
HUMAN RIGHTS AS THE FOUNDATION FOR ETHICAL PRACTICE OF LAW

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Citation: Uchenna Emelonye and Francis Igiriogu (2022) Human Rights as the Foundation for Ethical Practice of Law, *Global Journal of Politics and Law Research*, Vol.10, No.1, pp.1-14

ABSTRACT: *This Article is a reflection on the importance and foundational role human rights play in the Ethics and Code of Conduct of the legal profession generally and specifically as it relates to the Liberian National Bar Association. It submits that human rights represent the minimum standards with regard to decent treatment of human beings anywhere, notwithstanding the location or culture of persons involved. As a result this makes human right principles an indispensable reference point and guide when formulating rules of professional ethics and code of conduct. It contends that this accounts why ethics should promote human rights and respect to human rights principles should be the basis for any ethical codes. It concludes that, this being the case, any code of conduct that violates human rights, such code has ab initio lost its legitimacy and moral basis to be code of conduct.*

KEYWORDS: human rights, foundation, ethical practice, law

INTRODUCTION

Human rights are entitlements we have by virtue of our humanity. They represent minimum standards necessary for human beings to exist and an indispensable condition to live in dignity. Human rights are among those few attributes we share for being human and not predicated on our economic status, place of origin, skin colour, political affiliation, religion, sexual orientation, etc. They are derived from the inherent dignity and worth of all human beings.³

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³ Making a Difference: An Introduction to Human Rights, a publication of the United Nations Human Rights Regional Office for Europe issued on the occasion of the 70th anniversary of the Universal Declaration on Human Rights, 10 December 2018 p. 2

Human Rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Human rights are also part of international law contained in treaties and declarations that spell out specific rights that countries are required to uphold.⁴ It has been argued that while such documents define the legal and political dimensions of human rights, they are not constitutive for human rights as such.⁵ This view maintains that only moral foundation of human rights can lend such political and legal interpretation justifications in the first place.⁶ In similar vein, human rights have been defined as ‘quintessentially ethical articulations, and they are not, in particular, putative legal claims’.⁷ On the other hand, there are other views which postulate that states are entrusted with the mandate to institutionalize what is considered ‘right’ or ‘wrong’ and establish a legal regime separate from the moral foundation of the society.⁸ The foregoing are major contestable philosophical leanings on human rights- natural school of thought and positive school of thought. In fact there is seldom a universal consensus on human rights philosophical underlining. This presentation will follow the approach of United Nations that normally combine these two perspectives in defining human rights. Accordingly, human rights are those broadly recognized fundamental global standards of morality that inhere in human beings by virtue of their humanity which are protected by national governments and comity of nations in their laws and treaties respectively.

Although the State is the primary duty bearer in international human rights law, however every individual and every organ of the society like LNBA “...shall strive...to promote respect for these rights and freedoms ... to secure their universal and effective recognition and observance”.⁹ All human rights are indivisible which means that whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, all human

⁴ Discover Human Rights: A Human Rights Approach to Social Justice Training Manual, May 2017 – The Advocates for Human Rights Minneapolis, p.12

⁵ Florian Wettstein (2012) Human Rights as Ethical Imperatives for Business: The UN Global Compacts Human Rights Principles in Globally Responsible Leadership: Managing According to the UN Global Compact (ed.) Joanne Lawrence and Paul W. Beamish, Sage Publishers p. 75

⁶ Florian Wettstein (2012) Human Rights as Ethical Imperatives for Business: The UN Global Compacts Human Rights Principles in Globally Responsible Leadership: Managing According to the UN Global Compact (ed.) Joanne Lawrence and Paul W. Beamish, Sage Publishers p. 75

⁷ Sen Amartya (2004) Elements of a Theory of Human Rights, *Philosophy and Public Affairs* 32 (4) p. 321

⁸ H L A Hart, *The Concept of Law* (Oxford University Press 2012) 18; See also H L A Hart, *Essays on Jurisprudence and Philosophy* (Oxford University Press 1983); Leslie Green, ‘Positivism and the Inseparability of Law and Morales’ (2008) 83 New York University Law Review 1035

⁹ Preamble to the Universal Declaration of Human Rights 1948; See also David Weissbrodt (2014) ‘Human Rights Standards concerning Transnational Corporations and Other Business Entities’ 23 Minnesota Journal of Internal Law, 135.

rights are of equal status as rights, and cannot be ranked. They are also interdependent and interrelated, which means that the realization of one right depends, wholly or in part, upon the realization of others.

