

## PROFESSIONAL ETHICS IN THE PRACTICE OF JUDGES, PROSECUTORS AND ADVOCATES IN RWANDA

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### *Abstract*

*Judges, prosecutors as well as advocates serve many peoples in the various functions. The position they assume in society makes them answerable to a variety of stakeholders. They owe duties to normal citizens, to courts, opposing parties, and the wider community. Along with those external duties, they also owe a duty to themselves. These duties require them to follow certain ethical principles which incorporate common values of honesty, integrity and decency that all judges, prosecutors and advocates should possess. This article aims at analysing specific ethical principles and values required for a lawyer serving in capacity of judge, prosecutor or advocate. The author argue that compliance of the ethical principles would be greater to the legal profession by protecting its image and boosting public confidence in the legal system and in the rule of law.*

**Keywords:** Ethics, Professional Ethics, Legal Profession in Rwanda, Judges in Rwanda

### **1.0 Introduction**

The word ethics is not defined with exactitude. But peoples know Ethics, when they see it; when they smell it; when they hear it; when they taste it; and when they touch it. Equally, all know the opposite of Ethics (the Un-

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ethical), when they confront it, even at first glance.<sup>1</sup> The ethical is a wholesome, positive force in societies, and, especially so, in the governance mechanisms of our societies. Ethics defines what is good for the individual and for society, and establishes the nature of duties that people owe to themselves and to one another.<sup>2</sup> The ethical values include such signs as nobility, accountability, honesty, honour, trust, truth, openness, hard work, resilience, competence, diligence, proficiency, perseverance, charity, sacrifice, selflessness, self-denial and self-esteem.

Legal profession is a noble profession. The nobility of the legal profession is maintained by the adherence and observance of a set of professional norms by those who adopt this profession. It is known as legal ethics or the ethics of the legal profession.<sup>3</sup> In this lecture at the Institute of Legal Practice and development (ILPD), Johnston Busingye, the Minister of Justice and attorney general stated that: There is a need to continually ensure that legal practitioners are well equipped with professional ethics to drive fair judicial system and promote public trust and confidence.<sup>4</sup>

In the light of this, the legal profession plays a most significant role in upholding the social fabric. This is largely because lawyers are the people who have a direct part to play in the maintenance of the rule of law which is in turn what fastens and upholds society. Hence, it logically follows that when a Justice system builds a reputation of being trusted by the people and public confidence, then the people are fine and the whole society is better off at doing things.

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<sup>1</sup> D. Brian Dennison and P. Tibihikirra-Kalyegira (Eds), *Legal Ethics and Professionalism*, Geneva, Globethics 2014, p 31.

<sup>2</sup> D. Mortimer Schwartz, R. C. Wydick and Aliis, *Problems in Legal Ethics*, 6th ed, USA, West Group, 2003

<sup>3</sup> Garner Black's Law Dictionary 913 quoting Rhode and Luban Legal Ethics.

<sup>4</sup> New times, *Minister Busingye tips law students on ethics*, <https://www.newtimes.co.rw/section/read/211507>, Accessed on 10 May 2021.

In Rwanda, there are specific laws that regulate professional ethics for advocates, judges and prosecutors.<sup>5</sup> This article intends to investigate available laws that governs the legal professional ethics of Advocates, judges and prosecutors in Rwanda. The first issue to explore is the professional conducts for career judges and auxiliary judges in the exercise of their judicial function. The second issue relates to ethical values and principles governing the prosecutors and other members of staff of the National Public Prosecution Authority. Lastly, the article will evaluate the professional behaviour and ethics of advocates in the performance of their duties.

## **2.0 Professional Ethics for Judges**

Being a judge is as equally beautiful and utterly absorbing, as being a doctor or being a scholar. The profession of being a judge is not a good career for persons who do not possess a sufficiently well-established sense of personal and professional dignity, the virtue of personal integrity, impeccable past, professional and practical knowledge, social and family maturity, and personal maturity to be able to assume full responsibility for each ruling passed in accordance with the law and with their own conscience.<sup>6</sup>

In Rwanda, ethics for judges is governed by the Law N° 09/2004 OF 29/5/2004.<sup>7</sup> Judges are appointed in order to serve the citizens. They enforce laws in the name of the people. Their conduct should comply with

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<sup>5</sup> Law N° 09/2004 of 29/5/2004 Relating to the Code of Ethics for the Judiciary, *Official Gazette*. n° 11 of 01/06/2004; Law N°44 BIS/2011 OF 26/11/2011 Governing the Statute of Prosecutors and other Staff of the National Public Prosecution Authority as Modified and Complemented By Law N°12/2016 of 02/05/2016 and Law N°60/2016 of 11/01/2017, *Official Gazette* n°14 of 02/04/2012); (*O. G* n°21 of 23/05/2016); (*O. G* n° 4 of 23/01/2017); Law N° 83/2013 OF 11/09/2013 Establishing the Bar Association in Rwanda and Determining its Organization and Functioning, *Official Gazette* No. 44 of 04/11/2013

<sup>6</sup> Andrzej Rzeplinski, President of the Constitutional Tribunal of Poland, 201

<sup>7</sup> Law N° 09/2004 OF 29/5/2004 Relating to the Code of Ethics for the Judiciary, *Official Gazette*, n° 11 of 01/06/2004)

their obligations and their incompatibility provided for by this law. This law governs the common values of honesty, integrity and decency that all judges should possess. They may be complex issues, however, concerning the utility of theory of ethics. Why should we study ethics while there laws in place to direct, constrain and wrong and unprofessional behaviours? Another line of inquiry concerned the relationship between law and ethics? Could one enforce morality through legal means? These conundrums left me and many of others questioning the utility of ethical studies. There are additional challenges to the worthiness of judicial ethics in terms of relevance and practicality.

