

**Cour
Pénale
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**International
Criminal
Court**

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No.: ICC-01/21-01/25
Date: 28 October 2025

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
Judge Tomoko Akane
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Public Redacted Version of ICC-01/21-01/25-306-Conf

Victims' Response to the Defence Appeal against Pre-Trial Chamber I's "Decision on the Defence's 'Urgent Request for Interim Release' and 'Renewed Request for Interim Release'"

Source: Office of the Public Counsel for Victims

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

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D36

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☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

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I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the “Legal Representative”), appointed to represent the collective interests of potential victims until the mandate of the team of common legal representatives takes effect,¹ files her response to the Defence’s Appeal² against Pre-Trial Chamber I (the “Chamber”)’s “Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’” (the “Impugned Decision”).³

2. Preliminarily, the Legal Representative notes that there exist significant discrepancies between the content of the Notice of Appeal and the Appeal Brief and posits that the Appeals Chamber may consider to simply dismiss the arguments developed in the Appeal Brief which appear to be substantially reframed from the Notice of Appeal.

3. On the merits, the Legal Representative submits that none of the three grounds raised by the Defence establishes clear errors of law or fact committed in the Impugned Decision. Rather, the Defence’s arguments show its mere disagreement with the factual findings of the Chamber. Therefore, the Appeal should be dismissed in its entirety as the Chamber’s reasoning under each condition of article 58(1)(b) of the Rome Statute (the “Statute”) is legally and factually sound, justifying Mr Duterte’s continued detention.

¹ See the “Order on the conduct of confirmation proceedings” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-114](#), 17 April 2025, paras. 68-69.

² See the “Notice of Appeal against ICC-01/21-01/25-282-Conf”, No. ICC-01/21-01/25-287-Conf, 3 October 2025 (the “Notice of Appeal”); and the “Appeal Brief on Interim Release”, No. ICC-01/21-01/25-298-Conf OA2, 14 October 2025 (the “Appeal Brief”).

³ See the “Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’” (Pre-Trial Chamber I), No. ICC-01/21-01/25-282-Conf, 26 September 2025 (the “Impugned Decision”). A public redacted version [No. ICC-01/21-01/25-282-Red](#) was filed on 10 October 2025.

II. PROCEDURAL BACKGROUND

4. On 12 June 2025, the Defence filed its Request for Interim Release (the “Initial Request”)⁴ to which the Office of the Prosecutor (the “OTP”) and the Legal Representative filed their responses on 23 and 25 June 2025, respectively.⁵ On 23 July 2025, the Chamber deferred the issuance of a decision on the Initial Request, upon a request by the Defence.⁶

5. On 18 August 2025, the Defence filed a renewed request for interim release⁷ to which the OTP and the Legal Representative filed their responses on 28 and 29 August 2025, respectively.⁸ On 16 September 2025, the Defence filed the Notification⁹ to which the OTP and the Legal Representative filed their responses on 18 September 2025.¹⁰

⁴ See the “Urgent Request for Interim Release”, No. ICC-01/21-01/25-150-Conf-Exp, 12 June 2025 (the “Initial Request”). A public redacted version [No. ICC-01/21-01/25-150-Red](#) was filed on the same day.

⁵ See the “Confidential Redacted Version of ‘Prosecution’s response to ‘Urgent Request for Interim Release’”, No. ICC-01/21-01/25-159-Conf-Exp-Red, 23 June 2025. A public redacted version [No. ICC-01/21-01/25-159-Red](#) was filed on the same day. See also, the “Victims’ Response to the Urgent Defence Request for Interim Release”, No. ICC-01/21-01/25-162-Conf-Exp, 25 June 2025. A public redacted version [No. ICC-01/21-01/25-162-Red](#) was filed on the same day.

⁶ See the “Decision on the ‘Urgent Defence Request to Suspend Adjudication on the Defence Request for Interim Release’” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-209](#), 23 July 2025. See also, the “Urgent Defence Request to Suspend Adjudication on the Defence Request for Interim Release”, No. ICC-01/21-01/25-193-Conf, 14 July 2025. A public redacted version [No. ICC-01/21-01/25-193-Red](#) was filed on 18 July 2025; and the “Prosecution’s response to ‘Urgent Defence Request to Suspend Adjudication on the Defence Request for Interim Release’”, No. ICC-01/21-01/25-196-Conf-Exp. A confidential redacted version No. ICC-01/21-01/25-196-Conf-Red was filed the same day and a public redacted version [No. ICC-01/21-01/25-196-Red](#) was filed on 18 July 2025.

