

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/21-01/25**
Date: **19 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

Public redacted version of “Prosecution Response to Defence ‘Notification of a Request to Waive the Right to Attend the Hearing on the Confirmation of the Charges’ (ICC-01/21-01/25-383)”, 19 February 2026, ICC-01/21-01/25-386-Conf

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I. INTRODUCTION

1. The Prosecution hereby provides its response to Mr Duterte’s ‘Notification of a Request to Waive the Right to Attend the Hearing on the Confirmation of Charges’ (the “Notification”)¹ and its Annex A (the “Request”).² Mr Duterte is available, fit, and should attend the hearing in person.

II. CONFIDENTIALITY

2. This filing is classified as confidential pursuant to regulation 23*bis*(2) of the Regulations of the Court as it contains information taken from filings of the same classification.³

III. SUBMISSIONS

3. The Prosecution maintains its objection to Mr Duterte’s request to waive his right to appear at the confirmation hearing.⁴ Mr Duterte is not entitled to unilaterally excuse himself from attending the proceedings in-person.⁵ It is ultimately for the Chamber to decide “whether there is cause” to hold the confirmation hearing in the absence of the suspect.⁶ If a suspect fails to demonstrate adequate cause, the Chamber may order them to appear before the Court during the proceedings.⁷ In the past practice of this Court, requests to be excused from any stage of proceedings have been granted sparingly, and in the context of trial proceedings have been recognised as being “exceptional” in nature.⁸

¹ Notification of a Request to Waive the Right to Attend the Hearing on the Confirmation of the Charges, 18 February 2026, [ICC-01/21-01/25-383](#).

² Request by Mr Rodrigo Roa Duterte to Waive the Right to Attend the Hearing on the Confirmation of the Charges, 18 February 2026, [ICC-01/21-01/25-383-Anx A](#).

³ The Prosecution notes that, in its public Notification, the Defence cites documents that remain classified as confidential, preventing the Prosecution from fully responding to these submissions in its own public filing. See [Notification](#), paras 4-5.

⁴ Prosecution Response to ‘Defence Observations pursuant to Rule 122(3) and Defence Request pursuant to Rule 124(1)’, 17 February 2026, ICC-01/21-01/25-382-Conf (the “Prosecution Response to Defence Observations”), para. 11.

⁵ Despite the clear requirement set out in rule 125 of the Rules that the Chamber consider and decide on the Request, media reporting indicates Defence Counsel has already stated that Mr Duterte will not participate in the hearing: GMA, ‘Duterte won’t participate in ICC confirmation hearing via video, says Kaufman’, 17 February 2026 (last accessed on 19 February 2026 at <https://www.gmanetwork.com/news/topstories/nation/976878/duterte-kaufman-confirmation/story/?amp>).

⁶ Rules of Procedure and Evidence, rule 125(1). See also, Rome Statute, article 61(2)(a); Rules Procedure and Evidence, rules 124 and 125.

⁷ Rules of Procedure and Evidence, rule 125(4).

⁸ Appeals Chamber, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber V(a) of 18 June 2013 entitled “Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial”, 25 October 2013, [ICC-01/09-01/11-1066](#), paras 2, 56, 62.

4. In his Request, Mr Duterte fails to provide any compelling reason that would justify the confirmation hearing being held in his absence. Mr Duterte primarily seeks to waive his right to appear on the basis that he does not “recognize the jurisdiction” of the Court, states that he was “kidnapped”, and claims that the charges against him constitute “an outrageous lie” invented by his political opponents.⁹ These statements are a continuation of Mr Duterte’s rejection of the legitimacy of the proceedings against him before the Court.¹⁰ His refusal to acknowledge the legitimacy of the proceedings does not constitute cause to hold the confirmation hearing in his absence.

5. Mr Duterte is fit, competent, and physically and mentally able to attend the hearing in person. The state of Mr Duterte’s health has been comprehensively examined and litigated before this Chamber.¹¹ To this end, the Chamber has concluded that he is both physically and mentally fit to participate in the confirmation proceedings,¹² and has put measures in place to ensure his comfort throughout the hearing.¹³ It has done so with the benefit of extensive independent medical evidence and expert opinion.¹⁴ As such, Mr Duterte’s complaints that he is “old, tired, and frail” are irrelevant.¹⁵

6. Thus, the fact that he does “not wish to attend”¹⁶ should be given minimal weight in the Chamber’s decision on this matter. Any general health concerns alleged by Mr Duterte have been fully considered and accommodated by the Chamber as necessary, and cannot now be recycled as cause to hold the confirmation hearing in his absence. In addition, the fact that Mr Duterte has stated that he will not even follow the proceedings *via* video link demonstrates

⁹ [Request](#), pg. 2.