In Rwanda, the process of selecting and appointing judges is comprehensive. Efforts are made to ensure that judges are morally upright before they ever take the bench. Similar high standards are maintained through stringent threshold requirements and extensive background checks in other jurisdictions. For one to become a judge it is assumed that they will have gone through a rigorous vetting and selection system. Thus, only people with high integrity and ethical standards should qualify for judicial appointment. One could reasonably argue that there is no need for an emphasis on judicial ethics when those charged with practicing and maintaining judicial ethics are vetted to be ethical in the first place.

These arguments aside, it is my firm and respectful contention that judicial ethics is a worthy ground for inquiry, study and consideration. First of all, judicial ethics entails more than avoiding wrongdoing and public reprobation. Judicial ethics provides judges with the principles and precepts they need to navigate challenging scenarios in a manner commensurate with their office and societal obligations. Moreover, the tenets of judicial ethics must be known and agreed upon so that judges can be held accountable for their actions by the legal community and civil society. Finally, knowledge about the ethical standards applicable to judges empowers the general public to hold judges accountable.

## **2.1 Basic Principles of Judicial Ethics**

This section will cover the basic principles of judicial ethics. This includes a brief definition of judicial ethics, a discussion about the tension between rule-based and principle-based approaches to judicial ethics, a concise description of the Rwandan framework concerning judicial ethics and an introduction to the Bangalore Principles.

For the purpose of this section, I will define ethics as a system of moral principles that direct and inform people's actions and decisions to refrain from acting. It follows that judicial ethics is the system of moral principles that govern judicial officers. In performance of their regular tasks, judges should be guided by the following principles as provided for by the Law No. 09/2004 of 29 April 2004 relating to the Code of Ethics for the Judiciary.

## **2.2 The Principle of Judicial Independence**

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. To this end, article 4 of the law state that:

A judge shall be independent in the exercise of his or her judicial functions. A judge shall independently examine matters before him or her and take decisions without any external pressure.

It follows that the judge shall uphold and exemplify judicial independence in both its individual and institutional aspects. This means that if an individual judge possesses that state of mind, but the court over which he or she presides is not independent of the other branches of government in what is essential to its functions, the judge cannot be said to be independent. Judicial independence is, therefore, both a state of mind and a set of institutional and operational arrangements.<sup>8</sup>

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<sup>8</sup> Paragraph 23 of the Commentary of Principle 1(1) of Bangalore Principles of Judicial Conduct, 2002, [bangaloreprinciples.pdf \(unodc.org\)](https://www.unodc.org/bangaloreprinciples.pdf), accessed on 16 May 2024.

Judges must maintain a high quality while doing everything and they must remain steadfast to the law, notwithstanding all external authority or influence. They must be humane and socially aware but not sentimental or pandering to short-term trends. They must be consistent and clear in developing legal principles. They must be fearless but restrained when exercising public-law powers.

According to the Bangalore Principle 1, a judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law and free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.<sup>9</sup> Judicial independence entails both outward appearances and internal disposition. A judge shall be also independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.<sup>10</sup>

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<sup>9</sup> Paragraph 29 of the Commentary of Bangalore Principle 1(1) deals with the issue in more detail: "All attempts to influence a court must be made publicly in a court room, and only by litigants or their advocates. A judge may occasionally be subjected to efforts by others outside the court to influence his or her decisions in matters pending before the court. Whether the source be ministerial, political, official, journalistic, family or otherwise, all such efforts must be firmly rejected. These threats to judicial independence may sometimes take the form of subtle attempts to influence how a judge should approach a certain case or to curry favour with the judge in some way. Any such extraneous attempt, direct or indirect, to influence the judge, must be rejected. In some cases, particularly if the attempts are repeated in the face of rejection, the judge should report the attempts to the proper authorities. A judge must not allow family, social or political relationship to influence any judicial decision." See Bangalore Principles of Judicial Conduct, 2002, [bangaloreprinciples.pdf \(unodc.org\)](#), accessed on 16 May 2021.

<sup>10</sup> "While a judge is required to maintain a form of life and conduct more severe and restricted than that of other people, it would be unreasonable to expect him or her to retreat from public life altogether into a wholly private life centred around home, family and friends." Commentary, paragraph 31 "The complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial [...]. A judge is not merely enriched by knowledge of the real world; the nature of modern law requires that a

### 2.3 The Principle of Integrity

According to the law relating to the code of ethics for the judiciary, integrity is essential to the proper discharge of the judicial office. No definition or description of integrity is provided in the law. However, the law calls for judges to respect the law and uphold exemplary character in private and public life.<sup>11</sup> A judge shall avoid anything which may erode public confidence or which might compromise the reputation and honour of the judiciary. He shall settle his or her debts duly and avoid insolvency likely to result from extravagant expenditures and any other conduct like indecency.

