

Extending Grounds for Instituting a Criminal Action on Felony and Misdemeanor Offences under Rwandan Criminal Proceeding

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Abstract

For the accused to be convicted for having committed a criminal offence, the public prosecution must have established the existence of Actus reus as well as Mens Rea among other factors to indicate the commission of a crime. The latter refers to the criminal intent, state of mind statutorily required in order to convict a particular defendant of a specific crime. Practical cases in Rwanda reveal that defendants are often convicted without a thorough analysis on mens rea despite it being a fundamental prerequisite in criminal proceedings. This paper urges that the prosecution often fails to prove beyond reasonable doubt that the defendant committed an offence with a culpable state of mind. Moreover Rwandan law in general and criminal procedure in particular does not require the existence of sufficient incriminating and exculpatory evidence prior to indictment. The paper discusses likelihoods of apprehending, prosecuting, adjudicating and subsequently remanding individuals that are insane and in need of hospitalization, hence miscarriage of justice and a decline in judicial propriety. The paper further recommends the adoption of efficiency enhancing procedures including submission of certificate of sanity as a prerequisite for admissibility of a criminal action.

Key words: Rwandan criminal procedure, Prosecution, mens rea, insane

1. Introduction

The legal principle "actus non facit reum, nisi mens sit rea" is fundamental to criminal liability, highlighting that an action alone does not constitute guilt; it must be paired with a culpable mental state, referred to as "mens rea."¹ In the performance of the investigation function the investigator has responsibilities which include among others; gathering of incriminating and exculpatory evidence, searching for perpetrators of offences, co-offenders and their accomplices in order for them to be prosecuted by the public prosecution; writing a statement of arrest and detention and give a copy to the suspect and releasing the suspect or release him or her by instructing him or her to comply with a set of conditions. The investigator also has a duty to close the file if the constituent elements of an offence are incomplete². The existence of an offence (infraction) requires the presence of three elements, namely the

¹ Pleagers, Actus non facit reum nisi mens sit rea,online at <https://blog.ipleaders.in/actus-non-facit-reum-nisis-mens-sit-rea/>

² See article 16 of Law n° 058/2023 of 04/12/2023amending law n° 027/2019 of 19/09/2019 relating to the criminal procedure

legal element, the material element and the moral element. The legal element of an infraction refers to the legal text providing for an act or an omission considered as an infraction and for its penalty as well. This means that in order for an act or omission to be considered as an infraction, it must be provided for within a legal text, this is what is referred to as the principle of legality of infractions. The material element of an infraction can be defined as the external element by which the criminal intention is revealed. For example, if we consider murder, the material element is the fact of killing somebody. If we consider theft, the material element is made of the fact of removing something from somebody else. Therefore, the material element consists of an act or an omission which can be identified or identifiable.

An infraction exists, when the moral element exists, in addition to the two elements aforementioned. In other words, the material act must have been a deed of the will of the author. In the absence of that will, there is no infraction. The author must have been aware or conscious that he is violating a penal provision. This is what we call *mens rea*, an element that is given less value under Rwandan criminal proceedings due to the fact that procedurally prosecution does not examine the element through expert witnesses like medical doctors for provision of certificate of sanity to prove that the accused was in normal condition during the commission of an offence in all cases. On the other side the accused who might be insane is not capable of praying for the examination of insanity due to that very insanity. In this regard there is likelihood that prisons are full of insane folks in need of hospitalization on grounds that no party requested for examination of insanity and judges pronounced convicting verdicts upon merely examination of legal and material elements mostly presented by the prosecution or plaintiff's side.

2. Insanity and mens rea

Possession of insanity amounts to lack of *mens rea* during criminal proceedings. Insanity refers to mental illness of such a severe nature that a person cannot distinguish fantasy from reality, cannot conduct his or her affairs due to psychosis or is subject to uncontrollable impulsive behavior. Insanity is a concept discussed in court to help distinguish guilt from innocence.³ The insanity defense refers to a defense that a defendant can plead in a criminal trial. In an insanity defense, the defendant admits the action but asserts a lack of culpability based on mental illness. The insanity defense is classified as an excuse defense, rather than a justification defense.⁴ Upon approval of insanity in criminal process the accused is acquitted, nonetheless there is no legal provision obliging the prosecution operating under public interests to request or conduct inspection of insanity for the accused. Under normal circumstances a counsel from the defense side may request the inspection of insanity, nonetheless this happens in rare cases and most of the defendants possess neither legal representation nor capability of praying the examination of the insanity because they are insane.

