

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/21-01/25 OA2
Date: 28 November 2025**

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 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’”

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 the decision of Pre-Trial Chamber I entitled “Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’” of 26 September 2025 (ICC-01/21-01/25-282-Red),

After deliberation,

Unanimously,

Delivers the following

JUDGMENT

1. The decision of Pre-Trial Chamber I entitled “Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’” of 26 September 2025 (ICC-01/21-01/25-282-Red) is confirmed.
2. The Defence is directed to file a public redacted version of filing ICC-01/21-01/25-287-Conf by 16h00 on 3 December 2025.
3. The Registrar is directed to reclassify as public documents ICC-01/21-01/25-290-Conf and ICC-01/21-01/25-291-Conf.

REASONS

I. INTRODUCTION

1. On 26 September 2025, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) issued its decision on the Defence’s requests for interim release (hereinafter: “Impugned Decision”).¹

¹ [Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’](#), ICC-01/21-01/25-282-Conf (public redacted version filed on 10 October 2025 (ICC-01/21-01/25-282-Red)).

2. On 14 October 2025, the Defence for Mr Rodrigo Roa Duterte (hereinafter: “Mr Duterte”) filed its appeal brief against the Impugned Decision (hereinafter: “Appeal Brief”).²

3. The Defence raises three grounds of appeal, namely that (i) the Pre-Trial Chamber erroneously found that Mr Duterte poses a risk under article 58(1)(b)(i) to (iii) of the Statute (hereinafter: “First Ground of Appeal”);³ (ii) the Pre-Trial Chamber erred in its rejection of the State guarantees (hereinafter: “Second Ground of Appeal”);⁴ and (iii) the Pre-Trial Chamber erred by failing to take into account humanitarian considerations in assessing the right to interim release (hereinafter: “Third Ground of Appeal”).⁵

II. PROCEDURAL HISTORY

A. Proceedings before the Pre-Trial Chamber

4. On 7 March 2025, the Pre-Trial Chamber issued a warrant for the arrest of Mr Duterte (hereinafter: “Arrest Warrant”).⁶

5. On 12 March 2025, Mr Duterte was surrendered to the Court.⁷

6. On 12 June 2025, the Defence filed a request pursuant to article 60(2) of the Statute for the interim release of Mr Duterte (hereinafter: “Urgent Request”).⁸

7. On 18 June 2025, the Pre-Trial Chamber issued an order pursuant to rule 119(3) of the Rules of Procedure and Evidence (hereinafter: “Rules”) and regulation 51 of the Regulations of the Court (hereinafter: “Regulations”) inviting the State Party suggested

² [Appeal Brief on Interim Release](#), ICC-01/21-01/25-298-Conf (public redacted version filed on 28 October 2025 (ICC-01/21-01/25-298-Red)), with public [annex A](#) (ICC-01/21-01/25-298-AnxA).

³ [Appeal Brief](#), paras 11-28.

⁴ [Appeal Brief](#), paras 29-42.

⁵ [Appeal Brief](#), paras 43-49.

⁶ [Warrant of Arrest for Mr Rodrigo Roa Duterte](#), ICC-01/21-01/25-83.

⁷ ICC Press Release, [Situation in the Philippines: Rodrigo Roa Duterte in ICC custody](#).

⁸ [Urgent Request for Interim Release](#), ICC-01/21-01/25-150-Conf-Exp, with confidential and *ex parte* annexes A, B, and C (public redacted version filed on the same day (ICC-01/21-01/25-150-Red)).

by the Defence in the Urgent Request (hereinafter: the “State Party”) and the Kingdom of the Netherlands (hereinafter: “The Netherlands”) to provide observations.⁹

8. On 23 and 25 June 2025 respectively, the Deputy Prosecutor (hereinafter: “Prosecutor”) and the Office of Public Counsel for Victims (hereinafter: “OPCV”) responded to the Urgent Request.¹⁰

9. On 3 and 10 July 2025 respectively, the Registry transmitted to the Pre-Trial Chamber the observations submitted by the State Party and The Netherlands pursuant to the order of the Pre-Trial Chamber.¹¹

10. On 23 July 2025, following a Defence request to suspend the adjudication of the Urgent Request,¹² the Pre-Trial Chamber, Judge María del Socorro Flores Liera dissenting, deferred the issuance of the decision on the Urgent Request “until further action is undertaken by the Defence on the matter, or until when the Chamber will deem it appropriate”.¹³

11. On 18 August 2025, the Defence filed a renewed request for interim release (hereinafter: “Renewed Request”).¹⁴

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

¹⁰ [Prosecution’s response to “Urgent Request for Interim Release”](#), ICC-01/21-01/25-159-Conf-Exp (confidential redacted version (ICC-01/21-01/25-159-Conf-Exp-Red) and public redacted version (ICC-01/21-01/25-159-Red) filed on the same day); [Victims’ Response to the Defence Urgent Request for Interim Release](#), ICC-01/21-01/25-162-Conf-Exp (public redacted version filed on the same day (ICC-01/21-01/25-162-Red)).

¹¹ [Registry’s Report on consultations with States pursuant to Order ICC-01/21-01/25-155-Conf](#), ICC-01/21-01/25-175-Conf, with confidential annexes I to IV (public redacted version filed on 26 September 2025 (ICC-01/21-01/25-175-Red)); [Second Registry Report on Consultations with States pursuant to Order ICC-01/21-01/25-155-Conf](#), ICC-01/21-01/25-188-Conf, with confidential annexes I and II (public redacted version filed on 26 September 2025 (ICC-01/21-01/25-188-Red)).

¹² [Urgent Defence Request to Suspend Adjudication on the Defence Request for Interim Release](#), ICC-01/21-01/25-193-Conf (public redacted version filed on 18 July 2025 (ICC-01/21-01/25-193-Red)).

¹³ [Decision on the ‘Urgent Defence Request to Suspend Adjudication on the Defence Request for Interim Release’](#), ICC-01/21-01/25-209.

¹⁴ [Renewed Request for Interim Release](#), ICC-01/21-01/25-231-Conf, with confidential annexes A, B, and C (public redacted version filed on 19 August 2025 (ICC-01/21-01/25-231-Red)).

12. On 28 and 29 August 2025 respectively, the Prosecutor and the OPCV responded to the Renewed Request.¹⁵

13. On 26 September 2025, the Pre-Trial Chamber issued the Impugned Decision.

B. Proceedings before the Appeals Chamber

14. On 3 October 2025, the Defence filed a notice of appeal against the Impugned Decision pursuant to article 82(1)(b) of the Statute (hereinafter: “Notice of Appeal”).¹⁶

15. On 14 October 2025, pursuant to an order of the Appeals Chamber,¹⁷ the Defence filed the Appeal Brief raising three grounds of appeal.¹⁸ It requests that the Appeals Chamber reverse the Impugned Decision and order the immediate release of Mr Duterte under the terms and conditions specified before the Pre-Trial Chamber.¹⁹

16. On 21 October 2025, the Prosecutor²⁰ and the OPCV²¹ filed responses opposing the appeal (hereinafter: “Prosecutor’s Response” and “OPCV Response”, respectively).

III. STANDARD OF REVIEW

17. With respect to alleged errors of law, the Appeals Chamber has held that it

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.²²

¹⁵ [Prosecution’s response to “Renewed Request for Interim Release”](#), ICC-01/21-01/25-252-Conf-Exp (confidential redacted version filed on the same day (ICC-01/21-01/25-252-Conf-Red) and public redacted version filed on 12 September 2025 (ICC-01/21-01/25-252-Red)); [Victims’ Response to the Defence’s Renewed Request for Interim Release](#), ICC-01/21-01/25-256-Conf-Exp (public redacted version filed on 2 September 2025 (ICC-01/21-01/25-256-Red)).

¹⁶ Notice of Appeal against ICC-01/21-01/25-282-Conf, ICC-01/21-01/25-287-Conf.

¹⁷ Order on the conduct of the appeal proceedings, ICC-01/21-01/25-291-Conf.

¹⁸ [Appeal Brief](#), paras 11-49.

¹⁹ [Appeal Brief](#), para. 50.

²⁰ Prosecution’s response to “Appeal Brief on Interim Release” (ICC-01/21-01/25-298-Conf), ICC-01/21-01/25-307-Conf-Exp, with confidential redacted version filed on the same date (ICC-01/21-01/25-307-Conf-Red). A public redacted version was notified on 31 October 2025 ([ICC-01/21-01/25-307-Red](#)).

²¹ [Victims’ Response to the Defence Appeal against Pre-Trial Chamber I’s “Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’”](#), ICC-01/21-01/25-306-Conf. A public redacted version was notified on 28 October 2025 (ICC-01/21-01/25-306-Red).

²² See e.g., *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 “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) (hereinafter: “Said OA3 Judgment”), para. 13 and references therein.

18. 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.²³

19. Regarding 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.²⁴

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

IV. RELEVANT PARTS OF THE IMPUGNED DECISION

21. The Pre-Trial Chamber examined the criteria under article 58(1)(a) and (b) of the Statute, concluding that there are reasonable grounds to believe that Mr Duterte is responsible for the alleged crimes²⁵ and that he poses a risk under article 58(1)(b)(i) through (iii) of the Statute, making his continued detention necessary.²⁶

22. Moreover, the Pre-Trial Chamber considered whether the medical reports relied on by the Defence could mitigate the mentioned risks, but found that they did not

²³ *The Prosecutor v. Laurent Gbagbo and Charles 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"](#), 19 July 2017, ICC-02/11-01/15-992-Red (OA10), para. 16 (footnotes omitted). See also [Said OA3 Judgment](#), para. 14.

²⁴ See e.g., *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [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"](#), 1 July 2021, ICC-01/12-01/18-1562-Red (OA3), para. 19 and references therein.

²⁵ [Impugned Decision](#), para. 48.

