

**Cour
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**International
Criminal
Court**



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Date: **9 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 “Prosecution’s Observations on the ‘Registry Submission of a Shortlist of Medical Experts pursuant to ICC-01/21-01/25-268-Conf’ (ICC-01/21-01/25-270-Conf)”, 18 September 2025, ICC-01/21-01/25-276-Conf

Source: Office of the Prosecutor

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I. INTRODUCTION

1. Pursuant to the Chamber's order of 8 September 2025,¹ the Prosecution provides its observations on the "Registry Submission of a Shortlist of Medical Experts pursuant to ICC-01/21-01/25-268-Conf"² ("Registry's Shortlist of Experts").

2. The Prosecution supports the appointment of a multidisciplinary panel of experts for the assessment of Mr Duterte's fitness to stand trial and suggests that it should consist of at least three experts in the fields of forensic psychiatry, neuropsychology, and behavioural neurology. From the list of experts recommended by the Registry, the Prosecution supports the appointment of (i) [REDACTED] (or, alternatively of [REDACTED] if [REDACTED] becomes unavailable), as a forensic psychiatrist, (ii) of [REDACTED] as neuropsychologist, and (iii) of [REDACTED] as behavioural neurologist. Should the Chamber be inclined to appoint additional/alternative experts, the Prosecution also recommends [REDACTED] and/or [REDACTED] – highly experienced professionals in their respective fields of forensic psychiatry and behavioural neurology.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this document is filed as "Confidential", as it responds to submissions of the same classification.

III. PROSECUTION'S SUBMISSIONS

a. The panel should consist of multidisciplinary experts

4. The Prosecution agrees with the Registry's recommendation that the panel of experts should consist of several experts from relevant interdisciplinary fields.³ As communicated to the Registry,⁴ it is the Prosecution's view that the relevant fields of expertise are: forensic psychiatry, neuropsychology, and behavioural neurology. This is in line with recommendations

¹ Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence, ICC-01/21-01/25-268-Conf ("Order pursuant to rules 113 and 135").

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 ("Registry's Shortlist of Experts").

³ Registry's Shortlist of Experts, ICC-01/21-01/25-270-Conf, para. 12.

⁴ Registry's Shortlist of Experts, ICC-01/21-01/25-270-Conf, para. 22.

set out in the 2024 “Forensic Neurology and the Role of Neurologists in Forensic valuations” article,⁵ which states, *inter alia*, that:

*“In competency to stand trial evaluations in which a bona fide doubt is raised because of concerns of dementia, there can be synergistic value in independent evaluations and opinions from a forensic psychiatrist, neuropsychologist, and behavioral neurologist utilizing each discipline’s distinct skill sets. Similarly in cases of criminal responsibility or mitigating circumstances, having a multidisciplinary approach with a forensic psychiatrist, behavioral neurologist, and neuropsychologist when neurological evidence is relevant will best maximize objective truth-telling as it relates to the legal question at hand.”*⁶

5. As communicated to the Registry,⁷ the Prosecution further suggests that the panel should consist of an odd number of experts, with a minimum of three, and thus be composed of: one forensic psychiatrist, one or two neuropsychologists, and one or two behavioural neurologists specialising in [REDACTED].

b. Recommendations regarding specific experts

6. The Prosecution is in favour of appointing the following individuals from the list of experts recommended by the Registry into the panel (i) [REDACTED] (or if unavailable, then [REDACTED]) as forensic psychiatrist, (ii) [REDACTED] as neuropsychologist, and (iii) [REDACTED] as behavioural neurologist. The Prosecution notes that these experts were each identified as suitable experts by the Registry independent of any recommendation by the Prosecution or the Defence and have confirmed their interest and availability to the Registry.⁸

7. [REDACTED] is a highly experienced forensic psychiatrist, with demonstrated experience in providing expert testimony and reports to judicial bodies, including in criminal cases at international level.⁹ He confirmed his availability during most of September and October, is able to travel to The Hague on short notice, and has indicated that he would be in a

⁵ The Journal of the American Academy of Psychiatry and the Law article: <https://jaapl.org/content/jaapl/52/2/139.full.pdf> (last accessed on 18 September 2025).

⁶ The Journal of the American Academy of Psychiatry and the Law article: <https://jaapl.org/content/jaapl/52/2/139.full.pdf> p. 7, para. 2 (last accessed on 18 September 2025).

⁷ Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf, para. 22.

⁸ Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf, paras. 17-18.