³ See the definition of insanity available at <https://www.psychologytoday.com/us/blog/in-therapy/200907/the-definition-insanity>

⁴ See the insanity defense available at https://www.law.cornell.edu/wex/insanity_defense#:~:text=The%20insanity%20defense%20refers%20to,rather%20than%20a%20justification%20defense. Accessed on 18th November 2022

3. Categories of criminals

Criminals are divided into various categories. The first is about a common individual who is motivated by ambition of committing an offence as a result of factors beyond his control. Another one concerns to an ordinary person driven into a crime by an irresistible force; while the last is about the criminal person whose actions stem from cognitive impairment or a medical condition affecting mental function.⁵ Some factors can push individuals to engage in criminal behaviors.⁶ The factors include the social factors, biological factors, mental illness, etc.⁷ Courts consider some of these factors, especially the mental illness or insanity, as causes of non-liability.⁸ Insanity pertains to a significant impairment in an individual's mental state during the commission of a crime. Courts have indicated the standards of insanity to be a ground of non-responsibility. In the M'Naghten case, the UK court asserted that insanity will occur when an individual does not understand the nature of his actions, otherwise that the individual acted improperly as a consequence of mental or psychological disorder. In this regards justice demands that for the accused to be convicted it has to be clearly established that he or she was sane during the commission of the crime

4. Rwandan laws

Rwandan law determining offences and penalties in general establishes that only someone who intentionally commits an offense is subject to criminal liability. It recognizes that a person must act consciously to be held responsible, although it does not exclude liability for acts committed recklessly, negligently, or carelessly.⁹ The law also outlines conditions under which an individual can be relieved of criminal responsibility, including instances where the defendant was experiencing mental impairment at the time when the crime was committed.¹⁰ Nevertheless, the law does not define a clear standard for determining insanity, nor does it provide specific guidelines on how courts should assess an accused person's mental state. In contrast other legal systems, such as that of the United Kingdom, apply established standards, like the M'Naghten Rules, to determine whether an accused person qualifies for the insanity defense.¹¹ The absence of such a standard in Rwanda creates legal uncertainty and may lead to inconsistencies in judicial decisions. Additionally, in some jurisdictions, when an individual is determined to be not guilty due to insanity, they are not merely acquitted and set free. Instead, they may be subject to psychiatric detention or other legal measures to ensure both their treatment and public safety.¹² Rwandan law relating to criminal procedure governs acts of investigation, prosecution, trial and execution of penalties for the offences provided for by the criminal law.¹³ Nonetheless it is not indicated

5 Schmideberg M., Physiological factors underlying criminal behavior, 37 J.Crim., L.and criminology 458(1946-1947), p.458. Thesis for Joel. N

6 Ibid

7 Ibid

8 Lymburner J.A., Roesch R., The insanity defense: Five years of research, (1993-1997), International journal of law and psychiatry, vol.22:3-4, pp.2013-240, 1999, p.255

9 Art. 83 of the law no 68/2018 of 30/08/2018 determining offence and penalties in general, in O.G. no special of 27 September 2018

10 Idem, art.85

11 Thesis for Joel N P 3

12 UK Criminal Procedure (Insanity) Act 1964

13 See article one of the law No 27/2019 of 19/09/2019 relating to criminal procedure

anywhere that indictment shall be preceded by searching among others exculpatory evidence including certificate of sanity to establish that the accused deserve to face rigorous of law. Consequently individuals convicted of criminal offences particularly those categorized as felony or misdemeanor may ultimately find themselves subjected to lifelong detention. Nevertheless under the principles of true justice, such individuals should instead be hospitalized and provided with appropriate specialized treatment

6. The burden of proof and Rwandan legal framework

As the Latin legal phrase *Actori incumbit onus probandi* stipulates, the burden of proof in both civil and criminal cases always lies on the plaintiff. In criminal cases the burden of proof is on the prosecution side or any other complainant in circumstances of private prosecution. This is the applicable process in Rwandan criminal proceeding as highlighted in article 107 of Rwandan law relating to criminal procedure. The prosecution side having the burden of proof ought to clearly indicate the presence of the three elements, which are the legal element, the material element and the moral element. As per the constitutional provisions, a human being is sacred and inviolable. The State has an obligation to respect, protect and defend the human being.¹⁴ The constitution further states that all persons are equal before the law. They are entitled to equal protection of the law¹⁵ the obligation of the state to defend human being as well as the equality before the law demands that all accused are treated in the same way and in conducting searches for more evidence attention ought to go beyond incriminating evidence.

