

**Cour
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**International
Criminal
Court**



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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

Public redacted version of “Prosecution’s Observations on the Panel of Experts’ Joint and Individual Reports”, 7 September 2026, ICC-01/21-01/25-494-Conf

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I. INTRODUCTION

1. Pursuant to Trial Chamber III's (the "Chamber") decisions of 12¹ and 23² June 2026, the Prosecution provides its observations on the Panel of Experts' joint and individual reports³ ("Experts' Reports"). Based on the unanimous findings in the Experts' Reports, the Chamber should conclude that Mr Duterte is capable of meaningfully exercising his procedural and fair trial rights and that he is fit for trial.

II. CONFIDENTIALITY

2. Pursuant to regulation 23^{bis}(1) and (2) of the Regulations of the Court, this submission is filed as "Confidential", because it contains confidential information relating to the Panel and Mr Duterte's health sensitive information, and also responds to submissions with the same classification. A public redacted version of the application will be filed as soon as practicable.

III. SUBMISSIONS

A. *Mr Duterte is fit for trial*

i. *The Panel is impartial, expert and was instructed by the Chamber in accordance with the parties' proposed instructions*

3. Following the Defence 25 May 2026 request that the Chamber order a medical examination of Mr Duterte before the commencement of trial,⁴ the Chamber appointed the Panel of Experts (the "Panel") to carry out a medical examination of the Accused,⁵ in order to assist it to "properly discharge its obligations pursuant to Article 64 of the Statute and adjudicate on any issues as to the Accused's fitness to stand trial".⁶

4. The Panel is composed of the same three highly qualified multidisciplinary experts that evaluated the Accused in the context of the medical examination ordered by Pre-Trial Chamber I during the pre-trial proceedings.⁷ As noted by the Chamber, the Panel's

¹ Decision appointing experts for the purpose of a medical examination pursuant to Rule 135 of the Rules of Procedure and Evidence ("Decision appointing the Rule 135 Experts"), ICC-01/21-01/25-462-Red, para. 40.

² ICC-01/21-01/25-T-010-ENG at p.3, line 17-to p.5, line 7.

³ Registry Transmission of the Panel of Experts' Joint and Individual Reports, ICC-01/21-01/25-480-Conf and its Annexes I-IV (Experts' Reports).

⁴ Defence's request for medical examination pursuant to Rule 135 ("Defence's Rule 135 request"), ICC-01/21-01/25-450-Red, para. 18.

⁵ Decision appointing the Rule 135 Experts, p. 16.

⁶ Decision appointing the Rule 135 Experts, para. 17.

⁷ Decision appointing the Rule 135 Experts, para. 20; Decision on the appointment of experts for the purpose of a medical examination pursuant to rules 113 and 135 of the Rules of Procedure and Evidence and related matters, ICC-01/21-01/25-279-Conf, p. 9; Decision on the 'Urgent Defence Request to Disqualify Dr [REDACTED] and related matters, ICC-01/21-01/25-316-Conf, p. 7.

renewed appointment at the trial phase was supported by both the Prosecution and the Defence.⁸ The newly re-appointed Panel was provided with instructions by the Chamber,⁹ which were largely consistent with the proposed instructions of the parties,¹⁰ as submitted in a proposed joint Letter of Instruction.¹¹

5. In order to maintain the impartiality of the Panel, the parties and participants were instructed to refrain from any contact with the appointed experts.¹² Furthermore, the experts provided a declaration confirming their independence, impartiality, and the absence of any conflict of interest in relation to their assignment in the case.¹³

ii. The Experts' Reports demonstrate that Mr Duterte is fit for trial

6. In its Decision appointing the Rule 135 Experts, the Chamber instructed the Panel to *inter alia* “[c]linically assess the Accused, with the aim of providing an expert opinion, specifically to determine: a. Whether the Accused has the capacity necessary for the meaningful exercise of his procedural and fair trial rights at the trial phase, including the ability to: 1. Understand the charges; 2. Understand the purpose and consequences of the proceedings; 3. Follow the course of the proceedings, including the nature and implications of entering a plea; 4. Understand the evidence; 5. Testify or make an unsworn statement, if he so chooses; and 6. Instruct counsel in the preparation and conduct of his defence”.¹⁴

7. In fulfilling their mandate, each member of the Panel again met with Mr Duterte, in order to interview, examine, and assess him in person.¹⁵ Appointed experts also conducted a review of the relevant material, including additional medical documents prepared after the date of the

⁸ Decision appointing the Rule 135 Experts, para. 20. *See also* ICC-01/21-01/25-T-009-Red, p.40, lines 4-6; Defence’s Rule 135 request, para. 19.

