

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/21-01/25
Date: 8 September 2025**

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***

Confidential

Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence

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

- | | |
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| ☒ 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, by majority with Judge María del Socorro Flores Liera dissenting (the 'Majority'), this 'Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence' (the 'Rules').

I. Procedural history and background

1. On 12 March 2025, pursuant to a warrant of arrest issued by the Chamber on 7 March 2025,¹ Mr Rodrigo Roa Duterte ('Mr Duterte') was surrendered to the Court.
2. On 14 March 2025, Mr Duterte made his first appearance before the Chamber,² which decided that the hearing on the confirmation of charges would commence on 23 September 2025.³
3. On 14 July 2025, the Defence filed the 'Urgent Defence Request for a Status Conference under rule 121(2)(b)',⁴ requesting the Chamber to 'convene a status conference on or before 25 July 2025 to discuss issues affecting Mr Duterte's fitness to stand trial and to determine whether the current confirmation schedule remains practicable'.
4. On 17 July 2025, the Defence filed the 'Defence Notification',⁵ 'formally notif[ying] the Pre-Trial Chamber that it w[ould] raise the issue of legal competency as [a] bar to the holding of a hearing on the confirmation of charges'.
5. On 18 July 2025, the Defence filed the 'Defence Submission of Medical Reports',⁶ submitting 'new medical records that have recently come into its possession' and asserting that they are relevant 'to the issue of legal competency sought to be litigated'.
6. On 22 July 2025, the Chamber rejected the Defence Request for Status Conference finding *inter alia* that 'a status conference is not the appropriate procedure for dealing with "issues affecting Mr Duterte's fitness to stand trial and to determine whether the current confirmation schedule remains practicable"', and clarifying that 'any issue which the Defence indicated that it intended to raise in the course of the proposed status conference may be equally addressed in writing', so that '[p]arties and participants may then also present any relevant

¹ Warrant of Arrest for Mr Rodrigo Roa Duterte, ICC-01/21-01/25-83.

² Decision convening a hearing for the first appearance of Mr Rodrigo Roa Duterte, ICC-01/21-01/25-90.

³ Transcript of hearing, ICC-01/21-01/25-T-002-ENG, p. 10, lines 8-11.

⁴ ICC-01/21-01/25-192-Conf (public redacted version notified on 15 July 2025, ICC-01/21-01/25-192-Red) (the 'Defence Request for Status Conference').

⁵ ICC-01/21-01/25-197-Conf (public redacted version notified on 18 July 2025, ICC-01/21-01/25-197-Red).

⁶ ICC-01/21-01/25-199-Conf, with confidential annexes A, B and C.

submissions by way of written filings, allowing the Chamber to properly adjudicate such matters'.⁷

7. On 18 August 2025, the Defence filed the 'Defence Request for an Indefinite Adjournment',⁸ requesting that the Chamber (i) order 'that all legal proceedings, including the hearing on the confirmation of charges, be adjourned indefinitely'; or, in the alternative, (ii) 'convene a status conference for the purpose of litigating whether the Chamber should, if at all, exercise its discretion pursuant to Rules 113, 135(1), and 135(3) of the Rules of Procedure and Evidence'. The Defence further submitted that, 'given the extensive medical information now placed at the disposal of the Pre-Trial Chamber, the Defence does not believe that further medical examination [pursuant to rule 135(1) of the Rules] is necessary to grant the relief sought'.

8. On 26 August 2025, the Chamber issued the 'Order to the Registry for a report from the Medical Officer of the Detention Centre',⁹ instructing the Registry and the Medical Officer (the 'MO') of the Detention Centre (the 'ICC DC') to provide the Chamber with a report on (i) '[t]he management of Mr Duterte's health conditions while in custody at the Court's Detention Centre, including a complete overview of all measures and arrangements put in place to provide him with medical access and care, as well as any examinations and results thereof'; (ii) '[w]hether 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'; and (iii) '[w]hether any special measures or adjustments are recommended to address any medical condition of Mr Duterte during the pre-trial proceedings, including the confirmation of charges hearing'.

