



Fountain University Law Journal (FULAJ) (2024) 1(1) 156-172
A Publication of College of Law, Fountain University, Osogbo, Nigeria
<https://fountainjournals.com/index.php/FULAJ/index>

INVESTIGATING THE LEGAL REGIME OF BLOCKCHAIN AND CRYPTOCURRENCIES IN NIGERIA

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Abstract

The world is witnessing very fast developments in all spheres of human endeavour and has, in fact, become a global village. These tremendous developments are occasioned by swift and unending growth in technology and part of these developments is the emergence of the blockchain technology (BT). As it is in other parts of the world, BT is fast evolving in Nigeria and is fast disrupting the traditional financial system because it has ushered in a new type of currency called 'digital or virtual currency', which differs from the traditional currency, and is now a subset of alternative currencies. Despite the rapid acceptance of this digital currency in Nigeria, the existence of a legal framework for its provision, adoption, circulation and usage, as an alternative currency, is circumspect. It is against this background that this work seeks to explore the genesis of cryptocurrencies and their incursion into Nigeria's financial market and general business environment. The work, consequently, appraises existing legal framework on trade and commercial transactions, especially, as they pertain to BT and cryptocurrencies in Nigeria and some select foreign jurisdictions and concludes that there is urgent need for the enactment of a broad-based law for consumers' protection, state security, insulation against economic sabotage and general control of the provision, adoption, circulation and usage of cryptocurrencies in Nigeria, in line with international monetary best practices.

Keywords: Blockchain, Cryptocurrency, Technology, Alternative Currency, Legal Framework

1.0 INTRODUCTION

Prior to the invention of money (which is generally accepted as a medium of exchange, a measure of value, or a means of payment), as a means of exchange for goods and services, trade by barter was the means through which trading in goods and services were carried out. Goods and services were traded by people for what

they needed.¹ This was the order until the Mesopotamian created the shekel as the first known form of currency. Cowrie-shells, whale-teeth and other items from nature were some of the early form of currencies.²

Although the use of metal (coin) for money dates back to Babylon before 2000 BCE, it became standardised about the 7th century and it was then made up of a combination of silver and gold. In the 6th century, animal hide was used as currency in ancient Rome, Carthage (France), Russia and China. China was the first country to create paper money during the reign of Emperor Zhenzong and paper money spread to other parts of the world in the late 18th and early 19th centuries.³

Despite the modern-day paper currencies, the world over, it is noteworthy that there are other means used in settling commercial activities, including treasury bills, cheques, bills of exchange, *et cetera*.

The information technology industry is rapidly and steadily adding its transformational value, through new discoveries and development of technologies that could be relied upon for businesses to thrive. Online payments constitute one of such technologies, which were introduced to facilitate payment for goods and services, as against the physical exchange of coins and or paper money. As a result of internet boom and growth of e-commerce, online payments have become more convenient and accepted, both in the public and private sectors. Another development in the business circle, attributable to information technology, which is gaining tremendous popularity and widespread use, the world over, is digital currencies, otherwise known as “cryptocurrencies”.

Cryptocurrencies, by all standards and reference-laws, are not actual currency; this is because there are certain characteristics inherent in actual currency that cryptocurrencies lack, including liquidity, stability of value, being an easy and frictionless while trading between people takes place.⁴

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¹ Chris Butler, ‘Money 101: The Functions & Characteristics of Money’ <https://www.projectfinance.com/f...> accessed 18 January, 2023.

² Amy Tikkanen, ‘A Brief (and Fascinating) History of Money’ Britannica <https://www.britannica.com/story> accessed 29 September 2023; David Orrel, ‘A brief History of Money’ cited in Yukinobu Kitamura, ‘Overview of the History of Money’ (2022) 48 Hitotsubashi University IER Economic Research Series <https://link.springer.com>>chapter accessed 30 September, 2023.

³ Chelsea Dehner, ‘The History of Money: How Currency Evolved from Pelts to Paper’ <https://mint.intuit.com>>Blog accessed 30 September, 2023.

⁴ J Spacey, ‘10 Characteristics of Money’ <https://simplicable.com>>new.mo... accessed 17 January, 2023.

2.0 CONCEPTUAL FRAMEWORK

2.1 Cryptocurrency

“Cryptocurrency” is a medium of exchange, alternate to paper currency, created and stored electronically (digitally), using encryption techniques to control the creation of monetary units and to verify the transfer of funds.⁵ The Central Bank of Nigeria (CBN) defined “cryptocurrencies” as digital or virtual currencies issued by largely anonymous entities and secured by cryptography, cryptography being a method of encrypting and hiding codes that prevent oversight, accountability, and regulation.⁶

The International Monetary Fund (IMF) described “crypto-assets” as mere codes that are stored and accessed, electronically. It refers to a wide-spectrum of digital products that are privately issued, using similar technology and same can be stored and traded, using, primarily, digital wallets and exchanges.⁷

EU Market in Crypto-assets Regulation (MiCA) defined “crypto-asset” as ‘a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology’.⁸

2.2 Blockchain

Shaikh and Lashari described “blockchain” as a medium to perform data management that allows persons to create and share the public ledger of transactions within a distributed network.⁹ Blockchain may be described as a shared database, secured, due to its structure that can reduce transaction costs and increase transparency.¹⁰ It is a network of blocks connected to one another in a precise order, each block containing specific data, such as financial transactions, contractual terms, medical information, *et cetera*. It can also be described as a system, set-up to record decentralised transactions, in contrast to banks and issuing houses which are centralised authorities.¹¹

⁵ PwC’s Financial Services Institute, ‘Money is no Object: Understanding the Evolving Cryptocurrency Market’, (PwC, August 2015)

<https://www.pwc.com/us/en/financial-services/publications/assets/pwc-cryptocurrency-evolution.pdf> accessed 14 February 2023.

