

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **25 May 2026**

TRIAL CHAMBER III

Before: Judge Joanna Korner, Presiding Judge
Judge Keebong Paek
Judge Nicolas Guillou

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

**PUBLIC
With Confidential Annex A**

Public Redacted Version of “Defence’s request for medical examination pursuant to Rule 135”, 25 May 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
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Section**

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I. INTRODUCTION

1. Pursuant to the order of Trial Chamber III (the “Chamber”),¹ the Defence hereby requests that the Chamber order a medical examination of Mr Duterte, in accordance with Rule 135.

II. PROCEDURAL HISTORY

2. On 14 March 2025, following Mr Duterte’s arrest, the Pre-Trial Chamber was informed by Counsel of his intention to raise the issue of his competence to stand trial.² However, during the initial appearance, the Pre-Trial Chamber noted that the Court’s doctor was of the opinion that Mr Duterte was “fully mentally aware and fit”.³
3. On 14 July 2025, the Defence asked the Pre-Trial Chamber to convene a status conference to discuss issues affecting Mr Duterte’s fitness to stand trial.⁴ The Prosecution objected,⁵ and the Pre-Trial Chamber rejected the application, deeming it more appropriate for the matter to be addressed in writing.⁶
4. On 18 August 2025, the Defence sought an indefinite adjournment of all proceedings,⁷ based on the findings of a neurologist and two neuropsychologists (one of whom had been appointed by the ICC Detention Centre Medical Officer).
5. On 24 September 2025, on the basis that the material before it was not sufficient,⁸ the Pre-Trial Chamber appointed three further medical experts, an expert in forensic

¹ Email, Trial Chamber to Defence, “Instruction to the Defence regarding Rule 135 of the Rules of Procedure and Evidence”, 19 May 2026, 9:49 (“Instruction regarding Rule 135”). 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 request is filed **confidentially** pursuant to [Regulation 23bis\(1\)](#) because it concerns submissions of the same classification. The Defence will file a public redacted version forthwith.

² 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, 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, 6:48).

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

⁴ Public Redacted Version of “Urgent Defence Request for a Status Conference under rule 121(2)(b)”, [ICC-01/21-01/25-192-Red2](#), 7 October 2025, para. 8.

⁵ Prosecution’s response to “Urgent Defence Request for a Status Conference under rule 121(2)(b)”, [ICC-01/21-01/25-194](#), 15 July 2025, para. 7.

⁶ Decision on the ‘Urgent Defence Request for a Status Conference under rule 121(2)(b)’, [ICC-01/21-01/25-208](#), 22 July 2025, para. 6.

⁷ Public Redacted Version of the “Defence Request for an Indefinite Adjournment”, [ICC-01/21-01/25-230-Red](#), 11 September 2025, para. 35.

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

psychiatry, an expert in neuropsychology and an expert in geriatric and behavioral neurology (“the Panel”).⁹ Instructions to the Panel were finalised on 3 November 2025.¹⁰

6. The Pre-Trial Chamber instructed the Panel to assess whether Mr Duterte suffers from any medical condition that could affect his ability meaningfully to participate in the pre-trial proceedings, including the confirmation of charges hearing, and to recommend any necessary special measures or adjustments.¹¹ The Panel was asked to consider whether Mr Duterte was capable of understanding the charges, the evidence, the nature and possible consequences of the proceedings, and whether he was able to effectively instruct counsel in the preparation and conduct of his defence.
7. On 5 December 2025, the Registry¹² transmitted the Joint¹³ and Individual Reports of Dr [REDACTED],¹⁴ Dr [REDACTED]¹⁵ and Dr [REDACTED],¹⁶ in relation to which the Defence was permitted to submit its own observations.¹⁷
8. On 29 January 2026, the Pre-Trial Chamber, taking into consideration the Panel’s reports, found no need to convene a hearing to clarify their conclusions further and concluded that Mr Duterte was able effectively to exercise his procedural rights and was fit to participate in the pre-trial proceedings.¹⁸

⁹ 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 (“[Decision on the Appointment of Experts](#)”), paras 13, 23.

