



DSS Administrative Regulations

A. THE LIST OF LAWYERS AND OTHER LEGAL PROFESSIONALS

1 The list of lawyers and other legal professionals

- 1.1 Pursuant to Rule 11 of the Internal Rules of the ECCC, there shall be a list of lawyers approved to defend cases before the ECCC and other legal professionals approved to be members of the defence teams (hereinafter the "list").
- 1.2 The list shall be divided into 2 parts:
 - a. *The UNAKRT list.* For those paid by UNAKRT and assigned to represent persons with insufficient means to pay their lawyers, pursuant to Rule 11(2)(d), Rule 11(2)(i) and Rule 23(1)(b).
 - b. *The Non-UNAKRT list.* For those not paid by UNAKRT, either paid by the client directly or acting pro bono, pursuant to Rule 12(2)(c) and Rule 26(1)(a).
- 1.3 The Defence Support Section shall maintain a public and open announcement inviting candidates to apply to be included in the list and shall produce standard forms for applications which shall be completed by candidates and submitted together with any other documents required.
- 1.4 A candidate should not have been convicted of a serious criminal or disciplinary offence considered to be incompatible with defending a suspect, charged person or accused before the ECCC.
- 1.5 The Defence Support Section shall determine whether the prerequisites enumerated in the Internal Rules and these Administrative Regulations are satisfied by the candidates and shall approve candidates for inclusion in the list either fully or provisionally.
- 1.6 The DSS may require candidates to accept the terms and conditions of the Legal Assistance Scheme before including them fully in the UNAKRT list.
- 1.7 A candidate included in a list shall be removed where the candidate:
 - i. requests removal from the list and is not currently assigned to a case;
 - ii. no longer satisfies the qualifications as outlined in the Internal Rules, ECCC Practice Directions and administrative regulations, as well as the Cambodian Law on the Statutes of the Bar and recognised standards and ethics of the legal profession; or
 - iii. has since been disqualified from practice by the Bar Association of the Kingdom of Cambodia or any other competent bar association.

2 Qualifications – UNAKRT List

- 2.1 *National Co-Lawyer.* In order to be included in the UNAKRT list as a national co-lawyer the candidate must fulfil each of the following requirements:
 - i. To be a member of the Bar Association of the Kingdom of Cambodia;

- ii. To have established competence in criminal law and procedure at the national or international level.

2.2 *Foreign Co-Lawyer.* In order to be included in the UNAKRT list as a foreign co-lawyer, the candidate must fulfil each of the following requirements:

- i. To be a current member in good standing of a recognised association of lawyers in a United Nations member state.
- ii. To have a degree in law or an equivalent legal or professional qualification.
- iii. To have at least ten years working experience in criminal proceedings, as a lawyer, judge or prosecutor, or in some other similar capacity.
- iv. To have established competence in criminal law and procedure at the international or national level
- v. To be fluent in Khmer, French or English.
- vi. To be authorised by the Bar Council of the Kingdom of Cambodia to practise before the ECCC.

2.3 *Legal Consultant.* In order to be included in the UNAKRT list as a Legal Consultant, the candidate must fulfil each of the following requirements:

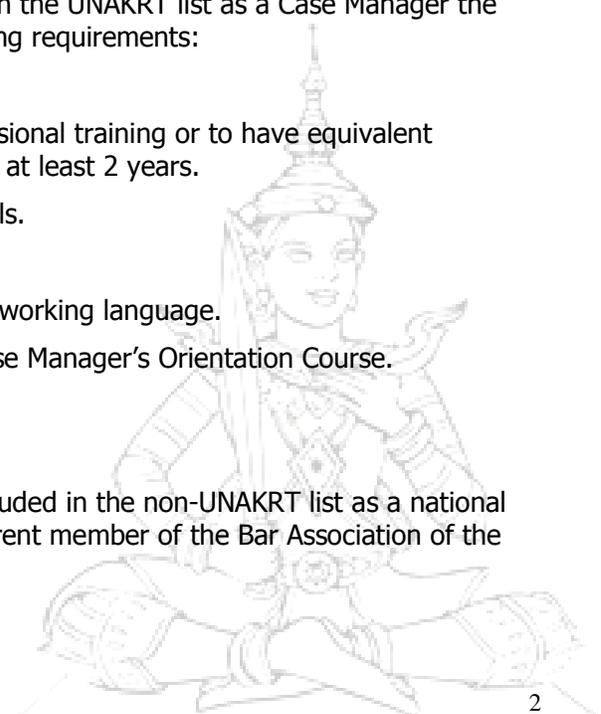
- i. To have a degree in law or an equivalent legal or professional qualification.
- ii. To have at least five years of relevant working experience in criminal proceedings, as a lawyer, judge or prosecutor, or in some other similar capacity.
- iii. To have specific competence in international criminal law and procedure.
- iv. To be fluent in Khmer, French or English.