9. On 27 August 2025, the Defence filed the 'Defence Request for Reconsideration of Order ICC-01/21-01/25-243-Conf',¹⁰ requesting the Chamber 'to reconsider and to rescind its order of 26 August 2025' on the 'grounds of a clear error of reasoning'.

10. On 28 August 2025, the Prosecution submitted that it 'takes no position' on the Defence Request for Reconsideration.¹¹

⁷ Decision on the 'Urgent Defence Request for a Status Conference under rule 121(2)(b)', ICC-01/21-01/25-208-Conf.

⁸ ICC-01/21-01/25-230-Conf, with confidential annexes A, B (the 'Defence Request for Adjournment').

⁹ ICC-01/21-01/25-243-Conf (the '26 August 2025 Order').

¹⁰ ICC-01/21-01/25-244-Conf (the 'Defence Request for Reconsideration').

¹¹ Prosecution's Observations on the "Defence Request for Reconsideration of Order ICC-01/21-01/25-243-Conf" (ICC-01/21-01/25-244-Conf), ICC-01/21-01/25-251-Conf.

11. On the same day, the Prosecution opposed the Defence Request for Adjournment, requesting the Chamber to (i) 'reject the Defence Request to adjourn indefinitely all legal proceedings against Mr Duterte'; and (ii) 'reject the Defence alternative request to convene a status conference for the purposes of litigating whether the Chamber should, if at all, exercise its discretion pursuant to rules 113 and 135'.¹² The Prosecution further stated that it 'accepts that a short adjournment may be necessary, but this should be limited to the time necessary for the Chamber to expeditiously render its decision on Mr Duterte's fitness to stand trial'.

12. On 29 August 2025, the Registry filed its observations on the Defence Request for Reconsideration submitting that (i) the MO of the ICC DC 'would be in a position to submit to the Chamber a factual report on "all measures and arrangements [if any] put in place to provide [Mr Duterte] with medical access and care" at the Detention Centre, if Mr Duterte consents to this information being so provided'; (ii) 'the MO of the ICC DC does not possess the requisite expertise or judicial knowledge to provide [...] an assessment regarding a detained person's fitness to stand trial'; and (iii) 'the MO would be in a position to provide recommendations for the confirmation of charges hearing regarding the length of the sitting schedule and/or the physical modalities (such as online attendance, chair adjustment, etc.) based on the general health condition of Mr Duterte'.¹³

13. On 29 August 2025, the Office of Public Counsel for Victims (the 'OPCV') responded to the Defence Request for Adjournment submitting that 'the Chamber should appoint independent expert(s) to assist in its the determination of Mr. Duterte's current state of health and his fitness to stand trial at this juncture (and in the future)', and that it 'does not oppose the alternative relief sought'.¹⁴

14. On 2 September 2025, the Registry filed the 'Registry Report on the Assessment by the Medical Officer of the Detention Centre',¹⁵ reporting on 'the MO's proposed adjustments to the sitting schedule for the confirmation of charges hearings' and transmitting as an annex 'the factual report containing "the measures and arrangements put in place to provide [Mr Duterte] with medical access and care"'.¹⁵

¹² Prosecution's Response to the "Defence Request for an Indefinite Adjournment" (ICC-01/21-01/25-230-Conf), ICC-01/21-01/25-253-Conf.

¹³ Corrected Version of "Registry's Observations on the "Defence Request for Reconsideration of Order ICC-01/21-01/25-243-Conf", 27 August 2025, ICC-01/21-01/25-244-Conf", 29 August 2025, ICC-01/21-01/25-254-Conf-Exp-Corr (confidential redacted version notified on the same day, ICC-01/21-01/25-254-Conf-Red-Corr).

¹⁴ Victims' Response to the "Defence Request for an Indefinite Adjournment", ICC-01/21-01/25-257-Conf-Exp (public redacted version notified on 2 September 2025, ICC-01/21-01/25-257-Red).