⁷ See the “Renewed Request for Interim Release”, No. ICC-01/21-01/25-231-Conf, 18 August 2025 (the “Renewed Request”). A public redacted version [No. ICC-01/21-01/25-231-Red](#) was filed on 19 August 2025.

⁸ See the “Confidential redacted version of ‘Prosecution’s response to ‘Renewed Request for Interim Release’”, No. ICC-01/21-01/25-252-Conf-Red, 28 August 2025. A public redacted version [No. ICC-01/21-01/25-252-Red](#) was filed on 12 September 2025; and the “Victims’ Response to the Defence’s Renewed Request for Interim Release”, No. ICC-01/21-01/25-256-Conf, 29 August 2025. A public redacted version [No. ICC-01/21-01/25-256-Red](#) was filed on 2 September 2025 (the “Victims’ Response to Renewed Request”).

⁹ See the “Defence Notification”, No. ICC-01/21-01/25-271-Conf, 16 September 2025. A public redacted version [No. ICC-01/21-01/25-271-Red](#) was filed on the same day.

¹⁰ See the “Prosecution’s Response to the ‘Defence Notification (ICC-01/21-01/25-271-Conf)’”, No. ICC-01/21-01/25-277-Conf, 18 September 2025. A public redacted version [No. ICC-01/21-01/25-277-Red](#) was filed on 29 September 2025; and the “Victims’ Response to the ‘Defence Notification’ (ICC-01/21-01/25-

6. On 26 September 2025, the Chamber rendered the Impugned Decision.¹¹

7. On 3 October 2025, the Defence lodged its Notice of Appeal.¹² On 7 October 2025, the Appeals Chamber instructed the Defence to file its Appeal Brief by 14 October 2025 and the OTP and the Legal Representative to file their responses by 21 October 2025.¹³ On 14 October 2025, the Defence filed its Appeal Brief.¹⁴

III. CLASSIFICATION

8. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court (the “Regulations”), the present submission is classified as confidential because it refers to the contents of documents bearing the same classification. A public redacted version will be filed in due course.

IV. SUBMISSIONS

A. Applicable law

9. The Legal Representative recalls that, with respect to errors of law, the Appeals Chamber will not defer to the lower chamber’s interpretation of the law and rather, it will arrive at its own conclusions as to the appropriate law and determine whether or not the lower chamber misinterpreted it.¹⁵ If such legal error is committed, the Appeals Chamber will only intervene if the error materially affected the Impugned Decision.¹⁶ Regarding an alleged error of fact, in the context of an appeal against a decision

271-Conf)”, No. ICC-01/21-01/25-278-Conf, 18 September 2025. A public redacted version [No. ICC-01/21-01/25-278-Red](#) was filed on 29 September 2025.

¹¹ See the Impugned Decision, *supra* note 3.

¹² See the Notice of Appeal, *supra* note 2.

¹³ See the “Order on the conduct of the appeal proceedings” (Appeals Chamber), [No. ICC-01/21-01/25-291-Conf OA2](#), 7 October 2025, p. 3.

¹⁴ See the Appeal Brief, *supra* note 2.

¹⁵ See the “Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled ‘Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions’”, [No. ICC-01/14-01/21-318 OA3](#), 19 May 2022, para. 13 (the “Said Abdel Kani Judgment of 2022”).

¹⁶ *Ibid.*

concerning interim release, the Appeals Chamber's review is corrective and not *de novo*.¹⁷ It will therefore not interfere unless it is shown that the Pre-Trial Chamber committed a clear error, namely: misappreciated the facts, took into account irrelevant facts or failed to take into account relevant facts.¹⁸ The Appeals Chamber also applies a standard of reasonableness in assessing an alleged error of fact, thereby according a margin of deference to the lower chamber's findings.¹⁹

B. Discrepancies between the Notice of Appeal and the Appeal Brief

10. Preliminarily, the Legal Representative notes that there exist significant discrepancies between the content of the Notice of Appeal and the Appeal Brief.²⁰ In this regard, the Legal Representative posits that an appeal brief must conform to, and remain within the scope of the grounds articulated in the notice of appeal. The purpose of the notice of appeal is to define with precision the errors alleged and the relief sought. Consequently, the appeal brief serves only to develop and substantiate those grounds, not to introduce new or materially different arguments, falling outside the parameters of the notice of appeal. Indeed, the latter delineates the permissible

