

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Original: **3 October 2025**

Date: **1 December 2025**

THE APPEALS CHAMBER

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

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

PUBLIC

**Public Redacted Version of "Notice of Appeal against
ICC-01/21-01/25-282-Conf"**

Source: Defence for Mr Rodrigo Roa Duterte

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

Duterte Defence Team

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Defence for Mr Rodrigo Roa Duterte hereby submits its Notice and Grounds of Appeal against the decision on interim release issued by Pre-Trial Chamber I on 26 September 2025.¹
2. The Defence seeks to appeal the Impugned Decision pursuant to Article 82(1)(b) of the Rome Statute on the three grounds of appeal articulated in this Notice. The Defence has specified the nature of the errors under each ground or sub-ground, as well as the impact of these flawed findings on the decision to deny Mr Duterte interim release.
3. This appeal is directed against, and seeks reversal of, the entirety of the Impugned Decision.

II. APPLICABLE LAW

4. Article 82(1)(b) of the Rome Statute provides that either party may exercise their right to appeal any decision granting or denying release of the person being investigated or prosecuted. Rule 154(1) of the ICC Rules of Procedure and Evidence requires that such an appeal be filed within five days of the date upon which the party filing the appeal is notified of the decision.²
5. Regulation 64(5) of the Regulations of the Court obliges Article 82(1)(b) notices of appeal to include the following information:
 - a. the name and number of the case or situation;
 - b. the title and date of the decision being appealed;
 - c. whether the appeal is directed against the whole decision or part thereof;

¹ Decision on the Defence's 'Urgent Request for Interim Release' and 'Renewed Request for Interim Release', [ICC-01/21-01/25-282-Conf](#), 26 September 2025 ("[Impugned Decision](#)"). This present notice is filed **confidentially** pursuant to Regulation 23bis(2) because it concerns a decision of the same classification. The Defence will promptly file a public redacted version of this Notice upon notification of a public version of the Impugned Decision.

² [ICC Rules of Procedure and Evidence](#), Rule 154(1).

- d. the specific provision of the Statute pursuant to which the appeal is filed;
 - e. the grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision; and
 - f. the relief sought.
6. The Appeals Chamber shall, within two days of the filing of the notice of appeal, issue directions for the conduct of the proceedings, which may include a hearing within 10 days of notification of the notice of appeal or issuance of a timetable to proceed by way of written submissions.³

III. GROUNDS OF APPEAL

- A. First ground of appeal: The Impugned Decision was insufficiently reasoned and the Pre-Trial Chamber premised its findings on risk factors on speculation and irrelevant considerations*
7. **Ground 1** will be divided into three sub-grounds to address the findings of the Pre-Trial Chamber in respect of each of the Article 58(1)(b) risk factors and will assert that the Impugned Decision contained errors in both law and fact. This ground of appeal will assert that the Pre-Trial Chamber misinterpreted and misapplied the Appeals Chamber's guidance in respect of risk assessment. The Defence will also argue that the Pre-Trial Chamber's reliance on gravity and the possibility of a lengthy sentence is misplaced. Generally speaking, and with respect to all risk factors, the Defence will submit that the Pre-Trial Chamber erred in law by selectively relying on evidence designed to support its desire to detain Mr Duterte while ignoring clear evidence that militates in favour of his release.
8. Under this ground of appeal, the Defence will also argue that the Impugned Decision was insufficiently reasoned and the Chamber's finding that Mr Duterte fulfils the risk factors under Article 58(1)(b) was largely premised on

³ [ICC Regulations of the Court](#), Reg. 64(6).

supposition and irrelevant considerations, such as the political positions of his family or statements by third parties with whom Mr Duterte has had no contact since his arrest. By way of example, the Chamber's reliance on risk factors with no material link to Mr Duterte to find a risk of flight – and thus, a need for continued detention – is inconsistent with its obligation to adjudicate the request for interim release fairly and impartially. Findings of risk under Article 58(1)(b) in the absence of concrete evidence are erroneous and necessarily vitiate the Impugned Decision.

B. Second ground of appeal: The Pre-Trial Chamber failed to give sufficient weight to the proposed State guarantees and conditions for release

9. **Ground 2** raises errors of law and fact. The Impugned Decision failed to give sufficient weight to the proposed State guarantees and conditions for release, the likes of which have never been proffered at the International Criminal Court. Inadequate and irrelevant reasons were given for rejecting these State guarantees and conditions for release and their capacity to neutralise the Article 58(1)(b) risk factors, especially in light of Mr Duterte's frail health.⁴
10. Furthermore, after identifying what it perceived to be deficiencies in the nature of the guarantees presented and the State Party's observations thereupon, the Chamber failed to seek the necessary clarifications from the State Party as to how they could be addressed, particularly given that the State Party had already indicated its readiness to accept any term or condition deemed appropriate by the Court. This ground of appeal will also address the Chamber's flawed reliance on the fact that the Registry [REDACTED].⁵

⁴ *Ntaganda*, Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', [ICC-01/04-02/06-2666-Red](#), 30 March 2021, para. 46, quoting *Kenyatta*, Judgment on the Prosecutor's appeal against Trial Chamber V(B)'s "Decision on Prosecution's application for a finding of non-compliance under Article 87(7) of the Statute", [ICC-01/09-02/11-1032](#), 19 August 2015, para. 25.

⁵ [Impugned Decision](#), para. 69.

11. The Chamber abused its discretion by placing undue weight on these irrelevant factors, which led to a decision that allowed Mr Duterte's right to interim release to be curtailed, in part, by logistical concerns and an absence of information that did not need to be included in the interim release request.

C. Third ground of appeal: The Impugned Decision failed to give sufficient weight to humanitarian considerations and objective medical evidence, and did not consider the prejudice caused by prolonged detention

12. **Ground 3** raises errors of law and fact. The Impugned Decision failed to give sufficient weight to the necessity of detention in light of the readily-available objective evidence as to Mr Duterte's cognitive decline and the effect thereof on his capacity to actualise interim release risk factors.
13. This third ground of appeal also asserts that by failing to give due weight to the available medical evidence and the prejudicial impact of prolonged detention in his particular circumstances, the Pre-Trial Chamber ignored its positive obligation to ensure that Mr Duterte's pre-trial detention is not disproportionate or inconsistent with the presumption of innocence.

IV. RELIEF SOUGHT

14. The above errors invalidated the outcome of the Impugned Decision. The Defence therefore seeks reversal of the Impugned Decision and Mr Duterte's immediate interim release to the State Party identified under the terms and conditions proffered in first instance.

A handwritten signature in black ink that reads "Nicholas Kaufman". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 1 December 2025
The Hague, the Netherlands