

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/21-01/25
Date: 13 February 2026

THE APPEALS CHAMBER

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

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Public Document

**Public Redacted Version of the
“Victims’ Response to the Defence Appeal against the
‘Decision on the review of Mr Rodrigo Roa Duterte’s detention’”
(ICC-01/21-01/25-373-Conf OA4)**

Source: Common Legal Representatives of Victims

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
D36

☒ Legal Representatives of the Victims
V50

☐ 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
M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Common Legal Representatives herewith file their response to the Defence Appeal (the “Defence Appeal”) against the “Decision on the review of Mr Rodrigo Roa Duterte’s detention” issued by Pre-Trial Chamber I (the “Chamber”) on 26 January 2026 (the “Impugned Decision”).¹

2. The Victims oppose the Defence Appeal in its entirety. The Chamber has correctly and meticulously considered all relevant information and reached a fair and reasonable conclusion based on the facts before it. Contrary to the Defence’s baseless assertion that it ignored relevant medical reports, the Chamber has appropriately weighted said information in its holistic assessment of whether the criteria of article 60(2) of the Rome Statute (the “Statute”) continue to be met. The Defence Appeal is but a mere repetition of previously unsuccessful arguments; it fails to demonstrate a discernible error in the Pre-Trial Chamber’s discretionary decision and decision-making process.

3. Therefore, the Defence Appeal should be dismissed in full and the Impugned Decision confirmed.

II. PROCEDURAL BACKGROUND

4. On 26 January 2026, the Chamber issued the Impugned Decision, deciding that Mr Duterte shall remain in pre-trial detention.²

5. On 28 January 2026, the Defence filed its Notice of Appeal against the Impugned Decision.³

¹ See the “Decision on the review of Mr Rodrigo Roa Duterte’s detention” (Pre-Trial Chamber I), No. ICC-01/21-01/25-357-Conf, 26 January 2026. A public redacted version [No. ICC-01/21-01/25-357-Red](#) was filed on the same day (the “Impugned Decision”).

² *Ibid.*

³ See the “Notice of Appeal against Decision ICC-01/21-01/25-357-Conf”, [No. ICC-01/21-01/25-360](#), 28 January 2026 (the “Notice of Appeal”).

6. On the same day, the Appeals Chamber designated the Presiding Judge in the present appeal.⁴

7. On 29 January 2026, the Appeals Chamber issued directions pursuant to regulation 64(6) of the Regulations of the Court (the “Regulations”),⁵ setting the schedule in the present appeal.⁶

8. On 5 February 2026, the Defence filed its Appeal Brief.⁷

III. CONFIDENTIALITY

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

IV. SUBMISSIONS

A. *Applicable law*

10. The Common Legal Representatives recall that, with respect to errors of law, the Appeals Chamber

*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.*⁸

⁴ See the “Decision on the Presiding Judge of the Appeals Chamber in the appeal of Mr Rodrigo Roa Duterte against the decision of Pre-Trial Chamber I entitled ‘Decision on the review of Mr Rodrigo Roa Duterte’s detention’” (Appeals Chamber), [No. ICC-01/21-01/25-361 OA4](#), 28 January 2026.

⁵ See the “Order on the conduct of the appeal proceedings” (Appeals Chamber), [No. ICC-01/21-01/25-362 OA4](#), 29 January 2026.

⁶ *Idem*, paras. 1-3.

⁷ See the “Appeal Brief on the First Review of the Detention of Mr Rodrigo Roa Duterte”, [No. ICC-01/21-01/25-366 OA4](#), 5 February 2026 (the “Appeal Brief”).

⁸ See the “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”’” (Appeals Chamber), No. ICC-01/21-01/25-326-Conf OA2, 28 November 2025, (the “Appeal Judgement of 28 November 2025”), para. 17, referring to the “Judgment on the appeal of

11. As concerns factual errors, the Appeals Chamber has held, in the context of an appeal against a decision concerning interim release, that it

*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.*⁹

12. Regarding alleged errors in a chamber's exercise of its discretion, the Appeals Chamber has previously ruled that:

*An abuse of discretion occurs when the impugned decision is so unfair or unreasonable as to "force the conclusion that the Chamber failed to exercise its discretion judiciously". The Appeals Chamber will also consider whether the first instance Chamber gave weight to extraneous or irrelevant considerations or failed to give weight or sufficient weight to relevant considerations in exercising its discretion.*¹⁰

B. Submissions on the Merits

Ground of Appeal: The Pre-Trial Chamber Erred in Fact and in Law When it Disregarded the Medical Report Proffered by the Defence

13. The Common Legal Representatives oppose the Defence Appeal in full and submit that the Chamber did not commit any error in disregarding the Defence's medical report.

