

**Cour
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Internationale**

**International
Criminal
Court**



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Date: **9 January 2026**

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

With Confidential Annexes A and B

Public Redacted Version of “Defence Observations on the First Review of Pre-Trial Detention”

Source: Defence for Mr Rodrigo Roa Duterte

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

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☒ 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

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I. INTRODUCTION

1. Justice must be seen to be done. It is dispensed in a courtroom. It is not an academic exercise performed by way of a bureaucratic exchange of paperwork where prosecutors and judges deny themselves the opportunity to assess a suspect's demeanour and well-being. To his lawyers and to his family, who see him in the ICC Detention Centre ("ICCDC") on a daily basis, Mr Duterte is an emaciated, infirm and incapacitated shadow of his former self. The passage of time has taken a grievous toll on Mr Duterte's health, with the panel of experts appointed by the Pre-Trial Chamber¹ agreeing that he is old, frail, and suffering from "unexplained weight loss".² Mr Duterte is unable to function on a daily basis without constant assistance. He is, likewise, unable to actualise the risk factors envisaged in Article 58(1)(b) of the Rome Statute.³ Mr Duterte's cognitive condition, which was not properly considered by the Pre-Trial Chamber in its first decision on interim release,⁴ constitutes a new fact that must now be considered in the present review of detention.

II. APPLICABLE LAW

2. A Pre-Trial Chamber shall review a ruling on a suspect's release or detention at least every 120 days.⁵ The Appeals Chamber has held that a chamber of first

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. This submission is filed **confidentially** pursuant to Regulation 23bis(2) of the Regulations of the Court as it provides observations on filings bearing the same classification and contains confidential medical information.

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 ("[Joint Report of Experts](#)"), p. 3, para. 5.4.

³ 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 ("[Renewed Request for Interim Release](#)").

⁴ 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](#), 10 October 2025 ("[Decision on Interim Release](#)"), para. 64.

⁵ See Rome Statute, [Article 60\(3\)](#); Rules of Procedure and Evidence, [Rule 118\(2\)](#).

instance is **obliged** to reconsider its decision on detention where changed circumstances warrant reconsideration of the factors forming the basis for detention.⁶

3. The onus rests on the Prosecution to demonstrate that there has been no change in the circumstances previously justifying detention.⁷ A mere assertion that circumstances remain unchanged is insufficient to discharge this burden.⁸ Where the Prosecution submits that no material change in circumstances has occurred, the Defence must be allowed to provide pertinent information, including on the detainee's current circumstances,⁹ to ensure that the Chamber is able to reach a fully informed decision.¹⁰
4. 'Changed circumstances' entails "either a change in some or all of the facts underlying a previous decision on detention, or **a new fact** satisfying a

⁶ *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 ("*Bemba Appeal Decision*"), para. 1.

⁷ *Mokom*, Public redacted version of 'Decision on the review of Mr Mokom's detention', [ICC-01/14-01/22-241-Red](#), 16 August 2023, para. 11.

⁸ *Said*, First review of the detention of Mr Mahamat Said Abdel Kani, [ICC-01/14-01/21-382](#), 29 June 2022 ("*Said Decision*"), para. 30 ("[n]evertheless, the Defence is correct in saying that it is insufficient for the Prosecution to simply make a blanket claim that nothing has changed. Even though this may well be factually true, and the Chamber will make an independent assessment in this regard below, the mere affirmation by the Prosecution is not enough to establish it. The Chamber therefore finds that the Prosecution should have made a greater effort to provide substantiated submissions on the matter").

⁹ *Said Decision*, para. 25. See also *Gbagbo and Blé Goudé*, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention", [ICC-02/11-01/15-992-Red](#), 19 July 2017, para. 38 ("[t]his inquiry by the Chamber carrying out the review is not dependent only upon the new information provided by the parties, but is a review of the current circumstances as a whole which underpin detention. It is the Chamber's obligation to look at those circumstances and be satisfied that continued detention is necessary").

