INTERNATIONAL BRIDGES TO JUSTICE

RWANDA CRIMINAL DEFENCE MANUAL

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About International Bridges to Justice

Who are we?

International Bridges to Justice (IBJ), founded in 2000, is dedicated to protecting the basic legal rights of ordinary individuals around the world. Specifically, IBJ works to guarantee all individuals the right to competent legal representation, the right to be protected from cruel and unusual punishment, and the right to a fair trial. IBJ has Defender Resource Centers in Rwanda, Zimbabwe, the Democratic Republic of the Congo, Burundi, Cambodia, China, India and Myanmar. Through its country programs, IBJ provides direct legal assistance to those in need, trains lawyers, hosts roundtables for justice officials, and organizes campaigns to inform people of their rights. IBJ addresses a crucial problem: namely, that many poor and vulnerable individuals, unable to afford a lawyer, are unable to fully exercise their rights.

IBJ in Rwanda: Rwanda Bridges to Justice

Rwanda Bridges to Justice is an autonomous local chapter and implementation partner of International Bridges to Justice. International Bridges to Justice started working in Rwanda in 2010. In partnership with the Ministry of Justice and the Rwanda Bar Association, with whom IBJ have signed Memorandums of Understanding, IBJ worked to fill the gaps in criminal legal aid. In 2014, IBJ Fellow Maitre John Bosco Bugingo initiated the creation of IBJ's autonomous local chapter, Rwanda Bridges to Justice (RBJ), with the same mission as its mother organisation International Bridges to Justice. Through the Defender Resource Center (DRC) in Kigali, RBJ provides the support necessary to motivate criminal defence lawyers, drives the movement to guarantee competent legal representation to the most vulnerable Rwandan defendants, including women, children, and the indigent, and builds a supportive community of legal professionals in the country. Additionally, through access to justice roundtables and public rights awareness campaigns, IBJ promotes popular and institutional support for comprehensive legal reform. Roundtables bring together justice sector stakeholders to develop practical solutions to address access to justice issues, while also breaking down barriers, building respect, and promoting collegial relationships. Rights awareness campaigns raise consciousness and empower citizens to utilize their legal rights. We work to create a culture in which both political leaders and ordinary citizens understand and support basic due process rights.

What do we do?

Our programs are composed of 6 main types of activities:

1. **Legal Assistance**

IBJ's intervention at the earliest possible stage of the criminal process ensures that even the poorest of the poor are offered the same level of protection under the law. Legal assistance is the backbone of IBJ's strategy to advance access to justice for the indigent accused and strengthen pro bono legal culture. Defender Resource Centres (DRCs), as the hubs of IBJ's in-country activities, serve as community legal centres that are the first stop for those seeking

legal assistance for themselves or their family. The DRCs enable IBJ to complement its legal defence trainings with mentoring, one-on-one legal consultations, opportunities for skill sharing, and technical support for defence lawyers.

2. Capacity-Building for Lawyers

IBJ is a leader in its field providing training to both new and experienced criminal defence attorneys, increasing the number of lawyers taking criminal cases and improving each lawyer's ability to provide competent representation. IBJ also trains other actors within the justice system, such as police, prison officials, and judges, in best practices for safeguarding the rights of the accused. The rigorous global curriculum is designed to enhance lawyers' capacities as qualified advocates for their clients and ensure effective legal protection for everyone.

3. Criminal Justice Reform

To promote cooperation from the entire legal community and mutual respect among different stakeholders, IBJ regularly convenes roundtable meetings where government authorities, police, prison officials, lawyers, judges, community leaders, legal academics and civil society organisations engage with one another to seek practical solutions and identify common ground. By providing a forum for these parties to communicate constructively, IBJ fosters a deeper understanding of the necessity to safeguard due process rights in a functioning criminal justice system.

4. Legal Rights Awareness Campaigns

Knowledge is a powerful tool in the fight for human rights. By equipping ordinary individuals with an awareness of their legal rights, IBJ greatly increases the likelihood that such individuals will assert their rights in case of arrest. This encourages individual defendants to demand representation, widens the general public's understanding of their legal rights and obligations, and increases public support for access to justice initiatives. IBJ employs a variety of media platforms to raise awareness, from posters to SMS campaigns to radio broadcasts.

5. eLearning and Criminal Defense Wiki

The IBJ eLearning platform and Criminal Defense Wiki provide vital assistance to human rights defenders worldwide and allow legal knowledge and best practices to be shared, with over 2 million views since their creation. No matter where they are, lawyers and legal activists can access these resources and discover crucial information about everything from legal procedures, to the impact of new criminal codes, to how best to intervene and prevent custodial torture. By making these resources available on a global scale and organizing them in an accessible way, IBJ moves one step closer towards institutionalizing defender standards worldwide.

6. JusticeMakers

Through the JusticeMakers program, we connect the best criminal justice defenders across the world to share intellectual capital and best practices. Launched in 2008, the IBJ JusticeMakers program funds innovative projects that bring change to local criminal justice systems and award $5,000 fellowships to lawyers and legal activists to spread their initiatives

around the world. Today, 69 JusticeMakers Fellows are active in 42 countries, with 10 new Fellows joining the community through the 2017 JusticeMakers Prevention of Torture Competition in Francophonie Africa.

Support our actions

There are many ways to support IBJ:

1. Make an online donation on www.ibj.org

2. Are you a lawyer, a human rights officer, a business professional, or a young person interested in justice issues? You can support our actions by lending us your expertise and your professional resources. To find out more, contact us at internationalbridges@ibj.org

- II -

Fundamental Principles

Chapter four on human rights and freedoms of the Constitution of the Republic of Rwanda 2003, as amended in 2015, together with certain other laws and a number of ratified international treaties, provide a legal basis for the fundamental protection of rights. There are principles enshrined within the different Articles and provisions which are relied on by practicing lawyers in the area of criminal defence. When such principles are put into consideration enable the lawyer to effectively deliver justice while performing his duty in the courts of law.

The right to a fair trial:
The right to a fair trial is provided for under Article 29 and 150 of the Code of Criminal Procedure (CCP) which provides for features of a fair trial. It requires that a suspect or an accused:

- Has a right to defence and legal representation;
- Be presumed innocent until proven guilty by a competent Court;

These highlighted elements constitute, amongst others, the concept of a fair trial.

Time is of the essence if the concept of a fair trial is to be achieved. As such, Article 34 of the Code of Criminal Procedure (CCP) stipulates a period of 5 days during which the accused must be presented before the courts of law, which are required to try the case on merit within a grace period of fifteen (15) days of receipt of the case file.

Criminal defence lawyers regularly consult and refer to provisions within both the Penal Code and the Code of Criminal Procedure (CCP) as a source of legal authority at the time of taking on the case of an accused person or suspect.

Both codes reinforce the Articles of the Constitution of Rwanda in relation to the rights of an accused person or a suspect. In practice, however, these codes tend to be less detailed or silent on certain issues. This is true of Rwanda, as everywhere.

We must remember that the judiciary is subject to the law and the Constitution. The rule of law allows (and requires) lawyers to invoke both the Constitution and all other laws applicable in Rwanda during criminal proceedings.

According to the rules and regulations of the Rwanda Bar Association presented under Sub-Section4, together with Article 61 of the CCP, lawyers have the right to demand the following:

1. Consult the case file and communicate with the accused.
2. **Absolute respect for the adversarial system (*audi alteram partem* principle).** This includes unrestricted access to the files and logically extends to a copy of the provision/law under which the suspect has been charged. In order to ensure equal protection under the law, this copy of the provision/law should be free. Practically, this is a manifestation of the right to a fair trial, and the right to defence, as provided in Article 29 of the Constitution. All parties to the case must have mutual respect

towards the adversarial proceedings. Under this principle, the **defence** counsel may not produce any evidence at the court without having previously shared it with all relevant parties.

Lawyers must also, through the application of the aforementioned principles and Articles 38 and 39 of the CCP, exercise professional discretion, as well as have confidential, permanent and unrestricted access to the accused or suspect.

These rules, including unrestricted access to the accused and respect for the adversarial system are also set out in Article 50 of Law n° 83/2013 of 11/09/2013, which established the Bar Association in Rwanda and determines its organisation and functioning.

3. **The right to challenge the detention of the client.** This obligation is the result of the reasonable period provided for under Article 34 of the Code of Criminal Procedure.

   The CCP allows for the challenge and renewal of temporary detention. The idea of a reasonable period, as found in the Constitution and under international conventions, is quantifiable and therefore, after a number of detention renewals without judgment, the defence may invoke the Constitution to obtain the un-judged detainee's immediate release.

4. **Public trial**. A pubic trial guarantees certain protections for the defence and encourages public debate. Lawyers will not be prosecuted for what is said while they truthfully and vigorously defend their client, nor will they be censured during proceedings.

   This principle of attorney candour is subject to restrictions, however. Outrage and insult remain both criminally and ethically reprehensible and the lawyer's freedom of speech does not extend beyond the doors of the courtroom. Lawyers do not enjoy complete freedom, nor do they enjoy complete freedom of speech before the press.

The Presumption of Innocence:

As stated in Article 29 of the Constitution, *"Everyone has the right to due process of law, which includes the right: […] 2° to be presumed innocent until proved guilty by a competent Court; […]".* Similarly, Article 85 of the Code of Criminal Procedure establishes the principle of presumption of innocence.

The presumption of innocence has two major consequences which must be the cornerstones of the defence.

1. The presumption of innocence is in direct opposition with the idea of pre-trial detention. In cases where a person facing criminal charges has few guarantees of representation, a presumption of innocence argument should be emphasized to prosecutors who may otherwise be tempted to overuse pre-trial detention without measuring its implications beforehand.
2. Under the presumption of innocence, the burden of proof lies upon the prosecution. This heavily influences the defence methodology. (See *Defence Strategies*)
3. It is also on the basis of presumption of innocence under Article 165 of the CCP that, if the proceedings conducted as completely as possible do not enable the judges to find reliable evidence proving beyond reasonable doubt that the accused committed the offence, the judge gives the benefit of doubt to the accused and as such, he or she is acquitted.

- III -

Client Interview (ill-treatment)

Whether preparing a defence on the merits for the client, or raising and proving procedural irregularities, it is important to ask the client certain questions in an interview to develop a defence and defence strategy.

Even with time and experience, after working on a number of cases or detention visits all lawyers will occasionally forget a few important points or questions. Accordingly, a small checklist of questions to ask can be a useful tool when interviewing clients.