¹⁷ *Idem*, para. 14.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ For example: while the first ground of appeal is termed "[t]he Impugned Decision was insufficiently reasoned and the Pre-Trial Chamber premised its findings on risk factors on speculation and irrelevant considerations" in the Notice of Appeal, the Appeal Brief formulates said ground as "A. [t]he Pre-Trial Chamber erroneously found that Mr Duterte poses a risk under Article 58(1)(b)(i)-(iii) of the Rome Statute." Moreover, it appears that some of the important elements the Defence pleaded in the Notice of Appeal are not included in the Appeal Brief. For example, the arguments to the effect that the Impugned Decision was insufficiently reasoned (in relation to Ground 1) and the Chamber abused its discretion (in relation to Ground 2) in the Notice of Appeal are totally absent in the Appeal Brief. Furthermore, in the Notice of Appeal, the third ground is titled "[t]he Impugned Decision failed to give sufficient weight to humanitarian considerations and objective medical evidence [...]", while Ground C in the Appeal Brief is titled "[t]he Pre-Trial Chamber erred in law by failing to take into account humanitarian considerations [...]". In this regard, the Chamber's alleged failure to give sufficient weight to humanitarian considerations and its alleged failure to take into account said considerations are totally different issues with significant legal consequences. The former would largely pertain to the assessment of evidence conducted by the Chamber while the latter - alleged omissions of other legal obligations imposed upon the Chamber by the statutory instruments of the Court. The same could also be extended to Ground 2 of the Notice of Appeal and Ground B of the Appeal Brief. *Vice versa*, some of the arguments developed in the Appeal Brief also falls outside of the parameters of the grounds contained in the Notice of Appeal. For example, arguments raised in part (iii) of the Ground A which are titled "[t]he Pre-Trial Chamber erred in fact by failing to give appropriate weight to relevant facts" were never mentioned in relation to the First Ground in the Notice of Appeal.

boundaries of the appeal while ensuring fairness, finality, and clarity in the appellate process and guaranteeing that the Appeals Chamber and the parties and participants are clearly apprised of the precise issues on appeal.

11. Therefore, the Legal Representative submits that the Appeals Chamber may consider to simply dismiss the arguments related to the grounds of appeal developed in the Appeal Brief that are substantially reframed from the ones presented in the Notice of Appeal.

C. Merits of the Appeal

12. The Defence, first, indicates that Mr Duterte is 80 years old, infirm and debilitated, and it is quite cruel to detain him while he enjoys the presumption of innocence.²¹ In this regard, the presumption of liberty does not mean that detention cannot be imposed where there exists a legal basis for doing so and, while the person subject to criminal proceedings shall enjoy the right to liberty, he or she may be deprived of that right as prescribed by law in a manner which is strictly necessary under the circumstances.²² Furthermore, the Legal Representative posits that, as shown *infra*, the Appeal should be dismissed as the Chamber's reasoning under each of the conditions of article 58(1)(b) of the Statute is legally and factually sound, justifying Mr Duterte's detention while respecting his rights.

Ground A. The Pre-Trial Chamber erroneously found that Mr Duterte poses a risk under Article 58(1)(b)(i)-(iii) of the Rome Statute

13. The Defence argues that, while acknowledging that an assessment of risk under article 58 (1)(b) of the Statute revolves around the "possibility", the Chamber misapprehended the applicable legal standard by allowing itself to be guided by

²¹ See the Appeal Brief, *supra* note 2, para. 2.

²² See the "Judgment on the appeal of Ali Muhammad Ali Abd-Al-Rahman against Trial Chamber I's 'Decision on the review of detention'" (Appeals Chamber), [No. ICC-02/05-01/20-542-Red OA10](#), 17 December 2021, paras. 37 and 38 (the "Ali Abd-Al-Rahman Judgment of 2021").

“possibility” alone, meaning that any suggestions, however unsubstantiated, may give rise to the “possibility” of risk.²³

14. The Defence misrepresents the Impugned Decision. Indeed, the Appeals Chamber held that what may justify continued detention under article 58(1)(b) of the Statute is that it must “appear” to be necessary, meaning that “*the question revolves around the possibility, not the inevitability, of a future occurrence.*”²⁴ Accordingly, the Chamber examined each of the conditions of article 58(1)(b) of the Statute against the overwhelming body of evidence properly placed before it. In particular, in relation to article 58(1)(b)(i) of the Statute, the Chamber found, *inter alia*, that:

- (i) Mr Duterte has, from his initial appearance, contested his arrest and detention, qualifying it as a kidnapping.²⁵ According to the Appeals Chamber, the behaviour of a defendant awaiting court proceedings is indeed a relevant factor when considering applications for interim release.²⁶
- (ii) Mr Duterte’s family physically resisted his arrest, publicly voiced criticism about detention, and demanded that he should be brought back to the Philippines.²⁷ Mr Duterte’s daughter (who is the current Vice President of the country) mentioned in public speeches the idea of facilitating her father’s escape from the ICC Detention Centre and indicated that he had told her that he wishes to return to Davao City,

²³ See the Appeal Brief, *supra* note 2, paras. 11-13.

