

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/21-01/25 OA4

Date: 6 March 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 redacted

Judgment

**on the appeal against Pre-Trial Chamber I's "Decision on the review of
Mr Rodrigo Roa Duterte's detention"**

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☒ **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
Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Rodrigo Roa Duterte against Pre-Trial Chamber I's "Decision on the review of Mr Rodrigo Roa Duterte's detention" of 26 January 2026 (ICC-01/21-01/25-357-Red),

After deliberation,

Delivers the following

JUDGMENT

Pre-Trial Chamber I's "Decision on the review of Mr Rodrigo Roa Duterte's detention" of 26 January 2026 (ICC-01/21-01/25-357-Red) is confirmed.

REASONS

I. INTRODUCTION

1. This judgment is with respect to the appeal of Mr Rodrigo Roa Duterte (hereinafter: "Mr Duterte") against the "Decision on the review of Mr Rodrigo Roa Duterte's detention", issued on 26 January 2026, pursuant to article 60(3) of the Statute (hereinafter: "Impugned Decision").¹ In the Impugned Decision, Pre-Trial Chamber I (hereinafter: "Pre-Trial Chamber") assessed the health condition of Mr Duterte as part of its assessment regarding the risk factors under article 58(1)(b) of the Statute identified in its initial decision on interim release. The Pre-Trial Chamber found, *inter alia*, that there were no new or changed circumstances requiring the modification of its prior ruling on the existence of the risks under article 58(1)(b) of the Statute,² and remanded Mr Duterte in detention.³

¹ Pre-Trial Chamber I, [Decision on the review of Mr Rodrigo Roa Duterte's detention](#), ICC-01/21-01/25-357-Conf (a public redacted version registered on the same day, ICC-01/21-01/25-357-Red).

² [Impugned Decision](#), paras 20-42.

³ [Impugned Decision](#), para. 43.

2. In making such determination, the Pre-Trial Chamber, *inter alia*, disregarded a report concerning the health condition of Mr Duterte submitted by the Defence for Mr Duterte (hereinafter: “Defence”).⁴

3. The Defence raises one ground of appeal with respect to this issue. The Defence submits that the Pre-Trial Chamber erred in fact and in law, and abused its discretion, when it disregarded the report on the basis that it had emanated from a party to the proceedings, and that the alleged errors materially affected the Impugned Decision. In particular, the Defence argues that the report constitutes a new fact in respect of Mr Duterte’s health condition, and therefore a changed circumstance, within the meaning of article 60(3) of the Statute. The Defence requests that the Appeals Chamber reverse the Impugned Decision and order the immediate release of Mr Duterte.

II. PROCEDURAL HISTORY

4. On 7 March 2025, the Pre-Trial Chamber issued a warrant of arrest against Mr Duterte for the crime against humanity of murder, pursuant to article 7(1)(a) of the Statute, allegedly committed in the Republic of the Philippines between 1 November 2011 and 16 March 2019 (hereinafter: “Arrest Warrant”).⁵

5. On 12 March 2025, Mr Duterte was surrendered to the Court.⁶

6. On 4 July 2025, the Deputy Prosecutor (hereinafter: “Prosecutor”) filed the “Document Containing the Charges”, submitting that Mr Duterte is criminally responsible for the crimes against humanity of murder and attempted murder, pursuant to article 7(1)(a) of the Statute, allegedly committed as part of a widespread and systematic attack against a civilian population on the territory of the Republic of the Philippines between 1 November 2011 and 16 March 2019.⁷

7. On 8 September 2025, the Pre-Trial Chamber issued an order, instructing the Registry to submit to it a shortlist of experts for the purpose of a medical examination

⁴ [Impugned Decision](#), paras 22-30.

⁵ [Warrant of Arrest for Mr Rodrigo Roa Duterte](#), ICC-01/21-01/25-83-SECRET-EXP (reclassified as public on 17 March 2025, ICC-01/21-01/25-83).

⁶ See ICC Press Release, [Situation in the Philippines: Rodrigo Roa Duterte in ICC custody](#), 12 March 2025.

⁷ [Document Containing the Charges](#), ICC-01/21-01/25-178-Conf (a public redacted version registered on 22 September 2025, ICC-01/21-01/25-178-Red; a public lesser redacted version registered on 13 February 2026, ICC-01/21-01/25-178-Red1).

of Mr Duterte, under rules 113 and 135 of the Rules of Procedure and Evidence (hereinafter: “Rules”).⁸

8. On 24 September 2025, the Pre-Trial Chamber, on the basis of the shortlist of medical experts provided by the Registry and following the observations and/or requests of the parties and participants,⁹ appointed a panel of three experts for the purpose of a medical examination of Mr Duterte (hereinafter: “Panel”).¹⁰

9. On 26 September 2025, following two requests by the Defence for interim release,¹¹ the Pre-Trial Chamber issued its initial decision on detention, pursuant to article 60(2) of the Statute, rejecting both requests and ordering the continued detention of Mr Duterte (hereinafter: “Initial Decision on Detention”).¹²

10. On 28 November 2025, following an appeal of the Defence,¹³ the Appeals Chamber confirmed the Initial Decision on Detention (hereinafter: “*Duterte* OA2 Judgment”).¹⁴

⁸ [Order pursuant to rules 113 and 135 of the Rules of Procedure and Evidence](#), 8 September 2025, ICC-01/21-01/25-268-Conf (reclassified as public on 7 October 2025, ICC-01/21-01/25-268) (hereinafter: “Order of 8 September 2025”).

⁹ See Registry Submission of a Shortlist of Medical Experts pursuant to ICC-01/21-01/25-268-Conf, 15 September 2025, ICC-01/21-01/25-270-Conf, with confidential Annexes I and II (hereinafter: “Registry’s Shortlist of Medical Experts”); Prosecution’s Observations on the “Registry Submission of a Shortlist of Medical Experts pursuant to ICC-01/21-01/25-268-Conf” (ICC-01/21-01/25-270-Conf), 18 September 2025, ICC-01/21-01/25-276-Conf; Defence Observations on Registry Submission ICC-01/21-01/25-270-Conf, 18 September 2025, ICC-01/21-01/25-274-Conf; Observations on behalf of Victims on the “Registry Submission of a Shortlist of Medical Experts pursuant to ICC-01/21-01/25-268-Conf”, 18 September 2025, ICC-01/21-01/25-275-Conf.

¹⁰ [Decision on the appointment of experts for the purpose of a medical examination pursuant to rules 113 and 135 of the Rules of Procedure and Evidence and related matters](#), 24 September 2025, ICC-01/21-01/25-279-Conf (a public redacted version registered on 16 October 2025, ICC-01/21-01/25-279-Red) (hereinafter: “Decision of 24 September 2025”).

¹¹ [Urgent Request for Interim Release](#), ICC-01/21-01/25-150-Conf-Exp (a public redacted version registered on the same day, ICC-01/21-01/25-150-Red), with confidential and *ex parte* Annexes A, B and C; [Renewed Request for Interim Release](#), ICC-01/21-01/25-231-Conf (a public redacted version registered on 19 August 2025, ICC-01/21-01/25-231-Red), with confidential Annexes A, B and C.

¹² [Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’](#), ICC-01/21-01/25-282-Conf (a public redacted version registered on 10 October 2025, ICC-01/21-01/25-282-Red).

¹³ [Notice of Appeal against ICC-01/21-01/25-282-Conf](#), 3 October 2025, ICC-01/21-01/25-287-Conf (a public redacted version registered on 1 December 2025, ICC-01/21-01/25-287-Red).

¹⁴ [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-Conf (OA2) (a public redacted version registered on the same day, ICC-01/21-01/25-326-Red (OA2)).

