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No. ICC-01/21-01/25

Date: 26 January 2026

PRE-TRIAL CHAMBER I

Before:

**Judge Iulia Antoanella Motoc, Presiding
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 “Decision on the ‘Defence Request for an Indefinite Adjournment’ and Mr Duterte’s fitness to take part in the pre-trial proceedings”, 26 January 2026

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☐ 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

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation
and Reparations Section

☐ Other

PRE-TRIAL CHAMBER I of the International Criminal Court issues the present decision on the ‘Defence Request for an Indefinite Adjournment’ and Mr Duterte’s fitness to take part in the pre-trial proceedings.

I. Procedural history and background

1. On 12 March 2025, pursuant to a warrant of arrest issued by the Chamber on 7 March 2025,¹ Mr Rodrigo Roa Duterte (‘Mr Duterte’) was surrendered to the Court.

2. On 14 March 2025, Mr Duterte made his first appearance before the Chamber,² which decided that the hearing on the confirmation of charges would commence on 23 September 2025.³

3. On 17 July 2025, the Defence filed the ‘Defence Notification’, ‘formally notif[ying] the Pre-Trial Chamber that it w[ould] raise the issue of legal competency as [a] bar to the holding of a hearing on the confirmation of charges’.⁴

4. On 18 July 2025, the Defence filed the ‘Defence Submission of Medical Reports’, submitting ‘new medical records that have recently come into its possession’, asserting that they were relevant ‘to the issue of legal competency sought to be litigated’ and averring that ‘Mr Duterte’s cognitive impairment is sufficient to warrant litigation of the matter prior to the holding of the confirmation hearing’.⁵

5. On 18 August 2025, the Defence filed the ‘Defence Request for an Indefinite Adjournment’, requesting, *inter alia*, that the Chamber order ‘that all legal proceedings, including the hearing on the confirmation of charges, be adjourned indefinitely’, based on its assertion that Mr Duterte ‘is not fit to stand trial as a result of cognitive impairment in multiple domains’.⁶ The Defence sought, in the alternative, a status conference to litigate whether the Chamber should exercise its discretion under rules 113 and 135 of the Rules of Procedure and Evidence (the ‘Rules’).⁷

¹ Warrant of Arrest for Mr Rodrigo Roa Duterte, ICC-01/21-01/25-83.

² Decision convening a hearing for the first appearance of Mr Rodrigo Roa Duterte, 13 March 2025, ICC-01/21-01/25-90.

³ Transcript of hearing, ICC-01/21-01/25-T-002-ENG, p. 10, lines 8-11.

⁴ ICC-01/21-01/25-197, para. 4.

⁵ ICC-01/21-01/25-199-Conf (public redacted version notified on 29 September 2025, ICC-01/21-01/25-199-Red) (the ‘Defence Submission of Medical Reports’), paras 1, 4, with confidential annexes A, B and C.

⁶ ICC-01/21-01/25-230-Conf (public redacted version notified on 11 September 2025, ICC-01/21-01/25-230-Red) (the ‘Adjournment Request’), paras 1, 35, with confidential annexes A and B.

⁷ Adjournment Request, para. 36.

6. On 28 August 2025, the Prosecution opposed the Adjournment Request, requesting the Chamber to ‘reject the Defence Request to adjourn indefinitely all legal proceedings against Mr Duterte’. The Prosecution further stated that it ‘accepts that a short adjournment may be necessary, but this should be limited to the time necessary for the Chamber to expeditiously render its decision on Mr Duterte’s fitness to stand trial’.⁸

7. On 29 August 2025, the Office of Public Counsel for Victims (the ‘OPCV’) opposed the Adjournment Request, submitting that the indefinite adjournment ‘sought is not justified because the requirements for said stay are not met’, but that ‘the Chamber should appoint independent expert(s) to assist in [determining] Mr. Duterte’s current state of health and his fitness to stand trial at this juncture (and in the future)’.⁹

8. Also on 29 August 2025, further to the Chamber’s ‘Order to the Registry for a report from the Medical Officer of the Detention Centre’ of 26 August 2025, instructing the Registry and the Medical Officer of the Detention Centre to provide the Chamber with a report in relation to the management of Mr Duterte’s health in detention, the existence of any conditions that may affect his ability to take part in the proceedings, and the recommended measures to address his condition during the pre-trial proceedings,¹⁰ the Registry submitted *inter alia* that ‘the [Medical Officer] of the [Detention Centre] does not possess the requisite expertise or judicial knowledge to provide [...] an assessment regarding a detained person’s fitness to stand trial’.¹¹

9. On 2 September 2025, the Registry filed the ‘Registry Report on the Assessment by the Medical Officer of the Detention Centre’, reporting on ‘the [Medical Officer]’s proposed adjustments to the sitting schedule for the confirmation of charges hearings’ and transmitting as an annex ‘the factual report containing “the measures and arrangements put in place to provide [Mr Duterte] with medical access and care”’.¹²

⁸ 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 (public redacted version notified on 11 September 2025, ICC-01/21-01/25-253-Red) (the ‘Prosecution’s Response to the Adjournment Request’), para. 23.

⁹ Victims’ Response to the “Defence Request for an Indefinite Adjournment”, ICC-01/21-01/25-257-Conf-Exp (public redacted version notified on 8 October 2025, ICC-01/21-01/25-257-Red2) (the ‘OPCV’s Response to the Adjournment Request’), paras 3, 4.

¹⁰ ICC-01/21-01/25-243, para. 3.

¹¹ Corrected Version of “Registry’s Observations on the “Defence Request for Reconsideration of Order ICC-01/21-01/25-243-Conf”, 27 August 2025, ICC-01/21-01/25-244-Conf”, 28 August 2025, ICC-01/21-01/25-254-Conf-Exp, 29 August 2025, ICC-01/21-01/25-254-Conf-Exp-Corr (confidential redacted version notified on the same day, ICC-01/21-01/25-254-Conf-Red-Corr; public redacted version notified on 30 September 2025, ICC-01/21-01/25-254-Corr-Red), para. 14.

¹² ICC-01/21-01/25-263-Conf (public redacted version notified on 30 September 2025, ICC-01/21-01/25-263-Red), para. 13, with confidential *ex parte* annex.

10. On 8 September 2025, the Chamber, by majority, Judge María del Socorro Flores Liera dissenting, decided to postpone the hearing on the confirmation of charges for ‘the time strictly necessary to determine whether Mr Duterte is fit to follow and participate in the pre-trial proceedings, including the confirmation of charges hearing, and to adjudicate the Adjournment Request’.¹³

11. On the same day, the Chamber, by majority, Judge María del Socorro Flores Liera dissenting, issued the ‘Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence’, in which it ordered further medical examination of Mr Duterte by medical experts.¹⁴ For that purpose, the Chamber instructed the Registry to submit a shortlist of experts ‘who are qualified and have relevant expertise to determine and assess’ Mr Duterte’s ability to follow and take part in the ongoing pre-trial proceedings; and whether any special measures or adjustments are recommended to address any medical condition of Mr Duterte during the pre-trial proceedings.¹⁵

12. Between 24 September and 3 November 2025,¹⁶ based on shortlists of medical experts provided by the Registry and its recommendations as to the composition of a panel of experts,¹⁷ and following the observations and/or requests of the parties and participants,¹⁸ the Chamber

¹³ Decision postponing the hearing on the confirmation of charges, ICC-01/21-01/25-267 (the ‘Postponement Decision’), para. 8; Dissenting Opinion of Judge María del Socorro Flores Liera, ICC-01/21-01/25-267-OPI.

¹⁴ ICC-01/21-01/25-268 (the ‘8 September 2025 Order’).

¹⁵ 8 September 2025 Order, para. 24.