²⁶ [Impugned Decision](#), paras 50-62.

indicate how Mr Duterte's alleged condition or impairment would negate the identified risks.²⁷

23. In relation to a potential release with conditions, the Pre-Trial Chamber found that the conditions proposed by the Defence did not sufficiently mitigate the risks set out in article 58(1)(b) of the Statute.²⁸

24. Finally, the Pre-Trial Chamber concluded that the humanitarian factors advanced by the Defence did not militate in favour of Mr Duterte's interim release either.²⁹

V. PRELIMINARY MATTERS

A. Discrepancies between Notice of Appeal and Appeal Brief

25. The OPCV argues that the Appeals Chamber could consider dismissing the Defence's arguments related to grounds of appeal reframed in the Appeals Brief compared to the ones presented in the Notice of Appeal since, in its view, "an appeal brief must conform to, and remain within the scope of the grounds articulated in the notice of appeal".³⁰

26. The Appeals Chamber recalls that regulation 64(5)(e) of the Regulations specifies the required content of a notice of appeal for appeals raised under article 82(1)(b) of the Statute. This provision, read together with regulation 64(6) and (7) of the Regulations, serves to ensure that proceedings on appeal in relation to decisions granting or denying release may proceed as efficiently as possible.³¹

27. The Appeals Chamber notes that the grounds of appeal specified in the Notice of Appeal differ to a certain extent from those presented in the Appeal Brief. In the instant case, however, the Appeals Chamber considers that such difference is not significant.

²⁷ [Impugned Decision](#), paras 63-64.

²⁸ [Impugned Decision](#), para. 68.

²⁹ [Impugned Decision](#), paras 72-75.

³⁰ [OPCV Response](#), paras 2, 10-11.

³¹ See *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Decision on Mr Laurent Gbagbo's Notice of Appeal](#), 5 October 2017, ICC-02/11-01/15-1047 (OA13), para. 6. See also, in relation to regulation 57(e) of the Regulations, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision on the "Prosecution Request regarding the Defence Notice of Appeal"](#), 21 October 2024, ICC-01/12-01/18-2657 (A), para. 12, referring to *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), paras 140-141.

In the circumstances at hand, and in particular bearing in mind that the Prosecutor and the OPCV did respond to the grounds of appeal as articulated in the Appeal Brief, the Appeals Chamber has considered the arguments raised in the Appeal Brief as presented.

B. Classification of documents

28. Regulation 23*bis*(1) of the Regulations requires that, should a participant wish to file a document as “confidential”, the participant must “state the factual and legal basis for the chosen classification”. If there is no such basis, a document should be filed as “public” or “public redacted”. Regulation 23*bis*(3) of the Regulations provides that a chamber may reclassify a document when the basis for the classification no longer exists.

29. The Appeals Chamber notes that in its Notice of Appeal, the Defence indicates that it would file a public redacted version thereof “promptly” upon notification of a public redacted version of the Impugned Decision.³² Further noting that a public redacted version of the Impugned Decision (ICC-01/21-01/25-282-Red) was filed on 10 October 2025, the Appeals Chamber directs the Defence to submit a public redacted version of filing ICC-01/21-01/25-287-Conf by 16h00 on 3 December 2025.

30. Moreover, and in light of public redacted versions of almost all relevant filings being available, the Appeals Chamber finds that no reason exists for 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 Defence’s “Urgent Request for Interim Release” and “Renewed Request for Interim Release”” (ICC-01/21-01/25-290-Conf) and the “Order on the conduct of the appeal proceedings” (ICC-01/21-01/25-291-Conf) to remain confidential. Therefore, the Registrar is directed to reclassify documents ICC-01/21-01/25-290-Conf and ICC-01/21-01/25-291-Conf as public.

³² Notice of Appeal, fn 1.

VI. RELEVANT LEGAL FRAMEWORK

31. Article 60 of the Statute provides, *inter alia*, for the possibility for a person subject to a warrant of arrest to apply for interim release pending trial. In this regard, article 60(2) of the Statute provides that:

A person subject to a warrant of arrest may apply for interim release pending trial. If the Pre-Trial Chamber is satisfied that the conditions set forth in article 58, paragraph 1, are met, the person shall continue to be detained. If it is not so satisfied, the Pre-Trial Chamber shall release the person, with or without condition.

32. Article 58(1) of the Statute in turn provides:

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:

(a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and

(b) The arrest of the person appears necessary:

(i) To ensure the person's appearance at trial;

(ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or

(iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

33. Following the initial ruling on the release or detention of a person under article 60(2) of the Statute, the Pre-Trial Chamber, pursuant to article 60(3) of the Statute,

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. Upon such review, it may modify its ruling as to detention, release or conditions of release, if it is satisfied that changed circumstances so require.

34. In accordance with rule 118(2) of the Rules, the periodic review envisaged under article 60(3) of the Statute shall occur at least every 120 days, or at any time at the discretion of the relevant chamber following a request submitted by the person or the Prosecutor.

VII. MERITS

35. Before turning to the discussion of the grounds of appeal raised by the Defence, the Appeals Chamber notes that article 58 of the Statute, as recalled above, regulates the issuance by the Pre-Trial Chamber of a warrant of arrest. Pursuant to article 58(1)(b) of the Statute, a chamber assesses whether the arrest of a person “appears necessary”: (i) to prevent a person from not appearing at trial; (ii) to prevent a person from obstructing or endangering the investigation or the court proceedings; or (iii) where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

36. In accordance with article 60(2) of the Statute, a person subject to a warrant of arrest under article 58 of the Statute may apply for interim release pending trial. The Pre-Trial Chamber’s ruling on detention on such an application under article 60(2) of the Statute is provisional in nature to the extent that it will be periodically reviewed, at least every 120 days or at any time following a request by the detained person or the Prosecutor. If satisfied that the circumstances so require, the Pre-Trial Chamber may modify its initial ruling on detention, pursuant to article 60(3) of the Statute and rule 118(2) of the Rules.

37. As recalled above,³³ the Defence raises three grounds of appeal regarding specific aspects of the Impugned Decision, alleging that the Pre-Trial Chamber (i) erroneously found that Mr Duterte poses a risk under article 58(1)(b)(i) to (iii) of the Statute; (ii) erroneously rejected the guarantees provided by the State Party; and (iii) erred in law by failing to take into account humanitarian considerations in assessing interim release.

38. The Appeals Chamber examines each ground of appeal, focusing on the specific aspects of the Impugned Decision challenged by the Defence.

A. First Ground of Appeal

39. Within the First Ground of Appeal, the Defence raises the following main arguments related to the Pre-Trial Chamber’s assessment of the risks under

³³ See paragraph 3 above.

article 58(1)(b)(i) to (iii) of the Statute: the Pre-Trial Chamber’s alleged reliance (i) on “hypothetical and non-specific risks” and (ii) on irrelevant considerations, and (iii) the Pre-Trial Chamber’s alleged failure to give appropriate weight to relevant facts.

1. *Whether the Pre-Trial Chamber erred in law by relying on hypothetical and non-specific risks to find that continued detention is warranted*

a. Summary of the submissions

40. According to the Defence, the Pre-Trial Chamber erred in law by relying on hypothetical and non-specific risks to find that continued detention of Mr Duterte is warranted.³⁴ The Defence argues that the Pre-Trial Chamber “misapprehended the applicable legal standard by allowing itself to be guided by ‘possibility’ alone”³⁵ and “interpreted the standard to mean that *any* suggestion, however unsubstantiated, may give rise to the ‘possibility’ of risk”.³⁶

41. Moreover, the Defence challenges the Pre-Trial Chamber’s reliance on, and assessment of, several documents, averring that the Pre-Trial Chamber “erred in attaching excessive evidential weight to such evidence” as it comprises hearsay, statements of NGOs and open-source articles.³⁷ Specifically regarding item PHL-OTP-0017-4591, the Defence also avers that it makes no direct reference to Mr Duterte and gives information from a contested source.³⁸

42. Further, the Defence argues that the Pre-Trial Chamber “relied largely on hypothetical assumptions” when finding that Mr Duterte “appears” to have the necessary political contacts that “may” help him abscond.³⁹ According to the Defence, “the Pre-Trial Chamber mistakenly found that the mere existence of popular or political support [...] is, *per se*, of such significance that it negates any mitigation that could otherwise be achieved by State guarantees”.⁴⁰ The Defence submits that the “Appeals Chamber should curb the formulaic reliance on a ‘network of supporters’”, since “[s]uch a hypothetical construct renders interim release at the International Criminal

³⁴ [Appeal Brief](#), paras 11-18.

³⁵ [Appeal Brief](#), para. 11.

³⁶ [Appeal Brief](#), para. 13 (emphasis in the original).

³⁷ [Appeal Brief](#), paras 13-15.

³⁸ [Appeal Brief](#), para. 14.

³⁹ [Appeal Brief](#), para. 16.

⁴⁰ [Appeal Brief](#), para. 17.

Court illusory”,⁴¹ and that the applied methodology would entail “a presumption of continued detention for any suspect or accused”.⁴²

43. The Prosecutor submits that the Pre-Trial Chamber did not rely on “hypothetical and non-specific risks” to find that Mr Duterte’s continued detention is warranted, averring that the Defence: (i) misstates the applicable legal standard;⁴³ (ii) misunderstands longstanding jurisprudence regarding the correct legal threshold;⁴⁴ and (iii) ignores relevant aspects of the Impugned Decision.⁴⁵

44. The OPCV submits that the Defence misrepresents the Impugned Decision in that the Appeals Chamber held that what may justify continued detention must “appear” to be necessary, and the Pre-Trial Chamber examined the conditions under article 58(1)(b) of the Statute against the evidence before it.⁴⁶ It argues that the Defence does not explain how the Pre-Trial Chamber’s determination “is somehow unsubstantiated” and that the apparent necessity of continued detention “may also be recognised on the basis of an analysis of all relevant factors taken together”.⁴⁷

45. The OPCV further argues that, since the conditions in article 58(1)(b) of the Statute are in the alternative, the Pre-Trial Chamber did not need to address other conditions as it considered article 58(1)(b)(i) of the Statute to be met, and the Appeals Chamber could, in the same vein, dismiss the appeal on consideration of the First Ground of Appeal alone.⁴⁸

b. Determination by the Appeals Chamber

46. The Appeals Chamber notes that the first main argument within the First Ground of Appeal raises questions concerning: (i) the Pre-Trial Chamber’s interpretation and application of the relevant legal standard; (ii) the Pre-Trial Chamber’s assessment and weighing of evidence in assessing risks pursuant to article 58(1)(b) of the Statute; and (iii) the Pre-Trial Chamber’s reliance on the notion of a “network of supporters”.