²⁴ See the “Judgment in the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release” (Appeals Chamber), [No. ICC-01/04-01/07-572 OA4](#), 9 June 2008, para. 21 (the “Ngudjolo Chui Judgment of 2008”).

²⁵ See the Impugned Decision, *supra* note 3, para. 50.

²⁶ See the “Judgment on the appeal of the Prosecutor against Pre-Trial Chamber II’s ‘Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa’” (Appeals Chamber), [No. ICC-01/05-01/08-631-Red OA2](#), 2 December 2009, para. 80 (the “Bemba Judgment of 2009”).

²⁷ See the Impugned Decision, *supra* note 3, para. 50.

should he be granted interim release.²⁸ Such inambiguous words promising specific actions must not be discounted. This kind of concrete evidence shows that there was (and still is) a significant risk that the Suspect might abscond, if released.²⁹

- (iii) Mr Duterte, as former President of the Philippines, has the necessary political contacts or network of support within the country that may help him to abscond.³⁰ The continued support in the Philippines to Mr Duterte is further demonstrated by his election as mayor of Davao City in May 2025.³¹ In this regard, the existence of international contacts, support network, and financial means³² are relevant to determining whether there is a risk that a person may evade justice or interfere with the Court's proceedings (whether or not there was evidence that the Suspect would actually utilise such contacts³³), because such support could indeed facilitate absconding.³⁴
- (iv) Mr Duterte is facing multiple charges comprising a number of murders and attempted murders as crimes against humanity, and he may receive a lengthy sentence if all or part of the charges were to be confirmed and he were convicted at trial.³⁵ Indeed, the Appeals Chamber consistently held that the seriousness of the crimes allegedly committed and the

²⁸ *Ibid.*

²⁹ See the Said Abdel Kani Judgment of 2022, *supra* note 15, para. 36.

³⁰ See the Impugned Decision, *supra* note 3, paras. 50-52.

³¹ *Ibid.*

³² See the Bemba Judgment of 2009, *supra* note 26, paras. 71, 72 and 87.

³³ See the "Judgment on the appeal of Mr Callixte Mbarushimana against the decision of Pre-Trial Chamber I of 19 May 2011 entitled 'Decision on the 'Defence Request for Interim Release'" (Appeals Chamber), [No. ICC-01/04-01/10-283 OA](#), 14 July 2011, para. 25 (the "Mbarushimana Judgment of 2011"); and the Mahamat Said Abdel Kani Judgment of 2022, *supra* note 15, para. 34.

³⁴ See the "Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled 'Decision on the 'Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo'" (Appeals Chamber), [No. ICC-02/11-01/11-278-Red OA](#), 26 October 2012, para. 59 (the "Gbagbo Judgment of 2012").

³⁵ See the Impugned Decision, *supra* note 3, para. 51.

length of sentence that a defendant is likely to serve, if convicted, are relevant factors that may make the person more likely to abscond.³⁶

15. Looking at this concrete evidence, the possibility of Mr Duterte absconding remains visible and no material was placed before the Chamber showing that such a possibility is imaginary.³⁷ As confirmed by the Appeals Chamber, the Chamber was under an obligation to make a prediction based on this clear and specific evidence as to the likelihood³⁸ of Mr Duterte's flight risk. As the appraisal of the evidence relevant to continued detention³⁹ and the weight to be given⁴⁰ lies, in the first place, with the Chamber, it found that the Suspect continues to pose a flight risk and detention is necessary to ensure his presence during the proceedings.⁴¹ This reasoning is in line with the Appeals Chamber's guidance to the effect that the availability of said types of evidence (not theoretical or abstract) shows that there is a significant risk that a defendant might abscond, if released.⁴²

16. However, the Defence does not explain how this determination based on an enormous body of evidence is somehow unsubstantiated. As shown *supra*, these factual findings were not simply *any suggestions* by which the Chamber allowed itself to be guided. Rather, in each instance, they constitute clear and concrete facts directly attributable to Mr Duterte, supporting the Chamber's determination that his detention remains necessary in order to ensure his appearance before the Court.