¹⁶ 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, 24 September 2025, ICC-01/21-01/25-279-Conf (public redacted version notified on 16 October 2025, ICC-01/21-01/25-279-Red) (the ‘24 September 2025 Decision’); Decision on the ‘Defence Request for the Disqualification of [REDACTED]’ and related matters, 17 October 2025, ICC-01/21-01/25-303-Conf (public redacted version notified on 14 November 2025, ICC-01/21-01/25-303-Red) (the ‘First Decision on Disqualification’); Decision on the ‘Urgent Defence Request to Disqualify [REDACTED]’ and related matters, 3 November 2025, ICC-01/21-01/25-316-Conf (public redacted version notified on 14 November 2025, ICC-01/21-01/25-316-Red) (the ‘Second Decision on Disqualification’).

¹⁷ Registry Submission of a Shortlist of Medical Experts pursuant to ICC-01/21-01/25-268-Conf, 15 September 2025, ICC-01/21-01/25-270-Conf (public redacted version notified on 9 October 2025, ICC-01/21-01/25-270-Red), with confidential annexes I and II; Registry Submission of a Shortlist of Experts in Neuropsychology pursuant to ICC-01/21-01/25-288-Conf, 10 October 2025, ICC-01/21-01/25-294-Conf (public redacted version notified on 12 November 2025, ICC-01/21-01/25-294-Red), with confidential annexes I and II; Registry’s Observations on the “Urgent Defence Request to Disqualify [REDACTED]”, ICC-01/21-01/25-304-Conf-Exp, 20 October 2025, 24 October 2025, ICC-01/21-01/25-310-Conf (public redacted version notified on 12 November 2025, ICC-01/21-01/25-310-Red); Registry’s Second Observations on the “Urgent Defence Request to Disqualify [REDACTED]”, ICC-01/21-01/25-304-Conf-Exp, 20 October 2025, 31 October 2025, ICC-01/21-01/25-315-Conf (public redacted version notified on 12 November 2025, ICC-01/21-01/25-315-Red).

¹⁸ Defence Observations on Registry Submission ICC-01/21-01/25-270-Conf, 18 September 2025, ICC-01/21-01/25-274-Conf (public redacted version notified on 7 October 2025, ICC-01/21-01/25-274-Red) (the ‘Defence’s 18 September 2025 Submission’); Observations on behalf of Victims on the “Registry Submission of a Shortlist of Medical Experts pursuant to ICC-01/21-01/25-268-Conf”, 18 September 2025, ICC-01/21-01/25-275-Conf (public redacted version notified on 8 October 2025, ICC-01/21-01/25-275-Red); 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-

appointed a panel of three experts (the ‘Panel’): (i) Professor [REDACTED] (‘Professor [REDACTED]’), possessing expertise in forensic psychiatry; (ii) Professor [REDACTED] (‘Professor [REDACTED]’), possessing expertise in geriatric and behavioural neurology, and experience in ‘the examination of an elderly person on fitness to participate in judicial proceedings’; and (iii) Professor [REDACTED] (‘Professor [REDACTED]’), possessing expertise in neuropsychology. The Chamber ordered the Panel to undertake the medical examination of Mr Duterte and to provide ‘a report, jointly to the extent possible and as considered appropriate’ by no later than 5 December 2025 on the same issues for which the Chamber had instructed the Registry to submit a shortlist of experts in the 8 September 2025 Order, referred to in the previous paragraph.¹⁹

13. On 5 December 2025, the Registry transmitted to the Chamber the Panel’s joint and individual reports.²⁰

14. On 11 December 2025, the Chamber rejected the Defence’s request for disclosure of ‘all communications between the Registry and the three experts appointed to assist the Pre-Trial

01/25-270-Conf), 18 September 2025, ICC-01/21-01/25-276-Conf (public redacted version notified on 9 October 2025, ICC-01/21-01/25-276-Red); Defence Request for the Disqualification of [REDACTED], 25 September 2025, ICC-01/21-01/25-280-Conf (public redacted version notified on 7 November 2025, ICC-01/21-01/25-280-Red), with confidential annexes A, B and C; Victims’ Response to the “Defence Request for the Disqualification of [REDACTED]”, 30 September 2025, ICC-01/21-01/25-283-Conf (public redacted version notified on 10 November 2025, ICC-01/21-01/25-283-Red); Prosecution’s Response to the “Defence Request for the Disqualification of [REDACTED]” (ICC-01/21-01/25-280-Conf), 30 September 2025, ICC-01/21-01/25-284-Conf (public redacted version notified on 10 November 2025, ICC-01/21-01/25-284-Red); Defence Response to Registry Observations ICC-01/21-01/25-293-Conf, 13 October 2025, ICC-01/21-01/25-297-Conf (public redacted version notified on 7 November 2025, ICC-01/21-01/25-297-Red); Defence Response to Registry Submission ICC-01/21-01/25-294-Conf, 14 October 2025, ICC-01/21-01/25-299-Conf (public redacted version notified on 7 November 2025, ICC-01/21-01/25-299-Red); Observations on behalf of Victims on the “Registry Submission of a Shortlist of Experts in Neuropsychology pursuant to ICC-01/21-01/25-288-Conf”, 15 October 2025, ICC-01/21-01/25-300-Conf (public redacted version notified on 10 November 2025, ICC-01/21-01/25-300-Red); Prosecution’s Observations on the “Registry’s Second Observations on ‘Defence Request for the Disqualification of [REDACTED]’, ICC-01/21-01/25-280-Conf, 25 September 2025” (ICC-01/21-01/25-293-Conf) and on “Registry Submission of a Shortlist of Experts in Neuropsychology pursuant to ICC-01/21-01/25-288-Conf” (ICC-01/21-01/25-294-Conf), 15 October 2025, ICC-01/21-01/25-301-Conf (public redacted version notified on 10 November 2025, ICC-01/21-01/25-301-Red); Urgent Defence Request to Disqualify [REDACTED], 20 October 2025, ICC-01/21-01/25-304-Conf-Exp (confidential redacted version notified on the same day, ICC-01/21-01/25-304-Conf-Red; public redacted version notified on 7 November 2025, ICC-01/21-01/25-304-Red); Prosecution’s Response to the “Urgent Defence Request to Disqualify [REDACTED]” (ICC-01/21-01/25-304-Conf), 22 October 2025, ICC-01/21-01/25-308-Conf (public redacted version notified on 10 November 2025, ICC-01/21-01/25-308-Red).

¹⁹ 24 September 2025 Decision, para. 23; First Decision on Disqualification; Second Decision on Disqualification. See paragraph 11 above.

²⁰ Registry Transmission of the Panel of Experts’ Joint and Individual Reports, ICC-01/21-01/25-327-Conf (public redacted version notified on 18 December 2025, ICC-01/21-01/25-327-Red), with confidential annexes I (the ‘Joint Report’), II (‘Annex II to the Joint Report’, being the report of Professor [REDACTED]), III (‘Annex III to the Joint Report’, being the report of Professor [REDACTED]) and IV (‘Annex IV to the Joint Report’, being the report of Professor [REDACTED]) (together, the ‘Panel Reports’).

Chamber in its determination of Mr Duterte's fitness to stand trial'.²¹ On 9 January 2026, the Chamber rejected the Defence's request for leave to appeal that decision.²²

15. On 12 December 2025, the Prosecution,²³ the OPCV²⁴ and the Defence²⁵ submitted observations on the Panel Reports, in which: (a) 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';²⁶ (b) the OPCV 'requests the Chamber to find that Mr Duterte is fit to participate in the proceedings and to set the date for the confirmation of charges hearing without further delay';²⁷ and (c) the Defence submits that, in light of the 'inconsistencies undermin[ing] the overall weight of the general joint conclusion on fitness [of Mr Duterte]', the Chamber 'must seek further clarification' and requests that it hold 'an evidentiary hearing whereby the parties will be able to clarify the conclusions of the experts, the reasons for such conclusions, the methodology adopted during the interviews, and the means whereby instructions were communicated to them'.²⁸

II. Determination

16. In light of the above, the question for the Chamber to determine in this decision is whether Mr Duterte is fit to participate in the pre-trial proceedings. For the reasons that follow, the

²¹ Decision on the 'Urgent Request for Disclosure of Communications between the Registry and the Independent Panel of Experts', ICC-01/21-01/25-336-Conf (public redacted version notified on 23 December 2025, ICC-01/21-01/25-336-Red) (the 'Decision on Disclosure of Communications'). See Urgent Request for Disclosure of Communications between the Registry and the Independent Panel of Experts, 10 December 2025, ICC-01/21-01/25-334-Conf (public redacted version notified on 18 December 2025, ICC-01/21-01/25-334-Red) (the 'Request for Disclosure of Communications').

