The International Meetings of the Defence

Common Code of Professional Conduct for all Counsel appearing before the International Criminal Tribunals

Nuremberg 2017
“Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.”

Basic Principles on the Role of Lawyers, paragraph 12, Havana, Cuba, 27 August to 7 September 1990
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Nuremberg 2017
I. PREAMBLE

The International Meetings of the Defence,

Recalling the Charter of the United Nations adopted at San Francisco on 24 May 1945;

Recalling the Basic Principles on the Role of Lawyers, adopted in Havana, Cuba, from 27 August to 7 September 1990;

Recalling that all persons are entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, and to call upon the assistance of a lawyer of their choice;

Having regard to the proliferation of international criminal tribunals created to try crimes of an international character and/or serious violations of international humanitarian law;

Considering that these tribunals contribute to the development of international criminal law and the international legal order;

Convinced that counsel practising before such tribunals are key actors in international criminal proceedings and that their independence is an essential condition for them in the performance of their profession;

Cognizant that each legal system has its own ethical rules associated with distinct professional traditions;

Cognizant nevertheless that those systems refer to principles which form a common foundation for all ethical and professional conduct, as reflected in the relevant international instruments;

Considering that the existence of a code of ethics is an essential guarantee for lawyers exercising their profession and for the proper administration of justice;

Considering that the main purpose of adopting such a code is to govern and harmonize the practices of lawyers before the international criminal tribunals, and to ensure that the requisite consideration is given in order that they may carry out their duties independently and effectively;

Considering that the Meetings have, on numerous occasions, noted the need to harmonize this professional practice in a common code of professional conduct;

Propose this Common Code of Professional Conduct,

Urge the international criminal tribunals:

- to interpret and apply their respective ethical rules in a manner consistent with the provisions of this Code

- to take into account the provisions of this Code during any adoption and/or revision of their ethical rules.
## II. DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
<th>Language</th>
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<tr>
<td>International criminal tribunals</td>
<td>In this Code, “international criminal tribunal” refers to any tribunal, court or chamber created under the auspices of the United Nations or by treaty, on an ad hoc or permanent basis, for the purposes of prosecuting crimes of an international character, such as terrorism and/or serious violations of international humanitarian law, whether that institution is of a hybrid, internationalized or purely international nature. Where the terms “Tribunal” or “Jurisdiction” appear in the chapters of this Code, they refer to any international criminal jurisdiction as defined herein.</td>
<td>English</td>
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<tr>
<td>Client</td>
<td>“Client” refers to any detainee, suspect, accused, victim or witness assisted or represented by a lawyer.</td>
<td>English</td>
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<tr>
<td>Counsel</td>
<td>“Counsel” refers to any lawyer, counsel or law professor admitted to appear, in conformity with the selection criteria in force, on the list of counsel of a tribunal and who has been engaged by a client or assigned by the competent authority of the relevant tribunal or the jurisdiction concerned, whether as lead counsel or co-counsel. This term also includes States’ representatives mandated to represent the interests of a State before an international criminal tribunal.</td>
<td>English</td>
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<tr>
<td>Code or Common Code</td>
<td>Désigne le Code de déontologie commun adopté en 2017 à Nuremberg dans le cadre des Rencontres Internationales annuelles de la Défense.</td>
<td>French</td>
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<tr>
<td>Defence</td>
<td>L’accusé ou l’accusé représenté par son conseil.</td>
<td>French</td>
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<td>Defence team</td>
<td>Désigne le conseil et l’ensemble des personnes travaillant sous sa supervision aux fins de la représentation d’un client devant toute juridiction pénale internationale (tribunal, cour ou chambre spéciale).</td>
<td>French</td>
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<tr>
<td>Chamber</td>
<td>Toute chambre connaissant aux stades de la mise en état, du procès ou de l’appel d’une affaire portée devant une juridiction pénale internationale (tribunal, cour ou chambre spéciale).</td>
<td>French</td>
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<tr>
<td>Party</td>
<td>La Défense ou l’Accusation</td>
<td>French</td>
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<tr>
<td>National authority</td>
<td>Désigne le barreau ou l’ordre des avocats, ou tout autre organe professionnel ou administratif, chargé de réglementer les activités des avocats exerçant au sein d’un système juridique national.</td>
<td>French</td>
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III. SCOPE

A. This Code applies to all counsel practising before the international criminal tribunals.

B. Where there is any inconsistency between the provisions of this Code and any other professional code of ethics which counsel are bound to honour, the provisions of this Code shall take precedence.

