

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **25 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

Prosecution's response to "Defence Request for Leave to Reply to the Prosecution's Response to the Defence Challenge on Jurisdiction (ICC-01/21-01/25-146)"

Source: Office of the Prosecutor

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

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☐ Legal Representatives of the Victims

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I. INTRODUCTION

1. The Prosecution respectfully requests that the Chamber reject, in part, the Defence's Request for Leave to Reply to the Prosecution's Response to the Defence Challenge on Jurisdiction (the "Request").¹

2. Specifically, the Prosecution opposes the Defence's request to reply, as set out in paragraphs 10-12 of the Request,² to the argument at paragraphs 38 to 43 of the "Prosecution's response to 'Defence Challenge with Respect to Jurisdiction'" (the "Prosecution's 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".³ The Defence does not identify any new issues arising from this argument that it could not have reasonably anticipated in the Defence Challenge with Respect to Jurisdiction (the "Defence's Challenge").⁴ Nor does the Defence identify any issue that would otherwise merit a reply.

3. The Prosecution does not object to the Defence's request to reply as set out in paragraphs 3 to 9 of the Request.⁵

II. SUBMISSIONS

4. The granting of leave to reply under regulation 24(5) of the Regulations of the Court (the "Regulations") is a matter for a Chamber's discretion, to be decided on a case-by-case basis.⁶ A reply may be warranted where the applicant seeks to provide arguments on matters that could not reasonably have been anticipated, or are otherwise necessary to adjudicate the matter.⁷

¹ Confidential 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, ICC-01/21-01/25-158-Conf (public redacted version filed the same day, ICC-01/21-01/25-158-Red).

² Request, ICC-01/21-01/25-158-Red, paras 10-12.

³ Confidential Corrected version of "Prosecution response to 'Defence Challenge with Respect to Jurisdiction'", 9 June 2025, (ICC-01/21-01/25-146-Conf), 10 June 2025, ICC-01/21-01/25-146-Conf-Corr (public redacted version filed the same day, [ICC-01/21-01/25-146-Red-Corr](#)), paras 38-43.

⁴ Defence Challenge with Respect to Jurisdiction, 1 May 2025, [ICC-01/21-01/25-121](#).

⁵ Request, ICC-01/21-01/25-158-Red, paras 3-9.

⁶ The Appeals Chamber, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on Mr Yekatom's request for leave to reply, 4 January 2021, [ICC-01/14-01/18-799](#) (Yekatom Decision), para. 8; Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, 15 May 2020, [ICC-01/04-02/06-2530](#), para. 7.

⁷ Yekatom Decision, [ICC-01/14-01/18-799](#), para. 8; Appeals Chamber, Situation in the Bolivarian Republic of Venezuela I, Decision on the Bolivarian Republic of Venezuela's request for leave to reply to the Prosecutor's response to the appeal brief and order concerning reclassification, 12 October 2023, [ICC-02/18-66](#).

5. The Defence's request to reply to the Prosecution's argument as set out at paragraphs 10-12 of the Request should be rejected. The Defence could have reasonably anticipated the Prosecution's arguments set out in paragraphs 38 to 43 of the Prosecution's Response.

6. First, the Prosecution's argument, concerning a central issue, was foreseen by the dissenting Judges in the Article 18(2) Appeal Judgment (the "Dissenting Opinion")⁸, a decision widely cited in the Defence's Challenge.⁹ Indeed, in introducing the challenged argument, the Prosecution referred to and cited to the Dissenting Opinion in noting that the Prosecution's interpretation of article 12(2) of the Statute "strikes the correct balance between the competing considerations at stake".¹⁰ This argument was, therefore, referred to by the dissenting Judges in the Dissenting Opinion and could have reasonably been anticipated by the Defence.

7. Second, the Defence's claim that "[n]owhere are the lengths to which the Prosecution has gone [...] 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 However, Associate Counsel for Mr Duterte previously arrived at the same conclusion as the Prosecution regarding article 12(2) of the Statute. Writing on his blog in March 2019, Counsel noted that article 12(2) is effectively open to more than one interpretation:

One can note that Article 12(2) indicates that the Court can exercise jurisdiction "if one or more of the following States are Parties to this Statute". The use of the present tense ("are") *seems to suggest* contemporaneity with the assessment.¹²

8. Counsel's view on whether article 12(2) is open to interpretation may have evolved, but in 2019 his published view was that a contemporaneity requirement merely seemed to be suggested by the text of the article, leaving the door open to other interpretations. Thus, differing interpretations could have been, and in fact were, reasonably anticipated by the Defence, contrary to the requirements of regulation 24(5) of the Regulations.

⁸ Situation in the Philippines, Article 18(2) Appeal Judgment, Dissenting Opinion of Judges Perrin de Brichambaut and Lordkipanidze, 18 July 2023, [ICC-01/21-77-OPI OA](#), para. 28.

⁹ Defence's Challenge, [ICC-01/21-01/25-121](#), *see, e.g.*, fn 12, 16, 17, 67, 68.

¹⁰ Prosecution's Response, [ICC-01/21-01/25-146-Red-Corr](#), para. 38, citing, Dissenting Opinion, [ICC-01/21-77-OPI OA](#), para. 28.

¹¹ Defence Request, ICC-01/21-01/25-158-Red, para. 11.

¹² Dov Jacobs, Spreading the Jam, [Some thoughts on the legal consequences of the Philippines leaving the Rome Statute, 20 March 2019](#), [emphasis added].

9. The Prosecution further notes that the Defence has impermissibly included substantive submissions in its Request.¹³

III. REQUESTED RELIEF

10. For the above reasons, the Prosecution respectfully requests that the Chamber reject, in part, the Defence's Request.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', written over a horizontal line.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 25th day of June 2025

At The Hague, the Netherlands

¹³ Request, ICC-01/21-01/25-158-Red, paras 10-12; *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Decision on the Defence request to amend the name of the case, 26 June 2020, [ICC-02/05-01/20-8](#), paras 11-12; *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Decision on the Defence request under article 67(1)(f) of the Rome Statute, 10 July 2020, [ICC-02/05-01/20-94](#) (Abd-Al-Rahman), para. 12.