

THE LEGAL PRACTITIONER AND PROTECTION OF HUMAN RIGHTS IN NIGERIA*

Abstract

On the 7th of September 1990, the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders in Havana, Cuba, adopted the Basic Principles on the Role of lawyers. The instrument highlights that the protection of human rights and fundamental freedoms requires unhindered access to legal services by independent legal practitioners. This instrument states that the professional association of legal practitioners play three vital roles; namely, to uphold professional ethics and standards; to provide legal services to all irrespective of race, gender, origin, religion or politics; and lastly, to cooperate with governmental and other institutions in furthering the ends of justice and public interest. Despite the above declaration on the role of lawyers and by extension to the professional association, effective access to legal services to all persons in present-day Nigeria has not been optimally achieved. The crucial question remains whether the role of lawyers in line with this instrument has improved human rights protection in Nigeria? This paper concludes that for Nigeria to achieve effective human rights protection, the role of legal practitioners must increase to achieve the justice needed by millions of victims of human rights violations.

Keywords: Human rights; Legal Practitioner; Duties: Nigeria: 1999 Constitution.

1. Introduction

The standard role of lawyers¹ and persons who exercise the function of lawyers in promoting and ensuring the proper role of lawyers was enshrined in Basic Principles on the Role of Lawyers over thirty years ago.² The role extends to and prioritises access to lawyers and legal services, special safeguards in criminal justice matters, qualifications and training, duties and responsibilities, freedom of expression and association, professional association of lawyers, and, disciplinary proceedings.³ Certainly, legal practitioners play a vital role in the administration of justice through their role as legal representatives to victims of human rights abuses. Some human rights safeguards such as the right to a fair and public hearing by an independent and impartial court, and the right to be tried without undue delay⁴ highlight the essential role of legal practitioners. In this sense, everyone is entitled to have effective access to legal services from independent legal practitioners.⁵

The role of a legal practitioner is embedded in international human rights treaties.⁶ These human rights provisions encapsulate the intention of drafters of those instruments towards effective human rights protection. In reality, however, ordinary people in several countries across the globe are ravaged by one of the most fundamental threats to human rights protection; access to justice and legal services. According to the key findings of the World Justice Project's Global Insight on Access to Justice 2019, justice problems are ubiquitous and frequent, and negatively impact people's lives.⁷ It is trite to say that people face a variety of obstacles to meeting their justice needs. For instance, the World Justice Project

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¹ The terminology 'lawyers' and 'legal practitioners' in this article mean and represent the same.

² United Nations Human Rights Office of the High Commission, Basic principles on the role of Lawyers, available at ><https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>< accessed 03 May 2022.

³ United Nations Human Rights Office of the High Commission, Basic principles on the role of Lawyers, available at ><https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>< accessed 03 May 2022.

⁴ Article 10 of the Universal Declaration of Human Rights (UDHR) and article 2 (b) and 14 of the International Covenant on Civil and Political Rights (ICCPR); article 6 of European Convention on Human Rights.

⁵ See also, article 14 of the international Covenant on Civil and Political Rights (ICCPR). This article guarantees the equality of all persons before the court.

⁶ Ibid.

⁷ This is the first effort to capture comparable data on the legal needs and access to civil justice on a global scale, representing the voices of people in 101 countries. See, Global Insights on the Access to Justice 2019, available at ><https://worldjusticeproject.org/our-work/research-and-data/global-insights-access-justice-2019>< accessed 03 May 2022.

estimates that over 1.4 billion people are unable to meet their everyday civil and administrative justice needs globally due to any of the following: source of help, problem status, hardship, legal problems, legal capacity, and process.⁸ The lives of these people who are largely among the poor and uneducated are often devastated by deprivations which impede their human rights.

Eliminating these deprivations entail improved substantive and procedural laws in affected countries. However, a legal practitioner's role in human rights protection cannot be optimally discharged without recourse to some legal factors associated with human rights such as substantive protection of a given right; the number of qualified lawyers in countries; and, the independence of a country's judiciary. But in the absence of strong substantive human rights law, and with an understanding that the legal practitioners and the courts are partners in human rights protection, the organ for making substantive law being the legislative arm of government is presumed a mover or enemy of human rights. In fact, the legislature, in the light of the unique and immense role it plays in a constitutional democracy, is expected to enact or amend laws that protect the rights of everyone without ambiguity or hindrances, and such hindrances must include poverty, hardship, or other factors emphasised above.