My learned friends, ladies and gentlemen, 'Foundation', for our present purpose and according to Cambridge dictionary means 'an idea or fact that something is based on'.¹⁰ It similarly provides its synonyms as 'basics', 'fundamentals', 'principles', 'rudiments', and 'essential'.¹¹ In the same vein, the Merriam-Webster dictionary defines 'Foundation' as a "basis (such as a tenet, principle, or axiom) upon which something stands or is supported".¹² It has also been defined as 'an underlying basis or principle'.¹³ Foundation is thus the basis upon which certain actions or events are anchored. On the other hand, the word 'Ethics' is defined by Cambridge dictionary as "a system of accepted beliefs that control behaviour, especially such a system based on morals".¹⁴ Similarly, the Merriam-Webster dictionary defined 'Ethics' as a set of moral principles, a theory or system of moral values".¹⁵ It is important to note that every profession has its own code of conduct and ethics that regulate its practice. As it relates to lawyers, our concern here is the ethics of the legal profession, specifically the ethics of legal practice that regulates members of the LNBA. Members of the bar are subject to professional discipline, which is a form of peer review by other members of the bar, the outcome of which is usually enforced by the courts of the country.¹⁶ Ethical practice of law therefore refers to a legal practice carried out by members of the legal profession in compliance with the ethics of their profession. Where such professional standards give clear guidance relating to the appropriate professional practices, lawyers will strive to uphold them even in the face of pressure to do otherwise.¹⁷

¹⁰ Cambridge online dictionary available at <https://dictionary.cambridge.org/dictionary/english/foundation>. See also Brian Leiter (2014-2015) Legal Realism and Legal Doctrine, 163 U. Pa. L. Rev. 1975

¹¹ Ibid

¹² See definition No. 2 available at <https://www.merriam-webster.com/dictionary/foundation>; See also Kenneth L. Buckman (1998) 'Changing the Metaphors of Foundation' *Philosophy in the Contemporary World*, Vol. 5 Nos. 2-3 Summer Fall. Realism, Constructionism and the Self, pp 55-59

¹³ Oxford Lexico dictionary available at <https://www.lexico.com/definition/foundation>

¹⁴ Cambridge online dictionary available at <https://dictionary.cambridge.org/dictionary/english/ethic>. See also Albert Bandura (1991) 'Social Cognitive Theory of Self-Regulation' *Organizational Behavior and Human Decision Processes*, Vol. 50, Issue 2, Dec. 1991 pp. 248-287

¹⁵ Merriam Webster online dictionary available at <https://www.merriam-webster.com/dictionary/ethic>. See also Donald Bersoff and Peter Koeppel (2011), 'The Relation Between Ethical Codes and Moral Principles' *Ethics & Behavior* Vol. 3, Issue 3-4, pp. 345-357

¹⁶ Derek A Denckla (1999), 'NonLawyers and Unauthorized Practice of Law: An Overview of the Legal and Ethical Parameters', *Fordham Law Review* Vol. 67, Issue 5, Article 32, 1999 p. 2581

¹⁷ Bruce A. Green and Bernadine Dohrn (1996) 'Foreword: Children and the Ethical Practice of Law' *Fordham Law Review* Vol. 64, Issue 4, Article 2 p.1287.

As members of the LNBA, lawyers are bound by the ‘Code of Moral and Professional Ethics’ (the Code), that guides their conduct as it relates to the court, their client, witnesses and the jury.¹⁸ There are also the Judicial Canons that establish standards for ethical conduct of judges. They are rules for all judges to uphold and promote the independence, integrity and impartiality of the Judiciary.¹⁹ The Judiciary Inquiry Commission has exclusive power and authority to receive and investigate complaint against judges of courts of record and non-record in the Republic of Liberia for violation of any provision of the Judicial Canons. On the other hand, the Grievance and Ethics Committee of the Liberian Judiciary has the authority to receive and investigate complaints against legal practitioners for violation of the Code. This is not only to maintain professional decorum and integrity of the legal profession but also to maintain the trust and confidence of the public in the profession.

