

**EXAMINATION OF THE LOOPHOLES IN THE RECENT CURRENCY REDESIGN
AND CASHLESS ECONOMY POLICY IN NIGERIA**

Olariyike Damola Akintoye*

Abstract

The Central Bank of Nigeria (CBN) announced on 26 October 2022, the redesign of three out of the eight Naira notes in circulation. The move is geared towards entrenching the cashless economy policy. According to the CBN, over 85% of the currency in circulation is kept outside the vaults of commercial banks, which has encouraged kidnapping and the demand for ransom by kidnapers in Nigeria. This Paper attempts to look at the loopholes in the cashless economy and currency redesign policy. The method adopted in carrying out this research work is doctrinal research method. The study revealed that one of the major problems of the cashless policy was wrong timing, that is, the policy was introduced very close to the 2022 general elections. Another problem identified was the three months' time frame given to Nigerians to swap old notes for new ones which was too short. Similarly, the CBN acted in contravention of The Money Laundering (Prevention and Prohibition) Act passed into Law on May 17 2022, to set standard and promote the effective implementation of legal, regulatory and operational measures for combating money laundering, The Paper recommends that, for the cashless policy to be successful, the e-payment system needs to be upgraded in Nigeria, and the time to swap old currency notes for new notes should not be too short as to bring untold hardship on the people.

Keywords: *loopholes, currency redesign, cashless policy, and central bank of Nigeria, Nigeria.*

Introduction

In October 2022, the Central Bank of Nigeria (CBN), decided to simultaneously redesign three of Nigerian bank notes and introduced new cash withdrawal limits. This move of the CBN was intended to, “kill two birds with one stone.” That is, to entrench the cashless economy agenda and to minimize access to large volume of money used by terrorists and kidnapers. The last

*Department of Business and Private Law, Faculty of Law, Kwara State University, Malete; olariyike.akintoye@kwasu.edu.ng, riyikeakintoye@yahoo.com; 08055830014.

time the CBN redesigned Nigerian currency was between the year 2004 and 2006 which was over 20 years ago. The currencies redesigned then, were the smaller denominations of N5, N10, N20, and N50 naira notes which were later printed on polymer substrates.

Redesigning of currency is not new to global economy as many nations have had the cause to redesign their currency at one time or the other. However, while other countries, like the United States of America and the United Kingdom had seamless redesign exercise, Nigeria's experience has not been smooth for some reasons. First, the timing of the currency redesign was awkward, and some have described it as wrong timing,¹ as it coincided with the country's general elections period. Also, the time frame of three months given by the CBN to swap the old notes for new was too short. This makes many analysts conclude that the policy was not well thought out and that it was targeted at politicians who were about to go to the polls for the general election.

Another reason why the currency redesign exercise was not as successful as it was in other climes was lack of adequate preparation. After people were compelled to return their old currency notes within a period of three months, the CBN could not provide new notes to replace the old naira notes.

The cash crunch that the new cash policy created resulted in stampedes, insurrection and with people going to the extent of destroying Bank's Automated Teller Machines (ATM) in some parts of the country. Some bank officials were physical attacked because there was the believe that they were the ones hoarding the new naira notes to give them out to politicians at a price. Some bank managers were indicted, and the most disturbing part was the effect the cashless policy had on people's psyche and how some frustrated citizens stripped themselves naked in banking halls, while others kept vigil outside the various deposit money banks in the hope to get money from the ATM, which had stopped dispensing money. It got so bad at some point that people started buying the old naira notes with very high commission from Point-of-Sale (POS) Machine operators.

¹Onimisi P.D, "Currency Redesign: What implication does it have for Socio-economic development in Nigeria" Association of African Development Finance Institutions, March 6, 2023. <www.scirp.org/journal/articles?>accessed 18 December 2024.

The History and Role of Central Banks

Sweden founded the first ever Central Bank, called *Sveriges Riksbank* in 1668,²This was followed by the Bank of England founded in 1694. Central banks have been said to wield great influence, over a country's monetary, financial, and economic conditions, and the kind of monetary policy pursued by the central bank can affect macroeconomic outcomes such as the level of unemployment and inflation. The common man on the street describes the expansionary monetary policy interventions of the central bank as 'pumping liquidity into the system' or 'printing money.'³ The oldest central bank arose from early European experiences with paper money during the seventeenth and eighteenth centuries. At the period in question, Europe not only developed innovative insurance products and established primitive versions of public bond and stock markets, but also experimented with various ways of issuing banknotes, to provide alternative means of payment apart from coins and to raise funds for the government.⁴

