

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/21-01/25**
Date: **2 February 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 Public Annex A

Public Redacted Version of “Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf” (ICC-01/21-01/25-363-Conf), filed on 2 February 2026

Source: Defence for Mr Rodrigo Roa Duterte

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence
Duterte Defence Team

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar
Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Pre-Trial Chamber was made aware of Mr Duterte's cognitive decline, and of the difficulties facing Counsel in receiving instructions from his client, even before Mr Duterte's initial appearance. This is what Counsel wrote to the Pre-Trial Chamber, on the eve of the initial appearance, when seeking a postponement of that hearing from Friday afternoon to Monday:

"I am also considering pleading issues of competence to stand trial. I raise this issue confidentially and *ex parte* now because it will not be spoken of in court at this stage in order to prevent an unnecessary media storm. Notwithstanding, this plea requires serious consideration by me such that, if I am forced to appear today, I will be obliged to state that I am not in a position to declare whether Duterte has been properly 'informed' of the nature of the charges against him per Article 60.1 RS and/ or the nature of the proceedings. I cannot let my client speak in such circumstances other than to acknowledge his name and former position. With the benefit of a weekend to work with my client (when the Court never sits), I could be in a better position to assess this matter".¹

2. With the Defence request for a one-day postponement rejected, and within hours of being discharged from hospital,² Mr Duterte was placed before a television to hear the Presiding Judge of the Pre-Trial Chamber pronounce, on the basis of nothing, that he was "fully mentally aware and fit".³ No proper neurological assessment had, at this stage, been realised.

¹ 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-Exp-Anx7](#), 14 May 2025 ("[Annex 7 to the Registry Report on Decisions and Orders](#)"), p. 5, para. 7 (an email from Counsel to Pre-Trial Chamber I, "ICC-01/21-01/25 URGENT Request for Postponement of the Initial Appearance", 14 March 2025, 06:48). All references to "Article", "Rule", and "Regulation" in the present submission are to the [Rome Statute](#), [Rules of Procedure and Evidence](#), and the [Regulations of the Court](#), respectively, unless otherwise indicated. This leave to appeal is filed **confidentially** pursuant to [Regulation 23bis\(1\)](#) because it concerns a decision of the same classification. The Defence will file a public redacted version forthwith.

² [REDACTED].

³ Transcript of the Initial Appearance, [ICC-01/21-01/25-T-002-ENG](#), 14 March 2025, p. 8, line 25.

3. Counsel has an ethical duty not to mislead the Court. Yet, there appears to be a popular perception, one seemingly propagated by the legal representative for victims,⁴ that the fitness plea in this case is a ploy carefully crafted to shirk accountability.
4. The same plea was even deemed unnecessary by a member of the Pre-Trial Chamber, who opined that issues of fitness “are exclusively within the competence of the Trial Chamber”,⁵ and that the Pre-Trial Chamber need not consider them.⁶ Instead, she advocated continuing with “the holding of the confirmation of charges hearing” in order “to ensure the expeditiousness of the proceedings”.⁷
5. To highlight the extraordinary injustice caused to Mr Duterte at every stage of the process, the Defence provides a brief recap of its attempts to litigate the matter of fitness. **Firstly**, and relying on a formalistic application of its own regulations that ignored Mr Duterte’s signed consent, the Registry denied Counsel direct access to Mr Duterte’s medical record, insisting that Mr Duterte procure it himself. Each time Counsel requested Mr Duterte to ask for these records, Mr Duterte would promptly forget to do so because of his cognitive condition, as the back-and-forth correspondence will show. **Secondly**, the Registrar and Detention Centre Medical Officer prevented a Defence neuropsychologist from examining Mr Duterte, until they had first instructed

⁴ See e.g. ABS-CBN News, [Statement by Atty. Joel Butuyan](#), 26 January 2026 (“[t]he victims’ families welcome the ICC decision finding Mr. Duterte fit to stand trial. This is the last of the multiple obstacles that the defense has tried to put up in order to prevent Mr. Duterte from becoming liable for the crimes against humanity that he so horribly committed against his own people [...] Mr. Duterte has been given more than enough time to ventilate his excuses and which have all been ruled upon as baseless and unfounded”).

⁵ Decision postponing the hearing on the confirmation of charges, Dissenting Opinion of Judge María del Socorro Flores Liera, [ICC-01/21-01/25-267-OPI](#), 8 September 2025 (“[Dissenting Opinion of Judge Flores Liera](#)”), paras 5, 7.

⁶ [Dissenting Opinion of Judge Flores Liera](#), para. 4.