Client Interview Checklist:

- Exact time and date of arrest.
- Details of arrest: number of people, role of each in the arrest and, if possible, name and occupation of each, words exchanged, rights evoked, placement in custody, whether or not the client had knowledge of the offense when being placed into custody. Language used, understanding, visits.
- Conditions and treatment after the arrest, and custody: doctor, lawyer, interpreter, questioning, rest, food, family.
- Any statement given by the client to the judicial police officer.
- Judicial follow-up: transfers to courtroom, summons, notifications, right to a lawyer.
- Any information that enable the lawyer to carry out an investigation in relation to the evidence, for example witnesses

This checklist is useful in preparing a defence for various crimes. Through these questions, one may find that the client has been (or is) a victim of torture or other ill-treatment.

1 – The law in relation to torture and ill-treatment

Even though there is a clear legal difference between torture and ill-treatment, as defined by international legal instruments, there is not a large difference between the two concepts for purposes of the defence lawyer's everyday work.

In practice, there is no difference between blows, physical abuse or psychological pressure (i.e. threats) in the pursuit of a confession whether it is defined as torture or “ill treatment”.

While the state has a monopoly on legitimate violence, which it can delegate to its police force, that monopoly has very clear limits.

To be pragmatic and deliberately simplistic, a criminal defence lawyer can express that limit as:

***The use of force has to be lawful, reasonable and proportionate to the objective according to Article 37 of* Law N°46/2010 OF 14/12/2010 determining**

Any other attack on the individual, be it physical (slaps, blows, deprivations (various, i.e. food, sleep, water, clothing), physical abuse, detention without valid warrant or cause) or psychological (threats, pressure on acquaintances, deprivation of contact) is an illegal act, regardless of definition used.

On the issue of legitimate state force, it is important to remember that the human being and his integrity are ***inviolable.***

The Constitution of Rwanda guarantees:

- **Article 13, Inviolability of a human being:** "*A human being is sacred and inviolable. The State has an obligation to respect, protect and defend the human being.*"

- **Article 14, Right to physical and mental integrity:** "*Everyone has the right to physical and mental integrity. No one shall be subjected to torture or physical abuse, or cruel, inhuman or degrading treatment.*"

The Code of Criminal Procedure guarantees this by controlling the judicial police.

The Penal Code guarantees this by qualifying actions which are in violation of Articles 13 and 14 of the Constitution as offenses.

Thus, the lawyer may use, as needed, any of the aforementioned texts, which address torture or ill-treatment, and must be indignant to ANY human suffering.

Remember:

Torture *is any activity that results in unbearable and sometimes long-term suffering, whether psychological or physical, and which avoids, or at least delays, death. Its after-effects can be physical, such as mutilations, or psychological, such as trauma.*

The torturer has total control over the victim, who cannot escape. Possible objectives and motivations for torture include:

- Obtaining secret information, confessions;
- Punishment of real or imagined misdemeanours;
- Terrorizing populations or political organisations by using members of a specific group as an example, leading to fear and passivity in the rest of the population, who are afraid of becoming victims themselves;
- Sadistic pleasure;
- Psychological preparation used to convince the victim that he is weak, with the aim of obtaining complete submission; and
-Self-justification for the torturer who is 'following orders'.

Torture is banned by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Geneva Convention) (adopted by the General Assembly of the United Nations on 10 December 1984, which came into effect the 26 June 1987) and by the Third Geneva Convention. Rwanda acceded to the Convention against Torture on

December 15, 2008. Nonetheless, torture is still used throughout the world, often concealed by an imprecise definition, or by vague domestic legislation.

For the purposes of this Defence Manual, there is not enough space to cite all the texts and agreements made available by the United Nations agencies and NGOs on the theme of torture and mistreatment.

Despite laws and safeguards protecting individuals from physical or psychological harm, the reality is that lawyers are regularly confronted with detainees who have been the victims of ill-treatment.

2 –Preparing for the hearing, with regard to the victim

During instances where torture is quasi-systematic, for example in the fight against terrorism in the Middle East (particularly in "little Guantanamos" established by the Americans in their allies' territories (Pakistan, Jordan, Saudi Arabia and Iraq)), there are two reactions commonly seen in victims of torture: Victims either remain silent, a reaction developed to deal with the trauma they have endured; or, victims becomes extremely talkative about what happened to them. It is, of course, possible to find victims who adopt a mixture of these two attitudes and it is important to adapt to them accordingly.

Regardless of the cause of, or response to torture, the defence lawyer must be methodical, keeping in mind the purposes and goals of interviewing their client.

The case must be prepared, and the client must be questioned in order to construct an effective defence.

All potentially interfering personal feelings or conflicts of interest must be put aside. Another mistake to avoid is questioning and responding to the victim out of pure curiosity (when it is irrelevant to the victim's case) as this weakens and/or lowers the effectiveness of the interview.

To proceed methodically:

- When faced with a client who appears to have been mistreated and who chooses to remain silent:
  - Do not lose sight of the fact that he or she requires help to talk about his or her experience. Resist the temptation to speak on your client's behalf.
  - A good interviewing method is to ask the victim to tell the story of arrest from the beginning, during which you ask for numerous details (for example, colour and make of the police car, what the weather was like that day, what people nearby were wearing, etc…). These details may initially seem insignificant; however, giving small details often makes it easier to speak of violence.
  - Never finish or complete the sentences of the client. Silences, even prolonged, may help him or her find the most appropriate or comfortable way of communicating what happened.

- Remember to pay attention to the details of the victim's account of what happened to them. The victim's understanding of the gravity of certain acts may be different from what is legally proscribed.[1]
- Once the client has begun, do not interrupt him or her. Wait until the narration is over to ask further questions.
- As far as possible, try to have them talk about the physical abuse before talking about psychological pressure and moral torture.
- With the victim, create an inventory of the visible marks that resulted. Ask if there were witnesses to the arrest (especially family or colleagues), and for descriptions and names of the perpetuators, if available (nicknames or first names are often given during aggressive interrogations).

❖ When faced with a talkative victim who is outraged at his or her experience:
- It is important to allow for an initial 'purging' phase during the interview, where the client is able to 'get it all out.' Take advantage of this time to identify elements that can be used to direct the conversation later.
- There can occasionally, but not always, be a tendency to exaggerate by victims.
- Explain how certain details may aid or inform the creation of a defence (nullity, defence on the merits, legal action against the perpetuators, etc.)
- Have the client make precise lists of people, blows given and clothing worn in order to organize the narrative of what happened.
- It is often preferable to have a talkative victim speak of mental or psychological torture first.
- Take breaks during the story to explain, for example, the anti-torture treaties or legislation which exist.
- If the flow is interrupted, change the subject for a time. Talking about family or friends is often an effective way to bring them back to reality. After this, you can return to the details of the violence.
- Review the injuries only at the end.
- Make an inventory of places, names and witnesses as described above.

With both types of victims (and a victim who exhibits tendencies from both types), by the end of the interview the lawyer must have information:

1. On the time and place of the events.
2. On all of the persons present during the incident (whether or not they participated).
3. On the exact role of each person or party involved, and especially, the nature and number of blows done by each.
4. On all pressures or threats constituting mental or psychological torture.
5. On all marks that you have personally seen.[2]
6. On possible witnesses (bystanders, co-prisoners).

[1] Many people explain that they were beaten reasonably, that they were subjected to the "normal" violence of an arrest.

[2]The lawyer is never a witness but may nevertheless provide information.

Following the interview, a doctor should be called (for expertise and as a witness to the injuries, but also sometimes treatment). Witnesses should be found and statements should be taken from them. Then, the counterattack/defence should be prepared.

The counterattack, or defence, can take one of three forms:

> **Nullity.** Putting forth a defence of nullity of proceedings can call for the invalidation of either the entire proceedings, or just parts, such as the arrest, interrogation, custody, etc. *See Section V*.
>
> **Defence on the merits**. A defence that rejects statements or observations of the prosecution in light of the conditions of violence and ill-treatment.
>
> **Disciplinary Action against Perpetrators.** Disciplinary (via the public prosecutor's office), or criminal and civil action (via a complaint) can be taken against the perpetrators.

It is possible to pursue these three actions simultaneously, and any of these may be added to the defences set out below.

In all cases, a ***concrete*** file is needed before moving forward. These counterattacks are exceptional in that for once, the burden of proof rests on the public prosecution. According to Article 85 of the Code of Criminal Procedure, the burden of proof is on the Public prosecution or private prosecution, on the victim of an offence or his/her rightful beneficiaries. An accused is always presumed innocent until proven guilty by a final court decision. An accused is not obliged to prove his /her innocence unless his/her guilt has been established. Therefore, the accused or the defence counsel present all the defences available to raise a plea of inadmissibility or show that the allegations against him/her do not constitute an offence or he/she is innocent and present all the facts challenging the veracity of incriminating evidence.

- III -

Strategies for the Hearing

1- Regarding the accused [3]

It is essential to demonstrate distance between you and your client to the court. It is a golden rule in criminal defence to avoid the quasi-systematic and instinctive confusion among judges and prosecutors about the relationship between the accused and the lawyer.

Demonstrating distance means:

- Even if my client lies, I will not lie.
- If he or she has committed a criminal act, I take on the noble task of defence. His act is not mine.
- If the client insists a foolish defence, I only act on his instructions with reservation, and I advise him against it.
- I will not hesitate to contradict the accused when it could be to his or her benefit and even to be curt with him.
- Where evidence to support the offence is presented, the accused or his/her legal counsel present all the defence available to him/her, raise a plea of inadmissibility or show that the allegations against him/her do not constitute an offence or he/she is innocent and present all the facts challenging the veracity of incriminating evidence.

But also, and above all:

- I am a shield between him and you.
- I fight against prejudice on his behalf.
- I believe fundamentally in what I tell you.
- The system is bigger than the accused: I am there to re-establish balance.
- Practicing criminal defence requires leaving nothing to chance, from a technical point of view.
- Being a legal practitioner justifies defending any act, any cause

Finally, it must ***always*** be remembered that often:

THE FIRST ADVERSARY IS THE CLIENT.

This may sound counterintuitive, but it is said to make the defence counsel aware that sometimes an accused can be their own worst enemy. They may lie, or may not be able to appreciate their own circumstances. It is defence counsel's obligation to protect the accused

[3] Except in cases of *défense de rupture*, reviewed in *Section IV*.

from themselves, when possible and necessary. Bearing this in mind, it is possible to prepare effective questions to ask the accused while they are giving testimony in court.