⁴¹ [Appeal Brief](#), para. 17.

⁴² [Appeal Brief](#), para. 18.

⁴³ [Prosecutor’s Response](#), para. 8.

⁴⁴ [Prosecutor’s Response](#), paras 9-15.

⁴⁵ [Prosecutor’s Response](#), paras 16-18.

⁴⁶ [OPCV Response](#), para. 14; *see also* para. 22.

⁴⁷ [OPCV Response](#), paras 16-18; *see also* para. 22.

⁴⁸ [OPCV Response](#), para. 19.

i. The applicable legal standard

47. The Appeals Chamber recalls that, in determining whether the conditions pursuant to article 60(2) of the Statute have been met, a chamber must find that detention “appears necessary”.⁴⁹ In this regard, the Appeals Chamber has found that “a determination shall be made concerning the possibility, and not the inevitability, that one of the events listed in article 58(1)(b) of the Statute will occur” and that it is the responsibility of the relevant chamber to weigh the evidence before it pursuant to the relevant standard.⁵⁰

48. With respect to the risk that a suspect may abscond as envisaged under article 58(1)(b)(i) of the Statute, this assessment “necessarily involves an element of prediction”.⁵¹

49. The Appeals Chamber notes that in its assessment of risks under article 58(1)(b)(i) and (ii) of the Statute, the Pre-Trial Chamber referred to the standard, as recalled above, that the assessment under article 58(1)(b) of the Statute concerns “the possibility, not the inevitability, of a future occurrence”,⁵² and in the case of article 58(1)(b)(i) of the Statute specifically, that an element of prediction is involved.⁵³ The Appeals Chamber considers that the Pre-Trial Chamber correctly articulated the applicable legal standard in paragraph 52 of the Impugned Decision and analysed the material before it against this standard.

50. In this regard, the Appeals Chamber is not persuaded by the Defence’s argument that the Pre-Trial Chamber interpreted the relevant legal standard to mean that “any

⁴⁹ [Said OA3 Judgment](#), para. 33.

⁵⁰ See e.g., [Said OA3 Judgment](#), para. 33 and references therein. See also *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, [Judgment on the appeal of Ali Muhammad Ali Abd-Al-Rahman against Trial Chamber I’s “Decision on the review of detention”](#), 17 December 2021, ICC-02/05-01/20-542-Red (OA10) (hereinafter: “*Abd-Al-Rahman OA10 Judgment*”), para. 42.

⁵¹ [Said OA3 Judgment](#), para. 34, referring to *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “Decision sur la demande de mise en liberte provisoire de Thomas Lubanga Dyilo”](#), 13 February 2007, ICC-01/04-01/06-824 (OA7) (hereinafter: “*Lubanga OA7 Judgment*”), para. 137.

⁵² [Impugned Decision](#), paras 52 and 54, referring to *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [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](#), 9 June 2008, ICC-01/04-01/07-572 (OA4) (hereinafter: “*Ngudjolo OA4 Judgment*”), para. 21; *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled “Decision on application for interim release”](#), 16 December 2008, ICC-01/05-01/08-323 (OA) (hereinafter: “*Bemba OA Judgment*”), paras 55, 67.

⁵³ [Impugned Decision](#), para. 52, referring to [Lubanga OA7 Judgment](#), para. 137.

suggestion, however unsubstantiated, may give rise to the ‘possibility’ of risk”. This is because the Pre-Trial Chamber articulated the factors it took into account when carrying out its assessment of risks,⁵⁴ referring to specific items of evidence which, in its view, established the existence of risks such that continued detention of Mr Duterte “appeared necessary” under article 58(1)(b) of the Statute.⁵⁵

51. Accordingly, the Defence has failed to demonstrate that the Pre-Trial Chamber misapprehended the legal standard relevant to the assessment of risks under article 58(1)(b) of the Statute.

ii. Assessment and weighing of evidence

52. The Appeals Chamber notes that the Pre-Trial Chamber made reference to various documents as part of its assessment of the risk under article 58(1)(b)(ii) of the Statute, which, in its view, “indicate[d] Mr Duterte’s propensity to interfere with investigations against him”.⁵⁶

53. As explained above, the Appeals Chamber will interfere with a chamber’s assessment only in the case where it cannot discern how the chamber’s conclusion could have reasonably been reached from the evidence before it.⁵⁷ Further, it is recalled that in determining whether detention appears necessary, it is the responsibility of the relevant chamber “on the basis of the available evidence, to weigh such evidence” and to make its determinations on that basis.⁵⁸ Moreover, there is no impediment to the use of newspaper articles or other public sources for the purpose of assessing the requirements under article 58(1) of the Statute, or a requirement that such material be corroborated. What is required from the relevant chamber is that it analyses “all the material placed before it, in order to determine what weight must be given to it for the

⁵⁴ See [Impugned Decision](#), paras 50-51, 54-56.

⁵⁵ See [Impugned Decision](#), paras 50-51, 54, 58, and footnotes therein.

⁵⁶ [Impugned Decision](#), para. 54, fns 54-55.

⁵⁷ See paragraph 18 above.

⁵⁸ See [Said OA3 Judgment](#), para. 33 referring to *The Prosecutor v. Callixte Mbarushimana*, [Judgment on the appeal of Mr Callixte Mbarushimana against the decision of Pre-Trial Chamber I of 19 May 2011 entitled “Decision on the ‘Defence Request for Interim Release’”](#), 14 July 2011, ICC-01/04-01/10-283 (OA) (hereinafter: “*Mbarushimana OA Judgment*”), para. 60. See also [Abd-Al-Rahman OA10 Judgment](#), para. 38.

purpose of the determination as to whether continued detention ‘appeared necessary’”.⁵⁹

54. In relation to the first document referenced by the Defence, PHL-OTP-0017-4591, the Appeals Chamber notes that this document indeed does not mention Mr Duterte himself as being directly involved in briefing individuals. It refers however to Mr Duterte’s “close associates”, including [REDACTED],⁶⁰ telling individuals to remain “loyal” to him and that “[REDACTED]”.⁶¹ The Appeals Chamber finds that it was therefore not unreasonable for the Pre-Trial Chamber to rely on this document for the above finding. In any event, the Appeals Chamber observes that Mr Duterte’s alleged involvement in briefing individuals is but one of the factors that the Pre-Trial Chamber took into account to support its conclusion on Mr Duterte’s propensity to interfere with investigations against him.

55. In relation to the other four documents relied on by the Pre-Trial Chamber,⁶² the Appeals Chamber notes that the weight given to these items by the Pre-Trial Chamber falls within its discretion. These four items comprise a book [REDACTED], two publications of non-governmental organisations, and a press article. As recalled above, there does not exist in the applicable law any impediment to the use of newspaper articles or other public sources for the purpose of assessing the requirements under article 58(1) of the Statute, nor is there any requirement that such material be corroborated.⁶³ Noting the above, the Appeals Chamber considers that it is possible to discern how the Pre-Trial Chamber reached its conclusion on Mr Duterte’s alleged involvement in the threatening and taking of retaliatory actions against individuals

⁵⁹ *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 Pre-Trial Chamber II of 14 August 2020 entitled ‘Decision on the Defence Request for Interim Release’](#), 8 October 2020, ICC-02/05-01/20-177 (OA2) (hereinafter: “*Abd-Al-Rahman OA2 Judgment*”), para. 34, referring to Pre-Trial Chamber I, [Decision on the “Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo”](#), 13 July 2012, ICC-02/11-01/11-180-Red, para. 54.

⁶⁰ See [Prosecutor’s Response](#), para. 12. See also Prosecution’s response to “Renewed Request for Interim Release”, 28 August 2025, ICC-01/21-01/25-252-Conf-Red, para. 11 (a confidential *ex parte* version was filed on the same day, ICC-01/21-01-25-252-Conf-Exp; a public redacted version was filed on 12 September 2025, [ICC-01/21-01/25-252-Red](#)).

⁶¹ [REDACTED].

⁶² [Impugned Decision](#), para. 54, fn 55, referring to PHL-OTP-0018-0003, PHL-OTP-0003-0803, PHL-OTP-0003-0826 and PHL-OTP-00019369. See also [Appeal Brief](#), paras 13-15.

⁶³ [Abd-Al-Rahman OA2 Judgment](#), para. 34, referring to Pre-Trial Chamber I, [Decision on the “Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo”](#), 13 July 2012, ICC-02/11-01/11-180-Red, para. 54.

opposed to him. In any event, the Appeals Chamber observes that this is only one of the factors that the Pre-Trial Chamber took into account to support its conclusion on Mr Duterte's propensity to interfere with investigations against him, and more generally on the risk of Mr Duterte obstructing or endangering the investigations or the court proceedings.

56. Furthermore, the decisions referenced by the Defence to support its argument on the lack of probative value and evidential weight in respect of the aforementioned documents,⁶⁴ relate to matters of a different nature than the issue of interim release and were issued at different stages of the proceedings. Indeed, the relevant decisions concern requests on the submission of evidence in writing during trial proceedings⁶⁵ and the adjournment of a confirmation hearing pursuant to article 67(1)(c)(i) of the Statute.⁶⁶ These decisions therefore provide little guidance on the assessment and weighing of evidence in the context of determining whether continued detention "appears necessary".

57. Moreover, in its determination of whether the risk under article 58(1)(b)(ii) of the Statute exists in relation to Mr Duterte, the Pre-Trial Chamber took into consideration other factors such as the statements of [REDACTED];⁶⁷ [REDACTED];⁶⁸ as well as the seriousness of the charges brought against him and the possible lengthy sentence he may receive.⁶⁹

58. In light of the above, the Appeals Chamber considers that the Defence has failed to demonstrate an error in the Pre-Trial Chamber's assessment and weighing of the evidence before it in the context of its consideration of the risk under article 58(1)(b)(ii) of the Statute.

