

**BAR ASSOCIATIONS AS WATCHDOGS TO NATIONAL, AFRICAN, COMMONWEALTH AND INTERNATIONAL LAW/ARBITRATION: ANALYSIS OF THE LEGAL STRENGTH IN NIGERIAN, AFRICAN, COMMONWEALTH AND INTERNATIONAL BAR ASSOCIATIONS' CONSTITUTIONS**

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**ABSTRACT:** *The Bar as it relates to law depicts the profession of Barrister or a Lawyer in a higher court. To be called to the Bar means allowed to work as a qualified barrister. Association on the other hand is an official group of people who have joined together for a particular purpose. In Nigeria, the association of Lawyers is called Nigerian Bar Association (otherwise, called the NBA). In Africa, the association shall be known as the African Bar Association (otherwise, called AFBA), in the Commonwealth it is Lawyer's Association otherwise called CLA. At the international level, the name of the corporation is the International Bar Association (otherwise, called the IBA). The Bar Association whether in Nigeria, Africa, Commonwealth or the world plays among other roles to promote the administration of justice under the rule of Law among Nigerians, Africans, Commonwealth and the people of the world. This Rule of Law is the Supremacy of regular as opposed to arbitrary power; the absence of any arbitrary power on the part of the government. Promotion of rule of Law is that a Lawyer is called to the Bar to discharge. Associations of these Lawyers otherwise called Bar Association have the promotion of rule of Law as one of their objects. This paper therefore is aimed to analyze how this association of Lawyers in Nigeria, Africa, Commonwealth and the world can compel their respective governments to operate within the ambit of the rule of Law, else, they may be compelled to take legal action in Court of Law for the promotion and protection of the principles of the rule of Law, to advance the science of jurisprudence and to promote in the execution of these objects the principles and aims of the United Nations in their legal aspects and to cooperate with and promote coordination among international judicial organizations having similar purpose. Recommendations were made to the effect that Nigerian and African Bar Associations should reform, emulate and develop their constitutions as the international Bar Association had done so that their objects will continue to compel their governments for more adherence to their legal and advisory portions in the affairs of their country or region so as to ensure Legal political and economic development within their jurisdictions.*

**KEYWORDS:** Bar Association, Watchdog, Legal strength, Nigeria, African, Commonwealth and International Bar Association and Constitutions.

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## INTRODUCTION

Governments whether at National, Regional, Commonwealth or International level may exercise arbitrary powers if there is no Rule of Law which Lawyers may Bar association is called to the Bar or formed to promote and protect. What is Rule of Law? Rule of Law is one of a number of overlapping ideas, including constitutionalism, due process, legality, justice and sovereignty, that make claims for the proper character and role of law in well-ordered states and societies.<sup>1</sup> Among these 'rule of law' has in recent time come into its own. It is lawed by international agencies, pressed upon conflictual, post conflict and transitional societies and of course, talked up by politicians and lawyers, particularly judge, all over the world. It is examined in political theory, and jurisprudence, and also, though less often, has been subjected to sociological investigation.<sup>2</sup> It used to be much criticized by Marxists and others on the left, including by members of the critical legal studies movement, but these criticisms are less audible today.<sup>3</sup> Bar Association in Nigeria, Africa, Commonwealth and International have come to discharge these responsibilities and therefore fit into these crusade. Ours is a special profession, so special that it is regarded, even by critics of the profession, as the only learned profession. The legal profession has existed for centuries in religion, common law, Roman Dutch Law and Code Napoleon. Indeed, the Bible referred to Lawyers and Paul, who later on, became the greatest of the apostles was the lawyer who whether at the time he was anti-Christ or at the time he was Pro-Christ, he exhibited legal activism. However, let us not carry this to the realm of religion. Let us as Somerset Maugham said, "We are of the earth earthly."<sup>4</sup> One of the my deepest convictions it that so far as the institutional progress of a people is concerned, its salvation lies in the hands of the profession of the Bar.<sup>5</sup>

