

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **23 June 2025**

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

PUBLIC

**Public Redacted Version of “Defence Request for Leave to Reply
to the Prosecution’s Response to the Defence Challenge on Jurisdiction
(ICC-01/21-01/25-146)”, 23 June 2025**

Source: Defence for Mr Rodrigo Roa Duterte

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

Duterte Defence Team

☐ 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

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Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Defence seeks leave to reply to filing ICC-01/21-01/25-146,¹ which constitutes the Prosecution's response to the "Defence Challenge with Respect to Jurisdiction".²
2. For the sake of economy, the Defence omits a recital of the procedural history.

II. SUBMISSIONS

3. The Prosecution's Response presents an argument that is founded on facts that were formerly shielded from the public, [REDACTED]. For this reason alone, the full scope of the Prosecution's Response, could not have been anticipated when the Defence Challenge was filed.
4. As will be recalled, paragraph 71 of the public version of the Response was redacted and preceded, in paragraph 70, by the Prosecution's argument that "meaningful steps may [...] be undertaken under article 68(1) of the Statute prior to the authorization of an investigation". Commenting on the nature of a preliminary examination, the Prosecution added that "the Court may be called upon to make substantive judicial decisions, including under regulation 46(3)".³
5. The above-mentioned comments piqued Counsel's curiosity. Accordingly, on 10 June 2025 at 05:20 am,⁴ Counsel enquired of his counterpart in the Office of the Prosecutor as to whether the Prosecution had, indeed, "called upon" the Court "to make substantive judicial decisions" and queried why the Defence

¹ Corrected Version of "Public redacted version of the Prosecution response to '[Defence Challenge with Respect to Jurisdiction](#)'", 9 June 2025, ICC-01/21-01/25-146-Red, [ICC-01/21-01/25-146-Red-Corr](#), 10 June 2025 ("Response" or "Prosecution's Response").

² Defence Challenge with Respect to Jurisdiction, [ICC-01/21-01/25-121](#), 1 May 2025 ("Defence Challenge").

³ [Prosecution's Response](#), para. 70.

⁴ [REDACTED].

had not received such information in advance - despite the fact that it had made a number of requests [REDACTED] prior to the preparation of its jurisdictional arguments.

6. At 10:11 am, on 10 June 2025,⁵ the Prosecution replied to Counsel and stated that it had sought [REDACTED].
7. [REDACTED].⁶ [REDACTED]. [REDACTED].
8. [REDACTED].
9. In any event, [REDACTED] newly revealed facts, which could not have been anticipated, are presently elicited to support the Prosecution's rebuttal of the Defence's submission that a preliminary examination cannot be deemed a "matter before the Court" for the purpose of Article 127(2) of the Rome Statute.⁷ A reply will elaborate that even "meaningful steps" undertaken during a preliminary examination – whatever their nature – cannot alter the Defence's more commonsense interpretation of Article 127(2) such that it would permit the Prosecution to initiate an investigation, and the Court to exercise jurisdiction, more than one year after a State Party's withdrawal from the Rome Statute and *in perpetuum*.
10. The Defence also seeks leave to reply to the Prosecution's argument at paragraph 38 of the Response that "[t]he object and purpose of the Statute supports the interpretation that the territorial State or State of the suspect's nationality need not be a State Party when the Court's jurisdiction is exercised".⁸ The Prosecution appears to be intimating that the fight against impunity would justify a tendentiously speculative interpretation of the Rome Statute so long as it ensures that Mr Duterte's alleged criminality does "not go

⁵ [REDACTED].

⁶ [REDACTED].

⁷ See [Rome Statute](#), Art.127(2).

⁸ [Prosecution's Response](#), para. 38.

unpunished”.⁹ The OPCV jumped on the same conceptual bandwagon by asserting that considerations of accountability should trump legal niceties and, moreover, by issuing an inappropriately stark threat to the Court that “concluding otherwise would mean upholding impunity and depriving Victims of justice”.¹⁰

11. Nowhere are the lengths to which the Prosecution has gone to give effect to such an emotional plea better illustrated than in its argument that the use of the present simple tense in Article 12(2) of the Rome Statute “is open to multiple interpretations”.¹¹ With this claim, the Prosecution abandons the interpretative guidance of the Vienna Convention, which both it and the OPCV vaunt so greatly, in order to import a superfluous precondition of temporality into Article 12(2).¹² The same semantic extravagance is exhibited by the OPCV, which, while averring that Articles 12 and 127 are “crystal clear”,¹³ nevertheless employs Orwellian doublethink (or what it calls “determinative interpretation”) to posit that Article 12(2) engages not only “States that ‘*are*’ still Parties to the Statute” but also “States that ‘*were*’ Parties to the same”.¹⁴ Such tortuous textual interpretation, as the Defence has previously highlighted, flies in the face of the opinion of two respected judges of the ICC Appeals Chamber.
12. The abovementioned argument, framed in terms of the “fight against impunity”, could not have been foreseen, quite simply, because of its irrelevance to a jurisdictional challenge. It is also premised on an unfair and emotive argument calculated to tug at the heartstrings of the international

⁹ [Prosecution’s Response](#), para. 39.

¹⁰ Victims’ Observations on the Defence Challenge with Respect to Jurisdiction, [ICC-01/21-01/25-145](#), 9 June 2025 (“OPCV Observations”), para. 4.

¹¹ [Prosecution’s Response](#), para. 24.

¹² See [Rome Statute](#), Art. 12(2). Examples of such textual perversity and inconsistency abound. Even while arguing that “the Court” should include its own Office, the Prosecution uses the notion to refer to the Pre-Trial Chamber’s exercise of judicial function throughout the Response.

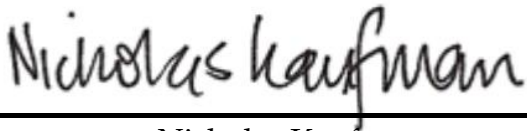
¹³ [OPCV Observations](#), para. 2.

¹⁴ [OPCV Observations](#), para. 35.

community. Combatting impunity is, of course, a noble objective. Accountability, however, cannot be the means whereby the Pre-Trial Chamber is made to feel obliged to compensate victims at the expense of a suspect's right to legal propriety. It is not Mr Duterte, therefore, who seeks to shirk accountability, but rather the Prosecution, for its miscalculated and, ultimately, erroneous decision not to initiate an investigation within the designated time-period.

III. RELIEF SOUGHT

13. In light of the aforementioned, the Pre-Trial Chamber should **GRANT** the present request for leave to reply to the Prosecution's Response to the Defence Challenge on Jurisdiction.



Nicholas Kaufman
Counsel for Mr Rodrigo Roa Duterte



Prof Dr Dov Jacobs
Associate Counsel for Mr Rodrigo Roa
Duterte

Dated this 23rd day of June 2025
At Jerusalem, Israel & The Hague, The Netherlands