

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Original: **18 September 2025**

Date: **7 October 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 "Defence Observations on Registry Submission
ICC-01/21-01/25-270-Conf"**

Source: Defence for Mr Rodrigo Roa Duterte

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence
Duterte Defence Team

☐ 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
Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

1. The Pre-Trial Chamber's Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence required the Registry, *inter alia*, "to submit [...] 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 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".¹
2. While the Defence appreciates the effort invested by the Registry in formulating the shortlist that has been presented to the Pre-Trial Chamber,² it should not be understood that the Defence endorses the suitability of any one of the experts identified to provide the expertise sought. The Defence has already submitted the expertise that it believes appropriate,³ and other than corroboration, it is not clear why further expertise is required, especially since the neuropsychologist selected by the Medical Officer (who has advised the Registry on the expertise required) confirms the findings of [REDACTED] – the Defence neuropsychologist.⁴

¹ Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence, [ICC-01/21-01/25-268-Conf](#), 8 September 2025 ("the Order"), para. 24. All references to "Article" and to "Rules" in the present submission are to the Rome Statute and the ICC Rules of Procedure and Evidence ("RPE"), respectively, unless otherwise indicated. This submission is filed confidentially pursuant to [Regulation 23bis\(2\)](#) of the Regulations of the Court as it provides observations on a filing bearing the same classification and also includes identifying and confidential medical information.

² Registry Submission of a Shortlist of Medical Experts pursuant to ICC-01/21- 01/25-268-Conf, [ICC-01/21-01/25-270-Conf](#), 15 September 2025 ("Registry Shortlist of Medical Experts").

³ Neurological Expert Report, authored by [REDACTED], 13 August 2025, submitted as [Annex A](#) to the Defence Request for an Indefinite Adjournment, [ICC-01/21-01/25-230-Conf](#), 18 August 2025. *See also* "Evaluation of the neuropsychological assessment performed by [REDACTED] at the request of [REDACTED] and additional clinical assessment on [REDACTED]", authored by [REDACTED], submitted as [Annex B](#) to the Defence Request for an Indefinite Adjournment, [ICC-01/21-01/25-230-Conf](#), 18 August 2025.

⁴ ICCDC Medical Report dated 23 June 2025, submitted as [Annex A](#) to the Defence Submission of Medical Reports, [ICC-01/21-01/25-199-Conf](#), 18 July 2025, pp. 5-6.

3. The Defence notes that beyond stipulating that “further medical examination by independent experts”⁵ was required, the Order additionally specified that the “impartiality and neutrality”⁶ of the shortlisted experts should be ensured. Such impartiality and neutrality can hardly be ensured if the proposed experts are the preferred choice of either of the parties. In fact, the Order did not permit either of the parties to suggest the names of experts but, rather, entrusted the selection process to the Registry alone.⁷

4. Notwithstanding the aforementioned, the Prosecution wrote to the Registry and proposed the names of three additional experts that it had identified: [REDACTED] (neurologist), [REDACTED] (neurologist), and [REDACTED] (forensic psychiatrist).⁸ In light of this, the Defence proposed one further expert of its own – [REDACTED]⁹ – a clinical neuropsychologist affiliated with [REDACTED].¹⁰ Furthermore, for the sake of maintaining neutrality and allowing the Pre-Trial Chamber to make an **uninfluenced** selection, the Defence requested that the Chamber not be informed as to which party had proposed which additional expert.¹¹ The Registry declined to act as requested, stating: “[REDACTED]”.¹²

⁵ [Order](#), para. 23.

⁶ [Id.](#), para. 25.

⁷ [Id.](#) (“[i]n 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”).

⁸ Email, Prosecution to Registry, “Re: Registry consultation pursuant to Order on experts”, 12 September 2025, 15:57.

⁹ Email, Defence to Registry, “Re: Registry consultation pursuant to Order on experts”, 15 September 2025, 12:54.

¹⁰ [REDACTED].

¹¹ Email, Defence to Registry, “Re: Registry consultation pursuant to Order on experts”, 15 September 2025, 12:54.

¹² Email, Registry to the Parties, “Registry consultation pursuant to Order on experts”, 15 September 2025, 13:26.

