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Public Interest Litigation, Citizens' Rights and 'Regulatory Irresponsibility':

Periscoping the Central Bank of Nigeria's Q1 2023 Currency Change Exercise

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CENTRAL BANK OF NIGERIA

Preface:

From Our Principal

The Holy Scriptures say that *“man shall not live by bread alone…”*: Matthew 4:4 . We try to live that out in a professional sense by robustly contributing to Nigerian business regulatory discourse through our *Thought Leadership* articles and special publications. In this special publication, (the first in our ***Business and Society Series***), we focus on the intersection of the impact of regulatory or government actions on citizens' rights and exploring the boundaries of potential remedies.

Whilst like the ill-fated and (deliberately) shambolic currency exchange exercise of 2022/ 2023 has come and gone, the traumatic after-effects is indelibly etched in the memories of many people who suffered severe (and for some, irreversible) losses as a result of the exercise. *Do such victims have, or should they remain without remedy? Is the exercise not a fitting subject of public interest litigation, especially as the Supreme Court (SC) held in* ***A-G Kaduna State & 9 Ors. v. A-G Federation & 2 Ors. [2023] 12 NWLR (Pt. 1899), 537*** *that the implementation of the exercise was in the main, invalid?*

This article argues that the above SC decision provides encouragement for the hypothesis that such victims can successfully claim for declaratory reliefs and damages against the President/Federal Government of Nigeria and the Central Bank of Nigeria (CBN), scaling over threshold issues like *locus standi* and/or lack of jurisdiction, because of constitutional/statutory protections like immunity or limitation period. Broadly, it should be feasible to bring actions, but the mechanics (how the claims are framed, (nature of) injury and damages suffered proven in evidence etc) will, as a matter of detail, be influenced by the factual circumstances of the respective aggrieved litigant.

The author explores these issues whilst there are still relatively recent, given the additional barriers and risks that further effluxion of time may pose to delayed future claims. There is also the need to send a message that citizens can also, like ten State Governments did in ***A-G Kaduna case***, challenge regulatory irresponsibility. This is moreso that ***A-G Kaduna*** did not provide, and could not have provided, any specific reliefs for (any) Nigerian citizens who suffered significant injury, since that was not the focus of the Plaintiffs.

We hope you find this publication an enjoyable read, and would be delighted to receive your feedback thereon to our email at: *info@lelawlegal.com*. It would also be a great pleasure if it re-ignites the interest of victims in seeking remedies for their injuries; albeit, we warn that we are not interested in engaging in any such public interest litigation. We believe that this publication is already, a significant enough investment, in that regard.

Thank you as always, for engaging with our publications; we consider it an honour and a privilege!

Afolabi Elebiju
Lagos, 31st December 2023.

"Ubi jus, ibi remedium" (Where there is a wrong, there is a remedy)
– Legal maxim

"(b) the security and welfare of the people shall be the primary purpose of Government"
– Section 14(2)(b), 1999 Constitution

"Furthermore, State parties may also not ipso facto, use their public status to overreach or bully their contractual counterparts, or regulated entities just by that fact of regulatory oversight cum power, alone."
– Afolabi Elebiju[1]

"The Central Bank of Nigeria (CBN) has announced plans to redesign, produce and circulate new local legal tender. The Naira has not been redesigned in the last 20 years. …Replacing old currency notes with new ones is a routine exercise that central banks do not necessarily make noise about. Old notes are gradually replaced with new ones once they return to the banking system. ***Proposing a sudden withdrawal of notes for replacement with redesigned notes is of no economic benefit to the country, but it will come at huge costs.***

Redesigning the ₦100 to ₦1000 notes, which should not be a priority now, is a waste of the nation's time and resources. *The ₦100 … to ₦500 … are due for replacement with Naira coins of the same denominations to make room for the introduction of higher denominations of Naira notes that will be more in line with the value of denominations of currency notes circulating in other climes.*

Fixing the deadline two to three weeks ahead of Christmas/New Year festivities, two months ahead of the general election, is disruptive and insensitive. The organized private sector is already enduring a lot of disruptions *ranging from local forex supply, exchange rate, and interest rate shocks. These aggravate food and energy shocks,* ***and they deserve to be spared the needless disruption from the wild goose chase proposed by CBN so close to the yuletide and the polls.***

The fact that 'over 80 percent of currency in circulation …exists outside the commercial banks' is not sufficient evidence of 'persistent hoarding of banknotes by members of the public.' The only reason that currencies are printed is for them to be put in circulation, not to be kept in banks. *That is why it is called currency in circulation, which is usually broken down into two components: currency outside banks and vault cash (the cash that banks keep aside to honor requests for cash by their customers).* ***Only a negligible f[r]action of currency in circulation should ideally stay in banks' vaults because it only stays in the vaults when in transit. The ultimate destination of every printed currency is outside the banks so that it may circulate from hand to hand for years.***

Also, ***the fact that 'currency in circulation has more than doubled since 2015; rising from ₦1.46 trillion in December 2015 to ₦3.23 trillion in September 2022' does not necessarily present a problem because the GDP also increased from ₦95 trillion to ₦210***

[1]***'Posers and Answers: The Petroleum Industry Act 2021, Production Sharing Contracts and Stabilisation Issues'****, LeLaw Tax Monograph Series No.4, April 2023, p.5):* https://lelawlegal.com/add111pdfs/Afolabi_Elebiju_-_Petroleum_Industry_Act_2021_Production_Sharing_Contracts_Stabilisation_Issues.pdf (accessed 14.12.2023).

***trillion over the reference period.** The value of currencies in circulation has been a stable fraction of GDP, roughly 1.34 percent, over the period."*

Information published in the annual report of the Currency Operations Department of CBN reveals that the number of pieces of notes in circulation has exploded from 3.2 billion pieces in 2006, following the phased introduction of ₦100 to ₦1,000 notes from December 1999 to December 2005, to more than 10 billion pieces of all notes as of 2020. More than five billion pieces of these were ₦100 to ₦1,000 notes.

Therefore, the CBN is proposing to redesign and replace five billion pieces of the highest four denomination notes, when the appropriate action to take is to coin ₦100 to ₦500 notes and replace them with about a billion pieces of larger denomination Naira notes to cut the monumental waste implicit in continuing to print pieces of low-value notes with a short lifespan.

The Naira will likely experience more exchange pressures that may further weaken it against major currencies if more people decide to buy foreign currencies as alternative store of value. The CBN needs to be more innovative to establish appropriate policies and take actions that will drive down the inflation rate and strengthen the value of our Naira."

– Lagos Chamber of Commerce and Industry, 28.10.2022[2]

***"The sudden announcement of the redesign project surprised the financial markets, analysts and even the Finance Minister, triggering a wave of uncertainty and heightening speculative activity against the Naira in the parallel market** as many hoarders rushed to offload their Naira stockpiles. Within 10 days of the announcement, the Naira lost 16.3% to an all-time low of ₦890/$ as at November 4th, 2022. Thus, the spread between the official (₦442/$) and parallel market rates widened to 101% – the highest ever. While the dust from the policy announcement is yet to settle, **the naysayers believe that the project amounts to a mere cosmetic exercise and that the CBN should be more concerned with its core functions of maintaining price and exchange rate stability**.*

How does the CBN call back ₦3.2 trillion in 90 days? The argument here is that the 90-day window is simply too brief to complete the project as banks would be unable to handle the massive pressure that the rush to deposit old notes would trigger.** Rising energy costs (diesel) are also compelling commercial banks, to stagger their operating hours at some branches – opening for limited periods on some days and, in other cases, only a few days per week – in an effort to cut costs. This reduces the chance of opening more hours to accommodate a possible rush by depositors. **Many anticipate an extension to the project's deadline, probably beyond February 2023, giving room for the use of old notes for monetary inducement during the elections."

- Agusto & Co., 18.11.2022[3]

***"The big question is how efficiently the recall will be implemented if,** as the World Bank estimates**, about 64 million of Nigeria's 200 million people are unbanked**. In a 2020 survey by Statista, cash was recorded as the most common payment method chosen in Nigerian stores, restaurants and similar locations despite efforts by the CBN and fintech companies pushing for digital banking and payment services."*

- Hillary Essien, 01.12.2022[4]

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[2]Emphases supplied. **Dr. Chinyere Almona, *'LCCI Statement on CBN Policy on Naira Notes'***, *28.10.2022*: https://www.lagoschamber.com/lcci-statement-on-cbn-policy-on-naira-notes/ (accessed 26.11.2023).

[3]Emphases supplied. Agusto & Co., ***'The Naira Redesign – A Master Stroke or an Exercise in Futility?'***, *Monthly Newsletter, 18.11.2022*: https://www.agusto.com/publications/agusto-co-newsletter-the-naira-redesign-a-master-stroke-or-an-exercise-in-futility/ (accessed 26.12.2023).

[4]Hillary Essien, ***'Cash at Hand, Cash at Bank?: The Puzzling Logic Behind Nigeria's New Notes'***, *The Republic, 01.12. 2022*: https://republic.com.ng/december-2022/nigerias-new-notes/ (accessed 26.12.2023).

" … amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. … ***It has always been one of the pillars of freedom, one of the principles of liberty for which, on recent authority, we are now fighting, that the judges are no respecters of persons, and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law."***

– Lord Atkins[5]

Introduction

The recent debacle that the CBN's currency change just around Nigeria's 2023 general elections represented, the magnitude of avoidably huge (and in some cases irreparable) losses, the untold hardship suffered by citizens as a result thereof; and heated discussions within this author's professional circles whether or not citizens should be entitled to any relief for such losses and hardship, gave rise to this article. This author was of the view that there should be enough basis for public interest litigation to press claims against the CBN and/or its management; and this article presents the opportunity to delve into or analyse, the related *pro* and *con* arguments in detail.

In doing so, there will be a prefatory treatment of the legal issues, with factual background of the currency exchange exercise.

A. *Factual Context: The CBN's 2023 Currency Exchange Exercise*

For convenience, the author principally adopts *Premium Times'* timeline:[6]

*"**26 October 2022:** The CBN announced the introduction of the redesign of ₦200, ₦500 and ₦1,000 banknotes. The CBN Governor, Godwin Emefiele, had said the banknotes were redesigned due to a request from the Federal Government. He disclosed that the new notes would begin circulation from 15 December 2022, while the old banknotes would remain legal tender and circulate together until 31 January 2023. The old notes were to cease to be legal tender on 31 January. …*

***27 October 2022:** The [CBN] gave reasons for the Naira redesign policy. According to Mr Emefiele, the policy would enable the CBN to take control of the Naira in circulation, manage inflation, combat counterfeiting, and ransom payment.*

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[5]Emphasis supplied. Lord Atkins, dissenting speech in ***Liversidge v. Anderson & Anor. [1942] AC 207; [1941] 3 All ER 338***.

[6]Ameh Ejekwonyilo, ***'Timeline: Naira Redesign Policy from Inception to Supreme Court Judgement'***, *Premium Times, 02.03.2023*: https://www.premiumtimesng.com/news/top-news/585737-timeline-naira-redesign-policy-from-inception-to-supreme-court-judgement.html. For another overview, see ***'Nigeria's New Banknote Crisis – A Case Study in Self-Harm or a Shrewd Step towards Modernising the Economy'***, *Arete, 21.02.2023*: https://areteafrica.com/2023/02/21/nigerias-new-banknote-crisis-a-case-study-in-self-harm-or-a-shrewd-step-towards-modernising-the-economy/ (both accessed 25.11.2023).