Rwandan criminal procedure lacks provisions regarding disclosure of insanity, thus it could only be considered upon request of the defendant party, as a matter of fact apart from Supreme court and Court of Appeal, it is not compulsory for a either plaintiff or defendant to be assisted or represented during the course of either civil or criminal proceedings. It is against this background that the researcher believes that once the accused fails to request examination of his insanity due to the very insanity, he or she will be convicted.

Rwandan legal framework on criminal procedure rarely encompasses provisions on treatment of insanity, neither is it mentioned anywhere in the law of criminal procedure. Article eighty four of Rwandan penal code however clearly stipulates as follows: “The accomplice may be prosecuted even if the criminal action cannot be instituted against the offender due to reasons particularly specific to the offender such as death, insanity or his/her being unidentified”¹⁶. This clearly indicates that upon realization that the accused is insane, criminal liability is waived. Nevertheless Rwandan criminal procedure does not evidently stipulate circumstances through which insanity shall be adequately detected. In this regards, there is likelihood that prisons are full of insane persons rather than the actual convicts. This is due to lack of adequate criminal procedure that ensures equity in all criminal proceedings until justice is obtained.

¹⁴ Article 13 of the constitution of Rwanda o

¹⁵ Article 15 of the constitution of Rwanda

¹⁶ Article 84 of the Law N°68/2018 of 30/08/2018, determining offences and penalties in general. Official Gazette no. Special of 27/09/2018

7.1. Substantial cases concerning the issue of mens rea

In Court of Appeal RPAA 00018/2020/CA (Mukandamage P.J) 20 May 2022, the case initiated from Intermediate Court to the Court of Appeal Rwatambuga Jean Marie Vianney was convicted of a felony (child defilement) and sentenced to twenty five years in prison without any sense of considering mens rea in all criminal processes.¹⁷ Within the facts of the case the convict was in forest cutting trees, all of a sudden he sees a girl who was 14 years of age, proximately grabs her and rapes her. All criminal proceedings from pretrial phase up to final conviction, no single party prayed that the accused be mentally examined to indicate presence of mens rea for merely the interest of justice. Lack of mens rea during the commission of crime must not even serve as mitigating excuse but as exclusion from criminal liability. For the interest of justice prosecution itself should have sought and initiated the process of examining the suspect as it is quite uncommon for a reasonable human being to commit such an offence under zero influence.

7.2. Owen Lloyd Swain case

In the case between Owen Lloyd Swain the Appellant Vs. Her Majesty the Queen the Respondent, it is clearly stated that: at trial, the Crown sought to adduce evidence with respect to insanity at the time of the offence; the appellant objected. After conducting a voir dire, the trial judge ruled that the Crown could adduce such evidence. Appellant was found not guilty by reason of insanity on all counts. Defence counsel then moved to have s. 542(2) of the Criminal Code (now s. 614), which provides for the automatic detention at the pleasure of the Lieutenant Governor of an insanity acquittal, declared inoperative on the basis that it violated the Canadian Charter of Rights and Freedoms. The judge held that appellant's constitutional rights were not infringed by s. 542(2) and ordered that he be kept in strict custody until the Lieutenant Governor's pleasure was known. Appellant appealed and applied for bail pending appeal. This application was adjourned in order to permit an early hearing of the appellant's case by the Advisory Review Board which advised the Lieutenant Governor concerning the detention of insanity acquittees. The Lieutenant Governor issued a warrant further detaining the appellant in safe custody in a mental hospital for assessment and report to the Advisory Review Board within 30 days.¹⁸ This is a clear indication that the prosecution side can request for examination of insanity for the interest of justice with or without the consent of the defendant whenever deemed necessary for avoidance of miscarriage of justice and a decline in judicial propriety.

8. Rising the issue of insanity

In Canada, the Crown (the prosecution) can raise the issue of insanity (not criminally responsible due to mental disorder - NCRMD) in two specific situations: after the accused has been found guilty but before a verdict is entered, or if the accused puts their mental capacity in issue during the trial. After guilty Verdict; If the Crown believes the accused is not criminally responsible due to mental disorder, they can raise the issue after the accused has been found guilty by the trier of fact (judge or jury), but before a

¹⁷ See Court of Appeal case RPAA 00018/2020/CA

¹⁸ See the case between Owen Lloyd Swain the Appellant Vs Her Majesty The Queen the Respondent available at <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/753/index.do#:~:text=In%20circumstances%20where%20the%20accused's%20own%20evidence,jury%20on%20s.%2016%20of%20the%20Code.>

verdict is formally entered. This allows the court to consider the NCRMD defense after the issue of guilt has already been decided.¹⁹ For the interest of justice, regardless of diverse procedures of different legal systems, the issue of insanity should be sought in ensuring that the final verdicts are pronounced upon exhausting all thinkable remedies. Rwandan criminal procedure is structured in such a way that during the pronouncement of court decision, a judge convicts the accused and concurrently pronounces sentence(s) given thereto. If there was a separate hearing for sentencing after conviction, it would contribute a lot as the defendant side or any other interested party might have an appropriate time for seeking the examination of insanity for the interest of justice. This would solve a lot of glitches to justice including overpopulation in prisons as well as case backlogs.