2.4 *Case Manager.* In order to be included in the UNAKRT list as a Case Manager the candidate must fulfil each of the following requirements:

- i. To have a degree in law.
- ii. To have completed legal professional training or to have equivalent professional legal experience of at least 2 years.
- iii. To have excellent computer skills.
- iv. To be fluent in Khmer.
- v. To have French or English as a working language.
- vi. To have completed the DSS Case Manager's Orientation Course.

3 Qualifications – Non-UNAKRT List

3.1 *National Co-Lawyer.* In order to be included in the non-UNAKRT list as a national co-lawyer the candidate must be a current member of the Bar Association of the Kingdom of Cambodia.



- 3.2 *Foreign Co-Lawyer.* In order to be included in the non-UNAKRT list as a foreign co-lawyer the candidate must be authorised by the Bar Council of the Kingdom of Cambodia to practise before the ECCC.

B – AUTHORISATION BY THE BAR COUNCIL

4 Authorisation

- 4.1 *Authorisation.* Foreign lawyers must be authorised by the Bar Council before they may act on behalf of a client at the ECCC.
- 4.2 *Sufficiency of Qualifications.* The Law on the Bar requires sufficiency of qualifications for foreign lawyers.
- 4.3 In order to be authorised to practise before the ECCC, foreign lawyers must be a current member in good standing of a recognised association of lawyers of a United Nations member state.
- 4.4 *Application procedure.* In order to be authorised by the Bar Council a foreign lawyer must complete an application for registration.
- 4.5 The following documents must be included with the application:
- Two passport sized photograph
 - A copy of passport or identity document
 - A copy of certificate of current membership of the Bar Association
 - A current certificate of good standing.
- 4.7 Applications must be sent to the Defence Support Section which will verify that all documents are attached and that the application is complete and will then translate the application and supporting documents and forward the translated applications to the Bar Association.
- 4.8 The DSS will forward translated applications for registration together with the original applications to the Bar Association on a monthly basis on the first Monday of each month, except where an accused selects a lawyer not in the list in accordance with Rule 22(1)(e) of the Internal Rules. In those circumstances the DSS will deliver the application to the Bar Association as soon as possible.
- 4.9 The applicant must pay a fee of \$500 to the Bar Association directly.
- 4.10 *Consideration.* The Bar Council shall consider applications and shall notify the Defence Support Section of the ECCC of their decision within 30 days of receiving the application.
- 4.11 Where an application is refused by the Bar Council, written reasons will be given for the refusal.
- 4.12 The Defence Support Section of the ECCC will immediately inform the applicant of the decision of the Bar Council.
- 4.13 *Revocation.* The Bar Association will inform the DSS within 15 days of any decision to revoke authorisation, with written reasons.

C – SELECTION AND ENGAGEMENT/ASSIGNMENT

5 Selection of Co-Lawyers

- 5.1 The Defence Support Section shall provide the suspect, charged person or accused with the list together with sufficient information to allow the suspect, charged person or accused to make an informed choice as to legal representation. If the suspect, charged person or accused wishes to select a lawyer not on the list then the DSS shall endeavour to provide sufficient information on that person.
- 5.2 Defence Support Section staff shall only meet with the suspect, charged person or accused with authorisation from the Head of the Defence Support Section. Any such meetings shall be confidential and subject to legal professional privilege.
- 5.3 The suspect, charged person or accused may freely select one Cambodian Co-Lawyer and one foreign Co-Lawyer from the list and complete Form 7: Request for Engagement/Assignment of Co-Lawyers.
- 5.4 Where the suspect, charged person or accused selects a Co-Lawyer not on the list, the Defence Support Section shall prioritise an application from that individual for inclusion in the list in accordance with the Internal Rules and these Administrative Regulations.