IV. OATH

I solemnly declare that I will perform my duties with dignity, conscientiously, independently, with probity, tact, integrity and humanity, and that I will scrupulously observe the principle of professional secrecy and confidentiality.

V. THE BASIC PRINCIPLES OF THE PROFESSION

Having regard to the general principles common to all legal systems, to the applicable international norms, as well as to the specific characteristics of professional practice before the international criminal tribunals, counsel shall:

(a) Exercise his or her mandate entirely independently and freely in accordance with the relevant provisions of the Common Code;

(b) Respect professional secrecy and confidentiality in accordance with the rule of law;

(c) Act with diligence, dignity, honour, probity, tact, humanity and integrity, and with absolute collegiality;

(d) Act in a manner compatible with fair trial rules;

(e) Safeguard the interests of his or her client and avoid conflicts of interests that might be in any way prejudicial to his or her independence;

(f) Ensure that he or she can fulfil his or her mandate with the necessary expert knowledge and professional competency with respect to the applicable law before the tribunal before which he or she is appearing, and ensure his or her continuing professional development;

(g) Commit to ensuring effective representation.
VI. OBLIGATIONS OF COUNSEL TOWARDS THEIR CLIENT

Section I

The legal representation agreement

Article 1

Representation agreement

A. Counsel shall act:
   (i) when commissioned to do so by his or her client;
   (ii) when he or she is assigned by a competent authority in accordance with the statutes of
        the tribunal seized with the case.

B. Counsel shall not give false, misleading or untruthful information about his or her proposed services to
   a prospective client or his or her family members or acquaintances.

C. Counsel shall not pay to or receive from any person a fee, commission or any other compensation as a
   consideration for referring a client to him or her.

Article 2

Refusal to enter into a representation agreement

A. Counsel may refuse to enter into a representation agreement, without having to give the reasons for such refusal.

B. Counsel shall refuse a representation agreement in the following cases:
   (i) when there is a conflict of interests;
   (ii) when he or she is unable to deal with the matter diligently;
   (iii) when he or she does not have the requisite expertise to deal with the matter.
Section II

Performance of the agreement

Article 3

General rules

1 - Integrity, competence and diligence

Counsel shall at all times perform his or her representation agreement in an effective manner. Representation is deemed ineffective where one or more acts or omissions of counsel, or of a member of his or her team, compromises or might compromise or materially affect the rights or interests entrusted to him or her. The monitoring of the effectiveness of the representation may only be carried out by an independent authority.

2 - Conduct towards the client

A. Counsel shall not engage in any discriminatory conduct towards a third party, in particular his or her client, on grounds of their race, gender, colour, ethnic or national origin, nationality, citizenship, political opinions, religious convictions, disability, or personal or economic status.

B. In the relations with his or her client, counsel shall take into account the client’s personal situation and specific needs, in particular when representing victims of torture or of physical, psychological or sexual violence, or children, the elderly or disabled, as well as vulnerable persons.

C. In his or her relations with a client, counsel shall not engage in any improper conduct, coercion or intimidation, or any other undue forms of pressure or constraint.

D. Where counsel reasonably believes that a client’s ability to take well-considered decisions with respect to his or her representation is impaired for whatever reason, counsel shall:

(i) inform the authority to which he or she reports;

(ii) inform the tribunal seized with the case; and

(iii) take all necessary steps to ensure the proper legal representation of his or her client despite the impairment.

3 - Obligation to provide information

A. Counsel shall keep his or her client informed of the state of progress of the proceedings in which his or her client is a party and provide the client with any explanations and information he or she may reasonably expect in order to be able to take informed decisions in respect of the objectives of the representation, the assistance and advice. Counsel shall consult with his or her client on the means to be implemented in order to achieve those objectives.
B. Unless expressly authorized by his or her client, counsel shall not enter into any proceedings whereby his or her client appears having admitted guilt in advance and shall refrain from engaging in any negotiations regarding his or her client’s sentence.