²² Decision on the 'Request for Leave to Appeal Decision ICC-01/21-01/25-336-Conf', ICC-01/21-01/25-352 (the 'Decision Rejecting Leave to Appeal the Decision on Disclosure of Communications'). See Request for Leave to Appeal Decision ICC-01/21-01/25-336-Conf, 17 December 2025, ICC-01/21-01/25-341 (the 'Defence Request for Leave to Appeal the Decision on Disclosure of Communications').

²³ Prosecution's Observations on the Panel of Experts' Joint and Individual Reports, ICC-01/21-01/25-338-Conf (public redacted version notified on 18 December 2025, ICC-01/21-01/25-338-Red) (the 'Prosecution's Observations').

²⁴ Observations on behalf of Victims on the Joint and Individual Reports of the Panel of Experts, ICC-01/21-01/25-337-Conf (public redacted version notified on 18 December 2025, ICC-01/21-01/25-337-Red) (the 'OPCV's Observations').

²⁵ Defence Observations on the Reports of the Panel of Experts (ICC-01/21-01/25-327-Conf), ICC-01/21-01/25-339-Conf (public redacted version notified on 18 December 2025, ICC-01/21-01/25-339-Red) (the 'Defence's Observations').

²⁶ Prosecution's Observations, para. 20.

²⁷ OPCV's Observations, para. 15.

²⁸ Defence's Observations, paras 27-28.

Chamber is satisfied that Mr Duterte is fit to do so, that those proceedings shall therefore resume and that certain measures shall be put in place to assist Mr Duterte during the confirmation of charges hearing, as advised by the medical opinions received by the Chamber.

A. Applicable law

17. The Chamber has had regard to articles 21, 61 and 67 of the Rome Statute (the ‘Statute’) and rules 121 and 135 of the Rules. The Chamber recalls that, while not specifically defined as such by the legal instruments of the Court, other Chambers of the Court have consistently held that the concept of ‘fitness’ to participate in its proceedings must be interpreted in light of the need to ensure that the proceedings against the suspect are fair in the sense that, when the suspect is unable to meaningfully exercise his or her procedural rights because of his or her state of health, the proceedings cannot be fair and criminal proceedings must be adjourned until the obstacle ceases to exist.²⁹ Accordingly, a person is to be considered fit ‘when he or she possesses the necessary capacities – to such a degree that he or she has an understanding of the essentials of the proceedings – to effectively exercise his or her fair trial rights and, as such, meaningfully participate in the proceedings before the Court against him or her’.³⁰

18. The capacities that are necessary to meaningfully exercise one’s procedural and fair trial rights, in light of the rights safeguarded under articles 61(6) and 67(1) of the Statute,³¹ include the ability to understand the charges, the evidence and the conduct, purpose and possible consequences of the pre-trial proceedings, and to instruct counsel for the preparation and

²⁹ Trial Chamber VI, *The Prosecutor v. Mahamat Said Abdel Kani*, Decision on Mr Said’s Fitness to Stand Trial, 15 December 2023, ICC-01/14-01/21-667-Red (‘*Said* Decision on Fitness’), para. 35; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision appointing experts for the purpose of a medical examination pursuant to Rule 135 of the Rules of Procedure and Evidence, 24 March 2021, ICC-01/12-01/18-1006-Red (‘*Al Hassan* Appointment Decision’), para. 33; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the Defence notice on Mr Al Hassan’s unfitness to stand trial, 13 July 2020, ICC-01/12-01/18-952-Red (‘*Al Hassan* First Fitness Decision’), para. 33; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Mr Al Hassan’s ongoing fitness to stand trial, 10 May 2021, ICC-01/12-01/18-1467 (‘*Al Hassan* Second Fitness Decision’), para. 69; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Defence Request to Order a Medical Examination of Dominic Ongwen, 16 December 2016, ICC-02/04-01/15-637-Red (the ‘*Ongwen* Decision Ordering a Medical Examination’), para. 7; Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, 2 November 2012, ICC-02/11-01/11-286-Red (‘*Gbagbo* First Fitness Decision’), para. 43; Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the fitness of Laurent Gbagbo to stand trial, 27 November 2015, ICC-02/11-01/15-349 (‘*Gbagbo* Second Fitness Decision’), para. 33.

³⁰ *Ongwen* Decision on Medical Examination, para. 7. See also *Gbagbo* Second Fitness Decision, para. 36.

³¹ The Chamber notes that article 67(1) of the Statute enumerates the fair trial rights, which by virtue of rule 121(1) of the Rules are applicable from the first appearance of the suspect before the Pre-Trial Chamber.

conduct of the suspect's defence at the pre-trial stage.³² These capacities are not required to be present at their notionally highest level or at the highest level that a particular suspect has ever enjoyed in respect of each capacity.³³ The Chamber will consider that the requirement is met when these capacities are present, viewed overall and in a reasonable manner.³⁴

19. Importantly, the Chamber notes that the meaningful exercise of one's fair trial rights does not require that the person be able to exercise them as if he or she were trained as a lawyer or judicial officer,³⁵ in particular considering that 'processing the wealth of complex information inherent in international criminal proceedings is the role of defence counsel'.³⁶ Consequently, there is no need for the suspect to fully comprehend the course of the proceedings and a 'broad understanding' of the proceedings suffices.³⁷

20. Finally, the Chamber recalls its previous finding to the effect that 'the question of whether a suspect is fit to take part in the pre-trial proceedings is a question of law that [...] does not depend, in and of itself, on whether the suspect has particular medical conditions',³⁸ but rather on whether these medical conditions affect the capacities of the person concerned to meaningfully exercise his or her fair trial rights.³⁹ When deciding whether the suspect is fit, the Chamber's assessment must be conducted in a holistic manner, by taking into account all the relevant circumstances of the case.⁴⁰ The Chamber must also examine whether the negative impact of particular medical conditions can be mitigated by putting in place certain practical arrangements.⁴¹

³² 24 September 2025 Decision, para. 18. *See also Said* Decision on Fitness, para. 35; *Al Hassan* First Fitness Decision, para. 34; *Al Hassan* First Fitness Decision, para. 70; *Ongwen* Decision on Medical Examination, para. 8; *Gbagbo* First Fitness Decision, para. 50; *Gbagbo* Second Fitness Decision, para. 35.

³³ *See Said* Decision on Fitness, para. 35; *Al Hassan* First Fitness Decision, para. 34; *Al Hassan* Second Fitness Decision, para. 70.

³⁴ *See Said* Decision on Fitness, para. 35; *Al Hassan* First Fitness Decision, para. 34; *Al Hassan* Second Fitness Decision, para. 70; *Ongwen* Decision on Medical Examination, para. 10; *Gbagbo* Second Fitness Decision, para. 36.

³⁵ *Al Hassan* First Fitness Decision, para. 35; *Al Hassan* Second Fitness Decision, para. 71; *Ongwen* Decision on Medical Examination, para. 10; *Gbagbo* First Fitness Decision, para. 52. *See also Gbagbo* Second Fitness Decision, para. 34.

³⁶ *Al Hassan* First Fitness Decision, para. 35; *see also Ongwen* Decision on Medical Examination, para. 10.

³⁷ *Ongwen* Decision on Medical Examination, para. 10.

³⁸ 24 September 2025 Decision, para. 16. *See also Said* Decision on Fitness, para. 35; *Al Hassan* First Fitness Decision, para. 36; *Al Hassan* Second Fitness Decision, para. 73.