¹⁰ Confidential Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’, 26 September 2025, ICC-01/21-01/25-282-Conf (public redacted version filed on 10 October 2025, ICC-01/21-01/25-282-Red) (the “[Interim Release Decision](#)”), para. 50.

¹¹ *See e.g.*, Decision on the ‘Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf’, 13 February 2026, ICC-01/21-01/25-376; 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 (the “[Decision on Fitness](#)”); [Interim Release Decision](#), paras 63-65; Confidential Judgment on the appeal of Mr Rodrigo Roa Duterte against the decision of Pre-Trial Chamber I entitled “Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’”, 28 November 2026, ICC-01/21-01/25-326-Conf (public redacted version filed on the same date, [ICC-01/21-01/25-326-Red](#)), paras 85-88; Confidential Decision on the review of Mr Rodrigo Roa Duterte’s detention, 26 January 2026, ICC-01/21-01/25-357-Conf (public redacted version filed on the same date, [ICC-01/21-01/25-357-Red](#)), paras 22-30.

¹² Decision on the ‘Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf’, 13 February 2026, [ICC-01/21-01/25-376](#), pg. 11; [Decision on Fitness](#), para. 16.

¹³ Order setting the schedule and directions for the confirmation of charges hearing and convening the annual hearing on detention, 27 January 2026, [ICC-01/21-01/25-359](#), paras 14-16.

¹⁴ *See e.g.*, [Decision on Fitness](#), paras 12-13, 16.

¹⁵ [Request](#), pg. 2.

¹⁶ [Request](#), pg. 2.

that his reasons to avoid appearing in public are not health related but rather due to his lack of respect for the Court.

7. Further, there are compelling reasons for Mr Duterte to appear before the Court next week. Mr Duterte's appearance during the confirmation hearing is a significant milestone for the victims in this case. As previously submitted by the Prosecution, it is also important that the proceedings are open and that Mr Duterte is visible while he defends the criminal charges made against him.¹⁷ The Defence itself acknowledged the importance of this principle as recently as 9 January 2026, when it complained again that Mr Duterte had "not been seen in court for ten months".¹⁸ Mr Duterte's sudden heel-turn on this matter now, days before he is due to face the substantive criminal charges made against him, should be rejected by the Chamber.

8. Finally, in its Notification, the Defence continues to misrepresent the written records that they purport to summarise:

- i. The Defence states that Mr Duterte is "not now capable of 'personally executing' anything" and that this "is why the Pre-Trial Chamber acceded to the Defence's request for a notary public to visit" Mr Duterte.¹⁹ The Chamber made no such finding in the email decision cited by the Defence; this decision is a short email confirming that a [REDACTED].²⁰
- ii. The Defence go on to state that the expert panel appointed to assess Mr Duterte's fitness reported that his visuo-spatial skills are "impaired" and that he scored poorly on various tests assessing his language fluency and ability to draw.²¹ The Defence omits the fact that the expert panel also considered that Mr Duterte was an [REDACTED] and that his [REDACTED].²²

¹⁷ Prosecution Response to Defence Observations, para. 11.

¹⁸ Defence Observations on the First Review of Pre-Trial Detention, 9 January 2026, ICC-01/21-01/25-351-Conf (public redacted version filed on the same date, [ICC-01/21-01/25-351-Red](#)), para. 6.

¹⁹ [Notification](#), para. 4.

²⁰ [ICC-01/21-01/25 – Confidential] Order on Defence's request regarding contact restrictions, 14 April 2025 at 13:33 hrs; Re: [ICC-01/21-01/25 – Confidential] Third order on the provisional implementation of contact restrictions, 9 April 2025 at 22:58 hrs.

²¹ [Notification](#), para. 5.

²² Registry Transmission of the Panel of Experts' Joint and Individual Reports, 5 December 2025, ICC-01/21-01/25-327-Conf-AnxI, paras 5.15, 5.18. See also, Registry Transmission of the Panel of Experts' Joint and Individual Reports, 5 December 2025, ICC-01/21-01/25-327-Conf-AnxIV, paras 95-96.

9. For the avoidance of doubt; the Prosecution does not accept as valid any of the assertions made by the Defence in paragraphs 4 and 5 of its Notification regarding Mr Duterte's health, fitness and mental or physical capacity. As the panel of experts concluded, unanimously, Mr Duterte is an unreliable historian in regard to assessment of his health and mental fitness.²³

IV. CONCLUSION

10. The Prosecution respectfully requests that the Chamber reject Mr Duterte's request to waive his right to appear at the confirmation hearing. There is no reasonable cause for Mr Duterte not to appear in person in court at the confirmation hearing.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', written over a horizontal line.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 19th day of February 2026

At The Hague, the Netherlands

²³ [Decision on Fitness](#), para. 41.