

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: **ICC-01/21-01/25**
Date: **18 December 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 Panel of Experts’ Joint and Individual Reports”, 12 December 2025, ICC-01/21-01/25-338-Conf

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I. INTRODUCTION

1. Pursuant to the Chamber’s decisions of 24 September,¹ 17 October² and 3 November 2025,³ the Prosecution provides its observations on the Panel of Experts’ joint and individual reports⁴ (“Experts’ Reports”). Based on the unanimous findings of the Experts’ Reports, the Chamber should conclude that Mr Duterte is capable of meaningfully exercising his procedural and fair trial rights, and that he is fit to participate in the hearing on the confirmation of charges.

2. The Prosecution notes the reasonable modalities proposed by the Panel of Experts⁵ (“Panel”) and by the Medical Officer of the Detention Centre⁶ in order to facilitate Mr Duterte’s presence in court during the hearing on the confirmation of charges. Following the Chamber’s determination on Mr Duterte’s fitness to take part in the pre-trial proceedings, and consistent with the Chamber’s previous instruction, the Prosecution stands ready to resume the proceedings on the confirmation of charges.

II. CONFIDENTIALITY

3. Pursuant to regulation 23bis(1) and (2) of the Regulations of the Court, this submission is filed as “Confidential”, because it responds to submissions with the same classification. It also contains confidential information relating to the Panel and Mr Duterte’s health.

III. SUBMISSIONS

a. Mr Duterte is capable of meaningfully exercising his procedural and fair trial rights

i. The Panel is independent and was constituted in full compliance with the Court’s regulatory framework and prior jurisprudence

¹ Decision on the appointment of experts for the purpose of a medical examination pursuant to rules 113 and 135 of the Rules of Procedure and Evidence and related matters, ICC-01/21-01/25-279-Conf, para. 24 (“Appointment Decision”).

² Decision on the ‘Defence Request for the Disqualification of [REDACTED]’ and related matters, ICC-01/21-01/25-303-Conf, para. 24, and p. 9.

³ Decision on the ‘Urgent Defence Request to Disqualify Dr [REDACTED]’ and related matters, ICC-01/21-01/25-316-Conf, para. 19, and p. 8.

⁴ Registry Transmission of the Panel of Experts’ Joint and Individual Reports, ICC-01/21-01/25-327-Conf and its Annexes I-IV (Experts’ Reports).

⁵ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 3-4, sections 5.8-5.12.

⁶ Registry Report on the Assessment by the Medical Officer of the Detention Centre, ICC-01/21-01/25-263-Conf, paras 14-15.

4. Following the Defence assertion that Mr Duterte “is not fit to stand trial as a result of cognitive impairment in multiple domains”,⁷ the Chamber, by Majority, determined that in order for it to “properly adjudicate on any issues as to Mr Duterte’s fitness and to ensure that Mr Duterte’s fair trial rights are respected [...] further medical examination by independent experts pursuant to rules 113 and 135 of the Rules is now required”.⁸ The Panel was thereafter appointed by the Chamber for this purpose,⁹ in full compliance with the Court’s relevant regulatory framework¹⁰ and its prior jurisprudence, as set out in the Prosecution’s previous submissions and hereby incorporated by reference.¹¹

5. Prior to selecting individual experts, the Chamber invited the parties and participants to submit their observations on the shortlisted candidates,¹² providing an opportunity to raise any potential issues regarding the proposed experts’ qualifications, experience, or any other factors that could be relevant to their possible appointment for the task of assessing Mr Duterte’s fitness. In addition, when the Defence subsequently raised concerns in relation to two of the initially appointed experts and requested their disqualification,¹³ the Chamber duly revoked the appointments in question and selected, instead, an expert whose suitability was agreed upon by both the Prosecution and the Defence.¹⁴

6. In order to maintain the impartiality of the Panel, the parties and participants were instructed to refrain from any contact with the appointed experts.¹⁵ Furthermore, the experts provided a declaration confirming the absence of any conflict of interest in relation to their assignment in the case.¹⁶

⁷ Defence Request for an Indefinite Adjournment, ICC-01/21-01/25-230-Conf, para. 1.

