

1 International Criminal Court
2 Appeals Chamber
3 Situation: The Republic of the Philippines
4 In the case of The Prosecutor v. Rodrigo Roa Duterte - ICC-01/21-01/25
5 Presiding Judge Luz del Carmen Ibáñez Carranza, Judge Tomoko Akane, Judge
6 Solomy Balungi Bossa, Judge Gocha Lordkipanidze and Judge Erdenebalsuren
7 Damdin
8 Appeals Judgment - Courtroom 1
9 Friday, 28 November 2025
10 (The hearing starts in open session at 10.41 a.m.)
11 THE COURT USHER: [10:41:22] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE IBÁÑEZ CARRANZA: [10:41:54] Good morning.
15 Could the court officer please call the case.
16 THE COURT OFFICER: [10:42:31] Good morning, Madam President, your Honours.
17 Situation in the Republic of the Philippines, in the case of the Prosecutor v. Mr
18 Rodrigo Roa Duterte, case reference ICC-01/21-01/25.
19 And for the record, we are in open session
20 PRESIDING JUDGE IBÁÑEZ CARRANZA: [10:42:49] I am Judge Luz del Carmen
21 Ibáñez Carranza, presiding in this appeal arising from the case of the Prosecutor v.
22 Rodrigo Roa Duterte. My fellow judges in this appeal are Judge Tomoko Akane,
23 Judge Solomy Balungi Bossa, Judge Gocha Lordkipanidze and Judge Erdenebalsuren
24 Damdin. Judge Gocha Lordkipanidze is to my right, Judge Damdin is to my left.
25 Judge Akane and Judge Bossa are on mission today.

1 May I ask the parties to introduce themselves for the record, please, starting with the
2 Defence.

3 MR KAUFMAN: [10:43:43] Good morning, your Honours. The Defence team
4 today is comprised of the following members, in ascending order of seniority,
5 immediately behind me, Maître Alexandre Desevedavy. Behind me to my left is
6 Maître Sandrine De Sena. To my left, Attorney Havneet Sethi and, myself, Attorney
7 Nicholas Kaufman. We represent the former president of the Philippines,
8 Mr Rodrigo Roa Duterte, who, with the leave of the Court, is absent today but very
9 much present in spirit.

10 PRESIDING JUDGE IBÁÑEZ CARRANZA: [10:44:17] Thank you.
11 Please, Office of the Prosecutor.

12 MS BRADY: [10:44:22] Good morning, your Honour, and good morning -- your
13 Honours, and good morning to everyone in the courtroom. For the Prosecution, to
14 my left, Mr Julian Nicholls, senior trial lawyer; behind me, Mr Matteo Costi, appeals
15 counsel; and next to him, Ms Hannah Allen, associate trial lawyer. And I'm Helen
16 Brady, I'm the senior appeals counsel. Thank you.

17 PRESIDING JUDGE IBÁÑEZ CARRANZA: [10:44:52] Thank you.
18 Office for the Public Counsel for Victims, please.

19 MS MASSIDDA: [10:44:57] Good morning, Madam President, Your Honours. For
20 the Office of Public Counsel for Victims appearing today, to my right, Mr Orchlon
21 Narantsetseg, legal officer; to his right, Ms Anne Grabowski, legal officer; behind me,
22 Ms Michaela Todd and Ms Gaia Conti, interns; and I am Paolina Massidda, principal
23 counsel.

24 PRESIDING JUDGE IBÁÑEZ CARRANZA: [10:45:25] Thank you.

25 Thank you very much. For the record, I note that Mr Duterte is not present in the

1 courtroom as he has waived his right to be present. His written waiver has been
2 filed on the record. He is represented by his counsel.

3 Today, the Appeals Chamber will deliver its judgment in the appeal of Mr Duterte
4 against the decision of Pre-Trial Chamber I entitled "Decision on the Defence's 'Urgent
5 Request for Interim Release' and 'Renewed Request for Interim Release'".

6 This is a non-authoritative summary of the Appeals Chamber's written judgment in
7 this appeal. The latter will be notified after this hearing.

8 I will first briefly outline the procedural history of this appeal.

9 On 26 September 2025, the Pre-Trial Chamber I issued its decision on two requests for
10 interim release presented by the Defence of Mr Duterte, the "Impugned Decision".

11 On 3 October 2025, the Defence filed a notice of appeal against the Impugned
12 Decision pursuant to Article 82(1)(b) of the Statute; and on 14 October 2025, its appeal
13 brief. The Defence raises three grounds of appeal.

