

Confidential

Dissenting Opinion of Judge María del Socorro Flores Liera

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1. I respectfully disagree with my colleagues' decision to postpone the hearing on the confirmation of charges in order to adjudicate the 'Defence Request for an Indefinite Adjournment' (the 'Request') and connected issues relating to Mr Duterte's fitness. Rather, for the reasons exposed below, I am of the view that the Request should have been rejected and the pre-trial proceedings continued, including the confirmation of charges hearing.
2. The Rome Statute (the 'Statute') separates, in its Parts 5 and 6, the proceedings for the 'investigation and prosecution' on one side, and the 'trial' of crimes within the jurisdiction of the Court on the other side, providing for different standards and prerogatives for the parties and participants at various stages of the proceedings. It is the Chamber's duty to ensure strict adherence to this statutory framework and therefore to interpret and apply these provisions within the limits of the specific stage of the proceedings to which they pertain, including when ensuring a person's enjoyment of his or her fair trial rights.
3. Pre-trial and trial proceedings are indeed different in nature, each held independently with clearly differentiated objectives. Through the Trial process detailed in Part 6 of the Rome Statute, the Trial Chamber shall hear and receive evidence which it will evaluate to determine for each charge whether to convict or acquit. The Trial Chamber must ultimately issue a written decision with a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions pursuant to article 74 of the Statute. The pre-trial proceedings, in contrast, serve a much more limited function. Notably, the purpose of the confirmation of charges hearing is to determine, pursuant to article 61(7) of the Statute, whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. To reach its conclusion, the Pre-Trial Chamber takes into account the evidence presented by the Prosecution, which 'may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial', pursuant to article 61(5) of the Statute.
4. It is in light of the above distinction that only the Trial Chamber has the obligation, under article 64(8)(a) of the Statute, to 'satisfy itself that the accused understands the nature of the charges'. No such analogous obligation exists for the Pre-Trial Chamber. Moreover, rule 135 of the Rules of Procedure and Evidence empowers only the Trial Chamber to issue the necessary orders to ensure that the accused is fit to stand trial.

5. Reading these provisions cumulatively, it is clear that, under the Statute, matters of fitness and the assessment of the same are exclusively within the competence of the Trial Chamber.

6. Finally, article 61(7) of the Statute foresees only three specific outcomes following the hearing on the confirmation of charges: (i) the Chamber confirms (part of) the charges in relation to which it has determined that there is insufficient evidence; (ii) the Chamber declines to confirm (parts of) the charges in relation to which it has determined that there is insufficient evidence; and (iii) the Chamber adjourns the hearing for the Prosecution to provide further evidence or conduct further investigation, or amend the charges. Accordingly, the Pre-Trial Chamber is statutorily mandated only to reach those specified conclusions through the confirmation of charges process. This further evidences that any determination regarding the suspect's fitness might affect the proceedings only after the confirmation of charges hearing has been held and a decision issued pursuant to article 61(7) of the Statute, time at which the Trial Chamber will have the competency.

7. In light of the above and considering the Chamber's duty to ensure the expeditiousness of the proceedings, the Chamber should have proceeded with addressing the Request by rejecting it, and continued with the pre-trial proceedings, including the holding of the confirmation of charges hearing.



Judge María del Socorro Flores Liera

Dated this Monday, 8 September 2025

At The Hague, The Netherlands