

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/21-01/25**
Date: **31 October 2025**

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
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

**Public Redacted Version of “Prosecution’s response to ‘Appeal Brief on Interim Release’ (ICC-01/21-01/25-298-Conf)”, 21 October 2025,
ICC-01/21-01/25-307-Conf-Exp**

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I. INTRODUCTION

1. On 26 September 2025, Pre-Trial Chamber I (the “Chamber”) rejected Mr Duterte’s request to grant him interim release under article 60(2) of the Rome Statute (the “Statute”) and ordered his continued detention (the “Decision”).¹ The Chamber found that the criteria in articles 58(1)(a) and 58(1)(b)(i)-(iii) were met, namely: that there were reasonable grounds to believe that Mr Duterte committed crimes within the jurisdiction of the International Criminal Court (the “Court”);² that his continued detention appeared necessary to ensure his appearance at trial;³ that his continued detention appeared necessary to ensure that he does not obstruct or endanger the investigation or court proceedings;⁴ and that his continued detention appeared necessary to ensure that he does not continue with the commission of crimes.⁵

2. The Decision is reasonable and correct. Mr Duterte’s three grounds of appeal (the “Appeal”) fail to establish any legal or factual error.⁶ Rather, the Defence repeatedly expresses its mere disagreement with the Decision, mischaracterises and ignores the Chamber’s reasoning, and misstates and misunderstands the applicable law. The Appeal should therefore be dismissed.

II. CONFIDENTIALITY

3. This filing is classified as confidential pursuant to regulation 23bis(1) and (2) of the Regulations of the Court (the “Regulations”), as it contains sensitive information [REDACTED]. It also refers to filings and decisions with the same classification. A confidential *ex parte*, defence and prosecution only, version has been filed as the filing refers to decisions with the same classification.

4. The Prosecution notes the Defence’s correspondence with the Chamber, in which it clarified that contrary to its previous assertion,⁷ the Appeal should not be reclassified as public, but rather, a public redacted version should be filed.⁸ The Prosecution notes that a public

¹ 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 notified 10 October 2025, [ICC-01/21-01/25-282-Red](#)) (“Decision”).

² Decision, paras 47-48.

³ Decision, paras 50-53.

⁴ Decision, paras 54-57.

⁵ Decision, paras 58-60.

⁶ Confidential Appeal Brief on Interim Release, 14 October 2025, ICC-01/21-01/25-298-Conf (“Appeal”) with public Annex A – Table of Authorities, ICC-01/21-01/25-298-AnxA.

⁷ Appeal, fn. 1.

⁸ Email from Defence to Appeals Chamber, 15 October 2025 at 18:07.

redacted version of the Appeal is indeed necessary as the [REDACTED] and may include other information that requires redaction.

III. APPLICABLE LAW

5. With respect to errors of law, the Appeals Chamber has held that:

it will not defer to the Trial Chamber's interpretation of the law. Rather, it will arrive at its own conclusions as to the appropriate law and determine whether or not the Trial Chamber misinterpreted the law. If the Trial Chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the Impugned Decision.⁹

6. Regarding an alleged error of fact, the Appeals Chamber has held that:

in the context of an appeal against a decision concerning interim release that its review is corrective and not *de novo*. It has explained that '[i]t will therefore not interfere unless it is shown that the Pre-Trial or Trial Chamber committed a clear error, namely: misappreciated the facts, took into account irrelevant facts or failed to take into account relevant facts'. As regards the 'misappreciation of facts' the Appeals Chamber will not disturb a Pre-Trial or Trial Chamber's evaluation of the facts just because the Appeals Chamber might have come to a different conclusion. It will interfere only in the case where it cannot discern how the Chamber's conclusion could have reasonably been reached from the evidence before it. The Appeals Chamber applies a standard of reasonableness in assessing an alleged error of fact in appeals pursuant to article 82 of the Statute, thereby according a margin of deference to the Trial Chamber's findings.¹⁰

IV. SUBMISSIONS

A. Ground one: The Pre-Trial Chamber did not err in finding that Mr Duterte poses a risk under articles 58(1)(b)(i)-(iii) of the Statute

1. The Pre-Trial Chamber did not rely on unsubstantiated "hypothetical and non-specific risks" to find that Mr Duterte's continued detention is warranted

7. The Chamber did not rely upon "hypothetical and non-specific risks" to find that Mr Duterte presented a risk under article 58(1)(b) of the Statute.¹¹ The Defence: (i) misstates the applicable legal standard regarding the assessment of risk pursuant to article 58(1)(b) of the

⁹ The Appeals Chamber, *The Prosecutor v. Mahamat Said Abdel Kani*, 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", 19 May 2022, ICC-01/14-01/21-318 ("Said 19 May 2022 Interim Release AD"), para. 13.

¹⁰ [Said 19 May 2022 Interim Release AD](#), para. 14.

¹¹ See *Contra* Appeal paras 11-18.