The CBN is the apex bank in Nigeria. Its core mandate is derived from the 1958 Act of Parliament, as amended in 1991, 1993, 1997, 1998, 1999, and 2007. The CBN Act, 2007 of the Federal Republic of Nigeria, charges the Bank with the overall control and administration of the monetary and financial sector policies of the Federal Government. The central Bank has the following main functions;⁵

1. Control the base rate and inflation or ensure monetary and price stability.
2. Issue legal tender currency or control the money supply through open market operations.
3. Maintain reserve requirement with private banks to safeguard the international value of the legal tender currency.
4. Ensure there are sufficient Foreign Exchange Reserves
5. Act as Bankers and provide economic and financial advice to the Federal Government

In view of the above, the bank is charged with the responsibility of administering the Banks and Other Financial Institutions Act (BOFIA), 2020, with the sole aim of ensuring, high standards of

²Boyce P, 'Central Bank: Definition, Objectives and Functions' available at: <<https://boycewire.com>> accessed March 26, 2023.

³Herger N., *Understanding Central Banks*, Springer Nature Switzerland AG 2019, p.9.

⁴ Ibid.

⁵Statement of CBN Core Mandate- Central Bank of Nigeria <<https://www.cbn.gov.ng/aboutcbn>> accessed April 10 2023.

banking practice and financial stability through its surveillance activities, as well as the promotion of an efficient payment system⁶ One can also deduce from the CBN Act that currency management is a key function of the CBN.⁷ According to the CBN Governor, the integrity of a local legal tender, the efficiency of its supply, as well as its efficacy in the conduct of monetary policy are some of the characteristics of an efficient Central Bank.⁸

Benefits of Currency Redesign

Countries around the world redesign and reissue their legal tender for several reasons, chief among which is the prevention of counterfeit currencies. Experiences from other jurisdictions have shown that effective currency redesign can support regulatory reform. The CBN Governor, Godwin Emefiele reiterates this when he said that the organisation has the best interest of Nigerians at heart when the policy was introduced. To justify the redesign exercise, he said that.

Our aim is mainly to make our monetary policy decisions more efficacious and like you can see; we've started to see inflation trending downwards and exchange rates relatively stable. Secondly, we aim to support the efforts of our security agencies in combating banditry and ransom taking in Nigeria through this program and we can see that the Military are making good progress in this important task in Nigeria.⁹

In the same vein he said.

Let me assure all Nigerians that the CBN, with the Deposit Money Banks and other very important stakeholder; Such as, the Economic and Financial Crimes Commission (EFCC), the Independent and Corrupt Practices Commission (ICPC) and the Nigeria Financial Intelligence Unit (NFIU) are working together to ensure that the ultimate goal, which is to deliver to all Nigerians, a new currency that meets global standard is achieved.¹⁰

⁶Central Bank of Nigeria: *The Core Mandate of the Bank*, available at: <www.cbn.gov.ng accessed 12 May 2023 <https://www.cbn.gov.ng/aboutcbn/coremandate.asp>> (last visited on April 11, 2023).

⁷ As enshrined in Section 2(b) of the CBN Act 2007

⁸ Extract from the full text of CBN Governor Godwin Emefiele's statement on the issuance of new naira bank notes. October 26, 2022. accessed 20 April 2023

⁹ Press Statement by the Nigerian CBN Governor Godwin Emefiele on the progress of implementation of new redesigned currency by the Central Bank of Nigeria, January 29, 2023, available at:<<https://www.cbn.gov.ng>> accessed April 4, 2023).

¹⁰ Ibid

Emefiele, further said that the currency redesign should normally have been done within a 5-8 years window, but in Nigeria, the CBN has not been able to undertake this important currency and liquidity management function for about 19 years¹¹ He also debunked the rumor going around that the policy was targeted at a group of people that is the politicians, but that it was, ‘derived from CBN in-house analysis to strengthen Nigeria's macroeconomic fundamentals and better Nigeria’s socioeconomic conditions.’ He however gave different reasons for the redesign.

Firstly, that the currency redesign policy will help mop up monies outside the banking system,¹² estimated to be over 85% of the currency in circulation, ‘that had contributed to rising inflation and currency speculation, which had resulted in foreign exchange challenges in recent times.’ Secondly, that the number of the ‘unbanked’ population is alarming and thirdly, that insecurity and ransom-taking by kidnappers in Nigeria needs to be addressed urgently and fourthly, solve the problem of currency counterfeiting among others.¹³ According to James Emejo the naira redesign and implementation of the cashless policy would plug fiscal leakages, boost government revenue, and aid the economic empowerment of vulnerable Nigerians as well as benefit the country as a whole. The following are the expected benefits of currency redesign;¹⁴

- a) It increases currency security by helping nations keep counterfeiting to a minimum and stay one step ahead of threats.
- b) It is anticipated to boost the economy, lower cash management cost, advance financial inclusion and improve the government’s ability to monitor the money supply.