⁸ Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence, ICC-01/21-01/25-268, para. 23.

⁹ Appointment Decision, ICC-01/21-01/25-279-Conf, p. 9; Decision on the ‘Urgent Defence Request to Disqualify Dr [REDACTED]’ and related matters, ICC-01/21-01/25-316-Conf, p. 7.

¹⁰ Rules 113 and 135 of the Rules of Procedure and Evidence.

¹¹ 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, paras. 9-10.

¹² Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence, ICC-01/21-01/25-268, p. 9.

¹³ See Defence Request for the Disqualification of [REDACTED], ICC-01/21-01/25-280-Conf and Urgent Defence Request to Disqualify Dr [REDACTED], ICC-01/21-01/25-304-Conf-Red.

¹⁴ Decision on the ‘Urgent Defence Request to Disqualify Dr [REDACTED]’ and related matters, ICC-01/21-01/25-316-Conf, p. 7; Urgent Defence Request to Disqualify Dr [REDACTED], ICC-01/21-01/25-304-Conf-Red, para. 2; Defence Response to Registry Submission ICC-01/21-01/25-294-Conf, ICC-01/21-01/25-299-Conf, para. 3.

¹⁵ Appointment Decision, ICC-01/21-01/25-279-Conf, para. 22.

¹⁶ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 2, section 2.

7. Thus, the Panel consists of independent, impartial, and qualified experts who were appointed by the Chamber (following consultations with the parties and participants) in full compliance with the Court’s regulatory framework and prior jurisprudence.

ii. The Experts’ Reports demonstrate that Mr Duterte is fit to participate in the pre-trial proceedings

8. In its 24 September 2025 decision, the Chamber instructed the Panel to “proceed with a medical examination of Mr Duterte and provide its assessment on [...] 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”.¹⁷ In this regard, the Chamber further instructed the Panel to focus “*inter alia* on Mr Duterte’s capacities which are necessary for the meaningful exercise of his procedural and fair trial rights, including the extent to which he is able to understand the charges, the evidence and the conduct, purpose and possible consequences of the pre-trial proceedings, and instruct Counsel for the preparation and conduct of his defence at the pre-trial stage”.¹⁸

9. In fulfilling their mandate, each Panel member interviewed, examined, and assessed Mr Duterte in person:¹⁹ Dr [REDACTED] on the morning and afternoon of 8 October 2025;²⁰ Dr [REDACTED] on 9, 16, and 20 October 2025;²¹ and Dr [REDACTED] on 18 November 2025.²² The Panel had sufficient time and relevant material before them to conduct their assessments, reach their conclusions, and write their respective reports.²³

10. Upon completion of their assessments, Panel members individually reached the same overall conclusion that, while frail and elderly,²⁴ Mr Duterte nevertheless possesses the necessary capacities to meaningfully exercise his procedural and fair trial rights. In particular, each Panel member independently concluded that Mr Duterte has the ability to: (i) understand

¹⁷ Appointment Decision, ICC-01/21-01/25-279-Conf, para. 17.

¹⁸ Appointment Decision, ICC-01/21-01/25-279-Conf, para. 18.

¹⁹ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 2, section 3.

²⁰ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 2, section 3.1 and 3.3; Annex II to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 3, sections 1.8-1.9.

²¹ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 2, section 3.1 and 3.4.

²² Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 2, section 3.1 and 3.5.

²³ See, e.g. Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 2, section 3; see also Annex II to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 3, section 1.7.