Statute; (ii) misunderstands the Court’s longstanding jurisprudence regarding the correct evidentiary threshold; and (iii) ignores other relevant aspects of the Chamber’s reasoning.

i. The Defence misstates the applicable legal standard

8. First, the Defence misstates the applicable legal standard when it submits that under article 58(1)(b) of the Statute there must be “more than a mere possibility of a risk [under article 58(1)(b) of the Statute] materialising.”¹² The Defence ignores the well establish jurisprudence of the Appeals Chamber and merely cites to jurisprudence of a different court in support of its proposition.¹³ To the contrary, the Appeals Chamber has consistently held that, in determining whether the conditions pursuant to article 60(2) have been met, a chamber must find that detention “appears necessary”.¹⁴ Such determination shall be made concerning the *possibility*, and not the inevitability, that one of the events listed in article 58(1)(b) of the Statute will occur.¹⁵ The Chamber correctly adopted this legal standard at paragraph 52 of the Decision, which is acknowledged by the Defence in its Appeal.¹⁶ The Defence is therefore incorrect to state that the Chamber “misapprehended the applicable legal standard by allowing itself to be guided by ‘possibility’ alone”¹⁷ The possibility of the risk, as applied in the Decision, is the correct legal standard.

ii. The Defence misunderstands the longstanding jurisprudence of the Court

9. The Defence argues that the Chamber erred in law by relying on unsubstantiated “hypothetical and non-specific risks” to find that the past behaviour of Mr Duterte and his associates “shows that [Mr Duterte] is able and has means, either directly or through his

¹² Appeal, para. 11.

¹³ Appeal, para. 11. The Defence cites to a decision of the Kosovo Specialist Chambers. *See The Prosecutor v. Pjetër Shala*, Public Redacted Version of Decision on Remanded Detention Review Decision and Periodic Review of Detention of Pjetër Shala, 22 April 2022, [KSC-BC-2020-04/F00188/RED](#), para. 32.

¹⁴ [Said 19 May 2022 Interim Release AD](#), para. 33.

¹⁵ [Said 19 May 2022 Interim Release AD](#), para. 33. *See also* Appeals Chamber, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, 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, 9 June 2008, ICC-01/04-01/07-572 (“[Ngudjolo 9 June 2008 Interim Release AD](#)”), para. 21; Appeals Chamber, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 14 August 2020 entitled ‘Decision on the Defence Request for Interim Release’, 8 October 2020, ICC-02/05-01/20-177 (“[Abd-Al-Rahman 8 October 2020 Interim Release AD](#)”), para. 33; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, [Judgment on the appeal of Mr Aime Kilolo Musamba against the decision of Pre-Trial Chamber II of 14 March 2014 entitled “Decision on the ‘Demande de mise en liberte provisoire de Maitre Aime Kilolo Musamba”](#)”, 11 July 2014, ICC-01/05-01/13-558, paras 107, 117.

¹⁶ *See*, Appeal, para. 11, citing, Decision, para. 52.

¹⁷ Appeal, para. 11.

associates, to obstruct proceedings against him.”¹⁸ To the contrary, the Chamber’s conclusion is substantiated. [REDACTED]:

- (i) [REDACTED],¹⁹
- (ii) [REDACTED],²⁰
- (iii) [REDACTED],²¹
- (iv) [REDACTED],²² and
- (v) [REDACTED].²³

10. The Defence complains that the five sources relied upon by the Chamber are open source and contain uncorroborated hearsay.²⁴ The Defence submits that the Chamber erred in law by placing excessive weight on these sources.²⁵ The Defence also baselessly claims that the media outlets are “anti-Duterte” and that Amnesty International and Human Rights Watch are “biased”.²⁶

11. This argument should be rejected as it is premised on a misunderstanding of the longstanding jurisprudence of the Court regarding the low evidentiary threshold applicable to article 58(1)(b) assessments.²⁷ The Appeals Chamber has repeatedly confirmed the principle that there is no impediment to “the use of [newspaper articles or other public sources], or any requirement that it be corroborated” and that the relevant chamber “must analyse all the material placed before it, in order to determine what weight must be given to it for the purpose of the determination as to whether continued detention ‘appeared necessary’”.²⁸ Thus, in

¹⁸ Appeal, para. 13, citing, Decision, para. 54.

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ Appeal, paras 14-15.

²⁵ Appeal, para. 15.

²⁶ Appeal, paras 14-15.

²⁷ Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, 18 November 2013, Decision on the Defence’s Application for Interim Release, ICC-01/04-02/06-147 (“[Ntaganda 18 November 2013 Interim Release Decision](#)”), paras 47-49; Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on the “Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo”, 13 July 2012 (“[Gbagbo 13 July 2012 Interim Release Decision](#)”), para. 54; [Ngudjolo 9 June 2008 Interim Release AD](#), paras 23-25.

²⁸ [Abd-Al-Rahman 8 October 2020 Interim Release AD](#), para. 34, citing, [Gbagbo 13 July 2012 Interim Release Decision](#), para. 54, upheld in Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, Public redacted version of 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

accordance with the low evidentiary threshold applicable to article 58(1)(b) assessments, previous chambers have consistently held that there is no bar to relying upon information contained in NGO reports, newspaper articles, or other public sources that may amount to hearsay, for the purposes of assessing whether article 58(1)(b) is satisfied,²⁹ nor is there a requirement that such information be corroborated.³⁰ Rather, the chamber must analyse all the material placed before it in order to determine what weight must be given to it for the purposes of determining whether continued detention “appears necessary”.³¹ The Chamber relied upon the material before it in making this finding and afforded it appropriate weight given the evidentiary standard articulated in the jurisprudence. As such, the Defence shows no error of law.

12. The Defence also appears to raise an error of fact, arguing that the Chamber wrongly relied upon one of the abovementioned media reports (PHL-OTP-0017-4591) to find that Mr Duterte was involved in briefing witnesses due to testify before the Philippines Senate’s inquiry into the Davao Death Squad.³² While this document does not refer to Mr Duterte directly briefing witnesses, it does reference his close associates, [REDACTED], instructing witnesses to remain loyal to him and to deny all of the allegations against him during Senate hearings.³³ [REDACTED].³⁴ It was therefore reasonable for the Chamber to rely upon this article to find that Mr Duterte is able and has means, either directly or through his associates, to obstruct proceedings against him.

