

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **9 December 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

**Defence Request for Leave to Reply to the "Prosecution Response to
'Appeal Brief on Jurisdiction'" (ICC-01/21-01/25-328)**

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

REGISTRY

Registrar

Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Defence for Mr Rodrigo Roa Duterte respectfully seeks leave to reply to the Prosecution's response¹ to the Defence's appellate challenge² to the Pre-Trial Chamber's ruling on jurisdiction ("Impugned Decision").³
2. Regulation 24(5) of the Regulations of the Court allows parties to reply to a response upon leave of the Chamber. A request for leave to reply must demonstrate the existence of new issues that could not reasonably have been anticipated in the original submission.⁴ The Appeals Chamber has granted requests for leave to reply where the above conditions are met,⁵ or where doing so would be necessary for,⁶ or assist in,⁷ the adjudication of the appeal, is in the interests of completeness of the judicial record,⁸ or is otherwise warranted.⁹

¹ Prosecution Response to "Appeal Brief on Jurisdiction", [ICC-01/21-01/25-328](#), 8 December 2025 ("Prosecution Response").

² Appeal Brief on Jurisdiction, [ICC-01/21-01/25-319](#), 14 November 2025.

³ Decision on the Defence Challenge to the Jurisdiction of the Court, [ICC-01/21-01/25-309](#), 23 October 2025.

⁴ Regulations of the Court, [Regulation 24\(5\)](#).

⁵ *Yekatom and Ngaïssona*, Decision on Mr Yekatom's request for leave to reply, [ICC-01/14-01/18-799](#), 4 January 2021, para. 8.

⁶ *Situation in the Islamic Republic of Afghanistan*, Decision on the Prosecutor's request for leave to reply, [ICC-02/17-206](#), 23 December 2022, para. 8.

⁷ *Situation in the Republic of the Philippines*, Decision on the Republic of the Philippines' request for leave to reply to the "Prosecution's response to the Philippine Government's Appeal Brief against 'Authorisation pursuant to article 18(2) of the Statute to resume the investigation' (ICC-01/21-65 OA)", [ICC-01/21-72](#), 2 May 2023, para. 9.

⁸ *Ruto and Sang*, Decision granting the Government of Kenya leave to reply, [ICC-01/09-01/11-757](#), 30 May 2013, para. 8.

⁹ *Ntaganda*, Decision on Mr. Ntaganda's request for leave to reply, [ICC-01/04-02/06-1994](#), 17 July 2017, para. 14.

II. SUBMISSIONS

3. Throughout the proceedings in the Situation in the Republic of the Philippines, the Prosecution has consistently argued that jurisdiction may be exercised even after a State Party's effective withdrawal from the Rome Statute. The Pre-Trial Chamber explicitly rejected this argument and agreed with the Defence by finding that "for the purposes of articles 12(2) and 13(c) of the Statute, the Court may not exercise its jurisdiction if, at the time that the Prosecutor has initiated an investigation, the State concerned is no longer a Party to the Statute".¹⁰ Subsequently, the Pre-Trial Chamber erroneously proceeded to rule that Article 127(2) constitutes *lex specialis* which permits the belated initiation of investigations on a nebulous "case by case"¹¹ basis.
4. Recognising the flawed application of the *lex specialis* principle, the Prosecution has subtly declined to defend the Pre-Trial Chamber's ruling on this critical point, averring casually that the holding discloses no error which can "materially affect"¹² the Impugned Decision. Thereafter, the Prosecution attempts a 'back-door' appeal, seeking the restoration of its own incorrect interpretation of Article 12(2) and Article 13(c) by resort to Regulation 28 of the Regulations of the Court.¹³
5. The Prosecution's attempt to invoke Regulation 28 is effectively a new request that could not reasonably have been anticipated by the Defence and should trigger an automatic right of reply. Out of an abundance of procedural caution, however, the Defence seeks leave to file a reply wherein, if leave is granted, it will argue that the Prosecution has failed, appropriately, to seise the Appeals

¹⁰ [Impugned Decision](#), para. 80.

¹¹ [Impugned Decision](#), para. 60.

¹² [Prosecution Response](#), para. 9.

¹³ [Prosecution Response](#), para. 58.

Chamber of its objection to the Pre-Trial Chamber's finding on the correct interpretation of Articles 12(2) and 13(c).

6. The Defence will further submit that the Prosecution's excuse for failing to appeal the Impugned Decision on this point is wholly unpersuasive. In order to conclude that Article 127(2) was *lex specialis* with respect to Article 12(2), the Pre-Trial Chamber had, perforce, to consider the scope of that statutory provision. As apparent from paragraphs 79 to 83 of the Impugned Decision, it is this very consideration that compelled the Pre-Trial Chamber to reach its erroneous interpretation of Article 127(2) as *lex specialis* and, as such, it cannot be deemed *obiter dictum* but, rather, the very crux of the issue at stake.
7. In its response, the Prosecution reveals the weakness of its effort to extend the applicability of Article 12(2) beyond the date of effective withdrawal by trying to relitigate a matter that was fully settled¹⁴ in favour of the Defence and that it consciously decided not to appeal. The weakness of the Prosecution's Response is further disclosed by its indecorous one-page introduction, warning the Appeals Chamber of the deleterious consequences of accepting the Defence's appeal. The Appeals Chamber is not charged with ensuring accountability for Mr Duterte at all costs but, rather, with resolving a question of pure legal interpretation. Responsibility, however, for failing to initiate a timely investigation within the period of effective withdrawal should fall squarely on the shoulders of the Prosecutor. The Prosecutor should now accept that the need for accountability cannot be achieved by perverting the correct

¹⁴ Corrected version of "Public redacted version of '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, para. 8 ("[i]n so doing, the Chamber should follow and as necessary elaborate upon its own reasoning in issuing the warrant for Mr Duterte's arrest, and the reasoning of the Pre-Trial Chamber in its former composition in authorising the investigation of the *Situation in the Philippines*, as well as the reasoning of the Pre-Trial Chamber in the *Situation in Burundi* [...] [t]he present litigation now offers an opportunity to allay these concerns definitively, in circumstances where all Parties can 'make observations on the issue', enabling the Pre-Trial Chamber to 'make a fully informed decision'") (internal citations omitted).

interpretation of the law and certainly not at the expense of a suspect's expectation of legal propriety.

III. RELIEF SOUGHT

8. In light of the aforementioned, the Appeals Chamber is requested to **GRANT** the Defence's request for leave to reply to the Prosecution's Response.



Nicholas Kaufman
Counsel
for Mr Rodrigo Roa Duterte



Dr Dov Jacobs
Associate Counsel
for Mr Rodrigo Roa Duterte

Dated this 9th day of December 2025
At The Hague, the Netherlands