²⁴ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 3, section 5.4.

the charges and the evidence;²⁵ (ii) understand the conduct, purpose and possible consequences of the pre-trial proceedings;²⁶ and (iii) instruct Counsel for the preparation and conduct of his defence.²⁷ These findings are clear and unanimous, and should be relied upon by the Chamber as authoritative,²⁸ to determine that Mr Duterte is fit to stand trial.

iii. The Panel unanimously concluded that Mr Duterte is an unreliable historian concerning his health and mental functions

11. The Panel's findings are reliable and the methodology employed is robust. Notably, each member of the Panel employed specific tests to assess whether Mr Duterte was underperforming while being assessed.²⁹ For instance, Dr [REDACTED] used the "coin in hand test" which, as described in his report, is announced as a test for "short-term memory", but is actually a "floor" test that is "very simple even for an individual with moderate to severe memory impairment".³⁰ Mr Duterte's score on this test was "[REDACTED]" and "[REDACTED]".³¹ As a result of this and other tests used to assess underperformance, all three experts concluded that Mr Duterte's subjective complaints regarding his health and mental functions are unreliable.³² In particular, Dr [REDACTED] noted that "[REDACTED]" and that "[REDACTED]".³³ Dr [REDACTED] concluded that Mr Duterte "[REDACTED]",³⁴ and Dr [REDACTED] stated that Mr Duterte "[REDACTED] [REDACTED]" indicating that "[REDACTED]".³⁵ Ultimately, the Panel unanimously agreed, that "[REDACTED]".³⁶

²⁵ Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 52-53, sections 4.7 and 4.8; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 13; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 33, paras. 124-125.

²⁶ Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 53, section 4.9; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 12; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 33, para. 126.

²⁷ Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 53, section 4.10; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 12; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 34, para. 127.

²⁸ See, e.g. 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.

²⁹ Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 51, sections 3.4-3.6 and p. 52, section 4.2; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 10, 13 (point 7), and 15; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 23-25, paras 85-92 and p. 28, paras 97-99.

³⁰ Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 16.

³¹ Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 16.

³² Annex I to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 4, section 5.14-5.18; see also Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 51, sections 3.4-3.6 and p. 52, section 4.2; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 10, 13 (points 5 and 7), and 16; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 23-25, paras 85-92 and p. 28, paras 97-99, p. 30, para. 108, p. 32, paras 119-120.

³³ Annex I to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 4, section 5.16.

³⁴ Annex I to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 4, section 5.17.

³⁵ Annex I to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 5, section 5.18.

³⁶ Annex I to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 4, section 5.15.

12. By way of contrast, although Defence Expert Dr [REDACTED] records that “[REDACTED]” and that Mr Duterte was “[REDACTED]”,³⁷ his report does not record that any formal testing for this was conducted. Further, Defence Expert Dr [REDACTED] records that he was of the view that formal testing for performance validity was not feasible.³⁸ Dr [REDACTED] observed that “[REDACTED]”.³⁹ With respect to that opinion, Dr [REDACTED] observed that “[REDACTED]”.⁴⁰ Dr [REDACTED] was of the opinion that “[REDACTED]”.⁴¹

13. The Prosecution submits that the Chamber should accept the unanimous view of the Panel given that they each employed specific tests to assess whether Mr Duterte was underperforming while being assessed and they each found him to be unreliable. In the Prosecution’s view, it strongly appears that Mr Duterte is feigning cognitive impairments in an attempt to avoid a trial on the merits.

14. In addition, unlike Dr [REDACTED]’s report, which appears to misstate the ICC’s test for fitness to stand trial,⁴² it is apparent that each member of the Panel has carefully addressed the specific questions posed by the Chamber, assessing the relevant capacities which are necessary for the meaningful exercise of Mr Duterte’s procedural and fair trial rights, as mentioned above.

b. The modalities to facilitate Mr Duterte’s presence in court during the confirmation hearing are reasonable

15. When instructing the Panel, the Chamber also requested its assessment of “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”.⁴³

³⁷ Annex A to the Defence Request for an Indefinite Adjournment, ICC-01/21-01/25-230-Conf-AnxA, p. 16. The Prosecution does however note that Dr [REDACTED]’s preliminary report states: “[REDACTED]”, see Annex C to the Urgent Request for Interim Release, ICC-01/21-01/25-150-Conf-Exp-AnxC, p. 11.