13. The Defence further argues that the Chamber erred in law by relying on “hypothetical assumptions” that Mr Duterte’s political connections, including his daughter who is the current Vice President of the Philippines, and his popular political support in the Philippines, are factors that support his potential flight risk pursuant to article 58(1)(b)(i) of the Statute.³⁵ However, the Defence once again ignores the jurisprudence of the Court and or merely expresses its disagreement with the Chamber’s assessment of the evidence. With respect to the

Gbagbo”, 26 October 2012, ICC-02/11-01/11-278-Red (“[Gbagbo 26 October 2012 Interim Release AD](#)”), para. 91.

²⁹ [Ntaganda 18 November 2013 Interim Release Decision](#), paras 47-49; [Gbagbo 13 July 2012 Interim Release Decision](#), para. 54; [Ngudjolo 9 June 2008 Interim Release AD](#), paras 23-25.

³⁰ [Gbagbo 13 July 2012 Interim Release Decision](#), para. 54.

³¹ [Gbagbo 13 July 2012 Interim Release Decision](#), para. 54, upheld in [Gbagbo 26 October 2012 Interim Release AD](#). See also [Ntaganda 18 November 2013 Interim Release Decision](#), paras 47-48.

³² Appeal, paras 13-14.

³³ PHL-OTP-0017-4591.

³⁴ [REDACTED].

³⁵ Appeal, paras 16-17.

risk that a suspect may abscond, the Appeals Chamber has found that this “necessarily involves an element of prediction”³⁶ and that the existence of a support network and financial means may be relevant to determining whether there is a risk that a person may evade justice or interfere with the investigation.³⁷ Similarly, the Appeals Chamber has noted that “access to international contacts could provide the means to enable a suspect to abscond, whether or not there was evidence that the suspect would actually utilise such contacts”.³⁸ The Chamber’s findings are reasonable and consistent with this jurisprudence.

14. The Defence’s submission that the Appeals Chamber should “curb the formulaic reliance” on the “hypothetical” “network of supporters” construct is unconvincing given the significant examples relied upon by the Chamber.³⁹ This includes the fact that as a result of his position as the former President of the Philippines, a position he held for six years, Mr Duterte has political contacts and has maintained a network of support within the country, including his daughter who is currently serves as the Vice President.⁴⁰ The Chamber also noted that Mr Duterte’s recent election as Mayor of Davao exemplifies his “continued support in the Philippines”.⁴¹ These examples are hardly “hypothetical” as argued by the Defence.⁴²

15. Having established that the Chamber applied the correct evidentiary threshold for an article 58(1)(b) assessment, the Defence’s argument that the Decision creates a presumption of continued detention since it will always be “possible to suggest, absent objectively independent and substantiated evidence, that there *might* exist some degree of risk, however unsupported, that a suspect, or others acting on his behalf without his knowledge, *might* want to actualise the

³⁶ [Said 19 May 2022 Interim Release AD](#), para. 34, citing, Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo”, 13 February 2007, ICC-01/04-01/06-824 (“[Lubanga 13 February 2007 Interim Release AD](#)”), para. 136.

³⁷ [Said 19 May 2022 Interim Release AD](#), para. 34, citing, [Gbagbo 13 July 2012 Interim Release Decision](#), paras 56, 59, 63-64.

³⁸ [Said 19 May 2022 Interim Release AD](#), para. 34, citing, Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, 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’”, 14 July 2011, ICC-01/04-01/10-283 (“[Mbarushimana 14 July 2011 Interim Release AD](#)”), para. 25.

³⁹ Appeal, para. 17; Decision, paras 50-51.

⁴⁰ Decision, paras 50-51.

⁴¹ Appeal, para. 51. The evidence before the Chamber regarding Mr Duterte’s “network of supporters” also included a filing before the Philippines Supreme Court, in which Mr Duterte’s counsel highlighted his current strong influence over the police in his home town of Davao – the same police department that the Prosecution alleges was involved in murders at his direction during the mayoral period as well as the fact that Mr Duterte’s son currently serves as Vice Mayor of Davao City. See Confidential *ex parte* Defence and Prosecution only, Prosecution’s response to “Urgent Request for Interim Release”, 23 June 2025, ICC-01/21-01/25-159-Conf-Exp (confidential and public redacted versions filed the same day ICC-01/21-01/25-159-Conf and ICC-01/21-01/25-159-Red (“[Prosecution’s Response to Request for Interim Release](#)”), paras 16, 22-23.

⁴² Appeal, para. 17.

[a]rticle 58(1)(b) risk factors” should be rejected.⁴³ There is no merit in this argument. To the contrary, the Chamber identified numerous reasons as to why Mr Duterte presents a significant risk under all factors listed in article 58(1)(b) of the Statute, which were supported by evidence that meets the required threshold.

iii. *The Defence ignores other relevant aspects of the Chamber’s reasoning*

16. In addition to misstating the relevant law regarding the correct evidentiary threshold and merely expressing its disagreement with the Chamber’s findings, the Defence ignores other factors showing that Mr Duterte presents a risk under article 58(1)(b) of the Statute, which the Chamber relied upon. This includes: (i) references to Mr Duterte’s arrest and detention as a “kidnapping”; (ii) physical resistance to Mr Duterte’s arrest by his family; (iii) public criticism of his arrest and demands he be returned to the Philippines by his family; (iv) a member of his family mentioning that they should break Mr Duterte out of the Court’s Detention Centre; (v) attempts by Mr Duterte and his family to delegitimise the Court’s proceedings by citing alleged collusion between the Court and the Government of the Philippines as well as the use of “fake witnesses”; (vi) Mr Duterte’s reported desire to return to Davao City if granted interim release; (vii) the fact that Mr Duterte is facing multiple charges and may receive a lengthy sentence if convicted; (viii) [REDACTED]; (ix) [REDACTED]; and (x) Mr Duterte’s threat to double the killings in Davao City.⁴⁴

17. In addition to the above examples, the Chamber also relied upon the fact that [REDACTED].⁴⁵ As stated in the Decision, [REDACTED], which found that “[REDACTED].”⁴⁶ [REDACTED].⁴⁷ [REDACTED].⁴⁸ As a result, [REDACTED].⁴⁹ As a result of [REDACTED].⁵⁰ The Defence ignores this part of the Chamber’s reasoning.