In emphasizing importance of maintaining ethical standards in legal practice, the New York Court of Appeal in *Wieder v. Skala* was clear -

“... that in any hiring of an attorney as an associate to practice law with a firm there is implied an understanding so fundamental to the relationship and essential to its purpose as to require no expression: that both the associate and the firm in conducting the practice will do so in accordance with the ethical standards of the profession”²⁰

The Nexus between Human Rights and Legal Practitioners Ethics

Traditionally, human rights norms are meant to guide the actions of governments whereas ethics consists of concerns for the specific actions, inspirations and relationships of professionals within their business confines.²¹ Codes of professional conduct have a dual function. First, their aim is to ensure that lawyers maintain at all time the honour and dignity of their profession and act, in the discharge of their professional functions, in accordance with predefined ethical standards and the duties and responsibilities intrinsic to their functions. Second, they are essential to ensuring the accountability of individual lawyers and the legal profession as a whole and to empowering the

¹⁸ See the Code of Moral and Professional Ethics available at <http://judiciary.gov.lr/code-of-moral-and-professional-ethic/>, See also Gerald Postema (1980) ‘Moral Responsibility in Professional Ethics’ New York University Law Review, Vol. 55, pp. 63-89

¹⁹ See details at <http://judiciary.gov.lr/judiciary-inquiry-commission/>, See also Mark Harrison (2007) ‘The 2007 ABA Model Code of Judicial Conduct: Blueprint for a Generation of Judges’ *Justice System Journal*, Volume 28, Issue 3, pp. 257-270

²⁰ *Wieder v. Skala*, 80 NY 2d 628 - NY: Court of Appeals 1992 p. 632

²¹ Wayne Visser, Dirk Matten, Manfred Pohl, Nick Tolhurst (2010), *The A to Z of Corporate Social Responsibility, 2nd Revised and Updated Edition*. John Wiley & Sons Publication. See Human Rights and Ethics in Public Health available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1751819/>

public to ensure lawyers maintain the high degree of professionalism expected.²² The legal profession itself should develop such codes of professional ethics. When established by law, the legal profession should be duly consulted at all stages of the legislative process.²³

In any case, the practice of law is governed by litany of laws which includes codes of legal ethics, the general law of contracts, tort, criminal law and the common law.²⁴ Fuller realization of exemplary conduct by members of the bar, may be achieved by considering professional ethics as not only a matter of legal obligation but also of volition exercised individually and collectively under difficult circumstances.²⁵ For instance, client's legal expectations from a lawyer imposes considerable constraints on a lawyer's ethical autonomy. Client retain lawyers to achieve objectives that are onerous *vis-a-vis* other litigants. This is because litigation involves infliction of direct legal coercion on others and negotiation involves struggles over money, power and allocation of risk.²⁶ Most clients will not countenance suggestion that their legal interest in such matters are selfish or unworthy. It is axiomatic that the client's legal interest must prevail as long as they are within the confines of the law. It is submitted that such 'confines of the law' includes being in compliance with the principles of human rights. In other words, lawyers should be circumspect and ensure that they do not violate/abuse human rights in the course of carrying out their assignment.

The point has been made that human Rights are moral principles or norms that describe certain standards of human behavior but are regularly protected as legal rights in municipal and international law. They are commonly understood as inalienable fundamental rights based on the belief that everyone is equal and should have the same rights and opportunities.²⁷ The ethical principles that guide professionals like LNBA are the product of broad based consultation and are drafted by representatives of the professional bodies and stakeholders in the form of guidelines and proposed codes of conduct. In contrast, human rights norms and standards tend to be drafted by government representatives negotiated in political forums by the legislators at the national level or State parties at regional and international level. The output is usually contained in a statute,

²² David Wilkins (1992), 'Who Should Regulate Lawyers', *Harvard Law Review*, Feb – Vol. 105, No 4, pp. 799-887. See also paragraph 63 of the Report of the Special Rapporteur on the Independence of Judges and Lawyers to the General Assembly, A/73/365, 5 September 2018

²³ See paragraph 64 of the Report of the Special Rapporteur on the Independence of Judges and Lawyers *ibid*

²⁴ Geoffrey C. Hazard Jr (1990) 'Ethical Opportunity in the Practice of Law', *San Diego Law Review*, Heinonline vol. 27 p.131

²⁵ *Ibid* p.129

²⁶ Geoffrey C. Hazard Jr (1990) 'Ethical Opportunity in the Practice of Law', *San Diego Law Review*, Heinonline vol. 27 p. 136

²⁷ See the Nigerian Court of Appeal case in *Bobade Olutide & Ors Vs Adams Hamzat & Ors* (2016) LPELR – 26047 (CA)

constitution or incorporated in the body of international law in the form of international treaties that impose legal obligations on the governments that pass or ratify them.²⁸

