

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/21-01/25**
Date: **11 September 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*

Public

Public redacted version of "Prosecution's Response to the 'Defence Request for an Indefinite Adjournment' (ICC-01/21-01/25-230-Conf)", 28 August 2025, ICC-01/21-01/25-253-Conf

Source: Office of the Prosecutor

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

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☒ **Counsel for the Defence**

☐ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

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I. INTRODUCTION

1. The Chamber should reject the “Defence Request for an Indefinite Adjournment”¹ (“Defence Request”). The proceedings against Mr Duterte cannot be “adjourned indefinitely” on the sole basis of the reports (the “Defence Reports”) of [REDACTED]² and [REDACTED]³ (the “Defence Experts”), the conclusions and opinions of which are not accepted by the Prosecution. The Prosecution is in the process of engaging its own expert(s) (the “Prosecution Expert”) to assist in determining Mr Duterte’s fitness to participate in the pre-trial proceedings and to stand trial.

2. The Prosecution notes the [REDACTED],⁴ and the [REDACTED].⁵ The [REDACTED] is expected to provide additional information regarding Mr Duterte’s health condition which will further assist the Chamber in its determination of the Defence Request. The contents of the [REDACTED] may therefore affect the submissions made in this filing.

3. The Prosecution accepts that an adjournment may be necessary, but any delay should be limited to the time required for the Chamber to expeditiously render its decision on the fitness of Mr Duterte to take part in the ongoing pre-trial proceedings and to stand trial. This determination should, at this stage, according to the information currently available to the Prosecution, be based on the [REDACTED], the 23 June 2025 medical report of the ICC Detention Centre (“ICCDC Report”),⁶ the reports of the Defence Experts, the Prosecution Expert, and the evidence of any other experts that the Chamber may, in its discretion, decide to appoint pursuant to rules 113 and 135 of the Rules of Procedure and Evidence (“Rules”).

4. The Chamber should also reject the Defence request, in the alternative, to “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)”.⁷ Convening a status conference would further delay the adjudication of this issue, which, as set out in detail below, should be promptly resolved by the Chamber pursuant to a schedule that would permit a confirmation of charges hearing to be completed as soon as possible and, in any event, before the end of 2025.

¹ Defence Request for an Indefinite Adjournment, ICC-01/21-01/25-230-Conf (“Defence Request”).

² Annex A to the Defence Request.

³ Annex B to the Defence Request.

⁴ [REDACTED], ICC-01/21-01/25-243-Conf.

⁵ Defence Request for Reconsideration of Order ICC-0121-0125-243-Conf, ICC-01/21-01/25-244-Conf.

⁶ ICCDC Medical Report dated 23 June 2025, ICC-01/21-01/25-199-Conf-AnxA (“ICCDC Report”).

⁷ Defence Request, ICC-01/21-01/25-230-Conf, para. 36.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this document is filed as “Confidential”, as it responds to a filing of the same classification. However, there is no justification to keep the entirety of these submissions confidential and doing so would be contrary to the practice of this Court.⁸ In particular, should there be an adjournment in proceedings as a result of the Defence Request, the public should be entitled to know the reason for it. Thus, the Prosecution requests that the Chamber orders the parties and participants to file public redacted versions of their submissions, with appropriate redactions to any sensitive medical details.

III. PROSECUTION’S SUBMISSIONS

a. Applicable law

6. Fitness to stand trial “must be viewed as an aspect of the broader notion of fair trial”, which is “rooted in the idea that whenever the accused is, for reasons of ill health, unable to meaningfully exercise his or her procedural rights, the trial cannot be fair and criminal proceedings must be adjourned until the obstacle ceases to exist”.⁹ As such, “fitness to stand trial can be defined as absence of such medical conditions which would prevent the accused from being able to meaningfully exercise his or her fair trial rights”.¹⁰ Therefore, the question of whether an accused is fit to stand trial does not depend, in and of itself, on whether they have particular medical conditions, but on whether they are able to effectively exercise their fair trial rights, irrespective of the existence of any such medical conditions.¹¹

⁸ See, *inter alia*, the following submissions regarding fitness to stand trial, which are available to the public: Decision on Mr Said’s Fitness to Stand Trial, ICC-01/14-01/21-667-Red; *Al Hassan* Ongoing Fitness Decision, ICC-01/12-01/18-1467; *Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red; *Gbagbo* First Decision on Fitness, ICC-02/11-01/11-286-Red; *Gbagbo* Second Decision on Fitness, ICC-02/11-01/15-349.