¹⁰ *Said*, Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled "First review of the detention of Mr Mahamat Said Abdel Kani", [ICC-01/14-01/21-460](#), 23 August 2022, para. 3 ("[n]evertheless, where there exists a decision in favour of detention under article 60(2) of the Statute, and where the Prosecution submits that there has been no change in circumstances in a review pursuant to article 60(3) of the Statute, it is apparent that the Defence will have a particular interest in providing information to the chamber so that the chamber will have all necessary information to arrive at a fully informed decision").

Chamber that a modification of its prior ruling is necessary”.¹¹ Examples of changed circumstances would include, *inter alia*, the demonstrable and proven deterioration of a detainee’s health.¹² Where changed circumstances are established, the Pre-Trial Chamber must assess their impact on the factors originally justifying detention.¹³

5. Where a Pre-Trial Chamber is satisfied of a new circumstance, it may choose to order conditional release to mitigate any perceived statutory risk factors.⁹

III. SUBMISSIONS

6. Mr Duterte is suffering from [REDACTED] and is being treated for [REDACTED] with [REDACTED].¹⁴ Ever since his arrival at the ICCDC, Mr Duterte has been under constant video surveillance 24 hours a day, seven days a week.¹⁵ This is not out of a concern that Mr Duterte might flee or injure others. It is based on a grounded fear that harm might befall him. Mr Duterte is unable to attend to his own nourishment or to his own medication. Neither the Prosecution nor the Pre-Trial Chamber is in a position to dispute the aforementioned progressive enfeeblement because, despite repeated Defence

¹¹ *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 (emphasis added).

¹² *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 (“*Gbagbo Appeal Decision*”), 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”).

¹³ *Gbagbo Appeal Decision*, para. 23. See also *Bemba Appeal Decision*, para. 1.

¹⁴ *Joint Report of Experts*, p. 4, para. 5.11. [REDACTED].

¹⁵ Registrar’s Decision to Extend the Cell Monitoring for Health Purposes of Mr Duterte pursuant to Regulation 196(1) and (2) of the RoR, DS/2025/068/HT/lb, 30 December 2025.

requests,¹⁶ Mr Duterte has not been seen in court for ten months. When he is finally invited to attend a hearing on his detention, as the statutory framework requires, Mr Duterte's demeanour will be assessed and his purported propensity to flee, threaten, or commit crime will be exposed to the world for what it is – a wholly unreasonable and fanciful assertion.

7. Mr Duterte's diagnosis of [REDACTED] was made by one of the [REDACTED] leading neurologists who examined Mr Duterte in May 2025. Indeed, the only person on the Court-appointed panel of experts equally qualified to make such a diagnosis is the Court-appointed neurologist, and even he opines that [REDACTED] cannot be ruled out. The fact that the Court-appointed psychiatrist states that he "cannot find objective, reliable evidence of [REDACTED]"¹⁷ nor "[REDACTED]"¹⁸ is not surprising. He is not a neurologist. Even if he were deemed more qualified than the other experts, as a forensic psychiatrist, to make such a diagnosis, the conflicting medical opinions mandate further forensic examination and the present application of the principle "*in dubio pro reo*".
8. In the course of its review of the medical documents supplied by the Defence's experts when it first sought interim release for Mr Duterte, the Pre-Trial Chamber noted that they had been submitted under the rubric of fitness to

¹⁶ **The Defence has sought a public hearing five times, with the most recent being requested on 19 December 2025. This was rejected by the Pre-Trial Chamber on 7 January 2026.** See Defence Request for an Expert Report on Article 58(1)(b) Risk Factors, [ICC-01/21-01/25-342](#), 19 December 2025, fn. 3; para. 11 ("[t]hereafter, 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"). See also Decision on the 'Defence Request for an Expert Report on Article 58(1)(b) Risk Factors', [ICC-01/21-01/25-350](#), 7 January 2026 ("[Decision on the Request for an Expert Report](#)"), para. 11 ("[w]ith regard to the Defence's request to hold a hearing on Mr Duterte's periodic review on detention, the Chamber, mindful of rule 118(3) of the Rules, will determine the schedule of the hearing in due course, and therefore deems it unnecessary to further address this matter in the present decision [...] **THE CHAMBER HEREBY REJECTS** the Request") (emphasis in the original).