Although these human rights processes imbues it with a sort of permanency and legitimacy useful for engaging governments and institutions of power, there is less flexibility in changing its contents than with ethical guidelines that can easily be varied by members of the profession concerned. This is because human rights reflect the principles of many cultures and traditions and the consensus achieved among governments of what rights should exist. In effect, human rights are more permanent and universal principles that should guide ethical principles or codes of conduct. In other words, ethical principles legitimacy or veracity is dependent on whether they comply with human rights principles. It has been rightly argued that the moral imperative deriving from human rights, is of the most fundamental kind and that it trumps all other moral considerations which are not themselves based on human rights.²⁹ This is because human rights represent the normative floor, the moral minimum with regard to the decent treatment of human beings anywhere and irrespective of legal and cultural contexts.³⁰

Human Rights Framework in Liberia.

My dear learned friends, the fundamental national framework for the protection of human rights in Liberia is the 1986 Constitution. It enumerated in its Chapter III (Articles 11-26) the list of human rights that Liberians and residents in Liberia are entitled to and which cannot be abrogated except in accordance with the law. These rights among others include – Right to Life; Freedom from Slavery and Forced Labor; Right to Free Press; Freedom of Expression; Freedom of Movement; Right to own Property; Freedom from Torture, Inhuman and Degrading Treatment; Right to Privacy; Freedom of Thought, Conscience and Religion; Right to Counsel of ones' choice etc.

The human rights of Liberians further extend to those legal guarantees contained in the various regional and international treaties which Liberia has subscribed to. At the regional level, Liberia

²⁸ Ryan Goodman and Derek Jinks (2004-2005), 'How to Influence States: Socialization and International Human Rights Law, *Duke Law Journal*, Vol. 54, December, No 3, p. 621

²⁹ Florian Wettstein (2012) Human Rights as Ethical Imperatives for Business: The UN Global Compacts Human Rights Principles in Globally Responsible Leadership, *Managing According to the UN Global Compact* (ed.) Joanne Lawrence and Paul W. Beamish, Sage Publishers p. 75

³⁰ Ibid p.76, See also Robert Blitt (2012-2013), 'Beyond Ruggie's Guiding Principles on Business and Human Rights: Charting an Embracive Approach to Corporate Human Rights Compliance' *Texas International Law Journal*, Vol.48, p.33

ratified the African Charter on Human and Peoples Rights in August 1982.³¹ As the contemporary normative architecture for Africa specific human rights norms, the African Charter expanded the already existing national normative framework for human rights. Liberia also ratified the Economic Community of West African States (ECOWAS) Treaty in 1973.³²

Both the African Charter and ECOWAS Treaty established regional and sub-regional courts to ensure the protection of human and peoples' rights in Africa in general and ECOWAS community in particular. While Liberia has not ratified the African Court protocol and not subject to the jurisdiction of the court, it is a member state of the 1975 ECOWAS Treaty mandating the Community Court of Justice (CCJ) to adjudicate disputes related to the interpretation and application of the Treaty. Based on the bill of rights provisions in the Constitution of the Republic of Liberia and the regional and international human rights frameworks that it has subscribed to, it is trite to state that there are adequate normative infrastructure for the protection of human rights in Liberia. It is for the Government to create enabling environment to carry out its human rights obligations to respect, protect and fulfill human rights of Liberians and residents. This can be in form of amending laws to comply with human rights standards, passage of new laws, and eradicating harmful traditional practices that violate civil liberties.

Human Rights as the Basis for Ethical Practice of Law

A code of conduct clarifies an organization's mission, values and principles, linking them with standards of professional conduct.³³ It is axiomatic that no organizational mission, values and principles worth their onion if they are devoid of or violate any human rights principles. This is because respect for human rights and dignity of the human person is at the center of any ethical principle or code of conduct. Ethical principles are meant to ensure transparency, fairness, equity, fair play in the business transaction of the professional body in question. In view of important role played by lawyers in the society, ethics for legal practitioners are at the core of legal practice and every jurisdiction guards them jealously.