Human rights violations in Africa have been on the increase, and Nigeria is not an exception.⁹ Recently, the United States Council of Foreign Relations which monitors human rights violations in countries reconfirmed the execrable human rights records and the increasingly dismal daily experience of Nigerians.¹⁰ According to this report, repeated and persistent human rights abuses in Nigeria includes unlawful and arbitrary killings by both government and non-state actors; forced disappearances by government, criminal groups, and terrorists; torture and cruel inhuman, or degrading treatment or punishment by the government and terrorist groups; and, arbitrary arrest and detention. The role of legal practitioners in the face of such grave human rights violations in Nigeria is one that must bring remedies to victims and ensure government and non-state actors are held accountable. It is precisely in this situation that national and international scrutiny and action of legal practitioners bear its fruits since many of these victims are ordinary citizens who lack the means to seek remedies.

2. Exploring the Basic Principles on the Role of Lawyers

The Basic Principles on the Role of Lawyers (Basic Principles) adopted at the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders in Havana, Cuba¹¹ reaffirms that all persons are entitled to call upon the assistance of a legal practitioner of their choice to protect and establish their rights, and to defend them in all stages of criminal proceedings.¹² Given its importance, the Basic Principles was unanimously adopted by all member states present at the UN Congress on the Prevention of Crime and the Treatment of Offenders and was welcomed by the United Nations General Assembly in 1990. But before the adoption of the Basic Principles, extant international human rights treaties recognised the importance of access to a legal practitioner, especially, in criminal cases of serious offences. For instance, the right to a legal representative was recognised as early as 1950 under the European Convention on Human Rights (ECHR).¹³ Furthermore, the African Charter on Human and Peoples' Rights (African Charter) adopted in 1981 guarantee the right to defence, including the right to choice of one's counsel.¹⁴ Also, the International Covenant on Civil and Political Rights

⁸ Ibid.

⁹ M. Seenyonjo, 'Responding to Human Rights Violations in Africa: Accessing the Role of the African Commission and Court on Human and Peoples' Rights (1987-2018)' 7 (1) *International Human Rights Law Review*, 1; Amnesty International, 'Human Rights in Africa: Review of 2019' available at <https://www.amnesty.org/en/documents/afr01/1352/2020/en/> accessed 26 May 2022.

¹⁰ Nigeria's 2021 Human Rights Report, 'State Department's Report Highlights Magnitude of Human Rights Challenge in Nigeria' available at <https://www.cfr.org/blog/state-department-report-highlights-magnitude-human-rights-challenge-nigeria> accessed 03 May 2022.

¹¹ United Nations Human Rights Office of the High Commission, Basic Principles on the Role of Lawyers, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers> accessed 03 May 2022.

¹² Article 1 of the Basic Principles on the Role of Lawyers.

¹³ Article 6 (3) (c) of the Basic Principles on the Role of Lawyers.

¹⁴ Article 7 of the African Charter on Human and Peoples' Rights.

(ICCPR) emphasises this right in relation to criminal offences but moves further to state that such accused person shall be informed, if there is no legal representative, of the right to a counsel; and to have a legal representative assigned in the interest of justice, and without payment by the accused person in cases where the accused have insufficient means to pay for a legal representative.¹⁵ So far, the international human rights treaties recognise the role of legal practitioners regarding the improvements in the protection of human rights.

Regardless of these available human rights provisions, the Basic Principles further provide that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.¹⁶ From the foregoing, however, it is evident that governments are obligated to ensure that efficient procedure and responsive mechanisms for effective and equal access to lawyers are in place for all persons without distinctions of any kind, as well as funding and other resources for legal services to indigent citizens.¹⁷ This obligation on the government imposes a duty to guarantee an independent judiciary and legal profession that conforms with applicable standards if effective administration of justice and full and non-discriminatory realisation of human rights are to be achieved.¹⁸

However, the Basic Principles represents a serious commitment for legal practitioners in the administration of justice in line with the human rights principle of equality before the law. It is a conscious attempt by the United Nations (UN) to incorporate legal practitioners' with responsibility in the universal quest to protect human rights. By these principles, governments, educational bodies and professional associations of lawyers are saddled with the responsibility to ensure appropriate education and training, as well as ideals and ethical duties of the lawyer, and human rights and fundamental freedoms recognised by national and international law.¹⁹ This, arguably, is adopted because the training of legal practitioners is the foundation on which other roles of a legal practitioner toward effective human rights protection are laid. The result of having good training and education for legal practitioners will strengthen human rights governments, activists, and legal practitioners.