Those who support redesigning the naira currencies in Nigeria said it will bring about a lot of benefits, for example it,

- a. Will decrease inflammatory pressure and suppress insecurities in Nigeria

¹¹ Godwin Emefiele Ibid.

¹²In 2015, currency-in-circulation was only N1.4 trillion but as of October 2022, currency-in-circulation had risen to N3.23 trillion; out of which only N500 billion was within the Banking industry and N2.7 trillion held permanently in people’s homes. Ordinarily, when CBN releases currency into circulation, it is meant to be used and after effluxion of time, it returns to the CBN thereby keeping the volume of currency in circulation under the firm control of the CBN.

¹³ In announcing the Naira redesign program, the CBN Governor said the move was aimed at checking the increasing ease and risk of currency counterfeiting evidenced by several security reports, and the increased risk to financial stability as well as the worsening shortage of clean and fit currency, with the attendant negative perception of the central bank.

¹⁴ Central Bank of Nigeria <https://www.cbn.gov.ng/ccd> Pdf accessed 20 April 2023.

- b. Will reduce money stock, which will slow the long-term course of inflation by reducing the amount of currency held outside of banks.
- c. May result in interest rate reductions from the ensuing deflationary pressure, which will stimulate economic activity in the short to medium term,
- d. Will increase aggregate demand and improve output growth
- e. Will lessen the inclination to buy votes during the March 2023 elections
- f. Will strengthen financial institutions, lessen corruption, and improve bank performance due to an increase in the use of electronic banking channels
- g. Will result in more transactions taking place through bank accounts and more agents being able to access the government's tax collection system and more agents in the tax net will result in an increase in revenue generation for the Federal Government of Nigeria.¹⁵

However, the above is against the belief held by other analysts that redesigning Naira notes will not check rising inflation¹⁶

The CBN Act provides the apex bank with the power to “arrange for the printing of currency notes and the minting of coins: as well as issue, re-issue and exchange currencies notes and coins at the Bank’s offices and at such agencies as it may, from time to time establish or appoint”¹⁷ The fact that the CBN has just about three months to redesign, produce and circulate the new currencies’ notes and only four months to recall the old notes leaves much to be desired and many analysts have asked the salient question, why the rush?

Similarly, Section 20 (3) states that

“notwithstanding sub-section (1) and (2) of this section, the Bank shall have power, if directed to do so by the President and after giving reasonable notice on that behalf, to call in any of its notes or coins on payment of the face value there and any note or coin

¹⁵Emejo James., “Merits of Naira Redesign, Cashless Initiatives”, This Day February 8, 2023 available at: <<https://www.thisdaylive.com>> accessed March 18, 2023.

¹⁶BukolaIdowu, ZakaKhaliq and Olushola Bello,” Redesigning Naira won’t Check Rising Inflation-Analysts” Professor Bongo Adi of the Lagos Business School speaking to Leadership News Available at: <https://leadership.ng/redesigning-naira-wont-check-rising-inflation-analysts/#> accessed March 20, 2023.

¹⁷ S. 18(a) 18(b) Central Bank of Nigeria Act.

with respect to which a notice has been given under this subsection, shall, on the expiration of the notice, cease to be legal tender”

From the above quotation, one would think that the only requirement for reissuing currency is that the CBN intends to do so, arranges for the process to be done, and gives reasonable notice to the members of the public of its intention to do so.

A look at global best practices shows that where there is an inadequacy in the provisions of the law, recourse is made to regulations, policies, precedents, and international best practices.¹⁸ In this wise, let us look at India and the United States of America experiences based on how each nation handle their currency redesign.

India’s Currency Redesign Experience

In 2016, the India government¹⁹ in its bid to stop corruption and reduce the amount of money in circulation, withdrew and reintroduced the 500 and 1000 denominations of the India rupees within six months. Reports said that the scheme froze “agriculture and small businesses with a liquidity shock, put people through unnecessary hardship, disrupted supply chains, and destroyed demand for everything from autos to property”²⁰ In addition, the report stated that net savings in India were reduced by 50 per cent a year after the policy was implemented. The currency in circulation also increased to 20 trillion rupees from 18 trillion rupees before the policy.

