

1 International Criminal Court
2 Appeals Chamber
3 Situation: Republic of the Philippines
4 In the case of The Prosecutor v. Rodrigo Roa Duterte - ICC-01/21-01/25
5 Presiding Judge Luz del Carmen Ibáñez Carranza,
6 Judge Tomoko Akane, Judge Solomy Balungi Bossa,
7 Judge Gocha Lordkipanidze and Judge Erdenebalsuren Damdin
8 Appeals Judgment - Courtroom 1
9 Wednesday, 22 April 2026
10 (The hearing starts in open session at 11.00 a.m.)
11 THE COURT USHER: [11:00:03] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE IBÁÑEZ CARRANZA: [11:00:50] Good morning.
15 Could the court officer please call the case.
16 THE COURT OFFICER: [11:00:58] Good morning, Madam President, your Honours.
17 Situation in the Republic of the Philippines, in the case of the Prosecutor versus
18 Rodrigo Roa Duterte, case reference ICC-01/21-01/25.
19 And for the record, we are in open session.
20 PRESIDING JUDGE IBÁÑEZ CARRANZA: [11:01:17] Thank you.
21 I am Judge Luz del Carmen Ibáñez Carranza, presiding in this appeal arising from
22 the case of Mr Rodrigo Roa Duterte. My fellow Judges in this appeal are
23 Judge Tomoko Akane, Judge Solomy Balungi Bossa, Judge Gocha Lordkipanidze and
24 Judge Erdenebalsuren Damdin.
25 I will allow now the parties and participants to identify themselves.

1 First the Defence, please. You have the floor.

2 MR KAUFMAN: [11:01:58] Good morning, your Honours.

3 As you're aware, the former president Rodrigo Duterte has been excused appearance
4 today. The Defence is represented by myself, attorney Nicholas Kaufman;
5 Dr Dov Jacobs; attorney Davide Rancati; *Maître* Alexandre Desevedavy; attorney
6 Kailin Chen, and Nicholas Rossouw.

7 PRESIDING JUDGE IBÁÑEZ CARRANZA: [11:02:21] Thank you.

8 Now, please, the Office of the Prosecutor, please. You have the floor.

9 MS REGUÉ BLASI: [11:02:28] Good morning, your Honours.

10 The Office of the Prosecution is represented by Matthew Cross, appeals counsel;
11 Edward Jeremy, trial lawyer; and myself Meritxell Regué, appeals counsel.

12 PRESIDING JUDGE IBÁÑEZ CARRANZA: [11:02:42] Thank you.

13 Finally, the Office of the Public Counsel for Victims, please.

14 MS MASSIDDA: [11:02:48] Good morning, Madam President, your Honours.

15 The Common Legal Representative team for the participating victims is composed
16 today by Mr Joel Butuyan, counsel; Mr Orchlon Narantsetseg, legal officer;
17 Ms Anne Grabowski, legal officer; and myself, Paolina Massidda.

18 PRESIDING JUDGE IBÁÑEZ CARRANZA: [11:03:08] Thank you.

19 I take it that the attendees are the same as the ones appearing on the list which
20 the court officer kindly provided to the Appeals Chamber before the hearing. If
21 the composition of any of the teams has changed, please notify the court officer by
22 email.

23 I note for the record that Mr Duterte is not present in the courtroom as he has waived
24 his right to be present and the Appeals Chamber has authorised it. His written
25 waiver has been filed on the record. He is represented by his counsel.

1 Today, the Appeals Chamber will deliver its judgment in the appeal of Mr Duterte
2 against the Pre-Trial Chamber I's decision of 23 October 2025 entitled "Decision on
3 the Defence Challenge to the Jurisdiction of the Court", which I will refer hereinafter
4 as to the "Impugned Decision".

5 In that decision, which bears the document number 309 in the case record,
6 the Pre-Trial Chamber found that the Court can exercise its jurisdiction in the present
7 case over the crimes alleged against Mr Duterte that were committed on the territory
8 of the Republic of the Philippines while it was a State Party.

9 This is a non-authoritative summary of the Appeals Chamber's written judgment in
10 the appeal. The authoritative version is the written judgment, which will be made
11 available and notified after this hearing.

12 Background of the appeal.

13 I will start with a brief background to this appeal.

14 As I have already mentioned, the Pre-Trial Chamber issued the Impugned Decision
15 on 23 October 2025.

16 On 14 November 2025, the Defence submitted its Appeal Brief raising four grounds of
17 appeal and requesting the Appeals Chamber to reverse the Impugned Decision; to
18 find that there exists no legal basis for the continuation of the International Criminal
19 Court's proceedings against Mr Duterte; and order his immediate and unconditional
20 release.

