

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/21-01/25

Date: 12 March 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
“Response to the Defence “Request for Leave to Appeal Decision ICC-01/21-01/25-
390-Conf”
(ICC-01/21-01/25-396-Conf)**

Source: Mr Joel Butuyan and Mr Gilbert Andres

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I. INTRODUCTION

1. Mr Butuyan and Mr Andres hereby file their response to the Defence Request for leave to appeal¹ (“Request”) the decision rejecting its application for disqualification of the legal representatives (“Impugned Decision”).²

2. As affirmed by the Pre-Trial Chamber (“Chamber”) in the Impugned Decision, *“it is incumbent on the Defence to properly and clearly present and articulate its arguments”* in an understandable manner, with identifiable *“legal basis for any contention or relief sought.”*³

3. Unfortunately for all parties involved, the Defence continues to shirk this duty with its latest Request. In particular, the Defence does not meet the requirements under article 82 of the Statute since the alleged issue does not arise from the Impugned Decision and its Request should be rejected.

II. PROCEDURAL BACKGROUND

4. On 26 January 2026, the Chamber instructed the Registry to appoint Mr Joel Butuyan, Mr Gilbert Andres, and Counsel from the Office of Public Counsel for Victims (“OPCV”) as the common legal representatives of victims (“CLRVs”) admitted in the present case.⁴

¹ Request for Leave to Appeal Decision ICC-01/21-01/25-390-Conf, 20 February 2026, [ICC-01/21-01/25-392](#) (the “Request”).

² Decision on the Defence Request for the Disqualification of the External Legal Representatives for the Victims, 20 February 2026, ICC-01/21-01/25-390-Conf, 20 February 2026, para. 14. A public redacted version [ICC-01/21-01/25-390-Red](#) was filed the same day (“Impugned Decision”).

³ *Ibid.*

⁴ Decision on victims’ participation and legal representation, [ICC-01/21-01/25-358](#), 26 January 2026, para. 31 (“Decision on Legal Representation of Victims”).

5. On 11 February 2026, the Defence filed a request for the disqualification of Mr Butuyan and Mr Andres as appointed external Common Legal Representatives for Victims (“external CLRVs”).⁵

6. On 20 February 2026, the Chamber rejected the Defence request.⁶

7. On 20 February 2026, the Defence filed the Request.⁷

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

9. Article 82(1)(d) of the Statute sets out the following prerequisites for granting a request for leave to appeal:

- (a) A decision which involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and
- (b) for which, in the opinion of the Pre-Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

⁵ “Defence Request for the Disqualification of the External Legal Representatives for the Victims” ICC-01/21-01/25-372-Conf, 11 February 2026. A public redacted version [ICC-01/21-01/25-372-Red](#) was filed the same day.

⁶ Impugned Decision, *supra* note 2.

⁷ Request, *supra* note 1.

10. This Chamber has previously recognized the Court's long-established jurisprudence that positions an interlocutory appeal as exceptional.⁸

11. Filed mere hours after the Impugned Decision, the Request does not meet this exceptional threshold under either of the conditions set out in article 82(1)(d) of the Statute.

The Defence does not raise an appealable issue under article 82(1)(d).

12. As this Chamber has clarified, "[a]n 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."⁹

13. The Defence argues that the Chamber erred in law when it determined that [REDACTED] for the purpose of [REDACTED] of the Code of Professional Conduct for Counsel ("Code") only [REDACTED].¹⁰

⁸ Decision on the 'Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf', 13 February 2026, [ICC-01/21-01/25-376](#), para. 4 (citing 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; 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).

⁹ *Ibid.*

¹⁰ Request, *supra* note 1, para. 4.

14. In the Impugned Decision, the Chamber found that the Defence had failed to indicate a conflict of interest regarding Mr Butuyan and Mr Andres within the meaning of [REDACTED] or 16 of the Code. It further held that “*the difference in roles, mandates or obligations of [the LRVs and Prosecution] does not per se indicate the existence of a conflict of interest.*”¹¹

15. In particular, the Chamber clarified that individuals who are not authorized to represent persons or make oral submissions before the Court are not included in the sphere of [REDACTED].¹²

16. The Decision addressed all the arguments raised in the Request. Thus, the Request raises no new grounds of argument that would qualify the purported “issue” as an appealable issue under article 82(1)(d) of the Statute.¹³

17. The bulk of the Defence’s arguments focus on its disagreements with the submissions of Mr. Butuyan and Mr. Andres.¹⁴ Very little is cited from the Impugned Decision other than its admonitions of Counsel to heighten the quality of their submissions before the Court and to rely on the strength of their argument rather than inflammatory rhetoric.¹⁵

¹¹ Impugned Decision, *supra* note 2, para. 23.

