



PARTLY DISSENTING OPINION OF
JUDGE GOCHA LORDKIPANIDZE

I. INTRODUCTION

1. This appeal arises from the decision of Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) on the Defence’s challenge to the jurisdiction of the Court issued on 23 October 2025 (hereinafter: “Impugned Decision”).¹ In the Impugned Decision, the Pre-Trial Chamber ruled that, “as a result of the Prosecution’s preliminary examination having commenced prior to both the Philippines depositing its written notification of withdrawal from the Statute and the date on which that withdrawal became effective, [...] the Court can exercise its jurisdiction in the present case over the crimes alleged against Mr Duterte that were committed on the territory of the Philippines while it was a State Party”.²

2. In today’s judgment,³ the majority of the Appeals Chamber (hereinafter: “Majority”) confirms the Impugned Decision, dismissing each of the four grounds of appeal raised by the Defence for Mr Rodrigo Roa Duterte (hereinafter: “Mr Duterte” and “Defence”) in its appeal brief (hereinafter: “Appeal Brief”).⁴

3. I agree with the Majority’s conclusion to dismiss the Defence’s first ground of appeal,⁵ on the basis that the Pre-Trial Chamber did not err in its conclusion that article 12(2) of the Statute requires that the relevant State be a Party to the Statute at

¹ [Decision on the Defence Challenge to the Jurisdiction of the Court](#), ICC-01/21-01/25-309.

² [Impugned Decision](#), para. 84.

³ Judgment on the appeal of Mr Rodrigo Roa Duterte against Pre-Trial Chamber’s “Decision on the Defence Challenge to the Jurisdiction of the Court” of 23 October 2025, ICC-01/21-01/25-415, (hereinafter: “[Majority Judgment](#)”), paras 199, 202.

⁴ [Appeal Brief on Jurisdiction](#), 14 November 2025, ICC-01/21-01/25-319.

⁵ See [Appeal Brief](#), paras 3, 6-26.

the time the Court exercises its jurisdiction.⁶ I agree with the Majority that this provision must be read together with article 127(2) of the Statute, which establishes the regime applicable to the specific circumstance of a State's withdrawal from the Statute.⁷ In line with the Majority's view, I agree that irrespective of the theoretical labelling, the Pre-Trial Chamber was correct in considering article 127 of the Statute as regulating the specific situation of a State's withdrawal.⁸

4. However, I respectfully dissent from the Majority's decision to dismiss the Defence's second ground of appeal on the basis that the Pre-Trial Chamber did not err when finding that a preliminary examination may constitute a "matter [...] under consideration by the Court" within the meaning of article 127(2) of the Statute.⁹ As I have previously stated in another dissenting opinion (hereinafter: "Dissent")¹⁰ and as set out again below, it is my view that a preliminary examination is not a "matter [...] under consideration by the Court" within the meaning of article 127(2) of the Statute, and that a situation is only under consideration by the Court once a pre-trial chamber authorises an investigation into that situation. Accordingly, I would have granted the Defence's second ground of appeal.

II. REASONS

5. At the outset, and as stated in the Dissent, I would like to reiterate that I am of the view

that there is a distinction between the *existence* of jurisdiction and the Court's ability to *exercise* the jurisdiction, and that the preconditions to the exercise of the Court's jurisdiction set out in article 12 of the Statute must exist at the time that the exercise of the jurisdiction is triggered pursuant to article 13 of the Statute.¹¹

6. I would like to reiterate also that, in my view

the wording of article 12(2) indicates that the appropriate time to make a determination as to whether the preconditions of article 12 of the Statute are met is when the exercise of the Court's jurisdiction is triggered, not when the crimes

⁶ See [Majority Judgment](#), paras 93-94.

⁷ See [Majority Judgment](#), para. 93.

⁸ See [Majority Judgment](#), paras 91-92.

⁹ See [Majority Judgment](#), para. 113.

¹⁰ [Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze](#), 18 July 2023, ICC-01/21-01/25-77-OPI, paras 23-36.

¹¹ [Dissent](#), para. 23 (emphasis in original).

were allegedly committed. In other words, the preconditions to the exercise of the Court’s jurisdiction must exist at the time that the jurisdiction is triggered pursuant to article 13 of the Statute, which, in the scenario provided for in article 13(c) of the Statute, in [my] view, definitely occurs when the pre-trial chamber authorizes the commencement of the investigation, pursuant to article 15(4) of the Statute.¹²

7. It is my considered view that:

Just as a State that is not, or is no longer, Party to the Statute cannot refer a situation to the Court under article 13(a) of the Statute and thus trigger the Court’s exercise of jurisdiction (though it may accept the jurisdiction of the Court under article 12(3)), the Prosecutor cannot commence the process of triggering the jurisdiction of the Court once a withdrawal has become effective and the State in question is no longer Party to the Statute. The Court’s jurisdiction must be triggered before the withdrawal has become effective. Put differently, once the State’s withdrawal has become effective, the Prosecutor can no longer open an investigation.¹³