11. On 5 December 2025, pursuant to an order to that effect,¹⁵ the Registry transmitted to the Pre-Trial Chamber the joint and individual reports of the Panel (hereinafter: “Panel’s Reports”).¹⁶

12. On the same day, the Pre-Trial Chamber issued, by way of email, an order to submit observations on Mr Duterte’s detention (hereinafter: “Order of 5 December 2025”).¹⁷

13. On 7 January 2026, following a request by the Defence,¹⁸ the Pre-Trial Chamber issued a decision, rejecting the request for the Panel to issue an additional report on the impact of Mr Duterte’s health condition on the risk factors under article 58(1)(b) of the Statute (hereinafter: “Decision of 7 January 2026”).¹⁹

14. On 9 January 2026, pursuant to the Order of 5 December 2025, the Defence submitted its observations on Mr Duterte’s detention (hereinafter: “Defence’s Observations of 9 January 2026”).²⁰ In support of its argument concerning Mr Duterte’s health condition in relation to the risks under article 58(1)(b) of the Statute, the Defence

¹⁵ [Decision on the ‘Defence Request for the Disqualification of \[REDACTED\]’ and related matters](#), 17 October 2025, ICC-01/21-01/25-303-Conf (a public redacted version registered on 14 November 2025, ICC-01/21-01/25-303-Red), para. 24. *See also* [Decision on the ‘Urgent Defence Request to Disqualify \[REDACTED\]’ and related matters](#), 3 November 2025, ICC-01/21-01/25-316-Conf (a public redacted version registered on 14 November 2025, ICC-01/21-01/25-316-Red), para. 19.

¹⁶ [Registry Transmission of the Panel of Experts’ Joint and Individual Reports](#), 5 December 2025, ICC-01/21-01/25-327-Conf (a public redacted version dated 18 December 2025 and registered on 19 December 2025, ICC-01/21-01/25-327-Red), with confidential Annexes I-IV.

¹⁷ [Impugned Decision](#), para. 6, *referring to* Email from the Pre-Trial Chambre on 5 December 2025 at 11:25, entitled “Order to submit observations on Mr Duterte’s detention”.

¹⁸ [Defence Request for an Expert Report on Article 58\(1\)\(b\) Risk Factors](#), 19 December 2025, ICC-01/21-01/25-342 (hereinafter: “Defence’s Request of 19 December 2025”). *See also* [Prosecution’s response to “Defence Request for an Expert Report on Article 58\(1\)\(b\) Risk Factors”](#), ICC-01/21-01/25-342, 23 December 2025, ICC-01/21-01/25-345-Conf (a public redacted version registered on the same day, ICC-01/21-01/25-345-Red).

¹⁹ [Decision on the ‘Defence Request for an Expert Report on Article 58\(1\)\(b\) Risk Factors’](#), ICC-01/21-01/25-350.

²⁰ [Defence Observations on the First Review of Pre-Trial Detention](#), ICC-01/21-01/25-351-Conf (a public redacted version registered on the same day, ICC-01/21-01/25-351-Red), with confidential Annex A (“Assessment of Alleged Risks Attributed to the Accused, authored by the Defence medical experts, 30 December 2025”, ICC-01/21-01/25-351-Conf-AnxA (hereinafter: “Defence’s Report”)) and confidential Annex B (“Letter from the State Party, dated 1 December 2025”, ICC-01/21-01/25-351-Conf-AnxB). *See also* [Prosecutor’s observations on the review of the pre-trial detention of Mr Rodrigo Roa Duterte](#), 7 January 2026, ICC-01/21-01/25-349-Conf (a public redacted version registered on 8 January 2026, ICC-01/21-01/25-349-Red); [Victims’ Observations on the Review of Mr Duterte’s Pre-Trial Detention pursuant to Rule 118\(2\) of the Rules of Procedure and Evidence](#), 7 January 2026, ICC-01/21-01/25-348.

submitted the Defence's Report, a medical report authored by the external medical practitioners selected by the Defence, in an annex to the observations.²¹

15. On 26 January 2026, the Pre-Trial Chamber issued the Impugned Decision.²²

16. On 28 January 2026, the Defence filed a notice of appeal against the Impugned Decision, pursuant to article 82(1)(b) of the Statute.²³

17. On 5 February 2026, following an order of the Appeals Chamber,²⁴ the Defence submitted its appeal brief, raising one ground of appeal against the Impugned Decision (hereinafter: "Appeal Brief").²⁵

18. On 12 February 2026, the Prosecutor filed his response to the Appeal Brief (hereinafter: "Prosecutor's Response").²⁶

19. On the same day, the Common Legal Representatives of the Victims (hereinafter: "CLRVs") filed their observations on the Appeal Brief (hereinafter: "CLRVs' Response").²⁷

III. STANDARD OF REVIEW

20. In the present appeal, the Defence alleges errors of law and of fact, as well as abuse of discretion.

21. With respect to errors of law, the Appeals Chamber has previously held that it

will not defer to the relevant Chamber's interpretation of the law, but will arrive at its own conclusions as to the appropriate law and determine whether or not the first instance Chamber misinterpreted the law.²⁸

²¹ Defence's Report.

²² [Impugned Decision](#).

²³ [Notice of Appeal against Decision ICC-01/21-01/25-357-Conf](#), ICC-01/21-01/25-360.

²⁴ [Order on the conduct of the proceedings](#), 29 January 2026, ICC-01/21-01/25-362 (OA4).

²⁵ [Appeal Brief on the First Review of the Detention of Mr Rodrigo Roa Duterte](#), ICC-01/21-01/25-366.

²⁶ [Prosecution's response to "Appeal Brief on the First Review of the Detention of Mr Rodrigo Roa Duterte" \(ICC-01/21-01/25-366\)](#), ICC-01/21-01/25-374-Conf (a public redacted version registered on the same day, ICC-01/21-01/25-374-Red).

²⁷ [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 (a public redacted version registered on 13 February 2026, ICC-01/21-01/25-373-Red).

²⁸ See [Duterte OA2 Judgment](#), para. 17 and cited jurisprudence therein.

22. If the relevant chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the decision impugned on appeal.²⁹ A decision is “materially affected by an error of law” if the chamber “would have rendered a [decision] that is substantially different from the decision that was affected by the error, if it had not made the error”.³⁰

23. Regarding alleged errors of fact, the Appeals Chamber has held in the context of an appeal against a decision concerning interim release that

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.³¹

24. As regards alleged errors in a chamber’s exercise of its discretion, the Appeals Chamber has stated that:

[A]n 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.³²

25. The above standard of review will guide the analysis of the Appeals Chamber.

²⁹ *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, [Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 19 August 2022 entitled “Decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022”](#), 19 December 2022, ICC-01/14-01/22-124-Red (OA3) (hereinafter: “*Mokom* OA3 Judgment”), para. 20 and cited jurisprudence therein.

³⁰ [Mokom OA3 Judgment](#), para. 20 and cited jurisprudence therein.

³¹ [Duterte OA2 Judgment](#), para. 18 and cited jurisprudence therein.

³² [Duterte OA2 Judgment](#), para. 19 and cited jurisprudence therein.