¹² *Ibid.*, paras. 18 and 20.

¹³ 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](#) (“Gbagbo Leave to Appeal Decision”), para. 70 (“*The Chamber reiterates, in this regard, that it is incumbent on the parties to identify the issue(s) they wish to appeal clearly and unambiguously.*”)

¹⁴ Request, *supra* note 1, paras. 6-8.

¹⁵ *Ibid.*, paras. 3 and 5.

18. Given this stark lack of reference to the actual, relevant parts of the Impugned Decision, the Defence merely expresses its disagreement with the outcome of the Chamber's deliberation.¹⁶ This disagreement is insufficient to necessitate the exceptional remedy of interlocutory appeal under the Statute.¹⁷

19. Rather than identifying a legal error, the Defence once more reiterates its displeasure with the "impugned arrangement" of the LRV support team without reference to identifiable provisions or caselaw that address the concrete legal implications of the arrangement as actionable by the appellate review mechanism.¹⁸

20. The Defence only engages in legal argumentation vis-à-vis the grounds of the Impugned Decision by alleging that [REDACTED] the Code purportedly applies to "past working relationships" on the [REDACTED].

21. Yet this very assertion presupposes that Ms. Arcaina [REDACTED] the Chamber explicitly denied and which the Request does not justify.

22. The Defence does not substantiate how the distinction between case manager and associate of counsel under article 2 of the Code is "artificial" based on any illustrative facets of the working roles.

¹⁶ 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](#) ("Ntaganda Decision on Leave to Appeal"), para. 26 ("[B]y introducing a similar argument, the Defence is clearly attempting to re-litigate or reconsider the same question which was previously ruled upon.")

¹⁷ DRC Leave to Appeal Judgment, *supra* note 8, para. 9 ("Only an "issue" may form the subject-matter of an appealable decision.... There may be disagreement or conflict of views on the law applicable for the resolution of a matter arising for determination in the judicial process. This conflict of opinion does not define an appealable subject. An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination. The issue may be legal or factual or a mixed one.")

¹⁸ Request, *supra* note 1, para. 9.

23. Further, the Defence does not dispute the Chamber's application of the law relating to [REDACTED] of the Code.¹⁹ Neither does the Request confront the Chamber's assessment that the Defence has misconceived the roles addressed by the clear wording of [REDACTED], nor does the Request illustrate how a team member of the external CLRVs acts as counsel within [REDACTED].

24. Simply put, the Request is hasty and severely lacking in legal reasoning besides mere assertion of presupposed conclusions the Defence continues to rely on the very reasoning the Chamber rejected as unduly speculative in its decision.²⁰

25. In sum, the Defence does not identify an issue arising from the Impugned Decision that could conceivably lead to appellate review for issues of fairness or expeditiousness of proceedings.²¹

¹⁹ See e.g., Kony Leave to Appeal Decision, *supra* note 8, para. 32 ("By challenging the interpretation of article 61 of the Statute, the Defence raises an issue which puts directly into question the foundation of the proceedings in this case. In other words, should the Chamber be erroneous in its interpretation of this provision of the Statute, this error would affect the whole confirmation proceedings in absentia.")

²⁰ Compare Request, *supra* note 1, paras. 3 and 11 with Impugned Decision para. 24.

²¹ Gbagbo Leave to Appeal Decision, *supra* note 13, para. 26 ("If an appealable issue is not clearly identified, the Chamber will simply be unable to carry out an assessment under article 82(1)(d) of the Statute as to whether the issue, if wrongly decided, may have implications on the fairness and expeditiousness of the proceedings or the outcome of the trial.")