Nigerian Legal Profession depicts vocation requiring advanced education and training, there is need to properly educate and train those who chose law as a career for proper changing the society for sustainable development.<sup>6</sup> Nigerian Bar Association aptly does this through their continuity Legal Education, Programme<sup>7</sup> African Bar Association is aimed at improving the standard of legal practice through comparative research into the Laws in Africa and its attendant benefits to its members.<sup>8</sup> The Commonwealth Lawyers' Association (CLA) exists to maintain and promote the rule of law throughout the Commonwealth by ensuring that an independent and effective legal profession serves the people of the Commonwealth.<sup>9</sup> International Bar Association is not left out in this important task, as it is to assists members of

<sup>1</sup> B A Garner, Black's Law Dictionary, (United States of America: 11th edition, Thomson Reuters, 2019) 1597

<sup>2</sup> Ibid

<sup>3</sup> Martin Krygier, 'Rule of Law', in the Oxford Handbook of Comparative Constitutional Law (Michael, Rosenfield & Andras Sajo eds., 2012) 233

<sup>4</sup> Kayode Eso JSC (Rtd), 'Seminar on Legal Activism for Gani Fawehinmi in Fawehinmi: The Challenges of Legal Activism in Nigeria Annual Lecture/Symposium, Nigerian Bar Association Nigeria, 2005, 9

<sup>5</sup> Newton D. Baker in an address at the Columbia University, 1973

<sup>6</sup> Oluwasegun Isaac Adenigbe, 'An Examination of Legal Education in Nigeria and its Impact on the Standard of Legal Protection 100 years!', Lecture, Faculty of Law, Bowen University, Imo, Nigeria

<sup>7</sup> See Section 3(a) of the Nigerian Bar Association Constitution, 2015 (as amended)

<sup>8</sup> See Article 3(viii) of the Charter of the African Bar Association (also called the Blue Charter)

<sup>9</sup> See the objective of Commonwealth Lawyers' Association

the legal profession throughout the world, whether in the field of legal education or otherwise, to develop and improve their legal services to the public<sup>10</sup>

### **Conceptual Clarifications and Definitions**

*Associate Organisation'* means an organisation of Members of the Legal Profession which is not created and does not exist primarily for the purpose of exercising and conducting their profession.

*'Bar Issues Commission'* or *"EIC"* means the commission established by that name pursuant to Article 6

*Constituents'* mean, collectively, the LPD, PPID, SPPI, BIC and HRI; and *'Constituent'* means any one of the Constituents, as applicable.

*'Council'* means the Council of the Association established pursuant to Article 4.

*'Councillor'* means a member of the Council

*'Country'* means a territory:

which is defined by internationally recognised boundaries, within which a community is permanently established for a political end, independently of external control and usually constituting a nation;

or which, while lacking one or more of, but not all, the characteristics specified in Article 2.6.1, is

governed under one system of law by one supreme authority; or is,

by reason of its history and tradition, generally regarded as a separate country.

*'Credentials Committee'* means the committee by such name established to provide opinion as to the eligibility of an applicant as a Member Organisation,

*'Division'* means the Legal Practice Division (LPD) and / or the Public and Professional Interest Division (PPID).

*Executive Director'* means the Executive Director of the Association.

*'Federation'* means an organisation whose members principally comprise other organisations of Members of the Legal Profession and includes but is not limited to any such organisation whose members include a National Organisation and/or regional organisation and/or which is itself a National Organisation.

*Full Member Organisation* means a National Organisation or other organisation of Members of the Legal Profession (whether a Bar Association, Law Society or other organisation representative of the Members of the Legal Profession or federation of any of those organisations) which is admitted as a Full Member Organisation pursuant to Article 3.1.

*'Human Rights Institute'* or *'HRF'* means the institute established by that name pursuant to Article 6.

*'Individual Member'* means a member of the Association who is admitted as an Individual Member pursuant to Article 3.

*'Judges' Forum'* means the committee of the SPPI by such name comprised of judges and former judges.

*'Legal Practice Division'* or *'LPD'* means the Division established by that name pursuant to Article 6.

*'Member Organisation'* means a Full Member Organisation or a Sustaining Member Organisation.

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<sup>10</sup> See Article 1(1.3) of the Constitution of the International Bar Association

*'Management Board'* means the Management Board established by that name pursuant to Article 5.

*'Members of the Legal Profession'* means practitioners of the law, including, but without limiting the generality of the foregoing, "attorneys, counsellors, solicitors, banisters, advocates, members of the judiciary, professors of law and other persons versed in the law

*'Member'* means and includes a Full Member Organisation, a Sustaining Member Organisation and an Individual Member.