A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.<sup>12</sup> The way in which this sensitive issue is handled is therefore crucial. Because appearance is as important as reality in the performance of judicial functions, a judge must be beyond suspicion. The judge must not only be honest, but also appear to be so. A judge has the duty not only to render a fair and impartial decision, but also to render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and also as to the judge's integrity. Therefore, while a judge should possess proficiency in law in order competently to interpret and apply the law, it is equally important that the judge act and

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judge live, breathe, think and partake of opinions in that world [...] Increasingly, the judge is called upon to address broad issues of social values and human rights, to decide controversial moral issues, and to do so in increasingly pluralistic societies. A judge who is out of touch is less likely to be effective." See Bangalore Principles 1(2) of Judicial Conduct, 2002, [bangaloreprinciples.pdf \(unodc.org\)](#), accessed on 16 May 2021.

<sup>11</sup> Articles 6, 7 and 8 of the Law N° 09/2004 of 29/5/2004 Relating to the Code of Ethics for the Judiciary, *Official Gazette* n° 11 of 01/06/2004

Principle 3(1-2) of the Bangalore Principles of Judicial Conduct, 2002, [bangaloreprinciples.pdf \(unodc.org\)](#), accessed on 16 May 2021.

behave in such a manner that the parties before the court are confident in his or her impartiality.

#### **2.4 The Principle of Diligence**

The law relating to the code ethics for the judiciary provides that “a judge shall perform his or her work with due care and diligence.” A judge is expected to maintain his or her diligence in a number of ways of which the four key ways are identified below:

- 1° adjudicate cases before him or her without undue or unjustified delays;
- 2° write judgements as soon as possible after deliberations;
- 3° maintain order and decorum in all matters before court;
- 4° in general, devote his professional capacity in the interest of work and respect its official hours.<sup>13</sup>

The application of these principles require judges to prioritize their career, stay abreast of the law and perform their duties.<sup>14</sup> The law goes on by

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<sup>13</sup> Article 9 of the Law N° 09/2004 OF 29/5/2004 Relating to the Code of Ethics for the Judiciary, Official Gazette n° 11 of 01/06/2004

<sup>14</sup> - The judicial duties of a judge take precedence over all other activities.

- A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses,

stating that a judge, in the exercise of his or her judicial functions, shall be encouraged to enhance technical knowhow and knowledge for better performance of his or her duties.<sup>15</sup> The centrality of competence and diligence in judicial practice was affirmed by the Bangalore principles.<sup>16</sup> Competence and diligence are considered as the prerequisites to the due performance of judicial office.

Indeed, this principle of diligence requires the delivery of reserved decisions with efficiency, fairness and reasonable promptness. The judge is required to conduct the proceedings before him with the requisite order and decorum. He is also to exercise patience with all those that appear before him in court. Judicial dedication to such principles can generate tangible results. The principle of diligence is the principle that lends itself to quantitative analysis. A judge's adherence to this principle can be measured more effectively and objectively than under any other principle.

## **2.5 The Principle of Impartiality**

Impartiality is the essence of the judicial function and applies not only to the making of a decision but also to the process by which the decision is made. A judge shall perform his or her duties without favour, bias or prejudice. According the article 11 of the law Relating to the Code of Ethics for the Judiciary, "a judge shall be impartial and shall demonstrate it in proceedings before court as well as in decisions he or she takes."<sup>17</sup>

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lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

- A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties

<sup>15</sup> Article 10 of the Law N° 09/2004 OF 29/5/2004 Relating to the Code of Ethics for the Judiciary, Official Gazette n° 11 of 01/06/2004

<sup>16</sup> Principle 6 of the Bangalore Principles of Judicial Conduct, 2002, [bangaloreprinciples.pdf \(unodc.org\)](#), accessed on 16 May 2021.

<sup>17</sup> Article 11 of the Law N° 09/2004 of 29/5/2004 Relating to the Code of Ethics for the Judiciary, Official Gazette n° 11 of 01/06/2004

Partiality can be either objective or subjective. Subjective partiality is complicated by the fact that it is more often than not unconscious. It is quoted that “we do not see things as they are, but rather as we are.”<sup>18</sup> To observations which ourselves we make, we grow more partial for the observer’s sake. As a remedy of this human tendency, the law Relating to the Code of Ethics for judiciary provides that a judge shall disqualify himself or herself in all matters in which he or she has interests, those of the parents, his or her relatives, friends and at any other time there is a likelihood of his or her impartiality.<sup>19</sup>

For objective impartiality, however, a judge should never make any comments in public that might impair the manifest fairness of the judicial process. Also, out of court a judge should avoid deliberate use of words or conduct that could reasonably give rise to a perception of an absence of impartiality.

The Council of Europe has restated this principle, indicating that “Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law”<sup>20</sup> A judge shall conduct himself or herself in a manner that handles all people equally, without any discrimination whatsoever based on race, colour, ethnicity, origin, clan, sex, opinion, religion or social status. He/she shall avoid any conflict of interest as well as situations which might reasonably be perceived as giving rise to a conflict of interest.

