

**Cour
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**International
Criminal
Court**



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

Date: **5 February 2026**

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

**Appeal Brief
on the First Review of the Detention of Mr Rodrigo Roa Duterte**

Source: Defence for Mr Rodrigo Roa Duterte

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I. INTRODUCTION

1. Mr Rodrigo Roa Duterte hereby submits a brief in support of his appeal against the decision of Pre-Trial Chamber I to maintain his pre-trial detention in the absence of changed circumstances (“Impugned Decision”).¹ The Pre-Trial Chamber committed substantial errors of fact and of law when it declined to consider a joint medical report (“Medical Report”) prepared by a leading neurologist of national standing and a neuropsychologist (“Experts”). The Medical Report addressed Mr Duterte’s cognitive impairments in multiple domains and his consequent inability to actualise Article 58(1)(b) risk factors.² The Pre-Trial Chamber dismissed the Medical Report out of hand, solely because it had been submitted by a party to the proceedings.³
2. The Experts found Mr Duterte incapable of planning or sequencing his daily activity, let alone capable of organising and executing a complex getaway while under strict supervision. The Medical Report detailed Mr Duterte’s lack of executive functioning, sustained planning capacity, and rapid decision-making – to say nothing of his enfeebled physical state – that would make it impossible for him to evade custody. It further found Mr Duterte incapable of exercising the sustained attention, initiative, and organisational capacity necessary to endanger the legal proceedings or to commit further similar crimes.

¹ Public redacted version of “Decision on the review of Mr Rodrigo Roa Duterte’s detention”, [ICC-01/21-01/25-357-Red](#), 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 Public Redacted Version of “Defence Observations on the First Review of Pre-Trial Detention”, [ICC-01/21-01/25-351-Conf-AnxA](#), 9 January 2026 (“[Medical Report](#)”), p. 3.

³ [Impugned Decision](#), para. 24 (“[a]s made abundantly clear in prior decisions, with a view to preserving the fairness of the proceedings, 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”).

3. The Medical Report was predicated not only on the Experts' prior clinical examinations but also on the reports recently furnished by the Panel of Experts ("Panel") appointed by the Pre-Trial Chamber to determine Mr Duterte's fitness. The Panel's reports were themselves recognised by the Pre-Trial Chamber as a new fact whereas the Medical Report was not.
4. The Appeals Chamber is thus requested to overturn the Impugned Decision in its entirety and to order Mr Duterte's immediate interim release to the State Party that has, since the last judgment of the Appeals Chamber, reiterated its commitment to the Court and expressed its desire to receive Mr Duterte onto its territory.

II. PROCEDURAL HISTORY

5. Mr Duterte was surrendered to the custody of the International Criminal Court on 12 March 2025. Upon entering the Detention Centre, he was immediately admitted to hospital.⁴ Prior to his initial appearance on 14 March 2025, Counsel had already informed the Pre-Trial Chamber that Mr Duterte's fitness to stand trial would be at issue.⁵ The Chamber disregarded this expression of concern, instead commenting, without the benefit of any neurological or cognitive examination, that Mr Duterte was "fully mentally aware and fit".⁶
6. On 28 May 2025, a Defence-appointed neurologist examined Mr Duterte and reported that his cognitive symptoms were, to some degree, exacerbated by the

⁴ Report of the Registry on the Arrest and Surrender of Mr Rodrigo Roa Duterte, [ICC-01/21-01/25-91-Conf](#), 14 March 2025, paras 15-16, 19.

⁵ Annex 7 to the Report on decisions and orders issued by way of email for the period February 2025 - April 2025, [ICC-01/21-01/25-133-Conf-Anx7](#), 14 May 2025, p. 5, para. 7. *See also* Public Redacted Version of "Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf" (ICC-01/21-01/25-363-Conf), filed on 2 February 2026, [ICC-01/21-01/25-363-Red](#), 2 February 2026, para. 1.