⁶⁴ See [Appeal Brief](#), para. 15, fns 33-34.

⁶⁵ Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the Prosecutor's Bar Table Motions](#), 17 December 2010, ICC-01/04-01/07-2635, para. 30.

⁶⁶ Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, [Decision adjourning the hearing on the confirmation of charges pursuant to article 61\(7\)\(c\)\(i\) of the Rome Statute](#), 3 June 2013, ICC-02/11-01/11-432, para. 35.

⁶⁷ [Impugned Decision](#), para. 54.

⁶⁸ [Impugned Decision](#), para. 55.

⁶⁹ [Impugned Decision](#), para. 56.

iii. “Network of supporters”

59. Regarding the Defence’s arguments on the notion of a “network of supporters”,⁷⁰ the Appeals Chamber recalls that it has considered that it is sufficient for a chamber to establish that it is *possible* that a suspect had the necessary assets to abscond, and that there is a risk that a suspect has the financial means to abscond on the basis of concrete evidence.⁷¹ Moreover, “[t]he existence of a political party that supports the detained person is a factor that is relevant to the determination of whether the continued detention appears necessary under article 58 (1) (b) (i) of the Statute, because such support could indeed facilitate absconding”.⁷²

60. It is further recalled that “the existence of a support network and financial means may be relevant to determining whether there is a risk that a person may evade justice or interfere with the investigation”;⁷³ and that “access to international contacts could provide the means to enable a suspect to abscond, whether or not there was evidence that the suspect would actually utilise such contacts”.⁷⁴

61. In the Impugned Decision, in determining whether Mr Duterte posed a flight risk under article 58(1)(b)(i) of the Statute, the Pre-Trial Chamber considered that he “appears to have the necessary political contacts, as well as to benefit from a network of support” within the Philippines. It based this conclusion on several factors such as his position as former president of the country; the network of support which includes his daughter who holds the office of vice-president of the Philippines; and his re-election as mayor of Davao City in May 2025.⁷⁵

62. The Appeals Chamber considers that, contrary to the Defence’s argument that the Pre Trial Chamber showed a “formulaic reliance on a ‘network of supporters’”, the Pre-

⁷⁰ [Appeal Brief](#), para. 17.

⁷¹ 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 provisoire du président Gbagbo’”](#), 26 October 2012, ICC-02/11-01/11-278-Red (OA) (hereinafter: “*Gbagbo OA Judgment*”), para. 56.

⁷² [Gbagbo OA Judgment](#), para. 59.

⁷³ [Said OA3 Judgment](#), para. 34 referring to [Gbagbo OA Judgment](#), paras 56, 59, 63-64.

⁷⁴ [Said OA3 Judgment](#), para. 34 referring to [Mbarushimana OA Judgment](#), para. 25; *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 27 June 2011 entitled “Decision on Applications for Provisional Release”](#), 19 August 2011, ICC-01/05-01/08-1626-Red (OA7) (hereinafter: “*Bemba OA7 Judgment*”), para. 32.

⁷⁵ See [Impugned Decision](#), para. 51.

Trial Chamber specifically outlined why it found the existence of a network of supporters in relation to Mr Duterte, and for which reason this supported its conclusion that the risk under article 58(1)(b)(i) of the Statute was established. The manner in which the Pre-Trial Chamber undertook this assessment was case-specific as it took into account the specific circumstances of Mr Duterte, including his position as former president of the Philippines and his re-election as mayor of Davao City in May 2025.

63. It follows from the above that the Defence has failed to demonstrate that the Pre-Trial Chamber committed an error in assessing and considering Mr Duterte’s “network of supporters” for the purpose of its examination of the risk under article 58(1)(b)(i) of the Statute.

2. Whether the Pre-Trial Chamber’s reliance on irrelevant considerations led to errors of law and fact

a. Summary of the submissions

64. The Defence argues that the Pre-Trial Chamber relied on irrelevant considerations when assessing the risks under article 58(1)(b) of the Statute, including statements criticising Mr Duterte’s arrest and its alleged motivation, or statements suggesting a wish of Mr Duterte to return to Davao City.⁷⁶ The Defence contends that the Pre-Trial Chamber selectively cited facts while ignoring others in the same item of evidence.⁷⁷ Moreover, the Defence argues that it was legally and factually incorrect for the Pre-Trial Chamber to impute actions or statements of third parties to Mr Duterte.⁷⁸

65. Further, the Defence considers the Pre-Trial Chamber’s finding that Mr Duterte’s election as mayor of Davao City and of his son as vice-mayor portends risk is “equally unreasonable”, as it fails to explain how Mr Duterte would be able to flee another country and ignores the fact that he relinquished his position as mayor.⁷⁹

66. Finally, the Defence avers that “[t]he Pre-Trial Chamber also erred by relying on gravity and the possibility of a lengthy sentence to find that Mr Duterte poses a flight risk”, since “[g]ravity is not a relevant factor when considering interim release” and the

⁷⁶ [Appeal Brief](#), para. 19, referring to [Impugned Decision](#), para. 50.

⁷⁷ [Appeal Brief](#), para. 20, referring to [Impugned Decision](#), para. 50 and fn 45.

⁷⁸ [Appeal Brief](#), para. 21, referring to [Impugned Decision](#), paras 51, 54.

⁷⁹ [Appeal Brief](#), para. 22, referring to [Impugned Decision](#), para. 58.

approach “has been rejected by other international tribunals, and challenged within this very Chamber”.⁸⁰

67. The Prosecutor argues that the Pre-Trial Chamber did not rely on irrelevant considerations, averring that the Defence disagrees with⁸¹ and mischaracterises⁸² the Impugned Decision and ignores longstanding jurisprudence of the Court.⁸³

68. The OPCV argues that the existence of international contacts, support network and financial means are relevant to determining whether there is a risk that a person may evade justice or interfere with Court proceedings.⁸⁴ It further submits that “hypothetical claims about personal willingness to abide by the law are of little weight in the determination of whether interim release should be granted”.⁸⁵

b. Determination by the Appeals Chamber

69. The Appeals Chamber considers that the arguments raised under the second main argument overlap, in part, with those raised under the first main argument above. They concern, first, the Pre-Trial Chamber’s assessment of certain evidence before it and, second, its reliance on the gravity of the alleged crimes and concomitant sentence in case of a conviction as one factor in the Pre-Trial Chamber’s risk assessment under article 58(1)(b) of the Statute.

i. Assessment of evidence

70. In the Impugned Decision, when assessing the risk under article 58(1)(b)(i) of the Statute, the Pre-Trial Chamber relied on several factors in support of its finding that such risk existed. It relied on the statement of Mr Duterte concerning his arrest as reported in a medical report;⁸⁶ statements by others; Mr Duterte’s position as former president of the Philippines; and his recent re-election as mayor of Davao.⁸⁷ In the view of the Pre-Trial Chamber, these factors illustrated “Mr Duterte’s rejection of the

⁸⁰ See [Appeal Brief](#), para. 23 (footnotes omitted), referring to [Impugned Decision](#), para. 51.

⁸¹ [Prosecutor’s Response](#), paras 20-23.

⁸² [Prosecutor’s Response](#), para. 24.

⁸³ [Prosecutor’s Response](#), para. 25.

⁸⁴ [OPCV Response](#), para. 14(iii).

⁸⁵ [OPCV Response](#), para. 25 (footnote omitted).

⁸⁶ See [Impugned Decision](#), para. 50, fn 40. The medical report is contained in Annex B to the Renewed Request (ICC-01/21-01/25-231-Conf-AnxB).

⁸⁷ [Impugned Decision](#), paras 50-51.

proceedings against him before the Court, and the will of his close family to help him elude detention and prosecution”.⁸⁸

71. The Pre-Trial Chamber also considered, as discussed above, the existence of a network of support, and it mentioned as additional factor that “Mr Duterte is facing multiple charges comprising a number of murders and attempted murders as crimes against humanity, and he may receive a lengthy sentence if all or part of the charges were to be confirmed and he were convicted at trial” in the context of its assessment under article 58(1)(b)(i) and (ii) of the Statute.⁸⁹ As detailed below, the Appeals Chamber does not find an error in respect of the Pre-Trial Chamber’s consideration of this factor in its assessment.⁹⁰

72. In relation to the Defence’s contention that a number of factors relied on by the Pre-Trial Chamber were “irrelevant”, the Appeals Chamber observes that the Defence does not explain why, in its view, the factors as referenced are “irrelevant” to the Pre-Trial Chamber’s assessment. Without more, the Defence has failed to substantiate that the Pre-Trial Chamber’s reasoning and assessment were unreasonable. As such, this argument of the Defence is rejected.

73. Moreover, with regard to the Defence’s contention that the Pre-Trial Chamber selectively cited facts and ignored others in the same items of evidence, the Appeals Chamber notes that the relevant items report other statements from Mr Duterte, made directly or through his daughter, whereby he would have expressed [REDACTED]⁹¹ and would “face the process head-on and will not run from justice”.⁹² Those statements do not however negate the fact that the relevant documents include Mr Duterte’s reported statements on the political aspect of his arrest and, of his daughter, that he wished to return to his hometown should he be released. The Defence has failed to demonstrate how the fact that the Pre-Trial Chamber accorded weight to the statements it cited should result in the Pre-Trial Chamber’s ignoring or attaching no weight to other statements.

⁸⁸ [Impugned Decision](#), para. 50.

⁸⁹ [Impugned Decision](#), para. 51 (footnotes omitted); *see also* para. 56.

⁹⁰ *See* paragraphs 78-81 below.

⁹¹ Annex B to the Renewed Request, p. 4.

⁹² *See* [Impugned Decision](#), para. 50, fn 45, *referring to* “Global Filipino Magazine, ‘Duterte eyes return to Davao if granted ICC interim release, says Sara’, 19 August 2025”.