In order to enhance the impartiality of judges in Rwanda, the Code of Ethics requires judges to abstain from engaging in business and other activities that may jeopardize their independence. Article 18 of the Code states: “the

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<sup>18</sup> Anais Nin - *"We don't see things as they are, we see them as we are."*  
<https://inspirationalgoods.com/blogs/>, accessed on 16 May 2021

<sup>19</sup> Article 11 (2) of the Law N° 09/2004 of 29/5/2004 Relating to the Code of Ethics

<sup>20</sup> Council of Europe, Recommendation No. R (94), doc. cit, Principal I.2.d.

he functions of a career judge shall be incompatible with political mandate, any management and any other public or personal service, whether directly or by employing other people.” One may argue that since the state cannot afford to pay them well, they should be allowed to supplement their income through other income-generating activities like other, working people in the public sector. However, it is strictly necessary to maintain this restriction on judges to minimize the temptation of corruption.

In nutshell, impartiality is the fundamental quality required of a judge and the core attribute of the judiciary. Impartiality must exist both as a matter of fact and as a matter of reasonable perception. If partiality is reasonably perceived, that perception is likely to leave a sense of grievance and of injustice, thereby destroying confidence in the judicial system. The perception of impartiality is measured by the standard of a reasonable observer. The perception that a judge is not impartial may arise in a number of ways, for instance through a perceived conflict of interest, the judge’s behaviour on the bench or his or her associations and activities outside the court.

## **2.6 The Principle of Confidentiality**

Under this principle, a judge shall maintain professional secrecy, even after his or her retirement unless the interest of justice requires otherwise.<sup>21</sup> Judges shall respect the confidentiality of consultations which relate to their judicial functions, the secrecy of deliberations, and the confidentiality of information acquired in the course of their duties, other than in public hearings. This means that a judge shall keep information about his or her own deliberative process as well as the deliberative process of another judge.

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<sup>21</sup> Article 15 of the Law N° 09/2004 of 29/5/2004 Relating to the Code of Ethics for the Judiciary, *Official Gazette* n° 11 of 01/06/2004

The law on ethics provides that the duty to keep professional secrecy disqualifies judges from any behaviour, language and statements which may put a judge's impartiality to question.<sup>22</sup> From this wording, Rwandan judges owe an explicit duty of confidentiality with respect to both public and private information acquired in their judicial capacity. The principle of deliberative secrecy protects some confidential information about the deliberative process of judges. As noted by the *Nova Scotia Court of Appeal in Cherubini Metal Works Ltd v Nova Scotia (Attorney General)*:

The principle of deliberative secrecy prevents disclosure of how and why adjudicative decision makers make their decisions. This protection is necessary to help preserve the independence of decision-makers, to promote consistency and finality of decisions and to prevent decision-makers from having to spend more time testifying about their decisions than making them.<sup>23</sup>

However, the scope of deliberative secrecy is narrow. It operates as an evidentiary rule that prevents disclosure of evidence concerning the deliberative process of judges and tribunal members. As noted by *McLachlin J in MacKeigan v Hickman*, it is grounded in the constitutional principle of judicial independence:

The judge's right to refuse to answer to the executive or legislative branches of government or their appointees as to how and why the judge arrived at a particular judicial conclusion is essential to the personal independence of the judge, one of the two main aspects of judicial independence . . . As stated by *Dickson C.J. in Beauregard v. Canada*, the judiciary, if it is to play the proper constitutional role, must be completely separate in authority and function from the other arms of government. It is implicit in that separation that a judge cannot be required by the executive or legislative branches of government to explain and account for his or her judgment.<sup>24</sup>

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<sup>22</sup> Article 16 of the Law N° 09/2004 of 29/5/2004 Relating to the Code of Ethics

<sup>23</sup> 2007 NSCA 37 at para 14, 253 NSR (2d) 144.

<sup>24</sup> [1989] 2 SCR 796 at 830–31, 76 DLR (4th) 688.

Deliberative secrecy is *prima facie* mandatory and cannot be waived by judges to voluntarily explain their deliberative reasoning when convenient, though it can be lifted by the court to admit deliberative evidence in some situations.

## **2.7 The Principle of Probity**

According to the law regulating the ethics for judicially, probity is essential to the performance of all of the activities of a judge. In this regard, “every career judge shall, upon assuming office and at all times as required by laws, declare his or her assets and liabilities to the Office of the Ombudsman.”<sup>25</sup> Probity requires conformity to conventionally accepted standards of behaviour or morals. It is in essence the flip side of integrity. While integrity reflects the private side of a judge’s values, probity reflects his or her public side. Although a judge, like any other citizen, is entitled to a private life; he must also expect to be the subject of constant public scrutiny and comment, and must therefore accept a restriction on his or her activities that might be viewed as burdensome by the ordinary citizen.

## **2.8 Incompatibilities and Interdictions**

Incompatibility is described in the legal literature as the prohibition to “carry out certain activities that might affect the exercise of the profession”<sup>26</sup> or as “legal impossibility to cumulate certain public functions or specific elective mandates or a public function or an elective mandate with certain private occupations or two private activities.”<sup>27</sup> The law regulating the ethics for judicially provides that the functions of a career judge shall not be compatible with political mandate, any management and any other public or personal service, whether directly or by employing other

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<sup>25</sup> Article 17 of the Law N° 09/2004 of 29/5/2004 Relating to the Code of Ethics

<sup>26</sup> Roxana M., “The incompatibilities in exercising the profession of lawyer from the ECHR jurisprudence perspective”, Series VII: *Social Sciences & Law* Vol. 8 (57) No. 1 – 2015; Cornu, G., *Vocabulaire juridique*. Paris, Quadrige/ PUF, 2007, p. 478.