The International Monetary Fund, in one of its reports, provided that the disruption caused by the cash shortages dampened consumer and business sentiments.²¹ This same scenario is playing out in Nigeria, where the abruptness of the policy and the consequent shortage of cash led to the policy’s poor performance. Unlike the picture that was painted by the NBN governor, the short time within which the policy lasted before the deadline for its full implementation was extended to December 2023, brought a lot of hardship to majority of Nigerians.

¹⁸OcheiAnthonia., “Naira redesign- the law and global best practices”, Business Day Newspaper, November 18, 2022.

¹⁹ Under Prime Minister Narendra Modi.

²⁰ Andy Mukherjee., ”By a 99.3% Verdict, India’s Cash Ban Was a Farce” Bloomberg News August 30, 2018, 2023 available at: <<https://www.bloomberg.com>> accessed March 14, 2022.

²¹ International Monetary Fund Article IV, Consultation Report on India 2018 accessed March 15, 2023

The United States of America's Experience

Unlike what played out in India in 2016 and the failed exercise in Nigeria in 2023, the United States of America's experience is quite different. This is because in the US, the currency redesign and distribution exercise are both systematic²² and systemic²³ and therefore came out with a better result.²⁴ Before a Federal Reserve²⁵ note enters circulation, it must pass through four critical stages which are design, order, production, and issuance. The Federal Reserve handles the monetary policies of the government independently and without legislative intervention. In addition to that, it performs all other functions of a central bank- regulating bank activities, conducting surveys about the US and global economy –all under the common objective of maintaining financial stability.²⁶ According to the US Federal Reserve, the primary purpose of any redesign is security. “The careful integration of exclusive security features to keep cash safe, secure and to ensure the stability of the US economy” According to the agency in redesigning the currency;²⁷

Notes must be resistant to increasingly sophisticated counterfeit attacks, new features closely aligned into the new design, are developed to address this threat. More than a decade of research and development, followed by years of optimization and

²² Systematic means constituting or based on a system, according to a system, Webster's Universal Dictionary & Thesaurus, Geddes & Grosset, 2007, Scotland, UK p.470 ; done or acting according to a fixed plan or system, Oxford Languages and Google-English Oxford Languages, available at: <<https://languages.oup.com/google-dictionary-en/>> accessed March 21, 2023.

²³ Systemic means something that is affecting the whole body, Webster's Universal Dictionary & Thesaurus, Geddes & Grosset, 2007, Scotland, UK p.471 ; it also means relating to a system especially as opposed to a particular part, Oxford Languages and Google-English Oxford Languages. <https://languages.oup.com/google-dictionary-en/> accessed 21 March 2023 .

²⁴ Ogwu Sunday M, 'Currency Redesign: Lessons For Nigeria From Global Practices' Daily Trust Newspaper February 5, 2023 available at:<<https://dailytrust.com/currency-redesign-lessons-for-nigeria-from-global-practices/>>accessed March 20 2023).

²⁵ The Federal Reserve, more commonly referred to as “The Fed” is the Central Bank of the United States of America and is the supreme financial authority behind the world's largest free-market –economy. Because of the US' influence on the global economy, ‘the Fed’ is considered one of the most influential financial institutions in the world. The Federal Reserve is headquartered in Washington DC.

²⁶ Federal Reserve (The Fed) available at:<https://corporatefinanceinstitute.com/resources/economics/federal-reserve-the-fed/?gclid=CjwKCAjw9J2iBhBPEiwAerwpeT8MoEbfKguIJ5vimbWbuoH0x1xIGbFJ2dGXxNAqM3SGtBorVlv0cBoCgNYQAvD_BwE> accessed April 2,2023).

²⁷ Anthonia Ochei, 'Naira Redesign – The Law and Global Best Practices' Business Day, 18 November 2022 <https://loyalnigerianlawyer.com/naira-redesign-the-law-and-global-best-practices/> (accessed January 29,2023).

integration testing into the banknote, is required to ensure the successful deployment of these features into US currency²⁸

The Bureau states that “the current denomination sequence and planned issuance dates have been in development with the Advanced Counterfeit Deterrence Committee since the year 2011: The USD denominations and the corresponding date of issuance are \$10 (2026), \$50 (2028), \$20 (2030), \$ (2032) and \$100 (2034). This sequence addresses risk mitigation and counterfeiting concerns”

The lesson to learn from the USA is that the process of their currency redesign is in sequence and the planning /execution, will take a period of 23 years. This is in contrast with Nigeria that first announced its currency redesign policy in October 2022, and gave a window of about three months for the exercise to be concluded. The Supreme Court of Nigeria, however saved the day when it ruled, that the deadline for the abolition of the old naira note should be extended to December 31, 2023.