The Liberian Code of Moral and Professional Ethics is clear as to what is expected of the legal practitioners. For instance, it is the duty of every lawyer to maintain respectful attitude towards the courts;³⁴ A lawyer representing an indigent person should provide such person quality legal

³¹ In 4th August 1982 see www.achpr.org/instruments/achpr/ratification/

³² Ratified 30th May 1975

³³ Mark Frankel (1989), 'Professional code s: Why, how, and with what impact?' *Journal of Business Ethics*, Vol. 8, pp.109–115. See also Ethics and Compliance Initiative available at <https://www.ethics.org/resources/free-toolkit/code-of-conduct/>

³⁴ Rule 2 of the Code of Moral and Professional Ethics, See also Austin Sarat and William Felstiner (1988-1989), 'Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office' *Yale Law Journal*, Vol. 98 p.1663

representation and non-payment of money should not be a barrier.³⁵ Similarly, the primary duty of the lawyer engaged in public prosecution is not to convict, but to see that justice is done.³⁶ In any case, suppression of facts or hiding of witnesses capable of establishing the innocence of the accused is highly reprehensible and utterly unprofessional.³⁷ Lawyers are enjoined to obtain full knowledge of their client's cause before advising thereon and it is unprofessional to advise the institution or continuation of an unmeritorious suit.³⁸

It is important that lawyers should avoid any act whereby for their personal benefit or gain they abuse or take advantage of the confidence reposed in them by their client.³⁹ For instance, money collected for their client, or other money or property of the client coming into their possession in the course of their professional duty to their client, should be accounted for promptly.⁴⁰ One of the most important duties a legal professional owes to a client is that of confidentiality. This duty applies to lawyers, paralegals, legal assistants, law firm secretaries, etc. Under most circumstances, a member of the legal representative of a client may not reveal any information given to him or her during that course of a legal representation without the consent of the client. This is known as the duty of "confidentiality."⁴¹ This is also consistent with the right to privacy of the client.

³⁵ Rule 5, See Jerome Carlin and Jan Howard (1964-1965), 'Legal Representation and Class Justice' *University of California Los Angeles Law Review*, Vol. 12 p.381

³⁶ See Rule 7, Kenneth Bresler (1995-1996), 'Pretty Phrases: The Prosecutor as Minister of Justice and Administrator of Justice' 9 *Geo. J. Legal Ethics* 1301

³⁷ Bennett Gershman (2010-2011), 'Hard Strikes and Foul Blows: Berger v. United States 75 Years After' 42 *Loy. U. Chi. L.J.* 177

³⁸ Rule 11, See also Richard Painter (1995-1996), 'Litigating on a Contingency: A Monopoly of Champions or a Market for Champerty' 71 *Chi.-Kent L. Rev.* 625

³⁹ Rule 15, See also Thomas Morgan (1976-1977), 'The Evolving Concept of Professional Responsibility' 90 *Harv. L. Rev.* 702

⁴⁰ John Dipippa (1995-1996), 'Lawyers, Clients, and Money' 18 *UALR L. J.* 95.

⁴¹ See Rule 35 of the Code of Moral and Professional Ethics. Note however that not everything is protected in confidence for the client. For example, announced intention of a client to commit a crime is not included within the confidence which the lawyer is bound to respect. He may properly make such disclosures as may be necessary to prevent a criminal act, or protect those against whom it is threatened. See also Geoffrey Hazard (1978), 'An Historical Perspective on the Attorney-Client Privilege' 66 *Calif. L. Rev.* 1061

Lawyers are expected to maintain the highest standard of honesty, integrity and fairness towards their client, the court, other lawyers and members of the public. This includes promptly honouring any undertaking given in the course of their legal practice. Similarly, a lawyer should possess the requisite competence needed to carry out his/her task. Competent legal representation requires the legal knowledge, skill, thoroughness and preparation that is reasonably necessary to represent a client. A lawyer should not accept any task that he or she cannot carry out in a competent and timely manner. This is because a lawyer holds ‘duty of care’ to his/her client. To comply with the duty of care, a lawyer must exercise the degree of care, skill, diligence, and knowledge commonly possessed and exercised by a reasonable, careful, and prudent lawyer in the practice of law in his jurisdiction.⁴² It is the case that "the practice of law tends to make the lawyer judicial in attitude and extremely tolerant."⁴³ It is therefore expected that "the lawyer has acquired a position materially different from that of other men. It is the position of the adviser of men."⁴⁴ Firm grasp of human rights knowledge is invaluable for a lawyer to discharge this important professional role. Although Lawyers ‘shall always loyally respect the interests of their clients’⁴⁵, but lawyers owe responsibility not only to his/her client but to the court and to the society at large.