⁶ Transcript of the Initial Appearance, [ICC-01/21-01/25-T-002-ENG](#), 14 March 2025, p. 8, line 25.

conditions of his detention, including the deprivation of familial and social contact.⁷

7. On 12 June 2025, the Defence sought Mr Duterte's interim release to a State Party that had agreed to receive him under unprecedented terms and conditions.⁸ The Pre-Trial Chamber subsequently ordered this State Party to submit any observations on its ability and willingness to receive Mr Duterte on its territory and to enforce restrictive conditions.⁹ On 3 July 2025, the State Party communicated to the Pre-Trial Chamber its readiness to "cooperate fully with the ICC" and to enforce the terms and conditions annexed to the Registry's *note verbale*.¹⁰ It most recently reinforced this willingness on 1 December 2025.¹¹
8. Some days later, the Defence requested,¹² and the Pre-Trial Chamber granted, suspension of its adjudication of the interim release request in order to enable the Defence's expert neurologist to finalise his findings.¹³ Upon receipt of the

⁷ Annex C to the Urgent Request for Interim Release, [ICC-01/21-01/25-150-Conf-Exp-AnxC](#), 12 June 2025, p. 11.

⁸ Public Redacted Version of "Urgent Request for Interim Release", [ICC-01/21-01/25-150-Red](#), 12 June 2025, paras 38-40.

⁹ Public redacted version of 'Order inviting observations pursuant to rule 119(3) of the Rules of Procedure and Evidence and regulation 51 of the Regulations of the Court', 18 June 2025, ICC-01/21-01/25-155-Conf, [ICC-01/21-01/25-155-Red](#), 23 September 2025, para. 5.

¹⁰ Public redacted version of "Registry's Report on consultations with States pursuant to Order ICC-01/21-01/25-155-Conf", ICC-01/21-01/25-175-Conf, 3 July 2025, [ICC-01/21-01/25-175-Red](#), 26 September 2025, para. 9. *See also* Annex II to the Report on consultation with States pursuant to Order ICC-01/21-01/25-155-Conf, [ICC-01/21-01/25-175-Conf-AnxII](#), 3 July 2025, p. 2.

¹¹ *See* Annex B to the Defence Observations on the First Review of Pre-Trial Detention, [ICC-01/21-01/25-351-Conf-AnxB](#), 9 January 2026. *See also* Public Redacted Version of "Defence Observations on the First Review of Pre-Trial Detention", [ICC-01/21-01/25-351-Red](#), 9 January 2026 ("[Defence Observations](#)"), para. 17 ("[t]he State Party concerned has reiterated its willingness to receive Mr Duterte and has now provided 'detail as to how the [...] 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'") (internal footnote omitted).

¹² Public Redacted Version of "Urgent Defence Request to Suspend Adjudication on the Defence Request for Interim Release", ICC01/21-01/25-193-Conf, 14 July 2025, [ICC-01/21-01/25-193-Red](#), 18 July 2025 ("[Request for Suspension of Interim Release Request](#)"), para. 7.

¹³ [Request for Suspension of Interim Release Request](#), para. 9.

final medical report,¹⁴ the Defence promptly renewed its request for interim release.¹⁵ On 26 September 2025, the Pre-Trial Chamber rejected the Defence's "Urgent Request for Interim Release" and "Renewed Request for Interim Release".¹⁶ On 28 November 2025, the Appeals Chamber confirmed the Interim Release Decision.¹⁷

9. One week later, on 5 December 2025, the Registry transmitted the Panel's joint and individual reports on Mr Duterte's fitness to stand trial.¹⁸ On 19 December 2025, the Defence urgently requested the clinical expertise of this same Panel on Mr Duterte's concrete ability to realise the risk factors set out in Article 58(1)(b) in anticipation of the upcoming periodic review on detention.¹⁹ This request was, perfunctorily, rejected.²⁰ Two days later, the Defence submitted its observations on the review of Mr Duterte's detention and tendered the Medical Report.²¹

¹⁴ Annex B to the Renewed Request for Interim Release, [ICC-01/21-01/25-231-Conf-AnxB](#), 18 August 2025 ("[Expert Neurologist Report](#)"); Annex A to the Renewed Request for Interim Release, [ICC-01/21-01/25-231-Conf-AnxA](#), 18 August 2025 ("[Expert Neuropsychologist Report](#)").