18. The Chamber’s assessment was appropriately based on all of the factors described above.⁵¹ By pointing to isolated aspects of the Chamber’s Decision – in this case one finding

⁴³ Appeal, para. 18.

⁴⁴ Decision, paras 50-60.

⁴⁵ Decision, para. 55.

⁴⁶ Decision, para. 55, [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ The Appeals Chamber has held that the “[...] necessity of continued detention [...] does not necessarily have to be established on the basis of one factor taken in isolation. It may also be established on the basis of an analysis of all relevant factors taken together. See [Abd-Al-Rahman 8 October 2020 Interim Release AD](#), para. 35.

regarding Mr Duterte's ability and means to obstruct proceedings against him – the Defence mischaracterises the Decision and the Chamber's reasoning.

2. The Pre-Trial Chamber did not rely on irrelevant considerations

19. The Defence argues that the Chamber relied on “irrelevant considerations” that led to errors of law and fact.⁵² However, the Defence: (i) merely expresses its disagreement with the Decision; (ii) ignores other relevant aspects of the Chamber's reasoning; (iii) mischaracterises the Decision; and (iv) ignores the Court's longstanding jurisprudence.

i. The Defence merely disagrees with the Decision

20. The Defence argues that the Chamber erred by relying on a “number of irrelevant factors” to find that Mr Duterte poses a risk pursuant to article 58(1)(b) of the Statute.⁵³ The four factors include: (i) the characterisation of Mr Duterte's arrest as a kidnapping; (ii) that Mr Duterte “[REDACTED]”; (iii) that his family not only physically resisted his arrest, but have also publicly voiced criticism thereof, and; (iv) that his daughter allegedly indicated, on 19 August 2025, that Mr Duterte had told her that he wished to return to Davao City despite the Defence's assertion that he would remain in the State he would be released to.⁵⁴ The Chamber found these factors to be relevant to Mr Duterte's risk of flight pursuant to article 58(1)(b)(i) of the Statute.⁵⁵ The Defence provides no explanation as to why it considers these factors “irrelevant” to the Chamber's assessment.⁵⁶ The Defence simply expresses disagreement with the Chamber's assessment and thus raises no appealable error.

21. The Defence next alleges that the Chamber erred, presumably in fact, by “selectively citing facts while ignoring other pertinent facts in the same item of evidence” in support of the four factors listed above.⁵⁷ The Defence provides two examples. First, the Defence points to a report relied upon by the Chamber to find that Mr Duterte [REDACTED].⁵⁸ The Defence baselessly claims that Mr Duterte's statement in this regard is “undeniably true”.⁵⁹ The Defence argues that the Chamber erred by ignoring a statement in the same report that Mr Duterte

⁵² Appeal, para. 19.

⁵³ Appeal, para. 19.

⁵⁴ Appeal, para. 19.

⁵⁵ Decision, para. 50.

⁵⁶ Appeal, para. 19.

⁵⁷ Appeal, para. 20.

⁵⁸ Appeal, para 20; Decision, para. 50.

⁵⁹ Appeal, para. 20.

allegedly [REDACTED].⁶⁰ However, these statements are not mutually exclusive. The fact the Chamber did not reference both statements within its Decision does not mean that the report was not considered in its totality. It is well established that the obligation to provide reasons “will not necessarily require reciting each and every factor that was before the [relevant chamber] to be individually set out”.⁶¹

22. The same reasoning applies to the Defence’s allegation that the Chamber disregarded Sara Duterte’s reported statement that Mr Duterte would “face the process head-on and will not run from justice” while at the same time expressing that his only wish, if granted interim release, was to return to Davao City.⁶² These statements are not mutually exclusive and the Chamber was not required to mention all aspects of its reasoning in the Decision. The Defence therefore raises no error and again simply disagrees with the outcome of the Chamber’s analysis.

23. The Defence similarly argues that the Pre-Trial Chamber erred in fact by “ignoring” its submission, in an unrelated filing,⁶³ that Mr Duterte had “formally relinquished his position as Mayor” when ruling that Mr Duterte was at risk of committing crimes if released as a result of his alleged pledge to double the killings if he were to be elected as Mayor of Davao City.⁶⁴ The Prosecution notes that the Defence’s submission that Mr Duterte had “relinquished” his position as Mayor does not nullify the risk that he could resume his elected position if he returned to Davao City. Indeed, the Chamber ruled that “*should he return to Davao City, Mr Duterte would be placed in the very position that allowed him to commit the crimes for which his arrest and surrender to the Court was initially sought.*”⁶⁵ The Chamber’s finding on this issue was therefore reasonable. The Prosecution further notes that the Defence fails to acknowledge the totality of the Chamber’s reasoning on this point. The Chamber also found that as a result of Mr Duterte’s son’s position of power in the Philippines, at one of the locations of the crimes alleged in the Document Containing the Charges, the risk of further crimes being committed would exist even if Mr Duterte would be released to a location that falls outside of the geographic scope of the alleged crimes.⁶⁶

⁶⁰ Appeal, para. 20.