While there is no automatic recipe for success in court, experience teaches certain basic rules which can help to avoid grievous mistakes:

- Never ask a question to which you do not already know the answer.
- Do not ask too many questions which you have not fully gone through or explored in preliminary meetings.
- Explain to the accused in advance that you will not ask trick questions, and that he or she should always answer in the way which seems the most obvious to him or her.
- Ask short questions and do not hesitate to reformulate or to explain if the client digresses.
- Remind the accused regularly that the answer is meant for the court.
- It is always better to allow a doubt to linger (we can address it in our arguments and it may be favourably understood) than to end up with a catastrophic answer (which cannot be taken back).

Additionally, it is fundamental to remind the accused that he or she should always reply to the prosecution or the plaintiff's lawyer and to the President of the Court as briefly and concisely as possible. This will help to avoid making mistakes.

2- Regarding a co-accused

There are special considerations to take into account where your client has a co-accused. The golden rule is that we gain nothing by attacking others, including the co-accused.

Also, be mindful that there does not necessarily need to be a sharing of the responsibility between co-accused.

Questions asked to a co-accused should be direct and frank. The aim here is not to do the prosecution’s work but to clarify or lessen your own client’s responsibility.

Remember that it can be easy to cross the line between question and accusation.

Furthermore, the examination of the co-accused should never descend into a confrontation that may call for the colleague defending him to step in. This is a waste of energy and the result can be disastrous.

Finally, and above all, remember the rules regarding your own client; a doubt can be addressed in oral arguments whereas a certainty resulting from a disastrous answer cannot be undone. Apply these rules to your questioning of the co-accused, always with your own client’s interests in mind. For example, can you ask the co-accused a question which raises a doubt about your own client’s culpability?

Remember, it is pointless to ask for more than what the court may need.

3- Regarding victims and plaintiffs

Another golden rule is that the last person to take on is the victim.

Always address the victim courteously, gently, and calmly. It is important to show that the victim's point of view is understood, though not necessarily shared.

When facing a victim who is lying, he or she must be allowed to either admit to the lie or contradict previous statements, all the while showing that the lawyer understands why he or she needed to lie.

The client should also be reminded to treat the victim with caution.

A lawyer should never be aggressive with the victim. If it becomes clear that he or she is lying, inventing, misrepresenting, or manipulating, the lawyer must be firm and assertive in the questions asked, reiterating the consequences of committing perjury.

It is important to remember that until closing arguments others may defend the victim, or take the floor to contradict what you put to them or to correct what they have said. Therefore, it may be advisable to save one's most zealous advocacy for the closing arguments, to which no one can respond to or counter.

To summarize, it is always helpful to be conciliatory with victims in order to avoid having everyone turn against you. This strategy, however, does not prevent you from contradicting their statements or fulfilling your duty to advocate on behalf of your client.

Quick concrete points:

- It is all too common to observe defence lawyers being aggressive with plaintiffs, accentuating their victimhood and complicating the task of defending.
- On the opposite end of the spectrum, many lawyers become quiet when dealing with victims and thus neglect to fulfill their duty to cross-examine.

It is a difficult balance to find; success usually comes somewhere in the middle. The correct approach to be taken will depend on the circumstances of each case and upon the attitude of the victim.

It is not unusual or wrong to argue against a person who is found to be lying. Given the stakes involved for the client, it is important to do so. But it is also important that before becoming too assertive and firm with a victim, you are confident that they are actually lying.

- IV -

Defence strategies

Defence strategies differ from the above hearing strategies in that they are strategies decided before the hearing between the lawyer and the accused. They do not change until the judge's deliberations.

It is essential that these strategies are shared by the accused and the lawyer, as one cannot apply the strategy without the other's cooperation.

Part of being a good lawyer is having the ability to guide the accused to the best defence available to him or her and ensuring (in his or her interest) that he or she keeps to it throughout the trial.

In some cases, for example a trial of a clearly political nature, it may be the accused's position which restricts the lawyer to a very limited defence such as *defense de rupture*.

1 – Défense de rupture and défense de connivence

The *défense de rupture* is based in principle on challenging the legitimacy of the court. It therefore means questioning the authority of the State and its judicial power.

This defence strategy emerged in the 1960s during wars of liberation (notably in France with the Algerian conflict) and it is difficult to know whether the lawyers chose it or whether it was imposed on them by the unique position of the people they were defending.

Each of us may be called upon to ensure the defence of a member of a rebel political or ethnic movement, fighting for independence, autonomy or revolution.

These people will explain to their counsel that they do not recognize the Court's legitimacy to judge their actions (often serious: terrorism, assassination, armed rebellion, etc. or worse, actions arising from war crimes or crimes against humanity).

A question of conscience then arises for the lawyer who is, in theory, a cog in the judicial machine challenged by the accused.

In a democracy, the lawyer's everyday defence strategy is a so-called "*défense de connivance*", meaning that it accepts the legitimacy of the system to which it belongs and participates. It appears obvious that the acceptance of the system's legitimacy, and a lawyer's membership in it, must never be called into question. To do otherwise may necessitate leaving the Bar.

It is therefore necessary to manage a client who challenges (as a revolutionary) this connivance, or legitimacy, while at the same time undertaking a real defence. It must be remembered that the lawyer's professional ethics strictly prohibit him or her from pleading against the interests and wishes of the accused.

The result in these circumstances is often the same:

If the accused is coherent, he or she must ask the lawyer not to plead at all since that would amount to accepting the legitimacy of the judicial system.

The lawyer cannot however simply remain seated and silent despite being present.

The lawyer must either withdraw from the case (but it often happens that the lawyer is appointed by the President of the Court), or explain the accused's position in advance and justify the lawyer's lack of pleadings and defence (note that the client may forbid the lawyer to speak on the client's behalf, which poses a real problem).

In all cases of *défense de rupture*, one must act with enormous caution, explaining very precisely the client's position and wishes in terms of defence.

One must also, and this is essential, inform the client very precisely of the consequences of such a defence in terms of their sentence (in these cases, this will often be the maximum available).

In addition, it will be necessary to explain to the court the situation one is found in as a lawyer bound by ethical and professional obligations, both in regard to the accused and the court.

We can never advise enough caution before agreeing to a *défense de rupture* which is, in principle, a problematic *non-defence*.

It should be remembered that the lawyer can only be a neutral outsider to the accused's case, otherwise the lawyer loses his or her independence and conscience, which are the very essence of the profession.

At the same time, it is the very essence of the lawyer's duty to ensure all defences are raised effectively.

2 – Admit or dispute guilt

You must be very clear on this in order to make an effective defence. Namely does the client admit the facts or not?

Civil systems do not recognize in principle the practice of *pleading guilty* which is common in Anglo-Saxon law.

We can therefore conclude that it is ineffective to position oneself on this point in everyday trials.

Having said that, the question of how one pleads (guilty or not guilty) is generally the first question put to the accused. This seems logical.

How one pleads becomes relevant because the Penal Code of Rwanda - like many others - provides for mitigating circumstances which includes a plea of guilty.

Of course, admitting the facts will not automatically be found to be a "mitigating circumstance". The subconscious of the courts, like the collective subconscious, is sensitive

to the admission of facts for various reasons that vary from one person to another. However, one thing is certain, to dispute obvious fact is to deprive oneself of the benefit of mitigating circumstances and may actually be seen as an aggravating circumstance.

Many judges and public prosecutors have indicated to us privately that they look favourably on cases where guilt is admitted by the accused, often not least because they save a lot of time when the court is busy, or because disputing anything and everything is irritating.

Accordingly, the lawyer must observe a golden rule if he or she wants to plead mitigating circumstances or rely on the accused's good character:

Never dwell unnecessarily on details of facts that are admitted.

Defence counsel has every interest in keeping the court well-disposed by saving it time, or, more precisely, not wasting it unnecessarily.

Nevertheless, beware:

- Justice is not a question of the length of court time.
- If it is necessary to return to certain facts (for example, those that are partially admitted or in order to minimize them), it is the duty of the lawyer to do so.

This subject of admitted or disputed guilt may sometimes appear to be too detailed; however, it has immediate and long-term repercussions which require attention.

Immediate repercussions because the court will often be more severe when guilt is disputed.

Long term repercussions because the lawyer puts the credibility of his or her own word on the line.

To deny the evidence (of a fingerprint, for example, as we see too often) is a sure way of permanently eroding a lawyer's credibility with the court. A lawyer's career is not limited to one case. It resides in the hundreds of others that will be plead over time, often before the same magistrates. To appear before a court that does not consider you credible is often an insurmountable obstacle and one which does not serve your clients' interests.

In circumstances where we cannot manage to convince an accused who is denying clear evidence against them that their chosen defence is suicidal, it is often better to refrain from acting for the client. To act for the client in these circumstances risks betraying one's oath by pleading aberrations and under mines one's credibility with the judges.

In summary,

- It is vital to decide the position to be taken before the beginning of the hearing. If you are convinced that this can help the accused, invite the accused to admit what is indisputable (be careful that the accused does not admit facts that he or she has not committed).

- By admitting facts which are not in dispute, it is possible to concentrate the defence on the mitigating circumstances and on the accused's good character (where

available) in order to minimize the sentence or to propose alternative solutions to the court.

- This method of defence, when the facts are admitted, must be prepared with the same rigor as a defence which includes disputed facts or confessions.

As with other defence strategies, even where the accused admits certain facts it is necessary to:

- Have targeted the accused's entourage.
- Have facts about the accused's personal history.
- Have information about the accused's past (possibly in prison).
- Have medical documents if necessary.
- Instruct medical or psychiatric experts as required.
- Avoid assumptions

While the future of individuals can be only partly read in the past which influences it, it is still necessary to know that past in order to launch the most vigorous defence possible.

Where facts are disputed, the defence strategy will, by necessity, change. In these cases, two major strategies are possible:

1. Dispute pure and simple

There is no need to dwell on this defence strategy except to recall that ethically the lawyer does not have the right to plead "against" the statements of the person whom he or she defends. Accordingly, it is necessary that there be synergy between the two and consistency in what is being disputed and how it is demonstrated. There is a need to construct the argument on concrete facts (by quoting witnesses, providing material facts, etc.) in order to counter the accusation(s) made against the accused. This choice of defence imposes a demonstrative path instead of disputing the prosecution's accusations, in which case, one must be precise about their inadequacy.

It may be useful, in complex cases or if we want to force the court to respond to specific points for the appeal, to file written submissions for acquittal.

The adversarial principle requires that written submissions be sent to the Public Prosecutor's Office. However, it is advisable not to send them too soon in case the Public Prosecutor's Office acts to fill the gaps that the submissions have highlighted.

Again, strategy is all about balance.

2. Lack of sufficient charges

It must be said that the term "benefit of the doubt" is totally unsatisfactory. This concept of doubt often finds its way into judgments, which can render them and the results they explain doubtful. Similarly, if there is a discharge on the basis of “benefit of the doubt”, the innocence of the accused seems *doubtful* even though it will have been recognized by a final court decision.