⁹ Decision appointing the Rule 135 Experts, para. 31.

¹⁰ Decision appointing the Rule 135 Experts, para. 28.

¹¹ Joint Defence and Prosecution Submission on Instructions for the Assessment of Mr Rodrigo Roa Duterte’s Fitness to Stand Trial, ICC-01/21-01/25-453 and its Annex A.

¹² Decision appointing the Rule 135 Experts, para. 36.

¹³ Annex 1 to the Experts’ Reports (“Annex 1 to the Experts’ Reports”), ICC-01/21-01/25-480-Conf-Anx1, p. 4, section 2.

¹⁴ Decision appointing the Rule 135 Experts, para. 31(iii)(a).

¹⁵ Annex 1 to the Experts’ Reports, p.4, section 4.1. *See also* Annex 2 to the Experts’ Reports (“Annex 2 to the Experts’ Reports”), ICC-01/21-01/25-480-Conf-Anx2, p.11, para. 16; Annex 3 to the Experts’ Reports (“Annex 3 to the Experts’ Reports”), ICC-01/21-01/25-480-Conf-Anx3, p.2; Annex 4 to the Experts’ Reports (“Annex 4 to the Experts’ Reports”), ICC-01/21-01/25-480-Conf-Anx3, p.7, section 4.3.

Panel's initial assessment¹⁶ and, where relevant, also interviewed clinicians and custody staff.¹⁷ The Panel had sufficient time and relevant material before them to conduct their assessments, reach their conclusions, and write their respective reports.

8. Upon completion of their assessments, the Panel members found "[REDACTED]"¹⁸ and were satisfied that "[REDACTED]".¹⁹ The Panel further [REDACTED] since their initial assessments more than six months ago.²⁰ To the contrary, the Panel found that there was [REDACTED].²¹

9. In relation specifically to the capacities necessary to meaningfully exercise his procedural and fair trial rights, the Panel members concluded that Mr Duterte [REDACTED].²² These findings are [REDACTED].

iii. The Experts' Reports demonstrate [REDACTED] Mr Duterte's reduced effort and unreliability during assessments

10. As at the pre-trial stage, each appointed expert [REDACTED].²³

11. In this regard, Dr [REDACTED] noted that [REDACTED].²⁴ The results of these [REDACTED],²⁵ suggest that [REDACTED].²⁶ Dr [REDACTED] also noted [REDACTED].²⁷ Finally, Dr [REDACTED] noted *inter alia*, Mr Duterte's "[REDACTED]" in a "[REDACTED]".²⁸

¹⁶ Annex 1 to the Experts' Reports, p.4, section 4.2, p.5, section 6. *See also* Annex 2 to the Experts' Reports, p.11, para. 14, p.13-16, para. 29; Annex 3 to the Experts' Reports, p.4-10, paras 2-3; Annex 4 to the Experts' Reports, p.5-7, section 3.

¹⁷ Annex 1 to the Experts' Reports, p.7, section 8. *See also* Annex 3 to the Experts' Reports, p.10, para. 4, p.11; Annex 4 to the Experts' Reports, p.18, para. 19.

¹⁸ Annex 1 to the Experts' Reports, p.8, section 12.1. For the Panel's findings before the Pre-Trial Chamber, see Annexes I-IV to the Registry Transmission of the Panel of Experts' Joint and Individual Reports, ICC-01/21-01/25-327-Conf and, in particular, Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 52-53, sections 4.7-4.10; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 12-13; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 33-34, paras. 124-127.

¹⁹ Annex 1 to the Experts' Reports, p.9, section 14.1.

²⁰ Annex 1 to the Experts' Reports, p.10, section 18.1, p.11.

²¹ Annex 1 to the Experts' Reports, p.10, section 18.1, p.11. *See also* Annex 4 to the Experts' Reports, p.76, section 77.1, p.76, para. 4, p.77, para. 10, p.78, para. 13.

²² Annex 1 to the Experts' Reports, p.8-9, sections 13.1-13.6.

²³ Annex 1 to the Experts' Reports, p.8, section 11.3. *See also* Annex 2 to the Experts' Reports, p.12-13, para. 25.

²⁴ Annex 2 to the Experts' Reports, p.28, paras 81-83 (*see also* p. 12-13, para. 25, p.32, para. 100 of this Report).

²⁵ Annex 2 to the Experts' Reports, p.32, para. 100, p.34, para. 105 (*see also* p. 12-13, para. 25 of this Report).