4 - Confidentiality and professional secrecy

A. Counsel shall respect the counsel-client privilege even after his or her representation agreement has ended. He or she shall preserve the confidentiality of the case file and shall not reveal to any other person, except for persons who cooperate with him or her in the course of his or her representation activity, the content, existence or scope of any communications made or correspondence produced in the context of the professional relationship with the client.

B. Counsel may reveal information falling within the previous paragraph for the following reasons:

(i) if his or her client knowingly consents;

(ii) when the client has voluntarily disclosed the content of the communication to a third party and counsel provides proof of that disclosure;

(iii) if it is necessary for him or her when presenting arguments in criminal or disciplinary proceedings or civil litigation brought formally against him or her;

(iv) if, in so doing, he or she wishes to prevent an act which he or she has reason to believe:

(a) is or may be criminal or might be committed pursuant to the statutes or rules of the tribunal;

(b) could cause the death of or serious physical harm to another person.

5 - Conflict of interest

Counsel owes an overriding duty of loyalty to his or her client and shall put his or her client’s interests before his or her own while exercising the utmost care to avoid any potential conflict of interest arising and to resolve it should it arise.

6 - Immunity of counsel

Counsel shall enjoy civil and criminal immunity for any statement made in good faith in his or her written or oral pleadings before the tribunal.

Article 4

7 - Specific rules for assigned counsel in in absentia proceedings

Counsel assigned in proceedings held in absentia shall weigh the consequences of any act he or she undertakes on the position of the suspect or the accused in the ongoing or future proceedings, and may take any steps he or she considers best serve the defence of the interests and rights of the suspect or the accused.
Article 5

Provisions relating to investigations

A. When required in the course of representation, counsel may communicate with and meet a person who is not represented in the interests of the client.

B. When counsel makes contact with a person who is not represented, he or she shall:

(i) inform that person of their right to be assisted by a counsel and, if applicable, to seek legal assistance; and

(ii) inform them of the interests of the client that he or she is representing, and of the reasons for making contact with them, without breaching the counsel-client privilege by which he or she is bound with his or her client.

C. In the performance of his or her duty to gather evidence, counsel shall act with discernment and prudence. This must be the case in particular during his or her contacts and conversations with unrepresented persons who are liable to appear as witnesses or to provide evidence. In all circumstances, counsel must refrain from any conduct that might affect the integrity of the evidence.

Section III

Duration and termination of the representation agreement

Article 6

A. Counsel shall continue to act in accordance with the representation agreement until the case has been finally determined, including all appeals and, where applicable, review, unless:

(i) he or she has been withdrawn by the authority with the power to appoint counsel, in accordance with the statute of the tribunal;

(ii) he or she has terminated the representation agreement at his or her own request or that of the client;

B. Counsel may only request to be discharged from his or her agreement by the relevant authority according to the statutes of the tribunal if there is valid reason to do so.

C. Counsel whose representation agreement has ended shall continue to act in accordance with that representation agreement until replaced and shall take, as far as practicable, all steps or measures to preserve the client’s interests.
Section IV

Fees

Article 7

Fees of counsel

Counsel, if he or she has not been assigned, shall inform the client in writing, prior to being engaged to represent them, of the rate of fees to be charged and the criteria applied for setting them, the basis for calculating the costs, the billing and payment arrangements, and of the client’s right to receive a bill of costs.

Article 8

Fees of assigned counsel

A. Counsel, if assigned, shall not accept any other remuneration than that provided for in the statutes of the tribunal.

B. Where the client has legal aid, counsel’s fees shall be paid exclusively through the relevant authority according to the statutes of the tribunal.

C. Any agreement to share fees between assigned counsel and his or her client and/or his or her family is strictly prohibited.

Article 9

Insurance

A. Counsel shall take all steps to insure his or her professional civil liability to a reasonable extent taking into account the nature and extent of the risks involved.

B. Should this not be possible, counsel shall inform his or her client of the situation and of the consequences thereof.
VII. RELATIONS BETWEEN COUNSEL AND JUDGES

Section I
General rules

Article 10
Attitude and appearance

A. Judges, prosecutors and counsel mutually have a duty to show due respect to Justice. Counsel shall demonstrate respect, integrity and courtesy towards the Judges and all persons participating in the proceedings.