⁹ Annex I to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxI, p. 4, 8; Annex II to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxII, p. 2.

position to produce a report within days.¹⁰ [REDACTED] is another highly qualified forensic psychiatrist, whose skills also include medico-legal reporting and expert evidence.¹¹ [REDACTED] has not yet confirmed his availability¹² and therefore should be considered as an alternative expert to [REDACTED], should the latter become unavailable. [REDACTED] – [REDACTED] expert proposed by the Registry with specialisation in neuropsychology¹³ – is an experienced cognitive neuroscientist,¹⁴ whose expertise would complement the panel for a more holistic assessment of Mr Duterte. She has confirmed her availability for September and October.¹⁵ [REDACTED], [REDACTED] behavioural neurologist in the Registry’s shortlist,¹⁶ who was contacted by the Registry because it considered his area of expertise as “relevant to assist the Chamber in the current matter”,¹⁷ is another highly experienced professional whose expertise includes, *inter alia*, research in [REDACTED].¹⁸ [REDACTED] also had previous experience in [REDACTED].¹⁹ He too confirmed his availability and interest and the Registry states that it would “expedite the process for [REDACTED] to be included on the List of Experts”.²⁰ All four of these experts are able to conduct their examinations in English – a language that is spoken by Mr Duterte.

8. The Prosecution notes that, all but one²¹ of the remaining experts proposed by the Registry, are experts in fields other than behavioural neurology, neuropsychology, or forensic psychiatry, and therefore should not be considered for appointment for this specific panel. Moreover, the majority of these remaining experts have indicated issues with their availability during September/October.²²

9. Should the Chamber be minded to appoint additional experts, as communicated to the Registry during its consultation with the parties in respect of the list of proposed experts, the Prosecution also recommends [REDACTED] and/or [REDACTED] – both highly experienced

¹⁰ Annex II to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxII, p. 2.

¹¹ Annex I to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxI, p. 63, 65, 68.

¹² Annex II to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxII, p. 4.

¹³ Annex II to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxII, p. 2.

¹⁴ Annex I to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxI, p. 46.

¹⁵ Annex II to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxII, p. 2.

¹⁶ Annex II to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxII, p. 2.

¹⁷ Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf, para. 18.

¹⁸ Annex I to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxI, p. 144.

¹⁹ Annex II to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxII, p. 2.

²⁰ Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf, para. 18.

²¹ Expert [REDACTED] field of expertise is “[REDACTED]”, but he has not confirmed his availability for September/October and “[REDACTED]” (see Annex II to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxII, p. 2).

²² Annex II to the Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf-AnxII, p. 2-4.

professionals in their respective fields of forensic psychiatry and behavioural neurology. The Prosecution has not engaged either of these proposed experts.

10. The Prosecution notes that the Defence also took the opportunity to propose [REDACTED] as a potential expert.²³ Given the urgency of this matter,²⁴ the Prosecution respectfully submits that the Chamber should not entertain any further suggestions of potential experts. The Chamber set an expedited timeline for the shortlisting of experts and the Registry consulted with the parties in relation to the proposed shortlist, as ordered by the Chamber.²⁵ The Chamber should reject any attempt to propose additional experts at this stage, and thus delay the process of appointing experts.

11. The Prosecution opposes the appointment of [REDACTED] as an expert. While she is a qualified specialist in neuropsychology, her appointment could raise issues of potential bias. Following a request from the Prosecution, the Defence confirmed that [REDACTED] was recommended by [REDACTED], one of the [REDACTED] in this case.²⁶ Given the possibility that [REDACTED] may be part of the appointed experts' assessment, the Prosecution respectfully submits that it would be advisable to appoint experts who have [REDACTED] in order to mitigate any potential bias.

c. Instructions and materials to be provided to the panel of experts

12. Per the Chamber's Order pursuant to rules 113 and 135, the appointed experts have been instructed 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; and (ii) whether any special measures or adjustments are recommended to address any medical conditions of Mr Duterte, also in light of any prognosis, during the pre-trial proceedings, including the confirmation of charges hearing".²⁷ In particular, the appointed experts should be directed to assess whether Mr Duterte is able to meaningfully exercise his 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

²³ Registry's Shortlist of Experts, ICC-01/21-01/25-270-Conf, para. 29.

²⁴ As noted by the Chamber, *see* Order pursuant to rules 113 and 135, ICC-01/21-01/25-268-Conf, para. 26.

²⁵ As noted by the Chamber, *see* Order pursuant to rules 113 and 135, ICC-01/21-01/25-268-Conf, para. 25.

²⁶ *See* e-mail from the Defence sent on 17 September 2025 at 21:35.