²⁶ Annex 2 to the Experts' Reports, p.28, para. 84 (*see also* p. 12-13, para. 25, p.32, para. 102, p.34, paras 104-105, p.36, para. 116, p.37, paras 121-122 of this Report).

²⁷ Annex 3 to the Experts' Reports, p.14.

²⁸ Annex 4 to the Experts' Reports, p.42, section 48.13.

12. The Chamber should [REDACTED].

B. A hearing on Mr Duterte's fitness is unnecessary

13. As previously stated,²⁹ there is no statutory requirement to hold a hearing on fitness to stand trial in the Court's regulatory framework, nor is one envisioned within the process under rule 135 of the Rules of Procedure and Evidence. Thus, a decision to hold such a hearing is a discretionary one to be made on a case-by-case basis.

14. Here, given the [REDACTED] conclusion of the Panel that Mr Duterte [REDACTED], the full compliance by the Panel with the Chamber's instructions, as well as the Panel's demonstrated agreement on methodology, on measures used to identify possible underperformance, and on the interpretation of their findings, no further clarifications are needed from the Panel. As such, there is no need to convene a hearing.

C. Modalities to facilitate Mr Duterte's presence in court at trial

15. Pursuant to the Chamber's instructions,³⁰ the Panel provided a number of practical suggestions, including those aimed at facilitating Mr Duterte's effective participation at trial. The Panel was in agreement that (i) the use of [REDACTED];³¹ (ii) [REDACTED];³² (iii) hearings that start [REDACTED];³³ as well as (iv) availability of [REDACTED],³⁴ would benefit Mr Duterte during court hearings. Dr [REDACTED] and Dr [REDACTED] also provided further recommendations regarding [REDACTED], Mr Duterte.³⁵

16. The Prosecution considers that the above-mentioned measures proposed by the Panel are reasonable and defers to the Registry in relation to the feasibility of their practical implementation, as well as to the Chamber's discretion in their adoption. In relation specifically to the proposal to commence hearings [REDACTED], the Prosecution flags that exceptions may need to be made in order to accommodate witness testimony [REDACTED].

²⁹ Prosecution's response to the Defence 'Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf', ICC-01/21-01/25-369-Red, para. 11.

³⁰ Decision appointing the Rule 135 Experts, para. 29.

³¹ Annex 1 to the Experts' Reports, p.8, section 11.2, p.10, section 20.1; Annex 3 to the Experts' Reports, p.10, p.15, para. 7; Annex 4 to the Experts' Reports, p.22, section 26.18, p.77, section (iii), p.78, para. 12.

³² Annex 1 to the Experts' Reports, p.10, section 20.1; Annex 3 to the Experts' Reports, p.10; Annex 4 to the Experts' Reports, p.77, section (iii), p.78, para. 12.

³³ Annex 1 to the Experts' Reports, p.10, section 20.1; Annex 4 to the Experts' Reports, p.23, section 26.19, p.77, section (iii).

³⁴ Annex 1 to the Experts' Reports, p.10, section 20.1; Annex 3 to the Experts' Reports, p.10.

³⁵ Annex 2 to the Experts' Reports, p.37, para. 123; Annex 3 to the Experts' Reports, p.10, p.15, para. 6.

D. A fitness reassessment of Mr Duterte is unnecessary at this stage

17. The Panel suggested that [REDACTED] since their last assessment.³⁶ However, this recommendation may be interpreted as reflecting [REDACTED].

18. In this respect, the Prosecution notes that there is no ongoing statutory obligation on Chambers to reassess an accused's fitness, as rule 135(4) applies only in situations where an accused is found to be unfit to stand trial, as is clear from its language.³⁷

19. In this specific case, given that [REDACTED] since the Panel's last assessment of Mr Duterte, more than six months ago, but rather "[REDACTED]",³⁸ regular [REDACTED] reassessments may not be necessary. Instead, [REDACTED]. However, should the Chamber be minded to order a reassessment [REDACTED], it should be carried out by the same Panel to ensure continuity.

IV. CONCLUSION

20. For the above reasons, the Prosecution respectfully requests the Chamber to conclude that Mr Duterte is capable of meaningfully exercising his procedural and fair trial rights, and that he is fit for trial.



Mame Mandiaye Niang, Acting Prosecutor

Dated this 14th day of September 2026

At The Hague, the Netherlands

³⁶ Annex 1 to the Experts' Reports, p.11.

³⁷ Rule 135(4) of the Rules of procedure and evidence.

³⁸ Annex 1 to the Experts' Reports, p.11.