The understanding of training and education for legal practitioners must be open to all citizens without discrimination. For instance, article 10 of the Basic Principles guarantee that entry into the legal profession and continued practice within the legal profession is open to all without any form of discrimination on the ground of race, colour, sex, ethnic origin, religion, political or other opinion, birth, and, economic or other status. However, such restriction shall not be considered discriminatory where it is a requirement that a legal practitioner must be a national of the country concerned. The continuing training of legal practitioners ensures that the ideal and ethical standards are consistently imbibed. By embracing the responsibilities after training and education as emphasised by the Basic Principles, the minimal role expected of legal practitioners include ensuring victims of human rights violations are adequately represented in the course of justice that leads to remedies against their violated rights, and ensuring that justice is seen as done by holding human rights violators accountable.

A legal practitioner's role in promoting the cause of justice is intertwined with other roles such as advising clients as to their legal rights and obligations, taking legal actions to protect clients' interests, and assisting clients before the courts or tribunals.²⁰ The courts in Nigeria are the repository of the judicial power²¹ with powers to enforce legislation and international treaties that are ratified by virtue of section 12 of the 1999 Constitution. Accordingly, in promoting the cause of justice, legal practitioners must seek to uphold fundamental freedoms recognised by national and international law.²² This is a

¹⁵ Article 14 (3) (d) of ICCPR.

¹⁶ Article 7 of the Basic Principles on the Role of Lawyers.

¹⁷ See generally, article 2 and 3 of the Basic Principles on the Role of Lawyers.

¹⁸ See, article 27 of the Vienna Declaration and Programme of Action, 1993.

¹⁹ Article 9 of the Basic Principles on the Role of Lawyers.

²⁰ Article 13 of the Basic Principles on the Role of Lawyers.

²¹ Section 6 of the 1999 Constitution of Nigeria.

²² Article 14 of the Basic Principles on the Role of Lawyers.

earnest inclusion in the quest for improved access to justice and legal assistance to all persons for the protection of human rights and fundamental freedoms.

The Basic Principles is an ambitious document because both the preamble and majority of its principles focus on human rights protection. The bold recognition of human rights and the crucial role of legal practitioners in the preamble of the Basic Principles was to make member states establish the conditions under which justice can be maintained without distinction to race, sex, condition and religion. This, perhaps, stems from the United Nations objective towards promoting and protecting human rights. Simply put, the United Nations Congress on the Prevention of Crime and the Treatment of Offenders achieves, at least on paper, a decisive break from legal practitioners' lacklustre commitment to human rights, by ensuring that all persons have effective access to legal services. More so, the preamble of the Basic Principles unambiguously and boldly refers to all UN human rights instruments as its foundation to support the essence of legal practitioners. Therefore, legal practitioners should welcome this process, although the constraints of law practice specialisation exist within all regions. This submission is premised on the proposition that international human rights law is a recognised area of law.

However, the Basic Principle provides some minimal guarantees for legal practitioners by governments and authorities.²³ For instance, it recognises a legal practitioner's freedom of expression and association like any person under the law.²⁴ Simply put, lawyers are not barred from participating in discussions concerning the administration of justice and the promotion and protection of human rights; rather, lawyers must conduct themselves in accordance with the law and the recognised ethics and standard of the legal profession of the country. Moreover, as if the individual legal practitioner's recognition is not enough, the Basic Principles recognise the professional association of lawyers to represent their interests and protect their professional integrity, without external interference.²⁵ Such professional associations must cooperate with governments to ensure that equal access to legal services is guaranteed.²⁶ Adopting a realistic approach to the understanding that lawyers are not blameless or infallible, the Basic Principles provides for disciplinary measures and procedure for lawyers, while emphasising their inherent right to a fair hearing and the right to a lawyer for their defence.²⁷ Indeed, the Basic Principles establish a new culture of human rights promotion and protection.