³⁶ See the Ngudjolo Chui Judgment of 2008, *supra* note 24, para. 21; the "Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled 'Decision on application for interim release'", [No. ICC-01/05-01/08-323 OA](#), 16 December 2008, para. 55 (the "Bemba Judgment of 2008"); the Bemba Judgment of 2009, *supra* note 26, para. 67 and 70; the Mbarushimana Judgment of 2011, *supra* note 33, para. 21; the Gbagbo Judgment of 2012, *supra* note 34, para. 54; and the Said Abdel Kani Judgment of 2022, *supra* note 15, paras. 2 and 44.

³⁷ See the Ngudjolo Chui Judgment of 2008, *supra* note 24, para. 24.

³⁸ See the Said Abdel Kani Judgment of 2022, *supra* note 15, paras. 33-34.

³⁹ See the Ngudjolo Chui Judgment of 2008, *supra* note 24, para. 25; and the Bemba Judgment of 2009, *supra* note 26, para. 61.

⁴⁰ See the Bemba Judgment of 2009, *supra* note 26, para. 62; and the Mbarushimana Judgment of 2011, *supra* note 33, para. 21.

⁴¹ See the Impugned Decision, *supra* note 3, para. 53.

⁴² See the Said Abdel Kani Judgment of 2022, *supra* note 15, para. 35.

17. In this regard, the apparent necessity of continued detention in order to ensure the defendant's appearance does not necessarily have to be established on the basis of one factor taken in isolation as it may also be recognised on the basis of an analysis of all relevant factors taken together.⁴³ As shown *supra*, the Chamber did not rely on a single factor but concluded that the conditions of article 58(1)(b)(i) of the Statute were fulfilled on the basis of Mr Duterte's background, former position, his past behaviour, his family and political contacts and network and resources, as well as the seriousness of the crimes he is alleged to have committed and the punishment that he might face. None of these factors is extraneous to the question of whether there is a risk of absconding.⁴⁴

18. The Defence simply offers alternative conclusions in the opposite direction which could have been drawn by the Chamber. In this regard, the question is not whether the Chamber could have reached other conclusions, but whether it could not have reasonably reached the conclusions it did on the available evidence.⁴⁵ The Defence fails to show that no other Chamber could have reached the same conclusion based on the evidence before it. Thus, simply offering alternative explanations or expressing mere disagreement with the conclusions that the Chamber drew from available facts or the weight it accorded to particular factors is not enough to establish a clear error.⁴⁶ Rather, the appellant is under an obligation to identify a clear error in the Impugned Decision.⁴⁷ The Defence fails to do so.

19. Additionally, the conditions set forth in article 58(1)(b) of the Statute are in the alternative and thus, if one of those conditions is fulfilled, the others do not have to be addressed, and detention must be maintained.⁴⁸ Therefore, since the condition

⁴³ See the Bemba Judgment of 2008, *supra* note 36, para. 55.

⁴⁴ *Ibid.*

⁴⁵ See the Mbarushimana Judgment of 2011, *supra* note 33, para. 31.

⁴⁶ *Idem*, para. 21; the Gbagbo Judgment of 2012, *supra* note 34, para. 52; and the Ali Abd-Al-Rahman Judgment of 2021, *supra* note 22, para. 63.

⁴⁷ See the Gbagbo Judgment of 2012, *supra* note 34, para. 60.

⁴⁸ See the Ngudjolo Chui Judgment of 2008, *supra* note 24, para. 20; and the Bemba Judgment of 2009, *supra* note 26, para. 89.

provided in article 58(1)(b)(i) of the Statute is fulfilled, the Chamber did not even need to address the other circumstances of that provision in the Impugned Decision. In the same vein, the Appeals Chamber may also dismiss the Appeal on this ground alone and decline to address the rest of the arguments raised by the Defence.

20. In relation to article 58(1)(b)(ii) of the Statute, the Defence further argues that the Chamber found that it did not need to assess whether Mr Duterte could take steps to contact or exercise pressure on potential witnesses, but, rather, relied on an unsubstantiated allegation that he is able and has the means, either directly or through his associates, to obstruct the Court's proceedings.⁴⁹

21. In this regard, the Chamber actually found, *inter alia*, that:

- (i) Mr Duterte was allegedly involved in briefing a witness who was due to testify before the Philippines Senate's inquiry into the Davao Death Squad as well as threatening and taking retaliatory actions against individuals opposed to him.⁵⁰ Moreover, the Suspect [REDACTED].⁵¹ The previous behaviour of a defendant⁵² showing propensity to influence witnesses is a relevant factor in the Chamber's determination of interim release.
- (ii) [REDACTED].⁵³ In this regard, it is reasonable to assume that a support network that may assist in the absconding of the defendant may also assist in obstructing or endangering the Court's proceedings.⁵⁴ The Appeals Chamber also recalled that the intent to abscond and the intent to obstruct or endanger the proceedings have the same ultimate objective because both are directed towards preventing the trial from taking place and thus, the findings in respect of both the intent to abscond and the

⁴⁹ See the Appeal Brief, *supra* note 2, para. 13.