IV. MERITS

A. Relevant procedural background

1. *Relevant orders and decisions of the Pre-Trial Chamber*

26. Having received the relevant submissions of the parties and participants,³³ as well as two reports provided by the external medical practitioners selected by the Defence,³⁴ the Pre-Trial Chamber, by majority, found in the Order of 8 September 2025 that “further medical examination by independent experts pursuant to rules 113 and 135 of the Rules [was] now required”.³⁵ The Pre-Trial Chamber instructed the Registry as follows:

The Registry shall prepare [a shortlist of experts] taking into account all documents currently available on the record that are relevant to the issue at hand, and in consultation with the Defence and the Prosecution. In addition, *in order to ensure the shortlisted experts’ impartiality and neutrality, individuals who have already been engaged in connection with the present case on behalf of a party shall not be included in the Registry’s shortlist.*³⁶

27. After having received observations of the Defence, the Prosecutor and the OPCV on the Registry’s Shortlist of Medical Experts,³⁷ the Pre-Trial Chamber issued the Decision of 24 September 2025, instructing that “in order to maintain the impartiality of the Panel, the parties and participants shall refrain from any contact with the appointed experts”.³⁸ In the same vein, the Pre-Trial Chamber noted as follows:

[T]he Chamber clarifies that, in appointing experts, it will only consider those who are included in the Registry’s Shortlist and have indicated their availability for the assignment. Emphasising the need ‘to ensure the shortlisted experts’ impartiality and neutrality’, the 8 September 2025 Order did not invite or instruct the parties and participants to indicate additional experts for appointment: the Chamber will therefore disregard the suggestions made in that regard by the Prosecution and the Defence, and instructs the Registry not to further act on their basis.³⁹

³³ See [Order of 8 September 2025](#), paras 7, 11-15.

³⁴ Defence Submission of Medical Reports, 18 July 2025, ICC-01/21-01/25-199-Conf, with confidential Annexes A, B and C (hereinafter: “Defence’s Submission of 18 July 2025”).

³⁵ [Order of 8 September 2025](#), para. 23.

³⁶ [Order of 8 September 2025](#), para. 25 (emphasis added).

³⁷ See [Decision of 24 September 2025](#), paras 8-10.

³⁸ [Decision of 24 September 2025](#), para. 22.

³⁹ [Decision of 24 September 2025](#), para. 12 (footnotes omitted).

28. The Pre-Trial Chamber also instructed the Panel to provide an assessment on the following issues:

- (i) whether and, if so, at what level Mr Duterte suffers from any medical condition which might have an effect on his ability to follow and take part in the ongoing pre-trial proceedings, including the confirmation of charges hearing; and
- (ii) whether any special measures or adjustments are recommended to address any medical condition of Mr Duterte, also in light of any prognosis, during the pre-trial proceedings, including the confirmation of charges hearing.⁴⁰

29. Following a request by the Defence for the Panel to issue an additional report “focu[s]ing on whether Mr Duterte’s current cognitive state would permit him to flee the ongoing judicial proceedings, to intimidate witnesses, or to commit crimes”,⁴¹ the Pre-Trial Chamber issued the Decision of 7 January 2026,⁴² rejecting the Defence’s request on the basis that the Panel had already provided an “independent assessment on Mr Duterte’s medical condition”.⁴³ The Pre-Trial Chamber also found that “any additional expert report is neither appropriate nor necessary for its adjudication”, noting that “whether the risks under article 58(1)(b) of the Statute identified by the Chamber in the [Initial Decision on Detention] continue to exist is a legal determination to be made by the Chamber”.⁴⁴ Lastly, the Pre-Trial Chamber noted that the Defence could rely upon the Panel’s findings on Mr Duterte’s health condition in its observations with respect to the review of Mr Duterte’s detention.⁴⁵

2. *Duterte OA2 Judgment*

30. The Appeals Chamber confirmed the Initial Decision on Detention.⁴⁶ In particular, in relation to the issue of Mr Duterte’s health condition, the Appeals Chamber recalled that “there is no provision in the Court’s legal texts that specifically provides for the interim or conditional release of a detained person on health grounds”,⁴⁷ but the medical condition of a detained person may have an effect on the

⁴⁰ [Decision of 24 September 2025](#), para. 17.

⁴¹ [Defence’s Request of 19 December 2025](#).

⁴² [Decision of 7 January 2026](#).

⁴³ [Decision of 7 January 2026](#), para. 8.

⁴⁴ [Decision of 7 January 2026](#), para. 9.

⁴⁵ [Decision of 7 January 2026](#), para. 8.

⁴⁶ [Duterte OA2 Judgment](#), para. 130, p. 3.

⁴⁷ [Duterte OA2 Judgment](#), para. 85, referring to Appeals Chamber, *The Prosecutor v. Laurent Koudou 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](#)

risks under article 58(1)(b) of the Statute, or may be a reason for a pre-trial chamber to grant interim release with conditions.⁴⁸

31. The Appeals Chamber further considered, *inter alia*, that, in challenging the Pre-Trial Chamber's findings with respect to the question of whether Mr Duterte's health condition could mitigate the risks identified under article 58(1)(b) of the Statute, the Defence provided "its own reading of the determinations made in the medical reports [relied upon by the Defence] and their purported mitigating impact on the risks identified",⁴⁹ and that "[w]ithout more, these arguments merely express[ed] a disagreement with the Pre-Trial Chamber's assessment of Mr Duterte health condition for the purpose of its examination of the risk under article 58(1)(b) of the Statute".⁵⁰ In this regard, the Appeals Chamber also found that the Pre-Trial Chamber had clearly considered whether the information on Mr Duterte's alleged health situation could mitigate the risks identified under article 58(1)(b) of the Statute,⁵¹ and that it was not apparent from the Initial Decision on Detention, or the arguments presented by the Defence, that the Pre-Trial Chamber's finding that the identified risks "were not mitigated by Mr Duterte's purported condition and also could not be mitigated by any conditions imposed on release" was unreasonable.⁵²

32. Lastly, in rejecting all grounds of appeal raised by the Defence, the Appeals Chamber noted that the Pre-Trial Chamber's conclusions in relation to the risks enumerated in article 58(1)(b) of the Statute as espoused in the Initial Decision on Detention were based on "a comprehensive assessment of the information before it".⁵³

B. Relevant parts of the Impugned Decision

33. The Pre-Trial Chamber took note of the Defence's submission that Mr Duterte's health condition, in particular his cognitive deficiencies, constituted a new fact, with respect to the risks identified in the Initial Decision on Detention under article 58(1)(b)

[provisoire du president Gbagbo](#)", 26 October 2012, ICC-02/11-01/11-278-Conf (OA) (a public redacted version was registered on the same day, ICC-02/11-01/11-278-Red (OA)) (hereinafter: "*Gbagbo* OA Judgment"), para. 86.

⁴⁸ [Duterte OA2 Judgment](#), para. 85, referring to [Gbagbo OA Judgment](#), para. 87.

⁴⁹ [Duterte OA2 Judgment](#), para. 87.

⁵⁰ [Duterte OA2 Judgment](#), para. 87.

⁵¹ [Duterte OA2 Judgment](#), para. 122.

⁵² [Duterte OA2 Judgment](#), para. 127.

⁵³ [Duterte OA2 Judgment](#), para. 129.

of the Statute, which must be considered for the review of his detention.⁵⁴ It also noted that the Defence did not raise any change in the circumstances in respect of Mr Duterte's detention, aside from the alleged cognitive impairment of Mr Duterte.⁵⁵

34. As regards the issue of Mr Duterte's health condition, including his alleged cognitive impairment, the Pre-Trial Chamber recalled that this issue "had already been raised by the Defence at the time of the issuance of the [Initial Decision on Detention]", and that it duly considered the issue of Mr Duterte's health condition in that decision "as part of its assessment regarding possible mitigating factors of the identified risks under article 58(1)(b) of the Statute".⁵⁶ The Pre-Trial Chamber further noted that since the issuance of the Initial Decision on Detention, it received, on 5 December 2025, the Panel's Reports based on the Panel's medical examination of Mr Duterte, pursuant to rules 113 and 135 of the Rules.⁵⁷ The Pre-Trial Chamber considered that "the Panel's Reports do constitute a new fact as to Mr Duterte's health condition which may be taken into consideration for the present review of Mr Duterte's detention".⁵⁸

35. In respect of the Panel's Reports, while taking into account the Panel's findings that "Mr Duterte is '[REDACTED]'", and "[REDACTED]", the Pre-Trial Chamber noted that "none of the experts in the Panel [made] a positive diagnosis of [REDACTED]".⁵⁹ The Pre-Trial Chamber further noted that "the Court-appointed forensic psychiatrist [REDACTED]", and that it "does not consider [the alleged [REDACTED] issue] to be relevant to determine whether the risks under article 58(1)(b) of the Statute continue to exist".⁶⁰ The Pre-Trial Chamber concluded that "the Panel's Reports, and the information contained therein, do not therefore amount to a changed or new fact or circumstance that would warrant modifying the [Initial Decision on Detention] within the meaning of article 60(3) of the Statute".⁶¹

36. In relation to the Defence's Report, the Pre-Trial Chamber noted as follows:

⁵⁴ [Impugned Decision](#), para. 22.

