



Original: English

No. ICC-01/12-01/18

Date: 6 January 2021

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

Decision on Defence request for reconsideration

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

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 34, 36 and 39 of the Code of Professional Conduct for counsel, issues the following decision.

1. On 24 December 2020, a tweet was posted on Defence Lead Counsel’s Twitter account regarding this case (the ‘Tweet’).¹ 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’),² and a decision on a third party request for leave to submit *amicus curiae* observations rendered on 24 December 2020.³
2. On 31 December 2021, the Chamber made a submission to the Registry pursuant to Article 34(1)(a) of the Code of Professional Conduct for counsel (the ‘Submission’).⁴
3. On 4 January 2021, the Defence filed a request for reconsideration of the Submission (the ‘Request’).⁵
4. The Chamber notes that the Defence bases its request on three issues. Firstly, it submits that in issuing the Submission the Defence’s right to be heard was not respected. Second, the Defence argues that the Chamber based its Submission on erroneous factual conclusions and interpretation. The Defence also raises the issue of the publicity of the Submission. Third, the Defence states that the Submission has a ‘chilling effect’ on internationally recognised human rights of the Defence to use media.
5. The Chamber considers that in its Request the Defence misinterprets the nature of a Submission pursuant to Article 34(1)(a) of the Code of Conduct for counsel.

¹ See Submission to the Registry pursuant to Article 34(1)(a) of the Code of Professional Conduct for counsel, ICC-01/12-01/18-1234, Annex A.

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

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

⁴ Submission to the Registry pursuant to Article 34(1)(a) of the Code of Professional Conduct for counsel, ICC-01/12-01/18-1234 with public Annex A.

⁵ Defence Request for Reconsideration of ‘Submission to the Registry pursuant to Article 34(1)(a) of the Code of Professional Conduct for counsel’, ICC-01/12-01/18-1235.

By its very nature, the Chamber did not decide on any issue but simply referred the matter to the Registry so that the competent organ, in the instant case, the Commissioner and ultimately the Disciplinary Board can consider the complaint. In fact, as set out in Article 34(2) of the Code of Conduct for counsel, a complaint, even when made by a Chamber, describes an ‘alleged misconduct’, to be adjudicated upon through the disciplinary procedure foreseen in Article 39 of the Code of Conduct for counsel. The Defence Lead Counsel will have the right to be heard and to make any further submissions on what she alleges were errors of the Chamber in the context of these disciplinary proceedings.

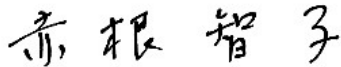
6. As regards the publicity of the Submission, the Chamber notes that Article 34(5) of the Code of Conduct for counsel relates to the procedure for the reception and transmission of complaints imposing a confidentiality obligation on the Registry. In its Submission to the Registrar the Chamber has not revealed any confidential information given that the statement of the Defence Lead Counsel which is the subject of the Submission was made publically on social media. Accordingly, there is no basis for the Defence Lead Counsel to assert that complaints regarding her public statements must be made confidentially.
7. As regards the remaining issues identified in the Request, the matter has now been transmitted to the Commissioner and these also are best addressed in the course of the procedure set out in the Code of Conduct for Counsel.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY
REJECTS** the Request.

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 6 January 2021
At The Hague, The Netherlands