Above all it is important to remember that the accused does not *benefit* from the doubt (as if the accused were presumed guilty but gets away with it this time). On the contrary, the accused benefits from the presumption of innocence.

The legal analysis which follows this important distinction is very simple:

> The presumption of innocence is a fundamental and immutable principle which applies to all judicial proceedings until a final decision is delivered (Article 29 Constitution of Rwanda and 85 CCP).
>
> The primary consequence is that the burden of proof rests exclusively and solely on the prosecution, which must establish guilt.
>
> The principle of legal certainty requires that this guilt be demonstrated and established with absolute certainty and that there is not the slightest uncertainty in this respect. Where uncertainty exists, no matter how small, an accused must be acquitted. This illustrates the legal adage on which a fair system is based: *Better one hundred guilty go free than one innocent be condemned*. This is not a choice. It is a legal obligation not withstanding that it may be unpopular with people with more conservative political convictions.
>
> If the Public Prosecutor fails to establish the guilt of a suspect in full, the suspect must be acquitted. In no case does it rest with the defence to submit even the smallest evidence of innocence.

In spite of the fact that the defence does not have to prove innocence, they must, of course, fight with or against facts which will demonstrate an accused's innocence. In doing so, however, it is important to remember this bedrock principle—the presumption of innocence—and focus on demonstrating the gaps in the prosecution's case before taking steps to "prove" innocence.

It may seem that focusing on the prosecution's gaps rather than on proving innocence is illogical, however, if we establish a practice which focuses on proving innocence rather than poking holes in the prosecution's case we may lose sight of (and the benefit of) the presumption of innocence which is fundamental to any accused's case. Remember that it is difficult to prove a negative (that which the accused did not do) and that it is much easier to demonstrate the flaws in the accusation (that which the Prosecution does not prove).

Let us remind the court and the accuser about the presumption of innocence and stop the prevalence of the belief that an acquittal is obtained due to the "benefit of the doubt".

- V -

Nullity of Proceedings

Elements of the philosophy of law:

The fundamental principal of justice entails meeting barbarity, in whatever form, armed only with legality. This is the essence of the concept of procedure. It marks the boundaries of the path which leads to judicial decision and to the ideal (often utopian) of social harmony.

As a consequence, all participants in the judicial process are willing slaves to procedure.

The highest echelon of this process is the magistrate, which means the bench as well as the prosecution.

Acting from the bench, the judging magistrate acquires true legitimacy only by scrupulously following the fundamental rules of procedure. More than any other, it is he who can void an entire proceeding or release a guilty man who admits criminal responsibility, including a cold-blooded murderer or a conman who has ruined dozens of people, because the rule of law has been flouted to such an extent that the entire case is marred by illegality.

This release, this scrupulous respect of procedure, gives the judge his real power to judge all other files, to condemn all other guilty parties because the rule has been complied with. It is not purely through respect for the word of the law, but through an understanding of the purpose of the justice system, which magistrates vow to accomplish their duty.

Whilst acting as the prosecution, the magistrate must not work with the same tools as the accused.

To breach the prosecution’s procedural obligations is to enter into illegality on the same level as those being pursued. The most inexcusable practice for the magistrate is if this is taken as the basis of banditry. A situation must not develop where a magistrate provides an escape from the law. Absolute equality is the basis of civilized, democratic justice.

Under the current system it is the prosecution's task to request the annulment of any doubtful elements of the proceedings, just as it is its task, at the preliminary discussions, to set out the parameters of its investigators, to give instructions, and to respect, and make others respect, the rule of law. It is also the prosecutor's mission, proscribed by the CCP, to assure that those who operate under its authority are monitored and sanctioned if any of these procedural rules are broken.

Only by doing the above can the prosecution legitimately and legally prosecute the accused.

For the police, as for lawyers and magistrates, to respect procedure is above all to respect the ethical framework of their professions. It is impossible to participate in the work of justice without being just and legal. Following rules, practices and policies of criminal procedure is one of the most important means of ensuring justness and legality in criminal proceedings.

There is only one justice, and it arises from fair trials and from the respect for fundamental rights.

Substantial principles of criminal cases

In criminal law practice, cases adhere to the following substantial principles in order for the legal procedure to be valid:

- Being held in Public
- Being fair and impartial
- Respect for the right to defence and to legal counsel
- Adversarial proceedings and equality of parties before the law
- Basing on evidence lawfully produced, being rendered within the time limits prescribed by law with the judgment and being rendered in the language used in the pleading.

There is no full list of all the circumstances that may result in a nullity of procedure. Each party in the judicial process must highlight violations of procedure and request that they be sanctioned accordingly.

Note, however, that not all breaches will justify an annulment.

The modern legislator will often take the time to clarify cases or circumstances that may be open to nullity. However, in some cases, only broad principles with respect to nullities are addressed in legal text, with more substantive guidance being implied by other laws and jurisprudence.

For example, the Code of Criminal Procedure of Rwanda does not expressly provide for annulment of proceedings, nor even for the annulment of sanctions of illegal acts.

Furthermore, it creates strict procedural rules without expressly providing for sanctions should they be broken, whether through a nullity of the act or the proceedings.

At the same time, Article 15 of the Constitution of Rwanda states that: *"All persons are equal before the law. They are entitled to equal protection of the law."*

In the same vein, Article 14 states that *"Everyone has the right to physical and mental integrity. No one shall be subjected to torture or physical abuse, or cruel, inhuman or degrading treatment."*

Rwandan criminal law does not contain express provisions for nullity in the sphere of criminal procedure (*textual nullity*).Instead, it is a general constitutional principal which constitutes the grounds for nullities that are put forward following harm to a human being (*substantive nullity*).

Thus, legal practitioners in Rwanda should refer to the Constitution regularly. The system exists to protect the general rule of law, which all democracies should respect.

In the absence of any general text on the nullity of criminal proceedings, it is possible to use a model founded upon substantive nullities. It is important to scrupulously apply proper criminal procedure so as to ensure a consistent and just criminal justice system. Doing so

also ensures that the magistrate will be more apt to recognize and remedy procedural issues when they occur.

The lawyer should therefore spend his energy on condemning irregular acts by the police, particularly through police interrogation and inquiry (illegal searches, absence of a lawyer, physical violence against the suspect, etc.).

There are a number of ways to address such instances. Firstly, there are disciplinary sanctions to which a judge, police officer or clerk at fault can be subjected.

Additionally, there are criminal sanctions that can be extended in cases of illegal searching or arrest, abusive detention, violence, torture and so on, occurring over the course of legal proceedings. There are also civil sanctions that can be commenced by the injured party. In that case, they would bring a case forward seeking damages a remedy for the harm they endured.

We are interested here in the most effective sanction: the *procedural* sanction.
The procedural sanction may be used with either *textual* or *substantive* nullity of proceedings.

1 – Even if the Code outlines no clear means of pursuing textual nullity, the application of a textual nullity, as far as it relates to interrogations or arrests, can be useful from a theoretical point of view.

For example, in cases where extorted confession can be shown, textual nullity can be used to void the confession.

In practice, however, lawyers must routinely produce concrete elements of proof (statements, attestations, medical certificates, etc.) for the judge to order a procedural sanction where it is alleged that a confession was the result of extortion.

In this area, remember, that if the lawyer is the defender of these principles and of these rights, the magistrate, the bench and prosecution are their guardian.

The prosecutor general must monitor all of the work of the prosecution and exercise control over the police forces, certain elements of which (often marginal) may be tempted to extort confessions (it is under the auspices of the authorities of the Public Minister that Judicial Police Officers (JPO) act, see Article 18 of the CCP). Prosecutors are thus best placed to explain and emphasize the uselessness of the practice (extorting confessions) regarding its results:

Obtaining confessions that could lead to the annulment of the entire proceedings is counter-productive.

The judge faced with a request for nullity, from the moment any signs or indications of torture is established, whatever its form, pronounce nullity.

Furthermore, the practice exposes the perpetrators to heavy sanctions which the Penal Code increases.

2 – Rwanda is a signatory to most international treaties that guarantee fundamental rights. A number of these treaties include the right to fair and impartial justice. The

Nation's justice system must thus sanction substantive nullities which may taint the judicial process.

Theoretically, Article 14 et seq. of the Constitution of Rwanda provides a basis for nullities of proceedings. That basis is also found in the aforementioned ratified international treaties.

The legal basis for nullities with respect to the conduct of police and investigators is found in the Code of Criminal Procedure. While the CCP provides a textual basis for certain nullities in limited circumstances, it is important to remember that the *substantive* character of nullity is that it need not be expressly provided for in the text of a law.

The idea of substantive nullity is as follows:

> *Even where not specifically provided for in law, the gravity of a violation against the accused is such that they are entitled to an annulment in recognition of that violation.*

In addition to substantive nullities, there are nullities of public order and nullities of grievance.

Public order nullities result from ignorance of the principles relating to public order. These transgressions should be highlighted even if there is no direct trespass on the rights of the defence.

An example of public order nullities includes the absence of required formalities in a hearing, the incompetence of a judge such that they violate the Code of Justice Organization, and an improperly composed Tribunal. According to R Garraud, avoiding these nullities is essential for justice to be fulfilled. For J Pradel, avoiding these nullities means that those involved in the judicial system are required to protect not only the interests of the parties, but also their interests in relation to the of the judicial system itself.

In addition to issues with the procedure or formality of a hearing, other examples of public order nullities include the territorial or material incompetence of an investigator or the examining magistrate, or a judicial ordinance of designation lacking the judge's signature. Examples specifically in regard to procedure include the absence of expert testimony, the absence of essential notifications, and the total absence of an examination of the accused.

Jurisprudence on the issue of public order nullities is established on a case by case basis. It can only result from decisions taken by the Supreme Court.

Elsewhere, **substantive nullities** (resulting from principles and not expressly provided for in texts)**are found where the right to defence has been trespassed upon (adverse effect nullity)**.We must therefore consider, in compensating for the absence of provision for textual nullities in the CCP, that there is nullity when the ignorance or misreading of a substantive formality has trespassed upon the interests of the concerned party. Here, we return to the notion of damage.

The concept of damage is an important distinction between substantive nullities and objections raised on the basis of minor details done with the intent to delay the proceedings.

Remember that in the context of damages, **the size of the prejudice demonstrated is more important that the severity of the irregularity**.

This principle carries with it a key consequence in that **anyone who trespasses on the rights of the defence by definition causes damage**.