*'National Organisation'* means any Federation or other organisation of Members of the Legal Profession or of a branch of the legal profession co-extensive in territorial scope with any Country which can, in the opinion of the Council, reasonably claim to be substantially representative in that Country of the members of the profession or of the branch concerned, as the case may be.

*'Nominations Committee'* means the committee established pursuant to Article 8.

*'Officer'* means any of the President, Vice-President, Secretary-General, Treasurer and Assistant Treasurer, the Chair and the Senior Vice-Chair of the BIC, and the two most senior officers of each of the LPD (Chair and Vice-Chair) and SPPI (Chair and Secretary-Treasurer).

"Other BIC Officers" means such officers of the BIC as are not Officers of the Association.

*'Public and Professional Interest Division'* or *'PPID'* means the Division established by that name pursuant to Article 6.

*'Regional Forum'* means a forum established by the LPD pursuant to Article 6.9 focused on the definition and execution of the strategies for the development and support of the activities of the Association within the geographical region of such forum.

*'Representative Councillor'* means a Councillor appointed as such from time to time by a Member Organisation pursuant to Article 4.3.5.

*'Reserved Matter'* means any of the following:

any decision relating principally to the finances of the Association other, than matters affecting the dues payable by Member Organisations (the decision of the Chair of the meeting as to whether a matter does so relate being final and binding);

any resolution to amend Article 6 (other than Article 6.6) or to adopt or amend any bylaws governing a Division adopted pursuant to Article 11; and

any resolution to amend this Article 7 or any of Articles 4.13.2 to 4.13.5 (inclusive), 5.5.1 to 5.5.3 (inclusive), 5.10, 5.11, 7.1, 7.3 or 7.4.

*'Rules of Procedure for the Election of Officers'* mean the rules of procedure for the election of Officers of the Association adopted from time to time by the Council pursuant to Article 11.

*'Section on Public and Professional Interest'* or *'SPPF'* means the section established by that name pursuant to Article 6.

*'Sustaining Member Organisation'* means an organisation of Members of the Legal Profession which is not a Full Member Organisation and which is admitted as a Sustaining Member Organisation pursuant to Article 3.2 read with Article 3.1.

Except where the context otherwise requires. *'Year'* means a calendar year; the singular shall include the plural: the masculine the feminine and vice versa; and *'including'* shall not be construed as being by way of limitation.<sup>11</sup>

"Association" means the Nigerian Bar Association.

"Biennial Conference" means the biennial conference of the Nigerian Bar Association.

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<sup>11</sup> See Article II of the Constitution of International Bar Association

"Committee" means a committee of the Section, Institute or Forum (delete as appropriate) and shall include a sub- committee.

"Council" means the Council of the Bar Association.

"General Meeting" means a general meeting of the Bar Association.

"National Executive Committee" means the National Executive Committee of the Nigerian Bar Association.

"Officers" means the officers of the Bar so elected, co-opted, nominated or appointed.<sup>12</sup>

**Constitution** is the fundamental and organic law of a country or state that establishes the institutions and apparatus of government, defined the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties; a set of basic laws and principles that a country, state or organization is governed by.<sup>13</sup>

**Watchdog** depicts a person or group of people whose job is to check that companies are not doing anything illegal or ignoring people's rights.<sup>14</sup>

**Legal Strength**, the word legal connotes connected with the law; the legal professional or legal system.<sup>15</sup> **'Strength'** on the other hand means the ability that something has to resist force or hold bearing weights without breaking or being damaged.<sup>16</sup> The legal strength is the ability law has to resist anything that is against the rule of law.

**International Law** is the legal system governing the relationships between countries more modernly, the law of international relations, embracing not only countries but also such participants as international organizations and individuals (such as those who involve their human rights or commit war crimes).<sup>17</sup>

**Arbitration** is a dispute resolution process in which the disputing parties choose one or more neutral third party to make a final or binding decision resolving the dispute. The parties to the dispute may choose a third party directly by mutual agreement or indirectly, such as by agreeing to have an arbitration organization select the third party.<sup>18</sup> An arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction. An exercise is not an arbitration, strictly so called, if it does not answer to this definition, notwithstanding that it is described as arbitration.<sup>19</sup> In English law, arbitration is, as a general rule, a private person.