74. Moreover, the Appeals Chamber is of the view that the fact that Mr Duterte would have also made other more favourable statements does not mean that the Pre-Trial Chamber erred in finding that Mr Duterte appears to pose a flight risk under article 58(1)(b)(i) of the Statute. This is because the relevant statements are not, as such, contradictory, and the Pre-Trial Chamber's conclusion is based on other relevant considerations, including the fact that "Mr Duterte has, from his initial appearance, contested his arrest and detention, qualifying it 'as a pure and simple kidnapping'".⁹³

75. Furthermore, the Defence fails to demonstrate that the Pre-Trial Chamber's reliance on Mr Duterte's re-election as mayor of Davao City in its assessment of the risk under article 58(1)(b)(iii) of the Statute was "unreasonable".⁹⁴ The Pre-Trial Chamber's conclusion in this regard is that this factor demonstrated the support that Mr Duterte continues to enjoy in the Philippines⁹⁵ and that should he return to Davao City, he "would be placed in the very position that allowed him to commit the crimes for which his arrest and surrender to the Court was initially sought".⁹⁶ The Defence offers no explanation as to why, on the basis of the material before it, it was unreasonable for the Pre-Trial Chamber to reach this conclusion. In addition, the Appeals Chamber notes that these considerations formed but one of the factors that the Pre-Trial Chamber took into account in its assessment of risks under article 58(1)(b)(iii) of the Statute.

76. Lastly, contrary to the Defence's assertion, the Pre-Trial Chamber did not "impute" actions and statements of third parties to Mr Duterte. Rather, when assessing whether Mr Duterte may pose a flight risk or whether there exists a risk of obstruction or endangering of investigations or Court proceedings under article 58(1)(b)(i) and (ii) of the Statute, the Pre-Trial Chamber examined statements and actions of third parties to assess whether Mr Duterte would have the means, directly or indirectly, to abscond or to obstruct proceedings.⁹⁷

77. In light of the foregoing, the Appeals Chamber considers that the Defence failed to demonstrate an error in the Pre-Trial Chamber's assessment of the evidence.

⁹³ [Impugned Decision](#), para. 50.

⁹⁴ See [Appeal Brief](#), para. 22.

⁹⁵ See [Impugned Decision](#), para. 51.

⁹⁶ See [Impugned Decision](#), para. 58.

⁹⁷ See [Impugned Decision](#), paras 50, 54.

ii. *Reliance on gravity of alleged crimes and concomitant sentence*

78. The Appeals Chamber has consistently held that the gravity of the alleged crimes, and the concomitant sentence that may be imposed upon conviction, are relevant considerations in assessing the risk that a person may not appear at trial under article 58(1)(b)(i) of the Statute, as these are factors that may increase the incentive of a person to abscond.⁹⁸ Given the Court's consistent jurisprudence in this regard, it is irrelevant whether other international jurisdictions would have "rejected" this approach, as argued by the Defence.⁹⁹

79. Moreover, the Appeals Chamber observes that the dissenting opinion referenced by the Defence to argue that gravity and the possibility of a lengthy sentence was "challenged within this very Chamber",¹⁰⁰ in fact states that gravity of the allegations and the risk of a lengthy sentence in case of conviction is indeed a relevant factor on which the Pre-Trial Chamber relied on. The dissenting opinion simply went on stating that "this abstract factor on its own cannot justify the finding of a flight risk".¹⁰¹

80. In the present instance, the gravity of the alleged crimes and the possibility of a lengthy sentence was but one of the factors the Pre-Trial Chamber took into account in its assessment of risks under article 58(1)(b)(i) and (ii) of the Statute.¹⁰² Also, the Pre-Trial Chamber did not assess the gravity of the alleged crimes *in abstracto*. Rather, it looked at the specific allegations Mr Duterte is faced with, namely "multiple charges comprising a number of murders and attempted murders as crimes against humanity".¹⁰³

⁹⁸ *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Judgment on the appeal of Mr Jean-Jacques Mangenda Kabongo against the decision of Pre-Trial Chamber II of 17 March 2014 entitled "Decision on the 'Requête de mise en liberté' submitted by the Defence for Jean-Jacques Mangenda"](#), 11 July 2014, ICC-01/05-01/13-560 (OA4) (hereinafter: "*Bemba et al.* OA4 Judgment"), para. 112, referring to [Gbagbo OA Judgment](#), para. 54; [Mbarushimana OA Judgment](#), para. 21; *The Prosecutor v. Jean-Pierre Bemba Gombo*, [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"](#), 2 December 2009, ICC-01/05-01/08-631-Red (OA2) (hereinafter: "*Bemba* OA2 Judgment"), para. 70; [Bemba OA Judgment](#), para. 55; [Ngudjolo OA4 Judgment](#), para. 21; [Lubanga OA7 Judgment](#), para. 136. See also [Said OA3 Judgment](#), paras 43-44.

⁹⁹ See [Appeal Brief](#), para. 23.

¹⁰⁰ [Appeal Brief](#), para. 23.

¹⁰¹ [Gbagbo OA Judgment](#) (Dissenting Opinion of Judge Anita Ušacka), para. 27.

¹⁰² See [Impugned Decision](#), paras 51, 56.

¹⁰³ See [Impugned Decision](#), para. 51.

81. It follows from the above that, without more, the Defence’s submissions fail to demonstrate that the Pre-Trial Chamber erred when taking into consideration the gravity of the alleged crimes and the length of any concomitant sentence in case of conviction as relevant factors in its assessment.

3. *Whether the Pre-Trial Chamber erred in fact by failing to give appropriate weight to relevant facts*

a. Summary of the submissions

82. The Defence argues that the Pre-Trial Chamber “erred by failing to assign appropriate weight to Mr Duterte’s ailing health and its mitigating effect on the risk factors set out in [a]rticle 58(1)(b)” of the Statute.¹⁰⁴ The Defence also argues, in its Third Ground of Appeal, that the Pre-Trial Chamber erred in law by refusing to consider humanitarian grounds as a factor mitigating the risks under article 58(1)(b) of the Statute.¹⁰⁵ It submits that “while issues of fitness to stand trial and interim release are factually distinct, the clinical evidence presented for the purpose of evaluating competency also bears upon the assessment of risk under [a]rticle 58(1)(b)” of the Statute.¹⁰⁶

83. The Defence contends that the Pre-Trial Chamber erred by “mischaracterising as ‘speculative’ Defence arguments” that “did not comprise extrapolated and unqualified expertise of Counsel”, but were “grounded in hard and unchallenged clinical fact”.¹⁰⁷ Indeed, the Defence argues that Mr Duterte’s “cognitive impairment and physical infirmity have significant bearing on his ability to abscond, to interfere with the investigations or proceedings, and to commit a crime”, and that had appropriate weight been given to his medical conditions, the Pre-Trial Chamber could not have reasonably found that his detention remains necessary.¹⁰⁸ According to the Defence, “[h]ad the [Pre-Trial] Chamber not committed such a factual error, it would have appropriately recognised the degree of mitigation presented by Mr Duterte’s medical conditions.”¹⁰⁹

¹⁰⁴ [Appeal Brief](#), paras 24-25.

¹⁰⁵ [Appeal Brief](#), para. 43.

¹⁰⁶ [Appeal Brief](#), para. 26.

¹⁰⁷ [Appeal Brief](#), paras 27-28, referring to [Impugned Decision](#), para. 64.

¹⁰⁸ [Appeal Brief](#), paras 24-25.

¹⁰⁹ [Appeal Brief](#), para. 28.

84. The Prosecutor submits that the Defence’s argument about the Pre-Trial Chamber failing to give appropriate weight to Mr Duterte’s health condition and its mitigating effect on the risk factors under article 58(1)(b) of the Statute should be rejected as mere disagreement with the Pre-Trial Chamber’s finding.¹¹⁰ The Prosecutor argues that the Pre-Trial Chamber’s conclusion was reasonable, that the reports are untested and insufficient to make determinations regarding Mr Duterte’s fitness, and that the Defence merely disagrees with the Pre-Trial Chamber’s assessment, failing to show any error while repeating arguments made before the Pre-Trial Chamber.¹¹¹ According to the Prosecutor, the Defence’s argument that the Pre-Trial Chamber failed to consider Mr Duterte’s medical condition as mitigating factor is “plainly incorrect”.¹¹²

b. Determination by the Appeals Chamber

85. The Appeals Chamber recalls 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”.¹¹³ It has, nevertheless, stated that

medical reasons can play a role in decisions on interim release in at least two ways. First, the medical condition of a detained person may have an effect on the risks under article 58 (1) (b) of the Statute, for instance on his or her ability to abscond, potentially negating those risks. Second, the medical condition of the detained person may be a reason for a Pre-Trial Chamber to grant interim release with conditions. As stated above, the Pre-Trial Chamber enjoys discretion when deciding on conditional release; the ill health of a detained person may be a factor in the exercise of its discretion.¹¹⁴

86. The Appeals Chamber considers that such a determination is necessarily case-specific. In the Impugned Decision, the Pre-Trial Chamber examined whether Mr Duterte’s ill-health could mitigate the risks identified under article 58(1)(b) of the Statute.¹¹⁵ Recalling the above judgment of the Appeals Chamber, it concluded that the two reports relied on by the Defence “are unable to affect the Chamber’s finding that Mr Duterte’s detention is necessary pursuant to article 58(1)(b) of the Statute”.¹¹⁶ It first considered that the purpose for which the reports were prepared, namely the issue

¹¹⁰ [Prosecutor’s Response](#), para. 26.

¹¹¹ [Prosecutor’s Response](#), paras 26-27.

¹¹² [Prosecutor’s Response](#), para. 39.

¹¹³ [Gbagbo OA Judgment](#), para. 86.

¹¹⁴ [Gbagbo OA Judgment](#), para. 87.

¹¹⁵ [Impugned Decision](#), paras 63-64.