5. It should be noted that the Registry set a deadline of Friday, 12 September 2025 at 16:00 for the parties' observations on the experts.¹³ The Defence filed its observations at 15:49¹⁴ whereas the Prosecution filed its observations at 15:57.¹⁵ As a result, the Defence was caught unawares by the Prosecution's 'broad' understanding of the Order. Since Friday, however, the Defence has sought and received recommendations concerning two further neurologists – [REDACTED]¹⁶ ([REDACTED]) and [REDACTED],¹⁷ based at [REDACTED]. These professionals were suggested by [REDACTED]. The Defence has not contacted these physicians and does not know whether they will agree to assist the Pre-Trial Chamber. Nonetheless, in light of the Prosecution's unsolicited suggestions, the Defence requests that these professionals also be considered by the Pre-Trial Chamber.
6. The Defence reiterates that it has not reached out to any of the physicians proposed herein and has given strict instructions to [REDACTED] and to [REDACTED] (who recommended [REDACTED]) not to mention anything about the *Duterte* case with these professionals should they happen to meet at any point.
7. The Defence believes that these professionals are best suited to provide independent expertise to the Chamber in the present case given their expertise in cognitive disorders, [REDACTED], and [REDACTED] ([REDACTED]), their [REDACTED] and, importantly, their [REDACTED]. Given that no translations into English or French of Mr Duterte's medical file would be

¹³ Email, Registry to the Parties, "Registry consultation pursuant to Order on experts", 11 September 2025, 12:38.

¹⁴ Email, Defence to Registry, "Registry consultation pursuant to Order on experts", 12 September 2025, 15:48.

¹⁵ Email, Prosecution to Registry, "Registry consultation pursuant to Order on experts", 12 September 2025, 15:57.

¹⁶ See [REDACTED].

¹⁷ See [REDACTED].

required in the event any of these experts are appointed, the five weeks estimated by the Registry for this purpose should, presumably, be greatly reduced.¹⁸ The costs of engaging any one of these professionals will clearly place less of a burden on the Court's resources and enable a more expeditious resolution of the issue at stake.

8. In any event, given the adversarial nature of proceedings at this Court, the Defence submits that each party must also be permitted, if it so desires, to present its own expert evidence in addition to that currently sought by the Chamber. Subsequently, it would be for the Chamber to decide what expertise to prefer after the parties have had an opportunity to conduct forensic cross-examination of all experts and make their respective submissions.
9. The ICC has recognised the value of an adversarial procedure in matters of fitness, with the *Gbagbo* Trial Chamber supporting the parties' right to question experts and noting that such forensic examination would "facilitate the adjudication of any issues which may arise therefrom".¹⁹ Both the *Gbagbo* Pre-

¹⁸ [Registry Shortlist of Medical Experts](#), para. 30.

¹⁹ *Gbagbo et al.*, Decision on the fitness of Laurent Gbagbo to stand trial, [ICC-02/11-01/15-349](#), 27 November 2015 ("*Gbagbo* Decision"), para. 10. See also *Gbagbo et al.*, Decision granting the request of the Gbagbo Defence and re-scheduling opening statements, [ICC-02/11-01/15-322](#), 28 October 2015 ("*Gbagbo* Decision on Defence Request"), para. 9.

Trial²⁰ and Trial Chambers²¹ emphasised the importance of oral hearings in assisting the Chamber in its deliberations.²²

10. Forensic examination in fitness litigation also finds support in the practice of the other international tribunals, including the IRMCT,²³ the ECCC,²⁴ and the ICTY,²⁵ at which the *Strugar* Chamber emphasised the utility of cross-

²⁰ The Pre-Trial Chamber's initial decision on Mr Gbagbo's fitness was taken only after a closed session had been held to hear the Defence, the Prosecution, and the Chamber-appointed experts, with the Chamber specifying that the purpose of that session was to enable the Pre-Trial Chamber and the parties to question, and seek clarification from, the experts on key issues arising from their respective reports, as well as for the Chamber to hear additional relevant submissions from the parties. See *Gbagbo*, Decision on issues related to the hearing on Mr Gbagbo's fitness to take part in the proceedings against him, [ICC-02/11-01/11-249](#), 20 September 2012 ("*Gbagbo* Decision on Hearing"), para. 37.

²¹ The Trial Chamber issued its final ruling on Mr Gbagbo's fitness subsequent to hearing expert testimony, direct and cross-examination of the witnesses, and, finally, oral submissions by the parties. The Chamber ordered the private hearing to allow the parties to examine the Chamber-appointed experts. See [Gbagbo Decision](#), para. 18.