6 Engagement/Assignment of Co-Lawyers

- 6.1 The Defence Support Section shall confirm with the Bar Association of the Kingdom of Cambodia that the selected national Co-Lawyer is a current member in good standing.
- 6.2 With respect to lawyers selected from the UNAKRT list, the Defence Support Section shall:
 - a. Inform the selected Co-Lawyer that he has been provisionally assigned to the suspect, charged person or accused, pending an assessment of means, pursuant to Paragraph 8 below, and;
 - b. Forward Form 7: Request for Engagement/Assignment of Co-Lawyers to the Investigating Judges or the relevant chamber to issue an order confirming the provisional assignment of the lawyer to be admitted as such by the Extraordinary Chambers in the terms of Article 21(1) of the Agreement.
- 6.3 With respect to lawyers selected from the non-UNAKRT list, the Defence Support Section shall:
 - a. Inform the selected Co-Lawyers that they have been engaged by the suspect, charged person or accused; and
 - b. Forward Form 7: Request for Engagement/Assignment of Co-Lawyers to the Investigating Judges or the relevant chamber to issue an order confirming the engagement of the lawyer to be admitted as such by the Extraordinary Chambers in the terms of Article 21(1) of the Agreement.
- 6.4 If there is a delay in the process of engagement or assignment and the suspect, charged person or accused requires representation, the Defence Support Section may provisionally assign one or more lawyers from the list until such time as Co-Lawyers can be engaged or assigned.

7 Change, withdrawal or removal of Co-Lawyers

- 7.1 Subject to any order of the ECCC, Co-Lawyers shall conduct the case to finality. Failure to do so, absent just cause approved by the ECCC, may result in forfeiture of fees in whole or in part, as determined by the ECCC.
- 7.2 *Change of lawyers.* A suspect, charged person or accused may apply to the ECCC to change both or either of the Co-Lawyers. A suspect, charged person or accused may only be permitted to change Co-Lawyers in exceptional circumstances.
- 7.3 *Withdrawal of lawyers.* Co-lawyers may apply to the ECCC to withdraw from a case to which they are engaged or assigned. Co-lawyers may only be permitted to withdraw from a case in exceptional circumstances. The co-lawyers shall continue to represent the suspect, charged person or accused until a replacement lawyer has been assigned or engaged.
- 7.4 *Removal of lawyers.* The ECCC may determine that a Co-Lawyer is no longer eligible to defend a suspect, charged person or accused before the ECCC.
- 7.5 Where there has been a change, withdrawal or removal of a Co-Lawyer, that Co-Lawyer shall ensure the transfer of case files to the new lawyer in accordance with Regulation 8.

8 Transfer of case files

- 8.1 When there is a change of representation for a suspect, charged person or accused, the existing lawyer shall be responsible for ensuring that the case files are properly transferred to the new lawyer as soon as that new lawyer is assigned or engaged.
- 8.2 All documents transferred should be properly filed and indexed, with all handwritten notes typed up. Confidential material must be clearly marked as such. Correspondence should be correctly filed, including email correspondence.
- 8.3 The documents that should be transferred to the new lawyers shall include:
- All documents disclosed to the defence during the investigation or trial stage.
 - Any legal applications together with responses, whether they originated from the defence lawyer, the prosecution or the ECCC;
 - Any statements or notes arising out of interviews with potential witnesses;
 - Any other material gathered in the course of the preparation of the defence case.
- 8.4 The following documents shall be transferred to the new lawyer only with the written permission of the suspect, charged person or accused:
- Any notes of meetings between the co-lawyer or members of the defence team and the accused;
 - Any notes of meetings between the co-lawyers and third parties involved in the case.
- 8.5 The original lawyer will be entitled to claim fees for the work required to transfer the case files properly in accordance with the ECCC Legal Assistance Scheme.

9 Conflicts of Interest

- 9.1 A Co-Lawyer shall not engage in activity that is incompatible with the discharges of his duties as the legal representative of the accused. In particular, a Co-Lawyer shall neither seek nor accept instructions regarding his representation of the Accused from any Government.
- 9.2 Co-Lawyers shall exercise all care to ensure that no conflict of interest arises. They shall put the client's interests before their own or those of any other person, organisation or state, having due regard to the provisions of the Law on the ECCC, the Internal Rules, these Administrative Regulations and any Code of Conduct to which they are bound.
- 9.3 Where a conflict of interests arises, a co-lawyer shall at once inform all potentially affected clients of the existence of the conflict and either withdraw from the representation of one or more clients or seek the full and informed consent in writing of all potentially affected clients to continue representation.