21 On 8 December 2025, the Prosecutor and the OPCV responded to the Appeal Brief
22 requesting the Appeals Chamber to confirm the Impugned Decision.

23 Upon invitation from the Appeals Chamber, the Prosecutor and the OPCV filed on
24 16 January 2026 additional observations on various issues considered necessary for
25 the proper disposal of the appeal, and the Defence filed a response thereto on

1 23 January 2026.

2 The Appeals Chamber's judgment.

3 I shall proceed to outline the decision of the Appeals Chamber on the merits of
4 the appeal.

5 First ground of appeal.

6 Under its first ground of appeal, the Defence contends that the Pre-Trial Chamber
7 erred in finding that Article 127(2) is *lex specialis* with respect to Article 12.

8 The Appeals Chamber recalls that, in the Impugned Decision, the Pre-Trial Chamber
9 considered the effects of the withdrawal of the Philippines from the Statute in
10 circumstances in which the Pre-Trial Chamber granted the authorisation to proceed
11 with an investigation pursuant to Article 15(3) after the withdrawal had become
12 effective. It concluded that Articles 12(2) and 13(c), which I will refer to hereafter as
13 "provisions in Part 2", read in isolation, would not support the Court's jurisdiction in
14 the present case. However, in the interpretation of the Pre-Trial Chamber,
15 Article 127(2) operates as *lex specialis*, applicable to circumstances of a State Party's
16 withdrawal from the Statute, with the effect that the Court retains jurisdiction in
17 the present case.

18 The Appeals Chamber considers it important to determine the scope and meaning of
19 these provisions, pursuant to articles 31 to 33 of the Vienna Convention on the Law of
20 Treaties, which require, *inter alia*, that a treaty shall be interpreted in good faith in
21 accordance with the ordinary meaning to be given to the terms of the treaty in their
22 context and in the light of its object and purpose.

23 The Appeals Chamber notes the wording of the heading of Article 12, addressing
24 the "[p]reconditions of the exercise of jurisdiction". Within those preconditions,
25 Article 12(2) stipulates that the Court may exercise its jurisdiction "if one or more of

1 the following States,[i.e. the State on the territory of which the conduct in question
2 occurred, or the State of which the person accused of the crime is a national]
3 are Parties to this Statute". The Appeals Chamber particularly underlines that this
4 article uses "the present tense" which implies that a contemporaneous assessment is
5 required.

6 The Appeals Chamber rejects the argument of the Prosecutor, that the use of
7 the present tense may plausibly reflect "drafting convenience, or even oversight",
8 rather than the introduction of a restriction on the Court's exercise of jurisdiction.

9 The Appeals Chamber observes that during the discussions leading up to the Rome
10 Conference, the adoption of Article 12 proved to be "perhaps the most difficult
11 compromise in the entire negotiations". Therefore, it cannot be assumed that this
12 language, which is repeatedly and interconnectedly employed in Part 2 of the Statute,
13 can be easily dismissed as accidental. Rather, this wording lends support to
14 the interpretation that the relevant States must be Parties to the Statute at the time
15 the Court exercises its jurisdiction.

16 Articles 11 to 15, all referring to the exercise of the Court's jurisdiction, are
17 interconnected and must be subject to a systemic reading. Pursuant to Article 12(1),
18 there is a point in time at which a State becomes a Party to the Statute and accordingly
19 accepts the jurisdiction of the Court with respect to the crimes listed in Article 5.

20 From this point in time, jurisdiction "exists" with respect to the relevant State until
21 the acceptance is revoked by a State Party's withdrawal from the Statute. However,
22 according to the statutory framework, the existence of jurisdiction needs to be
23 distinguished from the "exercise" of jurisdiction.

24 In situations of a State Party's withdrawal from the Statute, these provisions must also
25 be assessed in light of Article 127 which addresses specific circumstances and

1 determines that the withdrawal shall not "prejudice in any way the continued
2 consideration of any matter which was already under consideration by the Court
3 prior to the date on which the withdrawal became effective".