³⁹ *Said* Decision on Fitness, para. 35; *Al Hassan* First Fitness Decision, para. 36; *Al Hassan* Second Fitness Decision, para. 73; *Ongwen* Decision on Medical Examination, para. 13; *Gbagbo* First Fitness Decision, para. 51.

⁴⁰ *See Al Hassan* Second Fitness Decision, para. 72.

⁴¹ *Gbagbo* First Fitness Decision, para. 51.

B. Mr Duterte's fitness to participate in the pre-trial proceedings

21. It was against the above legal background that the Chamber made clear in the 8 September 2025 Order that it did not consider that it had sufficient information to determine whether Mr Duterte was fit to take part in the pre-trial proceedings based upon the information that was available to it at that time.⁴² It therefore decided to constitute an independent panel of three medical experts, pursuant to rules 113 and 135 of the Rules, following the Defence's notice to the Chamber that there was a potential issue relating to Mr Duterte's fitness.⁴³

22. As correctly presumed by the Defence,⁴⁴ and as expressly stated in the 8 September 2025 Order, the Chamber took specific steps to ensure the impartiality and neutrality of the experts from whom it was to hear and therefore instructed the Registry not to include individuals who had already been engaged on behalf of a party in the present case on the shortlist of qualified experts with relevant expertise that the Registry was ordered to prepare.⁴⁵ In the 24 September 2025 Decision, the Chamber re-emphasised the need to ensure the impartiality and neutrality of the shortlisted experts, determining that it would only consider those included in the Registry's shortlist and therefore disregarding suggestions for additional experts to be appointed that had been made by the Prosecution and the Defence.⁴⁶ The Chamber also determined that the parties and participants should refrain from having any contact with the appointed experts in order to maintain their impartiality.⁴⁷

23. The Chamber instructed the Registry to submit to it a shortlist of qualified experts who had relevant expertise to assess whether Mr Duterte suffers from any condition which might affect his ability to follow and take part in the pre-trial proceedings and whether any special

⁴² 8 September 2025 Order, para. 23. The Defence had asserted that Mr Duterte was 'not fit to stand trial as a result of cognitive impairment in multiple domains', filing, in support, reports of a neurologist and neuropsychologist selected by the Defence and the report of a neuropsychologist instructed by the Medical Officer at the ICC Detention Centre (*see* 8 September 2025 Order, para. 20; *see also* Adjournment Request, paras 1, 4; Annexes A and B to the Adjournment Request; Annex A to the Defence Submission of Medical Reports). The Prosecution, in response, disputed the Defence's allegations that Mr Duterte was unfit and indicated that it was in the process of engaging its own expert to assess Mr Duterte's fitness (*see* Prosecution's Response to the Adjournment Request, paras 12-22). The OPCV submitted that the evidence before the Chamber was 'inconclusive and unclear in relation to the extent of Mr Duterte's state of health', that a full assessment by the Chamber was required and that the Chamber should appoint independent experts to assist with its determination of Mr Duterte's fitness (*see* OPCV's Response to the Adjournment Request, in particular paras 3-4, 22, 25, 39).

⁴³ 8 September 2025 Order, paras 20-23.

⁴⁴ Defence's Observations, para. 9.

⁴⁵ 8 September 2025 Order, para. 25.

⁴⁶ 24 September 2025 Decision, para. 12.

⁴⁷ 24 September 2025 Decision, para. 22. The Chamber further notes, in this context, that, in the Joint Report, the experts declare, *inter alia*, that they 'have no prior knowledge of or involvement with the case of Mr Duterte', 'have no conflict of interest that would bias or influence us in relation to our assessments, reports and opinions' and 'have no disclosures to make regarding any conflict of interest concerning this case': *see* Joint Report, paras 2.1-2.2.

measures are recommended to address any medical condition that he may have during those proceedings. The Registry was instructed to prepare the shortlist taking account of all relevant documents on the record (necessarily including the medical reports submitted by the Defence) and in consultation with the Defence and the Prosecution; and to include in its shortlist information about the experts regarding, *inter alia*, their ‘experience in conducting examinations on fitness to participate in judicial proceedings’ and ‘expertise in any medical fields that are relevant to assess Mr Duterte’s medical situation in view of the information currently available in this regard’.⁴⁸ The Chamber further afforded the parties and participants the opportunity to submit observations on the shortlists submitted by the Registry and only determined the final composition of the Panel having taken those observations into account.⁴⁹

24. The Chamber appointed a multidisciplinary panel of three experts possessing senior and extensive expertise in forensic psychiatry, neuropsychology and geriatric and behavioural neurology; and each of the experts had experience of providing medical reports for the purpose of judicial proceedings.⁵⁰ The Chamber thereby ensured that the Panel was well balanced with complementary relevant expertise and experience of legal proceedings.

25. The Chamber further provided the Panel with specific directions on the medical examination that it was required to conduct. Taking into account the relevant legal principles set out above, the Chamber provided the Panel with specific instructions as to the factual assessment that required answering by reference to its medical expertise in order for the Chamber to be able to proceed to its legal determination of whether Mr Duterte was fit to take part in the pre-trial proceedings. It directed the Panel as follows:

16. The Chamber emphasises that the question of whether a suspect is fit to take part in the pre-trial proceedings is a question of law that falls exclusively within the remit of the Chamber’s legal determination, and which does not depend, in and of itself, on whether the suspect has particular medical conditions, but rather on whether he or she is able to effectively exercise his or her procedural rights.

17. In light of the above, and in order for the Chamber to properly adjudicate on any issues as to Mr Duterte’s fitness, the Chamber instructs the Panel to proceed with a medical examination of Mr Duterte and provide its assessment on the following issues:

⁴⁸ 8 September 2025 Order, paras 24-25, 27.

⁴⁹ See 8 September 2025 Order, para. 28; 24 September 2025 Decision, para. 13; First Decision on Disqualification, paras 3, 5-18, 20; Second Decision on Disqualification, paras 4-8, 10-13, 15.

⁵⁰ 24 September 2025 Decision, para. 13. See also First Decision on Disqualification, para. 20; Second Decision on Disqualification, para. 15. For the senior and extensive expertise possessed by each of the three experts, and for their experience of providing medical reports for legal proceedings, see Annex II to the Joint Report, p. 3, paras 2.1-2.3; Annex III to the Joint Report, p. 22; Annex IV to the Joint Report, p. 2, paras 1-3, pp. 37-39, paras 1-18.

- (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 condition of Mr Duterte, also in light of any prognosis, during the pre-trial proceedings, including the confirmation of charges hearing.

18. The Panel is therefore required to provide its assessment on the abovementioned issues for the purpose of assisting the Chamber's legal assessment by focusing *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.⁵¹

26. In order for the Panel to be able to carry out its above assessment, the Chamber proceeded to instruct the Registry to provide the Panel with 'all necessary assistance and information [...] in order for it to undertake the medical examination',⁵² continuing as follows:

20. In particular, the Registry, in consultation with the Medical Officer of the Detention Centre and in accordance with the applicable legal framework, shall provide the Panel with all relevant documents and materials, including: (i) Mr Duterte's medical record, including any new materials added to it following the issuance of the present decision; and (ii) all relevant filings on the case record. At this stage, and absent a request from the Panel to this effect, the Chamber does not deem it necessary to provide the Panel with the transcripts of phone calls, public statements of individuals who recently interacted with Mr Duterte or public recordings of Mr Duterte's speeches made shortly prior to his arrest.⁵³

27. Of note in relation to the filings on the case record that were to be provided to the Panel is that the Chamber specifically footnoted to the medical reports that had been provided to the Chamber by the Defence, as well as to the unredacted versions of the Defence's submissions in the Adjournment Request and the responses thereto.⁵⁴ It further provided the Panel with the Registry Report containing the assessment of the Medical Officer of the Detention Centre.⁵⁵ The Panel was therefore able to undertake its medical assessment of Mr Duterte in full knowledge of the previous medical reports and opinions that had been provided prior to its own examination, in addition to having been provided with Mr Duterte's medical record and relevant submissions. Indeed, the Chamber observes that, in the Joint Report, the Panel

⁵¹ 24 September 2025 Decision, paras 16-18. *See also* Second Decision on Disqualification, para. 18.