28 October 2022: *Barely 48 hours after the currency redesign policy was announced, Nigeria's Finance Minister, Zainab Ahmed, kicked against it. Ms. Ahmed said* ***the Finance Ministry was not consulted over the monetary policy. She expressed some reservations about the consequences of the policy on Nigeria's economy.***

21 January 2023: *Following the outcry that trailed* ***the non-availability of the new banknotes and lack of public awareness, especially in rural communities across Nigeria****, the CBN launched a cash swap programme in all [LGAs] of the country. The programme which took effect from 23 January, allowed the old notes to be exchanged for the newly redesigned notes.*

24 January 2023: *The National Assembly asked the CBN to extend the deadline for acceptance of the old Naira notes. The upper and lower chambers of the National Assembly urged the CBN to extend the deadline on the validity of the old Naira notes by six months.*

25 January 2023: *APC presidential candidate, Mr. Tinubu, said during a campaign stop in Abeokuta Ogun State, that the Naira design policy was orchestrated to ensure his defeat in the election.*

28 January 2023: *Two days to the expiration of the old banknotes, the Nigerian Bar Association (NBA), urged the CBN to review the policy. Referencing the CBN Act, the NBA's President, Yakubu Maikyau, said Nigerians were at liberty to approach the [CBN] to 'redeem' their old banknotes after the initial 31 January deadline.*

29 January 2023: *The CBN Governor announced a 10-day extension of the deadline for the deposit of old banknotes and the validity of the old notes. Mr. Emefiele spoke in Daura, Katsina State, after a meeting with Mr. Buhari. The apex bank had urged Nigerians to utilise the opportunity because the deadline was not going to be extended.*

31 January 2023: *The CBN Governor, while appearing before an Ad Hoc Committee of the House of Representatives, said banks must accept the old Naira notes even after the expiration of the 10 February deadline.*

1 February 2023: *The presidential candidate of the Peoples' Democratic Party (PDP), Atiku Abubakar, asked the Federal Government not to extend the 10 February deadline for ending the old Naira notes.*

3 February 2023: *Three Northern States – Kaduna, Kogi and Zamfara - sued the Federal Government, seeking the Supreme Court's order halting the implementation of the Naira redesign policy.*

6 February 2023: *A Federal Capital Territory High Court, Abuja, ordered the CBN to ensure the enforcement of the 10 February deadline for the old currency notes. The four parties in their ex parte request alleged that the CBN's new monetary policy was being sabotaged by Nigerian banks.*

8 February 2023*: Nigeria's Supreme Court ordered the CBN not to end the use of old Naira notes on 10 February. The court made the order temporarily, cancelling the CBN's 10 February deadline to end the validity of the old versions of the banknotes based on an ex parte application filed by three northern states – Kaduna, Kogi and Zamfara – being controlled by the All Progressives Congress (APC).*

8 February 2023: *Nigeria's 36 State Governors under the platform of the Nigeria Governors' Forum, appealed to*

President Muhammadu Buhari to extend the timeframe for the implementation of the currency policy. The Governors made their stance known in a statement signed by Sokoto State Governor and chairperson of the NGF, Aminu Tambuwal.

12 February 2023: *The NGF accused the apex bank of conducting a* ***'currency confiscation' programme that has brought immeasurable suffering to Nigerians****. In a communique issued at the end of their meeting in Abuja, the Governors called "for the halting of CBN's plan to end the use of the old currency notes."*

16 February 2023: In flagrant disobedience of the Supreme Court's interim order*, President Buhari insisted that the old notes ceased to be a legal tender.* ***But Mr. Buhari acknowledged the pendency of the apex court's ruling, and the hardship being faced by Nigerians as a result of the cash crunch****.*

16 February 2023: *Hours later, the Kaduna State Governor, Nasir El-Rufai, 'confronted' the President over the Naira redesign policy. Countermanding Mr. Buhari, Mr. El-Rufai, in a broadcast, ordered residents of Kaduna State to continue accepting the old Naira notes as legal tender.*

19 February 2023: *Atiku Abubakar made a U-turn admitting that the Naira redesign policy was hurting Nigerians. He called on the CBN to allow commercial banks to collect deposits of the old ₦200, ₦500, and ₦1,000 notes.*

22 February 2023: *A seven-member panel of the Supreme Court led by John Okoro slated 3 March for judgment on the Naira redesign policy suit."*

3rd March 2023*:* the SC held that the old Naira notes will remain as legal tender until 31st December 2023, alongside the new notes.

13th March 2023: the CBN (which had previously disobeyed Court orders concerning the currency swap), issued a statement to the effect that the old notes will remain legal tender till 31st December 2023, in line with the SC ruling.[7]

The timing of the currency swap policy left no one in doubt that it was meant to curb the monetisation or 'cash-jack' of the 2023 general elections, particularly the presidential election slated for 25th February 2023.[8]

B. *Analysis - The Regulatory Overview and Context*

The primary statutes that comprise the CBN's regulatory context are: (1) ***the Constitution of the Federal Republic of Nigeria 1999 as amended (1999 Constitution)***; the ***Central Bank of Nigeria Act[9] (CBN Act)*** and the ***Banks and Other financial Institutions Act 2020[10] (BOFIA)***. With ***Items 6 and 15, Part I, 2nd Schedule 1999 Constitution*** (the ***Exclusive Legislative List)*** being *"Banks, banking, bills of exchange and promissory notes"* and *"Currency, coinage and legal tender"* respectively; it follows that pursuant to ***section 4(1) - (4) 1999 Constitution***, the National Assembly (NA) enacted the ***CBN Act*** and ***BOFIA***, and that the CBN itself, is a federal institution, being part of the executive arm at the Federal level.[11]

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[7]See Ayodele Awi, ***'Cash Politics: the Impact of the Currency Redesign Policy on Nigeria's 2023 General Election',*** *Voices, BSG/UO, 23.02.2023:* https://www.bsg.ox.ac.uk/blog/cash-politics-impact-currency-redesign-policy-nigerias-2023-general-election (accessed 23.11.2023). *"On 26 October 2022, the Governor of the Central Bank of Nigeria (CBN) Mr. Godwin Emefiele announced that the highest denominations of the Naira, the Nigerian currency, (₦200, ₦500 and ₦1000 notes) would be redesigned, giving a deadline of 31 January 2023 for all old notes to be deposited in banks in exchange for new ones. According to the CBN, the new notes would help curb corruption and currency fraud, tackle the growing menace of kidnapping for ransom, lower inflation and address the problem of having too much money in circulation. There was an immediate backlash to this, with strong opposition from the Minister for Finance, Zainab Shamsuna Ahmed, who claimed that the Ministry had not been consulted. But the CBN Governor remained undeterred and the new notes were launched by President Muhammadu Buhari on 23 November 2022. Many Nigerians felt the CBN was too quick to implement the policy and* criticised the design *of the new notes as unappealing. In response, the CBN rolled out campaigns to educate Nigerians on the benefits of the policy and the Governor defied warnings from the legislative and judicial arms who continued to mount pressure that the policy, even if for good, was coming at the wrong time and questioned the haste in its implementation. By the deadline of 31 January when the old notes would cease to be legal tender, Nigeria would be less than four weeks away from a general election. The toughest resistance to the policy was soon to come, but this time it wouldn't be coming from the financial and economic experts but from the politicians."*

[8]According to a firm: *"Many commentators have, in recent weeks, suggested that the timing of the strategic move is very revealing. It has been suggested that the withdrawal of the old bank notes from legal tender was timed to forestall the payment of huge amounts of cash to influence the outcome of the imminent elections. Some have been more outspoken and claimed it is a direct attack on the APC nominee for the Presidency, Mr Bola Ahmed Tinubu."* See ***'Nigeria's New Banknote Crisis – A Case Study in Self-Harm or a Shrewd Step towards Modernising the Economy'***, Arete, ***(supra)***. *Cf.* India's objective for their currency change in 2016: *"The decision was taken to* ***crack down on corruption and illegal cash holdings known as 'black money'****. In* ***an attempt to curb tax evasion****, the government expects to bring billions of dollars of unaccounted cash into the economy because the banned bills make up more than 80% of the currency in circulation. Some 90% of transactions in India are in cash."* Emphasis supplied. See ***'India's Cash Crisis Explained'***, *BBC, 17.11.2016:* https://www.bbc.com/news/world-asia-india-37983834 (accessed 12.11.2023).

[9]***Cap. C4, Laws of the Federation of Nigeria (LFN) 2004*** *originally enacted as* ***CBN Act No. 7 of 2007***.

[10]***Act No. 5 of 2020***.

[11]Note also that by ***section 251(d) 1999 Constitution***, the Federal High Court (FHC) has exclusive jurisdiction *"connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another,* ***any action by or against the [CBN] arising from banking****, foreign exchange,* ***coinage, legal tender****, bills of exchange, letters of credit, promissory notes* ***and other fiscal measures****: Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank".* Emphases supplied.

The 1999 Constitution

Against the foregoing background, some provisions of the **1999 Constitution** are apposite:

Supremacy of **the Constitution**

Section 1 provides:

> *"(1) **This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria**.*
>
> *(1) **The Federal Republic of Nigeria shall not be governed**, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, **except in accordance with the provisions of this Constitution**.*
>
> *(2) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void."*

Fundamental Objectives and Directive Principles of State Policy

These provisions are contained in ***Chapter II 1999 Constitution***, and some would be highlighted here. According to ***section 13***:

> *"It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution."*

Section 14(1) and (2) declares that:

> *(1) **The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice**.*
>
> *(2) **It is hereby, accordingly, declared that**: (a) **sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority**; (b) **the security and welfare of the people shall be the primary purpose of government**; and (c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution."*

Whilst ***section 15(5)*** prescribes that *"The State shall **abolish all corrupt practices and abuse of power**"*, ***section 16(1)(b)*** expects that *"The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution **control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity**".*

Also, ***section 17(1) – (3b)*** stipulates as follows:

> *(1) The State social order is founded on ideals of **Freedom, Equality and Justice**.*
>
> *(2) In furtherance of the social order - (a) every citizen shall have **equality of rights, obligations and opportunities** before the law; (b) **the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced**; (c) **governmental actions shall be humane**;*
>
> *(3) **The State shall direct its policy towards ensuring that**- (a) **all citizens**, without discrimination on any group whatsoever, **have the opportunity for securing adequate means of livelihood** as well as adequate opportunity to secure suitable employment; (b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;*

Per ***section 21(a)***: *"The State shall protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter"*; whilst section 23 stipulates that *"The national ethics shall be Discipline, Integrity, Dignity of Labour, Social, Justice, Religious Tolerance, Self-reliance and Patriotism."*

Notably, ***section 6(6)(c)*** makes ***Chapter II 1999 Constitution***, non-justiciable as it expressly excludes: *"except as otherwise provided by this Constitution"*, the exercise of federal judicial powers from *"any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution"*.[12]