¹¹⁶ [Impugned Decision](#), para. 64.

of fitness to stand trial, was factually and legally distinct from the question of interim release.¹¹⁷ It then considered the relevant documents did not “indicate how Mr Duterte’s alleged physical condition or cognitive impairment [would] negate the risks identified”.¹¹⁸ It further considered the Defence’s arguments based on the reports to be “mere extrapolation”, and “purely speculative and without basis”.¹¹⁹

87. Contrary to the Defence’s assertion, in concluding the above, nowhere did the Pre-Trial Chamber suggest that it was “precluded”¹²⁰ from assessing the information before it within the context of its assessment under article 60(2) of the Statute. Rather, it noted the reports placed before it¹²¹ and considered, “following a thorough review”, that they were unable to affect its finding on risks under article 58(1)(b) of the Statute.¹²² The Defence has failed to show that the Pre-Trial Chamber’s approach was unreasonable. The Appeals Chamber considers that, in its submissions, the Defence provides its own reading of the determinations made in the medical reports and their purported mitigating impact on the risks identified.¹²³ Without more, these arguments merely express 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. Therefore, the Defence has failed to show an error by the Pre-Trial Chamber in its consideration of Mr Duterte’s health in its assessment.

4. *Conclusion*

88. In light of the above, having rejected the Defence’s arguments under this ground of appeal, the First Ground of Appeal is rejected.

B. Second Ground of Appeal

89. Within the Second Ground of Appeal, the Defence challenges the Pre-Trial Chamber’s assessment of the proposed conditions of release and State guarantees. The Defence argues that the Pre-Trial Chamber (i) failed to address the suggested conditions of release and State guarantees; (ii) failed to consider if the latter could mitigate the

¹¹⁷ [Impugned Decision](#), para. 64.

¹¹⁸ [Impugned Decision](#), para. 64.

¹¹⁹ [Impugned Decision](#), para. 64.

¹²⁰ See [Appeal Brief](#), para. 26.

¹²¹ [Impugned Decision](#), para. 63.

¹²² [Impugned Decision](#), para. 64.

¹²³ See [Appeal Brief](#), para. 28.

risks it had identified under article 58(1)(b) of the Statute; and (iii) erred by taking into account irrelevant considerations when examining the State guarantees.

1. *Whether the Pre-Trial Chamber erred in law in failing to address the proposed conditions of release and State guarantees*

a. Summary of the submissions

90. The Defence submits that the Pre-Trial Chamber committed a legal error when finding that the proposed conditions of release could not be assessed in a vacuum and lacked detail.¹²⁴ The Defence argues that it was not required to provide such details, as those would be developed after a chamber identified specific conditions.¹²⁵ According to the Defence, the Pre-Trial Chamber did not even consider the ability of the proposed conditions to “neutralise” the risks posed by Mr Duterte’s release.¹²⁶

91. In relation to the condition of an electronic bracelet, the Defence contends the Pre-Trial Chamber erred when failing to seek further clarification since the State Party concerned had agreed to implement or enforce “**any other condition** deemed appropriate by the Pre-Trial Chamber”.¹²⁷ The Defence submits that, in any event, “the Pre-Trial Chamber’s insistence on an electronic bracelet was, itself, unnecessary”,¹²⁸ and that, “if deemed critical, [it] will attempt to locate a private company and to finance the implementation of this measure” if the State Party concerned agrees to receive the surveillance reports and transmit them to the Court.¹²⁹

92. The Prosecutor submits that the Pre-Trial Chamber did not fail to address the proposed conditions of release and State guarantees,¹³⁰ and that rather the Defence ignores the reasoning of the Pre-Trial Chamber that the proposed conditions were not sufficient to mitigate the identified risks.¹³¹ The Prosecutor argues that “in any event, the [Pre-Trial] Chamber was not legally obliged to seek further observations from [the

¹²⁴ [Appeal Brief](#), para. 29.

¹²⁵ [Appeal Brief](#), para. 30.

¹²⁶ [Appeal Brief](#), para. 29, referring to [Impugned Decision](#), paras 68-70.

¹²⁷ [Appeal Brief](#), para. 32 (emphasis in the original), referring to [Impugned Decision](#), para. 69.

¹²⁸ [Appeal Brief](#), para. 33.

¹²⁹ [Appeal Brief](#), para. 33.

¹³⁰ [Prosecutor’s Response](#), paras 28-31.

¹³¹ [Prosecutor’s Response](#), para. 29; see also para. 30.

State Party] because it did not envisage the possibility of release given the risks Mr Duterte presents under article 58(1)(b) of the Statute”.¹³²

93. On the question of the condition of an electronic bracelet, the Prosecutor avers that “there was no information before the [Pre-Trial] Chamber that [the State Party] had agreed to implement electronic monitoring”, and that the Defence’s submission that insistence on this condition was “unnecessary” is unsubstantiated.¹³³

94. The OPCV argues that it was incumbent on the Pre-Trial Chamber “to verify whether the conditions and State guarantees in question were in fact enforceable and effective”.¹³⁴ The OPCV submits that “it is not erroneous for a Pre-Trial Chamber to make a general statement [...] as long as it did not disregard those proposals but expressly considered them”.¹³⁵ According to the OPCV, the fact that the Pre-Trial Chamber’s findings “could have been explained in more detail is inconsequential”, and the “alleged omission to provide more detailed reasoning does not detract from the correctness and adequacy of its finding”.¹³⁶

b. Determination by the Appeals Chamber

95. The Defence contends that the Pre-Trial Chamber erred when holding that the proposed conditions could not be assessed “in a vacuum” and lacked detail, and as such “summarily dismissed” the proposed conditions.¹³⁷ The Appeals Chamber notes in this regard that the Pre-Trial Chamber indicated that it had “duly considered” the conditions proposed and found that they “[did] not sufficiently mitigate the risks set out in article 58(1)(b) of the Statute”.¹³⁸ It was in this context that the Pre-Trial Chamber considered that “however stringent the conditions appear to be *prima facie*, they cannot be assessed in a vacuum and due regard should be given to the manner and the context in which they would be implemented to ensure effective enforcement”.¹³⁹ The Pre-Trial Chamber specifically pointed to some of the proffered conditions which would, in its view, require the involvement of the Registry, it showed concern as to the lack of detail

¹³² [Prosecutor’s Response](#), para. 31.

¹³³ [Prosecutor’s Response](#), para. 30.

¹³⁴ [OPCV Response](#), para. 29.

¹³⁵ [OPCV Response](#), para. 30.

¹³⁶ [OPCV Response](#), para. 30.

¹³⁷ [Appeal Brief](#), para. 29.

¹³⁸ [Impugned Decision](#), para. 68.

¹³⁹ [Impugned Decision](#), para. 68 (emphasis in the original).

on how the relevant authorities would implement the conditions, and it noted one other condition which was lacking.¹⁴⁰

96. The Appeals Chamber recalls that it has held in the past that in circumstances where a State has offered to accept a detained person and to enforce conditions, it is incumbent upon a chamber to consider conditional release.¹⁴¹ Moreover, the Appeals Chamber found that if release would lead to any of the risks described in article 58(1)(b) of the Statute, a chamber may examine appropriate conditions with a view to mitigating or negating the risk.¹⁴² It has further held that the Court is dependent upon State cooperation in relation to accepting a person who has been conditionally released as well as ensuring that imposed conditions are enforced as without such cooperation, any decision granting conditional release would be ineffective.¹⁴³

97. Bearing in mind the above, and with regard to the Defence’s contention that the Pre-Trial Chamber’s “concern with respect to the supposed lack of detail is unwarranted”,¹⁴⁴ the Appeals Chamber is of the view that the Pre-Trial Chamber did not appear to criticise a lack of detail in the proposed conditions, but rather in the details “as to how the [State Party’s] authorities would implement the necessary conditions”, most notably “to ensure Mr Duterte’s presence at the Court and his compliance with the interdiction to interfere with the proceedings”.¹⁴⁵ The Pre-Trial Chamber did consider release with conditions, as required, but found that in the circumstances before it, the risks it had identified could not be mitigated. As such, and contrary to the Defence’s submission, the Pre-Trial Chamber did not “[dismiss] *in limine* the proposed conditions and guarantees”.¹⁴⁶ In fact, it did consider the conditions and guarantees put before it. On this basis, the Defence has failed to substantiate how the Pre-Trial Chamber “abused its discretion”.

98. Moreover, and in relation to the Defence’s argument as to the Pre-Trial Chamber’s purported failure to seek further information in regard to a possible

¹⁴⁰ See [Impugned Decision](#), para. 69.

¹⁴¹ [Gbagbo OA Judgment](#), para. 79.

¹⁴² [Bemba OA2 Judgment](#), para. 105.

¹⁴³ [Bemba OA2 Judgment](#), para. 107.

¹⁴⁴ See [Appeal Brief](#), para. 30.

¹⁴⁵ See [Impugned Decision](#), para. 69.

¹⁴⁶ See [Appeal Brief](#), para. 31 (emphasis in the original).

implementation of the condition of an electronic bracelet,¹⁴⁷ the Appeals Chamber is of the view that the Pre-Trial Chamber was not obliged to seek further observations from the concerned State because it did not envisage the possibility of release given the risks it found Mr Duterte presents under article 58(1)(b) of the Statute.

99. The Appeals Chamber has previously held that the requirement to seek observations from a state, pursuant to regulation 51 of the Regulations, pertains to “scenarios where a chamber, in the circumstances at hand, intends to grant interim release or envisages the possibility thereof”.¹⁴⁸ Specifically, the Appeals Chamber has held that the obligations to seek further information “are only triggered when: (a) the Chamber is considering conditional release; (b) a State has indicated its general willingness and ability to accept a detained person into its territory; and (c) the Chamber does not have sufficient information before it regarding the conditions of release to enable it to make an informed decision”.¹⁴⁹

100. In line with this jurisprudence, and pursuant to rule 119(3) of the Rules and regulation 51 of the Regulations, the Pre-Trial Chamber sought the views of two States and, having received such observations, ruled that it did not envisage the possibility of Mr Duterte’s interim release, having “duly considered the list of conditions proposed by the Defence, but find[ing] that they do not sufficiently mitigate the risks set out in article 58(1)(b) of the Statute”.¹⁵⁰ As such, there was no requirement for the Pre-Trial Chamber to seek further information before it to conclude that the risks Mr Duterte’s interim release would present could not be mitigated by conditions.