⁵² 24 September 2025 Decision, para. 19. *See also* Second Decision on Disqualification, para. 18.

⁵³ 24 September 2025 Decision, para. 20 (footnotes omitted). *See also* Second Decision on Disqualification, para. 18.

⁵⁴ 24 September 2025 Decision, para. 20, fn 13. *See also* Second Decision on Disqualification, para. 18.

⁵⁵ 24 September 2025 Decision, para. 20, fn 13. *See also* Second Decision on Disqualification, para. 18.

confirmed that each of its members had ‘read the medical and related notes and correspondence, and relevant pleadings as disclosed to us’.⁵⁶

28. In that context, the Chamber notes that the Defence submits that the Panel failed to integrate into its unified conclusions on fitness observations of ICC Detention Centre staff about Mr Duterte’s condition or other ‘[REDACTED] significant medical conditions’ from which the Defence avers that Mr Duterte suffers which may impair cognition and functional capacity.⁵⁷ However, it is clear from the way in which the Joint Report is set out that the experts focussed, in that report, upon setting out their overall conclusions. It was not necessary for them to set out, in that Joint Report, each factor that they had taken into account in arriving at those conclusions. Conversely, it is also clear that they each had available to them the material to which the Defence refers, were able to consider it as a part of their assessment and that it did not affect their overall conclusion. Indeed, as referenced by the Defence, Professor [REDACTED] expressly refers to the observations of the Detention Centre staff in his individual report,⁵⁸ without this affecting his conclusion about Mr Duterte’s condition, which was based upon his own overall expert medical assessment and evaluation; and there is nothing to indicate that this material, even if not expressly referenced in their reports, was not read by the other two experts or would in any event have affected their overall conclusions. Furthermore, each expert set out Mr Duterte’s previous medical history in their individual reports,⁵⁹ having read his medical record.⁶⁰ They were therefore aware of the medical conditions to which the Defence refers prior to reaching their overall conclusions.

29. In addition, the Chamber notes that the Defence submits that ‘the experts have not been provided with certain ICC Detention Centre intercepts where any “varnishing” of Mr Duterte’s cognitive functioning for the purposes of performance validity may be completely discounted’.⁶¹ However, as is clear from the above, the Chamber: (i) determined that, ‘absent a request from the Panel’, the Chamber did not deem it necessary to provide it with, *inter alia*, transcripts of Mr Duterte’s telephone calls;⁶² and (ii) each member of the Panel quoted that

⁵⁶ Joint Report, para. 3.2.

⁵⁷ Defence’s Observations, paras 19-20.

⁵⁸ Annex III to the Joint Report, pp. 10-11.

⁵⁹ See generally Annex II to the Joint Report, p. 2, para. 1.7, pp. 7-9, paras 9.1-10.3, pp. 18-49, paras 18.1-42.16, p. 49, para. 1.2, p. 51, paras 4.1, 4.3-4.4; Annex III to the Joint Report, pp. 5-9, 11-12; Annex IV to the Joint Report, pp. 6-9, paras 24-35.

⁶⁰ Joint Report, para. 3.2.

⁶¹ Defence’s Observations, para. 26.

⁶² 24 September 2025 Decision, para. 20.

paragraph of the Chamber's findings in their individual reports,⁶³ yet did not request any such transcripts to be provided. They instead arrived at their conclusions about Mr Duterte's condition based upon their own expert medical assessment and the other materials that they had available without regarding any such further information to be necessary. To proceed in that manner in the circumstances appropriately falls within the discretion of the medical experts.

30. In accordance with further directions that the Chamber set out in its 24 September 2025 Decision, the Panel provided its Joint Report, to which it appended the individual reports of the three experts.⁶⁴ The Chamber observes that the Joint Report expressly incorporated the specific directions that the Chamber had given to the Panel and provided its assessment of the issues that the Chamber had set out.⁶⁵ Furthermore, each of the three experts on the Panel quoted in full in their individual reports all of the directions of the Chamber that have been set out above.⁶⁶ Their medical assessment was therefore carried out with the directions of the Chamber expressly in mind – and their conclusions addressed the elements on which the Chamber had requested their input.⁶⁷

31. In arriving at their conclusions, the Chamber notes the careful manner in which the experts conducted their assessments of Mr Duterte. In the Joint Report, reference is made to each of the experts having interviewed, examined and assessed Mr Duterte in person and to having prepared individual reports thereafter.⁶⁸ It is further clear from those individual reports that they considered Mr Duterte's personal and medical history, carried out mental state and/or physical examinations, undertook cognitive testing and analysis of the results, and expressed their overall clinical conclusions based upon their holistic assessment.⁶⁹ The Chamber further notes that the Panel met online 'to discuss method and to work towards points of agreement or difference'.⁷⁰

⁶³ Annex II to the Joint Report, p. 2, para. 1.6; Annex III to the Joint Report, p. 2; Annex IV to the Joint Report, p. 4, para. 10.

⁶⁴ See 24 September 2025 Decision, para. 23: 'The Panel shall provide the Registry with a report, jointly to the extent possible and as considered appropriate. The joint or individual reports of the Panel shall be filed on the record by the Registry [...]'; Joint Report, paras 1.1, 3.3-3.5, p. 6.

⁶⁵ See generally Joint Report, paras 5.1-5.25.

⁶⁶ Annex II to the Joint Report, pp. 1-2, paras 1.1-1.6. See also pp. 48-49, paras 42.8-42.13; Annex III to the Joint Report, pp. 1-2; Annex IV to the Joint Report, pp. 3-4, paras 5-10.

⁶⁷ Annex II to the Joint Report, pp. 50-52, paras 4.1-4.10; Annex III to the Joint Report, pp. 11-12; Annex IV to the Joint Report, pp. 32-33, paras 122-127.

⁶⁸ Joint Report, paras 3.1, 3.3-3.5.

⁶⁹ See generally Annexes II-IV to the Joint Report.

⁷⁰ Joint Report, para. 3.7; see also para. 3.6.

32. The Chamber notes that the Panel is agreed that Mr Duterte is [REDACTED];⁷¹ and that there is a difference of opinion among the experts about whether, and the extent to which, Mr Duterte suffers from [REDACTED].⁷² The Chamber further observes that the conclusions of the Panel on the specific capacities which the Chamber had illustrated are necessary for the meaningful exercise of Mr Duterte's procedural and fair trial rights⁷³ are clear and unanimous. In that regard, the relevant part of the Joint Report reads as follows:

5.20 Professor [REDACTED] is of the opinion that he cannot rule out that Mr Duterte may have [REDACTED]. It is impossible to rule these out in view of his unreliability. Professor [REDACTED] can find no objective reliable evidence of such impairment.

5.21 Professor [REDACTED] is of the opinion that Mr Duterte has the mental capacities to understand the charges, has the functional mental capacities to understand evidence and to follow the evidence, has the functional mental capacities to understand the conduct, purpose and possible consequences of the proceedings and has the functional mental capacities to instruct counsel for the preparation and conduct of his defence at the pre-trial stage. Mr Duterte has the capacities for the meaningful exercise of his procedural and fair trial rights.

5.22 Professor [REDACTED] is of the opinion that (Mr Duterte's) capacity on the balance of probability is not so impaired from a neuropsychological perspective as to prevent his from giving evidence.

5.23 Professor [REDACTED] is of the opinion that (Mr Duterte) has a clear understanding of the legal proceedings and has a partial understanding of the accusations. He also understands how his [REDACTED] might impair the legal proceedings. [REDACTED] reduces to some extent his ability to stand trial.

5.24 Professor [REDACTED] is of the opinion that Mr. Duterte has the cognitive abilities to comprehend the accusations and the conduct of the pre-trial proceedings and to instruct counsel for the preparation and conduct of his defence at the pre-trial stage.