⁹ Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, ICC-02/11-01/11-286-Red, para. 43 (*‘Gbagbo* First Decision on Fitness’). See also Decision on the fitness of Laurent Gbagbo to stand trial, ICC-02/11-01/15-349, para. 33 (*‘Gbagbo* Second Decision on Fitness’); Decision on the Defence Request to Order a Medical Examination of Dominic Ongwen, ICC-02/04-01/15-637-Red, para. 7 (*‘Ongwen* Decision Ordering a Medical Examination’); Decision Appointing Experts for the Purpose of a Medical Examination pursuant to Rule 135 of the Rules of Procedure and Evidence, ICC-01/14-01/21-630-Red, para. 34 (*‘Said* Decision Appointing Experts’); Decision on Mr Al Hassan’s ongoing fitness to stand trial, ICC-01/12-01/18-1467, para. 69 (*‘Al Hassan* Ongoing Fitness Decision”).

¹⁰ *Gbagbo* Second Decision on Fitness, ICC-02/11-01/15-349, para. 33. See also *Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red, para. 7.

¹¹ *Said* Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 37; *Al Hassan* Ongoing Fitness Decision, ICC-01/12-01/18-1467, para. 73; *Gbagbo* First Decision on Fitness, ICC-02/11-01/11-286-Red, para. 51; *Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red, para. 13.

7. As previously held by this Court, there are a number of relevant capacities which are necessary for the meaningful exercise of the accused's procedural rights, including the capacity to (i) understand the purpose, including the consequences of the proceedings; (ii) understand the course of the proceedings, including the nature and significance of pleading to the charges; (iii) understand the evidence; (iv) testify or give an unsworn statement (should the accused so choose); and (v) instruct counsel in the preparation and conduct of his defence.¹²

8. It is not required that the aforementioned capacities "be present at their notionally highest level, or at the highest level that a particular accused has ever enjoyed in respect of each capacity. The threshold is met when an accused has these capacities, viewed overall and in a reasonable manner".¹³ In this regard, Chambers have previously been guided by the notion that "[e]ffective participation requires only a "broad understanding" of the trial process with a comprehension of the "general thrust" of what is said in court".¹⁴ Furthermore, "meaningful exercise of one's fair trial rights does not require that the person be able to exercise them as if he or she were trained as a lawyer or judicial officer".¹⁵

9. The responsibility to ensure that an accused is fit to stand trial lies with the Chamber itself, as it is part of its obligations under article 64(2) of the Statute to ensure a fair trial. However, "for the Chamber to resort to an assessment of fitness to stand trial, there must be indications suggesting the existence of medical conditions which may impact on the accused's ability to meaningfully exercise his fair trial rights which the Chamber is unable to resolve without the assistance of one or more medical experts".¹⁶ When such indications exist, the Chamber may turn to rule 135 of the Rules, which provides the statutory framework meant to assist the Chamber in making its determination, as the rule's primary purpose is "to enable the

¹² *Gbagbo* Second Decision on Fitness, ICC-02/11-01/15-349, para. 35, referencing, in footnote 117, the Order of 30 September 2015, ICC-02/11-01/15-253-Conf, para. 13; *Hadžić* Decision, para. 38, citing *Strugar* Appeals Judgement, para. 55; ICTY, Prosecutor v. Pavle Strugar, Case No. IT-01-42-T, Trial Chamber Decision re the defence motion to terminate the proceedings, 26 May 2004 ('*Strugar* Trial Decision'), para. 36. See also *Said* Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 35; *Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red, para. 8.

¹³ *Said* Decision Appointing Experts, ICC-01/14-01/21-630-Red, para. 36; *Al Hassan* Ongoing Fitness Decision, ICC-01/12-01/18-1467, para. 70.

¹⁴ *Gbagbo* Second Decision on Fitness, ICC-02/11-01/15-349, para. 36, referencing, in footnote 119, the *Hadžić* Decision, paras 37 and 39, citing the *Strugar* Appeals Judgement, paras 47 and 55 and the *Strugar* Trial Decision, para. 3. See also *Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red, para. 7.

¹⁵ *Gbagbo* Second Decision on Fitness, ICC-02/11-01/15-349, para. 34; *Al Hassan* Ongoing Fitness Decision, ICC-01/12-01/18-1467, para. 71; *Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red, para. 10.

¹⁶ *Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red, para. 12.