The progressive provisions of the Basic Principles are only as good as the member states are willing to act upon them. However, both state parties and the legal professional bodies have a mandate to adopt the Basic Principles, and it can be argued that its provisions may have inspired the enactment or amendment of national laws on the association of legal practitioners that came into force after its adoption. Certainly, from a normative standpoint, the Basic Principles, although a non-binding instrument of the United Nations, is today a legal cornerstone for the independence of legal practitioners, the right to a lawyer, the right to access to justice, the principle of lawyer-client confidentiality, and against external intimidation and interference.

3. Construing the Role of Legal Practitioners in Nigeria

The legal profession is one of the most regulated disciplines, which is intended to enhance its nobility, decency, ethics, and excellence. The core legal instruments for legal practitioners in Nigeria are the Legal Practitioners Act (LPA), 2004, and, the Rules of Professional Conduct for Legal Practitioners (RPC), 2007, elaborated by the General Council of the Bar pursuant to the LPA. However, certain regulatory bodies have been established to help guide legal practitioners and ensure that fit and proper behaviour are exhibited. Instances of such bodies include the Nigeria Bar Association, Legal Practitioners Privileges Committee, Council of Legal Education, Legal Practitioners Disciplinary Committee, and Body of Benchers. These bodies ensure that the legal profession is practised by qualified legal practitioners for the good of public interest in the dispensation of justice.

²³ Article 16-22 of the Basic Principles on the Role of Lawyers.

²⁴ Article 23 of the Basic Principles on the Role of Lawyers.

²⁵ Article 24 of the Basic Principles on the Role of Lawyers.

²⁶ Article 25 of the Basic Principles on the Role of Lawyers.

²⁷ Article 26-29 of the Basic Principles on the Role of Lawyers.

The invocation of the membership of the body of legal practitioners in Nigeria as the cornerstone of upholding professional standards and ethics, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering justice is not unrestricted. Over time in Nigeria, the nature of membership of the Nigerian Bar Association (NBA)²⁸ has presumptively been automatic upon enrolment of a legal practitioner at the Supreme Court of Nigeria, and as a matter of obligation, payment of practising fees.²⁹ Under the LPA, members of the NBA shall have an audience in any court in Nigeria upon the payment of annual practising fees as prescribed by the Attorney-General of the Federation, after consultation with the NBA.³⁰ Simply put, legal practitioners must have been called to the bar, enrolled at the Supreme Court, and constantly pay the prescribed annual practice fees before they can represent clients in court.

A legal practitioner is a person entitled in accordance with the provisions of the LPA to practice as a barrister and solicitor either generally or for any particular office or proceeding.³¹ Section 2 of the LPA allows a person to practice law as a barrister and solicitor if, and only, he has been called to the Nigerian Bar and his name enrolled in the Supreme Court. The legal profession in Nigeria is fused unlike in England where it is separated between barristers and solicitors.³² The duty of a barrister is to represent a person in a court of law and advocate on behalf of such person. A barrister enjoys the right of audience in every court which allows such a person to conduct cases to a logical conclusion in accordance with the rules of procedure and evidence. On the other hand, a solicitor as a legal practitioner is consulted on issues such as the making of wills, drafting of leases and conveyances, contractual agreements, registration of land instruments, administration of estates, and formation of companies.³³

A legal practitioner has an obligation to diligently pursue a case to its logical conclusion, give honest and sincere advice to his client, and exhibit professional competence in the handling of the client's cases. In carrying out these responsibilities, a legal practitioner shall not be immune from liability for damages attributable to his negligence.³⁴ To avoid such negligence, a legal practitioner is expected to have the necessary competence before accepting any brief from a client.³⁵ Hence, no fear of public unpopularity should restrain a lawyer from the full discharge of the duty to ensure that a client benefits from every remedy and defence that is available in law.

Every legal practitioner is under professional obligation and duty to willingly accept briefs from clients without discrimination upon agreement on fees, where necessary. However, the undisturbed right of a lawyer to represent clients in court was tested on the strength of Rule 10 (1) of the RPC in *Sarkin Yaki v Baguda and others*.³⁶ In this case, the Supreme Court in its judgement delivered on the 27th of October, 2015, held that any process signed or filed without the NBA stamp/seal in line with Rule 10 (1) of the RPC is voidable. According to Justice Nwali Ngwuta, such a document, even though signed and filed, is not proper in law for the reason that the condition precedent for its proper signing and filing has not been met. This judgement brought to the fore a fundamental question regarding the legal rights of a lawyer to represent clients in the law court after enrolment at the Supreme Court and paying annual practice fees as enshrined under Rule 9 (1) of the Rules of Professional Conduct for Legal Practitioners, 2007 and the Legal Practitioners Act.