⁶ Osita Nwanisobi, ‘Response to Regulatory Directive on Cryptocurrencies’ <https://www.cbn.gov.ng/ccd> accessed 14 February 2023.

⁷ International Monetary Fund, ‘Regulating Crypto’ <https://www.imf.org/2022/09/Re> accessed 14 February 2023.

⁸ K Zhang, et al, ‘Overview of the New EU Crypto-Asset Regulatory Framework’ <https://www.klgates.com/MICA-O...> accessed 14 February 2023.

⁹ ZA Shaikh and IA Lashari, ‘Blockchain Technology: The New Internet’ (2017) 6(4) International Journal of Management Sciences and Business Research 168.

¹⁰ National Information Technology Development Agency (NITD), *National Blockchain Adoption Strategy: Streamlining into a Digital Future* (NITD, Abuja, 2023) 9 <https://nitda.gov.ng/wp-content/uploads/2023/01/BlockChainAdoptionStrategy-compressed-1.pdf> accessed 14 February, 2024.

¹¹ Rifkatu Ali, ‘The Regulatory Frameworks of Blockchain in Nigeria’ <https://sabilaw.org/the-regulatory-...> accessed 30 September, 2023.

3.0 GENESIS OF BLOCKCHAIN AND CRYPTOCURRENCIES

One of the emerging technologies that gained popularity and widespread acceptance, within the shortest period of its introduction, is BT, which is, primarily, aimed at driving new business and service models, by supporting the digital transformation of countries and businesses. Historically, cryptocurrency is said to have emerged in the early 1980s and was known, then, as “cyber-currency” and was later improved on, in the 1990s.¹² BT is said to have been first introduced in 2008, when Nakamoto, a researcher, published an article, titled: ‘A Peer-To-Peer Electronic Cash System’,¹³ in which he explained how one could carry out instant transactions, directly, from sender to receiver without any involvement of any third-party, such as government or financial institutions.¹⁴

Cryptocurrencies are a digital currency, also known as virtual currencies, which also serve as an alternative means of payment, created, using encryption algorithms, and they function as both a currency and virtual accounting system, simultaneously.¹⁵ As earlier indicated, the CBN defines “cryptography” as a method of encrypting and hiding codes that prevent oversight, accountability, and regulation.¹⁶ Examples of cryptocurrencies include bitcoin, ripple, compound, litecoin binance coin, chainlink, polkadot and cardano.

4.0 EXTANT LEGAL FRAMEWORK FOR CRYPTOCURRENCIES IN NIGERIA

Generally speaking, Nigeria, currently, has no specific legal framework aimed at regulating the use of cryptocurrencies and BT technology, although in second quarter of 2023, the National Blockchain Policy for Nigeria¹⁷ was approved by the Federal Executive Council, which is to serve as a roadmap for Nigeria’s adoption and utilisation of BT. The policy lays out a comprehensive framework for integrating BT into different spheres of life, so as to fully realise the potential of BT. The policy aims to encourage the use, adoption, and integration of BT in the various sectors of Nigeria’s digital economy, in order to increase economic prosperity, efficiency, innovation, transparency, security and trust.¹⁸ There is, however, an Investments and Securities Bill, presently, at the National Assembly, which seeks to repeal the Investments and Securities Act, 2007 and to establish the Securities and Exchange Commission as the apex regulatory authority for the Nigerian capital market as well as the regulation of the market to ensure capital formation, the protection of investors, maintenance of fair, efficient and transparent

¹² CG Kamau, ‘The Cryptocurrency Market in Kenya: A Review of Awareness and Participation by the Youth’ (2022) 12(1) *Journal of Asian Business Strategy* 49.

¹³ Satoshi Nakamoto, ‘Bitcoin: A Peer-To-Peer Electronic Cash System’ (21 August, 2008) <http://dx.doi.org/10.2139/ssrn.3440802> accessed 30 September, 2023.

¹⁴ Satoshi Nakamoto, ‘Bitcoin: A Peer-To-Peer Electronic Cash System’ *ibid* (n 13).

¹⁵ A Losev, ‘Regulating The Unregulated: What is the Future of Crypto Assets’ <http://valdaiclub.com/experts> accessed 23 January, 2023.

¹⁶ Osita Nwanisobi, ‘Response to Regulatory Directive on Cryptocurrency, CBN UPDATE’ (2021) 3(2) 9 <https://www.cbn.gov.ng> accessed 19 January, 2023.

¹⁷ NITD, *National Blockchain Policy For Nigeria* (n 10).

¹⁸ *Ibid*

market and reduction of systematic risk. However, the policy is not law and until this Bill is passed, it has no legal effect.

Currently, the principal law regulating the production, issuance, use and circulation of currencies, in their various denominations, is the Central Bank Act, 2007.¹⁹ However, there are other laws, whose contents, directly or indirectly, affect currencies in Nigeria. These laws includes: the Investment and Securities Act, 2007,²⁰ the Banks and Other Financial Institutions Act, 2020,²¹ the Companies and Allied Matters Act, 2020,²² the Money Laundering (Prevention and Prohibition) Act, 2020,²³ the Criminal Code, 2004,²⁴ the Penal Code, 2004,²⁵ the Federal Competition and Consumer Protection Act, 2018,²⁶ the Economic and Financial Crimes Commission Act, 2004,²⁷ the Independent Corrupt Practices Commission Act, 2004,²⁸ the Personal Income Tax (Amendment) Act, 2011,²⁹ the Financial Reporting Council Act, 2011,³⁰ the Capital Gains Tax Act, 2004,³¹ the Terrorism (Prevention) (Amendment) Act, 2013,³² *et cetera*.