101. In light of the above, the Appeals Chamber finds that the Defence has failed to identify an error by the Pre-Trial Chamber when addressing the proposed conditions of release and State guarantees.

¹⁴⁷ See [Appeal Brief](#), para. 32.

¹⁴⁸ [Abd-Al-Rahman OA2 Judgment](#), para. 55.

¹⁴⁹ *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 26 September 2011 entitled “Decision on the accused’s application for provisional release in light of the Appeals Chamber’s judgment of 19 August 2011”](#), 15 December 2011, ICC-01/05-01/08-1937-Red2 (OA9), para. 35. See also [Bemba OA7 Judgment](#), para. 55.

¹⁵⁰ [Impugned Decision](#), para. 68.

2. *Whether the Pre-Trial Chamber erred in law by failing to consider if the proposed State guarantees could mitigate risk under article 58(1)(b) of the Statute*

a. Summary of the submissions

102. The Defence argues that the Pre-Trial Chamber failed to consider the proposed terms and conditions individually and in their totality, and applied an erroneous standard “by seemingly requiring the *elimination* of risk factors as opposed to their *mitigation* in accordance with the principle of proportionality”.¹⁵¹ According to the Defence, the Pre-Trial Chamber erred by failing to appropriately assess the mitigating effect of the proposed terms¹⁵² and, in any event, took a “self-contradictory” position when finding the implementation of the proposed conditions to lack detail, but also that they “were insufficient to mitigate the identified risks”.¹⁵³ The Defence submits that the Pre-Trial Chamber “erred by failing to appreciate that the Prosecution had agreed to almost exactly the same terms of release to the Host State”.¹⁵⁴

103. The Prosecutor submits that the Pre-Trial Chamber did not fail to consider if the proposed conditions could mitigate the risks under article 58(1)(b) of the Statute,¹⁵⁵ but the Defence mischaracterises the Impugned Decision by ignoring pertinent aspects thereof.¹⁵⁶ The Prosecutor avers that the Defence’s argument on the Pre-Trial Chamber failing to appreciate that the Prosecutor had agreed to almost exactly the same terms of release to the Host State is “irrelevant”, and that the Pre-Trial Chamber “had no obligation to engage with a separate agreement between the Prosecution and the Defence regarding potential terms of release to a different state than the one proposed in Mr Duterte’s request for interim release”.¹⁵⁷

104. The OPCV argues that the Pre-Trial Chamber “did carefully consider each and every guarantee proposed”, “*alone and in combination with the other conditions*”, and

¹⁵¹ [Appeal Brief](#), para. 34 (emphasis in the original); *see also* para. 35.

¹⁵² [Appeal Brief](#), para. 36.

¹⁵³ [Appeal Brief](#), para. 37.

¹⁵⁴ [Appeal Brief](#), para. 38 (emphasis in the original).

¹⁵⁵ [Prosecutor’s Response](#), paras 32-34.

¹⁵⁶ [Prosecutor’s Response](#), para. 33.

¹⁵⁷ [Prosecutor’s Response](#), para. 34.

“[u]pon evaluating these conditions and guarantees [...] reached the conclusion that they do not sufficiently mitigate the risks set out in article 58(1)(b) of the Statute”.¹⁵⁸

b. Determination by the Appeals Chamber

105. As outlined in its consideration of the first main argument within this ground of appeal, the Appeals Chamber is of the view that, contrary to the Defence’s submission, the Pre-Trial Chamber did not fail to consider the suggested terms and conditions “both individually and in their totality against the backdrop of the identified risks”.¹⁵⁹ Rather, that the Pre-Trial Chamber did examine the conditions and guarantees before it.¹⁶⁰

106. Moreover, the Appeals Chamber finds that it does not appear from the Impugned Decision that the Pre-Trial Chamber would have required an “elimination” of risks, as argued by the Defence.¹⁶¹ Instead, the Impugned Decision specifically states that the Pre-Trial Chamber did not consider the suggested conditions to “sufficiently mitigate” the identified risks.¹⁶² The Defence’s reference to jurisprudence of other tribunals on the acceptance of State guarantees¹⁶³ is inconsequential insofar as it is not apparent from the Impugned Decision that the Pre-Trial Chamber would have engaged in an “outright dismissal” of the guarantees, as submitted by the Defence.

107. Further, the Appeals Chamber is of the view that the Pre-Trial Chamber did not err by “failing appropriately to assess the mitigating effect of the proposed terms of release”.¹⁶⁴ While the reasoning in the Impugned Decision may be succinct, it is apparent from the factors brought forward by the Pre-Trial Chamber when examining the implementation of conditions that it did consider them.¹⁶⁵ The Appeals Chamber does not consider that the Pre-Trial Chamber’s position in this regard was “self-contradictory”.¹⁶⁶ finding that the information on the implementation of the suggested conditions lacked detail is not contradictory to stating that such conditions were “duly considered”. On the contrary, had the Pre-Trial Chamber not “duly considered” the

¹⁵⁸ [OPCV Response](#), paras 28-29 (emphasis in the original).

¹⁵⁹ See [Appeal Brief](#), para. 34.

¹⁶⁰ See paragraph 97 above. See also [Impugned Decision](#), paras 68-69.

¹⁶¹ See [Appeal Brief](#), para. 34.

¹⁶² See [Impugned Decision](#), paras 68, 71.

¹⁶³ See [Appeal Brief](#), para. 35.

¹⁶⁴ See [Appeal Brief](#), para. 36.

¹⁶⁵ See [Impugned Decision](#), para. 69.

¹⁶⁶ See [Appeal Brief](#), para. 37.

proposed conditions, it would not have been in a position to identify the lack of detail regarding their implementation, as it did.

108. Finally, and with regard to the Defence’s argument that the Pre-Trial Chamber erred by failing to appreciate that the Prosecutor had agreed to almost exactly the same terms of release to the Host State,¹⁶⁷ the Appeals Chamber considers irrelevant to which conditions the Prosecutor agreed when discussing potential release of the suspect to the Host State. What matters are not conditions that may, in principle, be possible in case of a release to a State different to the one proposed by the Defence. Rather, what is of consequence for the Pre-Trial Chamber’s assessment are the conditions and guarantees proffered in relation to a release to the State Party concerned.

109. In light of the above, the Appeals Chamber is of the view that the Defence failed to substantiate that the Pre-Trial Chamber’s conclusions were unreasonable.

3. *Whether the Pre-Trial Chamber erred in fact and law by taking into account irrelevant considerations in respect of the State guarantees*

a. Summary of the submissions

110. The Defence argues that the Pre-Trial Chamber “erred by giving excessive and misplaced weight to the need for [REDACTED] to which release is contemplated”, when there is no such requirement in the statutory framework of the Court and established practice mandates for [REDACTED].¹⁶⁸ According to the Defence, the Pre-Trial Chamber appeared to assume that [REDACTED], and further “failed to indicate what is meant by ‘[REDACTED]’”.¹⁶⁹ The Defence asserts that these errors “materially affected the Impugned Decision by denying Mr Duterte interim release on the basis of factors neither reasonable nor foreseeable”.¹⁷⁰

111. The Prosecutor submits that the Pre-Trial Chamber did not err by finding that [REDACTED] the State Party to facilitate the proposed conditions.¹⁷¹ He argues that the Defence misrepresents the Impugned Decision in that the Pre-Trial Chamber did not rule that there was a legal requirement for [REDACTED], and did not find generally

¹⁶⁷ See [Appeal Brief](#), para. 38.

¹⁶⁸ [Appeal Brief](#), paras 39-40, referring to [Impugned Decision](#), para. 69.

¹⁶⁹ [Appeal Brief](#), paras 40-41.

¹⁷⁰ [Appeal Brief](#), para. 42.

¹⁷¹ [Prosecutor’s Response](#), paras 35-37.

[REDACTED] would be required as a matter of law, but instead found that certain conditions required [REDACTED].¹⁷²

112. The OPCV argues that the Chamber never ruled that the [REDACTED] and that the need for [REDACTED] “apparently arises from the nature of the conditions and State guarantees that the Defence itself offered”.¹⁷³ The OPCV submits that the Pre-Trial Chamber’s ruling “remains legally and factually unassailable”,¹⁷⁴ and that the Defence’s arguments are, “at best a mere disagreement”.¹⁷⁵

b. Determination by the Appeals Chamber

113. The Appeals Chamber is of the view that the Pre-Trial Chamber’s reference to [REDACTED] mainly related to the implementation and enforcement of the proposed conditions. As such, the Pre-Trial Chamber did not suggest that [REDACTED] was required under the statutory framework. Rather, it considered the practical implications of ensuring adherence to the proffered conditions in a situation such as the one at hand, [REDACTED] to oversee adherence to the conditions as well as ensure their implementation where required. In this context, that the Pre-Trial Chamber did not specify which [REDACTED] was irrelevant to its determination.

114. Moreover, consideration of [REDACTED] was in fact reasonable for and relevant to the Pre-Trial Chamber’s assessment of whether release on conditions could be a possibility. It is clear from the Impugned Decision that the Pre-Trial Chamber considered the practical implication of the proffered conditions and that it did so against the backdrop of having found that all three risks under article 58(1)(b) of the Statute were established. As such, it was reasonable for the Pre-Trial Chamber to examine how, in practice, the suggested conditions would be implemented. The Defence has failed to show an error in this assessment.

¹⁷² [Prosecutor’s Response](#), paras 36-37.

¹⁷³ [OPCV Response](#), para. 31.

¹⁷⁴ [OPCV Response](#), para. 31.

¹⁷⁵ [OPCV Response](#), para. 32.

4. Conclusion

115. In light of the above, the Appeals Chamber considers that the Defence has failed to show that the Pre-Trial Chamber erred in its assessment of the proposed conditions of release and its rejection of the State guarantees.