5.25 During the interviews, Professor [REDACTED] discussed the trial proceedings with Mr Duterte and with his knowledge of the current stage of the trial, his appraisal of the accusations as presently known to him and with his past professional experience he is able to instruct counsel.

33. Professor [REDACTED]⁷⁴ and Professor [REDACTED] are unambiguous that Mr Duterte has the mental capacities to understand the charges, the evidence and the conduct, purpose and possible consequences of the pre-trial proceedings, and to instruct Counsel for the preparation of his defence at the pre-trial stage. While the opinion of Professor [REDACTED] as set out in the Joint Report is limited to Mr Duterte's capacity not being so impaired as to

⁷¹ Joint Report, para. 5.4.

⁷² Joint Report, paras 5.5-5.7.

⁷³ Joint Report, para. 5.19, quoting the relevant part of Decision of 24 September 2025, para. 18.

⁷⁴ See also Annex II to the Joint Report, pp. 52-53, paras 4.7-4.10.

prevent him from giving evidence,⁷⁵ it is clear from his individual report that he concludes that there is no reason why Mr Duterte would lack functional mental capacity to understand the charges that he faces; to understand and follow evidence; to understand the conduct, purpose and possible consequences of the pre-trial proceedings; and to instruct his Counsel for the preparation and conduct of his defence at the pre-trial stage.⁷⁶

34. While Professor [REDACTED] refers to Mr Duterte having ‘a partial understanding of the accusations’, and that [REDACTED] ‘reduces to some extent his ability to stand trial’,⁷⁷ he is also of the opinion that Mr Duterte ‘has the cognitive abilities to comprehend the accusations and the conduct of the pre-trial proceedings and to instruct counsel for the preparation and conduct of his defence at the pre-trial stage’.⁷⁸ Read holistically, and in light of the cognitive abilities that Professor [REDACTED] is of the opinion that Mr Duterte possesses, the Chamber is satisfied that Mr Duterte does have the ability to understand the charges against him and is able effectively to exercise his procedural rights. The Chamber recalls, in this context, the legal principles that it has set out above that, *inter alia*, Mr Duterte’s capacities are not required to be present at their notionally highest level or at the highest level that a particular suspect has ever enjoyed in respect of each capacity; that the Chamber will consider that the requirement is met when these capacities are present, viewed overall and in a reasonable manner; that Mr Duterte has the assistance of defence counsel in the proceedings; and that a ‘broad understanding’ of the proceedings suffices.⁷⁹

35. In this regard, the Chamber notes that the Defence questions the opinion of Professor [REDACTED] that Mr Duterte is able to instruct Counsel notwithstanding his statement that Mr Duterte only has a ‘partial understanding of the charges’ and ‘understands how his [REDACTED] might impair the legal proceedings’, submitting that ‘it is not clear to what extent Professor [REDACTED] appreciates what would be required of Mr Duterte for the purposes of preparing for and participating in complex confirmation proceedings’.⁸⁰ However, the Chamber observes that Professor [REDACTED] further explained his opinion that Mr Duterte had the cognitive abilities to instruct counsel by stating that, during his interviews with him, he arrived at this conclusion having specifically discussed the proceedings with Mr Duterte and taking into account, *inter alia*, ‘his knowledge of the current stage of the trial

⁷⁵ Joint Report, para. 5.22.

⁷⁶ Annex IV to the Joint Report, pp. 32-33, paras 124-127.

⁷⁷ Joint Report, para. 5.23.

⁷⁸ Joint Report, para. 5.24.

⁷⁹ See paragraphs 18-19 above.

⁸⁰ Defence’s Observations, para. 24.

[and] his appraisal of the accusations as presently known to him'.⁸¹ His clinical opinion is thereby expressly stated to be based upon the relevant interviews that he carried out. Furthermore, the Defence has also failed to substantiate its submissions that Professor [REDACTED] and the other experts may not appreciate what is involved in these court proceedings.⁸² As already addressed above,⁸³ each of the experts has experience of providing medical reports for judicial proceedings; and the Chamber also notes that [REDACTED].⁸⁴ The Chamber therefore finds, in the context of these arguments of the Defence, that there is nothing to substantiate that the Panel did not have sufficient experience or understanding to arrive at its conclusions in the present case.

36. The Chamber is also not persuaded by further Defence submissions that are addressed in more detail below nor by the Defence's request for an evidentiary hearing.⁸⁵

37. As a part of its overall assessment of whether Mr Duterte is fit to participate in the pre-trial proceedings, the Chamber notes that the Defence avers that it is not in dispute that 'Mr Duterte understands the nature of the criminal process, the role of the parties therein, and the concept of the charge of murder', that he is able to enter a plea and that he 'is capable of drawing on his personal long-term memory, to a limited degree, in order to recall major milestone events earlier in his life and aspects of his mayoral governance policy'.⁸⁶

38. The Defence submits, however, that Mr Duterte's short-term memory 'is demonstrably impacted' in a manner that he 'cannot retain information for more than a short space of time' and that renders him 'incapable of following a trial, of exercising appropriate discretion, and of making informed decisions or instructing Counsel effectively'.⁸⁷ The issues raised by the Defence are medical in nature and were the reason for the Chamber to compose a Panel with specific expertise in the medical evaluation and assessment of whether Mr Duterte is able

⁸¹ Joint Report, para. 5.25.

⁸² The Defence contends that it is not clear what the experts 'actually know, if at all, about the complex nature of confirmation proceedings at the ICC, which require a suspect to be familiar, through his defence, with thousands of items of evidence comprising an investigation dating back more than four years': *see* Defence's Observations, para. 28.

⁸³ *See* paragraph 24 above.

⁸⁴ [REDACTED].

⁸⁵ *See* Defence's Observations, paras 27-28; *see generally* Defence's Observations, paras 1-3, 9-26.

⁸⁶ Defence's Observations, para. 1.

⁸⁷ Defence's Observations, para. 2, in which it is further averred that: 'The Defence finds it impossible to work with Mr Duterte because his instructions change from day to day, depending on his deficient recollection of information provided to him only the day before. Furthermore, Mr Duterte is not capable of assessing evidence and comparing it with other evidence that he may have already been provided (and forgotten) or against information he would otherwise be expected to remember. To take a basic example, he may hear evidence in Court, but he will have forgotten it by the time he needs to compare it against other evidence'. *See also* paras 3, 22-26.

effectively to exercise his procedural and fair trial rights. For the reasons set out above, the Chamber finds the conclusions of the Panel to be reliable. Furthermore, the Chamber observes that the Defence had made similar submissions in the Adjournment Request, including by reference to the medical reports that it had submitted.⁸⁸ As emphasised above, the Panel had that information before it⁸⁹ and nevertheless arrived at its own, different, conclusion in the circumstances described in detail above. The Chamber is therefore not persuaded by these arguments of the Defence.

39. The Chamber is also not persuaded by the Defence allegation that the Panel's reports cannot 'be dispositive since they contradict each other, internally, on crucial matters forming the basis of their unified conclusions'.⁹⁰

40. First, the Chamber notes that, as argued by the Defence, there is a difference of opinion about whether, and the extent to which, Mr Duterte has [REDACTED].⁹¹ Indeed, this difference of opinion is clearly set out in the Joint Report.⁹² However, in law, 'whether a suspect is fit to take part in the pre-trial proceedings [...] does not depend, in and of itself, on whether the suspect has particular medical conditions, but rather on whether he or she is able to effectively exercise his or her procedural rights'.⁹³ Notwithstanding any difference of opinion that the three experts had about Mr Duterte's [REDACTED], their subsequent assessment of whether Mr Duterte had the capacities necessary for the meaningful exercise of his procedural and fair trial rights is unanimous,⁹⁴ as has been explained above.⁹⁵

41. Second, in making submissions relating to Mr Duterte's memory, the Defence takes individual findings of members of the Panel out of context. The Defence relies upon certain results in tests undertaken by the experts to argue that he has a severely impaired memory.⁹⁶ However, it is of note that, in the section of the Joint Report in which the experts turn to address the capacities which are necessary for the meaningful exercise of Mr Duterte's procedural and fair trial rights,⁹⁷ far from unquestioningly setting out individual test results and proceeding to rely upon them as an appropriate basis for coming to the type of joint conclusion for which the

⁸⁸ See generally the Adjournment Request, in particular paras 20, 22-23, 28-34.