¹⁵ Public Redacted Version of the "Renewed Request for Interim Release, ICC-01/21-01/25-231-Conf", 18 August 2025, ICC-01/21-01/25-231-Red, 19 August 2025 ("[Renewed Request for Interim Release](#)"), para. 8.

¹⁶ Public redacted version of "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, [ICC-01/2101/25-282-Red](#), 10 October 2025 ("[Interim Release Decision](#)").

¹⁷ Public redacted Judgment on the appeal of Mr Rodrigo Roa Duterte against the decision of Pre-Trial Chamber I entitled "Decision on the Defence's 'Urgent Request for Interim Release' and 'Renewed Request for Interim Release'", [ICC-01/21-01/25-326-Red](#), 28 November 2025.

¹⁸ Public Redacted Version of "Registry Transmission of the Panel of Experts' Joint and Individual Reports", ICC-01/21-01/25-327-Conf, 5 December 2025, [ICC-01/21-01/25-327-Red](#), 18 December 2025, with confidential Annexes I-IV ("[Panel's Reports](#)").

¹⁹ Defence Request for an Expert Report on Article 58(1)(b) Risk Factors, [ICC-01/21-01/25-342](#), 19 December 2025 ("[Request for Panel Opinion on Article 58\(1\)\(b\)](#)").

²⁰ 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 ("[Decision on Article 58\(1\)\(b\) Risk Factors](#)").

²¹ [Defence Observations](#).

10. On 26 January 2026, the Pre-Trial Chamber issued the Impugned Decision, refusing outright to consider the Medical Report because it had emanated from a party to the proceedings.²²

III. APPLICABLE LAW

11. Article 82(1)(b) of the Rome Statute provides either party with the right to appeal any decision granting or denying release of the person being investigated or prosecuted.
12. The Appeals Chamber will not necessarily defer to the legal interpretation of a pre-trial Chamber, but “will arrive at its own conclusion as to the appropriate law and determine whether or not [the] Chamber misinterpreted the law”.²³ A decision may be reversed where it is “materially affected” by a legal error. Although findings of fact are entitled to a margin of deference, decisions on interim release may be reversed when a panel of first instance misappreciates or fails to consider relevant facts or takes into account irrelevant facts.²⁴
13. A pre-trial chamber is **obliged** to reconsider its decision on detention where changed circumstances warrant reconsideration of the factors forming the basis for detention.²⁵ While the onus rests on the Prosecution to demonstrate that there has been no change in the circumstances previously justifying detention,²⁶ a mere assertion that circumstances remain unchanged is insufficient to

²² [Impugned Decision](#).

²³ *Bemba et al.*, Judgment on the appeals against Pre-Trial Chamber II’s decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, [ICC-01/05-01/13-969](#), 29 May 2015, para. 20.

²⁴ *Said*, 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”, [ICC-01/14-01/21-318](#), 19 May 2022, paras 13-14.

²⁵ *Bemba*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 6 January 2012 entitled “Decision on the defence’s 28 December 2011 ‘Requête de Mise en liberté provisoire de M. Jean-Pierre Bemba Gombo’”, [ICC-01/05-01/08-2151-Red](#), 5 March 2012 (“*Bemba Appeal Decision*”), para. 1.

²⁶ *Mokom*, Public redacted version of ‘Decision on the review of Mr Mokom’s detention’, [ICC-01/14-01/22-241-Red](#), 16 August 2023, para. 11.

discharge this burden.²⁷ Therefore, where the Prosecution submits that no material change in circumstances has occurred, the Defence must be allowed to provide pertinent information, including on the detainee's current circumstances,²⁸ to ensure that the pre-trial chamber is able to reach a fully informed decision.²⁹

14. 'Changed circumstances' entails "either a change in some or all of the facts underlying a previous decision on detention, or **a new fact** satisfying a pre-trial chamber that a modification of its prior ruling is necessary".³⁰ Where changed circumstances are established, a pre-trial chamber must assess their impact on the factors originally justifying detention,³¹ and may choose to order conditional release to mitigate any perceived statutory risk factors.⁹