⁵⁰ See the Impugned Decision, *supra* note 3, para. 54.

⁵¹ *Idem*, paras. 54-55.

⁵² See the Bemba Judgment of 2008, *supra* note 36, para. 67.

⁵³ See the Impugned Decision, *supra* note 3, para. 54.

⁵⁴ See the Gbagbo Judgment of 2012, *supra* note 34, para. 63.

intent to obstruct or endanger the proceedings can be based on overlapping evidence.⁵⁵

22. These facts clearly show that, if released, Mr Duterte will be able to, either directly or through his supporters, obstruct proceedings against him. Again, the focus of this inquiry is whether detention “appears” necessary which requires an assessment of the risks that have crystallised at the time of the review.⁵⁶ At the time the Chamber assessed the evidence available before it, the risks under article 58 (1)(b)(ii) of the Statute were crystal clear. Therefore, the ensuing factual findings were far from mere suspicions or *any suggestions* that allegedly guided the Chamber, according to the Defence. Rather, in each instance, the risks in question were directly attributable to Mr Duterte, amply demonstrating the need to keep him in detention.

23. Moreover, the Chamber found, in relation to article 58(1)(b)(iii) of the Statute, that: (i) in 2024, Mr Duterte allegedly pledged to double the killings if he were to be elected again as Mayor of Davao City and that, in 2025, he was indeed re-elected mayor of Davao City, while his son was elected its vice-Mayor; (ii) some of the crimes under Count 1 in the Document Containing the Charges (the “DCC”) were allegedly committed when the Suspect held the position of Mayor of Davao City. As such, should he return to Davao City, Mr Duterte would be placed in the very position that allowed him to commit the crimes in question; (iii) Mr Duterte’s son is in position of power in the Philippines at one of the locations of the crimes alleged in the Warrant of Arrest and the DCC.⁵⁷ Consequently, the Chamber found that the risk of the Suspect committing further crimes continues to exist even if he is released [REDACTED].

24. The Defence further adds that Mr Duterte’s [REDACTED] have a significant bearing on his ability to abscond, interfere with the proceedings, and commit crimes.⁵⁸

⁵⁵ *Ibid.*

⁵⁶ See the Ali Abd-Al-Rahman Judgment of 2021, *supra* note 22, para. 42.

⁵⁷ See the Impugned Decision, *supra* note 3, paras. 58-59.

⁵⁸ See the Appeal Brief, *supra* note 2, para. 24.

It also stresses that the Suspect has formally relinquished his position as Mayor and pledged not to return to power.⁵⁹

25. In this regard, the Appeals Chamber held that the reason for detention under article 58(1)(b)(iii) of the Statute is the risk that further crimes may be committed and thus a Chamber is entitled to take into account that the defendant is suspected of having committed serious crimes and that, in the specific circumstances and in light of the information before it, there is a risk that he may commit further crimes if released.⁶⁰ In the absence of concrete evidence, hypothetical claims about personal willingness to abide by the law are of little weight in the determination of whether interim release should be granted.⁶¹ As a result, the Chamber's determination under article 58(1)(b)(iii) of the Statute was legally and factually sound, and the Defence fails to establish clear errors in this regard.

Ground B. The Pre-Trial Chamber erred in its rejection of the State guarantees

26. The Legal Representative recalls that: (i) a decision on interim release is not discretionary; (ii) if the Chamber is satisfied that the conditions set forth in article 58 (1) of the Statute are not met, it shall release the person, with or without conditions; (iii) if, however, the release would lead to any of the risks described in said provision, the Chamber may examine appropriate conditions with a view to mitigating or negating the risk; (iv) as the list of conditions in rule 119 (1) of the Rules of Procedure and Evidence indicates, the Chamber may also, in appropriate circumstances, impose conditions that do not, *per se*, mitigate the risks; (v) the result of this two-tiered examination is a single inseverable decision that grants conditional release on the basis of specific and enforceable conditions; and (vi) in such circumstances, release is only possible if specific conditions are imposed.⁶²

⁵⁹ *Idem*, para. 22.

⁶⁰ See the Gbagbo Judgment of 2012, *supra* note 34, para. 70.