Despite this avalanche of legislations, rules and regulations on traditional money and currencies in Nigeria, however, there is, presently, no coherent and synchronised legal and regulatory framework regarding Nigeria's position and usage of cryptocurrencies.

4.1 Central Bank of Nigeria Act

Section 1 of the Central Bank Act³³ established for Nigeria an independent corporate entity called the CBN,³⁴ the objectives of, which, as encapsulated in section 2 of the Act, are to: ensure monetary and price stability; issue legal tender currency in Nigeria; maintain external reserves to safeguard the international value of the legal tender currency; promote a sound financial system in Nigeria; and act as banker and provide economic and financial advice to the federal government of Nigeria.³⁵ Section 20 of the CBN Act, especially, bestows on the CBN, the power to regulate all forms of transactions involving currencies, including virtual currencies and other forms of digital assets. Consequently, the production, issuance and use of any form of currencies in Nigeria, not emanating from the CBN, become

¹⁹ Central Bank Act, 2007, No 7, 2007 (as amended).

²⁰ Investment and Securities Act, 2007, No 29, 2007.

²¹ Banks and Other Financial Institutions Act, 2020, No 5, 2020.

²² Companies and Allied Matters Act, 2020, No 3, 2020.

²³ Money Laundering (Prevention and Prohibition) Act, 2022, No 14, 2022.

²⁴ Criminal Code, Cap C38 LFN, 2004.

²⁵ Penal Code, Cap P3 LFN, 2004.

²⁶ Federal Competition and Consumer Protection Act, 2018, No 1, 2018.

²⁷ Economic and Financial Crime Act, Cap E1 LFN, 2004.

²⁸ Corrupt Practices And Other Related Offences Act Cap C31 LFN, 2004.

²⁹ Personal Income Tax (Amendment) Act, 2011, No 20, 2011.

³⁰ Financial Reporting Council Act, 2011, No 6, 2011.

³¹ Capital Gains Tax Act, Cap C1 LFN, 2004.

³² Terrorism (Prevention) (Amendment) Act 2013, No 3, 2013.

³³ Central Bank Act, 2007 (n. 19).

³⁴ *Ibid*, Section 1

³⁵ *Ibid*, Section 2

illegal, an affront and a usurpation of the powers of the CBN, being the statutory issuer of legal-tender currencies in Nigeria. The CBN has, unequivocally, declared, as direct contravention of existing law, the use of cryptocurrencies in Nigeria. It went further to direct the closure of all accounts owned by individuals or entities transacting in or operating cryptocurrencies' exchanges in Nigeria.³⁶ However, reading in- between the lines of the relevant CBN Circular, it is clear that there is no outright ban or prohibition on trading in virtual currencies.

4.2 Investments and Securities Act

The Investments and Securities Act, 2007,³⁷ is enacted to regulate capital market activities in Nigeria and in section 1, the Securities and Exchange Commission (SEC) was established. The specific powers of the Commission include: regulating investments and securities business in Nigeria, as defined in this Act; registering and regulating securities exchanges, capital trade points, futures, options and derivatives exchanges, commodity exchanges and any other recognised investment exchange; regulating all offers of securities by public companies and entities; registering securities of public companies; rendering assistance as may be deemed necessary to promoters and investors wishing to establish securities exchanges and capital trade points; preparing adequate guidelines and organising training programmes and disseminating information necessary for the establishment of securities exchanges and capital trade points; and registering and regulating corporate and individual capital market operators, as defined in this Act.³⁸

Further to these powers and functions, on 14 September, 2020, the SEC stated that virtual crypto assets are securities that fall within its jurisdiction;³⁹ and on 11 February, 2021, the Commission asserted that all digital asset token offerings (DATOs), initial coin offerings (ICOs), security token ICOs and other blockchain-based offers of digital assets, within Nigeria or by Nigerian issuers or sponsors, or foreign issuers targeting Nigerian investors, shall be subject to regulation by the SEC, further to which the SEC also approved a set of Rules on the Issuance, Offering Platforms and Custody of Digital Assets (the Digital Asset Rules), to regulate digital assets and virtual asset service providers. The Rules make the registration of the following compulsory: digital asset offering platforms; digital asset custodians; digital service providers and digital assets' exchange platforms. It is pertinent to observe that these Rules have no effective date.

Also, to assert its regulatory powers, the SEC, in the aforementioned Press Release, suspended the admission to its Regulatory Incubation (RI) programme, of all persons affected by the CBN directive, until they are able to operate bank accounts within the Nigerian banking and financial system.

³⁶ Bello Hassan and Musa I Jimoh, 'Letter to all Deposit Money Banks, Non-Bank Financial Institutions and Other Financial Institutions' <https://www.cbn.gov.ng> accessed 18 January, 2023.

³⁷ Investment and Securities Act, 2007 (n 20).

³⁸ See s 13, the Investment and Securities Act, 2007 *ibid*.

³⁹ Securities and Exchange Commission, 'Statement on Digital assets and Their Clarification and Treatment' <https://sec.gov.ng/statement-on-digital-assets-and-their-classification-and-treatment> accessed 16 January, 2023.

4.3 Money Laundering (Prevention and Prohibition) Act

The Money Laundering (Prevention and Prohibition) Act, 2022,⁴⁰ provides for the comprehensive legal and institutional framework for preventing and prohibiting money laundering in Nigeria, including detection, prosecution and punishment for money laundering and other related offences, placing certain anti-money laundering requirements on financial institutions and designated non-financial businesses and professions in Nigeria.