116. For the foregoing reasons, the Second Ground of Appeal is rejected.

C. Third Ground of Appeal

1. Summary of the submissions

117. The Defence argues that the Pre-Trial Chamber erred in law by refusing to consider humanitarian grounds “either as an independent consideration [...] or as a mitigating factor of [a]rticle 58(1)(b) risks”.¹⁷⁶ The Defence submits that by refusing to engage with the degree and impact of Mr Duterte’s cognitive impairment, the Pre-Trial Chamber disregarded a consideration “that directly affects the question as to whether the identified risks could have been sufficiently mitigated or conditional release warranted”.¹⁷⁷ According to the Defence, this “glaring omission vitiates the reasonableness of the Chamber’s determination under [a]rticle 58(1)(b)”.¹⁷⁸

118. The Defence further avers, with reference to two decisions in the *Bemba* case, that the Pre-Trial Chamber “erred in finding that prior Court practice of interim release on humanitarian grounds were fact-specific exercises inapplicable to the present case”.¹⁷⁹ The Defence also submits that the Pre-Trial Chamber’s position is contradictory, since on the one hand it did not address the question of whether a suspect could be released solely on humanitarian grounds, but on the other concluded that such grounds were not sufficiently set out in the case at hand.¹⁸⁰

119. Finally, the Defence contends that the Pre-Trial Chamber erred by failing to consider humanitarian considerations and their capacity to mitigate risk alongside the proposed conditions for release and State guarantees,¹⁸¹ and thereby “breached its

¹⁷⁶ [Appeal Brief](#), para. 43.

¹⁷⁷ [Appeal Brief](#), para. 45.

¹⁷⁸ [Appeal Brief](#), para. 45.

¹⁷⁹ [Appeal Brief](#), para. 46, referring to [Impugned Decision](#), para. 72.

¹⁸⁰ [Appeal Brief](#), para. 47, quoting [Impugned Decision](#), para. 73.

¹⁸¹ [Appeal Brief](#), para. 48.

positive obligation to ensure that Mr Duterte's pre-trial detention is neither disproportionate nor inconsistent with the presumption of innocence".¹⁸²

120. The Prosecutor argues that the Defence's argument on the Pre-Trial Chamber failing to consider humanitarian grounds as independent consideration merely disagrees with the Impugned Decision, which provided reasons for the Pre-Trial Chamber's interpretation that it does not have the power to release a suspect on humanitarian grounds only if the grounds for detention under article 58(1)(b) of the Statute continue to exist.¹⁸³ The Prosecutor notes that the Pre-Trial Chamber concluded that compelling humanitarian grounds had not been established, and provides what it considers required clarification on the Defence's reading of the reported neurologist's findings.¹⁸⁴

121. The OPCV argues that the Defence misrepresents the Impugned Decision as the Pre-Trial Chamber did take into account Mr Duterte's medical condition.¹⁸⁵ It posits that the Pre-Trial Chamber conducted an examination of humanitarian grounds¹⁸⁶ and reiterates its position presented in response to the Renewed Request that the medical documents submitted by the Defence did not suffice to justify interim release.¹⁸⁷

2. *Determination by the Appeals Chamber*

122. At the outset, the Appeals Chamber recalls its discussion above of whether the Pre-Trial Chamber erred in not assigning appropriate weight to Mr Duterte's purported health condition and any mitigating effect it may have on the identified risks.¹⁸⁸ The Impugned Decision, contrary to the Defence's contention,¹⁸⁹ clearly did consider whether the information on Mr Duterte's purported health situation before it could mitigate the risks identified under article 58(1)(b) of the Statute.

123. Further, the Appeals Chamber notes that the Pre-Trial Chamber did not "refuse" to address the question of interim release on humanitarian grounds. Rather, while indicating that it would not engage with the question of whether a suspect can be

¹⁸² [Appeal Brief](#), para. 49.

¹⁸³ [Prosecutor's Response](#), para. 40.

¹⁸⁴ [Prosecutor's Response](#), para. 41.

¹⁸⁵ [OPCV Response](#), para. 34.

¹⁸⁶ [OPCV Response](#), para. 35.

¹⁸⁷ [OPCV Response](#), paras 36-39.

¹⁸⁸ See paragraphs 85-87 above.

¹⁸⁹ See [Appeal Brief](#), paras 43, 45, 48.

released on humanitarian grounds only as a matter of principle, the Pre-Trial Chamber proceeded to give the reasons for which, in its view, the humanitarian grounds advanced by the Defence were not “sufficiently set out in the case at hand”.¹⁹⁰

124. The Appeals Chamber considers that the Pre-Trial Chamber was correct in finding, when examining the decisions referred to by the Defence concerning a supposed “prior Court practice of interim release on humanitarian grounds”,¹⁹¹ that those decisions fall short of illustrating a “practice” of interim release on humanitarian grounds.¹⁹² Indeed, the decisions at issue dealt with requests for temporary transfers outside of the detention centre for specific purposes not lasting more than 24 hours and with a Court representative accompanying the detainee concerned at all times.¹⁹³

125. The Appeals Chamber further considers the Defence’s reference to a decision of a chamber at the International Criminal Tribunal for the former Yugoslavia (hereinafter: “ICTY”)¹⁹⁴ inapposite insofar as that decision was set within a specific procedural framework that provided for provisional release on humanitarian grounds under specific circumstances.¹⁹⁵ Appellate jurisprudence at the ICTY had set specific conditions for provisional release on humanitarian grounds.¹⁹⁶

126. In the view of the Appeals Chamber, such jurisprudence is not directly transferable to the situation at hand. Importantly, while the Pre-Trial Chamber’s reasoning may be succinct, the Pre-Trial Chamber, rather than reaching its conclusion “without any engagement whatsoever with the clinical evidence or arguments on Mr Duterte’s medical condition” as suggested by the Defence,¹⁹⁷ engaged with the

¹⁹⁰ See [Impugned Decision](#), para. 73.

¹⁹¹ See [Appeal Brief](#), para. 46.

¹⁹² See [Impugned Decision](#), para. 72.

¹⁹³ See Pre-Trial Chamber II, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the Defence’s Urgent Request concerning Mr Jean-Pierre Bemba’s Attendance of his Father’s Funeral](#), 3 July 2009, ICC-01/05-01/08-437-Red (registered on 22 September 2009); Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the Defence Request for Mr Jean-Pierre Bemba to attend his Step-mother’s Funeral](#), 12 January 2011, ICC-01/05-01/08-1099-Red.

¹⁹⁴ See [Appeal Brief](#), para. 43, fn 80.

¹⁹⁵ ICTY, Trial Chamber II, *Prosecutor v. Vujadin Popović et al.*, [Decision on Gvero’s Motion for Provisional Release](#), 21 July 2008, IT-05-88-T, p. 6.

¹⁹⁶ See ICTY, Appeals Chamber, *Prosecutor v. Vujadin Popović et al.*, [Decision on consolidated appeal against decision on Borovčanin’s motion for a custodial visit and decisions on Gvero’s and Miletić’s motions for provisional release during the break in the proceedings](#), 15 May 2008, IT-05-88-AR65.4; IT-05-88-AR65.5; IT-05-88-AR65.6, paras 18, 24, 32.

¹⁹⁷ See [Appeal Brief](#), para. 47.

arguments brought forward by the Defence.¹⁹⁸ As such, the Defence fails to specify how the Pre-Trial Chamber would have “breached its positive obligation to ensure that Mr Duterte’s pre-trial detention is neither disproportionate nor inconsistent with the presumption of innocence”.¹⁹⁹ In this regard, the Appeals Chamber also recalls that prejudice caused by detention pending investigation and trial is, in and of itself, not a relevant consideration for a determination on interim release.²⁰⁰

127. Furthermore, the Appeals Chamber recalls that the *Gbagbo* OA Judgment found that the medical condition of a detained person may be a reason for a chamber to grant interim release with conditions, and that the chamber enjoys discretion when deciding on conditional release.²⁰¹ The Appeals Chamber considers that it is not apparent from the Impugned Decision, or the arguments presented by the Defence, that the Pre-Trial Chamber’s assessment was unreasonable. In particular, the Pre-Trial Chamber found the existence of risks under article 58(1)(b)(i) through (iii) of the Statute, which were not mitigated by Mr Duterte’s purported condition and also could not be mitigated by any conditions imposed upon release. The Pre-Trial Chamber then proceeded to analyse whether humanitarian grounds, as argued by the Defence, could justify release on conditions. The Appeals Chamber thus considers that the Pre-Trial Chamber assessed the relevant information before it in light of the arguments made by the Defence and reached its conclusion on this basis. It follows from the above that the Defence has failed to demonstrate that the Pre-Trial Chamber’s assessment was unreasonable. Accordingly, the Appeals Chamber finds that Defence has failed to show that the Pre-Trial Chamber erred in its assessment.

3. Conclusion

128. In light of the above, the Third Ground of Appeal is thus rejected.

D. Overall conclusion

129. For the foregoing reasons, all three grounds of appeal are rejected. The Appeals Chamber notes that the Pre-Trial Chamber reached its conclusions in relation to the

¹⁹⁸ See [Impugned Decision](#), paras 74-75.

¹⁹⁹ See [Appeal Brief](#), para. 49.

²⁰⁰ [Bemba et al. OA4 Judgment](#), para. 126.

²⁰¹ [Gbagbo OA Judgment](#), para. 87.

risks enumerated in article 58(1)(b) of the Statute on the basis of a comprehensive assessment of the information before it.

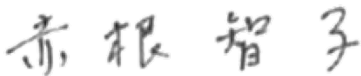
VIII. APPROPRIATE RELIEF

130. In an appeal pursuant to article 82(1)(b) of the Statute, the Appeals Chamber may confirm, reverse or amend the decision appealed.²⁰² In the present case, having rejected the three grounds of appeal presented by the Defence in the Appeal Brief, the Appeals Chamber unanimously confirms the Impugned Decision.

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



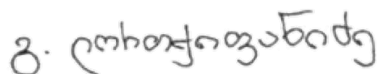
Judge Luz del Carmen Ibáñez Carranza
Presiding



Judge Tomoko Akane



Judge Solomy Balungi Bossa



Judge Gocha Lordkipanidze



Judge Erdenebalsuren Damdin

Dated this 28th day of November 2025

At The Hague, The Netherlands

²⁰² See rule 158(1) of the Rules.