¹⁷ Annex II to the Registry Transmission of the Panel of Experts' Joint and Individual Reports, [ICC-01/21-01/25-327-Conf-AnxII](#), 5 December 2025 ("[Psychiatric Report](#)"), p. 51, para. 3.5.

¹⁸ [Psychiatric Report](#), p. 51, para. 3.5.

stand trial, which is “legally distinct from the question of interim release”.¹⁹ With respect to their substance, the Pre-Trial Chamber ruled that the Defence’s medical documentation did “not indicate how Mr Duterte’s alleged physical condition or cognitive impairment negate the risks”²⁰ under Article 58(1)(b) of the Rome Statute. Furthermore, when the Defence argued that the hard medical facts made it “unreasonable to conclude that Mr Duterte would possess the faculties necessary to formulate and execute the continued commission of crimes”,²¹ the Pre-Trial Chamber considered “that these arguments consist in mere extrapolation of the above-mentioned documents by the Defence – who does not have the requisite expertise to draw such conclusion – and as such, are purely speculative and without basis”.²²

9. Given such detailed and pointed critique, it appears procedurally inconsistent for the Pre-Trial Chamber to declare, as it did, that an “additional expert report is neither appropriate nor necessary” for its adjudication of the detention review.²³ The Defence presumes that this observation was directed merely at the unnecessary delay that would be caused by engaging the Panel of Experts for a second time. Additional expertise is quite clearly necessary, in the circumstances, to address the very issues formerly identified by the Pre-Trial Chamber as falling under a different rubric and deemed “extrapolation” and “purely speculative”.
10. The Prosecution²⁴ and the OPCV²⁵ both objected to the receipt of further medical evidence from the Court-appointed experts, and the Pre-Trial

¹⁹ [Decision on Interim Release](#), para. 64.

²⁰ [Decision on Interim Release](#), para. 64.

²¹ [Renewed Request for Interim Release](#), para. 13.

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

²³ [Decision on the Request for an Expert Report](#), para. 9.

²⁴ Public Redacted Version of “Prosecution’s response to ‘Defence Request for an Expert Report on Article 58(1)(b) Risk Factors’ ICC-01/21-01/25-342”, [ICC-01/21-01/25-345-Red](#), 23 December 2025 (“[Prosecution Response on the Request for an Expert Report](#)”), para. 1.

²⁵ Victims’ Response to the Defence Request for an Expert Report on Article 58(1)(b) Risk Factors, [ICC-01/21-01/25-346](#), 23 December 2025 (“[OPCV Response on the Request for an Expert Report](#)”), para. 10.

Chamber endorsed their submissions. Nonetheless, the Pre-Trial Chamber has specifically acknowledged that medical evidence may be relied on for the purpose of the present detention review submissions when it declared that the Defence may refer to the reports prepared by the Panel of Experts.²⁶ In so doing, the Pre-Trial Chamber alluded to the OPCV's submission²⁷ that "the Chamber has received [...] a joint report of three Court appointed independent experts on Mr Duterte's state of health and cognitive abilities that allow it to draw conclusions if and where warranted within the ambit of its assessment of the article 58(1)(b) conditions".²⁸ Indeed, the Defence fails to see how medical evidence provided by professionals who have cautioned themselves with respect to the penalties for perjury can be of less weight or value than the internet media chatter on which the Prosecution so readily relies to support its submissions.

11. At **Annex A**,²⁹ the Defence supplies a joint report prepared by its own medical experts, which may be summarised as follows:
 - a) Regarding the risk of flight; Mr Duterte lacks executive functioning, sustained planning capacity, rapid decision-making, physical stamina, and the ability to evade supervision. These capacities are either clearly compromised or, at a minimum, practically unavailable to him in his current condition.³⁰
 - b) Regarding the threat to witnesses and to the integrity of the investigation; actualising such a risk would require sustained attention, initiative, organisational capacity, and the ability to coordinate intermediaries. Mr Duterte lacks such capacities.

²⁶ [Decision on the Request for an Expert Report](#), para. 8.

²⁷ [OPCV Response on the Request for an Expert Report](#), para. 10.