²⁷ *Said*, First review of the detention of Mr Mahamat Said Abdel Kani, [ICC-01/14-01/21-382](#), 29 June 2022 ("*Said Decision*"), para. 30 ("[n]evertheless, the Defence is correct in saying that it is insufficient for the Prosecution to simply make a blanket claim that nothing has changed. Even though this may well be factually true, and the Chamber will make an independent assessment in this regard below, the mere affirmation by the Prosecution is not enough to establish it. The Chamber therefore finds that the Prosecution should have made a greater effort to provide substantiated submissions on the matter").

²⁸ *Said Decision*, para. 25. See also *Gbagbo and Blé Goudé*, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention", [ICC-02/11-01/15-992-Red](#), 19 July 2017, para. 38 ("[t]his inquiry by the Chamber carrying out the review is not dependent only upon the new information provided by the parties, but is a review of the current circumstances as a whole which underpin detention. It is the Chamber's obligation to look at those circumstances and be satisfied that continued detention is necessary").

²⁹ *Said*, Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Trial Chamber VI entitled "First review of the detention of Mr Mahamat Said Abdel Kani", [ICC-01/14-01/21-460](#), 23 August 2022, para. 3 ("[n]evertheless, where there exists a decision in favour of detention under article 60(2) of the Statute, and where the Prosecution submits that there has been no change in circumstances in a review pursuant to article 60(3) of the Statute, it is apparent that the Defence will have a particular interest in providing information to the chamber so that the chamber will have all necessary information to arrive at a fully informed decision").

³⁰ *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. 60 (emphasis added).

³¹ *Gbagbo Appeal Decision*, para. 23. See also *Bemba Appeal Decision*, para. 1.

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

i. The Medical Report constitutes a new fact, and therefore a changed circumstance, within the meaning of Article 60(3) of the Rome Statute

15. In accepting that the Panel's reports "constitute a new fact as to Mr Duterte's health condition", the Pre-Trial Chamber acknowledged, correctly, the relevance of Mr Duterte's documented cognitive impairments to the review of his detention. This finding, however, is belied by the subsequent normative inconsistency of the Pre-Trial Chamber's acceptance of the Panel's reports – furnished in the context of fitness to stand trial – but simultaneous refusal to review a Medical Report tailored to Mr Duterte's actual ability to actuate the risks set out in Article 58(1)(b).³² The Pre-Trial Chamber's refusal to accept or assess the Medical Report as a new fact constitutes both a legal and factual error.³³
16. The Medical Report is highly relevant to the assessment of Mr Duterte's continuing detention. It was commissioned from two leading practitioners, specifically for the purpose of evaluating Mr Duterte's concrete ability to abscond, to threaten the integrity of the proceedings, and to commit further crimes.³⁴ It considered prior clinical findings as well as the Panel's joint and

³² [Impugned Decision](#), para. 24 ("the Chamber shall not rely on [...] [and] 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").

³³ 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; *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.

³⁴ [Medical Report](#), p. 2.

individual reports.³⁵ The Medical Report assessed Mr Duterte's neurological condition through an entirely different lens for a wholly different purpose.³⁶

17. The Medical Report substantiates Mr Duterte's deteriorating health and compromised cognition, a factor that the Pre-Trial Chamber was obliged to consider in its review.³⁷ Substantiated factual considerations which mitigate the need for detention should not be dismissed or ignored.³⁸ The opinions of respected experts should be deemed dispositive in the absence of counter-expertise on the same issue, especially when medical disability can impact on statutory risk factors.³⁹ Indeed, the jurisprudence of this Court recognises that changed circumstances include the effect of a detainee's medical condition on the statutory risks under Article 58(1)(b).⁴⁰
18. It is clear that the Pre-Trial Chamber believed that it had discharged its duty to assess "Mr Duterte's health condition, including his alleged cognitive impairment" at the time it issued its first decision on interim release in

³⁵ [Medical Report](#), p. 2.