⁵⁵ [Impugned Decision](#), para. 22.

⁵⁶ [Impugned Decision](#), para. 23.

⁵⁷ [Impugned Decision](#), para. 23.

⁵⁸ [Impugned Decision](#), para. 23.

⁵⁹ [Impugned Decision](#), para. 27.

⁶⁰ [Impugned Decision](#), para. 29.

⁶¹ [Impugned Decision](#), para. 30.

[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. Furthermore, the Chamber notes that the Defence's Observations are largely dedicated to providing the Defence's own views on Mr Duterte's health condition, and previous Chamber's decisions, be they related or unrelated to the matter of the review of detention. Since the present instance is not the appropriate venue for such submissions, the Chamber will disregard them.⁶²

C. Summary of the submissions

1. *Defence's submissions*

37. The Defence submits that the Pre-Trial Chamber erred in fact and in law, and "failed to exercise appropriate discretion", when it disregarded the Defence's Report on the basis that it had emanated from a party to the proceedings.⁶³ According to the Defence, the errors of the Pre-Trial Chamber materially affected the Impugned Decision as "Mr Duterte's continued pre-trial detention would, otherwise, have been unjustified".⁶⁴ As a result, the Defence requests that the Appeals Chamber reverse the Impugned Decision and order the immediate release of Mr Duterte.⁶⁵

38. In support of its submission, the Defence first argues that the Defence's Report constitutes a new fact in respect of Mr Duterte's health condition, and therefore a changed circumstance, within the meaning of article 60(3) of the Statute.⁶⁶ It contends that, given that the question of interim release is factually and legally distinct from the issue of fitness to stand trial,⁶⁷ the Defence's Report is "highly relevant to the assessment of Mr Duterte's continuing detention" since it assessed Mr Duterte's health condition and was prepared for the specific purpose of evaluating his ability "to actuate the risks set out in [a]rticle 58(1)(b) [of the Statute]".⁶⁸ According to the Defence, the Defence's Report substantiates that Mr Duterte's health condition undermines his

⁶² [Impugned Decision](#), para. 24 (footnotes omitted).

⁶³ [Appeal Brief](#), paras 1, 15, 23, 33.

⁶⁴ [Appeal Brief](#), paras 22, 30, 37.

⁶⁵ [Appeal Brief](#), paras 4, 21, 37.

⁶⁶ [Appeal Brief](#), paras 15-22.

⁶⁷ [Appeal Brief](#), paras 20-21; *see also* para. 33.

⁶⁸ [Appeal Brief](#), paras 15-16.

ability to abscond, to threaten witnesses or the investigation and to continue the commission of offences.⁶⁹ The Defence submits that as such, and in light of “the intent and purpose of periodic review under [a]rticle 60(3)”,⁷⁰ as well as “the jurisprudence of this Court [which] recognises that changed circumstances include the effect of a detainee’s medical condition on the statutory risks under [a]rticle 58(1)(b)”, the Pre-Trial Chamber was obliged to consider the Defence’s Report.⁷¹

39. Second, the Defence avers that the Defence’s Report is relevant “medical evidence supplied by leading professionals in good standing” and that the Pre-Trial Chamber erred by refusing to engage with its content and the related Defence’s arguments, solely on the basis that it was tendered by a party to the proceedings.⁷² It contends that the Pre-Trial Chamber was required to examine the Defence’s Report and assess its probative value, since “[e]vidence cannot be rendered inadmissible merely by virtue of the identity of its submitting party”, and the Court’s jurisprudence favours the admission of all evidence that is *prima facie* relevant.⁷³

40. Lastly, the Defence submits that the Pre-Trial Chamber’s dismissal of the Defence’s Report undermines the principle of equality of arms and the fairness of the proceedings, and deprives Mr Duterte of his right to a reasoned determination.⁷⁴

2. Prosecutor’s submissions

41. The Prosecutor requests that the Appeals Chamber dismiss the appeal, as the Defence disregards the Pre-Trial Chamber’s relevant findings and has failed to establish any error of the Pre-Trial Chamber which would have materially impacted the outcome of the Impugned Decision.⁷⁵

42. The Prosecutor first submits that the Pre-Trial Chamber was “entitled not to consider or rely on the Defence’s Report” and that the Pre-Trial Chamber’s “reasons for rejecting the report are consistent with its discretion to rule on the admissibility of

⁶⁹ [Appeal Brief](#), paras 16, 26-29.

⁷⁰ [Appeal Brief](#), para. 21.

⁷¹ [Appeal Brief](#), para. 17.

⁷² [Appeal Brief](#), paras 23, 32.

⁷³ [Appeal Brief](#), paras 24-25.

⁷⁴ [Appeal Brief](#), paras 23-25, 34.

⁷⁵ [Prosecutor’s Response](#), paras 3, 7, 26, 31-32.

any evidence under article 69(4) of the Statute as well as the free evaluation of evidence under rule 63(2) of the Rules”.⁷⁶

43. In this regard, the Prosecutor argues that the Pre-Trial Chamber, in any event, considered the impact of the Defence’s Report on the fairness of the proceedings,⁷⁷ assessed the probative value of the Defence’s Report, pursuant to rule 63(2) of the Rules,⁷⁸ and found that its probative value would not outweigh the fairness concerns.⁷⁹

44. Regarding the impact on the fairness of the proceedings, the Prosecutor avers that the Pre-Trial Chamber considered such impact of the Defence’s Report, given that, as recalled in the Impugned Decision, the Pre-Trial Chamber has emphasised that it would not rely on medical reports adduced by a party in order to preserve the fairness of the proceedings, in its previous decisions, namely the Order of 8 September 2025 and the Decision of 24 September 2025.⁸⁰ Concerning the probative value of the Defence’s Report, the Prosecutor first points out that the Defence’s filing of the Defence’s Report on 9 January 2026, two days after the Decision of 7 January 2026, disregards the Pre-Trial Chamber’s rulings in said decision.⁸¹ He further contends that the Defence’s Report “contains exactly the same subject matter” as the reports submitted by the Defence which the Pre-Trial Chamber previously rejected in the Decision of 7 January 2026,⁸² and that the Defence appears to acknowledge the probative value of the Panel’s Reports as it relied upon them extensively in the Defence’s Observations of 9 January 2026.⁸³

45. Second, the Prosecutor submits that as “it was not an error for the Pre-Trial Chamber to reject the Defence’s Report, it follows that the [Pre-Trial Chamber] did not err in failing to treat the Defence[’s] Report as a new fact or changed circumstances within the meaning of article 60(3) of the Statute”.⁸⁴ According to the Prosecutor, the Defence’s Report, in any event, does not contain “new facts” requiring an amendment

⁷⁶ [Prosecutor’s Response](#), paras 8-10, 16.

⁷⁷ [Prosecutor’s Response](#), paras 11-12.

⁷⁸ [Prosecutor’s Response](#), paras 13-14.

⁷⁹ [Prosecutor’s Response](#), paras 15-16.