²⁸ [Decision on the Request for an Expert Report](#), para. 7.

²⁹ Assessment of Alleged Risks Attributed to the Accused, authored by the Defence medical experts, 30 December 2025 ("Assessment of Alleged Risks"), submitted as Confidential **Annex A**.

³⁰ Assessment of Alleged Risks, p. 3.

Furthermore, neither of the Defence experts (nor, for that matter, the Court-appointed experts) found any clinical indication of disinhibition, aggression, or manipulative behavioural tendencies. To conclude, the notion of witness intimidation does not align with Mr Duterte's functional abilities or with the realities of an environment where his liberty is restricted and strictly supervised.³¹

- c) Regarding the potential for continued offending; Mr Duterte's impaired executive functioning, lack of sustained attention, and corresponding inability to plan and to sequence his daily activity would negate his ability to oversee complex chains of command enabling him to commit crimes similar to those with which he is charged.³²

12. It is important to stress that all the cognitive deficiencies highlighted in paragraph 11 above were also observed by the Court-appointed neuropsychologist and neurologist, of whom the former opined, *inter alia*, that Mr Duterte's working memory was assessed to be "[REDACTED]",³³ that he displayed significant difficulties in his ability to [REDACTED], that his [REDACTED] was significantly [REDACTED] than would be expected,³⁴ and that his executive functioning disclosed "[REDACTED]".³⁵ Although the Court-appointed neuropsychologist opines that Mr Duterte's failed effort or performance validity tests suggest that he "[REDACTED]"³⁶ than [REDACTED], the expert does not stipulate to what degree [REDACTED]. In fact, the Court-appointed neuropsychologist neglected to report on

³¹ Assessment of Alleged Risks, p. 3.

³² Assessment of Alleged Risks, pp. 3-4.

³³ Annex IV to the Registry Transmission of the Panel of Experts' Joint and Individual Reports, [ICC-01/21-01/25-327-Conf-AnxIV](#), 5 December 2025 ("[Neuropsychological Report](#)"), p. 22, para. 79.

³⁴ [Neuropsychological Report](#), p. 28, para. 99.

³⁵ [Neuropsychological Report](#), p. 28, para. 101.

³⁶ [Neuropsychological Report](#), p. 28, para. 97.

[REDACTED] that would negate counterfeiting, such as [REDACTED], during the execution of which Mr Duterte performed even *better* than expected for his peers.

13. The underlying reason for the perceived underperformance remains undetermined and its legal resolution can only be achieved through forensic litigation. Just by way of example, when reminded by Counsel, with considerable difficulty, about the so-called “coin-in-hand” test which he had “failed” miserably,³⁷ Mr Duterte responded that he merely guessed the answers, thinking that chance would allow him to achieve a score that would satisfy the medical expert. As Counsel has previously argued, and as the Court-appointed neuropsychologist himself states,³⁸ relying on an article that [REDACTED], there are limitations to performance validity tests and the poor results achieved could be explained by the presence of a neurological disorder – in the present case, [REDACTED].
14. In any event, none of the Court-appointed experts conclude that the “underperformance” is deliberate or a result of malingering, and the Court-appointed neurologist neither rules out [REDACTED]. **In fact, no explanation is posited by any of the Court-appointed experts for the perceived underperformance.** For this reason alone, it would be wrong for the Pre-Trial Chamber to dismiss Mr Duterte’s impaired functioning as an attempt to “feign illness”, as the Prosecution insultingly asserts without any foundation whatsoever.³⁹ The same may be said of the Prosecution’s shameful and

³⁷ Annex III to the Registry Transmission of the Panel of Experts’ Joint and Individual Reports, [ICC-01/21-01/25-327-Conf-AnxIII](#), 5 December 2025, p. 16. The “coin-in-hand” test requires the subject to look in which hand the medical professional is holding a coin. The subject is then asked to close his eyes for ten seconds and, in the meantime, the professional closes the hand. Upon reopening his eyes, the subject is asked to indicate in which of the professional’s hands the coin is hidden. [REDACTED].

³⁸ [Neuropsychological Report](#), p. 23, para. 86.