It is axiomatic that the foregoing rules are to guide lawyers in their professional duty to ensure equity, due process, fairness, transparency and above all integrity. These are virtues protected by human rights principles and based principally on protecting the dignity of the human person. Violation of these codes of conduct attracts not only disciplinary action but condemnation from the courts. In the case of *LIMINCO VS. JUDGE PAYE et. al* (February 17, 2017) in Petition for the Writ of Prohibition, Madam Justice Yuoh of the Liberian Supreme Court stated inter alia –

“That the case now before us is a classic illustration of how lawyers, in concert with their clients and some judges have failed to adhere to this wisdom championed by the Supreme Court and stooped low to debase our noble profession by crucifying their integrity on the altars of chicanery in exchange for wealth regardless of the dire consequential and ethical implications. So despicable

⁴² *Hizey v. Carpenter*, 830 P. 2d 646 - Wash: Supreme Court 1992, See also G. Nelson Smith III (1989-1990), ‘The Locality Standard of Care in Legal Malpractice Actions: What Principles Govern Us When We Break Our Own Rules’ 3 *Geo. J. Legal Ethics* 581

⁴³ L. BRANDEIS (1914), *The Opportunity in the Law*, in *BUSINESS-A PROFESSION* 315 cited in David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 *Vanderbilt Law Review* 717 (1988) p.721; See also Julie Macfarlane (2008), *The New Lawyer: How Settlement is transforming the Practice of Law*, *UBC Press*.

⁴⁴ *Ibid*

⁴⁵ Article 15 - Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990

*were the ethical transgressions of these legal practitioners that even after the demise of one of their infamous leaders his notoriety lives after him, haunting his unethical partners in schemes.”*⁴⁶

This view is consistent with the trite position that lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

Members of the LNBA and the protection of human rights

It is the global standard that while promoting the cause of justice, lawyers shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law, recognized standards and ethics’ of the legal profession.⁴⁷ The mission statement of the LNBA, which is to “promote access to justice, legal professional ethics and effective administration of justice”, reinforces the duty of LNBA and its members to carry out legal practice in accordance with ethical code of conduct that protects and promotes human rights. There is no gainsaying the fact that part of the professional ethics of a legal practitioner is to be an astute vanguard for human rights promotion and protection and to ensure that the Liberian State fulfills its human rights obligations. The Nigerian Court of Appeal, Ibadan Division in the case of *ANPP & Ors Vs The Resident Electoral Commissioner Akwaibom State & Ors* (2008), *LPELR 8322 (CA)* is very clear on the duty of a legal practitioner by stating that –

‘It is trite that a lawyer has an onerous duty to uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct and thus shall not engage in any conduct which is unbecoming of a legal practitioner’. Emphasizing the important role of the legal profession in promoting professionalism and complying with the code of conduct, the Liberian Supreme Court in *RE: ABRAHIM B. SILLAH* stated that:

*“The legal profession is one of the most profound professions. The way it operates, like the medical profession, for example, can determine the life or death of a citizenry. If it operates poorly, the nation and the people feel the repercussions. The slightest mistake a lawyer makes may determine if an accused lives or dies; or whether he loses or gains freedom; or if it is a civil matter, whether the plaintiff or defendant gains or loses his life’s savings or aspirations”*⁴⁸

⁴⁶ *LIMINCO VS. JUDGE PAYE et. al* (February 17, 2017) in Petition for the Writ of Prohibition available at <https://judiciary.gov.lr/messrs-liberia-mining-corporation-liminco-petitioner-vs-his-honor-emery-payee-assigned-circuit-judge-sixth-judicial-circuit-montserrat-county-andmessrs-fidc-inc-fidc-inc-respondents/>

⁴⁷ Martha Davis (2010-2011), ‘Human Rights and the Model Rules of Professional Conduct: Intersection and Integration’ *Columbia Human Rights Law Review*, Vol. 42 p. 157. See The Basic Principles on the Role of Lawyers - Article 14 - available at <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

⁴⁸ *IN RE: Sillah, Sr. et. al* [2017] LRSC 9 (3 March 2017) available at <http://www.liberlii.org/lr/cases/LRSC/2017/9.html>

His Lordship, Justice Banks in this opinion, underscored the invaluable role of a lawyer in the dispensation of justice and in the discharge of his professional calling to his community. My learned colleagues, if lawyers do not adhere to, and promote principles of justice, fairness and equity, the law itself is brought into disrepute and public confidence in the law will be undermined and as such hindering access to justice. Indeed, legal profession's collective reputation is crucial to the confidence it inspires. Importantly, that reputation is linked to how the public views the administration of justice and individual lawyers actions have huge role to play in this regard. Where there is no public confidence in the legal profession, trust in the justice system itself is undermined.⁴⁹ If as lawyers, we stick tenaciously to the codes of professional ethics, it would be very difficult for unscrupulous politicians to have the unfortunate advantage of using lawyers to perpetrate human rights violations, including drafting anti human rights legislation.