Assuming there is a legally appealable issue in the Defence request, the issue as described by Defence, along with its proposed remedy, undermines the fairness and expeditiousness of the proceedings

26. The Appeals Chamber decision in the Situation in the Democratic Republic of Congo (cited in the Request) unequivocally affirms that “[t]he expeditious conduct of the proceedings in one form or another constitutes an attribute of a fair trial.”²²

27. The Defence’s continued opposition and challenge to victims’ almost unanimously expressed will and choice for counsel is evidently dilatory and unfair to victims who, under applicable international human rights law, have a right to expeditious access to justice.

28. Without having gone through the substance of the pre-trial proceedings – namely the confirmation of charges hearing which has already been delayed for five (5) months – Defence Counsel has revealed a penchant, or perhaps more fittingly a strategy, for tactics that simply delay and dramatize the proceedings, before they even occur.

29. This is nowhere more apparent than in the incoherencies of the present Request, filed only hours after the Impugned Decision, which pretend that the issue of legal representation for victims is a “key issue” while simultaneously characterizing the participation of duly appointed legal representatives as “ceremonial” during the confirmation hearing – an incompatibility audaciously written back to back in paragraphs 11 and 12.

²² DRC Leave to Appeal Judgment, *supra* note 8, para. 11.

30. Moreover, the Defence raises an irrelevant point implicating [REDACTED] when the submission before the Impugned Decision was filed by Mr. Butuyan and Mr. Andres, the removal of whom the Defence sought as relief in its original request, and who Defence sought [REDACTED].²³ Once again, the incoherence of the Defence's requested remedy prevails.

31. Further, and without admitting to the impediment per previous submissions, the [REDACTED] has made moot the issue of impediment to representation [REDACTED].

32. [REDACTED].

33. The Chamber further clarified the role of counsel *vis-a-vis* the obligations of [REDACTED].²⁴

34. To re-litigate the issue of Ms. Arcaina's inclusion on the external CLRV team, the Defence relies on a claim that "*the potential for recurrent conflict of interests is liable to trigger litigation at a later stage,*" without substantiation of the existence of any such conflict other than the circumstances which have already been dismissed by the Court as not falling under article 16 of the Code.

35. As it is present in the Request as well,²⁵ the Defence brings up the issue of Ms. Arcaina's appointment in the context of its frustration and displeasure with the lack of statutory basis for the external CLRVS to disclose requested facts to the Defence. As it failed to do in its original request for disqualification, the Defence has not proven that

²³ Request, *supra* note 1, para. 5.

²⁴ [REDACTED].

²⁵ Request, *supra* note 1, para. 10.

alleged exculpatory evidence is purportedly being withheld from Defence in contravention of the rights of the accused upheld by article 67 of the Statute.

36. By forcing the Chamber to adjudicate a leave to appeal a non-issue, the Defence improperly submits an unfounded and ill-timed request before it.

37. This is further illustrated by the Request's reference to article 64 of the Statute, which outlines the functions and powers of the Trial Chamber. Nowhere in the Request does the Defence make note of the provisions of article 57 which is applicable to this Chamber. This further indicates, as in Section above, that the Request does not substantively engage with the Impugned Decision and, actually, substantiates the external CLRVs' previous submission that this disqualification attempt is a misguided maneuver to adjudicate trial-specific issues that have not presently arisen.²⁶

38. In essence, if taken as appealable, the Defence creates a 'new' issue on appeal, which, again this Chamber has identified as a mischaracterization of the conflict of interest framework under the Code.

39. The Defence does not point to any new facts that the Chamber did not already consider in its Impugned Decision which would impact the fairness of proceedings, a decision which significantly noted that the Defence's original proposed facts did not suffice to address the fairness issue.²⁷

²⁶ Mr Joel Butuyan and Mr Gilbert Andres' Observations on the Defence "Request for the Disqualification of the External Legal Representatives for the Victims," 16 February 2026, [ICC-01/21-01/25-381](#), para. 43 ("*[B]y conflating the ownership of evidence regarding internal operations by the Philippine government with access to evidence by lawyers at CenterLaw who serve as counsel for petitioners in a Philippine domestic case, the Defence seeks to improperly adjudicate an unripe challenge to the validity of the physical/digital evidence via a round-about challenge to the appointment of external CLRVs and members of their counsel support team.*")

²⁷ Impugned Decision, *supra* note 2, paras. 14 and 23.