<sup>27</sup> Debard, Th., Guinchard, S., *Lexique de termes juridiques*, Paris, 21 Edition, PUF, 2014, p. 497.

people.<sup>28</sup> However, the incompatibility may be lifted by the President of the Supreme Court after assessing whether the activities do not compromise the dignity and independence of the judiciary.<sup>29</sup>

### **3.0 Professional Ethics for Prosecutors**

In Rwanda, the profession of public prosecutors is governed by the law n°44 bis/2011 of 26/11/2011 governing the statute of prosecutors and other staff of the national public prosecution authority as modified and complemented by law n°12/2016 of 02/05/2016 and law n°60/2016 of 11/01/2017.<sup>30</sup>

In general, a public prosecutor is responsible for the investigation and prosecution of persons responsible for violations of criminal law or international criminal law committed in the territory of Rwanda. Rwandan prosecutors are also competent to prosecute crimes committed outside Rwandan territory if the offender or victim is a Rwandan. The primary responsibility of the prosecutor is to seek justice within the bounds of the law, not merely to convict.<sup>31</sup>

The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the

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<sup>28</sup> Article 18 of the Law N° 09/2004 of 29/5/2004 Relating to the Code of Ethics

<sup>29</sup> Article 18(2) The President of the Supreme Court may, however, grant to judge's permission to conduct lectures on subjects relevant to their field of work, or to carry out any other activities that do not compromise their dignity and independence.

<sup>30</sup> Law N°44 BIS/2011 OF 26/11/2011 governing the statute of prosecutors and other staff of the national public prosecution authority, *Official Gazette* n°14 of 02/04/2012; modified and completed by Law n°12/2016 of 02/05/2016 (O. G n°21 of 23/05/2016) and Law n°60/2016 of 11/01/2017 (O. G n° 4 of 23/01/2017)

<sup>31</sup> Office of the Public Prosecutor Code of Ethics, Vanuatu. A Code that replaces a 'Code of Practice and Ethics' published in Gazette No 24 of 2004 P.7

interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.<sup>32</sup>

In their function, prosecutors are guided by the ethical principles as describe in the previous sections of ethical principles for judges. Ethical principles are used as a code of conduct or a list of prohibited behaviour, and set out standards defining judicial misconduct. If a prosecutor violates an ethical principle, the High Council of the National Public Prosecution Authority may initiate an inquiry or investigation. The ethical principles constitute a weighty factor in determining whether a prosecutor has met the objective standard of impartiality and integrity required of a judge and in determining whether the challenged conduct meets the objective standard for removal from the institution.

There are five broad principles that are designed to assist members of the National Public Prosecution Authority (NPPA) to better perform their judicial functions. These principles are independence, integrity, propriety, impartiality fairness and confidentiality and discretion.<sup>33</sup> The first is the principle of judicial independence provides that prosecutors should “uphold and exemplify judicial independence in both its individual and institutional

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<sup>32</sup> IAP, *Standards of professional responsibility and statement of the essential duties and rights of prosecutors at The International Association of Prosecutors*, <https://www.iap-association.org/getattachment/Resources-Documentation/IAP-Standards> , accessed on 16 May 2021.

<sup>33</sup> Law n°014/2018 of 04/04/2018 determining the organization, functioning and competence of the national public prosecution authority and of the military prosecution department, *Official Gazette* n° Special of 30/05/2018; Law n°12/2016 of 02/05/2016 modifying and complementing law n° 44 bis/2011 of 26/11/2011 governing the statute of prosecutors and other staff of the national public prosecution authority, *Official Gazette* n°21 of 23/05/2016; Law n°44 bis/2011 of 26/11/2011 governing the statute of prosecutors and other staff of the national public prosecution authority, *Official Gazette* n°14 of 02/04/2011

aspects”.<sup>34</sup> The second principle is integrity, which provides that prosecutors “should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons”.<sup>35</sup> Third, the principle of impartiality states that prosecutors must be and should appear to be impartial with respect to their functions” and that their conduct in and out of institution should maintain and enhance public confidence in the impartiality of the judiciary.<sup>36</sup>

Fourth, the principle of integrity is essential to the proper discharge of prosecutorial function. Integrity means honesty, soundness of character and uprightness. This requires developing and observing high standards of personal and professional conduct. The principle of integrity is primarily aimed at protecting the public’s confidence in the prosecution. While noting that “integrity” is difficult to define with precision, the doctrine states that the “key issue about a prosecutor’s conduct must be how it ‘. . . reflects upon the central components of the prosecutor’s ability to do the job’,<sup>37</sup> and that “the ultimate standard for prosecution conduct must be conduct which constantly reaffirms fitness for the high responsibilities of the prosecution office”.<sup>38</sup> The lack of integrity undermines public confidence in the prosecution office.