⁶¹ See the Bemba Judgment of 2008, *supra* note 36, para. 56.

⁶² See the Bemba Judgment of 2009, *supra* note 26, para. 105.

27. The Defence argues that the Chamber summarily dismissed the proposed conditions of release and State guarantees as being insufficient.⁶³ It further posits that the supposed lack of details is unwarranted since they are negotiated between the Registry and the receiving State after a definitive ruling on whether a suspect actually poses a risk; and that the Chamber failed to consider whether the proffered terms and conditions would mitigate identified risks.⁶⁴

28. The Defence again misrepresents the Impugned Decision. The Chamber did carefully consider each and every guarantee proposed by [REDACTED] *alone* and *in combination with the other conditions* in the Impugned Decision in order to determine whether they could mitigate the risk under article 58(1)(b) of the Statute. In particular, the Chamber took into account: (i) the list of sixteen terms and conditions suggested by the Defence that would neutralise any possible concern about interim release, together with a list of undertakings to be provided by [REDACTED]; and (ii) the fact that [REDACTED] consented to receiving Mr Duterte on its territory for the purpose of interim release, agreed to enforce the conditions and facilitate the travel of the Suspect to and from The Netherlands.⁶⁵

29. Upon evaluating these conditions and guarantees, the Chamber reached the conclusion that they do not sufficiently mitigate the risks set out in article 58(1)(b) of the Statute because: (i) of the lack of detail as to how the [REDACTED] would implement the necessary conditions, notably to ensure Mr Duterte's presence at the Court and his compliance with the interdiction to interfere with the proceedings; (ii) some of the conditions will necessarily require the involvement of the Registry which [REDACTED]; (iii) the use of electronic bracelet, which is essential to mitigate the risk of flight [REDACTED].⁶⁶ Thus, contrary to the Defence's arguments, the Chamber did conduct a detailed and meaningful assessment of the State guarantees

⁶³ See the Appeal Brief, *supra* note 2, para. 29.

⁶⁴ *Idem*, para. 34.

⁶⁵ See the Impugned Decision, *supra* note 3, para. 66.

⁶⁶ REDACTED.

and conditions in question and reached a reasonable conclusion within the meaning of article 58(1)(b) of the Statute. Indeed, “[the Court] *is dependent on State cooperation in relation to accepting a person who has been conditionally released as well as ensuring that the conditions imposed by the Court are enforced*. Without such cooperation, any decision of the Court granting conditional release would be ineffective.”⁶⁷ Therefore, it was incumbent upon the Chamber to verify whether the conditions and State guarantees in question were in fact enforceable and effective.

30. As for the Defence’s arguments that the Chamber erred by stating, “*in a single sentence, that it had ‘duly considered the list of conditions proposed by the Defence, but finds that they do not sufficiently mitigate the risks set out in article 58(1)(b)’ [and] “[n]ot a single other line in the Impugned Decision is dedicated to an appraisal of the terms and conditions proffered by the Defence or the State”*”⁶⁸, it is not erroneous for a Pre-Trial Chamber to make a general statement that there was no condition short of detention that would be sufficient to mitigate the risks under article 58(1)(b) of the Statute as long as it did not disregard those proposals but expressly considered them.⁶⁹ The fact that the Chamber’s findings could have been explained in more detail is inconsequential,⁷⁰ since it nevertheless did take into account the risks associated with Mr Duterte’s release and found that they could only be effectively managed in the Court’s detention centre. Therefore, the Chamber’s alleged omission to provide more detailed reasoning does not detract from the correctness and adequacy of its finding on this point.⁷¹

31. As for the Defence’s arguments concerning the Chamber’s alleged insistence [REDACTED]. In fact, the need for [REDACTED] apparently arises from the nature of the conditions and State guarantees that the Defence itself offered to the Chamber. This is the reason why the Chamber considered that some of the conditions, namely

⁶⁷ See the Bemba Judgment of 2009, *supra* note 26, para. 107 (emphasis added).

⁶⁸ See the Appeal Brief, *supra* note 2, para. 36.

⁶⁹ See the Gbagbo Judgment of 2012, *supra* note 34, paras. 76-79.

⁷⁰ *Idem*, para. 80.

⁷¹ See the Bemba Judgment of 2008, *supra* note 36, para. 53.

conditions (iv) - (vi) contained in Annex B to the Defence's Initial Request, will necessarily [REDACTED].⁷² Therefore, the Defence's allegations that a suspect can be released only [REDACTED] are wrong. As a result, the Chamber's ruling in question remains legally and factually unassailable.