14. The Appeal evinces nothing but disagreement with the Chamber's decision and is in part premised on arguments impugning an earlier ruling, for which the Defence

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'" (Appeals Chamber), [No. ICC-01/14-01/21-318 OA3](#), 9 May 2022, para. 13 and references contained therein. A public redacted version [No. ICC-01/21-01/25-326-Red OA2](#) was filed the same day.

⁹ See the Appeal Judgement of 28 November 2025, *supra* note 8, para. 18, referring to the Public Redacted Version of 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'" (Appeals Chamber), [No. ICC-01/11-01/15-992-Red OA10](#), 19 July 2017, para. 16.

¹⁰ *Idem*, para. 19, referring to the "Judgment on the appeal of Mr Al Hassan against the decision of Trial Chamber X entitled 'Decision on application for notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court'" (Appeals Chamber), [No. ICC-01/12-01/18-1562-Red OA3](#), 1 July 2021, para. 19 and references contained therein.

failed to seek leave to appeal.¹¹ The Chamber provided a reasoned decision rejecting the Defence's request to have the Panel of Experts deliver a 'medical expertise' on article 58(1)(b) risk factors.¹² Nevertheless, the Defence disregarded the Chamber's reasoning on the lack of appropriateness to engage medical professionals on this legal question and unilaterally engaged its own Experts on the matter. The reported terms of reference provided to [REDACTED] were to conduct [REDACTED]: (1) [REDACTED] ; (2) [REDACTED] and (3) [REDACTED].¹³ On this basis, [REDACTED] swiftly provided a joint report (the "Article 58 Report") in which they concluded:

[REDACTED].¹⁴

15. The Defence tendered the Article 58 Report in support of its Observations regarding the first review of Mr Duterte's pre-trial detention and argued that its Experts had concluded [REDACTED], which, in its submission, constituted changed circumstances and, therefore, warranted interim release.¹⁵ The Defence also submitted a renewed letter of undertaking from the State Party that had previously accepted to receive Mr Duterte on its territory for the purposes of interim release.¹⁶

16. Unsurprisingly, given the earlier ruling on the matter of engaging medical professionals to opine on article 58 risks, the Article 58 Report was disregarded and thus not taken into account in the Chamber's assessment of whether the circumstances that had warranted Mr Duterte's pre-trial detention had changed.¹⁷ In the Defence's submission, this constituted a legal error.¹⁸ In particular, the Defence argues that – having acknowledged that the report of the Panel of Experts (the "Panel Report")

¹¹ See the Appeal Brief, *supra* note 7, para. 9, referring to the "Decision on the 'Defence Request for an Expert Report on Article 58(1)(b) Risk Factors'" (Pre-Trial Chamber I), [No. ICC-01/21-01/25-350](#), 7 January 2026 (the "7 January 2026 Decision").

¹² See the 7 January 2026 Decision, *supra* note 11.

¹³ See Annex A (the "Article 58 Report") to the "Observations on the First Review of Pre-Trial Detention", No. ICC-01/21-01/25-351-Conf, 9 January 2026 (the "Defence Observations"). A public redacted version of the Defence Observations [No. ICC-01/21-01/25-351-Red](#) was filed on the same day.

¹⁴ See the Article 58 Report, *supra* note 13, [REDACTED].

¹⁵ REDACTED.

¹⁶ See Annex B to the Defence Observations on the First Review of Pre-Trial Detention, No. ICC-01/21-01/25-351-Conf-AnxB, 9 January 2026.

¹⁷ See the Impugned Decision, *supra* note 1, para. 24.

¹⁸ See the Appeal Brief, *supra* note 7, para. 13.

constituted new circumstances warranting a review of the article 60(2) conditions – the Chamber erred in not considering the Article 58 Report as well.¹⁹ It further alleges that this led to the factual error of misjudging Mr Duterte’s abilities to actuate the risks enumerated in article 58.²⁰

17. The Common Legal Representatives reject the distorted presentation of relevancy of the Article 58 Report and likewise oppose the argument that the Chamber was under any kind of obligation to consider this (previously rejected) opinion. The crux of the matter is that the Defence is dissatisfied with the Chamber’s findings on Mr Duterte’s fitness to participate in the pre-trial proceedings; a finding it continues to assail from all possible angles. None of the Experts, including its own, have found Mr Duterte to be entirely functionally incapacitated as the Defence would have the Court believe.