4 The Appeals Chamber observes that the provisions referred to above must also be
5 interpreted in line with the object and purpose of the Statute, which is to put an end
6 to impunity for the perpetrators of the most serious crimes of concern to
7 the international community as a whole and thus to contribute to the prevention of
8 such crimes. It would be incompatible with this object and purpose to enable a State
9 Party to evade its responsibilities under the Statute by depositing a written notice of
10 withdrawal once it discovers that alleged crimes committed on its territory or by its
11 nationals are being examined by the Prosecution.

12 At the same time, the State's right to withdraw from the Statute would not be effective
13 if the Court were able to exercise jurisdiction indefinitely despite the State no longer
14 being a Party. The present interpretation ensures an appropriate balance between
15 the ability of States to effectively withdraw from the Statute and the responsibilities
16 that States accept upon ratification of the Statute, whilst providing a clear timeline
17 within which the examinations must be pursued.

18 The Appeals Chamber now turns to the contention of the Defence under the first
19 ground of appeal, namely that the Pre-Trial Chamber erred in law by construing
20 Article 127(2) as *lex specialis* vis-à-vis Articles 12(2) and 13(c). In situations involving
21 a State Party's withdrawal from the Statute, these provisions must be assessed
22 systemically in light of Article 127, which specifically addresses the consequences of
23 such a withdrawal.

24 The Appeals Chamber notes that the Defence argues mainly in abstract and
25 theoretical terms, focusing on the principle of *lex specialis*. However, the key issue in

1 this appeal is not how the principle is classified or applied in theory, but whether
2 the Pre-Trial Chamber made a legal error in interpreting the Statute. For this reason,
3 the Appeals Chamber finds it unnecessary to address the Defence's arguments on
4 the scope and application of *lex specialis*, as they do not affect the outcome of this
5 appeal. The Appeals Chamber considers that what is determinative to this appeal is
6 whether the Pre-Trial Chamber incurred an error of law in its interpretation of the
7 Statute.

8 In the view of the Appeals Chamber, the Provisions in Part 2 read together with
9 Article 127(2) settle the legal regime applicable to situations of a State Party
10 withdrawal.

11 Accordingly, the Appeals Chamber finds no error in the Pre-Trial Chamber's
12 interpretation of Article 12(2) as requiring that the relevant State be party to
13 the Statute at the time the Court exercises its jurisdiction read together with
14 Article 127, which establishes when the withdrawal takes effect and the regime
15 applicable under these circumstances. For the aforementioned reasons,
16 the Appeals Chamber unanimously rejects the Defence's first ground of appeal.

17 I shall now turn to the second ground of appeal.

18 Under the second ground of appeal, the Defence argues that the Pre-Trial Chamber
19 erred in finding that a preliminary examination may qualify as a "matter [...] under
20 [the] consideration" of the Court within the meaning of Article 127(2).

21 The Appeals Chamber rejects this argument of appeal by majority.

22 Judge Lordkipanidze dissents on this point, his reasons are set out in detail in his
23 dissenting opinion. Therefore, my references hereafter to the Appeals Chamber shall
24 be understood in light of this qualification, meaning that the relevant findings pertain
25 to the majority of the Appeals Chamber, as Judge Lordkipanidze is partially

1 dissenting.

2 Under its second ground of appeal, the Defence raises four sub-grounds of appeal:

3 First, the Defence contends that the Pre-Trial Chamber adopted an overly broad

4 interpretation of the term "matter" under Article 127(2) and failed to give due weight

5 to other language versions of the Statute in interpreting this provision. Having

6 examined the arguments raised by the parties and participants, the Appeals Chamber

7 finds that the Pre-Trial Chamber properly assessed the ordinary meaning of

8 the words "any matter under consideration" and did not expand them to include

9 a mere "concern" or "thought". Moreover, it did not espouse a particular reference

10 for the English version of the Statute. Rather, in accordance with the test set out in

11 the Vienna Convention on the Law of Treaties, it embraced the interpretation that best

12 reconciles any difference of wording in the texts in favour of a broad reading of

13 the phrase "any matter". Therefore, the Appeals Chamber does not discern any error

14 in this respect.

15 Second, the Defence alleges that the Pre-Trial Chamber "erred in law by finding that

16 a preliminary examination renders a matter 'under the consideration'" of the Court

17 within the meaning of Article 127(2). Having analysed all submissions received,

18 the Appeals Chamber also rejects this argument. The Appeals Chamber observes

19 that the preliminary examination phase has a clear basis in the Court's legal texts,

20 including in Articles 15 and 53 of the Statute and Rules 46 to 48 of the Rules of

21 Procedure and Evidence. In addition, the specific preliminary examination carried

22 out in the Philippines Situation properly qualifies as "any matter which was already

23 under the consideration of the Court" for the purposes of Article 127(2).