⁷ [Dissenting Opinion of Judge Flores Liera](#), para. 7.

an anonymous neuropsychologist to do so. This anonymous neuropsychologist reported finding the very same cognitive deficiencies observed by the Defence experts. The findings of this neuropsychologist, however, have also been subsequently ignored. **Thirdly**, the Pre-Trial Chamber decided to appoint a panel of experts ("Panel"), stating that it required 'further information', without ever stipulating the reason therefor. **Fourthly**, the Pre-Trial Chamber and the Registry made two aborted attempts to appoint a neuropsychologist to this Panel – the first, a pseudoscientist under active professional suspension, and the second, a rabid social media troll with a racist and foul turn of phrase. **Fifthly** and finally, the Pre-Trial Chamber denied the Defence the opportunity of clarifying the contradictory conclusions of the Panel forced on the proceedings, while simultaneously declining to engage with the Defence's medical expertise. The Defence submits that Mr Duterte was denied a fair opportunity to litigate the matter.

6. The Defence can only reiterate what it experiences on a daily basis: Mr Duterte is unable to process information in a manner that will enable him to exercise, meaningfully, his rights before this Court.⁸ The ICCDC Medical Officer is fully aware of this objective fact, since she commissioned her own neuropsychologist (something she would not have done had Mr Duterte a mind like a steel trap) and does not permit Mr Duterte to take responsibility for his own medication.

⁸ Email, Defence to Pre-Trial Chamber, "ICC-01/21-01/25: Duterte: ex parte Prosecution and Defence only: Competence", 5 June 2025, 14:53. See also [Annex 7 to the Registry Report on Decisions and Orders](#), p. 5, para. 7.

7. Accordingly, the Defence seeks leave to appeal the decision⁹ rejecting an indefinite adjournment of proceedings¹⁰ and denying an evidentiary hearing¹¹ (“Impugned Decision”) on four grounds. **Firstly**, the Pre-Trial Chamber erred in fact and in law when it ignored relevant clinical evidence on Mr Duterte’s cognitive condition, including that provided by the Defence experts. **Secondly**, the Pre-Trial Chamber erred in law by rejecting the Defence request to question the members of the Panel by way of an evidentiary hearing. **Thirdly**, the Pre-Trial Chamber erred in law by failing to articulate coherently its reasoning as to why it believed Mr Duterte fit to proceed to the confirmation proceedings. **Finally**, the Pre-Trial Chamber erred in law by confining its assessment of Mr Duterte’s fitness to the pre-trial phase and in failing to consider the impact of its finding on Mr Duterte’s ability to stand trial.
8. These issues directly affect the fairness of the present proceedings which will be advanced by prompt appellate intervention.

II. APPLICABLE LAW

9. A party may seek appellate review of a decision under Article 82(1)(d) of the Rome Statute where the decision gives rise to an appealable issue¹² that is capable of significantly affecting either the fair and expeditious conduct of the proceedings or the outcome of the trial. Such appellate review has previously

⁹ 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, [ICC-01/21-01/25-356-Red](#), 26 January 2026.

¹⁰ Public Redacted Version of the “Defence Request for an Indefinite Adjournment”, [ICC-01/21-01/25-230-Red](#), 11 September 2025 (“[Defence Request for an Indefinite Adjournment](#)”), para. 35.

¹¹ Public Redacted Version of “Defence Observations on the Reports of the Panel of Experts (ICC-01/21-01/25-327-Conf)”, [ICC-01/21-01/25-339-Red](#), 18 December 2025 (“[Defence Observations on the Reports of the Experts](#)”), para. 28. While the Defence agreed to the suitability of the personalities comprising the Panel, it never agreed that the means whereby the Panel had been appointed were fair.

¹² *Bemba*, Decision on the Prosecutor’s Application for Leave to Appeal the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, [ICC-01/05-01/08-532](#), 18 September 2009, para. 17. *See also Said*, Decision on the admissibility of the appeal, [ICC-01/14-01/21-514](#), 25 October 2022, para. 14.

been deemed appropriate where immediate resolution of the identified issue may materially advance the proceedings by eliminating potential judicial error at an early stage.¹³

III. SUBMISSIONS

i) *First Issue: The Pre-Trial Chamber erred in fact and in law by ignoring relevant clinical evidence on Mr Duterte's lack of fitness to stand trial*

10. The Pre-Trial Chamber ruled that a suspect is considered fit when “capable of meaningfully exercising [...] procedural and fair trial rights [...] viewed overall and in a reasonable manner.”¹⁴ Emphasising that this standard can only be met pursuant to a “holistic” assessment that takes into account all the relevant circumstances of the case,¹⁵ the Pre-Trial Chamber proceeded to do precisely the opposite. This is a clear factual error.