²² [Gbagbo Decision on Hearing](#), para. 39 ("the Single Judge is of the view that the Chamber will benefit from the outcome of any discussion between either of the parties and the Experts it has appointed and for this purpose, such discussion shall thus take place in the presence of the Chamber at the Hearing"). See also [Gbagbo Decision on Defence Request](#), para. 9 ("the Gbagbo Defence asks the Chamber to order the 'Appointed Experts' to appear at the hearing, for the sake of transparency and in order to allow the parties the opportunity to question the Appointed Experts on the methodology for their examinations and the contents of their reports [...] the Chamber considers that [...] allowing the Chamber, Prosecution and Gbagbo Defence an opportunity to question the Appointed Experts concerning their reports will further facilitate the Chamber adjudicating any issues which may arise therefrom").

²³ The *Kabuga* Chamber appointed its own medical experts, while simultaneously granting requests by both the Prosecution and the Defence to engage medical experts of their own choosing. As the proceedings advanced, a hearing was held on the issue of fitness, during which the Trial Chamber heard, over the course of two weeks, the testimonies of Chamber-appointed experts, followed by oral submissions by the parties on the issue. See *Kabuga*, MICT-13-38-AR80.3, [Decision on Appeals of Further Decision On Félicien Kabuga's Fitness To Stand Trial](#), 7 August 2023, paras. 5, 8.

²⁴ The parties in *Thirith* submitted written observations on the report of the Chamber-appointed expert. A preliminary hearing on the defendant's fitness was then held, after which a further four experts were appointed, with the parties being invited to submit questions or concerns that the experts would address in their assessments and reports. After the second expert report was filed, an oral hearing took place during which the Court-appointed experts testified and were examined. The Defence, Prosecution, and the Civil Party were also permitted to make oral arguments on the accused's competency, and were invited, throughout the hearing, to address specific questions by the Chamber. See *Nuon et al.*, 002/19-09-2007/ECCC/TC, [Decision on Ieng Thirith's Fitness to Stand Trial](#), 17 November 2011, paras. 7-9, 11.

²⁵ In *Strugar*, the Chamber chose not to appoint its own medical expert, instead relying on the parties' experts. The Chamber ordered an oral hearing in which the experts were subject to cross-examination, after which the parties filed written submissions on the issue of fitness. The Chamber thereafter permitted, once again, brief oral submissions before ultimately issuing its decision on the strength of

examination as “particularly helpful in enabling the Trial Chamber to understand more adequately the basis for the conclusions reached and the significance of the differences of approach”.²⁶

11. The adversarial nature of these types of proceedings is further enshrined in the European Convention on Human Rights. An essential element of the right to a fair hearing under Article 6(1) is that parties have full access to, and the opportunity to challenge, all evidence under consideration by the court.²⁷ This applies, equally, to expert reports, with the European Court of Human Rights finding that a failure to provide a party with an expert’s preliminary report prior to the relevant decision being rendered had effectively deprived the applicant of the opportunity to properly challenge the evidence, thereby disrupting the procedural balance and undermining the fairness of the proceedings.²⁸
12. Meaningful participation requires more than mere access;²⁹ a party must be afforded a full opportunity to examine and to test the information, methodology, and reasoning relied upon by the expert.³⁰ In apparent

evidence that had been tested in court. See *Strugar*, IT-01-42-T, [Decision re the Defence Motion to Terminate Proceedings](#), 26 May 2004 (“*Strugar* Decision”), paras. 10, 11, 40.

²⁶ [Strugar Decision](#), para. 40.

²⁷ ECtHR, *Mantovanelli v. France*, [App. No. 21497/93](#), Judgment, 18 March 1997 (“*Mantovanelli v. France*”), para. 33 (“each party must in principle have the opportunity not only to make known any evidence needed for his claims to succeed, but also to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court’s decision”).

²⁸ See e.g. ECtHR, *Baccichetti v. France*, [App. No. 22584/06](#), Arrêt, 18 February 2010, paras. 33-35 (“[e]lle estime que le respect du droit à un procès équitable, pris sous l’angle particulier du respect du principe du contradictoire, exigeait que le demandeur [...] ait la possibilité de soumettre ses commentaires en réponse au contenu du pré-rapport ou, pour le moins, qu’il en soit informé pour décider, le cas échéant, d’y répondre. Or, cette faculté ne lui a pas été donnée puisque le recours n’a eu connaissance du contenu de ce pré-rapport que postérieurement à la sanction disciplinaire”).

²⁹ See [Mantovanelli v. France](#), para. 33.