Under the Money Laundering (Prevention and Prohibition) Act, financial institutions include banks, bodies corporate, associations or group of persons, whether corporate or incorporate, which carry-on the business of investment and securities, virtual assets service providers, discount houses, insurance institutions, debt factorisation and conversion firms, bureaux de change, finance companies, money brokerage firms whose principal businesses include factoring, project financing, equipment leasing, debt administration, fund management, private ledger service, investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension funds management and such other businesses as the CBN, or other appropriate regulatory authorities, may designate.⁴¹

4.4 Federal Competition and Consumer Protection Act⁴²

The Federal Competition and Consumer Protection Act (FCCPA) establishes the Federal Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal, for the purpose of promoting competition in Nigerian markets, at all levels, through the elimination of monopolies, prohibition of abuse of dominant market positions and penalising other restrictive trade and business practices. It, generally, protects consumers of goods and services in Nigeria against unfair business practices, including misrepresenting material facts in the marketing of goods and services.⁴³ In its definition section, the Act⁴⁴ defines a consumer as including any person to whom a service is rendered. It is submitted that, although virtual currency operators are not, expressly, mentioned in the Act, individuals receiving the services of virtual currency operators in Nigeria are protected by the provisions of the Act and by extension, a customer has cause of action, under the FCCPA, for damage suffered because of misrepresentations made to him by a virtual currency operator.

4.5 Criminal and Penal Codes

Presently, there is no provision, either in the Criminal Code⁴⁵ or the Penal Code⁴⁶ that regulates the business of virtual currencies in Nigeria. For instance, section 419 of the Criminal Code provides that any person who, by any false pretense, and with the intent to defraud, obtains from any other person, anything capable of being

⁴⁰ Money Laundering (Prevention and Prohibition) Act (n. 23).

⁴¹ Ibid, section 30

⁴² Federal Competition and Consumer Protection Act, 2018, No 1, 2018.

⁴³ Ibid.

⁴⁴ Ibid, s 167 FCCPA

⁴⁵ Criminal Code, Cap C38 LFN, 2004.

⁴⁶ Penal Code, Cap P3 LFN, 2004

stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a felony and is liable to imprisonment for three years.

Also, section 320 of the Penal Code provides that whoever, by deceiving any person, fraudulently or dishonestly, induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.⁴⁷

The uniqueness of cryptocurrencies makes it an object that can be used to defraud. Crypto-Ponzi schemes are prevalent in Nigeria; hence, victims of fraudulent schemes of this kind can recover their investments by having recourse to the court for prosecution under the Criminal or the Penal Code.

4.6 Nigeria Data Protection Regulation 2019 (NDPR)

This regulation was made by the National Information Technology Development Agency (NITDA) in pursuance to its statutory mandates which include developing regulations for electronic governance and monitoring the use of electronic data interchange and other forms of electronic communication transactions, as an alternative to paper-based methods in government, commerce, education, the private and public sectors, labour and other fields, where the use of electronic communication may improve the exchange of data and information.

These rules make provisions for the rights of data subjects, which include the existence of the right to request from the controller, access to and rectification or erasure of personal data or restriction of processing concerning data subjects or to object to processing, as well as the right to data portability,⁴⁸ right to lodge a complaint with a relevant authority,⁴⁹ right to withdraw consent,⁵⁰ *et cetera*.

However, it has been opined that the decentralised and immutable nature of virtual currencies, as blockchain-based creations, poses an obstacle to executing this right and might make the right functionally impossible to exercise but that technical or practical solutions may be needed to facilitate the erasure or rectification of personal data so as to ensure compliance with NDPR provisions.⁵¹

4.7 Cybercrimes (Prohibition, Prevention, etc) Act

The Cybercrimes (Prohibition, Prevention, etc) Act,⁵² provides an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. This act also ensures the protection of critical national information infrastructure and promotes cyber-security and the protection of computer systems

⁴⁷ Ibid, See s 320 (a) and (b)

⁴⁸ See s 3.1(7)(h) NDPR, 2019.

⁴⁹ See s 3.1(7)(j) NDPR, 2019.

⁵⁰ See s 3.1(7)(i) NDPR, 2019.

⁵¹ C Ofili, I Muhammed, et al, 'The Virtual Currency Regulation Review: Nigeria' The Law Reviews <https://thelawreviews.co.uk> accessed 20 January, 2023.

⁵² Cybercrimes (Prohibition, Prevention, etc) Act, 2015.

and networks, electronic communications, data and computer programs, intellectual property and privacy rights.

The objectives of this Act are to: (a) provide an effective and unified legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria; (b) ensure the protection of critical national information infrastructure; and (c) promote cyber-security and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.⁵³

5.0 BLOCKCHAIN AND CRYPTO CURRENCY LEGAL FRAMEWORK IN INTERNATIONAL JURISDICTIONS

5.1 China

The first cryptocurrency began operation in China in 2011 and in 2013, Bitcoin was accepted for website security services.⁵⁴ China was one of the earliest countries to, heartily, embrace cryptocurrency. In September 2021, the Chinese authorities imposed a ban on financial transactions involving the use of cryptocurrencies. According to the People's Bank of China, which is the country's apex bank, all transactions and commercial activities related to virtual currency in cryptocurrency are illegal and unacceptable. The bank further added that China is conducting a consistent fight against the mining of digital assets. The Chinese regulator believes that such activities 'seriously threaten the security of people's property'. Furthermore, the National Development and Reform Commission of the People's Republic of China (NDRC) issued a notice saying that the country would take strict measures against cryptocurrency mining, as part of its efforts to reduce carbon emissions. The NDRC statement declares that activities, including mining projects, must be marked as 'to be eliminated'.⁵⁵

5.2 United States of America

In the United States, cryptocurrencies have been given much focus by federal and state governments. Agencies, such as the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Internal Revenue Service (IRS), the Office of the Comptroller of the Currency (OCC), the Financial Crimes Enforcement Network (FinCEN) and the Federal Trading Commission (FTC),⁵⁶ are some of the agencies that are saddled with the responsibility of regulating the use of virtual currencies.