11. Furthermore, the Pre-Trial Chamber erred in law when it premised its decision on Mr Duterte's fitness to participate in the proceedings **exclusively** on the Panel's reports, instead of also considering the clinical evidence proffered by the Defence experts.¹⁶ The latter does not feature anywhere in the Impugned Decision,¹⁷ including on those material points that the Pre-Trial Chamber

¹³ *Situation in the State of Palestine*, Decision on Israel's request for leave to appeal the 'Decision on the State of Israel's request to have arrest warrants withdrawn, vacated or declared of no force or effect and to suspend the Prosecutor's investigation', [ICC-01/18-468](#), 17 October 2025, paras 17-19. *See also Mbarushimana*, Decision on the "Prosecution's Application for Leave to Appeal the 'Decision on the confirmation of charges'", [ICC-01/04-01/10-487](#), 1 March 2012, para. 4; *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, [ICC-01/04-168](#), 13 July 2006 ("[DRC Decision](#)"), para. 19.

¹⁴ [Impugned Decision](#), para. 18.

¹⁵ [Impugned Decision](#), para. 20.

¹⁶ [Impugned Decision](#), paras 24-45; 35 ("[t]he 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").

¹⁷ [Impugned Decision](#), para. 38 ("[a]s emphasised above, the Panel had [the Defence medical reports] before it 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") (internal citations omitted).

accepted the Panel were not unified.¹⁸ The Pre-Trial Chamber simply ignored Defence expertise without articulating any reason.

12. Mr Duterte suffers from cognitive impairment affecting multiple domains, including his memory, executive function, and visuospatial skills.¹⁹ This has been found, clinically, to restrict his capacity for complex reasoning.²⁰ This, in turn, allows only limited insight into his current legal circumstances.²¹ The professional diagnosis of the Defence neurologist – and a possibility not excluded by the Court-appointed neurologist²² – is of “[REDACTED]”,²³ indicative of progressive and [REDACTED].²⁴ The Defence neurologist found that Mr Duterte’s condition was not expected to improve, even with medical or psychiatric intervention.²⁵
13. The Pre-Trial Chamber did not assess **any** of the above findings in the Impugned Decision. It focussed exclusively on the reports provided by the Panel, indicating only that the Panel had had at their disposal the Defence reports, should it have wished to rely on them.²⁶ To have dismissed the Defence reports out of hand merely because they were submitted by a party to the

¹⁸ [Impugned Decision](#), paras 32-34, 45; **40** (“the Chamber notes that, as argued by the Defence, there is a difference of opinion [within the Panel] about whether, and the extent to which, Mr Duterte has [REDACTED]”).

¹⁹ Annex A to the Defence Request for an Indefinite Adjournment, [ICC-01/21-01/25-230-Conf-AnxA](#), 18 August 2025 (“[Neurological Report of Defence Expert](#)”), p. 7. *See also* Annex B to the Request for Partial Modification of Restrictions Regime, [ICC-01/21-01/25-149-Conf-Exp-AnxB](#), 11 June 2025 (“[Preliminary Neurological Report of Defence Expert](#)”), p. 11.

²⁰ [Neurological Report of Defence Expert](#), p. 17.

²¹ [Neurological Report of Defence Expert](#), p. 17.

²² 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 (“[Neurological Report of Court-appointed Expert](#)”), p. 11.

²³ [Neurological Report of Defence Expert](#), p. 17.

²⁴ [Neurological Report of Defence Expert](#), p. 17. *See also* [Preliminary Neurological Report of Defence Expert](#), p. 11.

²⁵ [Neurological Report of Defence Expert](#), p. 17.

²⁶ [Impugned Decision](#), paras 27, 38.

proceedings is a clear legal error. After all, parties play a critical role in assisting ICC Chambers in their judicial determinations on fitness.²⁷

14. Moreover, when it relied on the Panel's reports, the Pre-Trial Chamber glossed over any findings that were, or could be, indicative of diminished cognitive function, and failed to explain the impact of such decline on Mr Duterte's actual capacity to effectively participate in the proceedings.²⁸ The Pre-Trial Chamber's failure to consider relevant medical evidence taints the Impugned Decision.

ii) Second Issue: The Pre-Trial Chamber erred in law by rejecting the Defence request to hold a hearing on Mr Duterte's purported fitness

15. Over the course of the last six months, the Defence has repeatedly requested the Pre-Trial Chamber to convene a status conference to litigate Mr Duterte's fitness.²⁹ After dismissing and, thereafter, totally ignoring Defence medical evidence on the spurious grounds of requiring "further information", the Pre-Trial Chamber **twice** denied a Defence request to hold a hearing to examine the members of its Panel.³⁰ The Defence explained that such a hearing was necessary both as a matter of fairness and to expedite the proceedings. It would allow, the Defence argued, the parties 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

²⁷ *Said*, Decision on Mr Said's Fitness to Stand Trial, [ICC-01/14-01/21-667-Red](#), 15 December 2023, para. 35. See also *Al Hassan*, Decision appointing experts for the purpose of a medical examination pursuant to Rule 135 of the Rules of Procedure and Evidence, [ICC-01/12-01/18-1006-Red](#), 24 March 2021, para. 36; *Ongwen*, Decision on the Defence Request to Order a Medical Examination of Dominic Ongwen, [ICC-02/04-01/15-637-Red](#), 16 December 2016, para. 11.