Chamber to “discharge[e] its obligations” in relation to ensuring that the accused understands the charges and ultimately that proceedings are fair”.¹⁷

10. Rule 135 of the Rules provides that the Chamber may order, *proprio motu*, or at the request of a party, “a medical, psychiatric or psychological examination of the accused” to be performed by one or more experts from the list of experts approved by the Registrar, or an expert approved by the Chamber at the request of a party.¹⁸ This rule is also applicable during pre-trial proceedings,¹⁹ including confirmation hearings,²⁰ and has been regularly used when assessing accused’ fitness to stand trial, or for determining any practical modalities needed to facilitate their participation in proceedings, in previous cases before this Court.²¹

11. While the Chamber “shall appoint one or more experts” to carry out the necessary examinations of the accused, it is ultimately the Chamber itself, and not the experts, that is exclusively competent to make the determination of an accused’s fitness to stand trial.²² In reaching its overall determination, the Chamber must take into account all relevant circumstances of each individual case. It must also examine whether the negative impact of particular medical conditions can be mitigated by putting in place any practical modalities.²³

b. Additional medical examination of Mr Duterte is necessary to adjudicate his fitness to stand trial

12. In the present case, the Chamber should order additional medical reports or examinations of Mr Duterte, as the Defence Reports provide indications alleging that he may be unable to meaningfully participate in legal proceedings against him.²⁴ While the Defence Reports raise concerns regarding Mr Duterte’s fitness to stand trial, they are not sufficient, on their own, to

¹⁷ *Gbagbo* First Decision on Fitness, ICC-02/11-01/11-286-Red, para. 56, citing rule 135(1) of the Rules and article 64(8)(a) of the Statute; *see also* Decision on the Defence Request to Grant Privileged Status to Medical Expert and to Allow In-Person Visits, ICC-01/14-01/18-567-Red, para. 17.

¹⁸ Rule 135(1) and (3) of the Rules.

¹⁹ Decision on the “*Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012*”, ICC-02/11-01/11-152-Red, para. 26. *See also* *Gbagbo* First Decision on Fitness, ICC-02/11-01/11-286-Red, paras. 2, 44, 54-55.

²⁰ Decision on the “*Requête de la Défense en report de l’audience de confirmation des charges prévue le 18 juin 2012*”, ICC-02/11-01/11-152-Red; Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, ICC-02/11-01/11-286-Red.

²¹ *See, inter alia*, Decision on Mr Said’s Fitness to Stand Trial, ICC-01/14-01/21-667-Red; *Al Hassan* Ongoing Fitness Decision, ICC-01/12-01/18-1467; *Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red; *Gbagbo* First Decision on Fitness, ICC-02/11-01/11-286-Red; *Gbagbo* Second Decision on Fitness, ICC-02/11-01/15-349.

²² *Gbagbo* First Decision on Fitness, ICC-02/11-01/11-286-Red, para. 55.

²³ *Gbagbo* First Decision on Fitness, ICC-02/11-01/11-286-Red, para. 51.

²⁴ Annex A, ICC-01/21-01/25-230-Conf-AnxA, p. 17.

form the basis of the Chamber's decision on the matter.²⁵ The Defence allegations, which are disputed by the Prosecution as described in more detail below, need to be adjudicated upon with the assistance of medical experts, who should be instructed to evaluate not only conditions relevant to the determination of Mr Duterte's fitness to take part in the ongoing proceedings, but also provide recommendations on any specific measures or adjustments that can be applied to facilitate his participation in these proceedings. In this regard, the Prosecution notes [REDACTED].²⁶

13. As foreseen by the Defence,²⁷ the Prosecution is in the process of engaging its own expert ("Prosecution Expert"), in order to assist in determining Mr Duterte's fitness to participate in the pre-trial proceedings and stand trial. The Prosecution Expert should be provided with the same records, documentation, and any other relevant information that was made available to the Defence Experts. The Prosecution Expert should also be provided with the [REDACTED].²⁸

14. For the purposes of expediting proceedings, the Prosecution proposes, based on the currently available information, that the Chamber's decision on the fitness of Mr Duterte to stand trial is, at this stage, based on the [REDACTED], ICCDC Report, the reports of the Defence Experts and the Prosecution Expert, and any other expert that the Chamber may choose to appoint pursuant to rule 135 of the Rules. Any such expert(s) appointed by the Chamber should have extensive experience not only in the fields of medicine relevant to Mr Duterte's medical conditions, but also forensic experience in the issue of fitness to stand trial and, consequently, experience in providing expert reports and testimony before various courts. In particular, any additional expert(s) should be familiar with legal proceedings in general and sufficiently familiar with proceedings at this Court, or at other international courts or tribunals and if appropriate, provide recommendations on any specific measures or adjustments that can be applied to facilitate Mr Duterte's participation in the proceedings.

15. To ensure an expeditious adjudication on the question of Mr Duterte's fitness to stand trial, the Prosecution proposes that the Chamber sets a schedule that would allow for this issue

²⁵ See Decision on the Defence Request to Grant Privileged Status to Medical Expert and to Allow In-Person Visits, ICC-01/14-01/18-567-Red, para. 17 ("An expert solely chosen by the Defence, notwithstanding whether this expert has been accepted to the List of Experts, does not fulfil these [Rule 135(1)] requirements").