²⁸ The NBA is an association of all legal practitioners in Nigeria. This body was registered under the Land (Perpetual Succession) Ordinance on 8th April, 1983. This (Perpetual Succession) Ordinance was later replaced by Companies and Allied Matters Act (CAMA) 1990.

²⁹ See, O. Okoye, *Law in Practice in Nigeria -Professional Ethics and Skills* (2nd Edition, Snaap Press Nigeria Limited) 112. see, section 8 of the Legal Practitioners Act, 2004.

³⁰ Section 8 (2) of the Legal Practitioners Act, 2004.

³¹ Section 24 of the LPA.

³² A. J. Beredugo, *Nigerian Legal System* (3rd Ed, Malthouse Limited, 2009) 204; J. O. Asein, *Introduction to Nigeria Legal System* (2nd Ed, Ababa Press Ltd, 2005) 138.

³³ A. Oba, 'Towards rethinking Legal Education in Nigeria' (2008) 6 (1) *Journal of Commonwealth Law and Legal education* 97.

³⁴ Section 9 of the LPA.

³⁵ Rule 14 of the RPC.

³⁶ (2015) All Federation Weekly Law Report (Pt. 810) 1026.

Specifically, however, the NBA had just before this judgement sought to ensure compliance with Rules 9 and 10 of the RPC through a directive to the effect that from April 15, 2015, every document or process must have a stamp/seal of the NBA for its validation.³⁷ Going by this directive, the above judgement may not be faulted given the NBA's place as the regulating body of legal practitioners. Nonetheless, this judgement erodes the right of a legal practitioner to prepare, issue, or file a process in Nigerian courts. This, of course, links directly to legal representation in court because the filing of court processes is the foundation of advocacy and legal representation. Regrettably, however, acquiring the NBA stamp/seal is not automatic upon the enrolment at the Supreme Court and payment of the annual practice fee; rather, it is issued upon meeting other conditions such as registration with a branch/bar of the NBA, payment of branch dues and other levies, and payment for the stamp/seal fee. What this judgement will achieve is limited access to the courts because it requires every legal practitioner in Nigeria to join and remain an active member of the NBA through its branches. Therefore, there is perhaps an element of a constitutional breach in this judgement as it relates to the right to freedom of association and assembly under section 40 of the 1999 Constitution.³⁸

The rationale in *Sarkin Yaki v Baguda and others*³⁹ judgement contrasts sharply with the international tenets of access to justice, the right to freedom of association, and the role of legal practitioners in advancing human rights protection. It poses a momentous step to limiting legal practitioners' right to audience in courts based on technicalities, and such should not be encouraged. However, a pragmatic approach that eschews interpretation of this judgement has resulted to the amendment of the RPC by the Attorney General of the Federation,⁴⁰ in September 2020, pursuant to Section 12 (4) of the LPA 2004. This amendment deleted Rules 9 (2), 10, 11, 12 and 13 of the RPC 2007.⁴¹ Other significant rules amended are Rules 10 and 12, which deal with stamp and seal and the annual practising certificate for lawyers. Although the legality of the amendment has been raised, the deleted rules would in the future ensure that every lawyer's right to conduct and take part in any court proceedings, sign and file legal documents are not restricted under the law on the condition that they affix a stamp/seal or hold an annual practice certificate.

This amendment, though, has deleted the obvious threats posed by the demand to affix the stamp/seal in line with the judgement in the *Sarkin Yaki* case, it has further raised another controversy for being effected solely by the Honourable Attorney General of the Federation, which does not meet the provisions of the LPA.⁴² To these critics, the *modus operandi* for the amendment is wrong because the General Council of the Bar was not involved.⁴³ That notwithstanding, this amendment seems not to have changed a lot because legal practitioners have continued to pay annual practice fees and other branch dues as well as apply for their stamp/seal which is always affixed in all legal processes.