²⁸ This error will be addressed in Ground 3 below.

²⁹ See Public Redacted Version of the "Urgent Defence Request for a Status Conference under rule 121(2)(b)", [ICC-01/21-01/25-192-Red](#), 7 October 2025, para. 2; [Defence Request for an Indefinite Adjournment](#), para. 36; Defence Request for Reconsideration of Order ICC-01/21-01/25-243-Conf, [ICC-01/21-01/25-244](#), 27 August 2025, para. 9; Defence Notification, [ICC-01/21-01/25-197](#), 17 July 2025, para. 4.

³⁰ See [Defence Observations on the Reports of the Experts](#), para. 28. See also Public Redacted Version of "Defence Observations on Registry Submission ICC-01/21-01/25-270-Conf", [ICC-01/21-01/25-274-Red](#), 7 October 2025 ("[Defence Observations on the Experts](#)"), paras 8-14. This includes the Defence's medical experts and those appointed by the Court.

them”,³¹ all of which would assist the Pre-Trial Chamber in its determination. The Pre-Trial Chamber, however, dismissed these requests.³²

16. In the Impugned Decision, the Pre-Trial Chamber simply held that “it had carefully considered – and rejected – the substantive submissions in the Defence’s Observations”.³³ No further reasoning was provided. Thereafter, the Pre-Trial Chamber rejected the Defence request to hold a hearing stating that the Defence had not shown that “it is necessary further to probe what the experts know about confirming proceedings at this Court”.³⁴ This is a material error of law.
17. Mr Duterte, as explained below, was entitled to a forensic hearing on the issue of his fitness. The necessity of such a hearing was all the more acute given that the Panel’s joint report disclosed an admittedly unanimous conclusion, yet with radically differing individual opinions as to the aetiology and degree of Mr Duterte’s cognitive depreciation.³⁵
18. The Pre-Trial Chamber’s disregard of the divergent clinical opinions, and its finding of an absence of need to clarify contradictory medical findings, is a clear error. By asserting that an absence of uniformity was to be “expected”,³⁶ without seeking to explain the underlying inconsistencies, the Chamber failed to assess the resulting effect on the overall reliability and probative value of the

³¹ [Defence Observations on the Reports of the Experts](#), para. 28. See also [Defence Observations on the Experts](#), paras 13-14.

³² See [Impugned Decision](#), paras 47-50. See also 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’, 24 September 2025, ICC-01/21-01/25-279-Conf, [ICC-01/21-01/25-279-Red](#), 16 October 2025, para. 11.

³³ [Impugned Decision](#), para. 47.

³⁴ [Impugned Decision](#), para. 47.

³⁵ [Defence Observations on the Reports of the Experts](#), paras 11-12.

³⁶ [Impugned Decision](#), para. 48.

Panel's joint report. The decision to forgo an evidentiary hearing deprived Mr Duterte of his right to a fair judicial process.

19. The Pre-Trial Chamber committed a further legal error by premising its decision to deny a forensic hearing by reference³⁷ to its rejection of the Defence's request for disclosure of communications.³⁸ Disclosure of the communications between the experts and the Registry is thoroughly distinct from the Defence's right to test the experts' evidence. The Pre-Trial Chamber's refusal to grant leave to appeal a prior procedural decision³⁹ should have no bearing on Mr Duterte's right to a hearing.
20. Forensic examination in fitness litigation is the absolute norm at first instance before the international courts and tribunals. A comprehensive review of 19 such cases at the ICC, IRMCT,⁴⁰ the ECCC,⁴¹ and the ICTY,⁴² attached to this

³⁷ [Impugned Decision](#), para. 49.

³⁸ Public redacted version of "Decision on the 'Urgent Request for Disclosure of Communications between the Registry and the Independent Panel of Experts'", 11 December 2025, ICC-01/21-01/25-336-Conf, [ICC-01/21-01/25-336-Red](#), 23 December 2025 ("[Decision on Request for Disclosure of Communications](#)"), para. 9.

³⁹ Decision on the 'Request for Leave to Appeal Decision ICC-01/21-01/25-336-Conf', [ICC-01/21-01/25-352](#), 9 January 2026 ("[Decision on Leave to Appeal](#)"), para. 8.