The Cashless Economy Policy

The Cashless policy is an economic policy aimed at reducing the amount of produced currency in the economy, and involves more electronic–based payments.²⁹ The new policy on cash-based transactions seeks to reduce the amount of physical cash circulating in the economy, and not to eliminate the use of cash completely, as well as to encourage more electronic based transactions in the payment for goods, and services.³⁰ In 2012, the CBN disclosed its plans to begin a transition to a cashless economy, as part of the country’s ambition to become one of the top 20 economies by the year 2020. The new policy seeks to ensure a seamless, inclusive and equitable implementation of the exercise for the overall benefit and growth of Nigerians, the financial system and the economy as a whole.³¹ The cashless policy initiative of the CBN has according to

²⁸ The US Bureau of Engraving and Printing, which collaborates with the Federal Reserves as well as the Treasury Department and the US Secret Service reported that the US has ongoing plans to redesign its currencies.

²⁹Ejiobih C, “Empirical Review of the Challenges of the Cashless Policy Implementation in Nigeria: A Cross-Sectional Research” *Journal of Physics: Conf. Series* 1299 (2019) 012056 Doi: 10.1088/1742-6596/1299/1/012056. accessed 10 May 2023

³⁰Ibid.

³¹Central Bank of Nigeria <<https://www.cbn.gov.ng/cashless>> accessed 10 May 2023.

James Emejo proven to be a business enabler, rather than a threat to the economy.³² This is due to the following identified benefits that can be derived from the cashless policy;

- a. It will establish a change in our payments systems in Nigeria. This is very important for economic growth and ultimately attainment of the Nigeria's vision 20 2020.
- b. It will reduce the huge cost of providing banking services. The money saved will be used to lend credit to Nigerians.
- c. It will help the Central Bank and commercial banks better manage Nigeria's economy to ensure that monetary policy works.³³

In addition to the above, there are some projected benefits for consumers, for corporations and for the government. On the side of the consumer, the expected benefits of the cashless policy are increased convenience, more service options, reduced risk of cash-related crimes, cheaper access to (out-of-branch) banking services and access to credit. For corporations, the expected benefits are, faster access to capital, reduced revenue leakage, and reduced cash handling costs while the benefits that are expected for the government are, increased tax collections, greater financial inclusion and increased economic development.³⁴

Because the cashless policy is good and the projected benefits numerous, and it is estimated to provide faster economic growth, it is important that the implementation is properly executed. Lack of proper execution by the CBN, caused a lot of hardship for Nigerians especially those in the informal sector.

While speaking in support of the cashless policy, the CBN governor said that.

The level at which people carry cash in Nigeria is unacceptable, our economy uses too much cash for transactions for goods and services, especially for buying and selling, this is not how it is done in other progressive countries of the world, where there are other payment options like debit and credit cards, bank transfers, bank direct debits, Automated Teller Machines (ATMs) and mobile phone money. Essentially, the cashless policy seeks to among other things; increase

³²Emejo J, Ibid.

³³ Cash-Less FAQs_230426_171645.pdf (Last visited April 24, 2023) accessed 23 MAY 2023

³⁴ Ibid.

the volume of all available payments instruments in the country as well as promote end to end electronic payments in the country.³⁵

Even though the process to reduce cash usage in the economy commenced in 2012, the implementation has been delayed and there had been five reversals in the bank's attempt to go cashless and promote financial inclusion since 2014. The reversals, were born out of the need to deepen the country's payment system infrastructure in Nigeria, as well as the need to enlighten the public to choose other available payment options, instead of the excessive reliance on cash for transactions.³⁶ Even though the CBN believes it has put in place enough infrastructure that would help Nigeria achieve a cashless policy that will be in line with global practices, this is in serious doubt, going by the untold hardship majority of Nigerians experienced when they were compelled to go cashless during the cash redesign exercise between January and March 2023.

Critics of the cashless policy have argued that it would further impoverish Nigerians and create unemployment in the financial value chain. However, Emejo said they lack evidence to buttress their rejection.³⁷ That notwithstanding, even if Nigerians are ready to adopt cashless initiatives, all the needed infrastructure must be put in place. Nigeria's current banking and digital payment infrastructure is inadequate to cater for the expected growth in the volume of digital /electronic based transactions.³⁸

Introduction of withdrawal limits in Nigeria

On December 21, 2022, the CBN announced an upward review of its cash withdrawal policy across all payment channels by individuals and corporate organisations. That is, effective January 9, 2023, individuals and corporate entities can withdraw a maximum of N500,000 and N3million respectively on weekly basis, compared to the N100,000 and N20,000 and N100,000 and 500,000 which were previously announced on December 6, 2022. The upward review was

³⁵ Press Statement by The CBN governor Mr Godwin Emefiele.