24 The Appeals Chamber notes that, in the specific circumstances as detailed in

25 the Impugned Decision, the Prosecutor:

1 (a) decided to initiate a preliminary examination prior to the Philippines' withdrawal
2 from the Statute;

3 (b) publicly announced the initiation of a preliminary examination;

4 (c) adopted a number of procedural steps, some of which involved judicial rulings;
5 and

6 (d) submitted a request to initiate a *proprio motu* investigation on the basis of
7 the results of the preliminary examination.

8 As a result, the Appeals Chamber dismisses this argument.

9 Third, the Defence argues that the Pre-Trial Chamber's application of the concept of
10 "subsequent practice" in relation to the Philippines' continued engagement with
11 the Court after its withdrawal was legally inappropriate and factually incorrect.

12 The Appeals Chamber recalls *inter alia* that, in the context of this its request to defer
13 the Prosecutor's investigation under Article 18(2), the Philippines underlined that
14 the Court lacks jurisdiction over the Philippines Situation.

15 The Appeals Chamber is of the view that the Philippines' decision to arrest and
16 surrender Mr Duterte, as well as its further engagement with the Court, is insufficient
17 to support a conclusion that the practice of the Philippines following its withdrawal
18 qualifies as "subsequent practice in the application of the treaty which establishes
19 the agreement of the parties regarding its interpretation" within the meaning of
20 article 31(3)(b) of the Vienna Convention on the Law of Treaties.

21 The Appeals Chamber cannot objectively discern how the Pre-Trial Chamber could
22 have reasonably reached said conclusion.

23 The factual conclusion reached by the Pre-Trial Chamber amounts to an error of fact
24 in the particular circumstances at hand. Nonetheless, this error did not materially
25 affect the Impugned Decision, as it did not constitute a determinative but rather an

1 ancillary element in its analysis of the Pre-Trial Chamber. As a result,
2 the Appeals Chamber dismisses this argument.

3 Under the fourth sub-ground, the Defence contends that a preliminary examination
4 and a decision to open an investigation "are definitely not identical since the
5 'consideration' of each of them is carried out by different organs of the Court and is
6 subject to distinct provisions". The Appeals Chamber is not persuaded by this line of
7 argumentation. There is no strict separation between the preliminary examination
8 and the opening of a *proprio motu* investigation as they constitute two components of
9 an integral legal procedure, without prejudice of the organ conducting the relevant
10 steps. Therefore the Appeals Chamber finds no error in the conclusion reached by
11 the Pre-Trial Chamber.

12 Judge Lordkipanidze considers that the Pre-Trial Chamber erred in law in its
13 interpretation of Article 127(2), namely that the Court can exercise its jurisdiction over
14 the alleged crimes in this case. For the reasons set out in his partially dissenting
15 opinion, he is of the view that "the Prosecutor's preliminary examinations are not
16 'a matter [...] under [the] consideration [of] the Court within the meaning of
17 Article 127(2), and that a situation is only under consideration by the Court once
18 a pre-trial chamber authorises an investigation into that situation". Accordingly, he
19 would have granted the Defence's second ground of appeal and found that the Court
20 cannot exercise jurisdiction in the present case.

21 For the foregoing reasons, the Appeals Chamber, by majority, rejects the second
22 ground of appeal. Judge Lordkipanidze is partially dissenting, he would have
23 granted the second ground of appeal and accordingly, he does not find it necessary to
24 address and the fourth grounds of appeal.

25 I shall now turn to the third ground of appeal.

1 Under the third ground of appeal the Defence alleges that the Pre-Trial incurred an
2 error of law in interpreting that the term "the Court" in Article 127(2) include
3 "the Office of the Prosecutor".

4 The Pre-Trial Chamber noted that the word "Court", which is capitalised in this article,
5 refers to the institution of the International Criminal Court as per Article 1 of the
6 Statute, rather than the judicial chambers. It further considered that, as stated in
7 Article 34, the Court is composed of four organs, including the Office of the
8 Prosecutor.

9 The Appeals Chamber observes that in line with the interpretive methodology
10 required by the Vienna Convention on the Law of Treaties, the Pre-Trial Chamber
11 first considered the ordinary meaning of the word "court". Noting the ambiguities in
12 the ordinary meaning of the word, the Pre-Trial Chamber then considered the context
13 of the term in the Statute as a whole, as well as by reference to the context in which it
14 is used in Article 127 itself.