"As a rule, persons enter into these contracts with the express view of keeping their quarrels from the public eyes, and of avoiding that discussion in public, which must be a painful one, and which might be an injury even to the successful party to the litigation and must surely would be to the unsuccessful."<sup>20</sup>

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<sup>12</sup> See Article XXIII of the Nigerian Bar Association, 2015 (as amended)

<sup>13</sup> Black's Law, op.cit at 388

<sup>14</sup> A S Hornby, Oxford Advanced Learner's Dictionary (Oxford: New 9th edition, Oxford University Press, 2015) 1760

<sup>15</sup> Ibid at p. 890

<sup>16</sup> Ibid at 1548

<sup>17</sup> Black's Law op.citat 975

<sup>18</sup> Ibid at 129

<sup>19</sup> G Ezejiofor, 'The Law of Arbitration in Nigeria (Lagos: Longman Nigeria PLC, 1997) 3

<sup>20</sup> See Per Sir George Jessel MR in Russel v. Russel (1880) 14 CHC) 471, 474. See also Halliburton v Chubb (2020) UKSC 19 Per Lord Hodge

## **Comparative Analysis of some relevant Provisions of Nigerian, African, Commonwealth and International Bar Associations' Constitutions.**

### **Aim and Objectives of the Nigerian Bar Association (NBA)**

The aims and objectives of the Association shall be the

- Maintenance and defence of the integrity and independence of the Bar and the Judiciary in Nigeria;
- Promotion and advancement of Legal Education, Continuing Legal Education, Advocacy and Jurisprudence;
- Improvement of the system of administration of justice, its procedures and the arrangement of court business and regular law reporting;
- Establishment, maintenance and operation of a system of prompt and efficient legal aid and assistance for those in need but who are unable to pay for same;
- Promotion and support of law reform;
- Maintenance of the highest standard of professional conduct, etiquette and discipline;
- Promotion of good relation among the members of the Association and lawyers of other countries;
- Promotion of co-operation between the Association and other National or International Law Organisations and such other bodies as may be approved by the National Executive Committee;
- Encouragement and protection of the right of access to courts at reasonably affordable fees and of representation; by counsel before courts and tribunals;
- Encouragement of the establishment of a National Law Library. Promotion and protection of the principles of the rule of law and, respect for enforcement of fundamental rights, human rights and people's rights;
- Creation of schemes for the encouragement of newly qualified members and assistance to aged or incapacitated members of the Association;
- Establishment of schemes for the promotion of the welfare, security and economic advancement of members of the legal profession;
- Creation and maintenance of an Endowment Fund for the proper observance and discharge of any of these aims and objects.<sup>21</sup>

It was in total fidelity to the motto and these aims and objectives of the Nigeria Bar Association (NBA) that the NBA – Public Interest Litigation Committee (NBA – PILC), on behalf of the NBA, commenced legal action at the Lagos Division of the Federal High Court of Nigeria in Suit No. FHC/L/CS/214/2021 (the Suit) against the President Federal Republic of Nigeria, the Police Service Commission and Mr. Mohammed Abubakar Adamu for extending the tenure of Office of Inspector General of Police by Mr. President after its expiration. In the Suit, the NBA seeks judicial determination of the Constitutionality of the President's extension of Mr Adamu's tenure as the Inspector-General of Police for three months after Mr Adamu had, on 1 February 2021, attained thirty-five years of service as a member of the Nigeria Police Force. The NBA's decision to take this extraordinary line of action is underpinned by an urgent need, and a sacred duty, to reassert the supremacy of the rule of law in the face of growing impunity and the seeming reluctance of Law Officers in Government to give proper counsel.

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<sup>21</sup> See Section 3(a) – (m) of Nigerian Bar Association Constitution, 2015 (as amended)

The NBA's position in the Suit is that MrAdamu ceased to be a member of the Nigeria Police Force when he attained the milestone of thirty-five years of service. Therefore, the President's extension of MrAdamu's tenure by three months, in the NBA's respectful view, is unconstitutional.

In the grand scheme of things, the NBA is wary that the more government officials casually violate the law, the harder it would become to expect citizens to be compliant. Citizens take their cues from their leaders and public office holders who flout the laws of the country that they are meant to uphold will discover sooner or later that their examples will be followed by those that they purport to govern.