In strict sense, at the federal level, the US is yet to make any law regulating cryptocurrency, although, there is a bipartisan Bill referred to as Responsible Financial Innovation Act, which is aimed at providing regulatory clarity for

⁵³ See s 1 Cybercrimes (Prohibition, Prevention, etc) Act, 2015 *ibid*.

⁵⁴ M Campbell-Verduyn, 'Bitcoin and Beyond: Cryptocurrencies, Blockchains and Global Governance' <https://library.oapen.org/bitstream/id/c8a35b6e-03a3-4116-97b9-af50ce7534b6/1000376.pdf> 35 accessed 18 January, 2023.

⁵⁵ Y Wang, 'China: National Development and Reform Commission Issues Notice Restricting Cryptocurrency Mining' <https://www.bpc.com/news/tech> accessed 20 January, 2023.

⁵⁶ J Dewey and S Patel, 'Blockchain & Cryptocurrency Laws and Regulations 2023 USA' Global Legal Insights <https://www.globalleglinsights.com> accessed 27 September, 2023.

agencies charged with supervising digital asset markets, providing a strong-tailored regulatory framework for stablecoins, integrate digital assets into existing tax and banking laws and spur innovation in the field and digital assets. At the state level, some state governments have passed laws affecting cryptocurrencies and blockchain technology, with either positive or negative effects, including Virginia, Utah, Arizona, Wyoming, *et cetera*. For example, Wyoming is one of those states that have passed a law allowing for the creation of a new type of bank or special purpose depository institution to act as custodial and in fiduciary capacity. Wyoming also passed a legislation easing the formation of decentralised autonomous organisations (DAOs). Conversely, states like Iowa, Maryland, Florida, *et cetera*, passed prohibitive laws on cryptocurrencies and blockchain technology.⁵⁷

5.3 European Union

The European Council Presidency and the European Parliament reached a provisional agreement on the markets in crypto-assets (MiCA) proposal, which covers issuers of unbacked crypto-assets, and so-called “stablecoins”, as well as the trading venues and the wallets where crypto-assets are held. This regulatory framework will protect investors and preserve financial stability, while allowing innovation and fostering the attractiveness of the crypto-asset sector. This will bring more clarity in the European Union, as some member states already have national legislation for crypto-assets, but so far there has been no specific regulatory framework at the EU level.⁵⁸

5.4 Japan

Japan was among the first countries to recognise cryptocurrency and it, indeed, became the cryptocurrency hub of the world.⁵⁹ On March 4, 2022, a ‘Bill for Partial Amendment to the Act on Payment Services Act, etc. for the Purpose of Establishing a Stable and Efficient Funds Settlement System’ (the ‘Amendment Act’) was submitted to, and subsequently approved on June 3, 2022 by, the Diet. The objectives of the Amendment Act is to establish a stable and efficient funds settlement system that is responsive to the digitalisation of finance and other fields, against the backdrop of the rise in issuance and circulation of stablecoins overseas, the growing need for improvement in transaction monitoring by banks, *et cetera* and the increasing prevalence of prepayment instruments that enable payments by electronic means. In connection with the rise in issuance and circulation of stablecoins overseas, the Amendment Act also introduces the concept of ‘electronic payment instruments’ (EPs), which corresponds to the concept of stablecoins (Article 2, Paragraph 5 of the Amended Payment Services Act (the ‘Amended PSA’)).⁶⁰

⁵⁷ J Dewey and S Patel, ‘Blockchain & Cryptocurrency Laws and Regulations 2023 USA’ *ibid*.

⁵⁸ Bruno Le Maire, ‘Digital Finance: Agreement Reached on European Crypto-Assets Regulation (MiCA)’ <https://www.concilium.europa.eu/> accessed 19 January, 2023.

⁵⁹ Dilip Kumar Patra, ‘An Overview of the Cryptocurrency Regulations in Japan’ *Cointelegraph* <https://cointelegraph.com/learn> accessed 27 September, 2023.

⁶⁰ Takeshi Nagase, Tomoyuki Tanaka and Takato Fukui, ‘Blockchain & Cryptocurrency Laws and Regulations 2023 Japan’ *Global Legal Insights* <https://www.globallegalsights.com/> accessed 27 September, 2023.

Also, the Amendment Act provides for a new definition of intermediary activities in respect of the management of stablecoins that constitute EPIs. Specifically, the Amendment Act defines the management of stablecoins that constitute EPIs as ‘electronic payment instruments transaction business’, besides introducing a registration system for businesses engaged in such activities. The Amendment Act will come into effect within a year from the date of its promulgation. The exact date will be specified by a subsequent Cabinet Order but the date is yet to be specified.