³⁶ Public redacted version of "Decision on the 'Defence Request for an Indefinite Adjournment' and Mr Duterte's fitness to take part in the pre-trial proceedings", [ICC-01/21-01/25-356-Red](#), 26 January 2026, paras 16 ("[t]he question for the Chamber to determine in this decision is whether Mr Duterte is fit to participate in the pre-trial proceedings"); 23, 25 ("[t]he Chamber provided the Panel with specific instructions as to the factual assessment that required answering [...] in order for the Chamber to be able to proceed to its legal determination of whether Mr Duterte was fit to take part in the pre-trial proceedings"; 32.

³⁷ *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).

³⁸ *Boicenco v. Moldova*, App. no. 41088/05, Judgment, 11 July 2006, para. 142.

³⁹ *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 Gbagbo'", [ICC-02/11-01/11-278-Red](#), 26 October 2012, para. 87.

⁴⁰ *Gbagbo*, 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'", [ICC-02/11-01/11-278-Red](#), 26 October 2012 ("[Gbagbo Appeal Decision](#)"), paras 86-87 ("the Appeals Chamber considers that medical reasons can play a role in decisions on interim release").

September 2025.⁴¹ Such judicial appraisal, however, was both rudimentary and superficial. In fact, the use of the word “alleged” by the Pre-Trial Chamber in this context, when the only contemporaneous evidence as to Mr Duterte’s cognitive condition emanated from a leading neurologist, highlights the Pre-Trial Chamber’s predisposition to disbelieve anything emanating from the Defence on the matter of fitness.

19. Health, by its very nature, is not static, and organic conditions such as those from which Mr Duterte suffers are progressive and degenerative. A judicial assessment conducted four months prior, for the purpose of another decision, cannot remain the yardstick by which future decisions are rendered. This is especially so where new clinical evidence has been supplied that speaks directly to the matter under determination. Such evidence is the very definition of a new fact. In short, the new Medical Report supersedes the Pre-Trial Chamber’s previous unqualified assessment and, in so far as it constitutes a new and uncontested circumstance, it should have been accorded persuasive value.
20. The Pre-Trial Chamber has adopted a capricious attitude to its assessment of Mr Duterte’s cognitive condition. In the Impugned Decision, the Panel’s fitness assessment is cited, *inter alia*, as justification to maintain pre-trial detention. Previously, however, the Pre-trial Chamber had ruled that “the issue of fitness to stand trial is factually and legally distinct from the question of interim release”.⁴²
21. In addition to the aforementioned inconsistent reasoning, the Pre-Trial Chamber now, ironically, relies on the Panel’s fitness reports to fix Mr Duterte’s

⁴¹ [Impugned Decision](#), para. 23.

⁴² [Interim Release Decision](#), para. 64.

ineligibility for pre-trial liberty.⁴³ In so doing, the Pre-Trial Chamber ignored the more recent opinion of Experts on the discrete issue of risk. Apart from the fact that the Pre-Trial Chamber's vacillating logic speaks to a desire to maintain Mr Duterte's detention with scant regard to the medical evidence, the precedent set is legally unsound. By ignoring fresh circumstances, in this instance the Experts' joint report, the Pre-Trial Chamber effectively negated the intent and purpose of periodic review under Article 60(3).

22. To conclude, the Pre-Trial Chamber's refusal to consider the Medical Report was a breach of its duty to assess whether there exist changed circumstances that would, in turn, affect the necessity of detention. This error so fully taints the Impugned Decision that it must be reversed in its entirety.

ii. The Pre-Trial Chamber erred in law when it refused to consider relevant evidence simply because it was tendered by a party to the proceedings

23. 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.⁴⁴ 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.

24. Evidence cannot be rendered inadmissible merely by virtue of the identity of its submitting party.⁴⁵ The Pre-Trial Chamber was required to examine the Medical Report and to assess its probative value before determining what

⁴³ [Impugned Decision](#), paras 23, 26-30.

⁴⁴ [Impugned Decision](#), para. 24.