This is equally true of elements that are cited in the CCP but not explicitly related to nullities, for example, cases of custody and other control mechanisms (Articles 37 to 40 of the CCP), questions of evidence (Article 85 to 88 of the CCP), home visits, searches and seizures (Articles 64 to 71 of the CCP), the absence of a lawyer, the unavailability of the file, the absence of a notification of rights, of medical visits, of the availability of an interpreter for those who do not understand the language being used, and so on. These are all examples of substantive nullities directly against the interests of the accused, which infringe the rights of the defence. In cases where the rights of defence are infringed there should be an absolute presumption of grievance.[4]

Here, we see a second degree in the sanction of nullities; the indirect trespass on an accused's rights.

To conform to international democratic standards, it is not enough to sanction only direct trespasses on the rights of the defence. Indirect trespasses on these rights, that is, instances where the accused is not given the opportunity to exercise fundamental rights, must also be addressed. Simply denying a suspect the opportunity to exercise his or her rights, or to exercise his or her rights *effectively*, should also cause nullity.

> For example, the failure to inform a suspect that he or she has the right to legal assistance constitutes a characteristic violation of defence rights, even if the suspects later says that he or she does not want a lawyer.

This illustrates the difference between impartial and equal judicial systems and those that are not.

By imposing sanctions with the aim of ensuring that necessary information about rights is passed on to suspects, judges can ensure that the judiciary system progresses, or, at the very least, remains at a reasonable level.

Proceedings that infringe upon the following in one way or another must not be respected or validated:

- The public order of the judiciary
- The presumption of innocence
- The right to a just, impartial and fair trial
- The integrity of the person
- The rights of the defence
- The substantive formalities after the grievance is caused

[4] J.PRADEL –*Procédure pénale* – Cour de Cassation Française-2003.

The implementation of nullities and when to raise them:

Considering the legislative drafting of the Code of Criminal Procedure and its silence on when nullities should be implemented, it would appear that the nullities are a last resort for the judiciary and that in order for them to be implemented the judiciary will require a thorough review of the entire file first.

It seems that nullities can only be invoked ***in limine litis*** (immediately before the commencement of the hearing) except during the pre-inquiry observations or, as stated in 8° and 9° of Article 144 of the CCP, the examination of exhibits that are being used to convict.

Once the issue of a nullity is raised, the judge will then have a choice between immediately adjudicating the nullity or looking at the incident more thoroughly and delivering a decision based purely on the circumstances of the case.

A nullity may be invoked at each stage of proceedings following custody. Pre-trial proceedings, such as pre-trial interrogation are particularly important and a useful time to raise the issue of nullities.

Other favourable times to argue for a nullity include hearings for provisional detention and hearings in regard to prolonging that detention, appeals, as well as during the investigative interrogations. It is also possible to argue for a nullity in submissions on pre-trial detention and extension orders, or the appeal of these orders.

Whenever possible, nullities must be raised and used with respect to pre-trial detention. Indeed, they are a fundamental weapon at the pre-trial detention stage; where proceedings may be vitiated due to a nullity it unacceptable for an individual, who is always presumed innocent, to be placed in pre-trial detention. To permit otherwise is intolerable and the result cannot be supported in law or the legal principles which govern criminal defence lawyers.

Before the state can deny the accused their liberty, the proceedings which have led to their detention must be found to be valid by a judge according to the constitution and the Code of Criminal Procedure. Even where the accused accepts the facts as alleged against them, where the procedure in detaining or arresting (etc.) them is improper, nullities must be raised.

Where the nullity arises from ill treatment or torture, the lawyer will have to call evidence to establish the nullity. In some cases, a nullity will only be revealed once evidence is heard. For example, a witness may disclose improper conduct or treatment of the accused, thereby opening the door to proving a nullity.

In other cases, an analysis of the record of procedure will reveal the short comings which can prove a nullity (lack of signature, time of searches, etc.).

To prove a nullity one may call tradition forms of evidence, such as witness testimony and documentary evidence, including medical records.

In order to prove a nullity, one must demonstrate two things:
• A violation of the procedure (so there must always be a law).
• Damage to the client.

Assuming you are able to prove a nullity, what will the effect be?

The effect of a proven nullity will vary depending on the circumstances in which it arose and how the nullity effects the proceedings as a whole. Depending on the circumstances, the judiciary may adopt a restrictive or liberal approach in deciding on the effect of, or remedy to, the nullity.

For example, one question to consider when assessing the likely effect of a nullity is whether it was limited to only one improper act, or whether the violation extended to the subsequent proceedings, thereby invalidating them (i.e. are the subsequent proceedings the "fruit of a poisoned tree" as is sometimes found in American jurisprudence)?

The ultimate effect, or remedy, of a nullity will depend on the judge's assessment of the circumstances, including the seriousness of the nullity and its consequences. A minor nullity is likely to attract a minor remedy; an improper search is not going to give rise to the same remedy as the torture of a suspect.

Indeed, in the author's opinion, the seriousness of torture, whether physical or moral, and the universal prohibition against it in international and domestic law, would have justified a specific sanction with respect to it in the Code of Criminal Procedure. As it is, that is not the case and therefore the remedy for torture will be determined according to the discretion of the judge hearing the case.

In some cases, the effect of a nullity which extends to subsequent proceedings may be used to annul the entire proceeding. Indeed, in cases of torture this may not be unusual.

On a strictly personal level, we believe that where there is a causal link between an invalidity/nullity and subsequent acts, the judiciary, including, of course, the Supreme Court, has the absolute freedom to annul the proceeding. Indeed, the gravity of certain violations and/or the breach of fundamental principles of the justice system require, by their nature, the annulment of all subsequent acts including the whole case against the accused.

We accept that there must be a causal link between the invalidity and the subsequent acts (for example, where torture leads to a confession which led to a conviction, that confession must be annulled) in order to result in a complete annulment. However that causal link must be assessed and argued on a case-by-case basis and defence lawyers must, in all cases, try to achieve the greatest possible remedy available for their client considering their circumstances.

The French judiciary has adopted an approach somewhere between the poisoned tree theory sometimes seen strictly applied in American jurisprudence and, on the opposite end of the spectrum, the refusal to grant a remedy where a nullity is found.

For example, in French jurisprudence it is not unusual for a confession following an improper search to be annulled, while other evidence, not tied to that initial invalidity, will not be annulled.

This is not dissimilar from our approach, referenced above, which looks for a "causal link" between the invalidity and subsequent proceedings.

The general rule in French jurisprudence is that acts subsequent to an invalidity but which are not "contaminated" by it are not to be annulled. However, acts which result from the invalid acts themselves will be annulled. This approach is, by some, seen to offer merit in that it relatively clear, however, in principle it can, for some, appear unsatisfactory.

Regardless of the approach adopted or theory applied to nullities, where an act is annulled as a remedy it shall be deemed never to have occurred and no party to the proceedings shall be permitted to refer to it.

When there are relatively minor procedural issues they may be corrected by order of the Court in order to continue the proceedings without annulment or remedy for the accused. However, in no case shall an act subject to a substantive nullity of principle, such as an attack on the physical integrity of a suspect or a witness, be corrected in this manner.

In this area, respect for the rule of law is the foundation of judicial legitimacy

In practical terms, a nullity must be raised in writing, whether at a hearing on the merits or in the context of pre-judicial submissions and observations.

The benefit of writing is, on the one hand, that it fosters respect from the prosecution who will be made aware of the arguments he or she will have to answer. Furthermore, once a written submission is filed with the Court, the Court is obliged to consider the arguments and address them in its decision. This can, if done well, protect your client's interests in cases where an appeal is necessary.

Any written submission must be based on fundamental principles in Rwandan and International law and include an analysis of Rwanda's jurisprudence with specific reference to the Supreme Court. This analysis must support your client's position and can assist the judge of first instance in coming to the conclusion which most benefits your client.

ANNEXES

Collection of Useful Texts

Constitution of Rwanda

Article 12: Right to life
Everyone has the right to life.
No one can be arbitrarily deprived of life.

Article 13: Inviolability of the human person
The human person is sacred and inviolable.
The State has an obligation to respect, protect and defend the human person.

Article 14: Right to physical and mental integrity
Everyone has the right to physical and mental integrity.
No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment.
No one shall be subjected to experimentation without his or her informed consent. Modalities of the such consent and experiments are determined by law.

Article 15: Equality before the law
All human beings are equal before the law. They enjoy equal protection of the law.

Article 29: Right to a guarantee of justice
Everyone has the right to a guarantee of justice including the right to:
1° Be informed of the nature and the reasons for the charge, the right of defence and legal representation;
2° Be presumed innocent until proved guilty by a competent court;
3° Appear before a competent court;
4° Not be prosecuted, arrested, detained or convicted for an act or omission which did not constitute an offense under national or international law at the time when it was committed. The offenses and penalties are determined by law;
5° Not be responsible for the offense he has not committed; Criminal responsibility is personal;
6° Not be sentenced to a greater punishment than that prescribed by law at the time the offense was committed;
7° Not be imprisoned merely because he is unable to perform a contractual obligation;
8° Not be prosecuted or punished for an offense that has reached its limitation period. However, the crime of genocide, crimes against humanity and war crimes are not subject to limitation. The law may determine other inalienable crimes.
Rwanda cannot extradite a Rwandan to another country.
Extradition of foreigners is permitted only within the limits of the law or international conventions to which Rwanda is linked.

Article 42: Promotion of Human Rights
The State is responsible for the promotion of human rights. This is particularly the responsibility of the National Human Rights Commission. The Commission is independent.

Article 43: Protection of rights and freedoms
The Judiciary is the guardian of human rights and freedoms. This mission shall be carried out in accordance with this Constitution and other laws.

Article 168: Mandatory force of treaties and international agreements
Treaties and international agreements which have been duly ratified or approved as soon as they are published in the Official Gazette shall have binding force, such as national legislation and the hierarchy of laws provided for in the first paragraph of Article 95 of this Constitution.