The ubiquity of acts of impunity, especially by those in high public offices, portends an existential threat to the survival of this country and her hard-won democracy. The NBA, now more than ever, is firmly committed to changing this narrative.

As the outcome of the Suit is awaited, the NBA will continue to condemn and confront lawlessness in any form and from all quarters.<sup>22</sup>

#### **Aims and General Objectives of the African Bar Association (AFBA)**

Encourage good governance and promotion of business ventures within Africa and the welfare of Africans;

Defend the interest of African Governments and people at local and the global stage in furtherance of the March to Prosperity and self-sufficiency;

Work towards enhancing of principles of democracy and separation of powers;

Strengthen professional links between members of the legal profession in Africa;

Maintain the honor and integrity of the legal profession through the promotion of the highest standards of professional ethics;

Encouragement of strong and vibrant independent Bar Associations and Law Societies within member states of the Association;

Encouraging adherence to the rule of law and the independence of the judiciary in all member states of the Association;

Improving the standard of Legal practice through comparative research into the laws in Africa and its attendant benefits to its members;

Protection of fundamental human rights within the member states of AFBA;

Advancement of the standards of legal practice, rule of law and good corporate governance;

Promote and support the legal process for resolving International disputes, issues and the Electoral process within the African sub region;

Enhance the protection of children, women and minorities rights.<sup>23</sup>

#### **Objective of the Commonwealth Lawyers' Association<sup>24</sup>**

The Commonwealth Lawyers' Association (CLA) exists to maintain and promote the rule of law throughout the Commonwealth by ensuring that an independent and efficient legal profession serves the people of the Commonwealth.

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<sup>22</sup> See Olumide Akpata, 'Inspector General of Police – Extension of Tenure of Office, Public Statement by the President of Nigeria Bar Association, 12th February, 2021

<sup>23</sup> Article 3 of the Charter of African Bar Association (also called the Blue Charter)

<sup>24</sup> See the Objective of CLA

Commonwealth countries share a substantial common ground in their legal systems. The CLA is committed to the preservation of the highest standards of ethics and integrity and to the furtherance of the rule of law for the benefit of the citizens of the Commonwealth.

The CLA's objectives, as enshrined in its Constitution, are to maintain and promote the rule of law in the Commonwealth by:

- Ensuring that a common bond of Commonwealth is preserved and fostered;
- Strengthening professional links between members of the legal profession;
- Maintaining the honour and integrity of the profession;
- Promoting uniformity in the standards of professional ethics;
- Encouraging improved standards of education;
- Promoting the administration of justice and protection of human rights in accordance with the principles enshrined in the Harare Declaration of 1991, Milbrooke Action Programme of 1995 and the Latimer House Guidelines of the Commonwealth of 1998 (now referred to as the Commonwealth (Latimer House) Principles on the accountability of and relationship between the three branches of Government), and the Commonwealth Charter 2013.

### **The Objects of International Bar Association (IBA)**

#### **Name and Objects**

The name of the corporation is the International Bar Association (hereinafter, the "*Association*"). Its objects are;

to establish and maintain relations and exchanges between Bar Associations and Law Societies and their members throughout the world;

to assist such Associations and Societies and Members of the Legal Profession throughout the world to develop and improve the profession's organisation and status;

to assist Members of the Legal Profession throughout the world, whether in the field of legal education or otherwise, to develop and improve their legal services to the public;

to advance the science of jurisprudence in all its phases;

by common study of practical problems to promote uniformity and definition in appropriate fields of law;

to promote the administration of justice under the rule of law among the peoples of the world;

to promote in the execution of these objects the principles and aims of the United Nations in their legal aspects and to cooperate with, and promote coordination among, international juridical organisations having similar purposes.<sup>25</sup>

The Association may take all action that it deems appropriate in the pursuit of its objects. In pursuit of such objects, the Association has the capacity to represent and stand and intervene in judicial, administrative, arbitral and other proceedings. The Constituents do not have the aforesaid capacity; however, in a given proceeding the Association may authorize a Constituent to act in the Association's behalf.

The Association is a non-political organisation and as such shall not entertain any matter which is political in character.