⁶¹ [Abd-Al-Rahman 8 October 2020 Interim Release AD](#), para. 42.

⁶² Appeal, para. 20; Decision, para. 50.

⁶³ [REDACTED].

⁶⁴ Appeal, para. 22; Decision, para. 58.

⁶⁵ Decision, para. 58 [emphasis added].

⁶⁶ Decision, para. 59.

ii. *The Defence mischaracterises the Decision*

24. The Defence further states, without support, that it was “legally and factually incorrect for the Pre-Trial Chamber to impute the actions or statements of third parties [...] to Mr Duterte”.⁶⁷ The Defence appears to take issue with the Chamber’s reliance on: (i) statements of Mr Duterte’s family alleging that he was kidnapped; (ii) Mr Duterte’s close associates instructing witnesses to remain loyal to Mr Duterte and to deny all of the allegations against him during Senate hearings; and (iii) [REDACTED].⁶⁸ The Defence mischaracterises the Decision. The Pre-Trial Chamber did not “impute” the statements or actions of others to Mr Duterte, but reasonably analysed the conduct and statements of Mr Duterte’s close associates and family members to determine whether he presented a risk under article 58(1)(b) of the Statute.⁶⁹ There was nothing precluding the Pre-Trial Chamber from doing so. In fact, the Appeals Chamber has previously upheld a decision in which the conduct of third parties was relied upon to find the existence of a risk under article 58(1)(b) of the Statute.⁷⁰ It would be artificial and unreasonable for a chamber to wilfully ignore the relevant statements of close associates and family members of the accused when determining whether certain risks exist if they were to be granted interim release. The Defence thus mischaracterises the Decision and fails to show any error in this regard.

iii. *The Defence ignores longstanding jurisprudence of the Court*

25. The Defence argues that the Chamber erred in law by relying on “gravity and the possibility of a lengthy sentence to find that Mr Duterte poses a flight risk.”⁷¹ This argument should be rejected. The Defence ignores the Court’s consistent and long-standing jurisprudence on the relevance of these factors in the article 58(1)(b) assessment,⁷² which the Chamber

⁶⁷ Appeal, para. 21.

⁶⁸ Appeal, para. 21, citing, Decision, paras 50-51, 54. See Confidential *ex parte* Defence and Prosecution only, Prosecution’s response to “Renewed Request for Interim Release” 28 August 2025, ICC-01/21-01/25-252-Conf-Exp (confidential version filed on the same day ICC-01/21-01/25-252-Conf and public redacted version notified on 12 September 2025, [ICC-01/21-01/25-252-Red](#)), para. 11.

⁶⁹ Decision, paras 50-54.

⁷⁰ Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, [Decision on the Defence Request for Interim Release](#), 14 August 2020, ICC-02/05-01/20-115, paras 28-29 (relying upon threats allegedly made by the suspect’s supporters to find that a risk existed under article 58(1)(b)(ii) of the Statute), upheld in Appeals Chamber, [Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 14 August 2020 entitled ‘Decision on the Defence Request for Interim Release’](#), 8 October 2020, ICC-02/05-01/20-177.

⁷¹ Appeal, para. 23.

⁷² See Decision, para 52, citing, [Mbarushimana 14 July 2011 Interim Release AD](#), para. 21 and the references cited therein. See also Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Public redacted version of ‘Decision on the Defence request for interim release’](#), 29 May 2020, ICC-01/12-01/18-786-Red, para. 58.

reasonably relied upon to find that the knowledge of the risk of a lengthy sentence may increase his or her motivation to abscond.⁷³ The Defence's unsupported criticisms of the Court's jurisprudence are unpersuasive. It is both rational and – as the Court's jurisprudence demonstrates⁷⁴ – uncontroversial to conclude that the risk of an accused absconding increases with the severity of the punishment they face and the confirmation of charges against them.

3. The Pre-Trial Chamber did not fail to give appropriate weight to relevant facts

i. The Defence merely disagrees with the Decision

26. The Defence argues that the Chamber erred in fact by “failing to assign appropriate weight to Mr Duterte’s ailing health and its mitigating effect on the risk factors set out in [a]rticle 58(1)(b)” of the Statute.⁷⁵ This argument should be rejected as a mere disagreement with the Chamber’s finding. The Chamber considered the Defence’s argument that Mr Duterte’s alleged fitness issues nullify the risks he presents under article 58(1)(b) of the Statute.⁷⁶ Following “a thorough review”, the Chamber correctly and reasonably concluded that the two medical reports relied upon by the Defence in support of its arguments did not support its position.⁷⁷ The Chamber explained that the medical reports did not show how Mr Duterte’s alleged physical condition or cognitive impairment negate the risks he presents under article 58(1)(b) of the Statute.⁷⁸ This was a reasonable conclusion given that the purported objective of the reports was to assess Mr Duterte’s fitness for trial, not whether he presented a risk if granted interim release.⁷⁹ The Chamber found that the Defence’s arguments in this respect were extrapolations by Defence Counsel “who does not have the requisite expertise to draw such a conclusion” and as such was “purely speculative and without basis”.⁸⁰ Notwithstanding this finding, Defence Counsel continues to offer his unqualified expert opinion on Mr Duterte’s health in the Appeal.⁸¹ However, the issue of Mr Duterte’s fitness is has yet to be evaluated and the Prosecution does not accept that there is any basis to conclude

⁷³ Decision, para. 51.

