

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **19 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
URGENT**

Defence Request for an Expert Report on Article 58(1)(b) Risk Factors

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

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Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. Mr Duterte's health is deteriorating. This is an objective fact substantiated by medical documentation and reports – including those of the panel of experts appointed by the Pre-Trial Chamber ("Panel").¹ The passage of time has had a deleterious impact on Mr Duterte's medical condition, with the Panel agreeing that he is old, frail, and suffering from "unexplained weight loss".² The Pre-Trial Chamber has refused to hold status conferences in this case,³ the very purpose of which is to ensure that justice is seen to be done.⁴ Had Mr Duterte been given the opportunity to appear before the Court, even once during the nine months of his detention, the Pre-Trial Chamber would have been afforded

¹ Public Redacted Version of '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-Red](#), 24 September 2025. All references to "Article" and "Rule" in the present submission are to the [Rome Statute](#) and the ICC [Rules of Procedure and Evidence](#) ("RPE"), respectively, unless otherwise indicated.

² Annex I to the Registry Transmission of the Panel of Experts' Joint and Individual Reports, [ICC-01/21-01/25-327-Conf-AnxI](#), 5 December 2025, p. 3, para. 5.4.

³ The Defence has requested a status conference four times; none have been granted, with the Pre-Trial Chamber explicitly rejecting the Defence requests on two separate occasions. See Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence, [ICC-01/21-01/25-268](#), 8 September 2025, para. 19 ("the Chamber recalls that it already rejected a request from the Defence to hold a status conference on the same matter"); Decision on the 'Urgent Defence Request for a Status Conference under rule 121(2)(b)', [ICC-01/21-01/25-208](#), 22 July 2025, para. 6 ("[t]he Chamber considers that a status conference is not the appropriate procedure for dealing with 'issues affecting Mr Duterte's fitness to stand trial'"). In respect of the four Defence requests, see Public Redacted Version of the "Urgent Defence Request for a Status Conference under rule 121(2)(b)", [ICC-01/21-01/25-192-Red](#), 7 October 2025, para. 2; Public Redacted Version of the "Defence Request for an Indefinite Adjournment", [ICC-01/21-01/25-230-Red](#), 11 September 2025, para. 36; Defence Request for Reconsideration of Order ICC-01/21-01/25-243-Conf, [ICC-01/21-01/25-244](#), 27 August 2025, para. 9; Defence Notification, [ICC-01/21-01/25-197](#), 17 July 2025, para. 4.

⁴ See [Chambers Practice Manual](#) (2024), para. 19 ("**Pre-Trial Chambers should make full use of the possibility to hold status conferences with the parties.** Oral orders and clarifications in relation to the conduct of the proceedings can be provided to the parties during such status conferences, increasing efficiency and eliminating the need for cumbersome written decisions") (emphasis added). Incidentally, Pre-Trial Chamber I has deemed it appropriate to convene "a number of status conferences" in the proceedings against Mr El Hishri, whose first appearance occurred on 3 December 2025, and has already slated the first status conference to take place less than two months after Mr El Hishri's transfer into the custody of the Court. See *El Hishri*, Transcript of the Initial Appearance, [ICC-01/11-01/25-T-001-ENG](#), 3 December 2025, p. 7, lines 22-25 ("[t]he Chamber shall conduct a number of status conferences to ensure that the exchange of information, *inter partes*, is carried out seamlessly and adequately. The first status conference is slated for either 28 or 29 January 2026").

visible proof of his infirmity and the absolute incongruity of the contention that he is liable to flee, intimidate, or commit crimes.

2. Time and again, the Defence has submitted that Mr Duterte is unable to function on a daily basis without constant assistance, much less actualise the risk factors envisaged in Article 58(1)(b) of the Rome Statute.⁵ Given Mr Duterte's forthcoming detention review,⁶ the Defence now urgently seeks the clinical expertise, of the same Panel appointed by Pre-Trial Chamber I to opine on Mr Duterte's fitness, to prepare a report, on the basis of its existing clinical findings,⁷ as to Mr Duterte's capacity to actualise the risk factors set out in Article 58(1)(b).