⁴⁵ See e.g. *Abu Garda*, Decision on the "Prosecution's Application for Leave to Appeal the 'Decision on the Confirmation of Charges'", [ICC-02/05-02/09-267](#), 23 April 2010, para. 8 ("[t]he free assessment of the evidence presented by a party is, pursuant to the Statute, a core component of the judicial activity both at the pre-trial stage of a case and at trial"). See also *Mbarushimana*, Decision on the confirmation of charges, [ICC-01/04-01/10-465-Red](#), 16 December 2011, para. 46.

weight, if any, to attribute. By declining to engage with the substance of the Report, the Pre-Trial Chamber failed to exercise appropriate discretion and improperly conflated admissibility with weight. The summary dismissal of the Medical Report undermines the fairness of the proceedings and deprives the Defence of a reasoned determination on a potentially relevant new circumstance.

25. Court practice has consistently affirmed an inclusionary approach to evidence that is focussed on relevance as opposed to provenance.⁴⁶ Chambers have typically interpreted Article 69(4) of the Rome Statute broadly,⁴⁷ favouring the admission of all evidence that is *prima facie* relevant, with questions of reliability or probative weight to be decided in a subsequent assessment.⁴⁸ Free assessment of evidence is a core judicial activity,⁴⁹ and, in point of fact, it is a **duty** incorporated into the judges' mandate under the Statute.⁵⁰ It is entirely

⁴⁶ *Lubanga*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, [ICC-01/04-01/06-1432](#), 11 July 2008, paras 3 ("[t]he right to lead evidence pertaining to the guilt or innocence of the accused and to challenge the admissibility or relevance of evidence lies primarily with the parties, namely, the Prosecutor and the Defence"); 95 ("[w]hile mindful that the Prosecutor bears the onus of proving the guilt of the accused, it is nevertheless clear that 'the Court has the authority to request the submission of all evidence that it considers necessary for the determination of the truth'").

⁴⁷ *Lubanga*, Decision on the admissibility of four documents, [ICC-01/04-01/06-1399](#), 13 June 2008, paras 23 ("[a]rticle 69(4) of the Statute confers on the Chamber a broad power to make decisions as regards evidence [...] It follows that the Chamber has been given a wide discretion to rule on admissibility or relevance and to assess any evidence, subject to the specified issues of 'fairness'"); 24 ("the Chamber is authorised by statute to request any evidence that is necessary to determine the truth, subject always to such decisions on relevance and admissibility as are necessary, bearing in mind the dictates of fairness [...] the Chamber has concluded that it enjoys a significant degree of discretion in considering all types of evidence").

⁴⁸ *Al Hassan*, Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza, [ICC-01/12-01/18-2222-Anx](#), 13 May 2022 ("[Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza](#)"), paras 1, 3 ("the trial chamber will make a proper and holistic assessment of all evidence at the end of the proceedings").

⁴⁹ *Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges", [ICC-01/04-01/10-514](#), 30 May 2012, para. 41. See also *Abu Garda*, Decision on the "Prosecution's Application for Leave to Appeal the 'Decision on the Confirmation of Charges'", [ICC-02/05-02/09-267](#), 23 April 2010, para. 8.

⁵⁰ [Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza](#), para. 1 ("[t]he purpose of the procedure for receiving evidence at this Court is [...] also [...] to determine the (judicial) truth [...] **the parties may submit all evidence relevant to the case**, and, importantly, the judges of the Court have

inappropriate, and grounded nowhere in ICC precedent, to exclude evidence at the outset merely because it originates from a specific party. On the contrary, the parties enjoy an unfettered right to present their own evidence.⁵¹ Indeed, evidentiary exclusion is such an exception at this Court that even evidence demonstrably procured by the Prosecution in violation of internationally recognised rights was admitted and relied upon by Trial Chamber VII in its Article 74 determination.⁵² The Pre-Trial Chamber's perplexing decision to exclude the Medical Report flies in the face of established practice and risks collapsing admissibility into weight, undermining the equality of arms, and – perhaps most problematically – destabilising the Court's truth-seeking function.⁵³

the authority to request, on their own motion, the submission of all evidence that judges themselves consider necessary for the determination of the truth. This is a judicial duty that the Statute has included as part of the judges' mandate. The determination of the truth implies a broader purpose in the interests of all parties and participants, **including the accused and the victims**") (emphasis added).