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<sup>25</sup> Article 1 of the Constitution of the International Bar Association



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### **Authority, Powers and Duties of the General Council of the Nigerian Bar Association (Otherwise called the Bar)<sup>26</sup>**

The statutory powers of the General Council of the Bar as provided pursuant to the Legal Practitioners Act, Cap 207, Laws of the Federation of Nigeria, 1990 shall not include;

- Any control over the budget or finance of the Nigerian Bar Association;
- The power to appoint representatives of the Association to any Statutory, Executive/Judicial or other bodies;
- The power to issue any statements purporting to express the view of the Association upon any matter of public interest or any matter affecting the interest of the Legal Profession generally;
- The power to make any arrangements whatsoever (including the drawing up of an Agenda or choice of venue) for the Annual General Meeting or any other General Meeting of the Association;
- If at any time, due to unavoidable circumstances or any emergency, an election cannot be held at the appropriate time or the National Executive Committee is incapable of functioning, the General Council of the Bar shall be convened with powers to constitute a 10 member caretaker committee of members of the Association to run the affairs of the Association for not more than the unexpired tenure of the National Officers or until when new National Officers shall be elected.

The General Council of the Bar acting under Section 6(2) hereto shall not be subject to any limitation of its powers as under section 1 (1) of the Legal Practitioners Act, Cap. 207, Laws of the Federation of Nigeria, 1990 until the expiration of the unavoidable circumstances or emergency.<sup>27</sup>

### **Powers and Functions of the Governing Council of African Bar Association.<sup>28</sup>**

**Powers of the Governing Council:** The Governing Council shall have the overall supervisory role over the Association in terms of:

Policy guidelines and programmes;

Funding - see to the purpose and adequate funding of the Association Receive, discuss and pass annual budget presented by the Executive Council;

Choose venues for annual meetings, conferences and contents/programs;

Scrutinize and appoint patrons for the Association on the recommendation of the Executive Council.

### **The Council**

CLA's council is responsible for the policies of CLA and comprises up to 29 voting members including a President, 4 Vice Presidents, Honorary Treasurer and representatives of Commonwealth member countries listed above. In addition, the council has four Honorary Life Presidents who are non-voting members of the council. There are a small number of other non-voting members such as the immediate past president and the council may also co-opt additional non-voting members for their particular area of legal expertise or where the council has a vacancy in that jurisdiction. These members are listed as 'ex-officio'.

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<sup>26</sup> See Section 6(1) & (2) of the NBA Constitution *op.cit* at p. 2-3

<sup>27</sup> 6(1)(a) – (3) of the Nigerian Bar Association Constitution

<sup>28</sup> See Section (a) and (b) of Article 10 of the Charter of AFBA, *op.cit* at p. 22

Council members meet in person in conference years and via teleconference on a regular basis. All members of the council are volunteers. Council members are subject to election by the general membership every two years during the Commonwealth Law Conference. Members are generally nominated by the governing bodies of their jurisdiction. Council members serve for two years but are eligible for re-election.<sup>29</sup>

### **Authority, Powers of and Duties of Council<sup>30</sup>**

The Association shall be governed by the Council which shall be the governing body of the Association in which control of the Association vests;

Subject to the provisions of this Constitution, the Council, without limiting the generality of Article 4.1:

- shall have the general supervision and control of the affairs of the Association and accordingly shall supervise and may, if it thinks fit, direct the Management Board;

- shall have the sole and exclusive authority on behalf of the Association to determine and make statements of policy in relation to issues affecting the legal profession;

- shall at least once annually receive reports on the activities of the Association during the preceding year from the Management Board, the LPD, the SPPI, the BIC, the HRI and such other parts of the Association as it may from time to time require;

- shall confirm the appointment of the members of the Management Board set forth in Article 5.5;

- shall establish such committees to assist in the governance of the Association, and dissolve the same, as it may from time to time deem appropriate;

- shall receive and consider annually the audited accounts of the Association for the preceding year;

- shall receive and consider the budget of the Association for each year;

- shall from time to time determine the financial year of the Association or other period for which audited accounts shall be prepared;

- shall appoint the auditors for each financial year or other period;

- shall fix the dues payable by Member Organisations;

- may make honorary appointments;

- may authorise the Management Board to:

- (a) invest moneys of the Association not immediately required for its objects in or upon such investments, securities or property in any part of the world as may be thought fit;

- (b) appoint as the Association's investment manager or investment managers (the 'Manager') on such reasonable terms as to remuneration and other matters such person or persons as may be thought fit and may delegate to the Manager the exercise of the power contained in Article 4.2.12(a); and

- (c) make such arrangements as may be thought fit for any investments of the Association or income from those investments to be held by a corporate body as nominee for the Association and pay reasonable remuneration as may be thought fit to any corporate body acting as such nominees.<sup>31</sup>

- may approve each Councilor's credentials;

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<sup>29</sup>See the Power of the Council in the Constitution of Commonwealth Lawyers' Association

<sup>30</sup> See Article 4(4.1) & (4.2) of the IBA Constitution *op.citat* p. 9

<sup>31</sup> See Article 4(4.2.3 – 4.2.12) Ibid

may adopt such by-laws or rules of procedure in accordance with Article 11 as it thinks fit.<sup>32</sup>

### **Summary of the Review, Analysis and Strength of the Bars' Constitutions**

A close look at the four Bars Constitutions revealed that as far as their aims and objects are concern, the Bars are the same. They aim to maintain and defend the integrity and independence of the Bar and the judiciary in Nigeria; promote the cooperation between the Association and other National or International Law Organization whether in Nigeria or elsewhere and such other bodies as may be approved by the National Executive Committee and among other things to promote and protect the principles of the rule of law and respect for enforcement of fundamental rights, human rights and people's rights in Nigeria, Africa, Commonwealth and the world.

Besides, the authority, powers and functions of the Bar Council whether in Nigeria, Africa, Commonwealth and at International level (the world) include other things, the power to issue any statement purporting to express the view of the Association upon any matter of public interest or any matter affecting the interest of the legal profession generally; and shall have sole and exclusive authority on behalf of the Association to determine and make statements of Policy in relation to issues affecting the legal profession.

However, while the authority and powers of the Nigerian Bar council and African Bar Council are Limited, that of the Commonwealth and International Bar Council cover Commonwealth and the world (including Nigeria and Africa). Today, to show the respect and overwhelming powers and authority which IBA commands, over Nigerian Bar, African and Commonwealth Bar Associations, their guidelines and position are always sought, considered and adhered to by international court on conflicts of interest in international Arbitration.<sup>33</sup> Thus; on 29 November, 2016, Mr. Thomas Birsic, an Attorney at K & I. Gates, Halliburton's US Lawyer wrote to Mr. Rokison over his appointment in reference 2 and 3 which was not disclosed to Halliburton.<sup>34</sup> The international acceptability and influence of IBA Constitution and Guidelines ahead of Nigeria, African Bar Association and Commonwealth Lawyers' Association made the court to refer to IBA guideline on the duty of disclosure imposed on the arbitrator in accordance with the Orange List in those guidelines and asked for confirmation of the fact of the two later appointments and an explanation of the failure to make poor disclosure of those appointment.

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<sup>32</sup> See Article 4(4.2.13 & 4.2.14) Ibid

<sup>33</sup> Halliburton v Chubb (2020) UK SC at p. 6

<sup>34</sup> Para 19 of the Halliburton v. Chubb Judgement Per Lord Hodge

## **General Standards Regarding Impartiality, Independence and Disclosure under International Arbitration and Alternative Disputes Resolutions.**

### **Conflicts of Interest**

*An arbitrator shall decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator if he or she has any doubts as to his or her ability to be impartial or independent.*

*The same principle applies if facts or circumstances exist, or have arisen since the appointment, that, from a reasonable third person's point of view having knowledge of the relevant facts, give rise to justifiable doubts as to the arbitrator's impartiality or independence, unless the parties have accepted the arbitrator in accordance with the requirements set out in General Standard (4).*

*Doubts are justifiable if a reasonable and informed third party would reach the conclusion that there, was a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision.*

*justifiable doubts necessarily exist as to the arbitrator's impartiality or independence if there is an identity between a party and the arbitrator, if the arbitrator is a legal representative of a legal entity that is a party in the arbitration, or if the arbitrator has a significant financial or personal interest in the matter at stake.<sup>35</sup>*

### **Disclosure by the Arbitrator**

*If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institutional rules) and to the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns about them.*