⁸⁰ [Prosecutor’s Response](#), paras 11-12, referring to [Impugned Decision](#), para. 24.

⁸¹ [Prosecutor’s Response](#), paras 13-14.

⁸² [Prosecutor’s Response](#), para. 13, referring to Defence’s Report, p. 2.

⁸³ [Prosecutor’s Response](#), para. 13, referring to [Defence’s Observations of 9 January 2026](#), paras 6-7, 12-14.

⁸⁴ [Prosecutor’s Response](#), para. 17.

of the Initial Decision on Detention,⁸⁵ because: (i) the medical practitioners commissioned by the Defence did not conduct a new examination of Mr Duterte;⁸⁶ and (ii) the Defence's Report relies upon the Panel's Reports for updated information with respect to Mr Duterte's health condition and, thus, does not contain any new information in this regard.⁸⁷ The Prosecutor argues that, as the Pre-Trial Chamber correctly found, the Panel's Reports, therefore, contain "the most current reliable information" on the matter,⁸⁸ and it is the Panel's Reports that constitute "a new fact as to Mr Duterte's health condition which may be taken into consideration in the present review of Mr Duterte's detention".⁸⁹

46. Third, the Prosecutor submits that the Defence merely repeats its argument that the rejection of the Defence's Report is an error and fails to raise any error of law or fact in asserting that the Defence's Report "is the only fact capable of mitigating the risks previously identified" by the Pre-Trial Chamber under article 58(1)(b) of the Statute.⁹⁰

47. Lastly, the Prosecutor submits that, even if the Appeals Chamber were to find that the Pre-Trial Chamber committed an error of law in refusing to rely upon the Defence's Report, such error did not materially affect the Impugned Decision.⁹¹ He avers that the Defence's Report: (i) could not have been afforded any probative value that would alter the assessment on Mr Duterte's health condition and the risks under article 58(1)(b) of the Statute;⁹² and (ii) opines on issues that are outside the areas and scope of expertise of its authors and are a matter for a legal determination by the Pre-Trial Chamber.⁹³ The Prosecutor adds that "the reasoning of the authors is [...] abstract and decontextualised",⁹⁴ and that the sources of the Defence's Report are "problematic" as its authors "do not appear to have been privy to the vast evidence [...] which the

⁸⁵ [Prosecutor's Response](#), para. 18.

⁸⁶ [Prosecutor's Response](#), para. 19.

⁸⁷ [Prosecutor's Response](#), para. 20.

⁸⁸ [Prosecutor's Response](#), para. 20.

⁸⁹ [Prosecutor's Response](#), para. 21, *referring to* [Impugned Decision](#), para. 23.

⁹⁰ [Prosecutor's Response](#), paras 23-24.

⁹¹ [Prosecutor's Response](#), paras 26-30.

⁹² [Prosecutor's Response](#), para. 26.

⁹³ [Prosecutor's Response](#), para. 27.

⁹⁴ [Prosecutor's Response](#), para. 28.

[Pre-Trial] Chamber and Appeals Chamber relied upon to find that Mr Duterte poses a risk under article 58(1)(b) of the Statute”.⁹⁵

3. *Victims’ observations*

48. The CLRVs request that the Appeals Chamber dismiss the appeal in its entirety.⁹⁶ In their view, the Defence repeats its previously unsuccessful arguments, merely disagrees with the Pre-Trial Chamber’s determinations, and challenges an earlier ruling of the Pre-Trial Chamber for which it had not sought leave to appeal, without demonstrating a discernible error in the Impugned Decision.⁹⁷

49. The CLRVs first submit that, despite the Decision of 7 January 2026, the Defence “unilaterally” filed the Defence’s Report, “disregard[ing] the [Pre-Trial] Chamber’s reasoning on the lack of appropriateness to engage medical professionals on this legal question [of article 58(1)(b) risk factors]”.⁹⁸ They “reject the [Defence’s] distorted presentation of relevancy of the [Defence’s Report]” and oppose the Defence’s argument that the Pre-Trial Chamber was obliged to consider the report.⁹⁹ According to the CLRVs, “the Defence is dissatisfied with the Chamber’s findings on Mr Duterte’s fitness to participate in the pre-trial proceedings; a finding [the Defence] continues to assail from all possible angles”.¹⁰⁰

50. In this regard, the CLRVs argue that “the terms of reference for the [Defence’s Report] overstepped the sphere of medical expertise by posing entirely legal questions to party-appointed medical professionals”, and that the Defence erroneously characterises the Defence’s Report as evidence.¹⁰¹ They also aver that the conclusions set out in the Defence’s Report, in any event, do not support the “exaggerated claims of infirmness put forth by the Defence”.¹⁰² In this vein, the CLRVs submit that the Defence’s contentions concerning the Defence’s Report, in particular: (i) that “the only practicable basis for modification under [a]rticle 60(3) is evidence of a material change, such as the accused’s health”; (ii) that the Panel’s Reports are “outdated”; and (iii) that

⁹⁵ [Prosecutor’s Response](#), paras 29-30.

⁹⁶ [CLRVs’ Response](#), para. 3.

⁹⁷ [CLRVs’ Response](#), paras 2-3, 13-14, 27-28, 30.

⁹⁸ [CLRVs’ Response](#), para. 14.

⁹⁹ [CLRVs’ Response](#), para. 17.

¹⁰⁰ [CLRVs’ Response](#), para. 17.

¹⁰¹ [CLRVs’ Response](#), paras 18-19.

¹⁰² [CLRVs’ Response](#), para. 18.

the Pre-Trial Chamber did not provide a reasoned decision for dismissing the Defence's Report, are "misguided" and not "rooted in actual fact".¹⁰³

51. Lastly, the CLRVs submit that the Defence is unable to demonstrate any error that would have materially affected the outcome of the Impugned Decision.¹⁰⁴ The CLRVs contend that the Pre-Trial Chamber's determination not to rely upon the Defence's Report cannot be "elevated to a decisive factor in the Impugned Decision" since Mr Duterte's medical condition and the reports are but one of the factors on which the Pre-Trial Chamber's decision to maintain Mr Duterte's pre-trial detention is founded.¹⁰⁵

D. Determination by the Appeals Chamber

52. The Defence submits that the Pre-Trial Chamber, in its assessment under article 60(3) of the Statute, committed errors of law and of fact, and abused its discretion, by refusing to consider the Defence's Report, solely on the basis that it was submitted by a party to the proceedings.¹⁰⁶ The Defence argues that the report constitutes: (i) a new fact and a changed circumstance within the meaning of article 60(3) of the Statute;¹⁰⁷ and (ii) relevant expert evidence of which the Pre-Trial Chamber was obliged to assess the content.¹⁰⁸ As such, it avers that the Pre-Trial Chamber's dismissal of the Defence's Report infringes upon Mr Duterte's right to a reasoned decision and his fair trial rights.¹⁰⁹ The Appeals Chamber will examine each argument of the Defence in turn below.

I. Relevant legal framework

53. According to article 60(3) of the Statute, a pre-trial chamber of the Court "shall periodically review its ruling on the release or detention of the person, and may do so at any time on the request of the Prosecutor or the person", and "[u]pon such review, [...] may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require". Rule 118(2) of the Rules further

¹⁰³ [CLRVs' Response](#), paras 19-21.

¹⁰⁴ [CLRVs' Response](#), para. 25.

¹⁰⁵ [CLRVs' Response](#), paras 24-25, 30.

¹⁰⁶ [Appeal Brief](#), paras 1, 10, 23.

¹⁰⁷ [Appeal Brief](#), paras 15-17, 19, 21-22.

¹⁰⁸ [Appeal Brief](#), paras 23-30, 32-33.

¹⁰⁹ [Appeal Brief](#), paras 23-25, 34.

provides that the pre-trial chamber “shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor”.