¹⁰ Public redacted version of “Decision on the ‘Urgent Defence Request to Disqualify [REDACTED]’ and related matters”, 3 November 2025, ICC-01/21-01/25-316-Conf, [ICC-01/21-01/25-316-Red](#), 14 November 2025 (“[Decision on Disqualification of \[REDACTED\]](#)”), para. 15.

¹¹ [Decision on the Appointment of Experts](#), paras 17-18. *See also* [Decision on Disqualification of \[REDACTED\]](#), para. 18.

¹² Registry Transmission of the Panel of Experts’ Joint and Individual Reports, [ICC-01/21-01/25-327-Conf](#), 5 December 2025, para. 8.

¹³ Annex I to the Registry Transmission of the Panel of Experts’ Joint and Individual Reports, [ICC-01/21-01/25-327-Conf-AnxI](#), 5 December 2025 (“[Joint Medical Report](#)”).

¹⁴ 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.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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 (“[Decision on Fitness](#)”), paras 45, 48-50, 53.

9. In rejecting a request for leave to appeal the decision,¹⁹ the Pre-Trial Chamber emphasised that it “does not prejudge Mr Duterte’s fitness to stand trial and that it does not preclude any competent chamber of the Court to revisit the issue should the need arise”, noting that Mr Duterte’s fitness to stand trial was likely to be reassessed at trial.²⁰
10. On 15 May 2026, in its observations in advance of the first status conference, the Defence submitted that the start of the trial would be contingent on a determination of Mr Duterte’s fitness, and stated its intention to request that he be assessed by independent experts for the trial phase, with those experts also being examined orally before the Chamber.²¹ The Chamber then ordered the Defence to submit any application under Rule 135 by 25 May 2026.²²

III. APPLICABLE LAW

11. Rule 135 empowers the Trial Chamber to order a medical, psychiatric or psychological examination of the accused for the purpose of discharging its obligations under Article 64(8)(a), or for any other reasons, or at the request of a party.²³ The Chamber is further tasked with ensuring a fair trial, under Article 64(2).²⁴ This duty entails guaranteeing the ability of the accused to *meaningfully* exercise his rights to such a degree that he is able to participate effectively in the proceedings.²⁵
12. The standard of meaningful participation is met, *inter alia*, by the accused’s ability to understand the charges and the conduct, purpose and consequences of proceedings, to understand the evidence, to make an informed decision whether to testify, and to instruct counsel in the preparation of his defence.²⁶ The Appeals Chamber of the ICTY,

¹⁹ 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, [ICC-01/21-01/25-363-Red](#), 2 February 2026.

²⁰ Decision on the ‘Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf’, [ICC-01/21-01/25-376](#), 13 February 2026, paras 23-24.

²¹ Public Redacted Version of “Defence Observations in Advance of the First Status Conference”, 15 May 2026, [ICC-01/21-01/25-439-Red](#), 15 May 2026, paras 25-28.

²² Instruction regarding Rule 135.

²³ Rules of Procedure and Evidence, [Rule 135\(1\)](#); Rome Statute, [Article 64\(8\)\(a\)](#). See also *Gbagbo*, Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, [ICC-02/11-01/11-286-Red](#), 2 November 2012 (“[Gbagbo First Decision](#)”), para. 56.

²⁴ Rome Statute, [Article 64\(2\)](#).

²⁵ See [Gbagbo First Decision](#), para. 56; *Gbagbo and Blé Goudé*, Decision on the fitness of Laurent Gbagbo to stand trial, [ICC-02/11-01/15-349](#), 27 November 2015 (“[Gbagbo Second Decision](#)”), para. 36. See also ICTY, *Strugar*, IT-01-42-A, [Judgement](#), 17 July 2008 (“[Strugar Appeal Judgment](#)”), para. 55.