⁸⁹ See paragraph 27 above.

⁹⁰ Defence's Observations, para. 9. See also para. 10.

⁹¹ See Defence's Observations, paras 11-12.

⁹² Joint Report, paras 5.5-5.7.

⁹³ 24 September 2025 Decision, para. 16.

⁹⁴ Joint Report, paras 5.19-5.25.

⁹⁵ See paragraphs 32-34 above.

⁹⁶ See Defence's Observations, paras 13, 16-17.

⁹⁷ Joint Report, para. 5.13, quoting 24 September 2025 Decision, para. 18.

Defence contends, the experts instead specifically and of their own volition introduce a section entitled: ‘Concerning Reliability’.⁹⁸ Within that section, the Panel specifically makes a point of stating that they are agreed that ‘Mr Duterte is an unreliable historian concerning his health and mental functions’;⁹⁹ and, respectively, that ‘Mr Duterte’s complaints of memory difficulty and apparent impaired performance on assessment are disproportionate to his observed abilities at interview’;¹⁰⁰ that ‘Mr Duterte’s subjective complaints of memory problems are in contrast with many aspects of the interviews, independently probing his professional and personal history’;¹⁰¹ and that Mr Duterte’s ‘test results are not an accurate reflection of his actual functioning’.¹⁰² Contrary to the submissions of the Defence that the experts fail to ‘integrate [...] the effect of Mr Duterte’s observed short-term memory impairment’,¹⁰³ they thereby explain, and express similar opinions about, part of the basis for their conclusions about Mr Duterte’s capacities in the section that follows immediately thereafter,¹⁰⁴ notwithstanding the results of the individual tests to which the Defence refers.

42. Furthermore, while the Defence avers that none of the experts expressly state that Mr Duterte’s underperformance is deliberate and that the reason for it is left unresolved by the Panel,¹⁰⁵ the Chamber notes the manner in which the Panel describes Mr Duterte’s underperformance and/or the nature of the performance validity tests that were applied to him.¹⁰⁶ In any event, the Chamber finds it of significance that, contrary to the arguments of the Defence,¹⁰⁷ none of the experts attribute Mr Duterte’s underperformance to [REDACTED]; and that they make clear that his underperformance is at odds with Mr Duterte’s capacities as observed by them during their examinations of him.¹⁰⁸ The Chamber finds persuasive the holistic approach adopted by the experts in their assessment of Mr Duterte and accepts the

⁹⁸ Joint Report, para. 5.14.

⁹⁹ Joint Report, para. 5.15.

¹⁰⁰ Joint Report, para. 5.16.

¹⁰¹ Joint Report, para. 5.17.

¹⁰² Joint Report, para. 5.18.

¹⁰³ Defence’s Observations, para. 26.

¹⁰⁴ See Joint Report, paras 5.19-5.25.

¹⁰⁵ Defence’s Observations, para. 14. *See also* para. 25.

¹⁰⁶ See Joint Report, paras 5.14-5.18; *see also* Annex II to the Joint Report, pp. 50-51, paras 3.3-3.6, 4.2; Annex III to the Joint Report, p. 15, at which Professor [REDACTED] explains that the ‘Coin in hand test’ is ‘announced as a test for “short-term memory.” The test is actually a “floor” test which is very simple even for an individual with moderate to severe memory impairment’. Professor [REDACTED] then explains that Mr Duterte’s score on this test ‘[REDACTED]. This score is highly suspicious of underperformance’ (*see also* his similar description of Mr Duterte’s results in respect of the same test at p. 9); Annex IV to the Joint Report, paras 85-92, 108, 119-120.

¹⁰⁷ Defence’s Observations, paras 15-18, 24.

¹⁰⁸ Joint Report, paras 5.16-5.18.

resulting clear and unanimous conclusions which they draw in relation to his capacities to meaningfully exercise his procedural and fair trial rights.¹⁰⁹

43. Third, the Defence argues that Professor [REDACTED] was wrong to use the ‘balance of probability’ standard in concluding that Mr Duterte was able to give evidence; and that this ‘erroneous standard’ might have ‘infected the entirety of his working methodology and the conclusions of the other Panel members’.¹¹⁰ However, the Chamber does not find it wrong for Professor [REDACTED] to have expressed himself in those terms in one paragraph of his report when considering Mr Duterte’s ability to give evidence. Medical opinion may need to be couched in those terms, given the nature of medical science. In any event, in arriving at its legal determination of whether it is satisfied that Mr Duterte is fit to participate in the pre-trial proceedings, the Chamber has had careful regard to the reasoning of Professor [REDACTED] (and the other experts) as a whole, taking into account all relevant circumstances, viewed holistically.

44. Finally, the Chamber cannot agree with the Defence that the measures that the Panel recommends to assist Mr Duterte during the pre-trial proceedings contradict a finding of low cognitive impairment and that ‘the rationale for them requires further clarification’.¹¹¹ It is clear that, in setting out those recommendations, the Panel was primarily focussing upon their agreed conclusion that Mr Duterte was [REDACTED] and upon various accommodations which would, as stated by Professor [REDACTED], ‘optimise (Mr Duterte’s) performance [REDACTED]’.¹¹² In those combined circumstances, providing further clarification of the rationale for the Panel’s recommendations is not necessary.

45. In light of the above, having carefully considered all of the relevant circumstances of the case, in particular the expert opinions provided by the Panel, and the Defence’s Observations thereon, the Chamber finds the conclusions of the Panel to be reliable. The Chamber further recalls the jurisprudence that it has set out above that, in law, the relevant capacities ‘are not required to be present at their notionally highest level or at the highest level that a particular suspect has ever enjoyed in respect of each capacity’.¹¹³ More generally, the Chamber recalls that what is required is for Mr Duterte to have a ‘broad understanding’ of the proceedings,¹¹⁴

¹⁰⁹ See Joint Report, paras. 5.19-5.25.

¹¹⁰ Defence’s Observations, para. 25.

¹¹¹ Defence’s Observations, para. 21.

¹¹² Joint Report, para. 5.12; *see generally* paras 5.8-5.12.

¹¹³ See paragraph 18 above.

¹¹⁴ See paragraph 19 above.

in particular considering that ‘processing the wealth of complex information inherent in international criminal proceedings is the role of defence counsel’.¹¹⁵ Having regard to the relevant legal principles, and to the medical assessment of the independent experts in light of all of the factors set out above, the Chamber is satisfied, in law, that Mr Duterte is able effectively to exercise his procedural rights and is therefore fit to take part in the pre-trial proceedings.

C. The Defence request for a hearing

46. At the end of the Defence’s Observations, under the heading ‘Conclusion and Relief Sought’, the Defence submits that, ‘although the Panel considers Mr Duterte competent for the purpose of the pre-trial proceedings, the means by which each member of the Panel reached his conclusions stridently conflict with those of the others’.¹¹⁶ The Defence argues that those ‘internal inconsistencies’ undermine the Panel’s joint conclusion on fitness and that the Chamber ‘must seek further clarification’ before rendering its decision.¹¹⁷ Making the argument that the Chamber has already addressed above about it not being clear what the experts ‘actually know, if at all, about the complex nature of confirmation proceedings at the ICC’, the Defence submits that, ‘[f]or this reason’ a hearing should be held at which ‘the parties will be able to clarify the conclusions of the experts, the reasons for such conclusions, the methodology adopted during the interviews, and the means whereby instructions were communicated to them’.¹¹⁸

47. Whether or not to hold a hearing with the medical experts on the Panel in relation to the question of Mr Duterte’s fitness is a matter within the Chamber’s discretion. In the present case, the Chamber does not find there to be any merit in holding a hearing. The Chamber has carefully considered – and rejected – the substantive submissions in the Defence’s Observations above. It is clear therefrom that the Defence has not substantiated that it is

¹¹⁵ See paragraph 19 above.