5.5 El Salvador

El Salvador was the first country in the world to recognise Bitcoin as a legal tender and as a result of this, El Salvador approved a law that would regulate the issuance of other digital assets by both state and private entities. The purpose of this law is to establish the legal framework that grants legal certainty to transfer operations to any title of digital assets used in public issuance offers. The law also establishes the creation of the National Commission for Digital Assets and the Bitcoin Funds Administration Agency, which is charged with managing, safeguarding, and investing the funds from public offerings of digital assets carried out by the government.⁶¹

The International Monetary Fund (IMF), although agreed the government of El Salvador on the importance of boosting financial inclusion, emphasises the need for strict regulation and oversight of the new ecosystem of Bitcoin because of the large risks associated with its use on financial stability, integrity, consumer protection and the associated fiscal contingent liabilities, including the speculative nature of crypto markets.⁶²

5.6 Egypt

In 2018, Dar al-Ifta, which is the primary Islamic legislator in Egypt, issued a religious decree⁶³ classifying commercial transactions in Bitcoin as haram which means that it is prohibited under Islamic law. According to the legislature the ban was based on the fact that it could be harmful to the country’s national security and central financial systems and that it could also be used to finance terrorism and terrorist activities.⁶⁴ Despite the fact that trading in cryptocurrency is illegal in Egypt, it is estimated that over 1.7 million people of the Egyptian population, currently, own cryptocurrency,⁶⁵ with trading volume of over 2.2 million Egyptian Pounds, as at 2020.⁶⁶

⁶¹ O Jarvis, ‘El Salvador Adopts Bitcoin’ <https://www.aljazeera.com.news> accessed 24 January, 2023.

⁶² Shashank Bhardwaj, ‘IMF Warns El Salvador Against Government’s Bitcoin Involvement’ <https://www.forbesindia.com>article> accessed 29 September, 2023.

⁶³ Note that fatwa is a religious decree and it is not legally binding.

⁶⁴ Central Bank of Egypt, Press Release: A Warning Statement (10 January, 2018), page archived at Perma.cc.

⁶⁵ A Tripple, ‘Cryptocurrency Adoption and Trends in Egypt’ <https://triple-a.io/crypto-ownership/> accessed 24 August, 2023.

⁶⁶ J Lyanchev, ‘Local Bitcoins Volume in Egypt Skyrockets to New ATH as Country’s Economy Slows Down’ <https://cryptopotato.com<local-bi> accessed 24 August, 2023.

It was after the warning given by Dar al-Ifta that the Central Bank of Egypt issued warning against trading in cryptocurrencies. The Central Bank of Egypt also stressed that exchange within the Arab Republic of Egypt is restricted only to official paper currencies approved by the Bank.⁶⁷ The Egyptian Parliament enacted the Central Bank and Banking Sector Law,⁶⁸ which defines “e-money” as ‘monetary value backed by EGP or by currencies issued by other formal currency issuing authorities and circulated via internet’ and “cryptocurrency” as ‘currency electronically stored and unbacked by any of the currencies issued by formal currency issuing authorities and is circulated via internet’. Article 206 of the Law prohibits issuing, dealing, or promoting e-money and cryptocurrency as well as establishing or operating platforms for the circulation of e-money and cryptocurrency, unless the CBE has granted a licence, in accordance with the applicable rules and procedures.

5.7 Kenya

Trading in crypto currencies are not forbidden in Kenya; thus, it can be legally purchased and sold.⁶⁹ As a result of technological developments in Kenya, the M-pesa money transfer system was introduced, which, in turn, culminated in increased usage of cryptocurrencies. The global ranking of Kenya is said to be sixth, in terms of the adoption of cryptocurrency.⁷⁰ As at 2020, Kenya had the largest volume of trade in cryptocurrencies in Africa, after Nigeria with Bitcoin trade of about 6.48 billion Kenya Shillings.

The National Payment Systems Act (NPSA), the Capital Markets Act (CMA), and the Kenya Information and Communications Act (KICA) are the main laws in Kenya that regulate cryptocurrencies. The Central Bank of Kenya is responsible for overseeing the NPSA, the Capital Markets Authority is in charge of managing the CMA, and the Communications Authority is in charge of running the KICA. But there is no regulatory framework to protect the interests of Kenyans in this fast-growing market.

In 2015, the Central Bank of Kenya issued public alerts regarding the potential dangers inherent in trading in cryptocurrencies by stressing that there is no special regulation for trading in cryptocurrency. As a caution to the general public in Kenya, the CBK further stated that cryptocurrencies are volatile.

6.0 Why the Need to Regulate Cryptocurrencies in Nigeria

It requires emphasis that there are some benefits derivable from the adoption and use of BT and cryptocurrency for Nigeria, which include improved transparency and accountability, increased efficiency, financial inclusion, enhanced security, job creation’,⁷¹ yet, there is need to regulate the use of cryptocurrencies and BT because

⁶⁷ Raha Rafiu, ‘Fatwas on Cryptocurrency: Egypt’s Dar al-Lfta’ <https://islamiclaw.blog/2022/05/05> accessed 24 August, 2023.

⁶⁸ Central Bank and Banking Sector Law No194, 2020.

⁶⁹ B Jason, ‘Freeman Law’ <https://freemanlaw.com/cryptocurrency/kenya/> cited in CG Kamau, ‘The Cryptocurrency Market in Kenya: A Review of Awareness and Participation by the Youth’ (2022) 12(1) *Journal of Asian Business Strategy* 50.

⁷⁰ *Ibid.*

⁷¹ See National Blockchain Policy for Nigeria *ibid* (n 15).

of their volatility, high-risks and adverse consequences on the economies of nations of the world, including Nigeria.

One of the negative effects of cryptocurrencies is that the rapid spread, high-value volatility and growing volumes of the crypto market could become a real threat to the stability of the global finance system and create serious problems for regulators and tax authorities in many countries; hence, the urgent need for international rules and regulatory practices.

In its advice to El Salvador, IMF said that there are large risks associated with the use of Bitcoin on financial stability, financial integrity and consumer protection as well as the associated fiscal contingent liabilities.⁷² It further stated that cryptocurrencies can reduce the ability of central banks to, efficiently, conduct monetary policy. It could also pose risks to the financial stability of emerging markets and developing economies.