32. This is also in line with the Appeals Chamber's guidance on the matter according to which "*in circumstances where a State has offered to accept a detained person and to enforce conditions, it is incumbent upon the Pre-Trial Chamber to consider conditional release. However, where the Pre-Trial Chamber is of the view that no condition could mitigate the identified risks there is no obligation on the Chamber to address the State's proposals any further.*"⁷³ Consequently, there is no discernible error⁷⁴ committed by the Chamber in the Impugned Decision. The Defence's arguments constitute at best a mere disagreement with the Chamber's reasoning. As recalled *supra*, such disagreements do not establish an error of law or fact.

Ground C. The Pre-Trial Chamber erred in law by failing to take into account humanitarian considerations in assessing the right to interim release

33. The Defence argues that the Chamber erred in law by refusing to consider humanitarian grounds as a mitigating factor of article 58(1)(b) risks and/or as an independent basis on which conditional interim release may be justified.⁷⁵ In so doing, the Defence adds that the Chamber breached its positive obligation to ensure that Mr Duterte's pre-trial detention is neither disproportionate nor inconsistent with the presumption of innocence.⁷⁶

34. The Defence once more misrepresents the Impugned Decision. Firstly, the Chamber did take into account Mr Duterte's medical condition in assessing the

⁷² REDACTED.

⁷³ See the Gbagbo Judgment of 2012, *supra* note 34, para. 1.

⁷⁴ *Idem*, para. 80.

⁷⁵ See the Appeal Brief, *supra* note 2, paras. 43-45.

⁷⁶ *Idem*, para. 49.

conditions under article 58(1)(b) of the Statute. In particular, the Chamber explicitly stated in the Impugned Decision that: “[REDACTED].”⁷⁷ Accordingly, the Chamber found that Mr Duterte’s detention remains necessary pursuant to article 58(1)(b) of the Statute.⁷⁸

35. Secondly, the Chamber conducted an examination of humanitarian grounds by explicitly stating that, while the Statute does not provide the Chamber with the power to release a suspect on humanitarian grounds, it is mindful of the practice of other international courts and tribunals related to sufficiently compelling humanitarian grounds.⁷⁹ The Chamber then found that such grounds have in any event not been appropriately set out in the case at hand.⁸⁰ The Chamber further reasoned that: (i) the Defence failed to demonstrate to what extent Mr Duterte [REDACTED] and how that would justify his interim release; (ii) he enjoys the right to medical treatment pursuant to regulation 103(4) of the Regulations and nothing indicates that this would not be sufficient to ensure that he receives appropriate medical attention and care in detention; and (iii) the Court has put in place measures to ensure that his right to family life is guaranteed.⁸¹

36. As submitted in her response to the Renewed Request, the Legal Representative posits that the medical documentation submitted by the Defence did not indeed suffice to justify an interim release. In fact, according to [REDACTED].⁸²

37. These facts clearly indicate, even in layman’s eyes, that, [REDACTED].

⁷⁷ REDACTED.

⁷⁸ *Idem*, para. 65.

⁷⁹ *Idem*, para. 73.

⁸⁰ *Ibid*.

⁸¹ *Idem*, para. 74.

⁸² REDACTED.

38. Moreover, the conclusions [REDACTED],⁸³ [REDACTED].⁸⁴ These facts show [REDACTED].

39. Additionally, [REDACTED]⁸⁵ and [REDACTED].⁸⁶ Therefore, this diagnosis fails to meet the threshold of sufficient justification for interim release in the absence of a demonstration of an acute crisis or a life-threatening medical condition.

40. Medical conditions of a detained person can play a role in decisions on interim release in two ways: (i) they may have an effect on the risks under article 58(1)(b) of the Statute, potentially negating those risks; and (ii) they may be a reason for a Pre-Trial Chamber to grant interim release with conditions.⁸⁷ As shown *supra*, the Chamber carefully examined whether Mr Duterte's current health condition may have an effect on the risks under article 58(1)(b) of the Statute but found that it was not sufficient to grant him interim release with conditions. Consequently, there was no legal or factual error in this regard and thus the Appeal must be dismissed.

⁸³ REDACTED.

⁸⁴ REDACTED.

⁸⁵ REDACTED.

⁸⁶ REDACTED.

⁸⁷ See the Gbagbo Judgment of 2012, *supra* note 34, para. 2.

V. CONCLUSION

41. For the foregoing reasons, the Legal Representative respectfully requests the Appeals Chamber to dismiss the Defence Appeal.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 28th day of October 2025

At The Hague, The Netherlands