³⁸ Annex B to the Defence Request for an Indefinite Adjournment, ICC-01/21-01/25-230-Conf-AnxB, p. 2.

³⁹ Annex B to the Defence Request for an Indefinite Adjournment, ICC-01/21-01/25-230-Conf-AnxB, p. 4.

⁴⁰ Annex II to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 39, section 31.2-31.3.

⁴¹ Annex II to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 39, section 31.2-31.3.

⁴² Annex A to the Defence Request for an Indefinite Adjournment, ICC-01/21-01/25-230-Conf-AnxA, p. 17; Prosecution’s Response to the “Defence Request for an Indefinite Adjournment”, ICC-01/21-01/25-253-Conf, para. 17.

⁴³ Appointment Decision, ICC-01/21-01/25-279-Conf, para. 17.

16. The Panel was in agreement that the use of [REDACTED], as well as regular breaks, would benefit Mr Duterte during court hearings.⁴⁴ Panel members also individually suggested additional measures to address Mr Duterte’s medical conditions more generally. As such, Dr [REDACTED] noted that Mr Duterte’s “[REDACTED]”, and that he should be provided with nutritious foods to his personal tastes and cultural preferences.⁴⁵ Dr [REDACTED] suggested “[REDACTED]”⁴⁶ and Dr [REDACTED] provided recommendations regarding the manner of questioning, or of providing information to, Mr Duterte.⁴⁷

17. In addition to the measures proposed by the Panel, the Medical Officer of the Detention Centre (“Medical Officer”) also provided a number of recommendations to facilitate Mr Duterte’s participation in the confirmation of charges hearing, including: (i) a maximum of four days a week in court; (ii) with a maximum of two days of hearings in a row, and one day with no hearings in the middle of the week; and (iii) only two court sessions per day, starting after 10am, and lasting no longer than 1,5 hours, with an adequate break in between.⁴⁸

18. The Prosecution considers that the above-mentioned measures proposed by the Panel/the Medical Officer are reasonable and defers to the Chamber’s discretion in relation to their adoption.

c. The proceedings on the confirmation of charges should resume

19. The Prosecution notes the Chamber’s earlier instruction that the “parties and participants shall be ready to immediately resume the proceedings on the confirmation of the charges, should Mr Duterte be found fit to participate in these proceedings”.⁴⁹ The Prosecution submits that based on the unanimous findings of the Experts’ Reports, the Chamber has the necessary information to conclude that Mr Duterte is fit to take part in the pre-trial proceedings, and accordingly, schedule the resumption of the proceedings on the confirmation of charges.

IV. CONCLUSION

⁴⁴ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 3-4, sections 5.8-5.11.

⁴⁵ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 4, section 5.10.

⁴⁶ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 4, section 5.11.

⁴⁷ Annex I to the Experts’ Reports, ICC-01/21-01/25-327-Conf-AnxI, p. 4, section 5.12.

⁴⁸ Registry Report on the Assessment by the Medical Officer of the Detention Centre, ICC-01/21-01/25-263-Conf, paras 14-15.

⁴⁹ Decision postponing the hearing on the confirmation of charges, ICC-01/21-01/25-267, para. 10.

20. For the above reasons, the Prosecution requests the Chamber to: i) conclude that Mr Duterte is capable of meaningfully exercising his procedural and fair trial rights, and that he is fit to participate in the pre-trial proceedings, including the confirmation hearing; and ii) schedule the resumption of the proceedings on the confirmation of charges with the modalities the Chamber considers appropriate to facilitate Mr Duterte's presence in court.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', written over a horizontal line.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 18th day of December 2025

At The Hague, the Netherlands