4. Constitutionality of the Role of Legal Practitioners in the Protection of Human Rights

The extent of human rights protection anywhere is measured by the nature in which human rights provisions are interpreted and implemented, and not by the width of the constitutional provisions. Presently, however, there seems to be a global tendency toward constitutional control legislation, and in the area of human rights, such control has been influenced by the development of international human rights treaties. Nigeria, not being an

³⁷ NBA Membership, available at ><https://nigerianbar.org.ng/nba-stamp-seal>< accessed 03 June 2022.

³⁸ See also, article 10 of the African Charter on Human and Peoples' Rights.

³⁹ (2015) All Federation Weekly Law Report (Pt. 810) 1026.

⁴⁰ The LPA confers power to make and amend the RPC on the General Council of the Bar, headed by the Attorney General of the Federation. Section 1 of the LPA. The composition of the General Council of the Bar shall be the Attorney General of the Federation, the Attorneys-General of the States, and twenty members of the Bar, and the quorum for this body shall be eight.

⁴¹ The amendment may be cited as the Rules of Professional Conduct for Legal Practitioners, 2020.

⁴² C. Onyekwelu, 'One Year After; X-raying the Validity and impact of the 2020 Amendment of RPC by Malami' The Cable, available at ><https://www.thecable.ng/one-year-after-x-raying-the-validity-and-impact-of-the-2020-amendment-of-rpc-by-malami>< accessed 20 May 2022; A. Osigwe, 'Stamp and Seal: AGF cannot unitarily amend the RPC' Law Forte, available at ><https://www.barristerng.com/stamp-and-seal-agf-cannot-unilaterally-amend-the-rpc-mazi-osigwe/>< accessed 21 May 2022.

⁴³ See article 1 and 12 (4) of the LPA.

exception, has human rights provisions in its 1999 Constitution.⁴⁴ The existence of constitutional human rights protection is not new in Nigeria: it has been expressly featured in previous constitutions of Nigeria.⁴⁵

Constitutional democracy requires more than the legal protection of human rights and rules necessary for the expression of the will of the people. In a constitutional democracy where power is granted based on the peoples' expression of their will, those in power have an undisputed obligation to implement the will of the people, which includes the provisions on their rights. Consequently, the position of the court and its ministers in the temple of justice becomes crucial in safeguarding the people's will by ensuring that obstacles to access to justice are eliminated. Emphatically, the role of the court, as well as legal practitioners in the protection of human rights, is enmeshed in section 46 (1) of the 1999 Constitution of Nigeria. This section stipulates that any person who alleges that any of the human rights provisions has been, is being, or is likely to be contravened may apply to a High Court for redress. An individual can access human rights as legal rights only by turning to the court of law, and the 1999 Constitution is clear on the role of the court. Section 46 (2) gives the High Court an original jurisdiction to hear and determine any application made to it concerning the violation of human rights as well as the power to make orders, issue writs and give directions as may be appropriate.⁴⁶ Human rights are mostly claimed by aggrieved parties. However, for the implementation of fundamental rights to be actualised, section 45 (3) of the 1999 Constitution requires the Chief Justice to make rules concerning the practice and procedure of the High Court. The rules act as the crucial pedestal for human rights enforcement in Nigeria.⁴⁷ This implies that the court and legal practitioners must always adhere to the procedure explicitly provided for in the rules in making a case for redress for an applicant or victim of human violation.⁴⁸

At the outset, the Supreme Court decision in *Adesanya v President*⁴⁹ interpreted the *locus standi* of an applicant in a fundamental human rights case as the actual victim. This decision allows only the victim to approach the court and seek redress. However, this conservative application began to change to accommodate public interest litigation. For instance, while in *Fawehinmi v Akilu*,⁵⁰ the Supreme Court applied the brotherhood concept that all human beings are brothers and an asset to one another, in *Williams v Dawodu* the Court of Appeal extended the concept by holding that the objective of the rule of law is to ensure the observance of the rule of law by permitting any person to put the judicial machinery in motion.⁵¹ Presently, no human rights litigation would be struck out or dismissed for want of *locus standi* by the applicant in line with these decisions which thus empowers legal practitioners, human rights activists, non-governmental organisations, and groups to institute human rights cases on behalf of victims who may have died, disappeared or facing arbitrary detention.