According to IMF, increased demands for crypto assets contribute to the outflow of capital, which, in turn, affects the foreign exchange market. The (pseudo) anonymity of crypto assets creates data gaps for regulators and can open unwanted doors for money laundering, as well as the financing of terrorism. Threats to the fiscal policy of states may increase, given that crypto assets contribute to tax evasion. The central banks profits that are earned from the right to issue currency could also decline.

There is the need to regulate crypto-assets, crypto exchanges and wallets in the crypto market because the risks associated with it are higher than in the regulated financial market. The rights of investors and consumers are not, in any way, protected.

Also, cryptocurrency mining requires a lot of energy and creates a huge carbon footprint, overloading power grids and generating capacity, and this can no longer be ignored. Thus, advocates of green energy are at the forefront of the fight aimed at discouraging the use of crypto currencies.

Anonymous payments are allowed in the cryptocurrency market. Thus, criminal groups involved in the sale of drugs, extortion, human organs trafficking, terrorism and other illegal operations can use it, as a way of transferring money, without being detected.⁷³

Another important reason necessitating regulation is the fact that cryptocurrency is unreliable because any of these Bitcoin platforms may fold up, unexpectedly, and without due consideration to the users. Recently, Paxful, a peer-to-peer Bitcoin platform, with over one million five hundred users in Nigeria, shot down its operations and market places. This unexpected shot down will, no doubt, affect

⁷² Christine Murray, 'IMF Urges El Salvador to Ditch Bitcoin as Legal Tender' <https://www.ft.com>...> currencies> accessed 21 January, 2023.

⁷³ Electronic bitcoin wallets have been used by terrorists in Syria, Iraq, Libya and Afghanistan. The US Government Accountability Office (GAO) report published on 10 January, 2022, notes that cryptocurrencies are, increasingly, being used in human and drug trafficking. The GAO and the Congressional Investigation Committee point to a fivefold increase in the number of suspicious activity reports filed by the Financial Crime Enforcement Network (FinCEN) over the past five years.

users of the platform, negatively.⁷⁴

Commenting on the legality of cryptocurrencies in Nigeria, Oliyide asserted that ‘cryptocurrencies have a mix-bag of prospects and operational challenges and one of the notable challenges is its legality, especially, domestically. Its legality in Nigeria has been a source of contention’.⁷⁵ Although the CBN has categorically proclaimed its illegality, it is submitted that the posture of the CBN on the legality of cryptocurrencies, although correct, in view of sections 2(b) and 17 of CBNA, which empower the CBN to be the sole authority to issue legal tender currency in Nigeria and section 20(1) to (5) of CBNA, which declares the currency notes issued by the CBN as the only legal tender in Nigeria, the CBN’s posture, nevertheless, appears pretentious. This is because it is a known fact that transactions in cryptocurrencies continue in the country unabated despite its being declared illegal. Advertisements for cryptocurrencies is made on daily basis, publicly and in various media, very well known to everyone, including the CBN, but checked by no one.

Oliyide contended further that ‘[t]here is absolutely nothing wrong about cryptocurrencies, as it has proved to be a veritable digital currency or assets in many other jurisdictions of the world’,⁷⁶ including US, UK, Canada, Sweden, Spain, Switzerland, Japan, Germany, Denmark, France, Australia and the whole of the European Union.⁷⁷ Very few countries, including China, Saudi Arabia and Thailand proclaim cryptocurrencies as illegal, like Nigeria.⁷⁸ According to Oliyide, ‘this argument is buttressed by the recent admission of the NDIC Managing Director that many Nigerians “have keyed into virtual currencies for financial rewards”’⁷⁹ and that ‘anyone was at liberty to invest in digital products’⁸⁰ but that such investment ‘should be undertaken with utmost caution, as [NDIC] currently does not provide guarantee for operations in the virtual currency spectrum of the Nigerian financial industry’.⁸¹

⁷⁴ Oluwakemi Abimbola and Temitayo Jaiyeola, ‘Bitcoin Platform With 1.5 million Nigerian Users Shuts Down Punch Newspaper’ <https://punchng.com/bitcoin-platform-with-1-5m-nigerian-users-shuts-down/> accessed 21 January, 2024.

⁷⁵Olusesan Oliyide, *Banking Regulation and Nigeria’s Prosperity: Unending Voyage, Definite Destination* (Olabisi Onabanjo University Publishing House, Ago-Iwoye, 2023) (Being the 111th Inaugural Lecture of Olabisi Onabanjo University, Ago-Iwoye, Nigeria delivered on 8 August, 2023) 107.

⁷⁶ Ibid,108

⁷⁷ Ibid 108, citing Prableen Bajpai, ‘Countries Where Bitcoin is Legal and Illegal’ <https://www.investopedia.com/articles/forex/041515/countries-where-bitcoin-legal-illegal.asp> accessed 28 April, 2023.

⁷⁸ Ibid 108, citing Bajpai ibid (n 77).

⁷⁹ Ibid 108, citing Editor, ‘NDIC Boss Warns Nigerians On Investing in Bitcoin, Other Virtual Currencies’ (Exclusive Africa, 23 October, 2019) <https://theexclusiveafrica.net/2019/10/23/ndic-boss-warns-nigerians-on-investment-in-bitcoin-other-virtual-currencies/> accessed 28 April, 2023.

⁸⁰ Ibid 108, citing Editor, ‘NDIC Boss Warns Nigerians on Investing in Bitcoin, Other Virtual Currencies’ ibid (n 79).

⁸¹ Ibid 108, citing Editor, ‘NDIC Boss Warns Nigerians On Investing in Bitcoin, Other Virtual Currencies’ ibid.