[12] Note that several approaches have been adopted to whittle down the supposed 'window-dressingesque' of ***Chapter II*** provisions. According to a learned commentator: *"It would appear, therefore, that the duty and responsibility on all organs of government is limited…., the executive do not necessarily have to comply with any of the provisions unless and until the Legislature have enacted specific laws for the enforcement. In Archbishop Anthony Olubunmi Okogie (Trustee of Roman Catholic School) & Others v. Attorney-General of Lagos State [(1891) 1 N.C.L.R. 218], it was held that the Directive Principles of State Policy in Chapter II of the Constitution have to conform and run subsidiary to the fundamental rights and that Chapter II is subject to legislative powers conferred on the State."* See ***'Akande: Introduction to the Constitution of the Federal Republic of Nigeria 1999'***, *(MIJ Publishers, 2000), pp.53-54.*

Whilst the policy underpinning of ***section 6(6)*** was apparently to 'put less pressure' on the government, but ***Chapter II*** at the very least has moral weight and still provides a moral burden of conscientious benchmarks for government performance and public service.[13]

Fundamental Human Rights Provisions

Section 33(1): *"Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria."*

Section 34(1)(a): *"Every individual is entitled to respect for the dignity of his person, and accordingly no person shall be subject to torture or to inhuman or degrading treatment";*[14]

Section 36(1): *"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."*

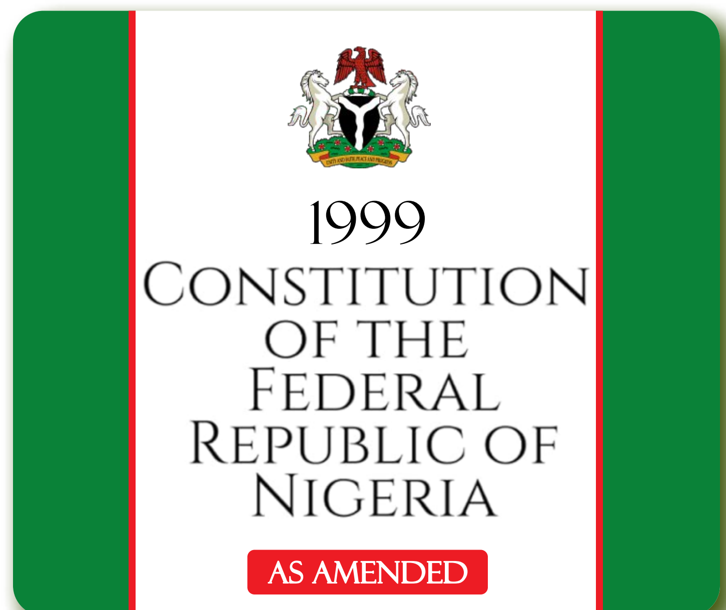
Section 37: *"The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."*[15]

Section 43: *"Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria."*

By ***Section 46(1) and (2)***:
"Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress" and *"Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter."*[16]

The ***CBN Act***

Section 1 in establishing the CBN goes on to provide in ***section 1(3)*** that: *"In order **to facilitate the achievement of its mandate** under this Act and the [BOFIA], and **in line with the objective of promoting stability and continuity***



[13]*"The provisions of this Chapter are an inbuilt manifesto for the political parties and all elected officials which programmes and objects they should implement for the people of Nigeria. … They are in the nature of social and economic rights and do not confer any legal right and remedy except such legal action can be based on another provision of the Constitution, which gives a right to a remedy: Adamu v. A-G Borno State [1996] 8 NWLR (Pt. 465), 203 CA …"* See Ese Malemi, ***'The Nigerian Constitutional Law'*** *(3rd ed. 2017 (Princeton)), p. 261 (footnote 1).* See also the commentary under ***'Chapter II: Fundamental Objectives and Directive Principles of State Policy'*** in AM Adebayo, ***'1999 Constitution of the Federal Republic of Nigeria as Amended (Annotated with Cases)'***, *(1st ed., (2012), Princeton) pp. 57-71*. However, note that in ***A-G Ondo State v. A-G Federation [2002] 9 NWLR (Pt. 772), 222***, the SC upheld the enactment of the ***Independent Corrupt Practices Commission Act 2000*** as being done pursuant to the power vested in the National Assembly to enact legislation that will give effect to ***Chapter II 1999 Constitution*** (specifically to establish and regulate authorities for the Federation or any part thereof to promote and enforce the observance of provisions of ***Chapter II 1999 Constitution***.

[14]Arguably, the currency exercise occasioned the breach of many FHRs. For example, adults going naked in public (for example in crowded bank halls) because of frustration for being deprived of access to their monies, whilst under pressure to meet essential needs of themselves and their families, is an indirect breach of the right to dignity of the human person. Also, citizens having to wake up early or keep vigils for long hours on queues, hungry and under inclement weather, only to receive pittance by way of cash is another example. Ultimately, the exercise subjected citizens to unnecessary trauma; and the CBN cannot credibly argue such was unforeseeable.

[15]The country was a 'jungle' at the height of the currency crisis, especially as the poor and less privileged jostled to survive the deprivations of the time. Citizens were forced to undertake 'involuntary' transactions, for example to access his own cash say ₦10,000; an individual may need to pay ₦15,000 (by transfer) to a POS operator who will hand over ₦10,000 cash in consideration for the ₦15,000 received. Some transaction counterparties (for example food vendors) refused to accept transfers, thereby forcing people to long queues at the banks, ATMs or POS. The situation was exacerbated by the fact due to network issues and sometimes specific banks' interface technical glitches; many transfers were either not going through or already concluded transactions were being reversed. In many instances, the latter may happen well after the purchaser might have left, thereby implicating loss for the vendor that gave value/physical consideration. For that and many reasons, some people insisted on cash only transactions, thereby further putting pressure on prospective counterparties to search for physical cash. This was a vicious cycle because the higher traffic/demand for cash resulted in higher charges by POS operators, who in turn had to pay huge sums by way of gratification to get the cash they would dispense from the banks. There was thus the anomalous scenario of ordinary citizens being unable to access cash at ATMs/the banks or the amounts they could withdraw being unreasonably low (irrespective of their needs cum commitments), whilst POS operators had relatively substantial amounts they could dispense to citizens at significant margins. Assuming the POS sale of cash transactions covered coins rather than currency notes, they would have been in breach of ***section 4 Currency Offences, Cap. C44 LFN 2004***.

[16]Note however that ***section 45(1)*** qualifies some of the FHRs in part by providing that: *"Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society: (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom or other persons."*

in economic management, the Bank shall be an independent body in the discharge of its functions". Per ***section 2***, the CBN's principal objects include to: *"(a) ensure monetary and price stability; (b)* ***issue legal tender currency in Nigeria****; (c) … ; (d)* ***promote a sound financial system in Nigeria****; and (e) Act as banker and provide economic and financial advice to the Federal Government."*[17]

Obviously, the CBN mandate did not include for the CBN to inflict untold sufferings and hardship on citizens.[18] CBN's ***section 2(b)*** responsibility was not meant to be exercised haphazardly or to cause damage to citizens. ***Sections 1 and 2*** had a dose of presumption of regularity and most of the anecdotal views was that the CBN currency exchange exercise was implemented in a manner inconsistent with these statutory objectives.

Was checking surreptitious monetary hijack of the electoral process part of the CBN mandate, and should CBN have gone fishing in uncharted waters when the ***Electoral Act****, the INEC, and the law enforcement infrastructure provide the primary framework for these election related issues? Was the purported exercise of CBN powers in furtherance of electoral objectives not usurpation of the constitutionally prescribed roles of the designated agencies and institutions?*[19]

Section 6(1) provides that: *"There shall be for the Bank* ***a Board of Directors … which shall be responsible for the policy and general administration of the affairs and business of the Bank."***[20] Does this and the rest of ***section 6 CBN Act*** permit reckless, ill-motivated and inefficient decisions, departures from statutory corporate governance requirements which translate to loss-occasioning outcomes for the populace? Is there no punishment for incompetent or negligent performance of statutory duties?

Should regulatory oversight permit the foisting of CBN's leadership failures on the banking system during the currency swap exercise that essentially stifled the operational excellence of individual banks, caused reputational damage to the sector and resulted in losses to banks without any remedies?[21]

According to ***section 8(1)***: *"The Governor and Deputy-Governors shall be persons of* ***recognized financial experience*** *and shall be appointed by the President subject to confirmation by the Senate on such terms and conditions as may be set out in their respective letters of appointment."*[22]

Section 9 provided in part that:

> *"**The Governor and the Deputy Governors shall devote the whole of their time to the service of the Bank** and while holding office shall not engage in any full or part time employment or vocation whether remunerated or not except such personal or charitable causes as may be determined by the Board and which do not conflict with or detract from their full time duties:"*

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[17]*Cf.* "***Statement of CBN Core Mandate"*** from CBN, ***'About CBN: Core Mandates'***: https://www.cbn.gov.ng/aboutcbn/Coremandate.asp (accessed 24.08.2023). If as many argued, that the CBN failed in its ***section 2(e)*** advisory role, who was to be held responsible as the CBN is itself an abstraction? These are some of the questions that would be answered in this article.

[18]As shown throughout this article, the headlines were awash with diverse accounts of the grievous hardship visited on the Nigerian public by the implementation of the CBN's currency change exercise. See for example, Abdulganiyu Abdulrahman Akanbi, ***'Change of Naira Notes Leaves Students Stranded Without Cash',*** *World University News (African Edition), 09.03.2023*: https://www.universityworldnews.com/post.php?story=20230307142852480 (accessed 16.11.2023).

[19]Incidentally, the CBN has performed some of its primary currency related roles with little success. One of them is to discourage the mutilation of Naira notes, hence the ban on the spraying of currency notes at parties. Thus ***section 21(3) CBN Act*** provides: *"For the avoidance of doubt, spraying of, dancing or matching on the Naira or any note issued by the Bank during social occasions or otherwise howsoever shall constitute an abuse and defacing of the Naira or such note and shall be punishable under sub-section (1) of this section."* However (and owing to cultural factors), this has been complied with more in breach than otherwise and the CBN has not been able to champion the necessary change in mindset in this regard. As a matter of fact, through connivance with bank officials, new notes are given to people at a premium to people who end up being hawkers of such new notes for gain at parties. Meanwhile, this is done with full awareness of ***section 20(4) CBN Act***: *"It shall also be an offence punishable under sub-section (1) of this section for any person to hawk, sell or otherwise trade in the Naira notes, coins or any other note issued by the Bank."* Regrettably, there were news reports of people who had wads of new currency to spray at parties, whilst the populace were having a hard time accessing cash for their basic needs. See for example, Eniola Olatunji, ***'New Naira Notes: Scarce in Banks, Abundant at Parties'***, *BusinessDay, 03.02.2023*: https://businessday.ng/news/article/new-naira-notes-scarce-in-banks-abundant-at-parties/; ***'Riots Erupt in Nigerian Cities as Bank Policy Leads to Scarcity of Cash'***, *The Guardian, 15.02.2023*: https://www.theguardian.com/world/2023/feb/15/angry-protests-erupt-across-nigeria-against-scarcity-of-cash; Pascal Oparada, ***'Naira Scarcity Leads Event Planners to Print Vouchers for Spraying at Parties, Pictures Look Like Naira Notes'***, *Legit, 21.02.2023*: https://www.legit.ng/business-economy/money/1521093-naira-scarcity-leads-event-planners-print-vouchers-spraying-a-party/: https://www.legit.ng/business-economy/money/1521093-naira-scarcity-leads-event-planners-print-vouchers-spraying-a-party/ (all accessed 24.08. 2023). Incidentally, even after the currency swap debacle, Naira scarcity is still lingering as at December 2023; see Nike Popoola, ***'Naira Scarcity Lingers, Traders Ration Cash'***, *Punch, 19.12.2023*: https://punchng.com/naira-scarcity-lingers-traders-ration-cash/ (accessed 24.12.2023).