18. Notwithstanding the fact that the terms of reference for the Article 58 Report overstepped the sphere of medical expertise by posing entirely legal questions to party-appointed medical professionals, but even the Defence Experts’ own conclusions in the Article 58 Report do not support the exaggerated claims of infirmness put forth by the Defence, which it appears determined not to abandon.²¹

19. The Defence further submits that the Chamber’s rejection of the Article 58 Report on the sole basis that it was proffered by a party constitutes “*in effect, a rejection of a suspect’s right to a fair hearing.*”²² It maintains that the Chamber was required to consider said Report and assess its probative value before determining what weight, and if any, to attribute to it.²³ The Defence then – erroneously – characterizes the self-commissioned Article 58 Report as ‘evidence’ and laments that the Chamber disregarded the basic principle of article 69(4) of the Statute.²⁴

¹⁹ *Idem*, para. 15.

²⁰ *Idem*, para. 16.

²¹ *Idem*, paras. 26-29.

²² *Idem*, para. 23.

²³ *Idem*, para. 24.

²⁴ *Idem*, paras. 24-25.

20. Lastly, the Defence puts forth that, as far as risk assessments rely on static factors, *“the only practicable basis for modification under Article 60(3) is evidence of a material change, such as the accused’s health”*.²⁵ In conclusion, it labels the Panel Report *“outdated”*²⁶ and complains that the Chamber did not provide a reasoned opinion for ‘dismissing’ the Article 58 Report, which, in its submission *“rendered the detention review meaningless”*.²⁷

21. The Defence’s contentions are misguided in multiple ways. A review of the Chamber’s reasoning reveals that none of the allegations are rooted in actual fact. First, the Chamber correctly set out the law as concerns the review of detention and whether it is still warranted in the circumstances,²⁸ and proceeded in the prescribed manner. It first recalled its earlier findings in the Decision on Interim Release,²⁹ upheld by the Appeals Chamber,³⁰ and then turned to examining whether there existed *“any changed or new circumstances”* in relation to the factors it previously found to warrant Mr Duterte’s detention. It examined *“whether [there exist] reasonable grounds to believe that Mr Duterte committed crimes within the jurisdiction of the Court”*.³¹ It found that *“it [was] not aware of any new or changed circumstances in this regard”* and noted that the Defence had also not contested this point.³²

22. Second, the Chamber specifically examined *“Article 58(1)(b) of the Statute and Mr Duterte’s medical condition”* in a dedicated section of its reasoning.³³ Third, the Chamber considered and found an additional factor warranting Mr Duterte’s detention pursuant to article 58(1)(b)(i) of the Statute, namely the impending

²⁵ *Idem*, para. 33.

²⁶ *Idem* para. 34.

²⁷ *Ibid.*

²⁸ See the Impugned Decision, *supra* note 1, paras. 11-14.

²⁹ *Idem*, paras. 15-19.

³⁰ See the Appeal Judgement of 28 November 2025, *supra* note 8.

³¹ See the Impugned Decision, *supra* note 1, para 20.

³² *Idem*, para. 21.

³³ *Idem*, paras. 22-30.

confirmation of charges hearing.³⁴ Fourth, it found that, in relation to article 58(1)(b)(ii) of the Statute, no changed or new circumstances that may justify modification of its earlier findings had been brought to its attention, recalling its various conclusions on Mr Duterte's means and network of associates.³⁵

23. Fifth, the Chamber found that the renewed guarantees provided by the State Party willing to accept the Suspect on its territory did not adequately address a condition it had previously underscored as being essential, if Mr Duterte were to be released on said State's territory.³⁶

24. In sum, the assailed part of the Impugned Decision, which discusses Mr Duterte's medical conditions and various reports received in relation thereto, constitutes but one of several pillars on which the Chamber's decision to maintain Mr Duterte's pre-trial detention is founded.

25. Thus, even if *arguendo* the Defence's submissions in relation to the Article 58 Report were accepted, it would not materially affect the Impugned Decision, as all of the other unassailed findings of the Chamber (such as in relation to the network of support, [REDACTED], and the prospect of a confirmation of charges hearing) individually warrant the continued pre-trial detention of the Suspect.

26. The Common Legal Representatives, however, submit that the Chamber did not err in rejecting the Article 58 Report *in limine*. The Chamber "*recalled that the issue of Mr Duterte's health condition, including his alleged cognitive impairment, had already been raised by the Defence at the time of the issuance of the Interim Release Decision and was considered by the Chamber therein as part of its assessment regarding possible mitigating factors of the identified risks under article 58(1)(b) of the Statute.*"³⁷ While the Chamber recognized the Panel Report as a "*new fact*" which had to be taken into consideration

³⁴ *Idem*, para. 31.