¹⁵ ICC-01/21-01/25-263-Conf, with confidential *ex parte* annex (the 'Registry Report').

15. On 3 September 2025, the Defence responded to the Registry Report submitting that ‘a dispute exists as to Mr Duterte’s ability to provide informed consent to the divulgence of his medical information’.¹⁶

II. Preliminary issue – Defence Request for Reconsideration

16. In the Defence Request for Reconsideration, the Defence (i) requests the Chamber ‘to reconsider and to rescind’ the 26 August 2025 Order on the ‘grounds of a clear error of reasoning’ arguing that ‘no statutory provision empower[s] the Pre-Trial Chamber to compel the Medical Officer to provide an opinion on a detainee’; and (ii) ‘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’.

17. The Chamber recalls that, while the mechanism of reconsideration has no statutory basis, it exists as an exceptional remedy¹⁷ which may be allowed only under strict and limited conditions, i.e. if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice.¹⁸

18. In the present case, the Chamber considers that the arguments raised by the Defence amount to mere disagreement with the Chamber’s interpretation and application of the legal framework, and as such do not demonstrate a clear error of reasoning. Furthermore, the Chamber does not find any valid reason to reconsider its 26 August 2025 Order and, in any event, as a result of the submission of the Registry Report on 2 September 2025, the Defence’s request is now moot.

19. Regarding the Defence’s request for a status conference, the Chamber recalls that it already rejected a request from the Defence to hold a status conference on the same matter.¹⁹ Therefore, the Chamber considers that the Defence merely re-litigates a previously adjudicated issue in the Defence Request for Reconsideration, which is thus rejected also in that respect.

¹⁶ Defence Response to the ‘Registry Report on the Assessment by the Medical Officer of the Detention Centre’ & Request for Disclosure, 3 September 2025, ICC-01/21-01/25-264-Conf.

¹⁷ See e.g. Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Kilolo Defence Request for Reconsideration, 15 July 2015, ICC-01/05-01/13-1085, para. 4; Trial Chamber V(a), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Sang Defence’s Request for Reconsideration of Page and Time Limits, 10 February 2015, ICC-01/09-01/11-1813, para. 19. See also, generally, Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Decision on Mr Ntaganda’s request for reconsideration of the decision on time and page extensions, 1 October 2019, ICC-01/04-02/06-2426.

¹⁸ See e.g. *Situation in the Philippines*, Decision on the Prosecutor’s Second request for extension of page limit for article 15(3) Request, 11 May 2021, ICC-01/21-6, para. 9.

¹⁹ Decision on the ‘Urgent Defence Request for a Status Conference under rule 121(2)(b)’, 22 July 2025, ICC-01/21-01/25-208-Conf.

III. Determination

20. The Defence asserts that Mr Duterte 'is not fit to stand trial as a result of cognitive impairment in multiple domains'²⁰ and, in support, presents a neurological report²¹ and a neuropsychological report²² provided by two external medical practitioners selected by the Defence, and refers to a report 'by a neuropsychologist instructed by the Medical Officer at the ICC Detention Centre at the specific request of the Registrar'.²³

21. The Majority recalls that, pursuant to rule 135(1) of the Rules:

The Trial Chamber may, for the purpose of discharging its obligations under article 64, paragraph 8 (a), or for any other reasons, or at the request of a party, order a medical, psychiatric or psychological examination of the accused, under the conditions set forth in rule 113.

22. Rule 113 of the Rules further provides, in relevant part, that:

1. The Pre-Trial Chamber may, on its own initiative or at the request of the Prosecutor, the person concerned or his or her counsel, order that a person having the rights in article 55, paragraph 2, be given a medical, psychological or psychiatric examination. In making its determination, the Pre-Trial Chamber shall consider the nature and purpose of the examination and whether the person consents to the examination.

2. The Pre-Trial Chamber shall appoint one or more experts from the list of experts approved by the Registrar, or an expert approved by the Pre-Trial Chamber at the request of a party.