For further reference:

- Law N°46/2010 OF 14/12/2010 determining the powers, responsibilities, organisation and functioning of the Rwanda National police
- Law Nº 30/2013 of 24/5/2013 relating to the Code of Criminal Procedure
- Organic Law N° 01/2012/OL of 02/05/2012 instituting the Penal Code
- Presentation of the rules and regulations of the Rwanda Bar Association

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IBJ CRIMINAL JUSTICE SYSTEM SCORECARD [5]

Assessment of:
Assessor[6] :
Place :
Date :

ASPECT OF PERFORMANCE	YES	NO	Training Required
I. POLICING			
LEGAL and REGULATORY FRAMEWORK			
Legislation exists that defines core responsibilities of the police force.			
Legislation assigns and distinguishes between the roles of different agencies in delivering police services.			
Police are trained on and bound by applicable human rights laws and standards.			
Updated laws, rules or regulations govern the powers and conduct of law enforcement officers.			
The law defines the grounds and threshold for the application of coercive powers, i.e. the concepts of "reasonable grounds," "reasonable belief" "probable cause," etc. exist and are defined.			
The use of police powers is limited to minimum reasonable force under the circumstances.			
The law establishes mechanisms for the monitoring and oversight of police conduct and performance, including a specific reference to corruption.			
The law provides a statutory right to make complaints against the police and provides a mechanism for making such complaints.			
Independent oversight over the complaints system exists.			
Differences in the roles of police in urban and rural areas are recognized in legislation, including the recognition of customary practices in rural areas.			
NATIONAL POLICING FRAMEWORK			
A written, updated national policing plan or strategy exists.			
The national plan identifies core policing functions and assigns responsibility for delivering each function.			
The national policing plan gives guidance about delivering police services in local communities.			

[5] This scorecard is used to assess the performance and needs of criminal justice systems. The scorecard is directive in that if the assessor answers any performance measure in the negative, it provides information as to how the system can be improved. It also allows IBJ to identify areas in which training is required, especially if there is a trend throughout a region showing that a particular practice is not properly performed. Finally, the scorecard can identify internal performance measures relating to IBJ training programs by administering the assessment instrument before a training program and then at set intervals throughout IBJ programming.

[6] To be completed by an IBJ representative. This form is to be filled out with the aid of interviews (of defenders, clients, other judicial actors), review of case assessment forms, and observations.

* These aspects are particularly difficult to assess. However, the assessor should still attempt to make some general assessment based on behavioural attitudes, relationships between parties, and a defender's practice as a whole (e.g. are there a lot of successful plea bargains?)

ASPECT OF PERFORMANCE	YES	NO	Required Training
Government policing priorities exist.			
Community policing strategies and priorities exist.			
Targets or performance measures have been set in relation to community policing priorities.			
Local police commanders have adequate information about policing demands within their areas (e.g. databases, paper records or other information sources indicating the number of calls for assistance from the public, crime levels).			
Formally defined and regularly timed mechanisms are in place allowing for consultation with the public, or their representatives, on local policing issues.			
A complaint system exists which enables members of the public to file complaints about the delivery of police services or the behaviour of officers. The system is:			
• Independent			
• Locally based			
• User friendly			
• Publicized			
NATIONAL INFRASTRUCTURE			
Police commanders are given responsibility for managing their own budgets.			
Budgets and expenditures are subject to a national or local audit process.			
If necessary, local police can call for support from central reserves (i.e. in the case of large protests, international crimes, or special forensic investigations).			
STAFFING			
The police service is fully and adequately staffed.			
Staff completes a probationary period before being confirmed as an officer.			
A sufficient police budget exists.			
The staff salary structure is appropriate to the national average wage.			
Police officers and other staff receive their pay regularly and on time.			
Salary increases are based on merit.			
Salaries do not discriminate between different people performing the same job.			
If private groups or organizations are involved in delivering police services:			
• They are held accountable.			
• Their allegiance is to the police and state structure.			
RECRUITMENT			
Appropriate recruitment procedures exist.			
Employment applications are open to all sections of the community.			
Vacancies are widely and publicly advertised.			
Recruitment is based on objective assessment and interview.			
The selection procedure is fair, transparent and objective.			
The police are representative of the community.			
• Police speak the local language.			
• Police live in the local community.			

Physical requirements (height, weight, sight) are attainable by all minority and ethnic groups.			
ASPECT OF PERFORMANCE	YES	NO	Required Training
TRAINING			
Basic incoming training is given to all police recruits.			
Training focuses on practical policing skills and ethical behavior that is consistent with human rights.			
Individual officers can describe aspects of training relating to integrity, accountability and ethics.			
Officers receive ongoing refresher training.			
Training is provided on:			
• Control and restraint techniques			
• Use of weapons			
• Obtaining statements and confessions without the use of coercion, force or torture.			
• New laws, regulations and procedures			
CAREER DEVELOPMENT			
Promotion is rewarded based on independent and objective assessment criteria.			
The promotion system is free from bias and favoritism.			
The selection process for work in specialized units is free from bias and favoritism.			
CORRUPTION			
Police do not receive direct payments or benefits from members of the public in exchange for special attention or additional protection.			
Police officers' lifestyles are compatible with their level of remuneration (no excessively large cars, etc.).			
Police are periodically tested with a polygraph and asked questions about dishonesty and corruption.			
Police are periodically tested for substance abuse.			
Officers do not receive free items from shopkeepers or free food and beverages from bar or restaurant owners.			
Officers do not have inappropriate sexual relationships with witnesses, suspects or informants.			
LOCAL POLICING STRUCTURES			
Police stations are easily accessible by members of the public.			
Police stations are secure and include secure storage areas for evidence.			
Police stations have appropriate equipment (electricity, furniture, telephones, computers, etc.).			
Police stations are open to the public at all times.			
Members of the public are able to report a crime, make a complaint or make enquiries about lost property at police stations.			
Police stations have facilities where confidential matters will not be overheard by others.			
Visitors are not required to wait an excessive amount of time before being seen.			
INVESTIGATIONS			
There are enough investigators to handle the workload.			

Evidence is handled appropriately using latex gloves and sealable bags.			
ASPECT OF PERFORMANCE	YES	NO	Required Training
A system exists to provide for appropriate preservation of evidence and to prevent tampering and contamination of evidence.			
Forensic examination facilities are available.			
The identities of informants are registered and kept confidential.			
CUSTODY FACILITIES			
Secure, clean cellblocks exist.			
Detainees are advised of their legal rights upon arrival.			
A written log exists of all incidents relating to a detainee's/prisoner's detention			
Detainees'/prisoner's medical needs are appropriately handled in a timely manner.			
Detention/imprisonment facilities include:			
• Toilet and washing areas			
• Separate areas for men, women and juveniles			
• Adequate lighting during the day			
• Adequate ventilation and heating			
• Recreation areas			
Detainees/prisoners are adequately fed on a regular basis.			
Detainees/prisoners are regularly released from their cells in order to exercise/receive fresh air.			
II. COURTS			
BUDGET AND ADMINISTRATION			
An adequate budget exists to support court activities.			
Court employees, including judges and support staff, maintain regular work hours and are present during full court hours.			
JUDICIAL COMPETENCE AND INDEPENDENCE			
Judges demonstrate knowledge and understanding of applicable law, including relevant international human rights treaties/norms.			
Judicial decisions are made in a timely manner consistent with applicable laws.			
Judges comply with any legal obligations to conduct regular inspections of detention facilities.			
Judges conduct any regular review of cases pertaining to detained individuals required by law.			
Speedy trial requirements required by law are met.			
Judges maintain effective control of court proceedings, lawyers, staff, witnesses and public.			
Judges display independence and do not respond to interference, inducement or intimidation.			
Judges correctly apply laws regarding arrest and detentions:			
• They enforce laws regarding first appearance of the accused in court.			
• They comply with rules regarding orders to dismiss defective warrants.			
• They carry out appropriate remedies upon a finding of illegal detention.			
Judges enforce requirements regarding legal assistance:			

• They promote access of defense advocates during all phases of case.			
ASPECT OF PERFORMANCE	YES	NO	Required Training
• They refrain from questioning unrepresented defendants who have requested counsel.			
Sentences are issued according to legally relevant grounds and not based on impermissible factors such as the race, gender, or ethnicity of the accused.			
Judges give individual attention to cases and decide them without undue disparity among similar cases.			
STAFFING			
The court hires and fires its own staff.			
A policy prohibiting nepotism exists.			
The most qualified applicants are hired for positions and a policy of non-discrimination exists.			
Court staff receive appropriate initial training for their positions.			
Ongoing training is available for court employees relating to skills, policies, professionalism, changes in the law and changes in court procedures.			
Staff are required to follow a code of ethics.			
Policies prohibiting corruption exist, and staff members who are proven to have accepted financial or other benefits from members of the public in exchange for special attention are appropriately sanctioned.			
COURT SERVICES			
There is an information counter or other central location where members of the public can receive information about court cases and processes.			
Staff who speak local languages are available to provide information to the public.			
A court user may obtain a copy of a court order or judgment and court procedures and processes.			
Courts provide translation services for the accused, victims and witnesses in proceedings.			
Court proceedings are open to the public and media.			
Court fees are not prohibitive and do not prevent access by the public.			
Court calendars and schedules are accessible to the public.			
Cases are heard at the time they are set on the court calendar.			
Courts are perceived to be fair and equal by members of the public.			
COURT FILES			
Court proceedings are recorded or summarized in writing.			
Court files exist for all cases.			
Files are kept up-to-date.			
There is a court registry.			
An efficient filing system for case records exists.			
Court records are protected from theft and damage by natural causes, including the environment and insects.			
CASE FLOW MANAGEMENT			
Cases are begun and completed within applicable statutory time limits.			
There are no excessive backlogs of pending cases.			
Judges are assigned appropriate levels of cases.			
Judges are aware of how many cases are assigned to them.			

A plan for assigning incoming cases exists.			
Cases can be tracked throughout the legal system.			
ASPECT OF PERFORMANCE	YES	NO	Required Training
FACILITIES			
The court is located where it can easily be reached by public transportation.			
Directions to the court facility are readily available to the public.			
The courthouse is clearly identifiable.			
The court is accessible to the disabled.			
Weapons and other security hazards are not allowed in the courthouse.			
Security personnel screen visitors.			
The courthouse is generally clean and well maintained.			
Visitors are assisted in a timely manner.			
Work areas for court personnel are adequate and equipped appropriately with telephones, computers, furniture, etc.			
Courtrooms are well maintained and designed to be used for court-related purposes.			
• Defendants can sit near counsel,			
• Workspace exists for completing court reports			
Sufficient public seating exists in the courtroom.			
Judges chambers are adequate, appropriately equipped and secure.			
Courtrooms are not excessively noisy.			
PRISONER TRANSPORT and CUSTODY			
Men and women are transported to court separately.			
Children and adults are transported to court separately.			
Adequate holding facilities for detainees exist in the courthouse.			
Restraints are used only when necessary.			
III. PRISONS			
Prisoners are classified to determine the prison security level to which they should be sentenced (maximum security, minimum security, etc.)			
The penitentiary system focuses on the treatment of prisoners, the essential aim of which is their reformation and social rehabilitation.			
PRISON MANAGEMENT			
There is a consistent and regularly used system for receiving prisoners; personal information is kept about each prisoner.			
Prisoners are presented with a clear list of existing rules, regulations and disciplinary procedures and punishments.			
Prisoners' next of kin are informed of prisoners' admission to prison.			
Clear records are kept about the prisoner's time in jail (regarding medical needs, prison leaves, program participation, etc.)			
All prisoners are held under a valid court order and are released when the order expires.			
LIVING CONDITIONS			
The prison infrastructure is clean and well maintained.			
Sentenced prisoners are kept separate from detainees awaiting trial.			
Cell space is appropriate to the number of people housed.			
Each prisoner is given a bed to sleep in with sheets and blankets.			
Each prison area has adequate light during the day.			
Each prison area has adequate ventilation.			
Prisoners have access to fresh water.			