⁷⁴ [Gbagbo 26 October 2012 Interim Release AD](#), para. 54; [Mbarushimana 14 July 2011 Interim Release AD](#), para. 21; [Ngudjolo 9 June 2008 Interim Release AD](#), para. 21; [Lubanga 13 February 2007 Interim Release AD](#), para. 136.

⁷⁵ Appeal, paras 24-28.

⁷⁶ Decision, paras 63-65.

⁷⁷ Decision, para. 64.

⁷⁸ Decision, para. 64.

⁷⁹ Decision, para. 64.

⁸⁰ Decision para. 64.

⁸¹ Appeal, e.g. paras 2, 24-28.

that Mr Duterte is not fit to stand trial.⁸² The reports relied upon by the Defence are untested and it is unclear what legal standards or thresholds were applied in the relevant assessments.⁸³ The reports are thus insufficient to make determinations regarding Mr Duterte's fitness.⁸⁴

27. The Defence merely disagrees with the Chamber's assessment and failed to show any error. The Prosecution further notes that the Defence's submissions on this issue largely repeat its arguments before the Chamber⁸⁵ and that Defence Counsel once again attempts to draw medical conclusions that he is not qualified to provide.⁸⁶

B. Ground two: The Pre-Trial Chamber did not err in finding that certain conditions could mitigate the risks Mr Duterte presents under article 58(1)(b) of the Statute

1. The Pre-Trial Chamber did not fail to address the proposed conditions of release and State guarantees

28. The Defence argues that the Chamber committed a legal error by holding that there was a lack of detail regarding how proposed conditions would be effectively enforced [REDACTED] if Mr Duterte was granted interim release.⁸⁷ The Defence submits that the Chamber was required to seek additional information regarding the implementation of the conditions, including the potential for an electronic bracelet, before rejecting the conditions.⁸⁸

i. The Defence ignores other relevant aspects of the Chamber's reasoning

29. The Defence ignores pertinent reasoning of the Chamber regarding its finding that the proposed conditions were not sufficient to mitigate the risks Mr Duterte presents under article 58(1)(b) of the Statute. Primarily, the Defence ignores the Chamber's finding that it had "duly considered" the conditions proposed and found that they "[did] not sufficiently mitigate the risk set out in article 58(1)(b) of the Statute".⁸⁹ As such, even if the conditions proposed by the Defence could be successfully implemented [REDACTED], the Chamber expressed that they were insufficient to mitigate the article 58(1)(b) risks.

⁸² [REDACTED].

⁸³ See Confidential Prosecution's Response to the "Defence Request for an Indefinite Adjournment" (ICC-01/21-01/25-230-Conf), 28 August 2025, ICC-01/21-01/25-253-Conf ("Response to Request for Indefinite Adjournment"), para. 17.

⁸⁴ Response to Request for Indefinite Adjournment, para. 17.

⁸⁵ See Confidential Renewed Request for Interim Release, 18 June 2025, ICC-01/21-01/25-231-Conf, paras 6-13.

⁸⁶ Appeal, e.g. paras 25-26, 28.

⁸⁷ Appeal, para. 29.

⁸⁸ Appeal, paras 30-32.

⁸⁹ Decision, para. 68.

30. The Defence also ignores other aspects of the Chamber’s reasoning. In addition to its concern regarding the lack of detail as to how the [REDACTED] authorities would implement the proposed conditions, the Chamber also reasoned that at least three conditions would “necessarily require the involvement of the Registry” which [REDACTED].⁹⁰ The Chamber further reasoned that the “obligation to wear an electronic bracelet is essential to mitigate the risk of flight, especially if [REDACTED].”⁹¹ While the Defence argues that this condition was “negotiable” (pointing to a footnote stating that the [REDACTED])⁹² there was no information before the Chamber that [REDACTED] had agreed to implement electronic monitoring. Further, the Defence’s submission that the “Chamber’s insistence on an electronic bracelet was, itself, unnecessary” is unsubstantiated and is representative of the Defence’s disagreement with the Decision.⁹³ Thus, contrary to the Defence’s submission, the Chamber ruled that the conditions were insufficient to mitigate the risks presented by Mr Duterte and provided a number of reasons regarding issues with the implementation of the conditions in [REDACTED].⁹⁴

ii. The Defence fails to show a legal error

31. In addition, and in any event, the Chamber was not legally obliged to seek further observations from [REDACTED] because it did not envisage the possibility of release given the risks Mr Duterte presents under article 58(1)(b) of the Statute. The Appeals Chamber has held that the requirement to seek observations from a state, pursuant to regulation 51 of the Regulations, pertains to “scenarios where a chamber, in the circumstances at hand, intends to grant interim release or envisages the possibility thereof”.⁹⁵ The Appeals Chamber specified that a chamber’s obligation to “seek additional information regarding conditions of release” is only triggered when: (i) the chamber is considering conditional release; (ii) a State has indicated its general willingness and ability to accept a detained person into its territory; and (iii) the chamber does not have sufficient information before it regarding the conditions of release to enable it to make an informed decision.”⁹⁶ Pursuant to rule 119(3) of the Rules of Procedure and Evidence and regulation 51 of the Regulations, the Chamber sought the views of

⁹⁰ Decision, para. 69.

⁹¹ Decision, para. 69.

⁹² Confidential Renewed Request for Interim Release, 18 August 2025, ICC-01/21-01/25-231-Conf, para. 15, fn. 25.

⁹³ Appeal, para. 33.

⁹⁴ Decision, paras 68-69.

⁹⁵ [Abd-Al-Rahman 8 October 2020 Interim Release AD](#), para. 55.

⁹⁶ [Abd-Al-Rahman 8 October 2020 Interim Release AD](#), para. 60.