Fifth, propriety and the appearance of propriety are essential to the performance of prosecutorial activities. Propriety means fitness, rightness

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<sup>34</sup> Canadian Judicial Council, *Majority Reasons of the Canadian Judicial Council in the Matter of an Inquiry into the Conduct of The Honourable P Theodore Matlow* (Ottawa: Canadian Judicial Council, 2008) at para 99 [Matlow Inquiry].

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> Jeffrey M Shaman, Steven Lubet & James J Alfani, *Judicial Conduct and Ethics*, 2nd ed (Charlottesville, VA: Michie, 1995) at 335.

<sup>38</sup> Ontario Judicial Council, “Principles of Judicial Office for Judges” by Judicial Conduct Subcommittee of the Chief Judge’s Executive Committee (Toronto: Ontario Judicial Council, 2013), online: ; Provincial Judges Association of British Columbia, Code of Judicial Ethics, revised 1994, online:

and correctness of behaviour or morals. Propriety and the appearance of propriety, both professional and personal are essential features of the prosecutor's life. Improper conduct includes creating and acquiescing in any appearance of impropriety. A prosecutor should freely and willingly accept personal restrictions that might be viewed as burdensome by ordinary citizens. He or she should conduct himself or herself in a manner that is consistent with the dignity of the office. This may include restraint from frequenting public liquor bars, casinos and night clubs, and the regular or excessive consumption of alcohol and similar substances in public places.<sup>39</sup>

Fairness is also essential to the proper discharge of prosecutorial functions. It is essential not only to the decision itself, but also to the process by which a decision is made. A prosecutor must perform the prosecution functions without fear or favour. The duty of a prosecutor is to act fairly, to assist the court to arrive at the truth.<sup>40</sup>

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<sup>39</sup> Code of Ethics for Prosecutors, [https://opp.gov.vu/images/Publications/Code-Of-Ethics\\_web.pdf](https://opp.gov.vu/images/Publications/Code-Of-Ethics_web.pdf), accessed on 15 May 2021.

<sup>40</sup> In this respect, a prosecutor has the duty to ensure that the prosecution case is presented properly and with fairness to the accused; a prosecutor must ensure that he/she guided by and acts in accordance with appropriate rules of evidence and procedural rules, including those that pertain to evidence of questionable sources; a prosecutor is entitled to firmly and vigorously urge the State view about a particular issue and to test and, if necessary, to attack the view put forward on behalf of the accused. However, if it is done, it must be done temperately and with restraint; a prosecutor must never seek to persuade the Court to a point of view by introducing prejudice or emotion; a prosecutor must not advance any argument that does not carry weight in his or her own mind or try to shut out any legal evidence that is important to the accused person's case or interest; a prosecutor must inform and bring to the attention of the Court authorities or trial directions relevant to the case, even where they are unfavourable to the prosecution; a prosecutor must disclose and offer all evidence relevant to the State's case during the presentation of the State's case. The State cannot split its case; a prosecutor must respect for the presumption of innocence. In particular, prosecutors must never publicly express a personal opinion about the guilt of a person under investigation or the accused outside the context of proceedings before the Court.

Finally, prosecutors shall uphold the highest standard of confidentiality in the discharge of their duties, and actively exercise all care to ensure respect for the confidentiality of information. They and other members of the staff must not disclose any privileged material or any material deemed confidential.<sup>41</sup>

#### **4.0 Professional Ethics for Advocates**

An advocate is charged with assisting and representing litigants before administrative entities, courts and other decision-making organs.<sup>42</sup> This role advocates assume in society makes them answerable to variety of stakeholders. An advocate owes duties to clients, courts opposing counsel, opposing parties, and wider community. Along with those external duties, the advocate owes a duty to himself/herself. Managing and fulfilling the many duties of an advocate can be challenging. This is particularly true in

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<sup>41</sup> Confidentiality includes, inter alia:

- a) full conformity with policies and procedures regarding confidentiality of correspondence, documents, proceedings, information and other matters obtained during the course of employment. Members of the Office shall pay particular attention to the provisions set out in the Prosecution Guideline and relevant Public Service code;
  - b) protecting the confidentiality of all intended prosecution trial materials from public exposure and scrutiny.
  - c) upholding the obligations stipulated in the undertaking contained in the Oath of Office;
  - d) vigilance regarding all communications that may potentially raise issues of confidentiality or potentially undermine the prosecution case, particularly communications with persons outside the Office and persons or parties interested in a prosecution;
  - e) immediate reporting of suspected breaches of confidentiality where they may represent a danger to the safety, well-being or privacy of other prosecutors, other staff members, victims, witnesses, persons under investigation, the accused and their families;
  - f) containment of such breaches by refraining from dissemination or discussion thereof;
- and
- g) the secure maintenance and storage of any material obtained by prosecutors and other members of the staff during the course of their official functions

<sup>42</sup> Article 1 of the Law N° 83/2013 of 11/09/2013 establishing the bar association in Rwanda and determining its organization and functioning *Official Gazette* No. 44 of 04/11/2013

Rwanda where a changing society and an increasingly competitive and commercialized environment places added demands on advocates.