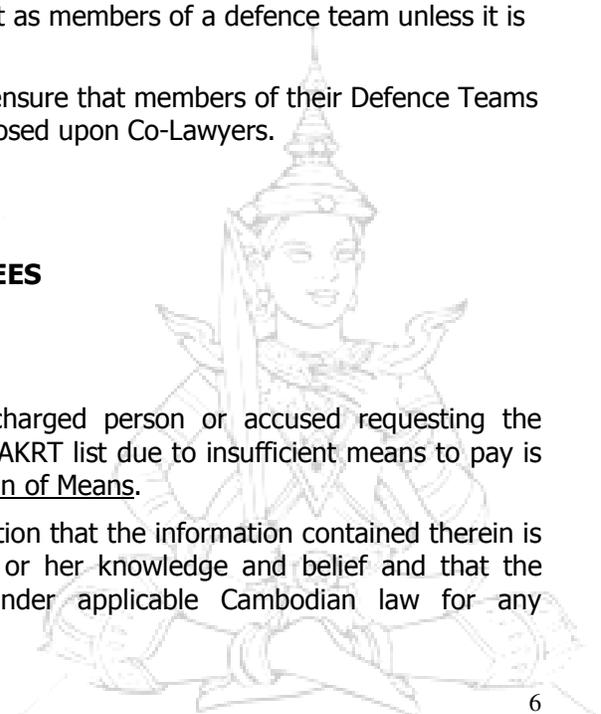
10 Selection and appointment of Defence Team

- 10.1 Where it is necessary for the effective preparation of the defence, Co-Lawyers assigned from the UNAKRT list may be assisted by a Legal Consultant and a Case Manager. The Co-Lawyers shall make a request for the appointment of a defence team to the Defence Support Section explaining the nature of the tasks to be undertaken and the duration of the appointment.
- 10.2 If it is agreed that such appointments are necessary, the Co-Lawyers may select a Legal Consultant and Case Manager from the list, who shall be appointed by the Defence Support Section on the basis of a periodically renewable contract. The DSS will then inform the ECCC of the appointments.
- 10.3 Co-Lawyers engaged by suspects or accused directly or on a pro bono basis may appoint lawyers and other professionals as part of their defence team and must inform the Defence Support Section of those appointments. The DSS will then inform the ECCC.
- 10.4 Members of the family or close friends of suspects, charged persons, accused or Co-Lawyers are not eligible for appointment as members of a defence team unless it is in the interests of justice to do so.
- 10.5 Co-Lawyers are under an obligation to ensure that members of their Defence Teams adhere to the standards and duties imposed upon Co-Lawyers.

D - FEES

11 The Determination of Means

- 11.1 Pursuant to Rule 11(6), a suspect, charged person or accused requesting the assignment of Co-Lawyers from the UNAKRT list due to insufficient means to pay is required to complete Form 8: Declaration of Means.
- 11.2 The Declaration shall include an attestation that the information contained therein is true and complete to the best of his or her knowledge and belief and that the declarant is liable to prosecution under applicable Cambodian law for any misrepresentation contained within it



- 11.3 Based on the information contained within the Declaration, the Defence Support Section shall make a determination as to whether and to what extent the suspect, charged person or accused is able to remunerate lawyers. The DSS shall take into account means of all kinds of which the suspect, charged person or accused has direct or indirect enjoyment or freely disposes, including but not limited to direct income, bank accounts, real or personal property, pensions, and stocks, bonds or other assets held, but excluding any family or social benefits to which he may be entitled. In assessing such means, account shall also be taken of the means of the spouse of a suspect, charged person or accused, as well as the means of his household, provided that it is reasonable to take such means into account.
- 11.4 If the suspect, charged person or accused is determined to lack sufficient means to pay for his defence, the Defence Support Section shall assign the Co-Lawyers chosen by the suspect, charged person, or accused from the list.
- 11.5 If the suspect, charged person or accused is determined to have sufficient means to pay in entirety for his defence, the Defence Support Section shall refuse the request for assignment of co-lawyers and the suspect, charged person or accused may engage lawyers directly.
- 11.6 If the suspect, charged person or accused is determined to have sufficient means to pay in part for his defence, the Defence Support Section shall determine the proportion of costs that will be born by the ECCC and will assign the Co-lawyers chosen by the suspect, charged person, or accused from the list. The Co-Lawyers will be paid under the Legal Assistance Scheme and it will be for the ECCC to recover the determined costs against the accused in the event of a conviction.
- 11.7 The DSS shall notify the suspect, charged person or accused of the results of the determination.
- 11.8 The DSS shall notify the Investigating Judges or the relevant Chamber of the ECCC and invite the relevant Chamber to issue a order confirming the assignment of the lawyer to be admitted as such by the Extraordinary Chambers in the terms of Article 21(1) of the Agreement.
- 11.9 The suspect, charged person or accused may seek review of the determination by the Defence Support Section either to the Investigating Judges or to the Chamber with jurisdiction at that stage.
- 11.10 During the determination of means and any appeal against a decision of the Defence Support Section, a Co-Lawyer who has been provisionally assigned shall be fully remunerated under the ECCC Legal Assistance Scheme.