8. As I have stated before, “[a]rticle 127 of the Statute guarantees to the State Parties a right to withdraw from the Statute”, and I consider “that it is a fundamental right of States to decide whether they want to be bound by a treaty or not”.¹⁴ As I am also “mindful of the Statute’s important objective ‘to put an end to impunity’”, I consider that “[t]here is a clear potential for conflict between these two competing considerations”, and that there is indeed “a risk that a State may use its right to withdraw from the Statute in order to shield certain persons from the Court’s prosecution”.¹⁵

9. I am of the view that

that the Statute strikes the right balance between these competing considerations and provides for a procedure that enables the Court to prevent any misuse of the State’s right to withdraw. Article 127(1) of the Statute stipulates that “[t]he withdrawal shall take effect one year after the date of receipt of the notification”. Therefore, the Prosecutor has to make all efforts to trigger the Court’s jurisdiction in a manner that would not infringe the right of a State to withdraw from the Statute. I am of the view that one year is sufficient for the Prosecutor to conduct his preliminary examination and request a pre-trial chamber to authorise the commencement of the investigation, and for the pre-trial chamber to rule upon such a request. The Statute thus gives the Court an opportunity to assert its jurisdiction. However, it also respects the States’ right to withdraw from the Statute and therefore provides for limitations to this power of the Court. Without

¹² [Dissent](#), para. 26 (footnotes omitted).

¹³ [Dissent](#), para. 27.

¹⁴ [Dissent](#), para. 28.

¹⁵ [Dissent](#), para. 28.

such limitations, the Court’s jurisdiction would stretch to an extent that would defy the assurances and guarantees to the States embedded in the Statute. This could have negative repercussions for the entire Court’s system. In the instant situation, since the Prosecutor had not proceeded to trigger the Court’s jurisdiction before the withdrawal became effective, the [Republic of the] Philippines reasserted what it considered to be its primary jurisdiction.¹⁶

10. Article 127(2) of the Statute provides that: (i) “[a] State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued”; and (ii) such withdrawal “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”.¹⁷

11. As I have stated before, “[p]ursuant to the first limb of the above sentence of article 127(2) of the Statute, the cooperation duties of the withdrawing State are limited to ‘investigations and proceedings’ that have commenced prior to the date on which the withdrawal became effective”.¹⁸ As noted in the past, it is my view that the Court did retain jurisdiction over the Situation in the Republic of Burundi precisely because the former Prosecutor sought authorisation and Pre-Trial Chamber III authorised the investigation before the withdrawal became effective.¹⁹

12. Importantly, as to the second limb of the above mentioned sentence of article 127(2) of the Statute, I consider that

the Prosecutor’s preliminary examinations are not a “matter [...] under consideration by the Court” within the meaning of article 127(2) of the Statute, and that a situation is only under consideration by the Court once a pre-trial chamber authorises an investigation into that situation. This is largely due to the informal nature of the preliminary examinations, which do not carry sufficient weight for engaging the Court’s jurisdiction, in the absence of a pre-trial chamber’s formal authorisation of the commencement of an investigation, pursuant to article 15 of the Statute. [I] consider that the last sentence of article 127(2) of the Statute cannot be relied upon to extend the Prosecutor’s power to submit an article 15(3) request beyond the time the withdrawal has become effective.²⁰

¹⁶ [Dissent](#), para. 29 (footnote omitted).

¹⁷ *See also* [Dissent](#), para. 31.

¹⁸ [Dissent](#), para. 32 (footnote omitted).

¹⁹ *See* [Dissent](#), paras 33-34.

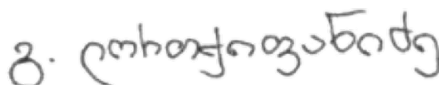
²⁰ [Dissent](#), para. 35 (footnote omitted).

13. Further, and, in my view,

crucially, the interpretation of article 127(2) of the Statute, as espoused by the Prosecutor, cannot be reconciled with the principles of the Vienna Convention on the Law of Treaties and with the intention of the drafters of the Statute, as that interpretation would render article 127 meaningless by allowing to trigger the Court's jurisdiction indefinitely. In [my] view, article 127 of the Statute is contained in the "Final clauses" (Part 13 of the Statute). The provisions contained in that part cannot alter the carefully crafted jurisdictional regime contained in Part 2 of the Statute.²¹

14. For the foregoing reasons, I consider that the Pre-Trial Chamber erred in law in its interpretation of article 127(2) of the Statute, namely that the Court can exercise its jurisdiction over the alleged crimes in this case.²² As a result, I would have granted the Defence's second ground of appeal and found that the Court cannot exercise jurisdiction in the present case. In view of this conclusion, I do not find it necessary to address the third and fourth grounds of appeal.

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



Judge Gocha Lordkipanidze

Dated this 22nd day of April 2026

At The Hague, The Netherlands

²¹ [Dissent](#), para. 36.

²² [Impugned Decision](#), paras 61, 69, 70, 84.