Distinguished colleagues, for lawyers to be able to achieve this and to be 'above board', LNBA must be able to support and protect its members. The underlying rationale for Bar Associations is the need to provide a platform to allow the legal profession to carry out its legitimate activities without any external interference. They protect individual members of the legal profession, promote and uphold the cause of justice; defend the role of lawyers in society; maintain the honour and dignity of the legal profession and its members.⁵⁰ This is necessary because it is difficult for lawyers to protect the interests of their clients if they are subject to interference from others especially those in power.

The actions or inactions of a lawyer, judge, prosecutor or public defender in the courtroom has a direct impact on whether human rights are protected or whether human rights violations are reinforced in the courtrooms. Having been entrusted with this very important assignment of being the last bastion of hope for the oppressed as well as a vanguard for human rights protection, the LNBA should discharge this duty with unrivalled courage and integrity. The result of lawyers' obedience to the Professional Code of Conduct will be promotion and protection of human rights since the ideals of equity, fairness, transparency, integrity, accountability and empathy will be upheld. These are virtues wrapped within the human rights principles to respect and uphold the dignity of the human person.

It is therefore safe to submit that the Liberian Code of Moral and Professional Ethics is a code of conduct for lawyers while plying their trade and at the same time a reminder that we should respect and treat persons we meet in the course of our practice fairly. Such persons may be the judges,

⁴⁹ Deborah Rhode (2000) *In the Interest of Justice: Reforming the Legal Profession*, Oxford University Press

⁵⁰ See paragraph 45 of the Report of the Special Rapporteur on the Independence of Judges and Lawyers to the General Assembly, A/73/365, 5 September 2018, See also Laurel Terry et al (2011-2012), 'Adopting Regulatory Objectives for the Legal Profession' *Fordham Law Review*, Vol. 80 p. 2685

fellow lawyers, witnesses, clients, members of the jury etc. This is so much so because every code of professional conduct should contribute to promotion and protection of human rights. Any of such code that violates human rights has lost its legitimacy and moral basis for being a code of conduct. In such instance, members of the legal profession (and any other professions) are justified to jettison and indeed disrespect such code of conduct that violate human rights.

It is important that LNBA should ensure that its members are very conversant with provisions of the Code and principles of human rights. It should therefore be actively involved in mass enlightenment and mobilization to educate not only the members but also the public on their rights, how to respect others rights, what to do and who to approach when it is violated. This is in consonant with internationally recognized principle that “professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law”⁵¹. The Bar should also ensure that lawyers have appropriate human rights education and training and be made aware of their role in the promotion and protection of human rights.⁵² Consequently, the need for continuous legal education on human rights for the Bar to enhance the capacities of its members in human rights protection whether in court, out of court or for the legal drafters in ministries or Parliament are highly recommended. In addition, human rights education should be institutionalized in the Liberian Law School as a basis of instilling the necessary sensitivities early to ‘would be lawyers’.

Human rights violations happen everywhere including at home, which is why human rights education is important. Only with full awareness, understanding and respect for human rights can we hope to develop a culture where they are respected rather than violated. The right to human rights education is therefore increasingly recognised as a human right in itself. Human rights education is not only a moral right, but also a legal right under international law.⁵³ Article 26 of the Universal Declaration of Human Rights states that everyone has a right to education and that

"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote

⁵¹ Paragraph 4 of the Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990. See also William Sullivan et al (2007) Educating Lawyers: Preparation for the Profession of Law, John Wiley & Sons Inc.

⁵² Martha Davis (2010-2011), ‘Human Rights and the Model Rules of Professional Conduct: Intersection and Integration’ Columbia Human Rights Law Review, Vol. 42, p.157, See also Paragraph 9 of the Basic Principles on the Role of Lawyers note 51 supra.

⁵³ Hurst Hannum (1995-1996), ‘The Status of the Universal Declaration of Human Rights in National and International Law’ 25 Ga. J. Int'l & Comp. L. 287

understanding, tolerance and friendship among nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".⁵⁴ Importance of human rights education cannot therefore be over-emphasized.