12 Levels of Fees

- 12.1 National Co-Lawyers will be paid according to their years of experience at the same rate as National Prosecutors.
- 12.2 Foreign Co-Lawyers are required to have 10 years experience and so will be paid a fee based upon a P5 Step 1 salary.
- 12.2 All co-lawyers will automatically be paid a 10% uplift in order to cover their additional professional costs. They will be entitled to claim an uplift of up to 40% on demonstration of actual costs.
- 12.3 No daily living allowance or any equivalent will be payable, but there will be an uplift for foreign co-lawyers in order to cover the costs of living in Phnom Penh.

- 12.4 Travel costs and other expenses will only be paid where the costs are agreed in advance with the Defence Support Section.

13 Action Plans and Time sheets

- 13.1 Co-lawyers will be required to complete Form 20: Action Plan on a monthly basis outlining in detail the tasks that need to be completed in order to provide effective legal advice and representation to the accused and allocating those tasks to individual members of the defence team. The Defence Support Section will consider the Action Plan and agree tasks that are necessary and reasonable for the preparation of the defence. Only pre-agreed tasks will be paid for save where unforeseen tasks are necessary and reasonable and justified as such.
- 13.2 Co-Lawyers will only be allowed to work on the case to the extent permitted by the work limits and time limits stated by the DSS.
- 13.3 In order to be paid for work completed, Co-lawyers and other members of defence teams will be required to maintain an accurate record of all preparatory work that is completed and the time that is spent in court through time sheets in a format provided by the DSS.

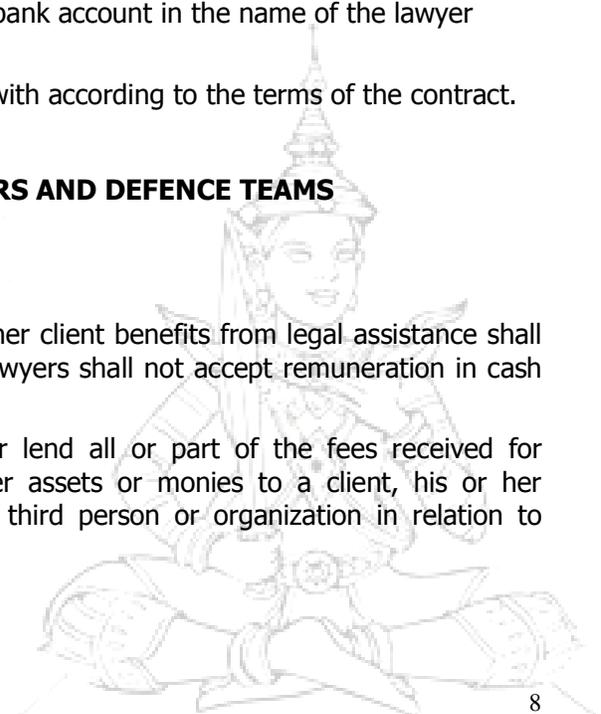
14 Payment of Fees

- 14.1 Co-Lawyers will be required to complete Form 24: Fees Claim on a monthly basis detailing the work that has been completed and the fee that is claimed. Timesheets must be attached to that claim form. Where a claim is for written work, that work product must be attached to the claim. Where a claim is for meetings, a note of that meeting must be provided or shown to the DSS.
- 14.2 The Defence Support Section will consider the claim form and pay fees for all work that was agreed in advance and has been completed. Where unforeseen additional work has been undertaken which was not agreed in advance, the Co-Lawyer must justify the work as being necessary and reasonable.
- 14.3 All fees must be paid into a nominated bank account in the name of the lawyer receiving the fee.
- 14.3 Disputes of fee payment shall be dealt with according to the terms of the contract.

