

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **28 January 2026**

THE APPEALS CHAMBER

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

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

PUBLIC

Notice of Appeal against Decision ICC-01/21-01/25-357-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 of Appeal against the “Decision on the review of Mr Rodrigo Roa Duterte’s detention” (“Impugned Decision”),¹ issued by Pre-Trial Chamber I on 26 January 2026.
2. The Defence seeks to appeal the Impugned Decision pursuant to Article 82(1)(b) of the Rome Statute on a single ground of appeal, namely the Pre-Trial Chamber’s error in failing to consider the joint medical report proffered by the Defence experts in Annex A to the Defence Observations of 9 January 2026.²
3. This appeal is directed against paragraphs 22 to 30 of the Impugned Decision and seeks reversal of the Impugned Decision in its entirety.

II. APPLICABLE LAW

4. Article 82(1)(b) 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) requires that the notice of appeal be filed within five days of the notification of the impugned decision.³
5. Regulation 64(5) obliges such notices 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;
 - d. the specific provision of the Statute pursuant to which the appeal is filed;

¹ Decision on the review of Mr Rodrigo Roa Duterte’s detention, ICC-01/21-01/25-357-Conf, 26 January 2026 (“[Impugned Decision](#)”). All references to “Article”, “Rule”, and “Regulation” in the present submission are to the [Rome Statute](#), [Rules of Procedure and Evidence](#), and the [Regulations of the Court](#), respectively, unless otherwise indicated.

² Confidential Annex A to the “Defence Observations on the First Review of Pre-Trial Detention”, ICC-01/21-01/25-351-Conf-AnxA, 9 January 2026 (“[Medical Report](#)”).

³ [Rules of Procedure and Evidence](#), Rule 154(1).

- 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.⁴

III. GROUND OF APPEAL: The Pre-Trial Chamber Erred in Fact and in Law When it Disregarded the Medical Report Proffered by the Defence Experts

7. The Pre-Trial Chamber committed an error of law and of fact when it refused, without proper motivation, to consider a medical report provided by a Defence neurologist and neuropsychologist (“Medical Report”) in Annex A to the Defence Observations.⁵ This Medical Report, prepared specifically for the purpose of the detention review, constitutes a new fact within the meaning of Article 60(3) of the Rome Statute; it speaks directly to Mr Duterte’s deteriorating health and compromised cognitive condition, a factor that the Pre-Trial Chamber was obliged to consider in its periodic review of Mr Duterte’s detention.⁶ In refusing to consider the Report, the Pre-Trial Chamber failed in its duty to assess whether there exist changed circumstances that would, in turn, affect the necessity of detention, as envisaged under Article 58(1)(b).

⁴ [Regulations of the Court](#), Reg. 64(6).

⁵ [Impugned Decision](#), para. 24 (“the Chamber shall not rely on medical reports provided by a party to the proceedings; neither shall the Chamber rely on the related Defence’s own interpretation or conclusions, since the Defence lacks the requisite expertise and is a party to the proceedings. Therefore, the Chamber will not consider the new medical report provided as Annex A to the Defence’s Observations, nor the related arguments in such observations, for the purposes of the present review of detention”).

⁶ *Bemba*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled “Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence”, [ICC-01/05-01/08-1019](#), 19 November 2010, para. 52 (“[t]he Chamber **must also consider any other information** which has a bearing on the subject”) (emphasis added).

8. The Medical Report is highly relevant to the assessment of Mr Duterte's continuing detention. It was commissioned specifically for the purpose of assessing Mr Duterte's ability to articulate Article 58(1)(b) risks in light of his health,⁷ and took into careful consideration the reports provided by the Panel of Experts,⁸ themselves constituting a new fact.⁹ The Pre-Trial Chamber's disregard of the Medical Report constitutes a factual error.¹⁰
9. The Pre-Trial Chamber also committed a legal error when it refused to engage with the uncontested content of the Medical Report and the Defence arguments thereupon.¹¹ The Pre-Trial Chamber's sole basis for dismissing the Medical Report out of hand was that it had been proffered by a party to the proceedings. To categorically disregard a party's submissions, to say nothing of objective medical evidence supplied by leading professionals in good standing, is, in effect, the rejection of a suspect's right to a fair hearing.
10. Finally, if the Pre-Trial Chamber felt unable to rely on submissions or evidence presented by a party to the proceedings, then it should have granted the Defence's prior request that the court-appointed Panel of Experts issue a report on Mr Duterte's current ability to actualise the Article 58(1)(b) risks.¹² That

⁷ [Medical Report](#), p. 2.

⁸ [Medical Report](#), p. 2.

⁹ [Impugned Decision](#), para. 23.

¹⁰ See e.g. *Bemba*, 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", [ICC-01/05-01/08-631-Red](#), 2 December 2009, para. 63 ("[t]hus, in order to justify the intervention of the Appeals Chamber, it would have to be demonstrated that the Pre-Trial Chamber committed an error of fact when it misappreciated facts, disregarded relevant facts or took into account facts extraneous to the *sub judice* issues in concluding that the conditions of article 58 (1) are no longer met on account of a 'change in circumstances'"); *Katanga and Ngudjolo*, 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, [ICC-01/04-01/07-572](#), 9 June 2008, para. 25.

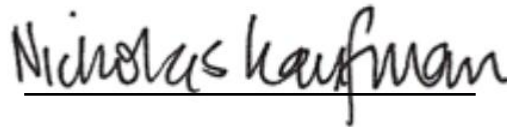
¹¹ [Impugned Decision](#), para. 24.

¹² Defence Request for an Expert Report on Article 58(1)(b) Risk Factors, [ICC-01/21-01/25-342](#), 19 December 2025, para. 8 ("[a]ccordingly, the Defence requests that the Pre-Trial Chamber order the Panel

Defence request, however, was denied on the basis that it was unnecessary, inappropriate, and that the Defence would, at a later date, be able to provide observations on Mr Duterte's pre-trial detention,¹³ observations which now appear to have been disregarded.

IV. RELIEF SOUGHT

11. The above errors vitiate the Impugned Decision. The Defence therefore respectfully seeks **reversal** of the Impugned Decision and requests Mr Duterte's immediate interim release, under the terms and conditions proffered by the State Party identified at first instance.



Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 28th day of January 2026
The Hague, the Netherlands

to provide an opinion, on the basis of its collective clinical examination, as to Mr Duterte's current ability to actualise the risk factors under Article 58(1)(b)").

¹³ Decision on the 'Defence Request for an Expert Report on Article 58(1)(b) Risk Factors', [ICC-01/21-01/25-350](#), 7 January 2026, paras 8-9.