B. During hearings, counsel shall adopt an attitude which does not call into question the authority and dignity associated with their duties.

C. Counsel shall wear either the black robe adopted by the tribunal but may, if they so desire, wear the robe of their nationality authority.

Article 11
Non-assimilation with the client

Counsel shall never be identified with their client or their client’s causes as a result of discharging their representation agreement before the tribunal.

Section II
Obligations of counsel

Article 12
Respect for the rules and decisions of the tribunal

Counsel shall comply with the statute and the rules of the tribunal. He or she shall take all measures to ensure that his or her actions and those of his or her assistants and team members do not contravene the oath taken by counsel.

Article 13
Duty of loyalty to the tribunal

A. Counsel shall neither mislead nor knowingly deceive the tribunal,
(i) by presenting an inaccurate version of the material or legal facts; or

(ii) by presenting evidence that he or she knows to be false.

B. Counsel shall take all necessary steps to correct any erroneous statement or version of the facts that he or she, or one of his or her assistants or team members might have submitted to the tribunal as soon as he or she becomes aware of it.

Article 14

Integrity of the evidence

Counsel shall maintain, at all times, the integrity of the written, oral and other evidence submitted or likely to be submitted to the tribunal.

Section III

Rights of counsel

Article 15

Unhindered right of audience

Counsel has the right to discharge all his or her professional functions without impediment, intimidation, harassment or interference on the part of the tribunal, the Judges or any organ of the tribunal. He or she has the right to defend his or her client by all legal and procedural means, without the risk of being prosecuted for contempt, defamation or insult.

Article 16

Counsel’s ability to testify

Counsel shall not act in a case in which he or she might be called to appear as a witness except where refraining to act as counsel is likely to be cause material prejudice to his or her client.
Section IV

Miscellaneous provisions

Article 17

Conflict with one or more Judges

In the event of conflict with a Judge, counsel shall maintain an appropriate attitude and make use of the necessary remedies provided by the texts in force, and shall inform the professional authority to which he or she belongs.

Article 18

Case of the prosecutor or amicus curiae

In proceedings where the prosecutor – including any ad hoc prosecutor or amicus curiae – has the status of a Judge, the rules relating to the relations between counsel and Judges shall apply mutatis mutandis to the relations between counsel and the prosecutor.

VIII. RELATIONS WITH OTHER COUNSEL

Section 1

Relations with other counsel

Article 19

Collegiality

A. Counsel shall maintain good relationships with other counsel and work to preserve the interests of his or her client.

B. Counsel shall refer to the competent authority in the event of conflict with other counsel.

C. Counsel may not directly contact the client of another counsel without going through the said counsel or having obtained his or her consent.
Article 20
Respecting confidentiality

A. Counsel wishing to send to other counsel communications which he or she wishes to remain confidential must clearly express that wish before sending the first correspondence, whatever its nature, whether in hard copy or digital format.

B. If counsel receiving those communications is not in a position to maintain their confidentiality, he or she must inform the sender to that effect without delay.

Section 2
Relations between lead counsel and counsel of his or her team

Article 21
Lead counsel shall ensure that the members of his or her team comply with this Code and shall assume responsibility for this.

Article 22
Responsibility of all counsel

All counsel are bound by this Code, notwithstanding the fact that they might have acted on the instructions of another counsel.

Section 3
Miscellaneous provisions

Article 23
Continuing professional development

Counsel must maintain and develop their knowledge and professional competencies, taking into account the international character of their profession.
IX. DISCIPLINARY REGIME

Article 24

Compatibility with other disciplinary regimes

The present chapter is without prejudice to the disciplinary powers of any other disciplinary authority that may apply to counsel subject to the provisions of the said Code.

Article 25

Misconduct

A lawyer or counsel commits misconduct when he or she:

(i) violates or attempts to violate any provisions of this Code, the statute, or the rules of procedure and evidence in force at the tribunal seized with the case imposing an ethical or professional duty on him or her;

(ii) knowingly assists or induces another person to commit any misconduct referred to in paragraph (i) of this article, or does so through the acts of another person; or

(iii) fails to comply with a decision of the competent disciplinary committee rendered pursuant to this chapter.