³⁶ Alternative cash payments options include, Point-of-sale (POS) terminals, Mobile payment systems, internet banking, Multi-functional Automated Teller Machine (ATM), Electronic Funds Transfer Systems, and Direct Debit.

³⁷Supranote 11 and 12 at p.6-7. Omejo said further that it is not surprising that most of the objections to the central bank policies are those who currently benefit from the rot in the system-politicians and other corrupt public officials who take undue advantage of the opaque system of administration that does not allow for transparency in government business.

³⁸Jaiyeola Temitayo, "Nigeria's Digital Payment Infrastructure Inadequacy" in an Interview with Route Pay CEO Femi Adeoti, Punch Newspaper April 18, 2023.p.11

because of the feedback it received from stakeholders on the implementation of the policy.³⁹ In addition, the CBN stated that in compelling circumstances, where cash withdrawal above the limit is required for legitimate purposes, such requests will be subject to a processing fee of 3 and 5 percent for individuals and corporate organisations respectively.

Complementary Guideline

The Nigerian Financial Intelligence Unit (NFIU) unveiled new guidelines aimed at mitigating money laundering, terrorist financing, and proliferation of weapons amongst others. The provisions of the framework also prohibit cash withdrawal from public accounts and ban the payment of estacodes and overseas allowances to civil and public servants in cash.

The Money Laundering (Prevention and Prohibition) Act of 2022 was passed into Law on May 17, 2022, to set standard and promote the effective implementation of legal, regulatory, and operational measures for combating money laundering, Section 2 of this Act, provides.

No person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding, N5,000,000 (five million naira) or its equivalent and N10,000.00 (ten million naira) or its equivalent for individuals and corporate bodies respectively.⁴⁰ In addition, it criminalises attempts at breaking up transactions into bits to circumvent the threshold value stated in the Act.

What went wrong in Nigeria?

According to the CBN directive, old naira notes were to be in circulation with the new notes until January 31, 2023, when the old naira notes would cease to be a legal tender. However, because of the hardship that was occasioned by the new cash policy, after much pressure from members of the public and particularly the politicians who were going to the polls in March and the fear that it could disrupt the whole electoral process, the CBN extended the initial deadline to February 10, 2023. Not satisfied with this extension, three states, Zamfara, Kaduna and Kogi approached the Supreme Court with an application seeking an interim injunction restraining the Federal Government from enforcing the 10 February deadline. This application was granted, but the

³⁹CBN updated circular dated December 21, 2022, and addressed to all Deposit Money Banks (DMBs) and other financial institutions, Microfinance Banks, Mobile Money Operators and Agents .

⁴⁰ Section 2 Money Laundry (Prevention and Prohibition) Act, 2022

CBN treated the law in contempt by not directing the banks to obey the Supreme Court's interim order.

The CBN ordered Deposit Money Banks (DMB) and other financial institutions to ensure that weekly-over-the-counter (OTC) cash withdrawals by individuals and corporate entities do not exceed N100,000 and N500,000 respectively. The apex bank also fixed daily minimum withdrawal via point of sale (PoS) terminals at N20, 000. The move was to take effect from January 9, 2023. These guidelines put many citizens to excruciating economic hardship as it got to a point that it became very difficult to withdraw any cash at all, and at another point no matter how much a customer wants to collect the bank could only give each customer N2, 000 cash.

By placing a limit on how much cash can be withdrawn daily, the CBN has breached the Money Laundering Act, 2022, which puts a limit of cash withdrawals and deposits at N5m for individuals and N10m for corporate entities.⁴¹ However, some are of the view that there is actually no restriction because bank customers can still withdraw any amount of money way above N100, 000 weekly, but have to pay a 5% withdrawal fee. This is however making it more expensive to withdraw your own money, and an infringement on the fundamental human rights of Nigerians, particularly the right to property.⁴² Another question that needs to be answered is, can the money in bank account be regarded as property? And if you are made to pay an extra fee when you want to withdraw your money from the bank, could it be said that it is being taken compulsorily? Nigerian Human Rights Lawyer, Mr. Femi Falana faulted the CBN new cash withdrawal limits as "illegal, null and void."⁴³ In response to the contradictory policies, 15 states sued the Federal Government⁴⁴ and two states joined suit with the Federal Government on the opposite side.

⁴¹ S. 2(1) MLA

⁴²Section 44 of the 1999 Constitution states that no immovable property or any interest in an immovable property shall be taken possession of compulsorily.