²⁶ [REDACTED], ICC-01/21-01/25-243-Conf, para. 3.

²⁷ See ICC-01/21-01/25-205-Conf, para. 3.

²⁸ [REDACTED], ICC-01/21-01/25-243-Conf, p. 2.

to be adjudicated by such time that would still allow a confirmation of charges hearing to be completed before the end of 2025.

c. The Prosecution disputes Defence allegations that Mr Duterte is unfit to stand trial

16. An additional medical evaluation of Mr Duterte is necessary because the Prosecution disputes the Defence's position that Mr Duterte is "not fit to stand trial"²⁹ and the currently untested findings of the Defence Experts. At this stage, pending the [REDACTED] and further analysis from the Prosecution's Expert, and any other experts that the Chamber may appoint, the Prosecution makes the following preliminary points.

17. *First*, it is unclear how familiar, if at all, the Defence Experts are with judicial proceedings at this Court, or even at other international courts or tribunals. It is thus also unclear what standards or thresholds they applied when making determinations relating to Mr Duterte's fitness to stand trial. For example, [REDACTED] report states that he "[REDACTED]",³⁰ but makes no mention of [REDACTED]. His report further concludes in a cursory fashion that "[REDACTED]" because he, *inter alia*, "[REDACTED]".³¹ However, as described at paragraph 8 above, effective participation at this Court requires only a "broad", as opposed to a "full", understanding of the trial process with a comprehension of the "general thrust" of what is said in court.³²

18. *Second*, the findings of the Defence Reports regarding [REDACTED] are disputed by [REDACTED]. More specifically, the [REDACTED]

19. *Third*, the [REDACTED] and [REDACTED] report recommend [REDACTED]. As such, the [REDACTED] clearly states that [REDACTED] and that [REDACTED].³³ Likewise, [REDACTED] report also contains a recommendation to [REDACTED]³⁴ and adds that "[REDACTED]".³⁵

²⁹ Defence Request, ICC-01/21-01/25-230-Conf, para. 1.

³⁰ Annex A, ICC-01/21-01/25-230-Conf-AnxA, p. 2.

³¹ Annex A, ICC-01/21-01/25-230-Conf-AnxA, p. 17 (emphasis added).

³² *Gbagbo* Second Decision on Fitness, ICC-02/11-01/15-349, para. 36, referencing, in footnote 119, the *Hadžić* Decision, paras 37 and 39, citing the *Strugar* Appeals Judgement, paras 47 and 55 and the *Strugar* Trial Decision, para. 3. *See also Ongwen* Decision Ordering a Medical Examination, ICC-02/04-01/15-637-Red, para. 7.

³³ [REDACTED], ICC-01/21-01/25-199-Conf-AnxA, p. 6.

³⁴ Annex B, ICC-01/21-01/25-230-Conf-AnxB, p. 2; *see also* Annex A, ICC-01/21-01/25-230-Conf-AnxA, p. 15.

³⁵ Annex B, ICC-01/21-01/25-230-Conf-AnxB, p. 4.

20. In this regard, the Prosecution notes that while both [REDACTED] final and preliminary reports state that there was “[REDACTED]”,³⁶ the preliminary report contains the following additional information: [REDACTED].

21. *Fourth*, the Defence Experts were provided with underlying material that has not been made available to the Prosecution and may not be impartial. For instance, [REDACTED] report lists, among its sources of information, “[REDACTED]”,³⁷ which should be immediately disclosed to the Prosecution.

22. *Finally*, the Prosecution notes that [REDACTED] report refers to findings of [REDACTED] [REDACTED]. Moreover, the Prosecution submits that the [REDACTED] is premature and speculative at this stage and should not be taken into account by the Chamber.

IV. REQUESTED RELIEF

23. For the above reasons, the Prosecution respectfully requests the Chamber to (i) reject the Defence Request to adjourn indefinitely all legal proceedings against Mr Duterte, (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. The Prosecution 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, which, at this stage, according to information currently available to the Prosecution, should be based on the [REDACTED], the ICCDC Report, the reports of the Defence Experts and the Prosecution Expert and any other experts the Chamber may choose to appoint in accordance with rules 113 and 135.

³⁶ Annex A, ICC-01/21-01/25-230-Conf-AnxA, p. 16 and Annex C to the Urgent Request for Interim Release, ICC-01/21-01/25-150-Conf-Exp-AnxC, p. 11.

³⁷ Annex A, ICC-01/21-01/25-230-Conf-AnxA, p. 3; *see also* Annex B, ICC-01/21-01/25-230-Conf-AnxB, p. 4.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', written diagonally across the page.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 11th day of September 2025

At The Hague, the Netherlands