

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/21-01/25**
Date: **11 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

Prosecution Response to “Defence Request for Leave to Reply to the ‘Prosecution Response to ‘Appeal Brief on Jurisdiction’”

Source: Office of the Prosecutor

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INTRODUCTION

1. The Defence request for leave to reply should be dismissed.¹ The single issue that the Defence identifies is not new, and could reasonably have been anticipated by the Defence. Moreover, the course of action proposed by the Prosecution expressly preserves the opportunity—if the Appeals Chamber considers necessary—for *all* the parties and participants (including the Defence) to make further submissions on the question of the correct interpretation of articles 12 and 13 of the Statute. Unless and until such time, however, no further submissions are required, and the proposed reply should not be entertained.

SUBMISSIONS

2. As the Defence acknowledges,² the Appeals Chamber has granted leave to reply in circumstances where the reply addresses new issues that could not reasonably have been anticipated, or that the Appeals Chamber considered otherwise necessary for the adjudication of the matter before it.³ The ordering of a reply lies within the Appeals Chamber’s discretion.⁴ In line with these principles, an appellant should not be permitted to use a reply to strengthen arguments previously advanced,⁵ or to repeat submissions already made in the appeal brief.⁶

3. In the present case, leave to reply is unwarranted for the single issue identified by the Defence. Notably, the Request seeks a reply to argue that “the Prosecution has failed, appropriately, to seize the Appeals Chamber of its objection to the Pre-Trial Chamber’s finding on the correct interpretation of Articles 12(2) and 13(c).” It submits that “[t]he Prosecution’s attempt to invoke Regulation 28 [of the Regulations of the Court] is effectively a new request that could not reasonably have been anticipated by the Defence and should trigger an automatic right of reply.”⁷

4. This reasoning is faulty in several respects. First, on the merits, it was always clear that the Prosecution did not agree with the Pre-Trial Chamber’s *obiter dictum* concerning the correct interpretation of articles 12(2) and 13(c)—a matter which the Prosecution had

¹ *Contra* [ICC-01/21-01/25-331 OA3](#) (“Request”).

² [Request](#), para. 2.

³ See e.g. [ICC-02/18-66](#) (“Venezuela Leave to Reply Decision”), paras. 10-11; [ICC-01/21-72](#) (“Philippines Leave to Reply Decision”), paras. 6-7; [ICC-02/17-206](#) (“Afghanistan Leave to Reply Decision”), paras. 7-8; [ICC-01/04-02/06-1994](#) (“Ntaganda July 2017 Leave to Reply Decision”), para. 9.

⁴ [ICC-01/14-01/18-799](#) (“Yekatom Leave to Reply Decision”), para. 8; [Ntaganda July 2017 Leave to Reply Decision](#), para. 9; [ICC-01/04-02/06-1813](#) (“Ntaganda March 2017 Leave to Reply Decision”), para. 8.

⁵ [ICC-01/04-02/12-296-tENG](#) (“Ngudjolo Leave to Reply Decision”), para. 7.

⁶ [ICC-01/04-02/06-2488](#) (“Ntaganda March 2020 Leave to Reply Decision”), para. 8.

⁷ [Request](#), para. 5.

addressed at length in its submissions at first instance.⁸ At the same time, it is also clear as a matter of appellate procedure that the Prosecution could not appeal the Pre-Trial Chamber's *obiter dictum*, because such an appeal could not have materially affected the Chamber's decision.⁹ This is because the decision not only affirmed the jurisdiction of the Court as the Prosecution had requested, but the *ratio decidendi* concerned the correct interpretation of article 127(2) only.¹⁰ It was thus entirely foreseeable that the Prosecution would preserve its position as it did. While the Defence has now placed on the record its own view of the *ratio decidendi* of the decision,¹¹ the matter is for the Appeals Chamber to decide.

5. Second, the Prosecution addressed the matter of articles 12(2) and 13(c) in its submission before the Appeals Chamber only to the same (limited) extent that the Defence did in its Appeal Brief—namely, while the Defence made clear that it agreed with the Pre-Trial Chamber's *obiter dictum* (without developing its position),¹² the Prosecution made clear that it disagreed with the *obiter dictum* (without developing its position).¹³ *Precisely* in the interests of a fair and expeditious hearing of this appeal, the Prosecution then deferred to the Appeals Chamber's discretion in noting that *all* the parties and participants could provide additional submissions on this matter under regulation 28 *if* the Appeals Chamber considered necessary.¹⁴

⁸ See [ICC-01/21-01/25-146-Red-Corr](#) ("Prosecution Response to Jurisdiction Challenge"), paras. 10, 14-47. See also [Request](#), para. 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").

⁹ See e.g. [Statute](#), art. 83(2). See also [ICC-01/21-01/25-328 OA3](#) ("Prosecution Response Brief"), para. 9 (fn. 12).