⁴³Egobiambu E, "CBN's Cash Withdrawal Limits is illegal" December 12 2022 available at: <<https://www.channels.com/2022/12/12/cbns-cash-withdrawal-limits-is-illegal-falana>> (Last visited December 12,2022).

⁴⁴Kaduna, Kogi, and Zamfara were later joined by Cross-River, Sokoto, Lagos, Ogun, Katsina, Ondo and Ekiti states. Later Nasarawa, Niger, Kano, Jigawa, Rivers and Abia states joined suit. However, Rivers and Abia states filed separate suits that were consolidated with the main one. Edo and Bayelsa states joined the side of the Federal Government to oppose the suit.

The Supreme Court Judgment Aborting the Policy

Three State governments, Kaduna, Kogi, and Zamfara filed a suit against the Federal government seeking an order, invalidating the CBN's recent banknotes redesign. The Justice Okoro led seven-member panel ⁴⁵ gave an interim order on February 8, 2023, that the old and the new banknotes should continue to circulate until the determination of the suit brought before it. The Federal government/CBN did not obey this interim court order, which made the Supreme Court to berate President Buhari for not obeying previous provisional order to halt the policy until it decided the case.⁴⁶ The court also said the correct process has not been followed,⁴⁷ and declared the directive given by the President as invalid because, "such directive is not just handed down after personal conversation with the governor of CBN."

The Socio-Economic Rights and Accountability Project also filed a lawsuit against the President over, "the unlawful directive banning the use of old N500 and 1,000 banknotes, contrary to the interim injunction granted by the Supreme Court that the old N200, N500, N1000 notes remain legal tender." Joined in the suit as defendants were the Attorney General of the Federation, the Minister of Justice,⁴⁸ and the CBN. The CBN failed to act on the Supreme Court's ruling, by not instructing the deposit money banks to comply with the ruling.

On March 3, 2023, the Supreme Court of Nigeria reversed the CBN policy on new notes and ordered reliefs as follows.

1. A declaration that the currency redesign and accompanying cash limit policies are inconsistent with the CBN Act.
2. A declaration that the President cannot make a unilateral policy without consulting with and carrying along the states.
3. A declaration that in issuing the policy, the President is under an obligation to also consult with and carry along the National Council of states.
4. A declaration that the policy has impeded the functions of the state governments

⁴⁵ Other Justices that sat on the case are Emmanuel Agim, Amina Augie, Mohammed Garba, Ibrahim Saulawa, Adamu Jauro and Tijani Abubakar.

⁴⁶Nduka Orjinmo, Nigeria's Supreme Court rules CBN naira redesign invalid' BBC News, Abuja 3 March 2023 available at: <bbc.co.uk/news/world-africa> accessed April 2,2023)

⁴⁷ Supreme Court rulling on Cash redesign and cash withdrawal limits.

⁴⁸Abubakar Malami, SAN

5. A declaration that the directive of the president is illegal
6. An order that the old version of the naira notes shall continue to be legal tender with the new naira notes until December 2023.⁴⁹

Justice Emmanuel Agim, delivering the lead judgment in the case, brought by the state governments, said, “ the rule of law upon which our democratic governance is founded becomes illusory if the President of the country, or any authority or person refuses to obey the order of courts” Expressing unfamiliarity with any law which empowers a bank to withhold a customer’s money and refuse to give him/her, the lead judgment extended the validity of the old naira notes until 31 December, ordering that they remain legal tender alongside the new notes, up till the newer deadline.

The Justices of the Supreme Court based their decision on the fact that enough notice was not given to the public before the old notes were withdrawn, and that not enough of the new notes were released into circulation, leading to cash crunch, widespread anger, and frustration.⁵⁰

The Supreme Court also declared that the unconstitutional use of powers by President Buhari on the naira re-designing breached the fundamental rights of the citizens in various ways, adding that such use of powers by the President was not permitted under democracy and was an affront to the constitution.⁵¹

Recommendations

This Paper therefore comes up with the following recommendations.

There is the need to put in place all the necessary banking and digital payment infrastructure.

There should be enlightenment of members of the public to choose other available payment options, instead of the excessive reliance on cash for transactions.

Nigeria should borrow a leaf from the United States of America government which has in place a long-time plan for the phasing out of old bank notes, thereby giving enough notice to the public before withdrawing the old notes.

⁴⁹ Supreme Court ruling of March 3, 2023, on the new cash policy in Nigeria.

⁵⁰ Many people were unable to get cash to pay for food and slept outside banks.