⁴⁰ The *Kabuga* Chamber appointed its own medical experts, while simultaneously granting requests by both the Prosecution and the Defence to engage medical experts of their own choosing. As the proceedings advanced, a hearing was held on the issue of fitness, during which the Trial Chamber heard, over the course of two weeks, the testimonies of Chamber-appointed experts, followed by oral submissions by the parties on the issue. See *Kabuga*, MICT-13-38-AR80.3, [Decision on Appeals of Further Decision On Félicien Kabuga's Fitness To Stand Trial](#), 7 August 2023 ("[Kabuga Decision](#)"), paras 5, 8.

⁴¹ The parties in *Thirith* submitted written observations on the report of the Chamber-appointed expert. A preliminary hearing on the defendant's fitness was then held, after which a further four experts were appointed, with the parties being invited to submit questions or concerns that the experts would address in their assessments and reports. After the second expert report was filed, an oral hearing took place during which the Court-appointed experts testified and were examined. The Defence, Prosecution, and the Civil Party were also permitted to make oral arguments on the accused's competency, and were invited, throughout the hearing, to address specific questions by the Chamber. See *Nuon et al.*, 002/19-09-2007/ECCC/TC, [Decision on Ieng Thirith's Fitness to Stand Trial](#), 17 November 2011, paras 7-9, 11.

⁴² In *Strugar*, the Chamber chose not to appoint its own medical expert, instead relying on the parties' experts. The Chamber ordered an oral hearing in which the experts were subject to cross-examination, after which the parties filed written submissions on the issue of fitness. The Chamber thereafter permitted, once again, brief oral submissions before ultimately issuing its decision on the strength of

request, reveals that whenever a party has requested a fitness hearing at first instance, the request was granted.⁴³ In some cases, the relevant Chamber even ordered the hearing *proprio motu*.

21. To date, the ICC, itself, has adopted the adversarial procedure in matters of fitness and accepted it as the norm. The *Gbagbo* Trial Chamber, for example, supported the parties' right to question experts and noted that such forensic examination would "facilitate the adjudication of any issues which may arise therefrom".⁴⁴
22. Both the Pre-Trial Chamber⁴⁵ **and** the Trial Chamber⁴⁶ in the same case emphasised the importance of oral hearings to the judicial panel's deliberations.⁴⁷ Elsewhere, in the *Strugar* case at the ICTY, cross-examination

evidence that had been tested in court. See *Strugar*, IT-01-42-T, [Decision re the Defence Motion to Terminate Proceedings](#), 26 May 2004 ("[Strugar Decision](#)"), paras 10, 11, 40.

⁴³ See Annex A.

⁴⁴ *Gbagbo and Blé Goudé*, Decision on the fitness of Laurent Gbagbo to stand trial, [ICC-02/11-01/15-349](#), 27 November 2015 ("[Gbagbo Decision on Fitness](#)"), para. 10. See also *Gbagbo and Blé Goudé*, Decision granting the request of the Gbagbo Defence and re-scheduling opening statements, [ICC-02/11-01/15-322](#), 28 October 2015 ("[Gbagbo Decision on Defence Request](#)"), para. 9 ("the Gbagbo Defence asks the Chamber to order the 'Appointed Experts' to appear at the hearing, for the sake of transparency and in order to allow the parties the opportunity to question the Appointed Experts on the methodology for their examinations and the contents of their reports [...] the Chamber considers that [...] allowing the Chamber, Prosecution and Gbagbo Defence an opportunity to question the Appointed Experts concerning their reports will further facilitate the Chamber adjudicating any issues which may arise therefrom").

⁴⁵ The Pre-Trial Chamber's initial decision on Mr Gbagbo's fitness was taken only after a closed session had been held to hear the Defence, the Prosecution, and the Chamber-appointed experts, with the Chamber specifying that the purpose of that session was to enable the Pre-Trial Chamber and the parties to question, and seek clarification from, the experts on key issues arising from their respective reports, as well as for the Chamber to hear additional relevant submissions from the parties. See *Gbagbo*, Decision on issues related to the hearing on Mr Gbagbo's fitness to take part in the proceedings against him, [ICC-02/11-01/11-249](#), 20 September 2012 ("[Gbagbo Decision on Hearing](#)"), para. 37.

⁴⁶ The Trial Chamber issued its final ruling on Mr Gbagbo's fitness subsequent to hearing expert testimony, direct and cross-examination of the witnesses, and, finally, oral submissions by the parties. The Chamber ordered the private hearing to allow the parties to examine the Chamber-appointed experts. See [Gbagbo Decision on Fitness](#), para. 18.