³⁰ *Id.* para. 36 (“Mr and Mrs Mantovanelli could only have expressed their views effectively before the expert report was lodged. [...] **The applicants were therefore not able to cross-examine these five people who could reasonably have been expected to give evidence along the same lines as the CHRN, the opposing side in the proceedings.** As to the documents taken into consideration by the

recognition of the principle that only through rigorous scrutiny can the reliability and credibility of expert opinions and findings be properly tested, the French Court of Cassation has even required experts to share their documents with the parties to facilitate discussion **before** submission of the expert report to the Court.³¹ Other domestic jurisdictions around the world, in both common and civil law systems, also advocate an adversarial proceeding to determine the issue of fitness.³²

expert, the applicants only became aware of them once the report had been completed and transmitted [and] were thus not able to comment effectively on the main piece of evidence. The proceedings were therefore not fair as required by Article 6 para. 1”) (emphasis added).

³¹ Cass. Civ. Ch. 1, [No. 10-18.853](#), 1 February 2012. Parties’ observations must be appended if requested, and experts may seek clarifications or documents directly. *See also* French Procedural Civil Code (*Code de procédure civile*), articles [276 paras. 1, 242](#) and [243](#).

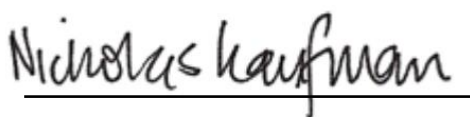
³² Competency hearings in federal court in the **United States** are mandated under federal statute, ensuring that a defendant is able to present evidence and cross-examine witnesses (*see* [18 U.S.C. § 4247](#), regulating the procedures governing competency hearings, including **that the defendant shall be represented by counsel, and shall have the opportunity to testify, to present evidence, to subpoena witnesses on his or her behalf, and to confront and cross-examine witnesses who appear at the hearing**). Other jurisdictions also provide for parties to question and challenge expert evidence during proceedings.

In **Germany**, upon submission of the expert report, the court may summon the expert on its own initiative or at a party’s request. Parties may also submit additional questions or request a hearing, where they can challenge the report and seek further explanations. On this, *see* [Zivilprozessordnung](#), §411(4). The German Constitutional Court’s jurisprudence on the adversarial principle focuses on the parties’ right to question the expert and has found that the Federal Court of Justice violated this right when it invalidated a patent by adopting a position contrary to the expert’s report without allowing the parties to question the expert at the hearing. On this, *see* Federal Constitutional Court (*Bundesverfassungsgericht*), BVerfG, Decision of the Third Chamber of the First Senate of May 14, 2007, [1 BvR 2485/06](#).

Similarly, in **Spain**, experts in criminal proceedings are required to answer questions and may be cross-examined by the parties. *See* Ley de Enjuiciamiento Criminal, Real Decreto de 14 de septiembre de 1882 ([BOE-A-1882-6036](#)), articles 480 and 723. *See also* Supreme Court of Spain (*Tribunal Supremo*), Sala de lo Penal, Sección 1ª, [Sentencia no. 940/2013](#), rec. 443/2013, ECLI:ES:TS:2013:5907, 13 December 2013, p. 9 (discussing the procedural rules on expert evidence, and finding that parties are allowed to attend the expert examination, the due process right of confrontation is fulfilled by allowing the defence to question the expert at the hearing, and there exists no impediment to the inclusion, in the case file and evidence, of reports by the parties’ experts).

Comparable provisions exist in the **Czech Republic**, where the [Code of Criminal Procedure \(141/1961, Section 108\)](#) as well as case law ensure that parties can interrogate and challenge expert evidence. *See* Czech Supreme Court (*Nejvyšší soud*), [11 Tdo 7/2025-445](#), 19 March 2025, paras. 6, 63.

13. Competence is a legal question,³³ and hearings thereon must comprise the same due process safeguards as any other legal process. This can only be assured, so it is submitted, through a fair and robust examination of the evidence, including of the witnesses. To do any less would compromise the integrity of the proceedings and may call into question the fairness and credibility of any decision ultimately rendered.
14. In light of the foregoing, the Defence suggests that, at the appropriate time, a hearing be held in which any expert appointed by the Chamber and the parties is subject to forensic examination, and that the parties be permitted to present submissions – oral or written – subsequent to such hearing.



Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 7th day of October 2025
At The Hague, The Netherlands

³³ 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](#), 28 August 2025, paras. 6, 11 ("[REDACTED]"); *Gbagbo*, Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, [ICC-02/11-01/11-286-Red](#), 2 November 2012, paras. 43, 55 ("[t]he Chamber [...] has considered the appointment of experts to conduct a medical, psychiatric and psychological examination [...] [t]hese experts were engaged in order to provide specialised information and medical opinion, based on specific expertise which the Judges do not possess. However, the Chamber considers that it remains exclusively competent to make the determination of the suspect's fitness to stand trial").