¹⁰ The outcome of the decision as a whole, namely that jurisdiction existed, was the outcome favourable to the Prosecution. See e.g. [ICC-01/21-01/25-309](#) ("Decision"), paras. 45-46 ("The central issue that arises in this case is the effect of the withdrawal of the Philippines from the Statute upon the Court's ongoing jurisdiction. [...] This issue requires resolution by reference to article 127 of the Statute"), 78 ("In light of its above findings in relation to article 127(2) of the Statute, it is *not strictly necessary* for the Chamber further to consider additional arguments of the Defence that relate specifically to the above provisions within Part 2 of the Statute", emphasis added), 84 ("[t]he jurisdictional regime set out in Part 2 of the Statute continues to apply to this case as if the Philippines were still a Party to the Statute, so as to ensure that, pursuant to article 127(2) of the Statute, the withdrawal of the Philippines from the Statute 'shall not prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective'").

¹¹ See [Request](#), paras. 6-7.

¹² See e.g. [ICC-01/21-01/25-319 OA3](#) ("Defence Appeal Brief"), paras. 2, 6-7 ("the Defence wholeheartedly endorses these legally correct findings").

¹³ See e.g. [Prosecution Response Brief](#), para. 17 ("the Prosecution does not agree with the Chamber's reliance on such a narrow interpretation of articles 12(2) and 13(c)"), 57 (recalling that, "[a]t first instance before the Chamber, the Prosecution explained the basis for its view that, correctly interpreted, articles 12(2) and 13(c) require only that a State has the status of a State Party at the time the alleged crimes were committed").

¹⁴ [Prosecution Response Brief](#), para. 58 (noting that "the Prosecution does not examine further the merits of these issues here" but rather "respectfully propos[ing] that, *if* the Appeals Chamber were to consider it necessary, the Appeals Chamber could invite the parties and participants under regulation 28 to make concise further submissions on these questions", emphasis supplied).

6. Whether the Defence anticipated this particular proposal using regulation 28 is irrelevant, since it is purely procedural in nature and occasions no prejudice.¹⁵ To the contrary, it treats the parties and participants equally. Certainly, there is no cause to grant the Defence “an automatic right of reply” to address whether the Appeals Chamber *should* order additional submissions under regulation 28—a matter on which the Prosecution itself took only a neutral position.¹⁶

7. Finally, notwithstanding the limited scope of the leave sought, the Request also inaccurately paraphrases the Prosecution’s response.¹⁷ It is plain from any neutral reading of the Prosecution’s response that the Prosecution has submitted that: (i) the Pre-Trial Chamber was correct in interpreting article 127(2); (ii) this preserved the Court’s exercise of jurisdiction in the circumstances of the case notwithstanding the Pre-Trial Chamber’s (*obiter*) interpretation of articles 12(2) and 13(c), and; (iii) the appeal should be dismissed on this basis alone.¹⁸ It is only in the alternative that the Prosecution noted the possibility that the Appeals Chamber could order additional submissions on articles 12(2) and 13(c) pursuant to regulation 28 if it considered that it was necessary.¹⁹

8. Notwithstanding the thrust and parry inherent in legal advocacy,²⁰ the Prosecution further defers to the Appeals Chamber’s assessment whether litigation is usefully conducted in the terms in which the Defence has sought to characterise the Prosecution submissions.²¹

¹⁵ *Contra* [Request](#), para. 5.

¹⁶ *Contra* [Request](#), para. 5. See [Prosecution Response Brief](#), para. 58.

¹⁷ *Contra* [Request](#), paras. 3-4.

¹⁸ See e.g. [Prosecution Response Brief](#), paras. 6-8, 10-55, 59.

¹⁹ See [Prosecution Response Brief](#), paras. 9, 56-58.

²⁰ See e.g. [ICTY, Prosecutor v. Gotovina and Markač, Decision on Prosecution’s Request for Leave to File Sur-Reply to Respond to False Allegations in Markač’s Reply Brief, IT-06-90-A, 1 November 2011](#), p. 1.

²¹ See e.g. [Request](#), para. 7 (“[...] The weakness of the Prosecution’s Response is further disclosed by its indecorous one-page introduction [...] The Prosecution should now accept that the need for accountability cannot be achieved by perverting the correct interpretation of the law and certainly not at the expense of a suspect’s expectation of legal propriety”). Compare [Code of Professional Conduct for Counsel](#), arts. 7(1) (“Counsel shall be respectful and courteous in his or her relations with the Chamber, the Prosecutor and the members of the Office of the Prosecutor, the Registrar and the members of the Registry, the client, opposing counsel, accused persons, victims, witnesses and any other person involved in the proceedings”), 24(2) (“Counsel is personally responsible for the conduct and presentation of the client’s case and shall exercise personal judgement on the substance and purpose of statements made [...]”).

CONCLUSION

9. For all the reasons above, the Appeals Chamber should dismiss the Request.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 11th day of December 2025

At The Hague, the Netherlands