⁴⁷ [Gbagbo Decision on Hearing](#), para. 39 ("the Single Judge is of the view that the Chamber will benefit from the outcome of any discussion between either of the parties and the Experts it has appointed and for this purpose, such discussion shall thus take place in the presence of the Chamber at the Hearing"). See also [Gbagbo Decision on Defence Request](#), para. 9.

was considered to be “particularly helpful in enabling the Trial Chamber to understand more adequately the basis for the conclusions reached and the significance of the differences of approach”.⁴⁸

23. The absolute uniformity of the above-mentioned judicial practice reflects the need for heightened procedural safeguards where fitness is in dispute. Such a practice, adopted across the board, distinguishes the position adopted by Pre-Trial Chamber I as being uniquely inexplicable and unfair.

iii) Third Issue: The Pre-Trial Chamber erred in law by failing to articulate coherently its reasoning as to why it believed Mr Duterte fit to proceed to the confirmation proceedings

24. The Pre-Trial Chamber predicated its order establishing the Panel on the insufficiency of the Defence expertise.⁴⁹ Subsequently, however, the Pre-Trial Chamber failed to demonstrate how, or why, the Panel’s findings displaced those proffered by the Defence.⁵⁰

25. By adopting the Panel’s findings wholesale and without reasoned analysis, the Pre-Trial Chamber committed an error of law. Ignoring the Defence’s totally warranted expectation of an adversarial process and failing to engage with the uncontested Defence expertise, the Panel, effectively, replaced the Pre-Trial Chamber in determining what is strictly a question of law.⁵¹ Such an approach

⁴⁸ [Strugar Decision](#), para. 40.

⁴⁹ Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence, [ICC-01/21-01/25-268](#), 8 September 2025, para. 23.

⁵⁰ [Impugned Decision](#), para. 45.

⁵¹ *Al Hassan*, Decision on Mr Al Hassan’s ongoing fitness to stand trial, [ICC-01/12-01/18-1467](#), 10 May 2021, para. 68 (“[t]he decision with respect to the fitness of the accused is a legal and not a scientific determination”). See also [Impugned Decision](#), para. 41 (“the experts instead specifically and of their own volition introduce a section entitled: ‘Concerning Reliability’ [...] [in which they] express similar opinions about, part of the basis for their conclusions about Mr Duterte’s capacities”); 32 (“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 rights are clear and unanimous”) (internal footnotes omitted).

is wholly inconsistent with the Pre-Trial Chamber's own holding that fitness is a matter reserved, exclusively, for judicial determination.⁵²

26. The Impugned Decision provides no explanation as to what is required, practically speaking, for a suspect to be deemed fit for the purpose of the confirmation proceedings, let alone to stand trial. As stated above, one member of the Pre-Trial Chamber even deemed a suspect's fitness to be an irrelevancy at pre-trial.
27. The Pre-Trial Chamber also failed to examine – as is the practice at the international tribunals⁵³ – whether or how, in light of the various expert reports, Mr Duterte can meaningfully exercise his procedural and fair trial rights. Chambers previously faced with this question have explained these rights with the utmost clarity and care, indicating that they encompass the ability not only to understand the purpose of the proceedings, but also to understand, assimilate and recall the evidence, to testify or give an unsworn statement (and to understand the consequences thereof), or to instruct counsel in the conduct of his defence.⁵⁴
28. On the contrary, the Impugned Decision is devoid of the rigorous factual analysis that one would have expected. It fails to explain how, precisely, Mr Duterte can “meaningfully exercise” his rights. Finding, correctly, that the

⁵² [Decision on the Appointment of Experts](#), para. 16 (“[t]he 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”).

⁵³ See e.g. ICTY, *Kovačević*, IT-01-42/2-1, [Public Version of the Decision on Accused’s Fitness to Enter a Plea and Stand Trial](#), 12 April 2006 (“*Kovačević Decision*”), para. 5.

⁵⁴ [Strugar Decision](#), para. 36. See also [Gbagbo Decision on Fitness](#), para. 35 (“[a]s recalled previously, to ascertain fitness to stand trial, an accused must have the capacity to: (i) understand the purpose, including the consequences of the proceedings; (ii) understand the course of the proceedings, including the nature and significance of pleading to the charges; (iii) understand the evidence; (iv) testify or give an unsworn statement (should the accused so choose); and (v) instruct counsel in the preparation and conduct of his defence”).

evaluation of Mr Duterte's fitness should be "holistic"⁵⁵ does not thereafter relieve the Pre-Trial Chamber of its obligation to determine that – and, and more importantly, *how* – Mr Duterte can meaningfully exercise each and every one of his due process rights. This is the *sine qua non* condition to ensure the fairness of the proceedings.