14 On 21 October 2025, the Deputy Prosecutor and the Office of Public Counsel for
15 Victims filed their responses, opposing the appeal.

16 I will now turn to the three grounds of appeal raised by the Defence.

17 Summary of the grounds of appeal.

18 Under the first ground of appeal, the Defence alleges that the Pre-Trial Chamber
19 erroneously found that Mr Duterte poses a risk under Article 58(1)(b) subparagraphs
20 (i) to (iii) of the Statute. Within this ground of appeal, the Defence raises three main
21 arguments. According to the Defence, the Pre-Trial Chamber committed the
22 following errors of law and/or fact: (i) it erred by relying on "hypothetical and
23 nonspecific risks" when determining that Mr Duterte's continued detention is
24 warranted; (ii) it erred by relying on irrelevant considerations; and (iii) it erred by
25 failing to give appropriate weight to the relevant facts.

1 Under the second ground of appeal, the Defence submits that the Pre-Trial Chamber
2 erred in rejecting the State guarantees, and raises three main arguments. The
3 Defence argues that the Pre-Trial Chamber erred (i) in law by failing to address the
4 conditions of release and guarantees suggested by the State that agreed to receive
5 Mr Duterte should he be released; (ii) in law by failing to consider if the guarantees
6 provided by that State could mitigate the risks identified under Article 58(1)(b) of the
7 Statute; and (iii) erred in fact and law by taking into account irrelevant considerations.

8 Under the third ground of appeal, the Defence argues that the Pre-Trial Chamber
9 erred in law by failing to take into account humanitarian considerations in assessing
10 the right to interim release. The Defence alleges that the Pre-Trial Chamber erred in
11 refusing to consider humanitarian grounds as an independent consideration or as a
12 factor mitigating the risks under Article 58(1)(b) of the Statute.

13 I will address these three grounds of appeal in turn.

14 At the outset, Article 58 of the Statute regulates the issuance by the Pre-Trial Chamber
15 of a warrant of arrest. Pursuant to Article 58(1)(b) of the Statute, a chamber assesses
16 whether the arrest of a person "appears necessary": one, to prevent a person from not
17 appearing at trial; two, to prevent a person from obstructing or endangering the
18 investigation or the court proceedings; or, three, where applicable, to prevent the
19 person from continuing with the commission of that crime or a related crime which is
20 within the jurisdiction of the Court and which arises out of the same circumstances.

21 In accordance with Article 60(2) of the Statute, the person subjected to a warrant of
22 arrest under Article 58 of the Statute may apply for interim release pending trial.

23 The Pre-Trial Chamber's ruling on such an application under Article 60(2) of the
24 Statute is provisional in nature to the extent that it will be periodically reviewed, at
25 least every 120 days or at any time following a request by the detained person or the

1 Prosecutor. If satisfied that the circumstances so require, the Pre-Trial Chamber may
2 modify its initial ruling on detention, pursuant to Article 60(3) of the Statute and
3 Rule 118(2) of the Rules of Procedure and Evidence.

4 Regarding the first ground of appeal, and the question of whether the Pre-Trial
5 Chamber erred in law by relying on hypothetical and non-specific risks to find that
6 continued detention is warranted, the Appeals Chamber recalls that, in determining
7 whether the conditions pursuant to Article 60(2) of the Statute have been met,
8 a chamber must find that detention "appears necessary". In this context, the Appeals
9 Chamber observes that a determination shall be made concerning the possibility, and
10 not the inevitability, that one of the events listed in Article 58(1)(b) of the Statute will
11 occur, and that it is the responsibility of the relevant chamber to weigh the evidence
12 before it pursuant to the relevant standard.

13 The Appeals Chamber notes that, in its assessment of risks under Article 58(1)(b) of
14 the Statute, the Pre-Trial Chamber relied on this legal standard. Indeed, the
15 Pre-Trial Chamber correctly referred to the standard that the assessment under
16 Article 58(1)(b) of the Statute concerns "the possibility, not the inevitability, of a future
17 occurrence". It then analysed the material before it against this standard.

18 According the Defence -- accordingly, the Defence has failed to demonstrate that the
19 Pre-Trial Chamber misapprehended the legal standard relevant to the assessment of
20 risks under Article 58(1)(b) of the Statute.