¹¹⁶ Defence’s Observations, para. 27.

¹¹⁷ Defence’s Observations, para. 27.

¹¹⁸ Defence’s Observations, para. 28; *see also* para. 8. The Chamber notes that the request in the Defence’s Observations for such a hearing to be held follows the previous suggestion in the Defence’s 18 September 2025 Submission, 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’ (*see* Defence’s 18 September 2025 Submission, para. 14). At that time, the Chamber held that those submissions were premature as they addressed the procedure to be followed after the reports of the medical experts had been submitted and that it therefore would not consider them further (*see* 24 September 2025 Decision, para. 11). For the avoidance of doubt, the Chamber’s ruling directly below on the need for a hearing is equally finally dispositive of those earlier submissions.

necessary further to probe what the experts know about confirmation proceedings at this Court.¹¹⁹

48. Furthermore, it is equally clear from the Chamber's above determination that the Defence has failed to substantiate that there is any 'strident conflict' or significant inconsistency which is capable of undermining 'the overall weight of the general joint conclusion on fitness'.¹²⁰ It is to be expected that experts in different fields of medicine express themselves in light of their different clinical perspectives, which is the purpose of appointing a multidisciplinary and experienced Panel; and that they also may not agree, or express their agreement, in identical fashion on every point that they consider. However, for the reasons expressed above, the expert opinions of the members of the Panel are clear and unanimous in concluding that Mr Duterte possesses the capacities which are necessary for the meaningful exercise of his procedural and fair trial rights; and those opinions are based upon sound methodology and reasoning. In those circumstances, there is no need to convene a hearing further to clarify the conclusions of the experts, the reasons therefor and the methodology adopted during their interviews, also bearing in mind that the procedure adopted by the Chamber in order to resolve the issue of Mr Duterte's fitness has been abundantly fair and that there is a concurrent need to proceed as expeditiously as the demands of fairness require and allow.¹²¹

49. The Chamber finally observes that there is clearly no need to convene a hearing for the purpose of clarifying 'the means whereby instructions were communicated to [the experts]'.¹²² Further to a Defence request,¹²³ the Chamber has already ruled upon this issue in the Decision on Disclosure of Communications and refers to its reasoning in that decision,¹²⁴ from which it also rejected the Defence's request for leave to appeal.¹²⁵ The Chamber also cannot find any other reason to hold a hearing to clarify that point.

50. For all of the above reasons, the Chamber rejects the Defence request to hold a hearing.

¹¹⁹ See paragraphs 24, 35 above.

¹²⁰ Defence's Observations, para. 27.

¹²¹ In that context, the Chamber recalls its previous finding in the Postponement Decision, para. 8: 'The Majority emphasises that, in accordance with the Chamber's duty to ensure the fair and expeditious conduct of the proceedings, the abovementioned postponement will be limited to the time strictly necessary to determine whether Mr Duterte is fit to follow and participate in the pre-trial proceedings, including the confirmation of charges hearing, and to adjudicate the Adjournment Request'.

¹²² Defence's Observations, para. 28.

¹²³ See Request for Disclosure of Communications.

¹²⁴ See Decision on Disclosure of Communications, paras 5-9.

¹²⁵ See Decision Rejecting Leave to Appeal the Decision on Disclosure of Communications; *see also* Defence Request for Leave to Appeal the Decision on Disclosure of Communications.

D. Conclusion

51. The Chamber recalls that the Adjournment Request sought the indefinite adjournment of all legal proceedings, including the hearing on the confirmation of charges, based upon the Defence's assertion that Mr Duterte 'is not fit to stand trial'.¹²⁶ The Defence sought, in the alternative, a status conference to litigate whether the Chamber should exercise its discretion under rules 113 and 135 of the Rules.¹²⁷

52. The Chamber further recalls that, following the Adjournment Request, it considered that 'a limited postponement of the hearing on the confirmation of charges is warranted to allow sufficient time to adjudicate the Adjournment Request';¹²⁸ and that the 'postponement will be limited to the time strictly necessary to determine whether Mr Duterte is fit to follow and participate in the pre-trial proceedings, including the confirmation of charges hearing, and to adjudicate the Adjournment Request'.¹²⁹ In the 8 September 2025 Order, the Chamber rejected the Defence's alternative request for a status conference to be held on the basis that it had previously rejected a request from the Defence to hold a status conference on the same matter;¹³⁰ and the Defence request for a status conference is in any event now moot given that the Chamber proceeded by way of instructing further medical examination by independent experts pursuant to rules 113 and 135 of the Rules,¹³¹ which happened thereafter, as has been extensively referenced above.

53. In light of its above finding that Mr Duterte is able effectively to exercise his procedural rights and is therefore fit to take part in the pre-trial proceedings, the Chamber rejects the Adjournment Request.

54. The proceedings relating to the confirmation of the charges are therefore resumed. Recalling its duty pursuant to rule 121(1) of the Rules to ensure the fair and expeditious conduct of proceedings under article 67 of the Statute, the Chamber hereby sets the date of the commencement of the confirmation of charges hearing for 23 February 2026. The Chamber

¹²⁶ Adjournment Request, paras 1, 35.

¹²⁷ Adjournment Request, para. 36.

¹²⁸ Postponement Decision, para. 7.

¹²⁹ Postponement Decision, para. 8. The Chamber notes that, thereafter, the Defence repeated its request to adjourn the proceedings against Mr Duterte, which the Chamber stated would be determined in due course, as it was a mere repetition of the Adjournment Request, which was being adjudicated separately (*see* Second Decision on Disqualification, para. 9). For the avoidance of doubt, the Chamber's present ruling on the Adjournment Request is necessarily determinative of all requests made by the Defence for the postponement of the proceedings on the basis of Mr Duterte's alleged lack of fitness to participate in the pre-trial proceedings.

¹³⁰ 8 September 2025 Order, para. 19.

¹³¹ 8 September 2025 Order, para. 23.

will issue an order setting the schedule and directions for the hearing on the confirmation of charges in due course.¹³² Those directions will include instructions on the taking of measures that the medical reports have recommended to ensure that any medical condition that Mr Duterte has can appropriately be addressed during the pre-trial proceedings.

55. With regard to submissions pursuant to rule 121(9) of the Rules, the Chamber recalls its directions at paragraphs 45-46 of the 17 April 2025 ‘Order on the conduct of confirmation proceedings’,¹³³ and orders the Prosecution and the Defence to provide such submissions, if any, by no later than 16 February 2026. As to objections and observations pursuant to rule 122(3) of the Rules, the Chamber recalls its directions at paragraphs 47-49 of the Order on the Conduct of Proceedings, and orders the parties to provide any such objections and observations in writing by no later than 16 February 2026.

¹³² See Postponement Decision, paras 9-10.

¹³³ ICC-01/21-01/25-114 (the ‘Order on the Conduct of Proceedings’).

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Defence request to hold a hearing with the medical experts appointed by the Chamber pursuant to rules 113 and 135 of the Rules;

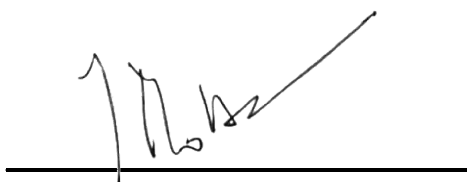
FINDS that Mr Duterte is fit to take part in the pre-trial proceedings;

REJECTS the Adjournment Request;

DECIDES to resume the pre-trial proceedings relating to the confirmation of the charges in this case and to set the date of the commencement of the confirmation of charges hearing for 23 February 2026; and

ORDERS the parties to submit any submissions pursuant to rule 121(9) of the Rules, and any objections and observations pursuant to rule 122(3) of the Rules, by no later than 16 February 2026 pursuant to paragraph 55 of this decision.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Iulia Antoanella Motoc, Presiding



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge María del Socorro Flores Liera

Dated this Monday, 26 January 2026

At The Hague, The Netherlands