29. For example, the exact materials furnished to the Panel remain vague and, as previously stated, the Pre-Trial Chamber both denied the Defence full disclosure and the ability to appeal such refusal.⁵⁶ Accordingly, it is not clear whether the Panel even received something as basic as the arrest warrant or the document containing the charges. It is even less clear whether the bald-faced assertion that Mr Duterte understood the charges was based on the Panel's knowledge of the exact nature of the charges or Mr Duterte's rudimentary recollection that he is charged with "murdering drug pushers". Such lack of clarity as to the methodology adopted to assess Mr Duterte's purported fitness is fatal to the claim that he can participate in the confirmation process effectively.
30. Moreover, while Mr Duterte need not exhibit cognitive function of the "highest level"⁵⁷ to be considered fit, a "broad understanding"⁵⁸ of the nature of the charges nevertheless implies *some* degree of understanding not just of the general accusations, but also of the specific, factual allegations, including on the modes of liability. This degree of understanding – necessary, in and of itself, to ensure the fairness of the proceedings – is also a prerequisite to determine

⁵⁵ [Impugned Decision](#), para. 20.

⁵⁶ See [Decision on Leave to Appeal](#). See also Request for Leave to Appeal Decision ICC-01/21-01/25-336-Conf, [ICC-01/21-01/25-341](#), 17 December 2025; [Decision on Request for Disclosure of Communications](#).

⁵⁷ [Impugned Decision](#), paras 18, 34, 45.

⁵⁸ [Impugned Decision](#), paras 34, 45.

the suspect's capability to effectively instruct Counsel or to participate in his Defence.

31. Equally erroneous is the absence of any substantive assessment as to whether, or how, Mr Duterte would be "able to communicate with counsel in such [a] way that counsel is able to adequately present the position of [Mr Duterte] in respect of [...] relevant matters".⁵⁹ Counsel has continually informed the Pre-Trial Chamber of the difficulties he faces in communicating with Mr Duterte in the present phase.⁶⁰
32. Indeed, the Pre-Trial Chamber failed to address the Panel's silence on the Defence argument that Mr Duterte is incapable of retaining information for the purpose of delivering effective instructions. The Panel did **not** conclude that Mr Duterte was devoid of memory problems, rather that he exhibited underperformance. Nowhere did the Panel state that such underperformance was deliberate. Accordingly, the Pre-Trial Chamber failed to consider how Mr Duterte's cognitive issues, whatever their degree, impacted on his ability to retain information for the purpose of exercising his procedural rights.
 - iv) *Fourth Issue: The Pre-Trial Chamber erred in law in confining its assessment of Mr Duterte's fitness to the pre-trial phase and in failing to consider the impact of its finding on Mr Duterte's ability to stand trial*
33. The Impugned Decision is also infected by the Pre-Trial Chamber's failure to address how Mr Duterte is expected, in practical terms, to exercise his procedural rights in future proceedings in light of a memory impairment recognised by all the experts.⁶¹ International criminal proceedings are

⁵⁹ [Kovačević Decision](#), para. 5.

⁶⁰ Defence Observations on ICC-01/21-01/25-224-Conf-Exp and ICC-01/21-01/25- 225-Conf-Exp, [ICC-01/21-01/25-227-Conf-Exp](#), 8 August 2025, para. 9. *See also* Defence Observations on ICC-01/21-01/25-211-Conf-Exp and ICC-01/21-01/25- 219-Conf-Exp, [ICC-01/21-01/25-220-Conf-Exp](#), 29 July 2025, para. 15.

⁶¹ *See* 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, p. 51, para. 3.4; [Neurological Report of Court-appointed](#)

notoriously protracted, and a suspect's fitness must be assessed holistically, in relation to the judicial proceedings as a whole. It cannot be assessed in isolation, limited only to the here and now. The Pre-Trial Chamber, however, appears to have done just that. This is an error of law.

34. The Pre-Trial Chamber has not addressed how its present determination on fitness will affect, or be affected by, the realities of ongoing and lengthy proceedings. It tailored its finding of fitness to the "pre-trial proceedings",⁶² leaving the core legal issue unresolved – namely, whether Mr Duterte will, ultimately, be fit to stand *trial*.
35. The confirmation of charges is intended to act as a gatekeeper by determining whether a case is sufficiently meritorious to proceed to trial. There is little point in holding a confirmation hearing when there is a strong likelihood that the suspect, even if charges were to be confirmed, would be unfit to stand trial.
36. Trial proceedings, in stark contrast to the confirmation phase, encompass dozens of witnesses, hundreds of hours of oral testimony, and tens of thousands of pages of documents. Hearings occur almost daily, and the accused must be able to follow evolving evidence and to engage continuously with his defence. Indeed, procedural stamina assumes a significance that is largely absent at the pre-trial phase. Memory deficits, impaired concentration, or an inability to follow proceedings over extended periods will, most surely, fatally compromise one's defence.