21 With regard to the Pre-Trial Chamber's assessment and weighing of evidence in
22 assessing risks pursuant to Article 58(1)(b)(ii) of the Statute, the Appeals Chamber
23 notes that the Pre-Trial Chamber made reference to five documents, including media
24 articles, publications of non-governmental organisations and a book, which, in its
25 view, indicated that Mr Duterte's inclination to interfere with investigations against

1 him.

2 In relation to the first document, a media article, the Appeals Chamber finds that it
3 was not unreasonable for the Pre-Trial Chamber to rely on this document for its
4 finding. Whilst this document does not mention Mr Duterte himself as being
5 directly involved in briefing individuals, it does not refer to statements of close -- it
6 does refer, sorry, it does refer to statements of "close associates", including one where
7 individuals would have been told to remain "loyal".

8 In any event, the Appeals Chamber observes that Mr Duterte's alleged involvement in
9 briefing individuals is but one of the factors that the Pre-Trial Chamber took into
10 account to support its conclusion on Mr Duterte's inclination to interfere with
11 investigations against him.

12 In relation to the other four documents, a book, two publications of
13 non-governmental organisations, and a press article, the Appeals Chamber recalls
14 that there does not exist in the applicable law of this Court any impediment to the use
15 of newspapers, articles, or other public or open sources for the purposes of assessing
16 the requirement under Article 58(1) of the Statute, nor is there any requirement that
17 such material be corroborated. Noting this, the Appeals Chamber considers that it is
18 possible to discern how the Pre-Trial Chamber reached its conclusion on Mr Duterte's
19 alleged involvement in the threatening and taking of retaliatory actions against
20 individuals opposed to him. In any event, the Appeals Chamber observes that this is
21 only one of the factors that the Pre-Trial Chamber took into account to support its
22 conclusion on Mr Duterte's inclination to interfere with investigations against him
23 and, more generally, on the risk of Mr Duterte obstructing or endangering the
24 investigations or the court proceedings.

25 For these reasons, the Appeals Chamber considers that the Defence has failed to

1 demonstrate an error in the Pre-Trial Chamber's assessment and weighing of evidence
2 before it in the context of its consideration of the risk under Article 58(1)(b)(ii) of the
3 Statute.

4 In relation to the Pre-Trial Chamber's reliance on the notion of a "network of
5 supporters", the Appeals Chamber recalls that it has considered that it is sufficient for
6 a chamber to establish that it is possible that a suspect had the necessary assets to
7 abscond, and that there is a risk that a suspect has the financial means to abscond on
8 the basis of concrete evidence.

9 The Appeals Chamber has also held that "the existence of a support network and
10 financial means may be relevant to determining whether there is a risk that a person
11 may evade justice or interfere with the investigation", and that "access to international
12 contacts could provide the means to enable a suspect to abscond, whether or not there
13 was evidence that the suspect would actually utilise such contacts".

14 In the Impugned Decision, in determining whether Mr Duterte posed a flight risk
15 under Article 58(1)(b)(i) of the Statute, the Pre-Trial Chamber considered that he
16 "appears to have the necessary political contacts, as well as to benefit from a network
17 of support" within the Philippines.

18 The Appeals Chamber considers that, contrary to the Defence's argument, the
19 Pre-Trial Chamber specifically outlined why it found that there existed a network of
20 supporters in relation to Mr Duterte, and for which reason this supported its
21 conclusion that the risk under Article 58(1)(b)(i) of the Statute was established. In
22 the view of the Appeals Chamber, the manner in which the Pre-Trial Chamber
23 undertook this assessment was case-specific as it took into account the specific
24 circumstances of Mr Duterte, amongst others his position as former president of the
25 Philippines and his recent re-election as mayor of Davao City in May 2025.