⁵¹JideOjo, “Supreme Court decision on naira redesign policy” Punch Newspaper, March 8, 2023 Available at: <<https://punchng.com/supreme-court-decision-on-naira--redesign-policy/>> (Last visited April 1, 2023).

There should be creation of more awareness to bring the unbanked into the banking system.

Lastly, the various tiers of government should set good example for the citizens by obeying court orders, because nobody is above the law. Not doing this is a sign of the failure of the rule of law.

Conclusion

To answer the question did the CBN act within the law, the answer is yes and no. Yes, in the sense that the cashless policy is within the purview of the mandate given to the CBN by its enabling Act. Not only is it within the law, but the policy also if properly executed, has many economic benefits and it is often recommended to usher in economic growth. No, in the sense that the CBN failed to properly implement the policy. In conclusion, the cashless policy if well implemented can result in massive economic growth and ultimately attainment of the Nigeria vision 20- 2020.⁵² Which has not been achieved four years after the targeted year 2020. It will also reduce the huge cost of providing banking services and the money saved can be used to lend credits to Nigerians.

In the same vein, if most of the people embrace e- payment, it would move Nigeria into a cashless society, and with its proper use, corruption which is a cancer in government arena will be drastically reduced. E-payment is however faced with challenges, like public acceptability, lack of uniform platform being operated by the banks, lack of adequate infrastructure and issues of security.

In addition, one can say no to the question because the implementation of the cashless policy contravened the fundamental right of the citizens to peaceful enjoyment of their property which includes money which they were not able to withdraw from their bank accounts. The policy also contravened another law, the Money Laundering Act, 2022

The timing of the introduction of the cashless policy was wrong as it was too close to the March 2023 general elections. If not for the people's resolve to go on with the elections despite all odds the election would have been aborted.

⁵² That is, to be one of the best 20 economies before the year 2020. This vision is a tall ambition yet to be achieved 3 years after the targeted year

Disobedience of the order of the Supreme court by the defendants⁵³ is a sign of the failure of the rule of law and as was declared by the Supreme Court it shows that the country's democracy is a mere pretension which is now replaced by autocracy. Up till now, Nigerians are still experiencing difficulties accessing cash at banks and from ATM machines and it is not clear yet the impact the reversal will have on the economy in the nearest future.

Even though many people have switched to online banking, millions of people and businesses in the rural areas remain heavily dependent on cash. Also, the problem of frequent failed electronic payment transactions has discouraged many Nigerians from patronising e-transactions. There is however an improvement in the e-payment services in March 2023 as against the experience in January and February.⁵⁴ According to new industry statistics from the Nigeria Inter-Bank Settlement System (NIBSS), Nigeria used electronic gateways 1.35 billion times in March 2023, 448.54 million times more than the 901.46 million times they did in February of the same year. Cashless transactions grew by 44.84 percent to N126, 73tn in the first quarter of 2023 from N87, 49tn in the corresponding period of year 2022.

A tightly contested presidential election which took place in March 2023, was won by the ruling party, although there were some cases of vote buying, but they were not as rampant as in previous elections. According to the President of Nigeria in his national broadcast on 16 February 2023, notwithstanding the initial setbacks experienced, the evaluation and feedback mechanism set up revealed that gains have emerged from the policy initiative. He said he has been reliably informed that since the commencement of the exercise, about N2.1 trillion out of the banknotes previously held outside the banking system had been successfully retrieved. This represents about 80% of such funds. The president noted also that the new monetary policy has also contributed immensely to the minimization of the influence of money in politics.⁵⁵

Although the President gave his administration a pass mark on what was generally described as "poorly conceived and shoddily executed naira redesign,"⁵⁶ the United Nations lend credence to the fact that the naira redesign policy and the resultant naira crunch was a failure because it

⁵³ The CBN and the attorney General of the Federation

⁵⁴ Jaiyeola, Jaiyeola "E-Payment rise to N49 trillion over naira crises" The Punch Newspaper, Tuesday April 18, 2023, p.26

⁵⁵ President Muhammadu Buhari in his national broadcast on 16 February 2023.

⁵⁶ Adedokun Abimbola, "Buhari Doesn't Deserve Forgiveness" in the Article Thursdays with Abimbola Adedokun, The Punch Newspaper April 27, 2023 p.30 aadedokun@punching.com.accessed April 20 2023

crippled the Nigerian economy. The UN disclosed this in a report produced by the United Nations Conference on Trade and Development. UNCTAD⁵⁷The report further said that a shortage of cash, triggered by the replacement of the 1000naira which is the country's highest currency denomination hobbled the economy, especially the informal sector.

⁵⁷ United Nations Trade and Development Report Update: Global Trends and Prospects (April 2023)