⁵¹ *Mbarushimana*, Decision on the confirmation of charges, [ICC-01/04-01/10-465-Red](#), 16 December 2011, para. 46.

⁵² See *Bemba et al.*, Decision on Request in Response to Two Austrian Decisions, [ICC-01/05-01/13-1948](#), 14 July 2016, para. 40 ("[i]n consequence, the Chamber finds that, **while there has been a violation of the right to privacy, the admission of the Western Union Documents would not be antithetical to and would seriously damage the integrity of the proceedings**"). See also Judgment pursuant to Article 74 of the Statute, [ICC-01/05-01/13-1989-Red](#), 19 October 2016, paras 210-212; Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", [ICC-01/05-01/13-2275-Red](#), 8 March 2018, paras 347-348 ("the Appeals Chamber finds that the Trial Chamber erred in law in, once more, making a determination on whether there had been 'manifest' violations of national law in the collection of the Western Union Records and in its conclusion that 'in view of' the two subsequent domestic rulings of the Higher Regional Court of Vienna, the Western Union Records had been obtained by means of a violation of the internationally recognised human right to privacy. Rather, upon application of the law to the relevant facts, the Appeals Chamber concludes that the Western Union Records were not obtained by means of a violation of internationally recognised human rights within the meaning of article 69 (7) of the Statute, irrespective of the two domestic rulings in question").

⁵³ [Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza](#), para. 1. See also *Ngudjolo Chui*, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", [ICC-01/04-02/12-271-Corr](#), 7 April 2015, paras 256 ("[t]he establishment of the truth is one of the principal objectives of the Statute, to which the Trial Chamber must actively contribute. In this context, the Appeals Chamber notes that article 69 (3) of the Statute gives the Court the power 'to request the submission of all evidence that it considers necessary for the

26. The Medical Report is clearly relevant to the assessment of continued detention. Mr Duterte's cognitive impairment and physical infirmity have significant bearing upon – if not entirely abrogate – the ability to abscond, to interfere with ongoing investigations or proceedings, and to commit a crime.
27. With regard to the risk of flight, the Experts found that Mr Duterte lacks the executive functioning, sustained planning capacity, rapid decision-making and physical stamina necessary to evade supervision.⁵⁴ These capacities are either clearly compromised or, at a minimum, practically unavailable to him in his current condition.⁵⁵
28. In the context of posing a threat to witnesses or to the investigation, the Experts found that actualising such a risk would require a degree of sustained attention, initiative, organisational capacity, and an ability to coordinate intermediaries that Mr Duterte, quite simply, does not possess. Nor does the notion of witness intimidation align with his functional abilities or with the realities of an environment where, as would be the case with conditional release, his liberty would be restricted and strictly supervised.⁵⁶
29. Finally, regarding the potential for the continued commission of offences, Mr Duterte's impaired executive functioning, lack of sustained attention, and inability to plan and to sequence his daily activity negates any possibility of him either perpetrating such acts or otherwise overseeing the complex chains of command that would be necessary to effect new crimes.⁵⁷

determination of the truth"); 275 ("the Appeals Chamber considers that the determination of the truth is a central aspect of any criminal trial to which not only the Prosecutor, but also a Trial Chamber is under an obligation to actively contribute") (internal citation omitted).

⁵⁴ [Medical Report](#), p. 3.

⁵⁵ [Medical Report](#), p. 3.

⁵⁶ [Medical Report](#), p. 3.

⁵⁷ [Medical Report](#), pp. 3-4.

