



**Original: English**

**No. ICC-01/12-01/18  
Date: 31 December 2020**

**TRIAL CHAMBER X**

**Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Tomoko Akane  
Judge Kimberly Prost**

**SITUATION IN THE REPUBLIC OF MALI**

**IN THE CASE OF  
*THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG  
MAHMOUD***

**Public  
With public Annex A**

**Submission to the Registry pursuant to Article 34(1)(a) of the Code of  
Professional Conduct for counsel**

**Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:****The Office of the Prosecutor**

Fatou Bensouda  
James Stewart

**Counsel for the Defence**

Melinda Taylor  
Kirsty Sutherland

**Legal Representatives of Victims**

Seydou Doumbia  
Mayombo Kassongo  
Fidel Luvengika Nsita

**Legal Representatives of Applicants****Unrepresented Victims****Unrepresented Applicants for Participation/Reparations****The Office of Public Counsel for Victims****The Office of Public Counsel for the Defence****States Representatives***Amicus Curiae***REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

Esteban Peralta

**Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations Section****Other**

**TRIAL CHAMBER X** of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Article 64(6)(c) and (f) of the Rome Statute (the ‘Statute’), and Articles 7, 8, 24(1) and 34(1)(a) of the Code of Professional Conduct for counsel, issues the following decision.

## **I. Background**

1. On 24 December 2020, a tweet was posted on Defence Lead Counsel’s Twitter account regarding this case (the ‘Tweet’).<sup>1</sup> The Tweet referred to two recent decisions of this Chamber, a decision on Mr Al Hassan’s request for a custodial visit rendered on 23 December 2020 (the ‘Custodial Visit Decision’),<sup>2</sup> and a decision on a third party request for leave to submit *amicus curiae* observations rendered on 24 December 2020.<sup>3</sup>

## **II. Applicable law**

2. Article 7 of the Code of Professional Conduct for counsel (the ‘Code of Conduct’)<sup>4</sup> governs the professional conduct of counsel. Article 8 addresses professional secrecy and confidentiality. Article 24 addresses counsel’s duties towards the Court. Article 31 deals with misconduct, for example when counsel violates or attempts to violate any provisions of the Code of Conduct, the Statute, the Rules of Procedure and Evidence and the Regulations of the Court or the Registry.<sup>5</sup>
3. Complaints of misconduct alleged against counsel may be submitted to the Registry by, *inter alia*, the Chamber dealing with the case.<sup>6</sup> It is for the Registry subsequently to transmit the complaint to a Commissioner,<sup>7</sup> who is responsible for investigating complaints of misconduct arising out of Article 31 of the Code of Conduct.

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<sup>1</sup> See Annex A.

<sup>2</sup> Decision on the urgent Defence request for a custodial visit on compassionate grounds, ICC-01/12-01/18-1227-Conf.

<sup>3</sup> Second decision on request for leave to submit *amicus curiae* observations, ICC-01/12-01/18-1228.

<sup>4</sup> Code of Professional Conduct for counsel, Res. ICC-ASP/4/Res.1, 2 December 2005.

<sup>5</sup> Code of Conduct, Article 31(a).

<sup>6</sup> Code of Conduct, Article 34(1)(a).

<sup>7</sup> Code of Conduct, Article 34(3).

4. The Commissioner may dismiss the complaint, investigate the complaint, or attempt to find an amicable settlement, and thereafter it is to report any settlement to the Disciplinary Board for consideration.<sup>8</sup> After any investigation, a hearing will be conducted by the Disciplinary Board.<sup>9</sup> Following a hearing, where both counsel and the Commissioner are heard,<sup>10</sup> the Disciplinary Board shall decide whether misconduct has been established. Possible sanctions include admonishment, public reprimand, payment of a fine, suspension of the right to practice before the Court (not exceeding 2 years), or permanent ban on practicing before the Court.<sup>11</sup> The decision may be subject to appeal before the Disciplinary Appeals Board.<sup>12</sup>

### III. Analysis

5. The Chamber notes with concern that the Custodial Visit Decision, which is referenced in the Tweet, is confidential. Pursuant to Article 8(1) of the Code of Conduct, Counsel has an obligation to respect and exercise all care to ensure respect for the confidentiality of information in the trial proceedings. By publicly disclosing the existence and outcome of a confidential decision of the Chamber, Counsel has flagrantly breached these requirements of the Code of Conduct.
6. The Chamber further recalls the overarching obligations on Counsel pursuant to Article 7(1) of the Code of Conduct to be respectful and courteous in her relations with the Chamber, and Article 24(1), to take all necessary steps to ensure that her actions are not prejudicial to the ongoing proceedings and do not bring the Court into disrepute. Fundamental to these duties is the requirement to respect any decision issued by the Chamber, be it oral or written. To the extent that Counsel disputes or disagrees with any ruling by the Chamber, she may pursue that through the legal recourses available in accordance with the legal framework of the Statute. As set out in Article 7(3) of the Code of Conduct, Counsel must comply with this framework at all times rather than seeking to dispute decisions of the Chamber through other fora. The content of the Tweet directly violates

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<sup>8</sup> Code of Conduct, Article 39(1), (2), (4), (5).

<sup>9</sup> Code of Conduct, Article 39(6).

<sup>10</sup> Code of Conduct, Article 39(7).

<sup>11</sup> Code of Conduct, Article 42.

<sup>12</sup> Code of Conduct, Article 43.

these obligations. Finally, the Chamber finds the Tweet in totality by its content and sarcastic tone to be highly offensive and disrespectful of the Chamber and the Court as a judicial institution.

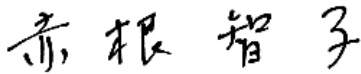
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**SUBMITS** the abovementioned conduct of Defence Lead Counsel by way of a complaint to the Registry, pursuant to Article 34(1)(a) of the Code of Conduct.

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



**Judge Antoine Kesia-Mbe Mindua**  
**Presiding Judge**



**Judge Tomoko Akane**



**Judge Kimberly Prost**

Dated this 31 December 2020  
At The Hague, The Netherlands