54. In this context, the Appeals Chamber recalls that “the scope of the review carried out in reaching a decision under article 60(3) is potentially much more limited than that to be carried out in reaching a decision under article 60(2) of the Statute”.¹¹⁰ The pre-trial chamber “does not have to enter findings on the circumstances already decided upon in the ruling on detention” and does not have to “entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed in previous decisions”.¹¹¹ Ultimately, when assessing whether changed circumstances warrant an alteration of the ruling on detention, it is for the first instance chamber to satisfy itself “that the conditions under article 58(1) of the Statute, as required by article 60(2) of the Statute, continue to be met”.¹¹²

2. Preliminary issues

55. The Appeals Chamber notes that the Defence raises, for the first time on appeal, arguments in relation to the Pre-Trial Chamber’s determination that it would not rely upon any reports provided by individuals who had been engaged in connection with the present case on behalf of a party. The Defence did not raise this issue before the Pre-Trial Chamber either (i) when the Pre-Trial Chamber, in the Order of 8 September 2025, found that “in order to ensure the shortlisted experts’ impartiality and neutrality, individuals who have already been engaged in connection with the present case on behalf of a party shall not be included in the Registry’s shortlist”,¹¹³ or (ii) when the

¹¹⁰ [Gbagbo OA Judgment](#), para. 24; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60\(3\) of the Rome Statute”](#), 29 October 2013, ICC-02/11-01/11-548-Red (OA4) (hereinafter: “Gbagbo OA4 Judgment”), para. 52.

¹¹¹ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [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”](#), 19 November 2019, ICC-01/05-01/08-1019 (OA4) (hereinafter: “Bemba OA4 Judgment”), para. 53; [Gbagbo OA4 Judgment](#), para. 112; 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 “First review of the detention of Mr Mahamat Said Abdel Kani”](#), 23 August 2022, ICC-01/14-01/21-460 (OA4) (hereinafter: “Said OA4 Judgment”), para. 36.

¹¹² [Bemba OA4 Judgment](#), para. 52.

¹¹³ [Order of 8 September 2025](#), para. 25.

Pre-Trial Chamber, in the Decision of 24 September 2025, emphasised that it would disregard the suggestions made by the parties with respect to additional experts for appointment, considering the need to ensure the shortlisted experts' impartiality and neutrality.¹¹⁴

56. In the view of the Appeals Chamber, the Defence could have reasonably raised its concerns in the proceedings before the Pre-Trial Chamber. However, since the Defence did not do so, the Pre-Trial Chamber did not have an opportunity to consider the Defence's arguments in this respect and make a finding thereupon. Given the nature of these arguments, the Appeals Chamber finds that, if it were to examine them, this would exceed the scope of its appellate review, as there is no specific finding of the Pre-Trial Chamber to review in this regard.¹¹⁵

57. In the same vein, the Appeals Chamber notes that the Defence appears to challenge the Pre-Trial Chamber's rejection, in the Decision of 7 January 2026, of the Defence's request that the Panel issue an additional report on Mr Duterte's ability to actualise the risks under article 58(1)(b) of the Statute.¹¹⁶ This decision is not under review in the present appeal. As a result, the Defence's arguments in this regard are dismissed.

58. Lastly, the Appeals Chamber notes that the Defence raises arguments concerning the Initial Decision on Detention,¹¹⁷ which the Appeals Chamber has unanimously confirmed in the *Duterte* OA2 Judgment.¹¹⁸ The Appeals Chamber finds that such a practice is not an appropriate use of judicial time and resources.¹¹⁹ Accordingly, the Appeals Chamber will not entertain the Defence's arguments in this respect.

¹¹⁴ [Decision of 24 September 2025](#), para. 12.

¹¹⁵ See Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, [Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 28 February 2024 entitled "Reparations Order"](#), 7 April 2025, ICC-02/04-01/15-2108 (A3), paras 87, 225, *referring to, inter alia*, Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, [Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled "Sentence"](#), 15 December 2022, ICC-02/04-01/15-2023 (A2), para. 108; Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber II entitled "Decision Setting the Regime for Evidence Disclosure and Other Related Matters"](#), 17 June 2015, ICC-02/04-01/15-251 (OA3), para. 45.

¹¹⁶ See [Appeal Brief](#), paras 35-36.

¹¹⁷ See [Appeal Brief](#), paras 18-21.

¹¹⁸ See [Duterte OA2 Judgment](#), para. 130, p. 3.

¹¹⁹ See [Said OA4 Judgment](#), para. 67.

3. *Whether the Defence's Report constitutes a new fact and changed circumstance within the meaning of article 60(3) of the Statute*

59. Turning to the merits, the Appeals Chamber notes the Defence's contention that the Defence's Report constitutes a new fact, and therefore a changed circumstance, within the meaning of article 60(3) of the Statute.¹²⁰ In support of its submission, the Defence argues that the submission of the Defence's Report postdates the Pre-Trial Chamber's assessment of the Panel's Reports.¹²¹

60. The Appeals Chamber recalls that:

The passage of time alone does not *per se* lead to the conclusion that circumstances have changed in favour of interim release in the context of a review under article 60(3) of the Statute. Rather, this must be decided in the context of the specific circumstances in each case.¹²²

61. In the circumstances of the instant case, the Appeals Chamber notes that, other than arguing in the abstract that “[h]ealth, by its very nature, is not static, and organic conditions such as those from which Mr Duterte suffers are progressive and degenerative”,¹²³ the Defence has not indicated with specificity why the passage of “four months” between the issuance of the Initial Decision on Detention and the filing of the Defence's Report leads to the conclusion that the Defence's Report constitutes a “more recent opinion”, and thus a new fact, in respect of Mr Duterte's health condition, in comparison to the information provided in the Panel's Reports which was submitted before the Pre-Trial Chamber on 5 December 2025.¹²⁴

62. In this regard, the Appeals Chamber takes note of the submissions of the Prosecutor and the CLRVs that the Defence's Report does not include any new information concerning Mr Duterte's health condition since the two medical practitioners selected by the Defence did not conduct any new examination of Mr Duterte.¹²⁵ The Appeals Chamber observes that the Defence has not explained why or how the Defence's Report, without any examination of Mr Duterte, may provide more updated or reliable information concerning Mr Duterte's health condition than

¹²⁰ [Appeal Brief](#), paras 15-22.

¹²¹ [Appeal Brief](#), para. 19.

¹²² [Said OA4 Judgment](#), paras 1, 40.

¹²³ [Appeal Brief](#), para. 19.

¹²⁴ See [Appeal Brief](#), para. 21.

¹²⁵ See [Prosecutor's Response](#), paras 13, 18-20. See also [CLRVS' Response](#), paras 20-21.

that provided in the Panel's Reports. Indeed, the Appeals Chamber notes that the Defence's Report relies upon the information already provided in the Panel's Reports with respect to Mr Duterte's health condition and explicitly acknowledges that "[n]o independent clinical re-examination was conducted for the purpose of this specific risk assessment".¹²⁶ Furthermore, the Defence has not substantiated as to how "the Court's truth-seeking function" was "destabilis[ed]" by the Pre-Trial Chamber's determination not to rely upon the Defence's Report.¹²⁷

63. In light of the foregoing, the Appeals Chamber finds that the Defence has failed to establish any errors of the Pre-Trial Chamber in relying upon the Panel's Reports which provide the most updated medical information in respect of Mr Duterte's health condition. Consequently, and contrary to the Defence's argument,¹²⁸ the Appeals Chamber finds no inconsistency between the Pre-Trial Chamber's rejection of the Defence's Report and the Pre-Trial Chamber's finding that while the Panel's Reports constitute a new fact as to Mr Duterte's health condition, the Panel's Reports and the information therein do not amount to a new fact or changed circumstance that would warrant modifying the Initial Decision on Detention under article 60(3) of the Statute.¹²⁹ Accordingly, the Defence's arguments in this regard are rejected.