II. APPLICABLE LAW

3. A Pre-Trial Chamber shall review a ruling on a suspect's release or detention at least every 120 days.⁸ The Appeals Chamber has held that a chamber of first instance is **obliged** to reconsider its decision on detention where changed circumstances warrant reconsideration of the factors forming the basis for detention.⁹
4. 'Changed circumstances' within the meaning of Article 60(3) entails "either a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is

⁵ See Public Redacted Version of the "Urgent Request for Interim Release, 12 June 2025", [ICC-01/21-01/25-150-Red](#), 12 June 2025. See also Public Redacted Version of the "Renewed Request for Interim Release, ICC-01/21-01/25-231-Conf, 18 August 2025", [ICC-01/21-01/25-231-Red](#), 19 August 2025.

⁶ The Defence has been ordered to file its observations on Mr Duterte's forthcoming detention review by 9 January 2026. See Email, Pre-Trial Chamber to the Parties and participants, "[ICC-01/21-01/25 – Confidential] Order to submit observations on Mr Duterte's detention", 5 December 2025, 11:25.

⁷ Public Redacted Version of "Registry Transmission of the Panel of Experts' Joint and Individual Reports, 5 December 2025, ICC-01/21-01/25-327-Conf", [ICC-01/21-01/25-327-Red](#), 19 December 2025.

⁸ See Rome Statute, [Article 60\(3\)](#); Rules of Procedure and Evidence, [Rule 118\(2\)](#).

⁹ *Bemba*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled "Decision on the defence's 28 December 2011 'Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo'", [ICC-01/05-01/08-2151-Red](#), 5 March 2012, para. 1.

necessary”.¹⁰ Examples of such changed circumstances may include, *inter alia*, excessive pre-trial detention;¹¹ diminished political status or financial losses;¹² **and** the deterioration of a detainee’s health.¹³

III. SUBMISSIONS

5. The Pre-Trial Chamber must consider any and all information which has a bearing on interim release and must motivate its review of detention clearly.¹⁴
6. The Prosecution objected to the Defence’s medical reports arguing that they should not be relied upon by the Pre-Trial Chamber.¹⁵ At first, the Prosecution

¹⁰ *Bemba*, Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II’s “Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa”, [ICC-01/05-01/08-631-Red](#), 2 December 2009, para. 60.

¹¹ See *Bemba et al.*, Judgment on the appeals against Pre-Trial Chamber II’s decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, [ICC-01/05-01/13-969](#), 29 May 2015, para. 45 (“the duration of time in detention pending trial is a factor that needs to be considered along with the risks that are being reviewed under article 60(3) of the Statute, in order to determine whether, all factors being considered, the continued detention ‘stops being reasonable’”) (internal citation omitted).

¹² *Bemba*, Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence, [ICC-01/05-01/08-743](#), 1 April 2010, para. 29 (“the accused is properly able to present arguments concerning his personal circumstances, and particularly his **suggested diminished political status, as well as his possible worsening financial circumstances**, [and] these matters have all been considered as relevant factors during earlier reviews of his detention [...] Developments of this kind are capable of constituting a material change in circumstances”) (emphasis added).

¹³ *Gbagbo*, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled “Decision on the ‘Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo’”, [ICC-02/11-01/11-278-Red](#), 26 October 2012, paras 86-87 (“[while] there is no provision in the Court’s legal texts that specifically provides for the interim or conditional release of a detained person on health grounds [...] the Appeals Chamber considers that medical reasons can play a role in decisions on interim release in at least two ways. First, the medical condition of a detained person may have an effect on the risks under article 58 (1) (b) of the Statute, for instance on his or her ability to abscond, potentially negating those risks. Second, the medical condition of the detained person may be a reason for a Pre-Trial Chamber to grant interim release with conditions. As stated above, the Pre-Trial Chamber enjoys discretion when deciding on conditional release; the ill health of a detained person may be a factor in the exercise of its discretion”).

¹⁴ *Bemba*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled “Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence”, [ICC-01/05-01/08-1019](#), 19 November 2010 (“*Bemba Detention Review Appeal Judgment*”), para. 52.

¹⁵ See Public Redacted Version of “Prosecution’s response to ‘Urgent Request for Interim Release’”, [ICC-01/21-01/25-159-Red](#), 23 June 2025 (“*Prosecution Response to Interim Release Request*”).

submitted that the Defence neurologist's report was incomplete and that Mr Duterte had not been examined by its own experts.¹⁶ Subsequently, the Prosecution argued that it would not accept the conclusions of the Defence experts and, accordingly, the reports could not be relied upon "at this stage of the proceedings" – presumably because of a lack of objectivity.¹⁷ Additionally, and most pertinently, the Prosecution contended that the Defence's submissions on medical matters were mere "extrapolations" by lawyers lacking the necessary expertise.¹⁸