[20]*Cf.* potential personal liability of directors for corporate decisions under the ***Companies and Allied Matters Act 2020***. According to ***section 13(4)***: *"Unless otherwise provided in this Act, decisions [of the Board] shall be by a simple majority of the votes of the members present, but in case of any equality of votes, the person presiding shall have a casting vote."* This means egregious Board decisions could expose participants to personal liability. In ***Access Bank Plc v. Ogboja [2022] 1 NWLR (Pt. 1812), 547 at 575E***, the SC held that the CBN Board has power (pursuant to ***section 51 CBN Act***), to make and alter rules and regulations for the good order and management of the CBN.

[21]Many bank branches were burnt, or vandalised, as frustrated citizens ventilated their anger against the CBN's currency exchange exercise. It can be really painful for a hard working person to be bear the brunt of third party actions which the former had/has no control over. *As unwilling victims, should the banks not have remedy against their regulator or the fear of regulatory (retaliatory) hammer which is a real and present fear always trump ability of the banks to protest and seek recovery?* Presumably, many banks may consider it not worthwhile to sue the CBN, especially if they could enjoy indemnification for their losses, through insurance claims.

[22]See also ***section 6 CBN Act***. ***Quaere*** – why did the ***CBN Act***, especially ***sections 6 and 8*** prescribe qualifications and experience for the Governor, Deputy-Governors and the Board, if not to prevent amongst others, the exact scenario that happened during the currency swap exercise? Is what the CBN did consistent with what ***section 8(1)*** envisaged? The qualification and experience threshold points is further reinforced by section 10 prescriptions for the five CBN directors. For example, *per* ***section 10(2)***: *"A Director appointed pursuant to this section shall be a person of recognized standing and experience in any of economics, law, public administration, business administration, accounting, banking and finance, … "*

Obviously joining the ruling party (APC) or attempting to contest as candidate in its presidential primaries[23] is inconsistent with the non-partisanship and independence required of the office of the CBN Governor. Is there no basis for proceeding personally against the CBN Governor for abuse of office[24] and endangering the statutorily enshrined independence of the CBN[25] on this ground, especially as such would clearly colour, or reasonably be deemed to colour, CBN currency swap decisions that negatively impacted citizens? When that is coupled with the political flavor of the currency exercise, the hypothesis of actionable injury and prospect of potential reliefs arguably become stronger.

Sections 17 and 18(a) and (b) CBN Act provide as follows:

> *"17. **The Bank shall have the sole right of issuing currency notes and coins throughout Nigeria** and neither the Federal Government nor any State Government, Local Government, other person or authority shall issue currency notes, bank notes or coins or any documents or tokens payable to bearer on demand being document or token which are likely to pass as legal tender.*
>
> *18. **The Bank shall - (a) arrange for the printing of currency notes and the minting of coins; (b) issue, re-issue and exchange currency notes and coins at the Bank's offices and at such agencies as it may, from time to time, establish or appoint;"**[26]*

The above provisions presume that these functions will be performed in the national interest and informed by the right motives, not extralegal considerations of trying to champion free and fair elections, which is the jurisdiction of other MDAs, but not of the CBN. Given the negligible quantity of new currency printed and the restricted circulation arrangements for same *vis a vis* the old currencies in circulation which were being withdrawn and terminal dates for their utility given;[27] *it is an inescapable conclusion that the whole exercise was designed to cause hardship.*[28]

The fact that presidential cover was obtained for the currency exercise is not in issue, but it does not excuse the shambolic implementation or even the

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[23]See Denis Erezi, ***'CBN Governor Emefiele Joins Presidential Race, Obtains APC Form'***, *The Guardian, 06.05.2022*: https://guardian.ng/news/cbn-governor-emefiele-joins-presidential-race-obtains-apc-form/; Dyepkazah Shibayan, ***'Emefiele Asks Court to Declare Him Eligible to Contest Presidential Election',*** *The Cable, 09.05.2022*: https://www.thecable.ng/emefiele-asks-court-to-declare-him-eligible-to-contest-presidential-election; ***'2023: Why Emefiele Is Not Qualified To Run For Presidency – Falana',*** *Channels, 09.05.2022*: https://www.channelstv.com/2022/05/09/2023-why-emefiele-is-not-qualified-to-run-for-presidency-falana/ (all accessed 22.11.2023). According to Mr. Falana SAN, "*Since he has the constitutional right to participate in politics and contest elections, **he is required by law to resign his appointment forthwith. If he does not call it quits with the CBN forthwith Mr. Emefiele should be removed by the President in line with Section 11 of the CBN Act and recommended for prosecution for conflict of interest before the Code of Conduct Tribunal**. Retaining Mr. Emefiele as the Governor of the CBN and presidential aspirant in the ruling party is going to have a more deleterious effect on the national economy that has been paralysed through the implementation of obnoxious monetary policies at the behest of imperialism…*". Emphases supplied.

[24]***Section 11(2)(c) CBN Act*** stipulates that: "*The Governor, Deputy Governor or Director **shall cease to hold office in the Bank if he is guilty of a serious misconduct in relation to his duties under this Act***". It is submitted that becoming a card-carrying member of a political party is a serious misconduct since such is manifestly inconsistent with and actually constitute breach of many ***CBN Act*** provisions. Theoretically, the CBN Governor became ineligible to continue in office from the moment he became partisan; *and it was a serious gap that no steps were initiated to relieve him of his office, pursuant to **section 11(2)(c)***. That 'act', which was without precedent, was also probably one of the most outrageous acts of any CBN Governor in Nigerian history. *Cf.* with ***section 11(1)(b)*** which disqualifies the Governor amongst others from remaining in office if they become "*a member of any Federal or State legislative house*". It is respectfully submitted that it is immaterial for purposes of criminal exposure and/or civil liability that the Governor eventually shelved his ambition and withdrew his candidacy for the APC presidential primaries. See Onyinye Nwachukwu, ***'CBN Governor, Emefiele Withdraws his Presidential Bid',*** *BusinessDay, 13.05.2022:* https://businessday.ng/news/article/cbn-governor-emefiele-withdraws-his-presidential-bid/; Alex Enumah, ***'Emefiele Withdraws Suit on Participation in 2023 Presidential Poll'***, *ThisDay, 24.05.2022*: https://www.thisdaylive.com/index.php/2022/05/24/emefiele-withdraws-suit-on-participation-in-2023-presidential-poll; and Ameh Ejekwonyilo, ***'CBN's Emefiele Loses Bid to Secure Court Order to Back his Presidential Ambition'***, *Premium Times, 09.05.2022*: https://www.premiumtimesng.com/news/headlines/528597-cbns-emefiele-loses-bid-to-secure-court-order-to-back-his-presidential-ambition.html?tztc=1 (all accessed 11.11. 2023).

[25]***Section 1(3)*** provides *inter alia*, that: "*the Bank shall be an independent body in the discharge of its functions.*" According to a CBN publication, ***"Central bank independence confers freedom on central banks or monetary authorities to facilitate the conduct of monetary policy in fulfillment of their set mandates, free of political interference. The overwhelming evidence shows some correlation between central bank independence and monetary and price stability, implying that independent central banks are more able to fulfill their monetary policy mandates, justifying the widespread call for independence among major central banks**. The section on country experiences portrays the degree of central bank independence across various countries. On balance, central banks in most countries are accountable to an elected parliament and the public, while a significant number enjoy instrument independence."* See Abstract to George Okorie***, 'Understanding Central Bank Independence',*** *(Understanding Monetary Policy Series No.13), (CBN, 2021), p.1*: https://www.cbn.gov.ng/Out/2022/MPD/Series%2013.pdf (accessed 11.11.2023). The CBN Governor's partisanship and consequent presidential aspiration, plus efforts to actualise same whilst in office was a clear breach of various provisions the CBN Act including section 9, and which ought to attract consequences. Whilst it is conceded that there are no direct civil or criminal sanctions in the ***CBN Act*** against such illegal behaviour, and ***sections 48-50 BOFIA*** targets regulated banks personnel (and not the CBN), provisions such as ***section 104 Criminal Code Act, Cap. C38, 2004 LFN (CCA)*** on abuse of office might have been leveraged to proceed against him. ***Section 104 CCA*** provides in part that: ***"****Any person who, being employed in the public service, **does or directs to be done in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, is guilty of a misdemeanour and is liable to imprisonment for two years***" and "***If the act is done or directed to be done for purposes of gain he is guilty of a felony**, and is liable to imprisonment for three years."* Emphases supplied.

[26]Emphases supplied.

[27]See ***'Naira Redesign: CBN Only Printed 13% of Currency Called in – Falana'***, *BusinessDay, 16.10.2023*: https://businessday.ng/news/article/naira-redesign-cbn-only-printed-13-of-currency-called-in-falana/. According to the news report, "*Femi Falana, a human rights lawyer in Nigeria, has revealed that the [CBN] only printed 402 billion Naira ($893 million) out of the 3.2 trillion Naira ($7.1 billion) it collected from various sources during the recent currency redesign exercise. This is about just 13% of the money recalled by the Central Bank. Falana made the revelation while speaking on Channels Television's Sunrise Daily on Monday. He said he had to take legal action under the Freedom of Information Act to obtain the information from the CBN.*" Incidentally, despite its own shortcomings, the CBN announced its intention to sanction banks for non-availability of cash to the public. See ***'CBN to Fine Banks ₦1m Daily Over New Currency Notes'***, *Vanguard, 20.01.2023*: https://www.vanguardngr.com/2023/01/cbn-to-fine-banks-n1m-daily-over-new-currency-notes/ *Cf.* with the Indian currency exercise of 2016 where "*Indian banks had received three trillion rupees ($44.4bn) in cash [of new currency] in the first four days after the ban [of old currency]*". See ***'India's Cash Crisis Explained'***, *BBC, 17.11.2016*: https://www.bbc.com/news/world-asia-india-37983834 (all accessed 12.11.2023).