The decisions of courts in human rights cases are of tremendous significance in their justiciability and evolution as they aptly differentiate between a right denied, a right defended, and a right. A system of legal norms protects both the strong and weak, and as well ensures that domination is not absolute and entirely arbitrary. Yet, effective protection of human rights requires a strong legal culture which considers every act and omission as a potential legal dispute that is actionable in the courts. Nevertheless, legal practitioners and the courts are the primary protectors of the citizens' rights through their commitment to participative justice and just standards and procedure as well as against arbitrariness.⁵² However, to operate as the protector of citizens' rights, standard institutions and mechanisms such as judicial independence, accessibility to justice, the promulgation of laws, judicial review, the supremacy of the law, vibrant civil societies, virile lawyers association, civilian authorities control of the military, and intolerance to impunity must be present in the Nigeria society.

⁴⁴ See Chapter 4 of the 1999 Constitution, from section 33.

⁴⁵ See previous constitutions of Nigeria such as 1963 Republican Constitution, and, 1979 Constitution.

⁴⁶ Section 46 (2) of the 1999 Constitution.

⁴⁷ I. Uzo, *Guide to Fundamental Rights Litigation* (2nd edn, Law Digest Publishing Company, 2016) 90-91.

⁴⁸ *Abia State University v Anyaibe*, (1996) 1 Nigeria Weekly Law Report (Part 459) 646.

⁴⁹ *Adesanya v President* (1981) 1 All Nigeria Law Report; (1981) 5 S. C. 69.

⁵⁰ *Fawehinmi v Akilu* (1987) 4 Nigeria Weekly Law Report (Part 67) 797.

⁵¹ *Williams v Dawodu*, (1988) 4 Nigeria Weekly Law Report (Part 86) 189; see also, *Nwankwo v Ononeze-Madu* (2009) 1 Nigeria Weekly Law Report (Part 1123) 671.

⁵² P. N. Bhagwati, 'Human rights as Evolved by the Jurisprudence of the Supreme Court of India' (1987) 13 Commonwealth Law Bulletin 237.

5. Synopsis of the Duties of Legal Practitioners in Nigeria

The Rules of Professional Conduct for Legal Practitioners 2007 (RPC) represents a serious commitment to the task of promoting and ensuring the proper role of legal practitioners in Nigeria. Under the RPC, a legal practitioner must uphold and observe the rule of law, promote and foster the cause of justice, maintain high standards of professional conduct, and portray the legal profession in a good light.⁵³ Human rights protection did not feature high in the RPC as with the Basic Principles. In contrast, the RPC provisions highlight little or no focus on human rights; rather, it upholds professional standards and ethics for members of the legal profession. Simply put, the RPC is preoccupied with the duties of legal practitioners as well as the relationship between legal practitioners and their clients, court, colleagues and the state. Therefore, the provisions of the RPC, as subsidiary legislation, having been made pursuant to Section 1 of the LPA are binding on all lawyers in Nigeria.⁵⁴

Firstly, a legal practitioner's duties to the court under the RPC are the obligations and responsibilities a legal practitioner owes to the court to maintain the dignity of the profession.⁵⁵ These guidelines and principles include a duty to respect attitude toward the court, courtroom decorum, a duty not to engage in trial publicity, and a duty to assist the court for quick dispensation of justice. The duty to assist the court is necessary to prevent delay in the administration of justice. Impliedly, this involves appropriate drafting and filing of necessary documents, and being present and prepared for cases in court, without constant requests for adjournments. Such duty by a legal practitioner is essential to speedy trial and conclusion of human rights cases. In fact, legal practitioners' attempt to rigorously adhere to this duty will promote justice, the rule of law, and human rights regime in Nigeria.

On the other hand, a legal practitioner's duty to a client under the RPC is encompassing.⁵⁶ Lawyers owe their clients a duty to make use of all applicable means to protect and advance the client's legitimate rights, objectives and claims. Duties under this category ensure that a lawyer is committed and devoted to the cause of the client; and, that a lawyer represents a client within the bounds of the law. Therefore, a lawyer shall not be deterred by a real or imagined fear of judicial disfavour or public unpopularity. Nonetheless, a lawyer may in unusual circumstances such as personal interest, conflict of interest, and religious belief, refuse to accept briefs from a client.⁵⁷ However, a lawyer's duty to accept briefs is subject to the payment of professional fees. The idea of professional fee should not deter a lawyer from accepting briefs on *pro bono* basis especially where human rights violation has occurred to a potential client with no financial capacity to pay for the needed legal services. In the sense, a lawyer must be honest in his relationship with his client, act in good faith and work in the best interest of the client. Thus, any dishonest act of a lawyer against a client will amount to misconduct.