[REDACTED] and the Host State.⁹⁷ Having received the observations of [REDACTED],⁹⁸ the Chamber ruled that it did not envisage the possibility of Mr Duterte's interim release, clearly holding that it had "duly considered the list of conditions proposed by the Defence, but [found] that they do not sufficiently mitigate the risks set out in article 58(1)(b) of the Statute."⁹⁹ As such, there was no requirement for the Chamber to seek further information from [REDACTED]. The Chamber had sufficient information before it in order to make the informed decision that the risk Mr Duterte presents could not be mitigated by conditions. The Chamber therefore made no legal error.

2. The Pre-Trial Chamber did not fail to consider if the proposed conditions could mitigate the risks under article 58(1)(b) of the Statute

32. The Defence argues that the Chamber erred by failing to appropriately assess "the mitigating effect of the proposed terms of release" by only reasoning 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)".¹⁰⁰ The Defence further argues that the Chamber "applied an erroneous standard by seemingly requiring the *elimination* of risk factors as opposed to their *mitigation* in accordance with the principle of proportionality".¹⁰¹

i. The Defence ignores relevant aspects of the Chamber's reasoning

33. The Defence mischaracterises the Chamber's Decision by ignoring pertinent aspects of the Chamber's reasoning. The Chamber did not simply state, without further reasoning, that the conditions "do not sufficiently mitigate the risks set out in article 58(1)(b)" as suggested by the Defence.¹⁰² The Chamber specifically ruled that the conditions did not sufficiently *mitigate* the risks set out in article 58(1)(b), and included a number of reasons regarding why the enforcement of the conditions was problematic including: (i) its concern regarding how the [REDACTED] authorities 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) the fact that the Registry would be required to implement certain conditions

⁹⁷ Order inviting observations pursuant to rule 119(3) of the Rules of Procedure and Evidence and regulation 51 of the Regulations of the Court, ICC-01/21-01/25-155-Conf, 18 June 2025, para. 5

⁹⁸ Annex II to Report on consultation with States pursuant to Order ICC-01/21-01/25-155-Conf, 3 July 2025, ICC-01/21-01/25-175-Conf-AnxII.

⁹⁹ Decision, para. 68.

¹⁰⁰ Appeal, para. 36.

¹⁰¹ Appeal, paras 34-35.

¹⁰² Appeal, para. 36.

which [REDACTED]; and (iii) the fact that [REDACTED] the condition of an electronic monitoring as it was [REDACTED].¹⁰³ The Defence thus mischaracterises the Chamber’s reasoning and the standard it applied. It therefore fails to show any no error.

34. Finally, the Defence’s argument that the Chamber erred by failing to appreciate that the Prosecution had agreed to almost exactly the same terms of release to the Host State is irrelevant.¹⁰⁴ The Chamber correctly analysed whether the conditions proposed could mitigate the risks it had identified under article 58(1)(b) of the Statute. It had no obligation to engage with a separate agreement between the Prosecution and the Defence regarding potential terms of release to a different state than the one proposed in Mr Duterte’s request for interim release, a different state to which the Prosecution had never agreed and, in fact, expressly objected to.¹⁰⁵ It is for the Chamber to determine whether the risks could be sufficiently mitigated by the proposed conditions, not the parties. In any event, the Chamber did expressly reference the terms agreed to by the Prosecution in finding that the Defence’s argument that the Prosecution had generally agreed not to contest the risk factors enumerated in article 58(1)(b) of the Statute if Mr Duterte was to proffer terms and conditions of release no less stringent than those proffered for the Netherlands for his interim release to other countries was misleading.¹⁰⁶ The Prosecution has not agreed to conditions for interim release to any country other than the Netherlands.

3. The Pre-Trial Chamber did not err by finding that the [REDACTED] to facilitate the proposed conditions

i. The Defence mischaracterises the Decision

35. The Defence argues that the Chamber “erred by giving excessive and misplaced weight to the need for [REDACTED] to which release is contemplated”.¹⁰⁷

36. The Defence first argues that the Chamber erred when it “appeared to have assumed [REDACTED].” when there is no statutory or procedural framework that requires this.¹⁰⁸ This

¹⁰³ Decision, para. 69.

¹⁰⁴ Appeal, para. 38.

¹⁰⁵ [Prosecution’s Response to Request for Interim Release](#), para. 35; Confidential *ex parte* Prosecution’s response to ‘Defence Request for Leave to Reply to ICC-01/21-01/25-159 (Prosecution’s response to Defence’s “Urgent Request for Interim Release”)', 30 June 2025, ICC-01/21-01/25-166-Conf-Exp (confidential redacted version filed on the same day ICC-01/21-01/25-166-Conf-Exp-Red and public redacted version notified on 3 July 2025, [ICC-01/21-01/25-166-Red](#)), paras 4-11.

¹⁰⁶ Decision, paras 35-36.

¹⁰⁷ Appeal, para. 39.

¹⁰⁸ Appeal, para. 40.

misrepresents the Decision. The Chamber did not rule that there was a legal requirement that [REDACTED]. Instead, the Chamber found that certain conditions would “necessarily require the involvement of the Registry”.¹⁰⁹ This included: [REDACTED].¹¹⁰ The Chamber’s finding that the implementation of these conditions would involve the Registry was practical and reasonable. The Defence shows no error.