40. Instead, as undertaken in its original filing, the Defence continues to create legal standards for conflict of interest and fairness not found in the Court's jurisprudence nor applicable to this matter before the Chamber.

41. For example, the Defence offers no jurisprudence as citation support for its bold assertion that there is a "*fundamental requirement that proceedings be – and appear to be – fair.*"

42. Finally, should a conflict of interest arise, the Impugned Decision does not preclude a competent court from determining the issue in front of it.

43. In fact, the current proposed appeal would neither advance the proceedings nor avoid further litigation – if the Defence's prescription were fulfilled, it would debilitate the effective representation of victims by removing three competent team members with the expertise to represent the 539 admitted victims in the case.

44. Thus, the alleged issue does not significantly impede the fairness of proceedings nor their expeditiousness. Rather, the creation of a "new" issue on appeal which, again, is a mischaracterization of the conflict-of-interest framework under the Code, slows proceedings to an unacceptable degree.²⁸

²⁸ See Ntaganda Decision on Leave to Appeal, *supra*, para. 11 (describing expeditiousness as an attribute linked to "the speedy conduct of proceedings, without prejudice to the rights of the parties concerned").

Grave mischaracterization of facts by the Defence in the Request

45. Given the preeminent discussion of fairness and propriety in this appellate review process, it bears noting a parallel issue to the ones directly raised by the Defence in its Request.

46. Launching its sparse argument that there is an appealable issue arising from the Impugned Decision, the Defence paraphrases the procedural history of the ruling in a few editorializing sentences.²⁹

47. In doing so, the Defence repurposes the Prosecution's clear neutrality – explicitly taking no stance on the issue in its 16 February submission – into an insinuation of a negative stance on the issue of impediment to representation for Ms. Arcaina.

48. Specifically, the Defence characterizes it as “notable” that the Prosecution took no stance on the issue and **in the same sentence** ties this [REDACTED], when **no such causality** was conveyed by the Prosecution's own two-paragraph submission to this Chamber.³⁰

²⁹ Request, *supra* note 1, para. 3 (“There was absolutely nothing “incoherent” or “theatrical” in the Defence's submissions on this matter. The Prosecution understood the Defence request perfectly well, as did the Common Legal Representatives – hence, the strength of their respective responses. Notably, the Prosecution took no stance on the issue of an impediment and [REDACTED].”) (emphasis in original). See also Request, *supra* note 1, para. 8 (“Lack of knowledge of Ms. Arcaina's status, however, does not validate her appointment. She was a [REDACTED] only as a result of the Defence request.”)

³⁰ The totality of the Prosecution's submissions are as follows:

Pursuant to the Chamber's order, the Prosecution informs the Chamber that it takes no position on the “Defence Request for the Disqualification of the External Legal Representatives for the Victims. Should it assist the Chamber in considering the Defence's request, the Prosecution confirms that [REDACTED] for the confirmation of charges hearing. The Prosecution also does not intend to [REDACTED] at trial”.

V. CONCLUSION

49. The Defence bemoans the lack of time it has had to raise issues for appeal on this matter and denies responsibility for the timing of its submissions. Yet, Counsel can indeed be held responsible for making frivolous leaves for appeal, particularly as it implicates the solemn undertaking by all counsel before the Court to “*declare that I will perform my duties and exercise my mission before the International Criminal Court with integrity and diligence, honourably, freely, independently, expeditiously and conscientiously.*”³¹

50. Per Article 27 of the Code,³² the external CLRVs beseech the Defence to act in good faith, acknowledge when the decisions made by the Chamber are definitive and comprehensive, and refrain from further wasting the time and resources of the Court in adjudicating non-issues.

51. Based on the foregoing, the external CLRVs request the Chamber to REJECT the Request for leave to appeal the Impugned Decision filed by the Defence.



Gilbert Andres



Joel Butuyan

Dated this 12th day of March 2026

At The Hague (The Netherlands)

³¹ ICC Code of Professional Conduct for Counsel, article 5 (emphasis added).

³² *Ibid.*, article 27(1) (“*Relations with other counsel*”: *In dealing with other counsel and their clients, counsel shall act fairly, in good faith and courteously.*)