²⁶ *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 on Mr Al Hassan’s ongoing fitness to stand trial, [ICC-01/12-01/18-1467](#), 10 May 2021, para. 70; *Ongwen*, Decision on Further Defence Request for a Medical Examination, [ICC-02/04-01/15-1622](#), 1 October 2019, para. 14; [Gbagbo Second Decision](#), paras 32, 35.

as well as the Appeals Chamber of the International Military Tribunal, endorsed this non-exhaustive list of capacities that a defendant ought to be able to exercise with a crucial nuance: the accused needs to understand the *details* of the evidence.²⁷

13. The concept of fitness to stand trial, although not defined by the Court's legal instruments, must be interpreted in the light of the need to ensure that the accused receives a fair trial. Namely, where an accused is unable to meaningfully exercise his or her procedural rights because of his or her state of health, the trial cannot be fair.²⁸ Pursuant to Rule 135(4), it falls to the Chamber to determine a suspect's competency for the purpose of legal proceedings.
14. It is submitted that no burden falls upon the Defence to show that the accused is unfit to stand trial. Rather, for the purpose of Rule 135, the Defence is a party assisting the Chamber in discharging its obligations under the legal framework of the Court.²⁹ To this end, the parties should also be provided with the opportunity to test the expert's evidence prior to the Chamber's determination on competency.³⁰

IV. SUBMISSIONS

15. The assessment of whether Mr Duterte was **fit to participate** in the proceedings was limited to the pre-trial stage.³¹
16. Nevertheless, while the Panel was confined to addressing questions relating to the confirmation proceedings, one of the experts found that Mr Duterte had "a partial understanding of the accusations", and that [REDACTED] "reduces to some extent his ability to stand trial".³²

²⁷ [Strugar Appeal Judgment](#), para. 63; IMT, *Goering et al.*, [Order of the Tribunal Rejecting the Motion on behalf of Defence Hess, and Designating a Commission to Examine Defendant Hess with Reference to his Mental Competency and Capacity to Stand Trial](#), 24 November 1945, para. 2.

²⁸ *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. 7.

²⁹ [Gbagbo First Decision](#), para. 56.

³⁰ [Gbagbo Second Decision](#), para. 10. *See also* *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, para. 39.

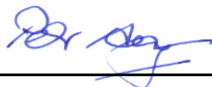
³¹ [Decision on Fitness](#), para. 16. *See also* Decision postponing the hearing on the confirmation of charges, [ICC-01/21-01/25-267](#), 8 September 2025, para. 8; Dissenting Opinion of Judge María del Socorro Flores Liera, [ICC-01/21-01/25-267-OPI](#), 8 September, para. 4. *See also* [Order pursuant to Rules 113 and 135](#).

³² [Joint Medical Report](#), p. 7, para. 5.23.

17. Moreover, notwithstanding the earlier pre-trial findings, the Trial Chamber has an ongoing obligation to reassess Mr Duterte's fitness to stand trial every 120 days, or upon the request of a party.³³
18. In the circumstances, and particularly given that more than six months have passed since Mr Duterte was last examined, and given the likelihood of [REDACTED] during that time, the Defence submits that it is appropriate that the Chamber order a medical examination of Mr Duterte pursuant to Rule 135 at this juncture and before the commencement of any trial.
19. Notwithstanding the desirability of continuity and familiarity in the appointment of medical experts for this purpose, the Defence is ready to provide the Chamber with a list of candidates from the ICC List of Experts, should there be any practical impediment to the instruction of the members of the earlier Panel, or in the event that the Chamber favours a fresh approach.
20. Moreover, in the spirit of cooperation, assistance and judicial economy, the Defence respectfully appends at Annex A to the present filing a draft letter of instruction to the proposed medical experts, for the Chamber's consideration.

V. CONCLUSION AND RELIEF SOUGHT

21. For the reasons set out above, the Defence requests the Chamber to order a medical examination of Mr Duterte, and schedule for corresponding written submissions and oral hearings to examine the experts on their conclusions in the courtroom.



Mr Peter Haynes, KC
Counsel for Mr Rodrigo Roa Duterte

Dated this 25th day of May 2026
At The Hague, the Netherlands

³³ Rules of Procedure and Evidence, [Rule 135](#).