Article 26

Liability for conduct of assistants or other team members

A. Counsel shall be liable for misconduct under article 25 of this Code by the staff of his or her team when he or she:

   (a) orders or approves the conduct involved; or

   (b) knows or has information suggesting that violations may be committed and takes no reasonable remedial action.

B. Counsel shall instruct his or her team members in the standards set by this Code.

Article 27

The Independent Commissioner

A. The President of the tribunal and the independent professional authority shall appoint in concert for four years an Independent Commissioner responsible for investigating complaints of misconduct pursuant to this chapter. The Independent Commissioner shall be chosen from amongst persons with established competence in professional ethics and legal matters.
B. The Independent Commissioner shall not be eligible for re-appointment. An Independent Commissioner who is involved in an investigation when his or her mandate expires shall continue to conduct such an investigation until it is concluded.

Article 28

Filing complaints of misconduct

A. Any complaints against counsel regarding misconduct as referred to in articles 25 and 26 may be submitted to the professional authority of the tribunal seized with the case or to the professional authority of the country of the counsel concerned by any person or group of persons whose rights or interests may have been adversely affected as a result of the alleged misconduct. The complaint shall be made in writing or, if the complainant is unable to do so, orally before a staff member of the professional authority of the defence of the tribunal seized with the case. It shall identify the complainant and the counsel against whom the complaint is made and shall describe in sufficient detail the alleged misconduct.

B. The professional authority of the defence of the tribunal seized with the case shall transmit the complaint to the Independent Commissioner.

C. The professional authority of the tribunal seized with the case may, on its own initiative, make a complaint to the Independent Commissioner regarding the matters that in its view constitute misconduct within the meaning of articles 25 and 26 of this Code.

D. All complaints shall be handled in confidence by the professional authority of the tribunal seized with the case.

Article 29

Limitation period

The right to file a complaint against counsel for misconduct shall lapse five years after the termination of the representation agreement.

Article 30

Composition and functioning of the Disciplinary Board

A. The Disciplinary Board shall comprise three counsel, two of whom shall be permanent and the third ad hoc.

B. The members of the Disciplinary Board shall perform their functions under this Code in an independent and impartial manner.

C. The professional authority of the tribunal shall make appropriate arrangements for the elections provided for in paragraph D of this article in consultation with counsel and, as appropriate, national authorities.
D. The two permanent members, as well as one alternate member who may be called upon to serve as a replacement for a permanent member in accordance with paragraph J of this article, shall be elected for four years by all counsel admitted to the list of counsel of the tribunal seized with the case. They shall be chosen from amongst counsel with established competence in professional ethics and legal matters.

E. The ad hoc member shall be a person appointed by the national authority competent to regulate and control the activities of counsel subject to the disciplinary procedure.

F. The permanent members shall not be eligible for re-election.

G. Notwithstanding paragraph D of this article, at the first election, one of the permanent members shall be selected by lot to serve for a term of six years.

H. After each election and in advance of the first meeting of the newly-elected Disciplinary Board, the permanent and alternate members shall elect one of the permanent members as a chairperson.

I. All members of the Disciplinary Board shall have the same rights and each shall have one vote. The Disciplinary Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph J of this article shall have the same rights and votes as permanent and ad hoc members serving on the same case.

J. If one of the permanent members is unavailable to deal with the case or serve on the Disciplinary Board, the chairperson or, where the chairperson is the permanent member concerned, the other permanent member, shall request the alternate member to serve as a replacement on the Disciplinary Board.

K. Permanent members or the alternate member whose mandates have expired shall continue to deal with the cases they already had under consideration prior to the end of their mandate, until such cases are finally determined, including all appeals.

Article 31

Preliminary procedures

A. If the complaint filed meets the requirements of article 28 of this Code, the Independent Commissioner shall forward it to counsel, who shall inform his or her national authority and submit a response within sixty days from the date the complaint is forwarded.