Prisoners have access to toilet and shower facilities.			
ASPECT OF PERFORMANCE	YES	NO	Required Training
Prisoners receive adequate food (both in amount and nutritional value).			
There is an adequate supply of medicines and medical equipment.			
Adequate recreational facilities exist to which prisoners are given regular periodic access.			
CONTACT WITH THE OUTSIDE WORLD			
Prisoners are housed close to their communities.			
Prisoners have access to legal aid.			
Prisoners can receive regular visits from friends and family.			
Prisoners can receive mail and telephone calls.			
Prisoners have access to newspapers, magazines and televisions.			
PRISON REGIMES and PROGRAMS			
An organized daily program for prisoners exists.			
Prisoners have access to educational facilities (curricula, libraries).			
Prisoners have access to training and vocational programs.			
Prisoners have access to work programs.			
Prisoners are appropriately dressed and protected if they are performing work.			
The prison provides therapy and behavior modification programs.			
The prison provides recreational activities.			
The prison provides adequate religious services and activities (including for minority religions).			
The prisoners are appropriately prepared for release at the conclusion of their sentences.			
The prison helps prisoners find accommodations and work in preparation for release.			
SAFETY and SECURITY			
Prison security is adequate, including physical barriers such as walls, bars and movement detectors.			
Prisoners are classified on the basis of the risks they pose to themselves and others.			
Regular searches of prisoners' quarters are carried out to ensure prisoners' security.			
Searches of all visitors are carried out.			
Few, if any, serious incidents such as hunger strikes, riots, or protests exist.			
Specific punishments exist for prisoners who misbehave.			
Prisoners know what the punishments and procedures will be if they misbehave.			
There are maximum amounts of time prisoners can be housed in punishment units (lockdown, etc.)			
• Punishment units have adequate light and ventilation.			
• Prisoners in punishment units receive at least one hour of exercise per day.			
COMPLAINT PROCEDURES			
A working complaints system exists by which prisoners can submit written complaints to prison administration			
Prisoners who complain are not punished or victimized by staff.			
Complaints are reviewed by an independent body.			

Complaints are confidential.			
ASPECT OF PERFORMANCE	YES	NO	Required Training
JUVENILES			
There are separate courts for juvenile offenders.			
Juveniles are kept separate from adult prison populations.			
Juveniles receive special care in prison.			
Juveniles are given educational and vocational training.			
Juveniles may receive visits from their families.			
Juvenile records are kept confidential.			
WOMEN			
Women are kept separate from the male population.			
Women have equal access to the same activities and services available to men.			
Women's particular medical and hygienic needs are met.			
Pregnant and breast-feeding women's needs are met.			
MENTALLY ILL			
Mentally ill prisoners have access to psychiatric treatment.			
Prisoners are transferred to civilian treatment centers if necessary.			
MANAGEMENT SYSTEM			
The prison system is under civilian (not military) management.			
Corruption does not exist in the system.			
There is no prisoner hierarchy allowing prisoners extort money or other benefits			
IV. LAWS AND LEGAL PROTECTIONS [7]			
Domestic laws protect all citizens equally without distinction of any kind, such as race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.			
Laws ensure equal rights of men and women to the enjoyment of all laws and legal protections.			
If the death penalty has not been abolished, the sentence of death is imposed only for the most serious crimes in accordance with laws in force at the time of the commission of the crime. Death penalty sentences are only carried out pursuant to final judgments rendered by competent courts.			
Death sentences are not imposed for crimes committed by persons below eighteen years of age.			
Domestic laws protect everyone from being subjected to torture or to cruel, inhuman or degrading treatment or punishment.			
Domestic law prohibits the use of statements and confessions obtained by means of coercion or torture.			
Domestic laws protect everyone from being subjected to arbitrary arrest or detention and from being deprived of their liberty except on such grounds and in accordance with such procedure as are established by law.			
Everyone who is arrested has the right to be informed, at the time of arrest, of the reasons for his arrest and the right to be promptly informed of any charges against him.			

[7] These rights are established in the International Covenant on Civil and Political Rights.

Minimum and maximum prison sentences are prescribed for different crimes.			
Anyone arrested or detained on a criminal charge has the legal right to be brought promptly before a judge or other officer authorized by law.			
Everyone charged with a criminal offense is entitled to a trial within a reasonable time or to release.			
Persons awaiting trial are not as a general rule detained in custody. Instead, release is subject to guarantees to appear for trial or at any other stage of judicial proceedings or for execution of the court's judgment.			
Under domestic law, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge against him.			
All judgments rendered in criminal cases or in suits at law are made public, unless the interest of juveniles or guardianship of children requires otherwise.			
Everyone charged with a criminal offence is presumed innocent until proved guilty according to law.			
In the determination of criminal charges, domestic law accords everyone the following minimum guarantees, in full equality:			
• To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;			
• To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;			
• To be tried without undue delay;			
• To defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;			
• To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;			
• To have the free assistance of an interpreter if he cannot understand or speak the language used in court;			
• Not to be compelled to testify against himself or to confess guilt.			
Everyone convicted of a crime has the right to have his conviction and sentence reviewed by a higher tribunal.			
No one is liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with applicable law and procedure.			
Domestic law prohibits a finding of guilt of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time it was committed.			
Internal and/or cross-border conflicts do not threaten or thwart human rights protections and democratic government.			

IBJ DIRECTIVE DEFENDER'S SCORECARD[8]

ASSESSMENT OF:
ASSESSOR[9] :
PLACE :
DATE :

ASPECT OF PERFORMANCE	YES	NO	Required Training
I. GENERAL			
Counsel does everything possible to gain free and full access to client whenever necessary			
*Counsel is respectful with client and explains attorney-client privilege			
*Counsel should provide zealous and quality representation to clients at all times			
Counsel develops and continually reassesses the theory of the case			
*Counsel abides by ethical norms (no corruption or collusion with state officials) at all times throughout the trial process (or at least, little suspicion)			
Counsel maintains lines of communication open with the client and with the prosecution/court.			
Counsel ensures that Accused is present in courtroom for all court proceedings (e.g.: arraignment, trial, sentencing).			
As soon as counsel is retained, counsel begins a detailed file including, but not limited to, interviews, detailed notes, statements, potential pieces of evidence, case law to begin building theory of defense and maintains this file until completion of case			
II. PRETRIAL			
DETENTION and ARREST			
Counsel presents self at place of detention *at earliest stage possible*, upon notification that client is detained			
Upon meeting, counsel informs client of legal rights and ensures that the client understands what they entail			

[8] This scorecard is used to assess the performance and needs of public defenders. The scorecard is directive in that if the assessor answers any performance measures in the negative, then it is clear how the Defender must improve his performance. It is also a way for IBJ to assess where training is required, especially if there is a trend throughout a region that a particular practice is not properly performed. Finally, this scorecard could be used to reveal internal performance measures of IBJ training by administering the assessment before training and then at set intervals throughout IBJ programming.

[9] To be completed by an IBJ representative. This form is to be filled out with the aid of interviews (of the Defender, clients, other judicial actors), review of case assessment forms, and observation.
* These aspects are particularly difficult to assess. However, the assessor should still attempt to make some general assessment based on behavioural attitudes, relationships between parties, and a Defender's practice on a whole (e.g. are there a lot of successful plea bargains?)

ASPECT OF PERFORMANCE	YES	NO	Required Training
Prior to agreeing to act as counsel, or accepting appointment by a court, counsel ensures that he has available time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. If this is not possible, then counsel should move to withdraw			
Counsel does not seek to withdraw from cases without compelling cause			
Counsel explains to Accused what they have been charged with, and the case the prosecution has to prove. Also sees if Accused was reasonably informed of the charges against him			
If Client offers admission or statement without presence of counsel, counsel receives copy and understands circumstances in which admission occurred			
Counsel explains to client the maximum sentence possible and other possible sentencing options available to the court should the client be found guilty			
*Counsel does not participate in any form of corruption/collusion with judicial officials or police to obtain confession or release of Accused			
Counsel presents to appropriate judicial officer a statement of factual circumstance and legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release			
Counsel takes all possible and necessary steps to apply for pre-trial release as soon as possible			
If client is incarcerated and unable to make pre-trial release, counsel alerts the court to any special medical or psychiatric and security needs of the client and request that court direct appropriate officials to meet such needs			
Counsel obtains instructions from client at every stage of trial process (bail, pre- trial release, pleading, etc.)			
With the permission of the client, counsel explores and possibly conducts plea negotiations with state officials. Should there be negotiations, counsel keeps client fully informed of any continued plea discussion.			
Existence of ongoing tentative plea negotiations with prosecution should not prevent counsel from taking steps necessary to preserve a defense			
DISCOVERY AND INVESTIGATION			
Counsel ensures that there is adequate time for trial preparation and applies for a continuation if not			
Counsel conducts independent investigation regardless of the Accused's admissions or statements to the lawyer of facts constituting guilt			
Counsel conducts an in-depth interview of the client as soon as possible and appropriate after retention to obtain information regarding			
• The incident			
• Improper police investigative practices			
• Prosecutorial conduct affecting client's rights			
Counsel seeks full disclosure of relevant materials from the prosecution with reasonable time for counsel to prepare for trial			