In Rwanda, the law establishing the bar association and various supporting regulation govern the conduct of advocates.<sup>43</sup> This statutory and regulatory framework includes legal mandates concerning relations with clients, conduct in court, relations with opposing parties, and interactions with other relevant third parties such as witnesses and potential clients. The internal rules and regulations of Rwanda Bar association and the Law establishing the bar association in Rwanda and determining its organization and functioning provides fundamental duties that an advocate must uphold.<sup>44</sup> This includes the duty of defence.<sup>45</sup> In case where an Advocate decides to handle a case, he/she has the obligation to fulfil this duty with professionalism and dignity.<sup>46</sup>

The advocate must command the trust and confidence of his clients and to do that he/she must be honest, be a person of high integrity, competent and dependable. If advocates do not command the confidence of the public or they are perceived as sophisticated thieves and conmen/women because of a few lawyers who disregard professional ethics and standards, then people may have no hope of getting justice through law and will be tempted to resort to self-help and hence undermine the rule of law.<sup>47</sup>

Furthermore, the internal rules also require an advocate to maintain duty of care which entail the handling of the Client's file without negligence, delay

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<sup>43</sup> Law N° 83/2013 of 11/09/2013 establishing the bar association in Rwanda and determining its organization and functioning *Official Gazette* No. 44 of 04/11/2013

<sup>44</sup> Internal rules and regulations of Rwanda Bar Association, [RBA Internal Rules and regulations-1608279466.pdf \(rwandabar.org.rw\)](https://www.rwandabar.org.rw/Regulations-1608279466.pdf), accessed on 16 May 2021.

<sup>45</sup> Article 129 of the Rules and regulations of Rwanda Bar Association

<sup>46</sup> Article 130 of The Rules and Regulations of the Rwanda Bar Association

<sup>47</sup> Opening Remarks by Chief Justice Sam Rugege at the Legal Ethics Training Kigali 15 – 18 July 2019, [Remarks by CJ - Legal Ethics Training July 2019.pdf \(judiciary.gov.rw\)](https://www.judiciary.gov.rw/Remarks-by-CJ-Legal-Ethics-Training-July-2019.pdf), accessed on 15 May 2021

or omission particularly those requiring speed and care. The list of such duties encompasses duty of loyalty (which is to refrain from fraud and more generally to respect the principle of contradiction.), Duty of delicacy (judiciousness, doing what is necessary and avoiding what is not suitable. Duty of probity (quality of respecting his/her moral duties in his/her life, this is among the quality that he/she vows to exercise when he/she takes the oath as an advocate). An advocate must also act with dignity, maintain high level of confidentiality and professional secrecy at all counts during his/her career.<sup>48</sup>

Article 130 (16) of the rules and regulations of the Rwanda Bar Association of internal rules and regulations of Rwanda Bar Associations provides a long list of fundamental duty that an advocate must uphold to during his/her professional career.<sup>49</sup> The duty above mentioned contain canons of conduct as specific guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned.

Besides the fundamental duties provided by internal rules, Rwanda Bar Association provides other ethical principles to promote efficiency and to improve the quality of service in liberal profession. This section will explore the many duties of the advocate toward clients, court, opposing counsel, opposing party and community.

#### **4.1 Duties to the Client**

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<sup>48</sup> Article 130 Internal rules and regulations of Rwanda Bar Association, RBA Internal Rules and regulations-1608279466.pdf (rwandabar.org.rw), accessed on 16 May 2021.

<sup>49</sup> Article 130 (16) of the Rules and Regulations of the Rwanda Bar Association, available at [https://www.rwandabar.org.rw/attached\\_pdf/RBA%20Internal%20Rules%20and%20regulations-1608279466.pdf](https://www.rwandabar.org.rw/attached_pdf/RBA%20Internal%20Rules%20and%20regulations-1608279466.pdf)

It is important to highlight the duties of the advocates to clients, prospective clients and to those who may formally or informally seek counsel from the advocate. Advocates are prohibited from acting for any person unless they have been duly instructed either by the client or by an agent of the client. It is common to assume that the advocate owes duties to only those clients with whom he has a lawyer-client relationship.

There is a myriad of duties owed by an advocate to the advocate's client. These duties include, inter alia: competency, timely work, clear and adequate communication, respect, fair billing, good counsel, listening, diligent record keeping, avoiding conflicts of interest, and the proper fiduciary care of client funds and assets.

An ethical advocate puts the interests of his/her client above his own. He/she will prepare the case adequately, present it with relevant knowledge and skill and without undue delay. It will be unfortunate, to see lawyers who come to court unprepared or fail to show up without informing the client. This is either because of neglect and not paying sufficient attention or because he/she (mostly he) has taken on too much work and cannot cope; hopping from one court to another, from criminal cases to divorce, to commercial litigation etc. There is here an element of dishonesty, lack of care and self-interest. This is also what leads in to unjustified requests for adjournment of cases and delays in cases which is not in the interest of clients and of course is costly to both parties.