B. The response shall indicate whether the alleged misconduct has been or is the subject of a disciplinary procedure before the national authority. If so, it shall include:

   (i) the identity of the national authority deciding on the alleged misconduct; and

   (ii) a certified communication by the national authority stating the alleged misconduct that is the subject of the disciplinary procedure before it.
Article 32

Complementarity of disciplinary measures

A. The disciplinary procedure in this Code shall be applied by the Disciplinary Board.

B. The ad hoc member of the Disciplinary Board shall serve as the contact point with the relevant national authority for all communications and consultations regarding the procedure.

C. Counsel subject to the disciplinary procedure shall request the national authority dealing with the matter to inform the Disciplinary Board of the progress of any national disciplinary procedure concerning the alleged misconduct and of its final decision, and shall take all measures necessary to facilitate the communication of such information.

D. When the alleged misconduct is the basis of a disciplinary procedure which has already been initiated before the relevant national authority, the procedure before the Disciplinary Board shall be suspended until a final decision is reached regarding the former procedure, unless:

   (i) the national authority does not respond to communications and consultations in accordance with paragraph B of this article within a reasonable time;

   (ii) the Disciplinary Board considers that the information received is not satisfactory; or

   (iii) the Disciplinary Board considers that, in the light of the information received, the national authority is unable or unwilling to conclude the disciplinary procedure.

E. As soon as it receives the decision from the national authority, the Disciplinary Board shall:

   (i) declare the procedure closed, unless the decision adopted does not adequately address a complaint of misconduct under this Code; or

   (ii) declare that the decision of the national authority does not cover or only partially covers the complaint of misconduct brought before the Disciplinary Board and that therefore the procedure is to be continued.

F. In the case of paragraphs C and D (ii) above, the Disciplinary Board may ask counsel concerned to provide detailed information about the procedure, including any minute or evidence which might have been submitted.

G. A decision by the Disciplinary Board based on this article may be appealed before the Disciplinary Appeals Board.

Article 33

Disciplinary procedures

A. The Independent Commissioner conducting the investigation may dismiss a complaint without any further investigation if he or she considers on the basis of the information at his or her disposal that the allegation of misconduct is unfounded in fact or in law. He or she shall notify the complainant accordingly.
B. Should the Independent Commissioner consider otherwise, he or she shall promptly investigate the counsel’s alleged misconduct and decide either to submit a report to the Disciplinary Board or to bring the procedure to an end.

C. The Independent Commissioner conducting the investigation shall take into consideration all evidence, whether oral, written or in any other form, which is relevant or has probative value. He or she shall handle all information concerning the disciplinary procedure in confidence.

D. The Independent Commissioner may try to find an amicable settlement if he or she deems it appropriate. The Commissioner shall report the outcome of any such efforts to reach an amicable settlement to the Disciplinary Board, which may take it into consideration. Any amicable settlement shall be without prejudice to the competence or powers of the Disciplinary Board under this Code.

E. The report of the Independent Commissioner shall be submitted to the Disciplinary Board.

F. Disciplinary Board hearings shall be public. However, the Disciplinary Board may decide to hold a hearing in closed session, in particular to safeguard the confidentiality of information contained in the investigation report or to protect victims and witnesses.

G. The Independent Commissioner and the counsel subject to the disciplinary procedure shall be called and heard. The Disciplinary Board may also call and hear any other person deemed useful for the establishment of the truth.

H. In exceptional cases, where the alleged misconduct is of such a nature as to seriously prejudice the interests of justice, the Independent Commissioner may lodge an urgent motion with the chamber before which the counsel who is the subject of the complaint is appearing, so that it may, as appropriate, declare a temporary suspension of such counsel.

Article 34

Rights of counsel subject to the disciplinary procedure

Counsel subject to disciplinary proceedings shall enjoy the internationally recognized rights of all accused

A. Counsel subject to the disciplinary procedure shall be entitled to assistance from counsel of his or her choosing.

B. Counsel subject to the disciplinary procedure shall have the right to remain silent before the Disciplinary Board, which may draw any inferences it deems appropriate and reasonable from such silence in the light of all the information available to it.

C. Counsel subject to the disciplinary procedure shall have the right to full and unhindered disclosure of the information and evidence gathered by the Independent Commissioner, as well as the Commissioner’s report.