*It follows from General Standards 1 and 2(a) that, an arbitrator who has made a disclosure considers himself or herself to be impartial and independent of the parties despite the disclosed facts and therefore capable of performing his or her duties as arbitrator. Otherwise, he or she would have declined the nomination or appointment, at the outset or resigned.*

*Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure, the affiliate is directly involved in the matters in dispute in the arbitration.<sup>36</sup>*

The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties;

The arbitrator regularly advises the appointing party or an affiliate of the appointing party, but neither the arbitrator nor his or her firm derives a significant financial income therefrom;

The arbitrator has a close family relationship with one of the parties or with a manager, director or member of the supervisory board or any person having a similar controlling influence in one of the parties or an affiliate of one of the parties or with a counsel representing a party;

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<sup>35</sup> Part 1(2)(a) – (d) Ibid

<sup>36</sup> Part 1(3)(a) – (c) Ibid

A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.<sup>37</sup>

### **Orange List**

Previous services for one of the parties or other involvement in the case

The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate the party have no ongoing relationship;

The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter;

The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties;

The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator;

The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.<sup>38</sup>

Current services for one of the parties

The arbitrator's law firm is currently rendering services to one of the parties or to an affiliate of one of the parties without creating a significant commercial relationship and without the involvement of the arbitrator;

A law firm that shares revenues or fees with the arbitrator's law firm renders services to one of the parties or an affiliate of one of the parties before the arbitral tribunal;

The arbitrator or his or her firm represents a party or an affiliate to the arbitration on a regular basis but is not involved in the current dispute.<sup>39</sup>

Relationship between an arbitrator and another arbitrator or counsel

The arbitrator and another; are lawyers in the same law firm;

The arbitrator and another arbitrator or the counsel for one of the parties are members of the same barristers' chambers';

The arbitrator was within the past three years a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the same arbitration;

A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties;

A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute;

A close personal friendship exists between an arbitrator and a counsel of one party, as demonstrated by the fact that the arbitrator and the counsel regularly spend considerable time together unrelated to professional work commitments or the activities of professional associations or social organizations.<sup>40</sup>

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<sup>37</sup> Part II(2)(2.3.5) – (2.3.9) Ibid

<sup>38</sup> See Part II(3)(3.1) – (3.1.5) Ibid

<sup>39</sup> Part II(3.2) – (3.2.3) Ibid

<sup>40</sup> See Para (3.3.6) Ibid

## **CONCLUSION**

The roles of Bar Association whether in Nigeria, Africa, Commonwealth and the world in promoting, defending and protection of the Rule of Law are unbeatable and cannot be neglected by any sane government and authority. Every reasonable nay democratic government must listen to the position and view of these Bars before its final decision and judgement. The aims of government whether Executive, Legislative and Judiciary should as a matter of wisdom should adhere to the aims and objects of these Bars Government which if refused to do so had regretted it; as law is law; lawyers are lawyers and they were made and called to regulate the society and defend the law. The association of Lawyers at both National, regional, Commonwealth and international was formed to defend and uphold the course of justice which is a hallmark of constitutionalism and development. Efforts should therefore be made to respect the motto, aims and objectives of Nigerian, African, Commonwealth and International bar associations for Peace, Unity, Obedience to Rule of Law, Equality, Societal and Sustainable Development.

## **Recommendations**

There is need for all citizens of Nigeria to adhere and submit to the aims and objects of Nigerians Bar Association as contained in the Bar Constitution. Africans should submit for the total authority, aims and objectives of the African Bar Association for the development of Africans, Commonwealth members should also submit to the Constitution of Commonwealth Lawyers' Association in order to maintain and promote the rule of law throughout the Commonwealth and the people of the world (including Nigerians, African and Commonwealth members) must bring their authorities under the Constitution of International Bar Association, their aims and objectives for uniform development.

There is need to reform Nigerian Bar Association Constitution and the Charter of African Bar Association and the Constitution of the Commonwealth Lawyers' Association for development driven and general acceptability and influence in committee of Bars and Nations as the International Bar Association. The IBA should continue to innovate and lead so as to make national, regional and Commonwealth bars to see something to emulate for proper disclosure, impartiality, justice and sustainable development in Nigeria, African, Commonwealth and world in general.