

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **27 August 2025**

**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***

**CONFIDENTIAL**

**Defence Request for Reconsideration of Order ICC-01/21-01/25-243-Conf**

**Source:** Defence for Mr Rodrigo Roa Duterte

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## I. INTRODUCTION

1. The Pre-Trial Chamber is requested, on the grounds of a clear error in reasoning,<sup>1</sup> to reconsider<sup>2</sup> and to rescind its order of 26 August 2025,<sup>3</sup> requiring the Medical Officer of the ICC Detention Centre ("ICCDC") to provide it with a report assessing the management of Mr Duterte's health conditions and the "measures and arrangements put in place to provide him with medical access and care, **as well as any examinations and results thereof**".<sup>4</sup>
2. The Order also sought the Medical Officer's views on "whether and, if so, at what level Mr Duterte **suffers from any condition** which might have an effect on his ability to follow and take part in the ongoing pre-trial proceedings, including the confirmation of charges hearing".<sup>5</sup>

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<sup>1</sup> Chambers are allowed to reconsider their own decisions in exceptional circumstances, where 'a clear error of reasoning has been demonstrated'. See e.g. *Ntaganda*, Decision on the Defence request for reconsideration and clarification, [ICC-01/04-02/06-483](#), 27 February 2015, para. 13; *Ongwen*, Decision on Defence request for reconsideration of or leave to appeal the directions on closing briefs and closing statements, [ICC-02/04-01/15-1259](#), 11 May 2018, para. 12; *Abd-Al-Rahman*, Decision on the Request for Reconsideration of Decision ICC-02/05-01/20-110 Submitted by the Defence (ICC-02/05-01/20-113), [ICC-02/05-01/20-163-tENG](#), 23 September 2020, para. 12 ("[t]he Chamber also finds that, not only does it have the right, it is indeed its duty to reconsider a decision when the very reasons for it are compromised"). The present request is filed confidentially pursuant to [Regulation 23bis\(2\)](#) of the Regulations of the Court as it pertains to submissions bearing the same classification. All references to "Article" and to "Rule" are to the [Rome Statute](#) and the [ICC Rules of Procedure and Evidence](#), respectively, unless otherwise indicated.

<sup>2</sup> Reconsideration has also been recognised as a procedural right of the accused. See *Abd-Al-Rahman*, Decision on requests for reconsideration, leave to appeal the confirmation decision and related matters, [ICC-02/05-01/20-517](#), 15 November 2021, para. 10 ("the Chamber also acknowledged that the Court's well established case law permit for the possibility of reconsideration as an exceptional measure: this might be the case where, for instance, a 'clear error of reasoning' has been demonstrated, or when it 'is necessary to prevent an injustice', or if the decision rendered is 'manifestly unsound'").

<sup>3</sup> Order to the Registry for a report from the Medical Officer of the Detention Centre, [ICC-01/21-01/25-243-Conf](#), 26 August 2025 ("Order"). The present request is filed confidentially pursuant to [Regulation 23bis\(2\)](#) of the Regulations of the Court as it pertains to submissions bearing the same classification. All references to "Article" and to "Rule" are to the [Rome Statute](#) and the [ICC Rules of Procedure and Evidence](#), respectively, unless otherwise indicated.

<sup>4</sup> Order, para. 3(a) (emphasis added).

<sup>5</sup> Order, para. 3(b) (emphasis added).

3. Finally, the Order made reference to Regulation 103(4) of the Regulations of the Court, which provides for the availability of a qualified medical officer with experience in “psychiatry” at the ICCDC.

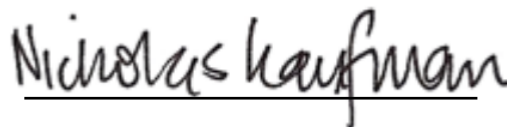
## II. SUBMISSIONS

4. The role of the ICCDC Medical Officer, as defined in Regulation 155(1) of the Regulations of the Registry, is merely to ensure “the physical and mental health” of the detainees in her charge. There exists no statutory provision empowering the Pre-Trial Chamber to compel the Medical Officer to provide an opinion on a detainee. In fact, the statutory provisions governing the operation of the ICCDC are specifically framed so as to avoid the involvement of the Medical Officer in litigation and to allow her to safeguard the privacy of her patients.
5. Access to Mr Duterte’s medical record may solely be afforded to the Pre-Trial Chamber upon Mr Duterte’s “express written consent” pursuant to Registry Regulation 156(3), and, even then, only through the agency of “a reporting physician **other than the medical officer**”. This reporting physician “shall provide the Registrar with the sealed medical record of the detained person”, which is then communicated to the Chamber. However, neither the reporting physician nor the Medical Officer can or will provide any “assessment” of the medical data contained in the medical record. Bearing this in mind, the Order makes no provision for obtaining Mr Duterte’s “express written consent” to access his medical record nor for identifying a reporting physician.
6. It is unclear why the Order refers to Court Regulation 103(4). Mr Duterte’s plea as to a lack of legal competency does not concern a functional disorder, but relates, rather, to an organic condition. The availability of a psychiatrist is thus irrelevant to the issues at stake.

7. In any event, the procedure whereby the Pre-Trial Chamber may commission a medical examination of Mr Duterte is set out in Rule 135(1), which itself refers to Rule 113. Rule 113(2) does not permit the Pre-Trial Chamber to solicit the assistance of the ICCDC Medical Officer, who must remain neutral and safeguard her patient's medical privacy. Rule 113(2) requires the Chamber to seek the opinion of an expert from "the list of experts" maintained by the Registry or an expert proposed by a party to the litigation. To this end, the Prosecution and the Defence have communicated on the issue of Mr Duterte's plea as to a lack of legal competence, and the former has indicated that it has identified an expert who has expressed his provisional agreement to examine Mr Duterte.

### III. CONCLUSION & RELIEF SOUGHT

8. In the circumstances, the Order is clearly erroneous. Accordingly, the Order must be reconsidered and rescinded.
9. The Defence also repeats its request that the Pre-Trial Chamber convene an immediate status conference to determine the appropriate procedure and timeline for litigating Mr Duterte's plea as to a lack of fitness to stand trial. This issue must be resolved before proceeding with the hearing on the confirmation of charges.



Nicholas Kaufman  
Counsel for Rodrigo Roa Duterte

Dated this 27th day of August 2025

At The Hague, The Netherlands