4. *Whether the Defence's Report constitutes expert evidence of which the Pre-Trial Chamber was obliged to assess the content*

64. The Defence submits that the Defence's Report is pertinent expert evidence and, as such, the Pre-Trial Chamber was required to examine its content in its assessment under article 58(1)(b) of the Statute.¹³⁰ The Appeals Chamber considers that the Defence's arguments in this regard are premised on its misunderstanding of the legal framework of the Court concerning a pre-trial chamber's review, pursuant to article 60(3) of the Statute. The Defence appears to conflate two discrete issues, namely, on the one hand, the Pre-Trial Chamber's assessment of Mr Duterte's health condition, and, on the other hand, the Pre-Trial Chamber's determination in respect of the risk factors under article 58(1)(b) of the Statute set out in the Initial Decision on

¹²⁶ Defence's Report, p. 2.

¹²⁷ See [Appeal Brief](#), para. 25.

¹²⁸ See [Appeal Brief](#), para. 15.

¹²⁹ See [Impugned Decision](#), paras 23, 30.

¹³⁰ [Appeal Brief](#), paras 21, 23-29, 32-33.

Detention. While related, these two issues require a distinct assessment both with regard to their content and their nature.

65. In this context, the Appeals Chamber first notes that, in its review of Mr Duterte's detention under article 60(3) of the Statute, the Pre-Trial Chamber assessed Mr Duterte's health condition as one of the factors which may have an effect on the risk factors under article 58(1)(b) of the Statute that were identified in the Initial Decision on Detention. As the Appeals Chamber has found above, the Pre-Trial Chamber, in its examination of Mr Duterte's health condition, took into account the Panel's Reports which provide the most updated and reliable information on Mr Duterte's health condition.¹³¹ Recalling that the Defence's Report provides the medical practitioners' opinion with respect to the impact of Mr Duterte's health condition on the risk factors under article 58(1)(b) of the Statute, without any new information with respect to Mr Duterte's health condition, the Appeals Chamber finds no error in the Pre-Trial Chamber's approach in this respect and considers that the Defence's Report provides information which has no bearing on the Pre-Trial Chamber's assessment under article 60(3) of the Statute.

66. The Appeals Chamber further notes that the Pre-Trial Chamber, on the basis of the information before it, subsequently assessed whether there were any new or changed circumstances in relation to the risks under article 58(1)(b) of the Statute that were identified in the Initial Decision on Detention, namely whether Mr Duterte's continued detention is necessary to ensure: (i) his appearance; (ii) that he does not obstruct or endanger the investigation or court proceedings; and (iii) preventing him from continuing with the commission of the crimes alleged in the Arrest Warrant or related crimes within the jurisdiction of the Court.

67. The Appeals Chamber considers that while reports provided by experts with up-to-date and reliable medical information may assist the Pre-Trial Chamber in its assessment of Mr Duterte's health condition, the assessment of the risk factors under article 58(1)(b) of the Statute, including the impact of Mr Duterte's health condition on these risks, is a legal determination to be made by the Pre-Trial Chamber that does not require any assistance of medical practitioners. In this regard, the Appeals Chamber

¹³¹ See paragraph 63 above.

recalls that experts are persons “who, by virtue of some specialised knowledge, skill or training can assist the Chamber in understanding or determining an issue of a *technical* nature that is in dispute”, and that it is for a chamber of the Court to decide whether the person qualifies as an expert and to assess the reliability and probative value of any report prepared by the expert.¹³²

68. Accordingly, the Appeals Chamber is not persuaded by the Defence’s contention that the Defence’s Report constitutes expert evidence of which the Pre-Trial Chamber was obliged to assess the content, in its review of the risk factors under article 58(1)(b) of the Statute. Therefore, the Appeals Chamber rejects the arguments of the Defence in this regard.

69. In this context, the Appeals Chamber also notes the Defence’s contention alleging “inconsistent” or “vacillating” reasoning of the Pre-Trial Chamber in relying upon the Panel’s Reports which were submitted in the context of the issue of Mr Duterte’s fitness to stand trial, in lieu of the Defence’s Report which was prepared for “the discrete issue of risk”.¹³³ The Appeals Chamber finds no error in the Pre-Trial Chamber’s approach in relying upon the information available in the record of the case concerning the health condition of Mr Duterte, in particular the Panel’s Reports.¹³⁴ The assessment of a suspect’s medical condition is discrete from a pre-trial chamber’s legal determination on the fitness to take part in the pre-trial proceedings. Accordingly, the Appeals Chamber rejects the arguments of the Defence in this respect.

5. *The alleged effect of the Impugned Decision on Mr Duterte’s Fair Trial Rights*

70. The Defence submits that the Pre-Trial Chamber’s rejection of the Defence’s Report on the “sole basis [...] that it had been proffered by a party to the proceedings”

¹³² See Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, [Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”](#), 15 December 2022, ICC-02/04-01/15-2022-Red (A), para. 1588 (emphasis added).

¹³³ See [Appeal Brief](#), para. 21.

¹³⁴ See also Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, [Decision on the review of Laurent Gbagbo’s detention pursuant to article 60\(3\) of the Rome Statute](#), 12 November 2012, ICC-02/11-01/11-291, para. 51.

infringed upon Mr Duterte's rights to a fair hearing,¹³⁵ and "a reasoned determination"¹³⁶ and undermines the principle of equality of arms.¹³⁷

71. The Appeals Chamber recalls that "[t]he relevant chamber must 'ensure the fairness of the proceedings in compliance with articles 64(2) and 67 of the Statute'",¹³⁸ and that "protecting the integrity of the proceedings [...] is a matter that is necessarily within the jurisdiction of the Pre-Trial Chamber".¹³⁹ This is also reflected in the context of the assessment of evidence, in particular in article 69(4) of the Statute which provides that a chamber of the Court has discretion to "rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and *any prejudice that such evidence may cause to a fair trial*".¹⁴⁰

72. In the present case, the Appeals Chamber first notes that the Pre-Trial Chamber consistently emphasised that, in order to preserve the fairness of the proceedings, it would not rely upon medical reports provided by any party to the proceedings.¹⁴¹ As noted above, the Defence did not raise any issues in this regard before the Pre-Trial Chamber.¹⁴²

73. The Appeals Chamber further notes that the Pre-Trial Chamber provided ample opportunities for the parties and participants to present their submissions and

¹³⁵ [Appeal Brief](#), para. 23.

¹³⁶ [Appeal Brief](#), para. 24; *see also* para. 34.

¹³⁷ [Appeal Brief](#), para. 25.

¹³⁸ *The Prosecutor v. Mahamad Said Abdel Kani*, [Judgment on the appeal of Mr Mahamad 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 (OA3), para. 61. *See also 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 Trial Chamber I of 23 January 2024 entitled "Decision on the Defence's request for postponement of the resumption of the Defence case", 6 March 2024, ICC-02/05-01/20-1097-Conf (OA13), para. 50; *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, [Dissenting Opinion of Judge Luz Del Carmen Ibáñez Carranza to Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Trial Chamber I of 17 February 2023 entitled "Decision on the admissibility of video \(DAR-OTP-0216-0119\) and records of telephone calls \(DAR-OTP-0216-0127, DAR-OTP-0216-0128\)"](#), 28 June 2023, ICC-02/05-01/20-982-OPI, para. 8; *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, [Dissenting Opinion of Judge Solomy Balungi Bossa and Judge Luz del Carmen Ibáñez Carranza](#), 19 December 2022, ICC-01/14-01/22-124-Anx-Red (OA3), para. 9.