In the service of justice to aid the legal system in Nigeria, lawyers also owe a duty to their colleagues.⁵⁸ The underpinning provision provides that 'lawyers shall treat one another with respect, fairness, consideration and dignity, and shall not allow demeanour towards the opposing clients'.⁵⁹ A lawyer must demonstrate respect for the legal service and for those who serve it, including judges, colleagues and public officials. The conduct of a lawyer should conform to the requirements of the law in professional service and personal affairs. In this light, the Supreme Court in *N. B. A. v. Ihioma* held that 'legal practice is a very serious business that is to be undertaken by serious-minded practitioners, particularly as both the legally trained minds and those not so trained learn from our examples. We, therefore, owe the legal profession the duty to maintain high standards required in the practice of the profession in this country'.⁶⁰ From the foregoing, the RPC encapsulates the ethics of the legal profession, which must be taken seriously by every lawyer.

The duties of a legal practitioner in Nigeria wittingly promote and foster the cause of justice. This position is overtly supported in the 1999 Constitution of Nigeria. For instance, section 6 vests the judicial powers of the courts, and the judicial powers vested in this section shall extend to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question

⁵³ Rule 1 of the RPC 2007.

⁵⁴ See, *NBA v Koku* (2006) 11 Nigeria Weekly Law Report (Pt. 991) 431. in this judgement, the court cited Section 18 of the Interpretation Act, which states that a subsidiary legislation has the force of law.

⁵⁵ Rules 30-38 of the RPC.

⁵⁶ Rule 14-22 of the RPC.

⁵⁷ Rule 24 of the RPC.

⁵⁸ Rules 22-25 of the RPC.

⁵⁹ Rule 26 (1) of the RPC.

⁶⁰ *N. B. A. v Ihioma* (2020) 14 Nigeria Weekly law Report (Pt. 1231) 641 at 680.

as to the civil rights and obligations of that person.⁶¹ The role of the courts further includes the protection and enforcement of the rights of citizens and the protection of the supremacy of the constitution. This position has been settled by the court in *INEC v Musa* where the court ruled that all powers, legislative, executive and judiciary must ultimately be traced to the constitution and the legislative power of the legislature cannot be exercised inconsistently with the constitution.⁶² Having robust and generous duties in the promotion of justice and the protection of human rights, the recognition of the judiciary in the constitution will not be useful or relevant if lawyers fail to breathe life, meaning, purpose and content to those constitutional provisions on the judiciary.

6. Conclusion

Effective human rights protection does not start and end with the articulation of human rights in the constitution of any country. A legal practitioner plays a vital role in the preservation of the protection of human rights, the administration of justice and the preservation of society. The role of legal practitioners constitutes a cornerstone of the legal system itself and human rights protection, especially to the victim whose rights have been violated, is violated or is likely to be violated. Consequently, legal practitioners and their professional associations ought to remain free to challenge authorities who do not respect the rule of law, respect to access to, and administration of justice. The role of legal practitioners is one that must improve the quality of legal services rendered to human rights victims while observing the rules of professional conduct. That, notwithstanding, the courts play a very important role in the protection of human rights in every society. This is because a legal practitioner's role is incomplete without access to a court. Therefore, the courts must complement the role of lawyers towards enhancing effective human rights protection by adopting a much broader and more liberal interpretation of human rights. Likewise, judges must take a robust position by mainstreaming human rights in their judgements, which requires a departure from the traditional complacency to judicial activism. Hence, the courts must depart from strict adherence to precedents where it does not take human rights forward. In all, Nigeria needs to accept new vistas that foster the cause of justice as well as protect human rights such as an increase in legal practitioners' participation in the legislative process, especially concerning human rights protection and access to justice.

⁶¹ Section 6 (6) (b) of the 1999 Constitution of Nigeria.

⁶² (2003) 3 Nigeria Weekly Law Report (Pt 806) 72 at 157 para D-G.