



Original: English

No. ICC-01/21-01/25 OA3

Date: 16 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 document

Order for Further Submissions

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☐ **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
Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Rodrigo Roa Duterte against the decision of Pre-Trial Chamber I entitled “Decision on the Defence Challenge to the Jurisdiction of the Court” of 23 October 2025 (ICC-01/21-01/25-309),

Having before it the Defence “Appeal Brief on Jurisdiction” of 14 November 2025 (ICC-01/21-01/25-319) and the “Defence Request for Leave to Reply to the ‘Prosecution Response to “Appeal Brief on Jurisdiction”’” of 9 December 2025 (ICC-01/21-01/25-331),

Issues, pursuant to regulation 28(2) of the Regulations of the Court, the following

ORDER

1. The Appeals Chamber invites the Deputy Prosecutor and the Office of Public Counsel for Victims to file additional observations on the issues as outlined below by 16h00 on Friday, 16 January 2026. The Defence may file a response by 16h00 on Friday, 23 January 2026. The submissions and the response shall not be longer than 10 pages.
 - a. How should articles 12(2) and 13(c) of the Statute be understood within the Court’s legal framework on jurisdiction?
 - b. How do articles 12, 13 and 127 of the Statute interact? What are the consequences of such an interaction, both generally and in the specific case at hand?
2. The Defence request for leave to reply to the Deputy Prosecutor’s response to its appeal brief is rejected.

I. PROCEDURAL HISTORY

1. On 23 October 2025, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) issued the “Decision on the Defence Challenge to the Jurisdiction of the Court” (hereinafter: “Impugned Decision”).¹
2. On 28 October 2025, the Defence filed a notice of appeal against the Impugned Decision pursuant to article 82(1)(a) of the Statute.²
3. On 14 November 2025, the Defence filed the “Appeal Brief on Jurisdiction” (hereinafter: “Appeal Brief”).³
4. On 8 December 2025, the Deputy Prosecutor (hereinafter: “Prosecutor”)⁴ and the Office of Public Counsel for Victims (hereinafter: “OPCV”)⁵ filed their responses.
5. On 9 December 2025, the Defence filed its request for leave to reply to the Prosecutor Response (hereinafter: “Defence Request for Leave to Reply”).⁶
6. On 11 December 2025, the Prosecutor filed a response to the Defence Request for Leave to Reply.⁷

II. REASONS

7. The Appeals Chamber notes that in the Impugned Decision, the Pre-Trial Chamber observed that “[...] articles 12(2) and 13(c), which are located within Part 2 of the Statute, require a State to be a Party to the Statute at the time that the Court exercises its jurisdiction”.⁸ The Pre-Trial Chamber further held that “[a]rticle 127 of the Statute makes specific provision for the consequences of the withdrawal of a State from

¹ [ICC-01/21-01/25-309](#).

² [Notice of Appeal against Decision ICC-01/21-01/25-309](#), ICC-01/21-01/25-312.

³ [Appeal Brief on Jurisdiction](#), ICC-01/21-01/25-319.

⁴ [Prosecution Response to “Appeal Brief on Jurisdiction”](#), ICC-01/21-01/25-328 (hereinafter: “Prosecutor Response”).

⁵ [Victims’ Response to the Defence Appeal against the “Decision on the Defence Challenge to the Jurisdiction of the Court”](#), ICC-01/21-01/25-329.

⁶ [Defence Request for Leave to Reply to the “Prosecution Response to ‘Appeal Brief on Jurisdiction’” \(ICC-01/21-01/25-328\)](#), ICC-01/21-01/25-331.

⁷ [Prosecution Response to “Defence Request for Leave to Reply to the ‘Prosecution Response to ‘Appeal Brief on Jurisdiction’”](#), ICC-01/21-01/25-335.

⁸ [Impugned Decision](#), para. 80.

the Statute and, as such, constitutes *lex specialis* in relation to the issues that require determination in the present case”.⁹

8. In the Appeal Brief, the Defence raises four grounds of appeal. The first, and, according to the Defence, the principal issue on appeal, is whether the Pre-Trial Chamber erred in law by finding that article 127(2) of the Statute is *lex specialis* with respect to article 12 of the Statute.¹⁰ Moreover, the Defence submits that the Impugned Decision is materially affected by three further errors of law and fact in light of the Pre-Trial Chamber’s findings that (i) a preliminary examination is a “matter under consideration”,¹¹ (ii) the reference to “the Court” in article 127(2) of the Statute includes the Office of the Prosecutor;¹² and (iii) the “object and purpose” of the Statute permits the opening of an investigation even after the effective withdrawal of the Republic of the Philippines.¹³

9. In his response, the Prosecutor recalls his first instance submission that articles 12(2) and 13(c) of the Statute should be read to only require that a State has the status of a State Party to the Statute at the time the alleged crimes were committed.¹⁴ The Prosecutor further submits that the Pre-Trial Chamber’s interpretation of articles 12(2) and 13(c) was adopted with very limited reasoning, was “not strictly necessary” and was *obiter dicta* given the reliance the Pre-Trial Chamber placed in its reasoning on article 127(2) of the Statute.¹⁵ The Prosecutor proposes that, if the Appeals Chamber were to consider it necessary to examine further the merits of these issues, it could invite submissions from the parties and participants under regulation 28 of the Regulations of the Court (hereinafter: “Regulations”).¹⁶

10. The Appeals Chamber recalls that pursuant to regulation 28(2) of the Regulations, the Appeals Chamber may, *proprio motu*, order the parties and participants to address

⁹ [Impugned Decision](#), para. 47.

¹⁰ See [Appeal Brief](#), paras 3, 6-26.

¹¹ [Appeal Brief](#), paras 3, 27-46.

¹² [Appeal Brief](#), paras 4, 47-54.

¹³ [Appeal Brief](#), paras 4, 55-58.

¹⁴ [Prosecutor Response](#), para. 57.

¹⁵ [Prosecutor Response](#), paras 56-58.

¹⁶ [Prosecutor Response](#), para. 58.

specific issues in written or oral submissions within a time limit specified by the Appeals Chamber.

11. In the instant case, the Appeals Chamber, acting *proprio motu* under regulation 28 of the Regulations, considers it necessary for the proper disposal of the Appeal for the parties and participants to address specific issues which have not been fully developed in the Impugned Decision and in the submissions presented before the Appeals Chamber thus far. Bearing in mind the need to ensure that the present proceedings are conducted expeditiously, the Appeals Chamber hereby invites the parties and participants to file further submissions on the following issues:

- a. How should articles 12(2) and 13(c) of the Statute be understood within the Court's legal framework on jurisdiction?
- b. How do articles 12, 13 and 127 of the Statute interact? What are the consequences of such an interaction, both generally and in the specific case at hand?

12. Submissions from the Prosecutor and the OPCV should be filed by 16h00 on Friday, 16 January 2026. The Defence may respond by 16h00 on Friday, 23 January 2026. The submissions and the response shall not be longer than 10 pages.

13. In light of the foregoing, the Appeals Chamber considers it appropriate to reject the Defence Request for Leave to Reply.

Done in both English and French, the English version being authoritative.



Luz de Carmen Ibáñez Carranza
Presiding Judge

Dated this 16th day of December 2025

At The Hague, The Netherlands