¹³⁹ Appeals Chamber, *The Prosecutor v. Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber II dated 20 July 2011 entitled "Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence"](#), 10 November 2011, ICC-01/09-02/11-365 (OA3), para. 46.

¹⁴⁰ Emphasis added.

¹⁴¹ *See Impugned Decision*, para. 24; [Order of 8 September 2025](#), para. 25; [Decision of 24 September 2025](#), para. 12; [Decision of 7 January 2026](#), para. 9.

¹⁴² *See* paragraphs 55-56 above.

observations in relation to its appointment of the Panel and to the Panel's Reports, and duly took them into account in its determinations.¹⁴³ As noted above, the Pre-Trial Chamber also provided that the Defence could rely upon the Panel's findings on the health condition of Mr Duterte in its observations in respect of the review of the Mr Duterte's detention,¹⁴⁴ which the Defence indeed did.¹⁴⁵ Furthermore, the Pre-Trial Chamber, in the Impugned Decision, examined the Defence's specific arguments concerning Mr Duterte's health condition under the section entitled "Article 58(1)(b) of the Statute and Mr Duterte's medical condition".¹⁴⁶

74. In this context, the Appeals Chamber also notes that the Defence previously submitted before the Pre-Trial Chamber two reports concerning Mr Duterte's health condition which were prepared by the medical practitioners selected by the Defence.¹⁴⁷ These reports were provided to the Panel and the Panel indicated in its reports that it took into considerations these reports in its assessment of Mr Duterte's health condition.¹⁴⁸ In this regard, the Appeals Chamber notes the Decision of 24 September 2025 in which the Pre-Trial Chamber instructed that the Panel shall be provided "with all relevant documents and materials, including: (i) Mr Duterte's medical record, including *any new materials* added to it following the issuance of the present decision; and (ii) all relevant filings on the case record".¹⁴⁹ In said instruction, the Pre-Trial Chamber included the aforementioned reports as relevant filings to be provided to the Panel.¹⁵⁰

75. In light of the foregoing, the Appeals Chamber considers that the Defence has failed to establish any error of the Pre-Trial Chamber with respect to the fairness of the proceedings. Therefore, the Appeals Chamber rejects the arguments of the Defence in this respect.

¹⁴³ See paragraphs 26-27, 29 above.

¹⁴⁴ [Decision of 7 January 2026](#), para. 8.

¹⁴⁵ [Defence's Observations of 9 January 2026](#), paras 6-7, 12-14.

¹⁴⁶ See [Impugned Decision](#), paras 26-29.

¹⁴⁷ See Defence's Submission of 18 July 2025.

¹⁴⁸ Annex I to Panel's Reports, para. 3.2; Annex II to Panel's Reports, para. 1.7; Annex III to Panel's Reports, p. 7; Annex IV to Panel's Reports, para. 24.

¹⁴⁹ [Decision of 24 September 2025](#), para. 20.

¹⁵⁰ See [Decision of 24 September 2025](#), para. 20, fn. 13.

76. As regards the alleged breach of the principle of equality of arms, the Appeals Chamber recalls that the principle requires that “each party must be afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the other party”.¹⁵¹ The Appeals Chamber notes that the Defence does not substantiate how the Pre-Trial Chamber’s determination not to rely upon the Defence’s Report placed it at a substantial disadvantage *vis-à-vis* the Prosecutor. In this context, the Appeals Chamber recalls the Pre-Trial Chamber’s consistent position that it would not rely upon medical reports provided by *any* party to the proceedings, and also notes that the Defence relied upon the Panel’s findings on Mr Duterte’s condition in its observations with respect to the review of the Mr Duterte’s detention. Accordingly, the Appeals Chamber rejects the Defence’s arguments in this regard.

77. Regarding the alleged lack of reasoning, the Appeals Chamber recalls that as regards the “minimum threshold” required for a reasoned decision, it has held that

‘[t]he extent of the reasoning will depend on the circumstances of the case’. Such reasoning ‘will not necessarily require reciting each and every factor that was before the [...] Chamber to be individually set out, but it must identify which facts it found to be relevant in coming to its conclusion.’ ‘Relatively sparse’ reasoning will not amount to an error if it is nonetheless ‘sufficiently clear to discern the basis’ for the finding challenged on appeal.¹⁵²

78. While the reasoning of the Pre-Trial Chamber for its determination not to consider the Defence’s Report in the Impugned Decision was relatively sparse, the Appeals Chamber notes that the Pre-Trial Chamber recalled its prior decisions in this regard, emphasising the impartiality and neutrality of the Panel, and stressed that “with a view to preserving the fairness of the proceedings”, it would not rely upon the Defence’s Report, “since the Defence lacks the requisite expertise and is a party to the

¹⁵¹ See *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the appeals against Trial Chamber II’s ‘Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable’](#), 18 July 2019, ICC-01/04-01/06-3466-Red (A7-A8), para. 248.

¹⁵² *Situation in the Bolivarian Republic of Venezuela I*, [Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I’s “Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute”](#), 1 March 2024, ICC-02/18-89 (OA), para. 187, referring to Appeals Chamber, *The Prosecutor v. Mahamat Said Abdel Kani*, [Judgement on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II entitled ‘Decision on the “Prosecution’s Request for Extension of Contact Restrictions”’](#), 29 June 2021, ICC-01/14-01/21-111-US-Exp (a public redacted version registered on 17 May 2022, ICC-01/14-01/21-111-Red), para. 45 (footnotes omitted).

proceedings”.¹⁵³ In these circumstances, the Appeals Chamber does not consider that the Pre-Trial Chamber failed to comply with its obligation to provide a reasoned decision and therefore made an error of law.

79. Accordingly, the Appeals Chamber rejects the Defence’s arguments concerning the principle of equality of arms, as well as Mr Duterte’s rights to a fair hearing and to a reasoned decision.

6. Overall conclusion

80. Having rejected or dismissed all of the Defence’s arguments, the Appeals Chamber rejects the Defence’s ground of appeal in its entirety.

V. NOTIFICATION OF THE JUDGMENT ON THE APPEAL

81. Pursuant to rule 158(2) of the Rules, read in conjunction with article 83(4) of the Statute, judgments of the Appeals Chamber “shall be delivered in open court”. However, in the circumstances of the present appeal and considering the confidential nature of the matter at hand, the Appeals Chamber finds it appropriate to deliver this judgment by way of notification to the parties (regulations 31 and 32 of the Regulations).

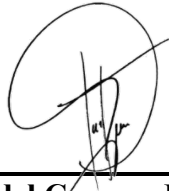
VI. APPROPRIATE RELIEF

82. In an appeal pursuant to article 82(1)(b) of the Statute, the Appeals Chamber may confirm, reverse or amend the decision appealed.¹⁵⁴ In the present case, the Appeals Chamber unanimously confirms the Impugned Decision.

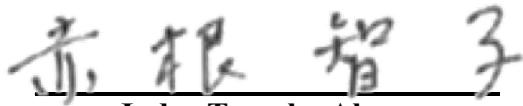
¹⁵³ See [Impugned Decision](#), para. 24.

¹⁵⁴ See rule 158(1) of the Rules.

Done in both English and French, the English version being authoritative.



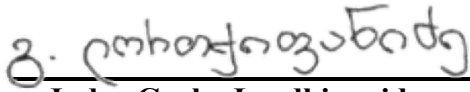
Judge Luz del Carmen Ibáñez Carranza
Presiding



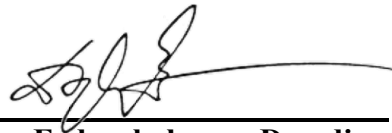
Judge Tomoko Akane



Judge Solomy Balungi Bossa



Judge Gocha Lordkipanidze



Judge Erdenebalsuren Damdin

Dated this 6th day of March 2026

At The Hague, The Netherlands