#### **4.2 Duties to the Court**

When representing clients, two maxims apply: first, the advocate is an officer of court, and second, the advocate is not a party to the dispute. These two principles undergird and inform several specific duties owed to the court. These include: the duty not to submit or aid the submission of false

evidence in court,<sup>50</sup> to advise the court on matters within his or her special knowledge,<sup>51</sup> and the he duty not to interfere with the due process of court.<sup>52</sup>

#### **4.3 Duties to opposing Counsel**

The internal rules indicate specific duties that advocates owe to opposing counsel. In the course of dealing with opposing counsel, advocates are expected to act professionally. Advocates are therefore between them fellows and must be characterised by a sense of union, solidarity and commitment to the same rules, the same ideal despite the opposing positions that they must have in the conflict of interest, and the judicial struggles of their clients. This means that in all circumstances, the Advocate must treat the other Advocate with politeness, courtesy, as an equal, and in a way, as he/she would like to be treated. Respect of the fellowship must be free of any corporatist spirit.<sup>53</sup>

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<sup>50</sup> In this regard, advocates shall not include in any affidavit, any matter which they know or have reason to believe to be false. In addition, where an advocate becomes aware that any person, has before the court, sworn a false affidavit, or given false evidence, he or she shall inform the court of his or her discovery. See D. Brian Dennison and P. Tibihikirra-Kalyegira (Eds), *Legal Ethics and Professionalism*, Geneva, Globethics 2014

<sup>51</sup> Advocates are under duty not to allow a court to be misled by remaining silent about a matter, which if made to court would affect the proceedings, decision or judgment. In addition, if an irregularity comes to the knowledge of the advocate during or after the hearing of a case but before verdict or judgment has been given, the advocate shall inform the court of the irregularity without delay. See D. Brian Dennison and P. Tibihikirra-Kalyegira (Eds), *Legal Ethics and Professionalism*

<sup>52</sup> This duty has several components including a duty not to hinder, intimidate or otherwise induce a witness whom the advocate knows has been or is likely to be called by opposite party with a view to departing from the truth or abstaining from giving evidence. Advocates are also prohibited from coaching witnesses. In addition, advocates are prohibited from making announcements or comments with respect to any pending, anticipated or current litigation. See D. Brian Dennison and P. Tibihikirra-Kalyegira (Eds), *Legal Ethics and Professionalism*

<sup>53</sup> Article 130 (7) of the rules and regulations of the Rwanda Bar Association.

#### **4.4 Duty to opposing Party**

Advocates are expected to work in the best interests of their clients. However, they may not disregard the broader duties in the pursuit of their clients' objectives. Advocates have a conciliatory role to play and should encourage dispute resolution through mediation and other mechanisms that are not primarily litigation. Advocates should treat the opposing party fairly and courteously. Advocates should not intimidate the opposing party and his or her witnesses. Advocates should not engage in opportunistic behaviour when facing an opposing party who is unrepresented by legal counsel.

#### **4.5 Duty to the Community**

Rwandan advocates owe a special duty to their nation in the area of anti-corruption and trust-building. Some Rwandans believe that "lawyers are not trustworthy persons" and that justice in Rwanda is only for the rich. For instance, consider a lawyer who may have a secret meeting with a colleague on the other side to persuade him/her to weaken his/her client's case so the latter can lose in return for a gift from the other party. Several principles are being violated here. It involves questions of integrity, honesty, confidentiality, independence and care of a client's interests.

The only way to build trust in this context is for advocates to comport themselves in a manner beyond reproach and to battle and expose corruption when they encounter it. For an advocate being involved in corruption undermines the administration of justice; it robs someone of his rights and gives a bad image of the administration of justice. Not only should an advocate not be involved in corruption but he/she should positively fight against it; by rejecting attempts to corrupt him/her and by exposing those involved in it, including clients, colleagues or judges. This of course is not easy; it takes a lot of courage and commitment and it can only come as the result of a dedicated long-term effort.

Moreover, article 13016 provides the duty of assistance to the indigent person. This duty is known under the concept of “*Pro bono*”, a terminology used in particular by Advocates when they defend the indigent or vulnerable persons. This duty consists of handling a case of needy person for free or with a very reduced fee. Any Advocate registered on the roll has therefore the obligation to assist the indigent persons on own initiative or where assigned by the authorities of the Bar.

## **5.0 Conclusion and Recommendations**

Rwandan Contemporary legal and ethical rules indicate ethical principles for lawyers practicing law as judges, advocates and prosecutors. These principles are useful to establish guidelines for the conduct of judges, advocates and prosecutors in their professional duties. It is observed that members of the Bar, judges, prosecutors are well acquainted with the ethical principles from the judicial ethics of Rwanda and the Bangalore Principles. The ethical principles currently outlined in the law relating to the code of ethics for the judiciary, law governing the statute of prosecutors, law establishing the bar association and various internal regulations set out the foundational values of judicial ethics in Rwanda. Therefore, we must all be vigilant and not let the few to tarnish our collective image and undermine confidence in the rule of law.

In summary, after the difficult period of rebuilding a justice sector that was in shambles after the Genocide Against the Tutsi, justice institutions, including the Judiciary, Prosecution and the bar Association, have recovered and are on a good footing in terms of efficiency and importantly in terms of ethics and professional standards. We still have issues now and then but on the whole a lot of progress has been done and we continue to struggle for excellence in delivering justice to those who seek it and preserving the rule of law.

While this article advocates that there is a specific legal framework for specific legal profession, ethical principles is not a taxation statute and

should not be drafted as such. For additional guidance, the concerned institution shall develop more ethical rules depending on nature of responsibilities. This will protect and promote public confidence in the judiciary, safeguard deliberative integrity and candour.