37. The Defence further argues that the Chamber did not define what it meant by “[REDACTED]” and that if it was referring to [REDACTED], it would unduly restrict the application of article 60(2) of the Statute to [REDACTED].¹¹¹ The Defence misconstrues the Chamber’s Decision again. The Chamber ruled that the specific conditions proffered by the Defence *in this case* would necessarily require [REDACTED].¹¹² This was a reasonable finding. Contrary to the Defence’s submission, the Chamber did not generally rule that conditions of interim release for all accused and in any state would necessarily require as a matter of law the [REDACTED]. The Defence’s characterisation of the Decision is thus incorrect and as such raises no error.

C. Ground three: The Pre-Trial Chamber did not err by refusing to take into account humanitarian considerations in assessing the right to interim release

i. The Defence mischaracterises the Decision

38. The Defence argues that the Chamber erred in law by “refusing to consider humanitarian grounds” in assessing Mr Duterte’s right to interim release either as an independent consideration or as a factor mitigating the risks under article 58(1)(b) of the Statute.¹¹³ The Defence mischaracterises the Chamber’s findings in this respect.

39. The Defence’s argument that the Chamber failed to consider Mr Duterte’s medical condition as a factor mitigating the risks presented under article 58(1)(b) of the Statute is plainly incorrect. As noted above, the Chamber explicitly addressed the Defence’s argument in this regard.¹¹⁴ The Chamber acknowledged the appellate jurisprudence that “the medical condition of the detained person may be a reason for a Pre-Trial Chamber to grant interim

¹⁰⁹ Decision, para. 69.

¹¹⁰ Decision, para. 69, fn 82, citing, confidential *ex parte* available to the Defence, Prosecution and OPCV only Annex B – [REDACTED], ICC-01/21-01/25-150-Conf-Exp-AnxB, conditions (iv), (v) and (vi).

¹¹¹ Appeal, para. 41.

¹¹² Decision, para. 69.

¹¹³ Appeal, para. 43.

¹¹⁴ Decision, paras 63-65.

release with conditions’, in the sense that, ‘the ill health of a detained person may be a factor in the exercise of its discretion’.”¹¹⁵ This is the very jurisprudence the Defence states the Chamber failed to consider.¹¹⁶ The Chamber went on to rule that “after thorough review” the evidence relied upon by the Defence did not support its position that Mr Duterte’s alleged fitness issues mitigate the risks he presents under article 58(1)(b) of the Statute.¹¹⁷ The Defence’s argument that the Chamber did not consider Mr Duterte’s medical condition as a potential mitigating factor of the risks he presents pursuant to article 58(1)(b) of the Statute is therefore false. The Defence failed to show any error.

ii. *The Defence fails to show a legal error*

40. With respect to the Defence’s argument that the Chamber erred in law by failing to consider humanitarian grounds as an independent consideration for interim release, the Prosecution notes that the Defence merely disagrees with the Chamber’s finding that the Pre-Trial Chamber does not have the power to “release a suspect on humanitarian grounds if any of the grounds for detention set out in article 58(1)(b) of the Statute continue to exist.”¹¹⁸ The Chamber provided its reasons as to why this interpretation was consistent with the wording of the Statute, which states that the person *shall continue to be detained* if the conditions under article 58(1) of the Statute are met.¹¹⁹

41. The Chamber further reasoned that in any event, compelling humanitarian grounds had not been established by the Defence in this case.¹²⁰ The Chamber ruled that the Defence had not substantiated how detention is so detrimental to Mr Duterte’s mental and physical health that it justifies his release.¹²¹ The Chamber further reasoned that Mr Duterte enjoys the right to medical treatment while in detention and that measures are in place to ensure Mr Duterte’s right to family life is guaranteed.¹²² The Prosecution notes in this respect that the Defence’s submission that its appointed neurologist who examined Mr Duterte “reported that his cognitive symptoms were, to some degree, exacerbated by [REDACTED]” requires

¹¹⁵ Decision, para. 63, citing, Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on the request for the conditional release of Laurent Gbagbo and on his medical treatment, 18 January 2013, [ICC-02/11-01/11-362-Red](#), para. 24.

¹¹⁶ Appeal, para. 44.

¹¹⁷ Decision, para. 64. The Prosecution has discussed the reasons underlying this finding at paras 26-27 of this filing.

¹¹⁸ Decision, para. 73.

¹¹⁹ Decision, para. 73.

¹²⁰ Decision, paras 73-74.

¹²¹ Decision, para. 74.

¹²² Decision, paras 74-75.

clarification.¹²³ The Defence cites to a preliminary report of its appointed neurologist in support of this statement,¹²⁴ [REDACTED].¹²⁵ However, [REDACTED].¹²⁶

D. Defence Counsel's inflammatory and offensive comments

42. The Prosecution takes this opportunity to reject, in the strongest terms, the Defence's baseless and offensive statement that the Pre-Trial Chamber had made a "predetermined decision to detain Mr Duterte".¹²⁷ Defence Counsel has recently reportedly made similar comments in the media, suggesting that Mr Duterte's continued detention was ordered by the Chamber because there was only "one active first instance case in its docket".¹²⁸

43. The Prosecution considers these comments to be especially troubling given [REDACTED].¹²⁹ [REDACTED].¹³⁰

V. REQUESTED RELIEF

44. For the foregoing reasons, the Prosecution respectfully requests that the Appeals Chamber dismiss the Appeal and affirm the Decision.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 31st day of October 2025

At The Hague, the Netherlands

¹²³ Appeal, para. 4.

¹²⁴ Appeal, para. 4, fn. 6.

¹²⁵ [REDACTED].

¹²⁶ [REDACTED].

¹²⁷ Appeal, para. 20.

¹²⁸ Inquirer, Duterte's legal team appeals ICC decision on interim release, 10 October 2025.

¹²⁹ [REDACTED].

¹³⁰ [REDACTED].