1 It follows that the Defence has failed to demonstrate that the Pre-Trial Chamber
2 committed an error in assessing and considering Mr Duterte "network of supporters"
3 for the purpose of its examination of the risk under Article 58(1)(b)(i) of the Statute.
4 Further, under the first ground of appeal, the Defence argues that the Pre-Trial
5 Chamber's alleged reliance on irrelevant considerations led to errors of law and fact.
6 Regarding the arguments on the assessment of evidence and, in particular, the
7 Defence's contention that a number of factors relied on by the Pre-Trial Chamber were
8 "irrelevant", the Appeals Chamber notes that when assessing the risk under
9 Article 58(1)(b)(i) of the Statute, the Pre-Trial Chamber relied on several factors in
10 support of its finding that such risk existed. It relied on a statement by Mr Duterte,
11 statements by others, Mr Duterte's position as a former president of the Philippines
12 and his recent re-election as mayor of Davao City, as well as the matter of the gravity
13 of the alleged crimes and concomitant sentence in case of conviction.
14 The Appeals Chamber observes that the Defence does not explain why, in its view,
15 these factors were "irrelevant" to the Pre-Trial Chamber's assessment. Without more,
16 the Defence has failed to substantiate that the Pre-Trial Chamber's reasoning and
17 assessment were unreasonable.
18 In the same vein, the Defence fails to demonstrate that the Pre-Trial Chamber's
19 reliance on Mr Duterte re-election as mayor of Davao City in its assessment of the
20 risks under Article 58(1)(b)(iii) of the Statute was "unreasonable".
21 Moreover, with regard to the Defence's contention that the Pre-Trial Chamber
22 selectively cited facts and ignored others in the same items of evidence, the Appeals
23 Chamber considers that the Defence has failed to demonstrate how the fact that the
24 Pre-Trial Chamber accorded weight to the statements from Mr Duterte that it cited
25 should result in the Pre-Trial Chamber's ignoring or attaching no weight to other

1 statements.

2 Regarding gravity and concomitant sentence in case of conviction, it is recalled that
3 the Appeals Chamber has consistently held that these factors are relevant
4 considerations in assessing the risk under Article 58(1)(b)(i) of the Statute, as these are
5 factors that may increase the incentive of a person to abscond.

6 In the present instance, the gravity of the alleged crimes and the possibility of
7 a lengthy sentence was but one of the factors the Pre-Trial Chamber took into account
8 in its assessment of risks under Article 58(1)(b)(i) and (ii) of the Statute, and it looked
9 at the specific allegations against Mr Duterte. It follows that the Defence has failed
10 to demonstrate an error.

11 Regarding the question of whether the Pre-Trial Chamber erred in fact by failing to
12 give appropriate weight to relevant facts, specifically Mr Duterte's health condition
13 and its mitigating effect on the risk factors set out in Article 58(1)(b) of the Statute, as
14 argued by the Defence, the Appeals Chamber recalls that "there is no provision in the
15 Court's legal texts that specifically provides for the interim or conditional release of
16 a detained person on health grounds". Nevertheless, the Appeals Chamber has
17 indicated that the medical condition of a detained person "may have an effect on the
18 risks under Article 58(1)(b) of the Statute" and "may be a reason for a Pre-Trial
19 Chamber to grant interim release with conditions".

20 The Appeals Chamber considers that such a determination is necessarily case-specific.
21 Contrary to the Defence's assertion, nowhere did the Pre-Trial Chamber suggest that
22 it was "precluded" from assessing the information about Mr Duterte's health within
23 the context of its assessment under Article 60(2) of the Statute. Rather, it noted the
24 reports placed before it and considered that they were unable to affect its finding on
25 risks under Article 58(1)(b) of the Statute. The Defence has failed to show that the

1 Pre-Trial Chamber's approach was unreasonable.

2 For these reasons, having rejected the Defence's argument under this ground of
3 appeal, the first ground of appeal is rejected.

4 The second ground of appeal.

5 I will now turn to the second ground of appeal. Under this ground, the Defence
6 challenges the Pre-Trial Chamber's assessment of the proposed conditions of release
7 and State guarantees. The Defence argues that the Pre-Trial Chamber erred in law in
8 failing to address the proposed conditions of release and State guarantees.

9 The Appeals Chamber is of the view that the Pre-Trial Chamber did not appear to
10 criticise a lack of detail in the proposed conditions, but rather in the details as to how
11 the State which accepted to receive Mr Duterte would implement the necessary
12 conditions. The Pre-Trial Chamber did not consider release with conditions, as
13 required, but found that in the circumstances before it, the risks it had identified
14 could not be mitigated by the proposed conditions.

15 Moreover, the Appeals Chamber is of the view that the Pre-Trial Chamber was not
16 obliged, as suggested by the Defence, to seek further observations from the concerned
17 State because it did not envisage the possibility of release given the risks it found
18 Mr Duterte presents under Article 58(1)(b) of the Statute.

19 For these reasons, the Appeals Chamber finds that the Defence has failed to identify
20 an error by the Pre-Trial Chamber when addressing the proposed conditions of
21 release and State guarantees.