[28]It is respectfully submitted that *the manner of implementing the currency change was also in breach of the CBN's exercise, discharge or exercise of its functions and duties under the **BOFIA**, by essentially creating an impediment to banking business as envisaged by the **BOFIA**. Also, restricting depositor's access to their funds was also a fundamental breach of banking ethos, and was a fait accompli, foisted on the banks by the CBN again in breach of the provisions and intendments of both the **CBN Act** and the **BOFIA**.* That these occasioned severe and in some cases irreparable losses, as well as mental agonies on Nigerians, is an understatement. It is trite that *ubi jus, ibi remedium*: where there is a wrong, there must be a remedy.

irresponsible act of making unrealistic and hardship-inducing recommendations, to the President.[29] The CBN had a duty to make only reasonable recommendations to the President, who also was entitled to expect only reasonable recommendations.[30]

Indeed, ***section 20(1)*** shows why the currency exercise was meant to be a very serious, and regulatory-responsible business, and which CBN was obliged to take very seriously: ***"The currency notes issued by the Bank shall be legal tender in Nigeria at their face value for the payment of any amount."*** Given the provisions of ***section 21(3)*** which regards spraying of, dancing or matching on the Naira at parties as an abuse and criminalises same; *was deliberately issuing unreasonably low quantum of new notes vis a vis a very tight exchange deadline not also an abuse for which at least the CBN functionaries should be accountable for in civil damages?*

The CBN's mismanagement of the currency exchange not only created new businesses for some people at the expense of the populace, it also massively contributed to creating ***section 20(4) CBN Act*** offence scenarios: *"It shall also be an offence punishable under sub-section (1) of this section for any person to hawk, sell or otherwise trade in the Naira notes, coins or any other note issued by the Bank."*[31]

Section 32(1) CBN Act obviously envisages at the minimum, reasonableness and optimality considerations: *"The Bank may, subject as is expressly provided in this Act generally conduct business as a bank, and do all such things as are incidental to or consequential upon the exercise of its power or the discharge of its duties under this Act."*[32]

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[29]See ***section 19(1)(a)***: *"The currency notes and coins issued by the Bank shall be in such denominations of the Naira or fractions thereof as shall be approved by the President on the recommendation of the Board"*. See also ***section 23(1)***: *"… the Bank shall have power, **if directed to do so by the President and after giving reasonable notice in that behalf, to call in any of its notes or coins on payment of the face value thereof and any note or coin with respect to which a notice has been given under this sub-section, shall, on the expiration of the notice, cease to be legal tender**, but, subject to section 22 of this Act, shall be redeemed by the Bank upon demand"*. Emphasis supplied. Cf. with the *"Rule of Reason"* as laid down in **Rooke's Case 1598 5 Co.Rep. 99b.** ***"And notwithstanding the words of the commission give authority to the commissioners to do according to their discretions, yet their proceedings ought to be limited and bound with the rule of reason and law**. For discretion is a science and understanding to discern … and not to do according to their wills and private affections, for as one saith, talis discretio discretionem confundit."* See Wade & Forsyth (Wade), ***'Administrative Law'*** *(10th ed. Oxford (2009), p. 294.* According to Wade *(op cit, p. 296)*, ***"Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended."*** Emphases supplied.

[30]Such duty and entitlement respectively, are discoverable or inferred, amongst others from provisions of the ***CBN Act*** (for example, ***sections 2, 17,18 and 32***), the ***BOFIA*** (for example, ***section 1(1)***), and the ***Public Service Rules 2008***: https://nigeriareposit.nln.gov.ng/server/api/core/bitstreams/cb8da6eb-4def-4b52-8641-714d1d4e955f/content. It was quite ironic that the CBN which in its capacity as regulator, issued or co-issued instruments such as ***Consumer Protection Guidelines on Responsible Business Conduct (June 2019)***: https://www.cbn.gov.ng/out/2019/ccd/draft%20guidelines%20on%20responsible%20business%20conduct.pdf; ***Code of Conduct in the Nigerian Banking Industry (Professional Code of Ethics and Business Conduct (2014))***: https://www.cibng.org/files/resourceDownloads/codeOfConduct.pdf; ***Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria (July 2023)***: https://www.cbn.gov.ng/Out/2023/FPRD/Circular%20and%20Guidelines%20for%20Corporate%20Governance.pdf , would toy with its duty to make reasonable recommendations to the President. Note that arguments that the CBN Governor/management only made *"recommendations"* to the President as a way of disclaiming liability should not pass muster. *Cf.* ***Aondoakaa v. Obot [2022] 5 NWLR (Pt. 1824) 523, at 586F-G*** where the SC was unimpressed by the attempt to downplay the advice of the AGF as advice which the recipients could have rejected/were not obliged to accept; moreso as the latter acted pursuant to such baseless advice. It is also noteworthy that the same CBN ought to have known that the abrupt and shambolic implementation of the currency exercise was inconsistent with the intendment of its ***Financial Systems Strategy 2020 (FSS)*** which was co-developed with Goldman Sachs. See Prof. Chukwuma Soludo, ***'Nigeria's Financial System Strategy 2020 Plan "Our Dream"'***, *presentation at the FSS 2020 International Conference, Abuja, 18.06.2007*: https://www.cbn.gov.ng/fss/mon/Nigeria's%20Financial%20System%20Strategy%202020%20Plan%20-%20OUR%20DREAM_Prof.%20Soludo.pdf . *Per* ***Slide 7 (Why FSS?)***, he stated: *"To achieve Goldman Sach prediction of the N-11s, there is need for a robust and vibrant financial system that will power new economy. For Nigeria to propel the rest of African economy, an integrated financial system is critical."* For a more current assessment, see Oladehinde Oladipo, ***'Is Nigeria's Financial System Strategy 2020 Still a Dream?'***, *BusinessDay, 01.07.2024*: https://businessday.ng/analysis/article/is-nigerias-financial-system-strategy-2020-still-a-dream/ (all accessed 11.12. 2023). Excerpts: *"Findings showed Africa's largest economy has spent huge resources, not once, twice or thrice, in developing an economic development plan and has always lacked the political will to implement its set agenda. … … Analysts fear little or no progress will be made in the proposed plan [ERGP/Vision 2050] based on the failure of previous plans. 'It is clear that Nigeria is lagging behind in almost everything and that is because of failure of being consistent in achieving long-term policies and objectives,' said Philip Alege, professor of Economics at Covenant University. Aside from failing to implement policies drafted in its development plans, Nigeria has a penchant for killing policies however good so long as they were drafted by previous governments."*

[31]There may also be need to examine whether by commercial banks' issuing new notes to only a select few in furtherance of the hawking of new notes business, such conduct is not discriminatory *vis a vis* other (majority) of bank customers without such access, contrary to their general customer service and corporate governance obligations; and also potentially in breach of the anti- trust provisions of the ***FCCPA***. Such conduct may also be inconsistent with the anti-money laundering and combating financing of terrorism undertakings of ***section 66 BOFIA***.

[32]*Cf.* ***A-G Abia v. A-G Federation [2022] 16 NWLR (Pt. 1856) 205, at 412F-G*** *per* Muhammad JSC's lead (majority) judgement: *"It is indeed trite that being constitutional provisions, the Court must construe the section liberally in order to enforce and protect the end they are designed to serve rather than embarking on a construction that defeats the obvious purpose and end of the sections. A holistic approach with all the related sections of the constitution being considered together provides the magic wand. See A-G Lagos State v. A-G Federation (2014) LPELR - 2270 (SC): (2014) 9 NWLR (pt. 1412) 217; A-G Abia State v. A-G Federation (2018) 17 NWLR (Pt. 1648), 299 at 350, 353."* See also *per* Ogunwumiju, JSC in ***Ezeani v. Onyeriri [2023] 9 NWLR (Pt. 1889) 315 at 325A-B***: *"Interpretation of a statute must not defeat its intent. …where the words of a statute are plain, clear and unambiguous, the courts should give effect to their literal meaning so long as the interpretation will not be absurd…"* See also generally, Hakeem O. Ijaiya, ***'Judicial Approach to Interpretation of Constitution'***, *(Malthouse, 2018)*.

Jurisdiction: Where Will the Action(s) be Filed?

The short answer to this question can be found in section 251(1)(d)1999 Constitution which provides that:

> *"Notwithstanding anything to the contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly,* ***the Federal High Court [FHC] shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters connected with or pertaining to banking, banks****, other financial institutions, including any action between one bank and another,* ***any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender****, bills of exchange, letters of credit, promissory notes and other fiscal measures****: Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank****".*[33]

Who to Sue and Immunity Issues

This author believes that the subject actions can be brought against the President and the CBN, and of course these raises additional issues. Should the CBN be sued since it is an agency of the Federal Government, a disclosed principal? The answer is an easy yes.[34] A key issue this throws up is immunity; which has always been a very interesting constitutional and statutory issue, when regulatory irresponsibility is being discussed.[35]

As for the President,[36] his immunity may be much more robust because same is based on constitutional, rather than statutory provisions *simpliciter* – given that the ***1999 Constitution*** is superior to, and is indeed, the *fons et origo* of all other legislation.[37] However, *it is respectfully submitted that actions seeking damages or even declaratory reliefs, for authorising the CBN currency change exercise and the manner of implementation may be successfully maintained for reasons further explained below*: (a) against the successor (current) President in his official capacity, because government is a continuum; and (b) arguably against the erstwhile President but in his personal capacity, having left office.[38]

Assuming *arguendo* that this kind of action is challenged on the basis that same cannot be instituted against the current President in his official capacity or the former President in his personal capacity after he has left office,[39] arguments and ruling by the Courts thereon would be helpful addition to our public litigation jurisprudence.[40]

However (and assuming the current and former Presidents cannot be sued), aggrieved citizens can

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[33]Emphasis supplied. See also, ***section 251(1)(p)-(r)*** which relates to: *"(p) the administration or the management and control of the Federal Government* ***or any of its agencies;*** *(q) subject to the provisions of this Constitution,* ***the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;*** *[and] (r)* ***any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies****"*. Emphases supplied.

[34]The bases include that aspects of the causes of action relates to some direct statutory responsibilities of the CBN for which it should be directly answerable, and by virtue of ***section 1(2) CBN Act***: *"The Bank shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name."* A further exception to the agency rule for purposes of litigation can also be found in ***section 1(3)***: *"In order to facilitate the achievement of its mandate under this Act and the Banks and Other Financial Institutions Act, and in line with the objective of promoting stability and continuity in economic management, the Bank shall be an independent body in the discharge of its functions."* Thus, the finding by the SC in ***A-G Kaduna State & 9 Ors. v. A-G Federation & 2 Ors. [2023] 12 NWLR (Pt. 1899) 537 at 580B*** that *"the [CBN] is an agency of the Government of Nigeria"* must be qualified accordingly.

[35]Unless based on a peculiar set of facts, clearly there is no cause of action against the banks by customers regarding their losses and suffering during the currency exchange crisis, because the contextual circumstances was not of the banks' making but attributable to the CBN's implementation of the exercise. Once there is no intention by customers to join their banks, then the proper venue is the FHC. Given the proviso to ***section 251(1)(d)***, any composite facts that amount to a cause of action against the aggrieved customers' banks may have to be litigated separately at the relevant State High Court (SHC). It is respectfully submitted that unless the circumstances justify it, filing a separate action may be a distraction especially if the damages is as is likely to be lower than in the CBN litigation. *Cf.* with the SC's refusal to heed the 1st Defendant's argument in ***A-G Kaduna State & 9 Ors. v. A-G Federation & 2 Ors. [2023] 12 NWLR (Pt. 1899) 537, at 580G-581D and 580B-C*** that the action ought to fail because it was not instituted at the FHC or that the CBN was not joined.