Rwanda has made significant progress in establishing robust institutional and legal frameworks to uphold the rule of law and ensure justice is given to all. These efforts have included the enactment of laws aimed at maintaining order and stability as well as establishment of the three branches of the government such as the judiciary, executive and legislature in promoting a system of checks and balance. However to achieve more effective and equitable justice delivery, further measures are needed to enhance transparency and ensure that all individuals are assessed under the same standard. At the same time, those requiring special treatment should receive appropriate care. This can be accomplished by strengthening both the legal and institutional frameworks to guarantee that individuals who should face justice do so fairly, while those in need of hospitalization are referred to appropriate facilities.

9. Conclusion, summary of findings and recommendations

Under the doctrine of the separation of powers, the judicial branch administers justice in the name of the State. The law is interpreted and applied by courts, tribunals, judges, and lawyers. These actors comprise the judicial system as a whole.²⁰ Prosecution authority also has a duty to represent government in criminal cases in ensuring that justice is given to all. During the course of this study it was observed that Rwandan laws in general and criminal procedure particularly do not make it mandatory to provide sufficient incriminating and exculpatory evidence such as provision of certificate of sanity which should be given a lot of weight before instituting a criminal action to ensure that the indicted is a normal human being. It is against this background that I recommend the following:

Rwanda lacks essential safeguards, including a standardized assessment for determining insanity and the establishment of specialized mental health detention facilities. There is a need of establishment of Not Guilty by Reason of Insanity" (NGRI) verdict. This verdict would mean that offenders who genuinely cannot understand or control their actions due to mental illness are not treated as ordinary criminals. Instead, they would be given treatment and rehabilitation. This approach prioritizes public safety by ensuring that those who need mental health care receive it, and it also protects the dignity and rights of

¹⁹https://www.google.com/search?q=when+may+the+crown+raise+the+issue+of+insanity+in+canada&sca_esv=a96711d142537bef&rlz=1C1GCEU_enRW1160RW1160&sxsrf=AHTn8zo44fTEIPaWGPwDp9hF2-jDQYJnng%3A1746781759447&ei=P8YdaJv2Gs_t7_UP9dyDkAc&oq=who+is+a+Crown+to+adduce+evidence+of+insanity&gs_l=lp=Egxnd3Mtd2l6LXNlcniAilXdobYBpcyBhIENyb3duIHVRvIGFkZHVjZSBldmlkZW5jZSBvZiBpbmNhbml0eSoCCAAYBRAAGO8FMgUQABjvBTIIEAAYgAQYogQyBRAAGO8FMgUQABjvBUi1pQFQ8B1Y-mFwAXgBkAEAmAHkA6ABsiGqAQUzLTkuMrGBAcGpBAPgBAvgBAZgCCKACpxbCagoQABiwAxjWBBhHwgINEAAYgAQYsAMYQxiKBcICBRAHGKABwgIIEAAYogQYiQWYAwCIBgQGBgqSBwcljMtNS4yoAeGNrIHBTMTNS4yuAefFg&sclient=gws-wiz-serp

²⁰ The role of the judiciary available at <https://upr-info.org/en/get-involved/judiciary/role>

mentally ill persons. Setting up specialized mental health detention facilities would provide a safe and therapeutic environment, rather than placing these individuals in regular prisons where their conditions could worsen.

Upon pronouncement of convicting verdicts, there should be another separate hearing on sentencing in ensuring all possible remedies to justice. This could be done so that the defendant side will have ample time to establish either mitigating or exculpatory factors

While collecting evidence the investigator should not only pay more attention on the incriminating evidence but also the exculpatory evidence, bearing in mind that his or her primary duty is ensuring that justice is delivered to all

The criminal procedure law should be amended and include provision of sanity certificate as one of the requirements for indictments on the side of prosecution especially on felony and misdemeanor offences

The law should make it clear for the judiciary not to admit indictment from prosecution without the presence of certificate of sanity especially on the prosecution of felony and misdemeanor offences

Justice sector in Rwanda should urgently establish a well-defined legal standard for the insanity defense. The current absence of such a standard creates significant potential for inconsistency and uncertainty in judicial decisions.

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