Through a comprehensive human rights education, citizens are prone to making informed choices in life, approach situations with critical and independent thought, take principled positions on issues, incline to democratic and civil actions, and develop moral and intellectual integrity that transcends personal interests and to empathize with other's points of view. These values are surely invaluable in making a civilized citizen who is better equipped to hold duty bearers accountable for human rights violation. Lawyers are better suited to be human rights defenders because of their peculiar training in law and ethics. That is why they should be at the forefront demanding that Liberia ratify pending regional and international treaties and domesticate the ratified ones. For instance, Liberia has not ratified the Protocol establishing the African Court of Human and Peoples Rights, thereby denying Liberians access to that important regional human rights court. The LNBA should be concerned about this development and carry out advocacy for its ratification.

Another important area LNBA has role to play in promoting human rights is access to justice. Human rights have no meaning if victims do not have easy access to seek justice and redress. The Bar enhances access to justice by establishing vibrant pro bono programs through which members provide legal representation to indigent and vulnerable members of the community. However, the more sustainable way of ensuring access to justice is the establishment of legal aid institution with clearly defined merit-based eligibility criteria through legislation or as a national policy. I commend the efforts of LNBA in providing free legal representation to deserving persons through its different pro bono programs. There is need however to do more since there are still many people in the counties that need such services. OHCHR will partner with LNBA in this direction.

Accountability and Ethical Legal Practice

The rule of law and accountability for human rights violations are critical for prevention of violations, conflict and violence, the building and sustaining of peace, and achievement of inclusive development.⁵⁵ We need governance systems in which all duty bearers, institutions and entities, public or private, are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated, and consistent with international human rights norms and standards.⁵⁶

⁵⁴ Article 26(2) of the Universal Declaration for Human Rights (UDHR) 1948

⁵⁵ OHCHR: Strengthening the Rule of Law and Accountability for Human Rights Violation, available @ <https://www.ohchr.org/EN/AboutUs/ManagementPlan/Pages/law-accountability.aspx>, See also Lisa J. Laplante (2008), 'Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework' *International Journal of Transitional Justice*, Volume 2, Issue 3, December, Pages 331–355

⁵⁶ See Ozge Dericiler Yucel (2018) 'Human Rights Indicators as a Tool for Assessing the Accountability and the Rule of Law' *Proceedings of the XXIII World Congress of Philosophy*, Vol. 15, Human Rights, pp. 107-113

Important aspect of professional ethics that is not only for legal practitioners but for every profession is issue of 'accountability'. The question of 'Accountability' is as fundamental to the larger society as it is for members of professional group like LNBA. Public confidence is reinforced when rules and codes of conduct are effectively enforced without discrimination and no matter whose Ox is gored. This is applicable to enforcement of Legal Practitioners Codes of Conduct.

Accountability for past human rights violation in Liberia has been in the 'front burner' for a couple of years now. Liberians from all walks of life including the LNBA have in different fora called on the Government to implement the Truth and Reconciliation Commission (TRC) recommendations including establishing Economic and War Crimes Court. We commend LNBA for being a very strong voice in this regard and for coming up with a draft bill for setting up the Economic and War Crimes Court. It now behooves on the Liberian legislature to carry out the wish of their people whose prerogative it is to determine accountability mechanism for Liberia. As representatives of the people, the legislature is under legal duty to commence legislative framework for establishment of the Economic and War Crimes Court as requested by Liberians.

CONCLUSION

Professional ethics or codes of conduct are fundamental in ensuring an independent, competent, effective and accountable legal profession. They guide lawyers to follow client care procedures, act in the best interest of their client and to respect the court, witnesses and fellow lawyers. Ethics also instill virtues of fairness, honesty and integrity in the way lawyers conduct themselves and strengthens public confidence in administration of justice. In all these, respect for dignity of the human person is the foundation and basis for any professional ethics or code of conduct. Human rights represent the minimum standards with regard to decent treatment of human beings anywhere, notwithstanding the location or culture of persons involved. This therefore makes human right principles a powerful reference point and guide for formulation of rules of professional ethics and code of conduct. This also accounts why ethics should promote human rights and respect to human rights principles is beneath the rationale of any ethical codes. Accordingly, any code of conduct that violates human rights, such code has *ab initio* lost its legitimacy and moral basis to be code of conduct. Lawyers, by virtue of their training and calling should be the vanguard for human rights promotion and protection and this should reflect on their conduct and nature of advice they give to their clients.