[36]Note that *per* ***section 5(1) 1999 Constitution***, the executive powers of the Federation are vested in the President and may be exercised by him either directly or indirectly through delegates (the Vice-President, Federal Ministers and/or federal officials), and such executive powers extends *"to the execution and maintenance of this constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws."*

[37]See for example, ***Nwokedi v. Anambra State Government [2022] 7 NWLR (Pt. 1828) 29, at 65H-66C*** *per* Aboki, JSC: *"…The constitution is described as the grundnorm and the fundamental law of the land. All other legislation in the country takes their hierarchy from the provisions of the Constitution . It is not a mere common legal document. It is an organic document which confers powers and also creates rights and limitations. It regulates the affairs of the Nation-State and defines the powers of the different components of government as well as regulating the relationship between the citizens and the State. Once the powers, rights and limitations under the Constitution are identified as having been created, their existence cannot be disputed in a court of law. But the extent and implications may be sought to be interpreted and explained by the court. The provisions of the Constitution precede any law enacted by the National Assembly has power to amend the constitution itself."*

[38]See ***section 308 1999 Constitution***: *"(1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section - (a)* ***no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during that period either in pursuance of the process of any court or otherwise****; (b) … and (c) no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued:* ***Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of his period of office****. (2) The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party. (3) This section applies to a person holding the office of President or Vice President, Governor or Deputy Governor; and the reference in this section to 'period of office' is a reference to the period during which the person holding such office is required to perform the functions of the office."* Emphases supplied.

[39]Arguably, the current President has inherited his predecessor's acts and liabilities, unless there is an express disclaimer or admission; whilst the former could lead to further contention prior to resolution, the latter is not and may provide basis for settlement. On the other hand, the former President may raise an objection that since the acts complained of were done in his official capacity, it is preposterous to proceed against him in his personal capacity. In response, *the complainants may contend that the presidential acts were so preposterous that they can no longer be regarded as having been performed in the President's official capacity*. Furthermore, the proviso to ***section 308*** arguably recognises that a former President can be proceeded against, since limitation period will not run for the period whilst he was in office; but the better argument may be that this proviso envisages personal matters that he should not be burdened with whilst in office. This is moreso that there is no bar on suing a sitting President in his official capacity for acts, decisions or omissions related to the performance of the duties of his office.

[40]For an interesting discussion about American currency jurisprudence (albeit not on all fours with our instant Nigerian scenario), see *"Currency, Coinage and Legal Tender"* in Prof. B.O. Nwabueze, SAN's ***'Federalism in Nigeria Under the Presidential Constitution'****, (2003, Lagos State Ministry of Justice), pp 216 – 220.*

look more particularly in the direction of the CBN/or and the relevant CBN management personnel. The question then, is: *how much of a cover does the* ***CBN Act*** *provisions give CBN officials in respect of the mismanaged currency exchange exercise?*

Section 52 provides that:

> *"(1)* ***Neither the Federal Government nor the Bank nor any officer of that Government or Bank shall be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of any power conferred*** *upon that Government, the Bank or such officer, by this Act.*
>
> *(2) For the purpose of this section, the Minister or any officer duly acting on his behalf shall be deemed to be an officer of the Federal Government and the Governor, any Deputy Governor of the Bank or other employee shall be deemed to be an officer of the Bank."*[41]

The simple point here is that once a person can establish the absence of good faith *cum* reasonableness or wrongful or ill-motive to any CBN action, then ***section 52*** cannot be used as a shield in responding to actions by aggrieved citizens.[42] In other words, the relevant CBN persons will lose the benefit of the ***section 52*** protection.[43]

It is trite that generally, immunity provisions (like statutory powers) are not absolute,[44] and the Courts have regularly held accordingly when public servants act wrongfully, *ultra vires* the relevant enabling statute or outside the scope of their employment.[45] The same result applies if they exercise any vested discretions perversely, or unreasonably.[46] It is respectfully submitted that *presidential cover will not avail CBN officials, since the currency exchange exercise did not originate as a presidential order, but as recommendation from the CBN, which the President signed off on.*[47]

Limitation Period Issues

It is trite that actions are only competent amongst others, if filed within any applicable limitation period and this raises the question: does the ***Public Officers Protection Act***[48] ***(POPA)*** apply? If it does not, then invocation of the three-month limitation period provisions[49] that would have been a huge challenge to

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[41]Emphasis supplied.

[42]In ***Irikefe v. CBN & 2 Ors. (2021) 55 TLRN 76 at 96-97***, the FHC *per Dimgba, J* held that ***section 52(1) CBN Act*** and ***53(1) BOFIA*** will not in the circumstances of the case, avail the CBN from liability or adverse claims since *"the intendment of the Acts is to protect the [CBN] from adverse claim, action, liability or demand by any person in respect of anything done or omitted to be done in good faith and in the execution of the powers conferred by the Acts. The qualifying phrases as used by the lawmakers are: 'good faith' and 'in the execution of power of the Act'.* ***It therefore means that to be entitled to the protection of the provisions set out above in the two legislations, two conditions must be met. First, the action done or omitted to be done must be one done or undone in good faith****, and secondly the actions done or undone in good faith must be one done or undone in the process of executing any powers conferred upon the apex bank by the applicable legislations. …* ***on the facts, the 1st Defendant cannot be shielded by the provisions of the law relied upon****."* Emphases supplied.

[43]See ***Para 8(1)(a) and (e), First Schedule CBN Act***: *"8. (1)* ***The Governor and Deputy Governors shall have special responsibility for - (a) the organization of the management of the Bank*** *at its Head Office, Branches and Currency Centres; (e)* ***the supervision of arrangements relating to the issue and redemption of Currency notes and coins*** *and all matters connected with the forms, design and Composition of currency notes and coins;* ***Provided that the Director of Currency Operations shall be charged with the direct responsibility under the Governor for specified matters under this sub-paragraph****."* Emphases supplied. On need to construe statute as a whole and when the exercise of statutory power may be invalid respectively, see ***APC v. ASIEC [2022] 12 NWLR (Pt. 1845), 411 at 456E-457B and 457F-458A***.

[44]It is settled that abuse of office will deprive the relevant public officer from the ***POPA's*** immunity provisions. *Per Ademola, CJN* in ***Lagos City Council v. Ogunbiyi (1969) 6 NSCC 283 at 284***: *"In the case of Newell v. Starkie (1920) PC 89 LJR 1, where the plea of malice was considered as affecting the protection of the English Act, Lord Finlay at page 6 of the Report said:- 'The [POPA] necessarily will not apply if it is established that the Defendant has abused his position for the purpose of acting maliciously. In that case he had not been acting within the terms of the statutory or other legal authority. He had not been bona fide endeavouring to carry it out. In such a state of facts he has abused his position for the purpose of doing a wrong, and this protection of this act, of course, never could apply to such a case."* See also, ***CIL Risk & Asset Management Ltd. v. Ekiti State Government & 3 Ors [2020] 12 NWLR (Pt. 1738) 203 at 271-272D-F and 272F-G.*** *Cf.* also the SC decision in ***A-G Kaduna State & 9 Ors. v. A-G Federation [2023]12 NWLR (Pt. 1899) 537 at 582E-583C***, where it held that ***section 52(1) CBN Act*** cannot interfere with or restrict the fullness of the SC's original jurisdiction as enshrined in ***section 232(1) 1999 Constitution***; and in any event, ***section 52(1) CBN Act*** would be void to the extent of its inconsistency, *per* ***section 1(3) 1999 Constitution***.

[45]Analogy may be drawn with the principle of vicarious liability under the law of torts: employees who act outside the scope of their employment by undertaking or going on *"a frolic of their own"* are usually exposed to personal liability; and the employer that would have been ordinarily liable based on *respondent superior* (let the master answer) is unaffected. See Kodinlinye & Aluko, ***'The Nigerian Law of Torts'****, (Spectrum 2nd ed. (1999)), Chapter 13 (Vicarious Liability), p. 235 et seq.;* Winfield & Jolowicz, ***'Tort'****, (19th ed., Sweet & Maxwell (2014), Chapter 9 (Employer's Liability).*

[46]*Cf.* with administrative law and the established Nigerian caselaw on these types of issues. See generally for example, Prof. P.A. Oluyede, ***'Nigerian Administrative Law'****, (Univ Press Ibadan, 2007);* Iluyomade & Eka, ***'Cases and Materials on Administrative Law in Nigeria'*** *(2nd ed., OAU Press (2007))*; B.U. Eka, ***'Judicial Control of Administrative Process in Nigeria'*** *(2001, OAU Press). "For the purposes of this work, administrative law is understood to mean the law relating to the discharge of functions of a public nature in government and administration. It includes the law relating to functions of public authorities and officers and of tribunals judicial review of the exercise of those functions, the civil liability and legal protection of those purporting to exercise them and aspects of the means whereby extra-judicial redress may be obtainable at the instance of persons aggrieved."* See ***'Halsbury's Laws of England'*** *(4th ed., (2001 Reissue), Butterworths), Vol. 1(1), para 1, p.5.*

[47]It is strongly submitted that the wrongful or unreasonable recommendation is akin to an act, omission, or decision; it was arguably not a non-factual thing that was incapable of attracting consequences or of being wished away as if such recommendation was never given. Also, Nigerian caselaw is replete with successful claims for declarations and (exemplary, punitive or compensatory) damages against public institutions and public officials in Nigeria, and also in the ECOWAS Court of Justice.

[48]***Cap. P.41, LFN 2004***.

[49]See ***section 2(a) POPA***: *"Where any action, prosecution, or other proceeding is commenced against any person for* ***any act done in pursuance or execution or intended execution of any Act or Law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, Law, duty or authority****, the following provisions shall have effect****: the action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in case of a continuance of damage or injury, within three months next after the ceasing thereof****…"* Emphases supplied. Consistent with the principle that limitation period is a threshold issue; *Augie, JSC* in ***Owolabi v. Seun [2023] 11 NWLR (Pt. 1896) 539 at 548H*** held: *"Issue 1 has to do with whether the record of appeal was compiled and transmitted to the court below within the stipulated time.* ***But it goes without saying that Issue 2, which questions whether the said Suit is statute barred, must be considered first****, as the effect of a Suit being statute barred is that the cause of action becomes extinct by operation of law and it can no longer be maintained in a court of law. Abdulahi v. Loko (2022) LPELR-57578(SC); (2023) 6 NWLR (Pt. 1881) 445."* Emphasis supplied. In ***Useni v. Attah [2023] 8 NWLR (Pt. 1887) 519 at 546H***, it was held that: *"Nevertheless, the legislature has prescribed certain periods of limitation for instituting certain actions. The rationale for this is the public policy consideration that there must be an end to litigation and the need to stop parties from litigating over stale disputes."*

It is respectfully submitted that presidential cover will not avail CBN officials, since the currency exchange exercise did not originate as a presidential order, but as recommendation from the CBN, which the President signed off on.

any action to recover damages or other judicial relief, does not arise.[50]

However, and unfortunately, the ***POPA*** applies because the CBN functionaries will qualify as *"public officials"*;[51] thus, ***POPA*** will ordinarily offer an escape route for both the President and the CBN officials in this instance, since three months has clearly elapsed after the currency exchange, or onset of the related injuries and losses.[52] *The way out may be to prove the continuity or ongoing nature of the losses and damage to the affected individuals.*[53]

For example, the husband who lost his pregnant wife and baby because no hospital will admit them, although aware of the critical condition, namely that she was going through labour pains because they had no cash to pay; is still suffering from an ongoing, long-term loss.[54] Similarly, citizens who suffered distinct economic losses with long term effects should, provided they are able to prove entitlement to relief.[55] The evidential burden should be relatively easy to discharge, given the factual reality of the respective losses or injury.