15 The Appeals Chamber finds that the Statute employs the term "the Court" in distinct
16 senses and it must be ascertained which one is appropriate with respect to
17 the provision under interpretation. Having considered the analysis of the Pre-Trial
18 Chamber, particularly regarding the context in which the term "the Court" is used in
19 both the Statute and in Article 127, the Appeals Chamber considers that the Defence
20 has failed to show how the Pre-Trial Chamber erred in finding that the term
21 "the Court" includes the Office of the Prosecutor for the purposes of Article 127(2) and
22 therefore the Appeals Chamber rejects the third ground of appeal.

23 I now turn to the fourth ground of appeal.

24 Under the fourth ground of appeal, the Defence argues that the Pre-Trial Chamber
25 erred in finding that the "object and purpose" of the Statute permits the opening of an

1 investigation even after the effective withdrawal of the Philippines from the Statute.

2 According to the Defence, in adopting its legal interpretation, the Pre-Trial Chamber
3 made a "policy-oriented determination".

4 The Appeals Chamber cannot discern any error in the Pre-Trial Chamber's
5 interpretation of Article 127. The Appeals Chamber is not persuaded by

6 the Defence's submission that the one-year withdrawal period under Article 127(1)

7 sufficiently preserves the Statute's object and purpose as the Prosecutor may seek an

8 investigation within this period. As noted above, if the Prosecutor is satisfied that

9 a reasonable basis exists to open an investigation *proprio motu*, he or she is under

10 the obligation to present an application for authorisation to do so to

11 the pre-trial chamber. The continuation of the preliminary examination past

12 the one-year withdrawal period is reflective of the balance, found by

13 the Appeals Chamber, between the responsibilities that States accept upon ratification

14 of the Statute, including the aim set out in the Preamble to put an end to impunity,

15 and the ability of the States to effectively withdraw from the Statute within a clear

16 timeline.

17 The Appeals Chamber further notes that the Pre-Trial Chamber's assessment of

18 certain facts led it to conclude "that there is a direct relationship between

19 the Prosecutor's announcement of the opening of the preliminary examination and

20 the decision of the Philippines to withdraw from the Statute". The Defence contends

21 that the Pre-Trial Chamber "unduly relied on a subjective political critique".

22 However, in the opinion of the Appeals Chamber the Pre-Trial Chamber interpreted

23 Article 127 in line with the methodology set out in the Vienna Convention on the Law

24 of Treaties and its discussion of the Philippines' potential motivations for

25 withdrawing from the Statute did not form part of the reasoning contributing to its

1 legal interpretation of Article 127(2). Rather, having explained why the object and
2 purpose of the Statute also supported its interpretation of Article 127, the Pre-Trial
3 Chamber merely referenced certain facts to provide an example of what Article 127,
4 read as a whole, is designed to prevent.

5 Therefore, the Appeals Chamber considers that the Defence has failed to demonstrate
6 that the Pre-Trial Chamber committed an error of law and rejects the fourth ground of
7 appeal.

8 The Appeals Chamber by majority, as a conclusion, Judge Lordkipanidze partially
9 dissenting in the second ground has rejected all four grounds of appeal.

10 Having rejected the entire appeal, the Appeals Chamber considers that the Defence
11 request for the immediate and unconditional release of Mr Duterte is moot.

12 In the appeal pursuant to Article 82(1)(a) of the Statute, the Appeals Chamber may
13 confirm, reverse or amend the decision appealed. In the present case,
14 the Appeals Chamber, by majority, confirms the Impugned Decision.

15 Judge Lordkipanidze appends a partially dissenting opinion.

16 This brings us to the end of the summary of the Appeals Chamber's judgment of
17 today.

18 Finally, I would like to end by thanking all the parties, participants and their counsel,
19 Registry staff and interpreters who have assisted with today's hearing. There is a lot
20 of work that goes on behind the scenes to ensure that these hearings run smoothly
21 and the Appeals Chamber is very grateful to all of those involved, including to IMSS
22 for its efforts to make sure the courtroom's systems are available for the present
23 hearing. Finally, I would like to thank my colleagues, the Judges, and
24 the Appeals Chamber's staff for their support.

25 The hearing is adjourned.

- 1 THE COURT USHER: [11:34:56] All rise.
- 2 (The hearing ends in open session at 11.34 a.m.)