7. For its part, the Pre-Trial Chamber has declined to integrate Mr Duterte's medical condition¹⁹ (as substantiated by Defence medical reports)²⁰ into its assessment of the risk factors for interim release. When issuing its decision denying interim release, the Pre-Trial Chamber ruled that

the self-proclaimed objective of the Final Medical Report [was] to assess whether Mr D[uterte] [was] experiencing cognitive decline that may affect his ability to stand trial, participate meaningfully in legal proceedings, or recall events relevant to the charges brought against him.²¹

The Pre-Trial Chamber then proceeded to dismiss the expert reports proffered by the Defence stating that they did not indicate how Mr Duterte's physical or cognitive impairment negated the risks identified in its decision denying release.²²

¹⁶ [Prosecution Response to Interim Release Request](#), para. 18.

¹⁷ Public Redacted Version of "Prosecution's response to 'Renewed Request for Interim Release', 28 August 2025, ICC-01/21-01/25-252-Conf-Exp", [ICC-01/21-01/25-252-Red](#), 12 September 2025, paras 2, 19 ("[Prosecution Response to Renewed Request](#)").

¹⁸ [Prosecution Response to Renewed Request](#), para. 20.

¹⁹ Public Redacted Version of "Decision on the Defence's 'Urgent Request for Interim Release' and 'Renewed Request for Interim Release', 26 September 2025, ICC-01/21-01/25-282 Conf", [ICC-01/21-01/25-282-Red](#), 26 September 2025 ("[Interim Release Decision](#)"), paras 63-65.

²⁰ [Interim Release Decision](#), paras 63-65.

²¹ [Interim Release Decision](#), para. 64.

²² [Interim Release Decision](#), para. 64.

8. In light of previous rulings on matters pertaining to Mr Duterte's cognitive state, the Defence is presently unable to substantiate its medical submissions other than through the Panel that the Pre-Trial Chamber has deemed to be independent. Accordingly, the Defence requests that the Pre-Trial Chamber order the Panel to provide an opinion, on the basis of its collective clinical examination, as to Mr Duterte's current ability to actualise the risk factors under Article 58(1)(b).
9. The conclusions of such a tailored **and** objective report would fall within the scope of "information which has a bearing on the subject" of interim release, as elucidated by the Appeals Chamber,²³ and would allow the Pre-Trial Chamber more accurately to assess whether any risks emanating from Mr Duterte can be sufficiently mitigated.

IV. URGENCY

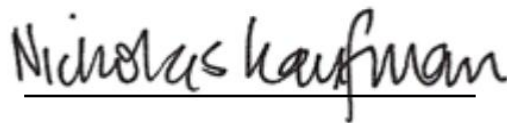
10. The deadline for the Defence's observations on Mr Duterte's detention has been fixed for 9 January 2026.²⁴ The present request is thus urgent. The Defence will not object to the suspension of the current deadlines should the Pre-Trial Chamber be minded to accede to the Defence request and commission a report from the Panel.
11. Thereafter, and pursuant to Rule 118(3), the Defence submits that the Pre-Trial Chamber will be obliged to hold a hearing since, by the time of the subsequent review, Mr Duterte will have been held in detention for more than one year.

²³ [Bemba Detention Review Appeal Judgment](#), para. 52 ("[t]he Chamber must revert to the ruling on detention to determine whether there has been a change in the circumstances underpinning the ruling and whether there are any new circumstances that have a bearing on the conditions under article 58(1) of the Statute [...] The Chamber must also consider **any other information which has a bearing on the subject**. Finally, in its decision on review, the Chamber must clearly set out reasons for its findings") (emphasis added).

²⁴ See fn. 6.

V. CONCLUSION AND RELIEF SOUGHT

12. In light of the aforementioned, the Pre-Trial Chamber is requested to **ORDER** the Panel to issue a report focussing on whether Mr Duterte's current cognitive state would permit him to flee the ongoing judicial proceedings, to intimidate witnesses, or to commit crimes.
13. Furthermore, the Pre-Trial Chamber is requested to **ORDER** the aforementioned report on an urgent basis and, pending the submission thereof, the Defence will agree to a brief and reasonable suspension of the present deadlines.
14. Finally, the Pre-Trial Chamber is requested to **ORDER** a hearing on Mr Duterte's periodic review on detention, as required under Rule 118(3).



Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 19th day of December 2025
At the Hague, the Netherlands