ASPECT OF PERFORMANCE	YES	NO	Required Training
In making discovery requests, counsel takes into account that such requests that may trigger reciprocal discovery obligations o Improper police investigative practices			
Counsel generally seeks discovery of the following at the earliest time:			
• Charging documents			
• Potentially exculpatory information			
• Names and addresses of all prosecution witness and any statements made by them			
• All oral and written statements made by accused and circumstances in which they were made			
• Prior criminal record of the accused			
• Any evidence of misconduct that government may intend to use against the Accused			
• Relevant physical evidence			
• Expert opinion evidence			
• Statements of any co-Accused			
• Any police reports and investigative notes			
• Note that the Prosecution generally does not have to disclose information relating to solicitor/client privilege, informant privilege, immunity			
Counsel conducts interviews with key prosecution witnesses and has knowledge of purpose of testimony			
Counsel examines and obtains attendance of witnesses for the Defence under the same conditions as witnesses against him			
Counsel considered using, at a minimum, the following sources of investigation:			
• Charging documents (make sure that proper charge approval standards were used and that the wording of the document is sufficiently specific with regards to time, place, date, person, and nature of the offense)			
• Interviews with client and recommended sources by client			
• Potential witnesses			
• Disclosure materials from prosecution			
• Physical (direct + circumstantial) evidence			
• Visiting the scene of the incident (use camera to preserve)			
• Expert opinions			
Consider benefits and disadvantages of judge alone trial or jury trial and explain to client his options			
If jury trial is selected, then consider critical aspects of jury selection			
Counsel seeks and follows instructions of the client in deciding to go to trial			
Counsel strives to enter a plea of not guilty in all but the most extraordinary circumstances where a sound tactical reason exists for not doing so			
Counsel does not unduly influence client's decision to plead guilty			
Counsel attempts to anticipate weaknesses in the prosecution's proof and prepares corresponding motions			
Counsel attempts to anticipate weaknesses in the prosecution's proof and prepares corresponding motions			
If prosecution uses expert witnesses, counsel investigates expertise and credentials of expert witnesses presented by prosecution			
Based on prosecution materials, police reports, and interviews, Counsel should consider whether the client's arrest was lawful			

ASPECT OF PERFORMANCE	YES	NO	Required Training
Counsel conducts adequate legal research with critical thought			
TRIAL PREPARATION (pre-trial motions, etc.)			
Counsel endeavours to establish a proper record for appellate review. As part of this effort, counsel should request whenever necessary, that trial proceedings be recorded			
Counsel arranges for free assistance of an interpreter is necessary for the duration of trial			
Counsel thinks critically and creatively and challenges constitutional validity of laws if possible			
Counsel considers filing pre-trial motions (or requesting voir dires, advance rulings) when there exists a good-faith reason to believe that the applicable law may entitle the defendant to relief which the court has discretion to grant:			
• Pre-trial custody			
• Constitutionality of provisions			
• Potential defects of charging process			
• Joinder and severance of Accused			
• Discovery obligations			
• Illegally obtained evidence (were warrants used?)			
• Objections to potential witnesses (challenging competence or compellability or expertise of expert)			
• Involuntary statements or confessions made by Accused			
• Publication ban			
• Unreliable evidence			
• Suppression of evidence			
• Right to speedy trial			
• Right to a continuance, trial or courtroom procedure			
• Use of prior convictions			
Counsel provides any necessary notices to court for trial (e.g. use of expert witness)			
If prosecution uses expert witnesses, counsel ensures that there is advance notice to the court			
Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor			
In preparing for trial, counsel should consider (with accused) whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt			
Where lacking expertise, counsel conducts appropriate research and seeks advice of more experienced counsel			
Where appropriate, counsel has the following materials organized and available at the time of trial:			
• Copies of all relevant documents filed in case			
• Relevant documents prepared by investigators (police, etc.)			
• Voir dire questions			
• Outline or draft of opening statement			
• Cross-examination plans for all possible prosecution witnesses			
• Direct examination plans for all prospective defense witnesses			
• Copies of defense subpoenas			

ASPECT OF PERFORMANCE	YES	NO	Required Training
• Prior statements of all prosecution witnesses (e.g. transcripts, police reports)			
• Prior statements of all defense witnesses			
• Reports from defense experts			
• A list of all defense exhibits, and the witnesses through whom they will be introduced			
• Originals and copies of all documentary exhibits			
• Proposed jury instructions with supporting case citations			
• Copies of all relevant statutes and cases			
• Outline or draft of closing argument			
Counsel arranges with client an effective communication method throughout trial			
If there is a preliminary inquiry, Counsel should apply for discharge or committal on a lesser offense if an essential ingredient of the charge is missing			
III. TRIAL			
OPENING STATEMENT			
Counsel ensures that his opening statement meets the permissible requirements of an opening statement within that jurisdiction			
In preparing the opening statement, counsel considers the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring opening statement until the beginning of the defense case			
Counsel's objective in making an opening statement may include the following:			
• Provide overview of defense case			
• Identify weakness of prosecution case			
• Emphasize prosecution's burden of proof			
• Summarize testimony of witnesses, and role of each in relationship to entire case			
• Describe exhibits which will be introduced and the role of each in relationship to the entire case			
• To clarify the juror's responsibilities			
• To state the ultimate inferences which counsel wishes the jury to draw			
If the prosecutor oversteps the bounds of a proper opening statement, counsel should consider objecting (though sometimes frowned upon), requesting a mistrial, or seeking cautionary instructions, unless tactical considerations weigh against any such objections or requests. Such tactical considerations may include, but are not limited to:			
• Significance of the prosecutor's error			
• Possibility that an objection might enhance the significance of the information in the jury's mind			
• Whether there are any rules made by the judge against objecting during the prosecution's opening argument			
PROSECUTION'S CASE			
Counsel has attempted to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal			

ASPECT OF PERFORMANCE	YES	NO	Required Training
Counsel is vigilant during prosecution's examination in chief to ensure that no leading/irrelevant/immaterial questions are asked			
Counsel is vigilant during prosecution's case that no immaterial/irrelevant/hearsay evidence is admitted without objection			
Counsel ensures that all prosecution evidence is properly authenticated following the rules of that jurisdiction			
Counsel may choose to object to the admissibility of Prosecution evidence because:			
• No identifying witnesses			
• Opportunity for tampering or contamination occurred			
• There were gaps in the chain of custody (who possessed the item)			
• Item is not a true and accurate depiction			
Counsel listens carefully of examination in chief and takes notes			
Counsel needs to ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If such statements have not been received, counsel should request adequate time to review these documents before commencing cross-examination			
Considers if prosecution witnesses are competent witnesses (no spouses, co- accused, mentally disabled, minors), and if not, object to their testimony			
In preparing for cross examination, counsel:			
• Considers need to integrate cross-examination of each individual witness is likely to generate helpful information			
• Anticipates those witnesses the prosecutor might call in its case-in-chief or in rebuttal			
• Creates any necessary cross-examination plan for each anticipated witness			
• Is alert to inconsistencies or possible variations in witness testimony and highlights these inconsistencies to the court			
• Reviews all prior statements of witnesses and any prior relevant testimony of the prospective witnesses			
• Where appropriate, reviews relevant statutes and local police regulations for possible use in cross examining police witnesses			
• Is alert to issues relating to witness credibility, including bias and motive for testifying and highlights these issues through cross-examinations			
Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel moves (or considers moving) for a judgment of acquittal on each count charged. This request should include that the court immediately rule on the motion in order that the counsel may make an informed decision about whether to present a defense case			
Counsel is aware of opening client to character evidence by asking specific questions during cross examination of prosecution witnesses			
DEFENSE			
Counsel develops the overall defense strategy in consultation with the client			
Counsel considers benefits and disadvantages of having the client testify			

ASPECT OF PERFORMANCE	YES	NO	Required Training
Counsel protects the client's right to non-self-incrimination			
Counsel protects the client's right to silence			
Counsel ensures that the client's failure to testify is not noted upon and that no negative inferences are drawn			
Counsel protects privilege relationships such as marital privilege and lawyer- client privilege			
If Counsel stages an affirmative defense, Counsel has necessary evidence available for submission to the court in support of this defense			
In preparing for mounting the defense, counsel has, where appropriate:			
• A plan for examination in chief of each defense witness			
• Considered the effective ordering of witnesses for testimony			
• Utilized the potential of character witnesses (if necessary)			
• Utilized the potential of expert witnesses (if necessary)			
Counsel has prepared all witnesses for direct and possible cross-examination			
Counsel has advised witnesses of suitable courtroom attire and behaviour and has talked them through the process of being a witness			
Counsel conducts redirect examination as appropriate			
In performing examination in chief, counsel is capable of refreshing witness' memory			
CLOSING ARGUMENT			
In making an effective closing argument, Counsel uses the defense summation to, where possible:			
• Highlight the weaknesses in the prosecution's argument			
• Describe favourable inferences to be drawn from the evidence			
• Describe favourable inferences to be drawn from the evidence			
If the prosecutor exceeds the scope of permissible argument, Counsel should consider requesting a mistrial or seeking cautionary instructions unless tactical considerations suggest otherwise			
Counsel's finishes the submission asking jury or judge to acquit the Accused			
IV. POST TRIAL			
Upon a verdict of "not guilty," Counsel explains to Accused that he is free to go			
Upon a verdict of "guilty as charged," Counsel:			
• Explains to client what steps are to follow			
• Counsel considers with the client whether or not they should appeal, or if they can appeal as of right			
• If client is returning to custody, Counsel should accompany him if possible. If not, Counsel should meet with client as soon as possible after the verdict			
Where possible, Counsel should exhaust all avenues of appeal			

ASPECT OF PERFORMANCE	YES	NO	Required Training
SENTENCING			
If the client decides to not proceed to trial, plea negotiations should have considerations of sentencing, correctional and financial implications			
In making sentencing submissions, Counsel should ensure that the court is aware of all mitigating and favourable information which is likely to benefit the client (e.g. pleading guilty as a sign of remorse)			
In preparing for sentencing, Counsel should inform the client of possible sentencing consequences and sentencing alternatives (therapy, volunteer time)			
In preparing for sentencing, Counsel should interview the client for the purpose of obtaining a personal history including prior criminal record, employment history and skills, medical history and condition, financial status, and possibly ask client for any letters of reference that could be beneficial to present to the court			
In preparing for sentencing, Counsel should prepare a folder of relevant materials for submission to the court			
In sentencing submissions, the client may address the court if he so wishes (even though it is usually not recommended) and counsel should not prevent/forbid this			
Counsel must seeks to achieve:			
• the least restrictive and burdensome sentencing alternative that is most acceptable to that of the client			
• a sentence reasonably obtained based on the facts and circumstances of the offense			
• A sentence that takes into consideration the Defendant's background			
• A sentence that uses appropriate sentencing provisions most favourable to the Defendant			
In making sentencing submissions, counsel should ensure that the client is not harm by inaccurate information or information that is not properly before the court in determining the sentence to be imposed			
Upon sentencing, counsel should attend with the client:			
• To complete any necessary paperwork			
• Explain the parole system/ who the parole officer is			
• Explain any possible conditions to release			
• Discuss avenues of appeal			
• Receive instructions on any help or tasks that client requires lawyer to attend to (e.g. phone calls, etc.)			
If client is sentenced to further custody/incarceration, then lawyer should attend client as soon as possible to discuss next step of process if any			

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