²⁷ Order pursuant to rules 113 and 135, ICC-01/21-01/25-268-Conf, para. 24.

unsworn statement (should the accused so choose); and (v) instruct counsel in the preparation and conduct of his defence.²⁸ This assessment should be carried out pursuant to the relevant standards, as elaborated in the Prosecution’s Response to the “Defence Request for an Indefinite Adjournment”.²⁹

13. In addition, should the appointed experts determine the presence of any mental capacity impairment of Mr Duterte, they should be instructed to (i) specify the affected areas of mental capacity, and (ii) assess whether these are due to reversible or irreversible causes, evaluate the relative impact of each cause, and assess whether there are any contributing factors that exacerbate the condition(s) and whether they are preventable or reversible.

14. The panel’s assessment should also expressly include an evaluation of any evidence of malingering, particularly in light of [REDACTED].

15. The appointed experts should be provided with the necessary time and any logistical support required to facilitate their examination of Mr Duterte. They should also be provided with (i) Mr Duterte’s medical record, including all reports from the Medical Officer to date (ii) the Defence Experts’ reports,³⁰ including the preliminary report³¹ (iii) all materials that had been made available to the Defence Experts, including those listed in [REDACTED] Report,³² (iv) any reports or test results generated as a result of the examination of Mr Duterte by the Defence Experts, including, *inter alia*, the results of the [REDACTED] and the [REDACTED], (v) any reports or test results generated following the medical examinations of Mr Duterte by other professionals, including his MRI and CT scans, and (vi) Mr Duterte’s detention record.

16. In addition, the appointed experts should be provided with access to any other material that may be deemed relevant and requested by them for the purposes of fulfilling their mandate, such as, *inter alia*, (i) objective information from relevant persons who have “no personal stake

²⁸ *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.

²⁹ Prosecution’s Response to the “Defence Request for an Indefinite Adjournment”, ICC-01/21-01/25-253-Red, paras. 6-11.

³⁰ Annexes A and B to the Defence Request for an Indefinite Adjournment, ICC-01/21-01/25-230-Conf-AnxA and ICC-01/21-01/25-230-Conf-AnxB.

³¹ Annex C to the Urgent Request for Interim Release, ICC-01/21-01/25-150-Conf-Exp-AnxC.

³² *See* ICC-01/21-01/25-230-Conf-AnxA, section 4 (Sources of Information).

in the outcome”³³ of this process, such as detention centre personnel who have interacted with Mr. Duterte since his surrender, in particular, before his fitness was raised as an issue in this case, (ii) [REDACTED]. [REDACTED]. Appointed experts should also be provided with public recordings of Mr Duterte’s speeches made shortly prior to his arrest,³⁴ and (iii) [REDACTED]

17. In order to maintain the impartiality of the panel, the Chamber should also instruct the parties and participants to refrain from any contact with the experts, unless authorised by the Chamber.

18. Finally, the Prosecution requests that the Chamber encourage the Registry to accelerate the estimated five week timeline it has provided to translate the relevant material.³⁵ An accelerated timeline for translations will help to ensure that the issue of Mr Duterte’s fitness is resolved swiftly.

IV. CONCLUSION

19. For the above reasons, the Prosecution requests the Chamber to: (i) constitute a multidisciplinary panel of experts consisting of at least three experts in the fields of forensic psychiatry, neuropsychology, and behavioural neurology; (ii) appoint [REDACTED] (or alternatively, [REDACTED] and/or [REDACTED]) as forensic psychiatrist; [REDACTED] as neuropsychologist; and [REDACTED] (or alternatively, [REDACTED]) as behavioural neurologist, (iii) order that the appointed experts are provided with the necessary material as set out in paragraphs 15-16 above, (iv) order the Registry to expedite the translations of the relevant material; and (v) instruct the parties to refrain from unauthorised contact with the appointed experts.

³³ Note that such information was assessed and deemed relevant to the determination of fitness to stand trial by an expert appointed in the ICTY, *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-T. See transcript of the 28 April 2004 hearing at:

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fucr.irmct.org%2FLegalRef%2FCMSDocStore%2FPublic%2FEnglish%2FTranscript%2FNotIndexable%2FIT-01-42%2FTRS1336R0000092655.doc&wdOrigin=BROWSELINK>, in particular p. 14, line 24-p. 15, l. 8, where the expert describes that he had interviewed one of the correctional officers and a nurse at the prison in order to “obtain as much objective information as possible” (last accessed on 18 September 2025).

³⁴ See, for instance, the video of Mr Duterte’s speech in Hong Kong, dated 9 March 2025 (two days prior to his arrest), PHL-OTP-00090149 and its translation at PHL-OTP-00091699.

³⁵ Registry’s Shortlist of Experts, ICC-01/21-01/25-270-Conf, para. 30.

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

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 9th day of October 2025

At The Hague, the Netherlands