E – DUTIES OF CO-LAWYERS AND DEFENCE TEAMS

15 Prohibition on fee splitting

- 15.1 The fees of a Co-Lawyer where his or her client benefits from legal assistance shall be paid exclusively by the Court. Co-Lawyers shall not accept remuneration in cash or in kind from any other source.
- 15.2 A Co-Lawyer shall neither transfer nor lend all or part of the fees received for representation of a client or any other assets or monies to a client, his or her relatives, acquaintances, or any other third person or organization in relation to which the client has a personal interest.



- 15.3 Where a Co-Lawyer is requested, induced or encouraged to violate the obligations under this article, he or she shall advise the client of the prohibition of such conduct.
- 15.4 A Co-Lawyer shall inform the DSS of any alleged fee-splitting arrangement by any member of his or any other Defence team.
- 15.5 Where a Co-Lawyer is found to have engaged in a practice of fee-splitting or to have entered into a fee-splitting arrangement with his client it shall immediately be reported to the ECCC.
- 15.6 A Co-Lawyer shall not pay any person for being referred to the Accused. A Co-Lawyer shall not request or accept payment for referring another Lawyer to a suspect, charged person or accused at the ECCC.

16 Availability

- 16.1 A Co-Lawyer must be available to provide effective legal advice and representation to the accused. A Co-Lawyer shall disclose to the DSS full details of any other case that may impair that availability and shall not accept assignment to any other case that may affect availability.
- 16.2 A Co-Lawyer shall confirm to the DSS that all such cases will have been completed prior to the commencement of proceedings before the Trial Chamber of the ECCC, or if they are not completed that they will not impair availability.
- 16.3 Shall not accept assignment to any other case that may impair that availability;
- 16.4 A Co-Lawyer shall immediately inform the Head of the DSS of any obligations on any other case that may affect availability.
- 16.5 A Co-Lawyer shall be present at the ECCC where necessary for the effective representation of the accused and whenever given reasonable notice to do so, save in the case of serious illness or a temporary nature or attendance of obligations related of the death of a close family member.

17 Confidentiality

- 17.1 Co-Lawyers and other members of defence teams shall at all times maintain the integrity of all documents whether in written oral or any other form, including evidence which is submitted to the Court.
- 17.2 Following the termination of the representation, Co-Lawyers shall keep files containing documents and records of work carried out for five years. Co-Lawyers shall allow the former client to inspect the file unless he or she has substantial grounds for refusing to do so. After this time Co-Lawyers shall seek instructions from the former client, his or her heirs or the ECCC for the disposal of the files, with due regard to confidentiality.
- 17.3 Co-Lawyers may request the assistance of the Defence Support Section to provide basic legal assistance and support including legal research and document research and retrieval in accordance with Rule 11(2)(j) of the Internal Rules. Any assistance given shall be regarded as confidential and legally privileged and shall not cause any prejudice to the independence of the Co-Lawyers or to the confidentiality owed by the Co-Lawyers to their clients.

18 Relations with Other Persons

- 18.1 Co-Lawyers shall not engage in any discriminatory conduct in relation to any other person, in particular his or her client, on grounds of race, colour, ethnic or national origin, nationality, citizenship, political opinion, religious convictions, gender, sexual orientation, disability, marital status or any other personal or economic status.
- 18.2 When required in the course or representation, Co-lawyer may communicate with and meet an unrepresented person in the client's interest, and when doing so he or she shall inform them of their right to assistance from a lawyer and, if applicable, to their right to legal assistance, and without infringing upon the confidentiality of lawyer-client privilege, inform them of the interests that they represent and the purpose of the communication.
- 18.3 In dealing with other co-lawyers and their clients, a co-lawyer shall act fairly, in good faith and courteously.
- 18.4 All correspondence between co-lawyers representing clients with a common interest in a litigated or non-litigated matter and who agree on exchanging information concerning the matter shall be presumed confidential and privileged by a co-lawyer.
- 18.5 When a co-lawyer does not expect particular correspondence between co-lawyers to be confidential, he or she shall state clearly at the outset that such correspondence is not confidential.
- 18.6 A Co-Lawyer shall not address directly the client of another Co-Lawyer except through or with the permission of that Co-Lawyer.
- 18.7 A Co-Lawyer shall refrain from intimidating, harassing or humiliating witnesses or victims or from subjecting them to disproportionate or unnecessary pressure within or outside the courtroom.
- 18.8 A Co-Lawyer shall have particular consideration for victims of torture or of physical, psychological or sexual violence or children, the elderly or the disabled.
- 18.9 Any reference to a duty or obligation upon co-lawyers applies to other members of defence teams.