³⁵ *Idem*, paras. 34-35.

³⁶ *Idem*, para. 40.

³⁷ *Idem*, para. 23.

in conducting its review,³⁸ it doubled-down on its earlier reasoning in reiterating that it had “*made [it] abundantly clear in **prior decisions**, with a view to preserving the fairness of the proceedings,[that] 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, [...] the Chamber notes that the Defence’s Observations are largely dedicated to providing the Defence’s views on Mr Duterte’s health condition, and **previous** Chamber’s [sic] decisions, be they related or unrelated to the matter of the review of detention.*”³⁹

27. Procedurally, the Defence is in fact attempting to challenge earlier or unrelated decisions, in relation to some of which it failed to seek leave to appeal.⁴⁰ Substantively, the Defence is merely disagreeing with the Chamber’s earlier ruling regarding the instruction of the Panel to consider the article 58 factors. Both challenges suffer the same flaw. They do not substantiate the alleged error committed in the Impugned Decision.

28. The Defence, aware of the deficiency of its own arguments, however attempts to dress them as the Chamber’s failure to look at the Article 58 Report, which it declares to constitute a new fact for the only reason that it was produced and signed by medical professionals [REDACTED] and because it post-dates the Panel Report. Despite its insistence, the Defence is still unable to identify an error of law or reasoning in the Chamber’s decision for the simple fact that there is none. Indeed, the Chamber did not simply dismiss the Defence’s arguments after pointing to its earlier findings on the matter. It even went to the length to dismantle the Defence’s claims regarding Mr Duterte’s state of health with reference to concrete findings of the Panel,⁴¹ and pointing out the Defence’s selective approach in quoting the Panel’s findings “*out of context*”.⁴²

³⁸ *Ibid.*

³⁹ *Idem*, para. 24. Emphasis added. Internal references omitted.

⁴⁰ It is noted that the Defence has requested leave to appeal the “Decision on the ‘Defence Request for an Indefinite Adjournment’ and Mr Duterte’s fitness to take part in the pre-trial proceedings” (Pre-Trial Chamber I), No. ICC-01/21-01/25-356-Conf, 26 January 2026 on 2 February 2026. See the “Request for Leave to Appeal Decision ICC-01/21- 01/25-356-Conf”, No. ICC-01/21-01/25-363-Conf, 26 February 2026 (the “Request”). A public redacted version [No. ICC-01/21-01/25-363-Red](#) was filed on the same day.

⁴¹ See the Impugned Decision, *supra* note 1, paras. 25-28.

⁴² *Idem*, para. 28.

29. In addition, the Chamber engaged with the Panel's findings and came to the conclusion that they were not relevant to determining whether the risks under article 58(1)(b) of the Statute continue to exist.⁴³ Overall, it found that the information contained in the Panel Report did *"not [...] amount to a changed or new fact or circumstance that would warrant modifying the Interim Release Decision within the meaning of article 60(3) of the Statute."*⁴⁴

30. In this regard, the mere disagreement with the conclusions that the first-instance Chamber drew from the available information or the weight it accorded to particular factors does not suffice to establish an error.⁴⁵ As set out *supra*, the Chamber's overall finding was premised on a number of considerations, including but not limited to some it had previously assessed and found to be unaffected by Mr Duterte's alleged health conditions. Not only can the fact that the Chamber decided to discard the Article 58 Report not be elevated to a decisive factor in the Impugned Decision, but the Defence's submissions reveal nothing but a general disagreement with the Chamber's reasoning. As such, the Defence is unable to demonstrate a factual or legal error in the Impugned Decision and, accordingly, its Appeal must fail.

⁴³ *Idem*, para. 29.

⁴⁴ *Idem*, para. 30.

⁴⁵ See the "Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled "Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute" (Appeals Chamber), [No. ICC-02/11-01/15-208 OA6](#), 8 September 2015, para. 73.

V. CONCLUSION

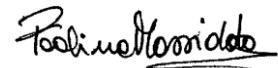
31. For the foregoing reasons, the Common Legal Representatives respectfully request that the Defence Appeal be dismissed in its entirety and the Impugned Decision be confirmed.



Gilbert Andres



Joel Butuyan



Paolina Massidda

Dated this 13th day of February 2026

At The Hague (The Netherlands) and Manila (The Philippines)