³⁹ [Prosecution Response on the Request for an Expert Report](#), para. 5.

misleading assertion that Mr Duterte's weight loss,⁴⁰ his voluntary restriction of dietary intake, and his neglect as to his personal appearance are part of a devious plan whereby he is "manipulating his physical appearance to match or support his allegedly deteriorated medical condition".⁴¹

15. Counsel has been reporting the very same cognitive and weight-related issues – now clinically found to be objectively impaired – from the very start of his representation.⁴² Unless the Prosecution should be so brazen as to suggest that Mr Duterte has acquired such a degree of guile and cunning so as to hoodwink his own lawyers over the course of ten months, any perceived performance invalidity should be attributed to Mr Duterte's neurological condition.

IV. CONCLUSION AND RELIEF SOUGHT

16. The medical evidence that the Defence presently submits does not encroach on the role of the Pre-Trial Chamber in determining whether the statutory risk factors exist. The existence of the risk factors has already been determined by the Appeals Chamber and, as such, the Defence is bound by this finding.
17. The new medical evidence is proffered in order to assist the Pre-Trial Chamber in assessing whether Mr Duterte's medical condition sufficiently mitigates his capacity to actualise the statutory risk factors, such that his release to the State Party that has expressed its willingness to receive him may now be contemplated. The State Party concerned has reiterated⁴³ its willingness to

⁴⁰ The Prosecution has wilfully **ignored** the observation of the Panel of Experts opining that Mr Duterte exhibited "unexplained weight loss". See [Prosecution Response on the Request for an Expert Report](#), para. 7. See also [Joint Report of Experts](#), p. 3, para. 5.4.

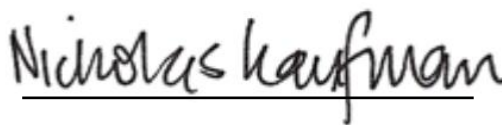
⁴¹ [Prosecution Response on the Request for an Expert Report](#), para. 7.

⁴² Annex 7 to the Report on decisions and orders issued by way of email for the period February 2025 - April 2025, [ICC-01/21-01/25-133-Conf-Anx7](#), 14 May 2025, p. 5 (an email from Counsel to Pre-Trial Chamber I, "[REDACTED]", 14 March 2025, 06:48, para. 7). See also Email, Defence to Detention Centre, "URGENT: Rodrigo Roa Duterte – Counsel's Concerns", 16 April 2025, 14:08 ("[a]s you are aware, I have not challenged the Registrar's order to ordain the video-surveillance of Mr. Duterte's cell on a 24/7 basis ever since his admission to the ICC Detention Centre on 13 March 2025. There is a good reason for this. It is my impression that Mr. Duterte is in an extremely fragile condition").

⁴³ See Letter from the State Party, 1 December 2025 ("Letter from the State Party"), submitted as **Confidential Annex B**.

receive Mr Duterte and has now provided “detail as to how the [...] authorities would implement the necessary conditions, notably to ensure Mr Duterte’s presence at the Court and his compliance with the interdiction to interfere with the proceedings”.⁴⁴ Where conditions of release are not [REDACTED]⁴⁵ or require a [REDACTED],⁴⁶ the Defence will act either to supply a privately funded alternative or apply to the relevant national court [REDACTED].

18. In light of all the aforementioned, the Pre-Trial Chamber is requested to **ORDER** the interim release of Mr Duterte on the same terms and conditions as proffered in the originating request, with any additional undertaking, guarantee, or requirement deemed appropriate.
19. Due process requires that the issues engaged by Mr Duterte’s current neurological and cognitive condition be forensically examined with an opportunity for the Defence to clarify, in open court, the inherent contradictions arising out of the respective reports of the Panel of Experts. The Pre-Trial Chamber should not, it is respectfully submitted, hasten to determine such weighty issues thereby rendering the present request for interim release moot.



Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 9th day of January 2026
At The Hague, the Netherlands

⁴⁴ [Decision on Interim Release](#), para. 69.

⁴⁵ Letter from the State Party, p. 2, point (iii).

⁴⁶ Letter from the State Party, p. 2, point (v).