[Expert](#), p. 11; 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 of Court-appointed Expert](#)"), p. 22, paras 82-83.

⁶² [Impugned Decision](#), p. 1 ("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**"); 25 ("FINDS that Mr Duterte is fit to take part in the pre-trial proceedings"); paras 10, 11, 16 ("the question for the Chamber to determine in this decision is whether Mr Duterte is fit to participate in the **pre-trial proceedings**"); 18, 20, 21, 23, 25, 43, 44, 45 ("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**"); 53.

37. No consideration was given by the Pre-Trial Chamber to the fact that, given his age and vascular risk profile, Mr Duterte's memory will continue to depreciate just as the need for recollection and mental acuity sharply increases.⁶³ This failure, and the subsequent finding of fitness, has not only polluted the fairness of the present proceedings, but is also an injudicious use of resources should Mr Duterte prove, as the Defence anticipates, unable to participate in his own trial.

v) Fair and expeditious conduct of the proceedings or outcome of the trial

38. Proceedings are fair only in so far as they are transparent and fully respect the rights of the person brought before the Court.⁶⁴ A failure to respect such rights during the pre-trial stage will have significant consequences on the outcome of the proceedings.⁶⁵ Moving forward with the proceedings despite contradictory evidence on Mr Duterte's lack of fitness contaminates the entire process and affects the fairness of the proceedings.⁶⁶

39. Mr Duterte's fitness to stand trial is a key issue, and one that is likely to be revisited as his condition deteriorates – even at the trial stage. In the absence of an adversarial hearing and reasoned articulation of the legal requirements for fitness in the context of demanding court proceedings, the standards applied by the Pre-Trial Chamber lack clarity. In addition to tainting the fairness and transparency of the present proceedings, such uncertainty is liable to trigger litigation at a later stage. For this reason, a definitive ruling by the Appeals Chamber on the issues identified herein will ensure the expeditious conduct of

⁶³ The Court-appointed neuropsychologist, for example, found that Mr Duterte's **current** ability to recall information after twenty minutes is extremely low and scores below the first percentile (0.01). See [Neuropsychological Report of Court-appointed Expert](#), p. 22, para. 83.

⁶⁴ Rome Statute, [Article 64\(2\)](#).

⁶⁵ [DRC Decision](#), para. 11.

⁶⁶ IRMCT, *Kabuga*, MICT-13-28-PT, "Decision on Felicien Kabuga's Motion for Certification to Appeal the Decision of 13 June 2022", 23 June 2022, p. 2 ("the issue of an accused's fitness to stand trial, absent certain circumstances, is of such importance that it may generally be regarded as an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial").

proceedings as a whole by preventing unnecessary future litigation.⁶⁷

vi) Immediate Resolution

40. The Defence raised the plea of fitness before Mr Duterte's initial appearance. It is not to blame for any delay. Had the Pre-Trial Chamber held a status conference as has been repeatedly requested, any perceived protraction of proceedings could have been avoided. In any event, an immediate resolution of this matter by the Appeals Chamber is now necessary. Any further delay in addressing the issue at hand risks prejudicing the rights of Mr Duterte and impeding the fair and expeditious conduct of the proceedings. Prompt appellate resolution will ensure that the pre-trial proceedings proceed on a sound basis, will avoid any future litigation on the matter, and will remove doubts as to the correctness of the Impugned Decision.⁶⁸

IV. CONCLUSION AND RELIEF SOUGHT

41. In light of the patently detrimental effect of the above identified errors on Mr Duterte's rights and on the fairness of the proceedings, the Defence requests Pre-Trial Chamber I to certify the cited issues for appeal.



Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 2nd day of February 2026
At the Hague, the Netherlands

⁶⁷ See [Gbagbo Decision on Fitness](#), para. 3. See also [Kabuga Decision](#), para. 5.

⁶⁸ [DRC Decision](#), paras 15 (“[a] crucial word in the second leg of article 82 (1) (d) is ‘advance’ [...] The meaning conveyed by ‘advance’ in the latter part of sub-paragraph (d) is ‘move forward’; by ensuring that the proceedings follow the right course. Removing doubts about the correctness of a decision or mapping a course of action along the right lines provides a safety net for the integrity of the proceedings”); 16 (“[a] wrong decision on an issue in the context of article 82 (1) (d) of the Statute unless soon remedied on appeal will be a setback to the proceedings in that it will leave a decision fraught with error to cloud or unravel the judicial process. In those circumstances the proceedings will not be advanced but on the contrary they will be set back”) (internal citation omitted).