Declaring cryptocurrencies as illegitimate by the CBN smacks more of an admission of lack of requisite will-power and capacity to regulate the virtual-currencies than their unsuitability.⁸² It is, therefore, suggested that the CBN should, through training and retraining of its manpower and acquisition of required technology, develop appropriate human capital necessary to regulate this mode of digital currencies.⁸³ The CBN should also come up with a robust mechanism for regulating them and for that purpose, seek an amendment of the relevant sections of CBNA, so as to make cryptocurrencies exist, side-by-side, with the naira, as legal tender in the country.⁸⁴

According to Oliyide, his suggestion is in view of the manifest continuing widespread acceptance of cryptocurrencies, globally and in Nigeria, despite the CBN having declared them illegal.⁸⁵ Oliyide further argued that ‘one of the challenges that have plagued the integration of the Economic Community of West African States (ECOWAS) is the issue of common currency’.⁸⁶ He asked the question: which national currency should be adopted as common currency, in furtherance of?⁸⁷ He, then, suggested that cryptocurrencies may be well-suited for adoption as ECOWAS common currency.⁸⁸

It is submitted that Oliyide’s arguments above, cannot be faulted, anyhow, as they emphasise the reality of the widespread acceptance of cryptocurrencies, globally, which provides the justification for its legality anywhere in the world, Nigeria inclusive. Oliyide⁸⁹ was vindicated when, in December, 2023, the CBN, commendably, announced the lifting of ban on cryptocurrencies and other virtual assets.⁹⁰

What is required of the CBN is to evolve a very robust regulatory framework and highly technological monitoring mechanism that will be most suited for supervising the use of cryptocurrencies in Nigeria. Such robust regulatory framework and highly technological monitoring regime should be so dynamic as to, always be far ahead of dubious entities that may attempt to use to use cryptocurrencies for money laundering, terrorism financing, advanced fee fraud and other malfeasances and to beat such dubious entities to their game.

Any attempt of the Nigerian government to reintroduce ban on cryptocurrencies and other virtual monies will be a clear admission of manifest incapability of the CBN to come up with such robust regulatory framework and highly technological monitoring regime that are both being canvassed in this paper. Not even the recent

⁸²Ibid

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid, 109.

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ See, Dennis Ezezi, ‘Nigeria lifts ban on Cryptocurrency Transactions’ (*The Guardian* 23 December, 2023 edn) <https://guardian.ng/news/nigeria-lifts-ban-on-cryptocurrency-transactions/> accessed 10 April, 2024.

discovery that a whopping \$22 billion was laundered through cryptocurrencies in Nigeria in 2023⁹¹ can be justification for any decision of Government to clamp-down on cryptocurrencies and other electronic monies in the country.

7.0 SUMMARY, CONCLUSION AND RECOMMENDATIONS

7.1 Summary

This paper has examined the legal framework upon which the provision, adoption, circulation and usage of BT and cryptocurrencies, as an alternative currency in Nigeria, are based. Some existing laws and regulations in relation to Nigeria's monetary policies and safeguards were analysed and the legal framework relating to BT and cryptocurrencies in some international jurisdictions were considered. The potential risks accompanying the use of virtual currencies were also highlighted.

7.2 Conclusion

The concept of currency is associated with the power of the sovereign to establish a legal framework providing for central issuance of banknotes and coins. Naira and Kobo are the official legal tender (currency) in Nigeria which is legally backed up by many Acts. As it is now, the closest law in the regulation of cryptocurrency in Nigeria is the CBN Guidelines which is not a law for the regulation or otherwise of the use of cryptocurrencies. At best the said Guidelines can be described as *caveat emptor*, as the Supreme Court decided in *Oladejo Adewuyi v Fadele Akanni and Ors.*⁹²

Despite its volatility and other demerits, cryptocurrencies are widely accepted in Nigeria, as the high volume of trade in the virtual currencies, in the country, show. This provides the justification for making cryptocurrencies legal in Nigeria and imposing on the CBN, the obligation to fashion a very robust and dynamic regulation mechanism for the virtual currencies. Doing so will fill the current gap occasioned by near-absence of regulation of cryptocurrencies in the country and will allow the maximisation of the various benefits inherent in cryptocurrencies.

6.3 RECOMMENDATIONS

Despite the identified risks associated with virtual currencies and the reluctant attitude of even developed countries in totally accepting cryptocurrencies, as an alternative currency, it has come to stay and any law aimed at prohibiting or criminalising the usage of crypto currencies may not be effective.

It is recommended that the Nigerian government should, as a matter of urgency, enact a comprehensive law and also come up with policies that will regulate the use of virtual currencies in the country. Such laws and policies should aim at protecting the rights of the users of cryptocurrencies.

The Nigerian government should partner with willing Nigerian Universities by sponsoring and adequately funding research works on BT and cryptocurrencies.

⁹¹ See Royal Ibeh, '\$22 Billion Laundered Through Cryptocurrency in 2023' (*Leadership* 2 February, 2024 edn) <https://leadership.ng/22bn-laundered-through-cryptocurrency-in-2023/> accessed 10 April, 2024.

⁹² (1993) LPELP-SC.36/1987.

Furthermore, those circumventing existing CBN policies on crypto transactions should be punished.

It is also recommended that the robust regulatory mechanism for cryptocurrencies earlier recommended should include efficacious strategies aimed at preventing cryptocurrencies from serving as a means of financing terrorism (both internationally and domestically) and other criminal acts.

Also, there should be increased awareness to educate cryptocurrencies users on the nature, gains and high-risks attached to BT and cryptocurrencies.