22 In relation to the question of whether the Pre-Trial Chamber erred in law by failing to
23 consider if the proposed State guarantees could mitigate the risks under
24 Article 58(1)(b) of the Statute, the Appeals Chamber finds that it does not appear from
25 the Impugned Decision that the Pre-Trial Chamber would have required an

1 "elimination" of risks, as argued by the Defence. Instead, the Impugned Decision
2 specifically states that the Pre-Trial Chamber did not consider the suggested
3 conditions to "sufficiently mitigate" the identified risks. It is also apparent from the
4 factors brought forward by the Pre-Trial Chamber when examining the
5 implementation of conditions that it did consider them.

6 Finally, the Appeals Chamber considers irrelevant to which conditions the Prosecutor
7 agreed when discussing potential release of the suspect to the host State. What
8 matters are not conditions that may, in principle, be possible in case of a release to
9 a State different to the one proposed by the Defence. Rather, what is of consequence
10 for the Pre-Trial Chamber's assessment are the conditions and guarantees proffered in
11 relation to a release to the State party concerned.

12 For these reasons, the Appeals Chamber is of the view that the Defence failed to
13 substantiate that the Pre-Trial Chamber's conclusions were unreasonable.

14 Regarding the Defence's contention that the Pre-Trial Chamber erred in fact and law
15 by taking into account irrelevant considerations in respect of the State guarantees, the
16 Appeals Chamber considers that the Pre-Trial Chamber's findings mainly related to
17 the implementation and enforcement of the proposed conditions. It considered the
18 practical implications of ensuring adherence to the proffered conditions in a situation
19 such as the one at hand. It did so against the backdrop of having found that all three
20 risks under Article 58(1)(b) of the Statute were established. As such, it was
21 reasonable for the Pre-Trial Chamber to examine how, in practice, the suggested
22 conditions would be implemented. The Defence has failed to show an error in this
23 assessment.

24 For these reasons, the Appeals Chamber considers that the Defence has failed to show
25 how the Pre-Trial Chamber erred in its assessment of the proposed conditions of

1 release and State guarantees.

2 For the foregoing reasons, the second ground of appeal is rejected.

3 The third ground of appeal.

4 Regarding the third ground of appeal, within which the Defence argues that the

5 Pre-Trial Chamber erred in not considering humanitarian grounds either as

6 independent consideration or mitigating factor in assessing interim release, the

7 Appeals Chamber considers that the Pre-Trial Chamber did not "refuse" to address

8 the question of interim release on humanitarian grounds. Rather, it gave the reasons

9 for which, in its view, the humanitarian grounds advanced by the Defence were not

10 "sufficiently set out in the case at hand".

11 Further, the Appeals Chamber recalls that the medical condition of a detained person

12 may be a reason for a chamber to grant interim release with conditions, and that the

13 Chamber enjoys discretion when deciding on conditional release. The Appeals

14 Chamber considers that it is not apparent from the Pre-Trial Chamber's assessment

15 that it was unreasonable. The Pre-Trial Chamber found the existence of risks under

16 Article 58(1)(b) of the Statute, which were not mitigated by Mr Duterte's purported

17 condition and also could not be mitigated by any condition imposed upon release.

18 The Pre-Trial Chamber then proceeded to analyse whether humanitarian grounds, as

19 argued by the Defence, could justify release on conditions. The Appeals Chamber

20 thus considers that the Pre-Trial Chamber assessed the relevant information before it

21 in light of the arguments made by the Defence and reached its conclusion on this

22 basis. It follows that the Defence has failed to demonstrate that the Pre-Trial

23 Chamber's assessment was unreasonable. Accordingly, the Appeals Chamber finds

24 that the Defence has failed to show that the Pre-Trial Chamber erred in its assessment.

25 For these reasons, the third ground of appeal is rejected.

1 Finally, the Appeals Chamber notes that the Pre-Trial Chamber reached its conclusion
2 in relation to the risks enumerated in Article 58(1)(b) of the Statute on the basis of
3 a comprehensive assessment of the information before it.

4 In the present case, having rejected the three grounds of appeal presented by the
5 Defence in the appeal brief, the Appeals Chamber unanimously confirms the
6 Impugned Decision.

7 This brings us to the end of the summary of the Appeals Chamber's judgment.

8 The judgment will be notified to the parties and participants after the hearing.

9 Translations of the summary will also be available in due course.

10 I would like to thank the court reporters, the interpreters, and other Registry staff for
11 their valuable assistance today in holding this hearing.

12 The hearing is adjourned.

13 THE COURT USHER: [11:16:32] All rise.

14 (The hearing ends in open session at 11.16 a.m.)