D. Counsel subject to the disciplinary procedure shall be given the time required to prepare his or her defence.
E. Counsel subject to the disciplinary procedure shall have the right to question, personally or through his or her defence counsel, any person called by the Disciplinary Board to testify before it; he or she may summon and examine witnesses of his or her choosing.

Article 35

Decisions by the Disciplinary Board

A. The Disciplinary Board may conclude the procedure finding no misconduct on the basis of the evidence submitted to it, or finding that counsel subject to the disciplinary procedure committed the alleged misconduct.

B. The decision shall be made public but without identifying the counsel in question, unless the Disciplinary Board issues a decision publicly identifying counsel as a sanction. It shall be reasoned and issued in writing.

C. The decision shall be notified to counsel subject to the disciplinary procedure and to the professional authority of the defence of the tribunal seized with the case.

D. When the decision is final, it shall be published in the Official Journal of the tribunal seized with the case and transmitted to the national authority.

Article 36

Sanctions

A. When misconduct has been established, the Disciplinary Board may impose one or more of the following sanctions:

(i) admonishment;

(ii) public reprimand with an entry in counsel’s personal file;

(iii) issuance of a public version of the decision identifying counsel;

(iv) suspension of the right to practise before the tribunal seized with the case for a period not exceeding two years; and

(v) a permanent ban on practising before the tribunal seized with the case and striking off the list of counsel.

B. The admonishment may include recommendations by the Disciplinary Board.

C. The costs of the disciplinary procedure shall be within the discretion of the Disciplinary Board.
Article 37

Appeals

A. Sanctioned counsel and the Independent Commissioner shall have the right to appeal the decision of the Disciplinary Board on factual or legal grounds.

B. The appeal shall be notified to the secretariat of the Disciplinary Board within one month from the day on which the decision was delivered.

C. The secretariat of the Disciplinary Board shall transmit the appeal case file to the secretariat of the Disciplinary Appeals Board.

D. The Disciplinary Appeals Board shall decide on the appeal according to the procedure followed before the Disciplinary Board.

Article 38

Composition and functioning of the Disciplinary Appeals Board

A. The Disciplinary Appeals Board shall decide on appeals against decisions of the Disciplinary Board.

B. The members of the Disciplinary Appeals Board shall perform their functions under this Code in an independent and impartial manner.

C. The professional authority of the defence of the tribunal seized with the case shall make appropriate arrangements for the elections provided for in paragraph E of this article, in consultation with counsel and, as appropriate, national authorities.

D. The Disciplinary Appeals Board shall be comprised as follows:

(i) three counsel, two of whom are elected in accordance with paragraph E of this article. The third counsel is an ad hoc counsel who is appointed by the national authority of counsel subject to the disciplinary procedure.

(ii) he or she, as with counsel appointed in the first instance, shall be the point of contact with the hierarchical national authority of the counsel in question.

(iii) one former Judge of an international criminal tribunal who has no knowledge of the professional practice of the counsel subject to the disciplinary procedure, and who was not involved in the case in which the failure is alleged.

(iv) a person of high moral character who is recognized in his or her profession as having high moral and ethical values as well as experience in disciplinary matters.

(v) the chairmanship of the Disciplinary Appeals Board is undertaken by one of the five members mentioned under sub-paragraphs (i) and (ii). He or she is appointed by the five judges.
E. The members of the Disciplinary Appeals Board, as well as an alternate member who may serve as a replacement, shall be elected for four years by all counsel admitted on the list of counsel. These members shall possess recognized competence in matters of professional ethics.

F. If one of the elected members is unavailable to deal with the case or serve on the Disciplinary Appeal Board, the chairperson may request the alternate member to serve as a replacement.

G. The functions of members of the Disciplinary Appeals Board are incompatible with those of members of the Disciplinary Board.

H. The elected members shall not be eligible for re-election.

I. All members of the Disciplinary Appeals Board shall have the same rights and votes. The Disciplinary Appeals Board shall decide by majority vote. An alternate member serving on a case pursuant to paragraph F of this article shall have the same rights and votes as other members serving on the same case.

J. Members whose mandates have expired shall continue to deal with the cases they already have under consideration until such cases are finally determined.