Other escape routes from the ***POPA*** is that *arguably in the circumstances both the President and the CBN were acting outside the colour of their statutory or constitutional duty*;[56] or to allege *absence of good faith, especially given the (misguided) extraneous considerations of safeguarding electoral integrity that partly informed the currency exchange exercise in the first place or the shambolic manner in which it was implemented*.[57] It has even been argued that the ***POPA's*** constitutional validity may be in doubt, given its intent to constrain access to Court, which is guaranteed by ***sections 6 and 36(1) 1999 Constitution***.[58]

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[50] *Cf.* with ***section 12(1) Nigerian National Petroleum Corporation Act, Cap. N123, LFN 2004*** which displaces ***POPA*** by stipulating that actions can be brought against the NNPC within twelve (12) months. However, ***section 307 Petroleum Industry Act 2021 (PIA)*** makes ***POPA*** applicable to legal proceedings against or involving the sectoral regulators, management and their employees.

[51] *Cf.* ***section 52 CBN Act*** (quoted at p._ above). See also, ***section 18 Interpretation Act Cap. I23, LFN 2004***: *" 'public officer' means a member of the public service of the Federation within the meaning of the Constitution of the Federal Republic of Nigeria 1999, or of the public service of a State"*. See also, ***'Sasegbon's Judicial Dictionary of Nigerian Law'***, (DSC Publications, 2019), *Vol.5 at pp.851-861*, for varied Nigerian caselaw illustrations of *"public officer"*.

[52] See ***section 2(a) POPA***.

[53] Albeit it is conceded that in the event of success, the quantum of damages to be awarded would be moderated by whether the Plaintiff mitigated or could have mitigated his loss: ***Nwangwu v. First Bank of Nigeria Plc [2022] 1 NWLR (Pt. 1812), 427 at 457-458G-A; and 458B***.

[54] See Tukur Muntari, ***'New Naira: How my Pregnant Wife Died in Kano Hospital – Husband'***, *Punch, 19.02.2023*: https://punchng.com/new-naira-how-my-pregnant-wife-died-in-kano-hospital-husband/. According to the report, *"A 32-year-old woman, Shema'u Labaran, died along with her nine-month pregnancy at the Abdullahi Wase Specialist Hospital, Kano, reportedly due to the inability of her husband to pay medical bills in the new Naira notes in time. Labaran was allegedly left in pain for more than eight hours without attention from the medical personnel on duty. Narrating the unfortunate incident that led to his wife's death, the 42-year-old husband of the deceased, Bello Baffa, told an online newspaper on Saturday that his wife (Shema'u) bled to death while he was struggling to settle medical bills at the pharmacy through transfer. Baffa revealed how he spent hours waiting for the cashier to confirm the payment of ₦8,528 for drugs because the hospital had stopped receiving the old Naira notes."* There were several other similar unfortunate cases, such as: Rachael Omidiji , ***'A Pregnant Woman Loses her Life to Scarcity of New Naira Notes'***, *Nigerian Tribune, 02.02.2023*: https://tribuneonlineng.com/a-pregnant-woman-loses-her-life-to-scarcity-of-new-naira-notes/; ***'Naira Scarcity: Death Figures Spike In Hospitals'***, *Daily Trust, 12.02.2023*: https://dailytrust.com/naira-scarcity-death-figures-spike-in-hospitals/ (all accessed 12.11.2023). The latter report covered many instances across the country.

[55] See for example, Bunmi Aduloju, ***'Naira Scarcity: ₦20trn Lost to Reduction in Economic Activities, Says CPPE'***, *The Cable, 13.03.2023*: https://www.thecable.ng/naira-scarcity-n20trn-lost-to-reduction-in-economic-trading-activities-says-cppe (accessed 12.11.2023). According to the news report: *"Retail transactions across sectors have become nerve-wracking and distressing as payment system challenges persist. Since the onset of the cash crisis, the Nigerian economy has lost an estimated ₦20 trillion.' The CPPE CEO said these losses arose from the deceleration of economic activities, the crippling of trading activities, the stifling of the informal economy, contraction in the agricultural sector and the paralysis of the rural economy. 'There are also corresponding job losses in hundreds of thousands,' he added. Evidently, President Buhari did not seem to appreciate the gravity and enormity of the suffering and pain that Nigerians have been experiencing since the onset of the currency redesign policy. We again plead with the president to immediately intervene to put an end to the devastating and traumatic outcomes of a repressive, poorly conceptualised and badly implemented currency redesign policy."*

[56] ***Anozie v A G, Fed. [2008] 10 NWLR (Pt. 1095) 278 at 290 - 291***.

[57] See for example, *footnotes 68 and 69* herein for further reasoning that the exercise was essentially an abuse of office, given the panoply of more appropriate statutory/regulatory tools available (e.g. ***MLA*** reporting and enforcement framework), and purported assumption of mandates of other MDAs charged with such duties (for example INEC), and even failure to fully optimise agencies like the EFCC and ICPC. That these agencies and the security architecture (with the intelligence capabilities), were all answerable to President, and he could have given instructions for their full deployment towards achieving electoral integrity but chose not to, is surely a sore point that litigants can make heavy weather of. Incidentally, the CBN Governor appeared to have lost sight of, or deliberately ignored, the provisions of ***Currency Conversion (Freezing Orders) Act Cap. C43 LFN 2004***, which according to its long title is: ***"An Act to enable the Governor of the [CBN] to order the stoppage of any account of any person in circumstances where there exists any irregularity in payment, etc. calculated or likely to prejudice any currency conversion exercise."*** Emphasis supplied. Note however, that this was originally a military ***Decree*** and unlike previously (when ***Decrees*** were superior to unsuspended provisions of then extant ***Constitution***), it is now subject to the provisions of the ***1999 Constitution***.

[58] See Chukwuebuka S. Okeke, ***'Constitutionality of the Public Officers Protection Act: A Fresh Look at the Principles of Reasonableness and Proportionality'***: https://ir.nilds.gov.ng/bitstream/handle/123456789/398/CONSTITUTIONALITY%20OF%20THE%20PUBLIC%20OFFICERS.pdf?sequence=1. The author argues in his Conclusion (at p. 21 or 114) that: *"It is thus apparent that in taking into consideration the critical importance of the right of access to Court, POPA is both objectively unreasonable and clearly disproportionate. The effect is that contrary to settled law, an Act of the National Assembly has unlawfully subverted a Constitutional right. By providing a period of just three months within which to seek redress in respect of governmental misdeeds (which in practical terms is two months); POPA constitutes an improper obstacle that limits the actualization of a Constitutional right."*

However, the fact that ***POPA*** may prevent an action does not mean that the analysis in this article is moot; it could be a sensitisation pointer for relief by hapless masses against future occurrences of regulatory irresponsibility by government MDAs.[59]

Furthermore, and rather curiously, the ***CBN Act*** does not seem to have any pre-action notice requirements unlike many other government institutions like the Corporate Affairs Commission (CAC), the Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority.[60]

Locus Standi

Locus standi (or standing to sue), has always been a threshold issue that has aborted the emergence of many otherwise valid causes of action; the *locus standi* bar must be successfully scaled, since it is meant to deter interlopers.[61] It is in the interest of judicial efficiency and integrity that people who do not suffer injury or are not aggrieved by an action or decision should not be allowed to clog the courts dockets.[62] It is respectfully submitted that individuals who suffered, and can prove their peculiar losses, will pass the *locus standi* test.

Damages and/or Declaratory Reliefs?

In line with the foregoing discussion, the author believes that aggrieved plaintiffs can claim damages, in line with extant principles; for example, entitlement to general and specific damages would need to be proved, albeit there is a higher threshold for the latter.[63] The Court will take the usual factors into consideration in determining quantum. Punitive damages may also be in the mix.[64]

Complementarily, declaratory reliefs may also be claimed: for example, *that the CBN acted perversely, unreasonably, incompetently, without good faith and in breach of statutory provisions implementing the currency exchange, etc.*[65] The declaratory reliefs claim if successful, will provide the basis for potential award of damages which would be reflective of injury and losses suffered by the aggrieved/injured plaintiffs.[66]

In line with the foregoing discussion, the author believes that aggrieved plaintiffs can claim damages, in line with extant principles; for example, entitlement to general and specific damages would need to be proved, albeit there is a higher threshold for the latter. ”

[59]See ***Timinimi v. INEC [2023] 7 NWLR (Pt.1882) 109 at 132F – 133B)*** per Ogunwumiju, JSC's concurring judgment: *"… the determination of the question of improper delineation of wards and units as canvassed by the Appellants in this case is a live issue and not academic. The issue is germane to the political life and future participation of the Appellants and the people they represent in this Suit. In view of the position of this Court in Centre for Oil Pollution Watch v. NNPC [2019] 5 NWLR (pt. 1666) pg. 518, it is apparent that* ***this Court has shifted from its hitherto conservative stance on locus standi when it held that it would be a lacuna in the system of public law if a pressure group, a single public spirited tax payer or as in this case a group of politicians involved in the electoral process were prevented by outdated technical rules of locus standi from bringing a matter to the attention of the court to vindicate the rule of law and get an unlawful or wrongful conduct stopped****. Thankfully, the Respondent has agreed that it is bound by law to delineate the respective electoral wards and units all over the country from time to time.* ***The Respondent also agrees that it is an ongoing process. However, it appears that in the circumstances of this case it needs additional court intervention to propel it to do its constitutional duties****. …"* Emphases supplied.

[60]*Cf.* ***section 17 CAMA 2020*** and ***308 PIA***. In ***Idahosa v. State [2022] 8 NWLR (Pt. 1833) 397***, it was held that filing a notice of appeal outside the limitation period, renders the appeal incompetent.

[61]According to the SC in ***Agunsoye v. Arojojoye [2023] 12 NWLR (Pt. 1897), 137 at 167A-B***, *per Abubakar, JSC*: *"There is a long line of authorities on locus standi and the general principle is that for a person to have locus standi either to institute an action or to prosecute an appeal he has to show that he has special interest, that the interest is not vague or intangible supposed or speculative or that it is not an interest to which he shares with the other members of the society. He also must show that such interest has been adversely affected by the act or commission which he seeks to challenge."*

[62]See for example, the primaries election related case of ***PDP v. Ngbor [2023] 8 NWLR (Pt.1885) 1***, particularly the holding by *Ogunwumiju, JSC* at **22F-G**: *"My Lords, a lot of fuss has been made about the fact that this Court in several cases had nullified primaries conducted in violation of the Electoral Act. However, these cases arose as a result of a challenge by an aspirant within the same political party who felt aggrieved about the illegal venue where the primaries were conducted or about the illegality and irregularity perpetrated by his party which adversely affected his interest. Section 285(14)(e) cannot be a license for another political party to challenge not to talk of successfully challenge such a wrongdoing by* INEC. *In the circumstances, this issue is resolved against the Appellant."* In other words, *"No matter how manifestly unlawful an action is, it is the person with the locus standi to sue who can challenge [it] in a court of law"*: *Ogunwumiju, JSC* in ***APC v. INEC [2023] 8 NWLR (Pt. 1887), 563 at 588F.*** the SC took a similar stance in ***PDP v. INEC & 3 Ors. [2023] 13 NWLR (Pt. 1900) 89*** by holding that a political party cannot challenge the nomination of the candidate of another party.