30. Had the Pre-Trial Chamber admitted the Medical Report, it would have found that the risks underpinning its previous decision on detention no longer exist or could be mitigated with suitable conditions of release. The above error thus contaminates the whole of the Impugned Decision.

iii. The Medical Report is the only new fact capable of mitigating the risks previously identified by the Pre-Trial Chamber

31. In its previous judgment, the Appeals Chamber endorsed the findings of the Pre-Trial Chamber with respect to risks flowing from statements attributed to Mr Duterte's family and close associates⁵⁸ as well as his access to political contacts and a network of support.⁵⁹ The Appeals Chamber also found that the gravity of the charges against Mr Duterte and the sentence they carry to be a factor militating against interim release.⁶⁰ In light of the Appeals Chamber's previous findings, none of the above-cited factors are, realistically, capable of being mitigated. The Defence has conceded that, once endorsed on appeal, these factors are immutable.⁶¹

32. With respect to medical matters, the Pre-Trial Chamber had previously deemed all Defence arguments to be "extrapolation" or "speculative".⁶² When presented, however, with highly pertinent new medical evidence, the Pre-Trial Chamber chose to ignore it and to fall back on factors already considered and which cannot change.⁶³

33. In so far as risk assessments rely on static factors, the only practicable basis for modification under Article 60(3) is evidence of a material change in circumstances, such as the accused's health. The Medical Report constituted

⁵⁸ [Interim Release Decision](#), para. 50. See also [Interim Release Decision](#), para. 17.

⁵⁹ [Interim Release Decision](#), para. 51. See also [Interim Release Decision](#), para. 17.

⁶⁰ [Interim Release Decision](#), para. 51. See also [Interim Release Decision](#), para. 17.

⁶¹ Public Redacted Version of "Appeal Brief on Interim Release", ICC-01/21-01/25-298-Conf, 14 October 2025, [ICC-01/21-01/25-298-Red](#), 28 October 2025, paras 19-23.

⁶² [Decision on Interim Release](#), para. 64.

⁶³ [Impugned Decision](#), para. 32 (emphasis added).

just such new and objective evidence and it was specific to the discrete issue of Mr Duterte's pre-trial detention. By refusing to consider the substance of the Medical Report and ignoring the mitigating effect of Mr Duterte's cognitive condition on the statutory risk factors set out in Article 58(1)(b), the Pre-Trial Chamber committed a legal and factual error.

34. Further, were the Pre-Trial Chamber, after assessment, inclined to dismiss the Medical Report, it would have been obliged to provide the reason therefor. The Pre-Trial Chamber's refusal to accept and consider the Medical Report, and its reliance instead on outdated, unchanging information deprived Mr Duterte of his right to a reasoned decision and rendered the detention review meaningless.

V. CONCLUSION AND RELIEF SOUGHT

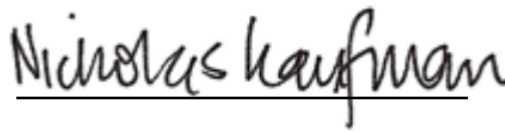
35. Had the Pre-Trial Chamber, for whatever reason, felt unable to rely on submissions or evidence presented by a party to the proceedings, then it should have granted the Defence's request that the Panel issue a report on Mr Duterte's current ability to actualise the Article 58(1)(b) risks.⁶⁴ That Defence 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,⁶⁵ observations which now appear to have been disregarded.
36. In so doing, the Pre-Trial Chamber breached its positive obligation to ensure that Mr Duterte's pre-trial detention is neither disproportionate nor inconsistent with the presumption of innocence. Taken together, the Pre-Trial Chamber's errors have materially affected the Impugned Decision because Mr

⁶⁴ [Request for Panel Opinion on Article 58\(1\)\(b\)](#), para. 8 ("[a]ccordingly, the Defence requests that the Pre-Trial Chamber order the Panel 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)").

⁶⁵ [Decision on Article 58\(1\)\(b\) Risk Factors](#), paras 8-9.

Duterte's continued pre-trial detention would, otherwise, have been found unjustified.

37. In accordance with Rule 158(1) of the ICC Rules of Procedure and Evidence, the Defence requests the Appeals Chamber to **REVERSE** the Impugned Decision and to **ORDER** the immediate release of Mr Duterte under the terms and conditions proffered at first instance.

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

Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 5th day of February 2026
The Hague, the Netherlands