23. Contrary to the Defence's assertion,²⁴ the Majority considers 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. Accordingly, in order for the Chamber to properly adjudicate on any issues as to Mr Duterte's fitness and to ensure that Mr Duterte's fair trial rights are respected, the Majority finds that further medical examination by independent experts pursuant to rules 113 and 135 of the Rules is now required.

24. The Majority therefore orders the Registry to submit to the Chamber, by no later than 15 September 2025, a shortlist of experts who are qualified and have relevant expertise to determine and assess: (i) whether and, if so, at what level Mr Duterte suffers from any medical

²⁰ Defence Request for Adjournment, para. 1.

²¹ Annex A to the Defence Request for Adjournment.

²² Annex B to the Defence Request for Adjournment.

²³ Defence Request for Adjournment, para. 4. See Annex A to the Defence Submission of Medical Reports, 18 July 2025, ICC-01/21-01/25-199-Conf.

²⁴ Defence Request for Adjournment, para. 2.

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; and (ii) whether any special measures or adjustments are recommended to address any medical condition of Mr Duterte, also in light of any prognosis, during the pre-trial proceedings, including the confirmation of charges hearing.

25. The Registry shall prepare the abovementioned shortlist taking into account all documents currently available on the record that are relevant to the issue at hand, and in consultation with the Defence and the Prosecution. In addition, in order to ensure the shortlisted experts' impartiality and neutrality, individuals who have already been engaged in connection with the present case on behalf of a party shall not be included in the Registry's shortlist.

26. Noting the urgency of the matter, the Chamber instructs the Registry to ensure that it shortlists only experts that have expressed interest and availability for a potential urgent and short-notice assignment by the Chamber. The Registry shall, to the extent possible, include in its shortlist (i) information regarding the availability of each expert; and (ii) each experts' estimate regarding the time needed to complete the abovementioned assignment by the Chamber, based on the currently available information.

27. The Chamber further instructs the Registry to include in its shortlist information on the experts regarding their (i) experience in conducting examinations on fitness to participate in judicial proceedings; (ii) expertise in any medical fields that are relevant to assess Mr Duterte's medical situation in view of the information currently available in this regard; and (iii) language for the medical examination.

28. The Defence, the Prosecution and the OPCV shall submit observations, if they so wish, on the shortlist of experts submitted by the Registry by no later than 18 September 2025.

29. Judge María del Socorro Flores Liera respectfully disagrees with the Majority because, in her view, the factual elements regarding Mr Duterte's medical situation presented before the Chamber pursuant to the 26 August 2025 Order do not contain information warranting the triggering a procedure aimed at determining the fitness of the suspect to participate in the pre-trial proceedings and the confirmation of charges hearing. For the reasons that Judge Flores Liera sets out in her dissenting opinion to the 'Decision postponing the hearing on the confirmation of charges', such procedure does not have a legal basis in the statutory framework of the Court for its application at the pre-trial stage of the proceedings, particularly in light of the different nature and objectives of the pre-trial and trial proceedings.

FOR THESE REASONS, THE CHAMBER HEREBY

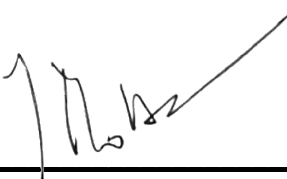
REJECTS the Defence Request for Reconsideration;

ORDERS the Defence and the Prosecution to file public redacted versions of filings ICC-01/21-01/25-230-Conf and ICC-01/21-01/25-253-Conf by no later than 11 September 2025;

ORDERS, Judge María del Socorro Flores Liera dissenting, the Registry to submit a shortlist of experts pursuant to paragraphs 24-27 above by no later than 15 September 2025;

INVITES, Judge María del Socorro Flores Liera dissenting, the parties and participants to submit observations on the Registry's shortlist, if they so wish, pursuant to paragraph 28 above by no later than 18 September 2025.

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 Monday, 8 September 2025

At The Hague, The Netherlands