[63]See generally, the Court of Appeal (CoA) decision in ***JPO Investment Nig Ltd v. Ibeto Cement Co. Ltd [2023] 17 NWLR (Pt. 1914) 451 at 553F-G***: *"It is settled that general damage is a kind of damage that the law presumes to flow from the wrong complained of. They are the type that the court will award in the circumstances of the case and without any yardstick to assess except the expectation of a reasonable man. See Lar v. Sterling Astaidi Ltd (1977) 11-12 SC 53, Omonuwa v. Wahabi (1976) 4 SC 37."* The CoA also held ***at 555E-H***: *"Now special damages are those which are alleged to have been sustained in the circumstances of a particular wrong. The distinction between the two classes of damages was drawn in the case of Incar (Nig.) Ltd v. Benson Transport Ltd (1975) LPELR -1512 (SC) … '… Special damages on the other hand is such a loss as the law will not presume to be the consequence of the Defendant's act but which depend in part, at the least on the special circumstances of the case.'". "[Whilst] it must be proved by the Claimant to have been a direct flow or consequence of wrongful act of the Defendant. The claim for general [damages] needs not be specifically pleaded"*: ***Agboola v. ASB Inv. Ltd. [2023] 16 NWLR (Pt. 1910) 241 at at 276D***.

[64]According to the SC in ***Aondoakaa v. Obot [2022] 5 NWLR (Pt. 1824) 523 at 586C-E***: *"There is no doubt that the pleadings in this case support the award of exemplary damages against the Defendants, having established unconstitutional acts committed by the writing of letters to … advising them to disregard orders made by the Court of Appeal…"*

[65]*Cf.* the rebuke of the SC in ***Aondoakaa v. Obot [2022] (supra) at 586H – 587C***: ***"The Appellant as the Chief Law Officer of the Federation … was reckless and acted in a manner unbecoming of the occupant of such an exalted office****. His Lordship, Oyewole, JCA captured the mood of the learned trial judge when he observed at pages 299 – 300 of the record:* ***'the fact leading to this appeal captured a most sordid low in the administration of justice in this country. It is unthinkable that the occupier of the exalted office of Attorney General would subvert the ends of justice, as was crudely done in this case by the Appellant. When an Attorney General acts imperiously, placing himself above the laws of the land, impunity and anarchy are enthroned. Public office is a sacred trust…"*** Emphases supplied.

[66]It is respectfully submitted that given the SC's grant of declaratory reliefs in ***A-G Kaduna v. A-G Federation (supra)***, the chances of immediate potential litigants succeeding is high. On the nature of declaratory relief and when the Court may grant same, see ***Ecobank (Nig.) Plc v. Monye [2022] 4 NWLR (Pt. 1820) 347 at 363E-364A***. Therein, the CoA also reiterated (at ***364B-C*** and ***365C-D***), that the evidence to successfully ground a declaratory claim can be oral or documentary. According to Wade *(op cit., p. 481): "In administrative law, the great merit of the declaration is that it is an efficient remedy against ultra vires action by governmental authorities of all kinds… If the Court will declare that some action, either taken or proposed is unauthorised by law, that concludes the point as between the plaintiff and the authority."*

Was it not an exemplar of regulatory irresponsibility that it seemed as if the CBN was deriving some 'sadistic joy' from the hardship experienced by Nigerians, largely as a result of its shambolic exercise?[67] Was it not exacerbated by the fact that the exercise appeared to have been more informed by 'wrong' motives – for example, of *achieving integrity of the 2023 elections, a role that the CBN did not have primary responsibility for pursuant to its enabling statute and the* ***1999 Constitution****?*[68]

Should the courts allow the CBN to walk away without any accountability whatsoever, not allow CBN enjoy the discomfiture of reward for their action? It would be strange indeed, and inequitable, if citizens who suffered peculiar losses will not have any right of relief.

Or engineering the exercise as a way to deal with monied political class or check money laundering, despite the avalanche of many tools and statutory provisions that was available to the CBN and the FG in that regard?[69] *Was it not morally repugnant for the CBN to choose softer targets (the masses) when it could have directly confronted/taken enforcement action against the big wigs (through the panoply of statutory and regulatory tools available to it vis a vis the banking system)?*

In the event, the more courageous, reasonable and morally justifiable approach would have spared Nigerians, the avoidable misery that the currency exchange exercise represented. *Should the courts allow the CBN to walk away without any accountability whatsoever, not allow CBN enjoy the discomfiture of reward for their action?* It would be strange indeed, and inequitable, if citizens who suffered peculiar losses will not have any right of relief.

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[67]See generally amongst many others, Seriki Adinoyi, ***'Deadline will not Be Extended, CBN Warns Nigerians Holding Old Currency',*** *ThisDay, 24.01. 2023*: https://www.thisdaylive.com/index.php/2023/01/24/deadline-will-not-be-extended-cbn-warns-nigerians-holding-old-currency; Ogaga Ariemu, ***'Naira Redesign: CBN Deadline Insensitive, Spells Doom for Country's Economy – Experts',*** *Daily Post, 24.01.2023*: https://dailypost.ng/2023/01/24/naira-redesign-cbn-deadline-insensitive-spells-doom-for-countrys-economy-experts/; Hope Moses-Ashike, ***'CBN Debunks Statement on ₦500, ₦1,000'***, *BusinessDay, 09.03.2023*: https://businessday.ng/news/article/cbn-debunks-statement-on-n500-n1000/; Festus Akanbi, ***'Clock Ticks on Naira Redesign as CBN Raises Interest Rate to 17.5%'***, *ThisDay, 29.01.2023*: https://www.thisdaylive.com/index.php/2023/01/29/clock-ticks-on-naira-redesign-as-cbn-raises-interest-rate-to-17-5; Moses Orjime, ***'Currency Swap: Kola Abiola Berates APC for Imposing Hardship on Nigerians'***, *Leadership, 25.02.2023*: https://leadership.ng/currency-swap-kola-abiola-berates-apc-for-imposing-hardship-on-nigerians/; Aisha Wakaso, ***'CBN Cashless Policy Causing Hardship for Citizens – Bello'***, *Punch, 02.02.2023*: https://punchng.com/cbn-cashless-policy-causing-hardship-for-citizens-bello/; Abdulkareem Mojeed, *et al*, ***'Naira Redesign: Nigerians Grapple with Hardship as PoS Transaction Charges Jump 400%'***, *Premium Times, 06.02.2023*: https://www.premiumtimesng.com/news/headlines/580177-naira-redesign-nigerians-grapple-with-hardship-as-pos-transaction-charges-jump-400.html; Stephen Angbulu, *et al*, ***'New Naira: CBN Insists on Jan 31, Buhari Snubs Govs, Monarchs'*** *Punch, 29.01.2023*: https://punchng.com/new-naira-cbn-insists-on-jan-31-buhari-snubs-govs-monarchs/; Collins Olayinka, *et al*, ***'Stampede as Nigerians Tackle CBN Deadline on Cash Swap'***, *The Guardian, 27.01.2023*: https://guardian.ng/news/stampede-as-nigerians-tackle-cbn-deadline-on-cash-swap/; Biodun Busari, ***'Nigerians Going Through Untold Hardship Over Naira Scarcity – Oluwo'***, *Vanguard, 01.02.2023*: https://www.vanguardngr.com/2023/02/nigerians-going-through-untold-hardship-over-naira-scarcity-oluwo/; ***' "You Brought Untold Hardship": Kate Hateshaw Bashes CBN for Old Naira Notes Recirculation'***, *Legit, 14.03.2023*: https://www.legit.ng/entertainment/celebrities/1525070-brought-untold-hardship-kate-hateshaw-bashes-cbn-notes-recirculation/. See also for a subsequent event, ***'CBN, Release Cash to Nigerians'***, *Daily Trust (Editorial), 11.12.2023*: https://dailytrust.com/cbn-release-cash-to-nigerians/ (all accessed 16.11.2023).

[68]See ***section 2 Electoral Act No. 13 of 2022*** (***the EA***) which vests powers in INEC, *"in addition to the functions conferred on it by the Constitution"*, to amongst others: *(a) conduct voter and civic education; (b) promote knowledge of sound democratic election processes."* The ***1999 Constitution, vide sections 132 and 134 (President); 76 and 78 (National Assembly); 114, 116 and 118 (State Houses of Assembly); and 178 and 178 (Governor)*** makes specific provisions obligating INEC with oversight of elections into the above listed respective offices. It was therefore wrong policy for the FG and/or the CBN to purport to use extraneous means in attempted safeguard of electoral integrity. This is moreso that ***Part IV***, ***the EA (sections 114-129)*** created multifarous electoral offences, in addition to provisions such as ***sections 145 (Trial of offences)***, ***12(3)*** (Qualification for registration), ***16(3) (holding more than one voter's card); 18(5) (prohibition against issuance of replacement voter's card less than 90 days before polling day)***, ***19(5) (failure to display voters list not less than 90 days pre-election)***; ***22 (Offences of buying and selling voters' cards)***; ***23 (Offences relating to register of voters)***; ***26(2) (violation of oath of neutrality)***, amongst others. Respectfully, the comprehensive provisions of ***the EA*** are sufficient, if well and sincerely enforced, are enough to guarantee the conduct of free and fair elections without using a dodgy currency change gambit. However, the same FG was alleged to have nominated partisan individuals for screening and approval by the Senate as Resident Electoral Commissioners, contrary to the express provisions of ***the EA,*** which envisages an impartial electoral framework. See for example, Jesupemi Are, ***'CSOs Reject Buhari's Nominees as INEC RECs Over Partisanship, Corruption'***, *The Cable, 26.08.2022*: https://www.thecable.ng/csos-reject-buharis-nominees-as-inec-recs-over-partisanship-corruption; Leo Sobechi, *et al*, ***'With Nomination of 'Partisan' RECs, Credibility of 2023 Under Threat'***, *The Guardian, 04.09.2022*: https://guardian.ng/sunday-magazine/newsfeature/with-nomination-of-partisan-recs-credibility-of-2023-election-under-threat/; QueenEsther Iroanusi, ***'Senate Overrules Petitions, Confirms All INEC RECs Nominated by Buhari'***, *Premium Times, 05.10.2022*: https://www.premiumtimesng.com/news/headlines/558036-just-in-senate-overrules-petitions-confirms-all-inec-recs-nominated-by-buhari.html?tztc=1; Clifford Ndujihe, *et al*, ***'Partisan RECs Hurt 2023 Polls Badly, INEC Source Admits'***, *Vanguard, 22.04.2023*: https://www.vanguardngr.com/2023/04/partisan-recs-hurt-2023-polls-badly-inec-source-admits/. (all accessed 11.11.2023). Specifically, ***section 8(5) EA*** even provides that: *"A person who, being a member of a political party, misrepresents himself by not disclosing his membership, affiliation, or connection to any political party in order to secure an appointment with the Commission in any capacity, commits an offence and is liable on conviction, to a fine of ₦5,000,000 or imprisonment for a term not more than two years or both."* How could such provision co-exist with nomination of potential partisan RECs? It is respectfully submitted that such *mala fides* exercise of presidential nominating power, further supports the case that the currency exercise as implemented was an abuse of powers and the supposed electoral integrity objective was a smokescreen. Such argument should further attract the sympathy of the Courts in favour of litigants, who proceed against the CBN/FG for losses incurred or damages suffered, resulting from the ill-motivated currency swap exercise.

[69]Nigeria has a robust reporting and enforcement framework under *inter alia*, the: ***CBN Act; BOFIA; Money Laundering (Prevention and Prohibition) Act No. 14 of 2022 (MLA); The Corrupt Practices and Other Related Offences Act Cap. C31, LFN 2004 (ICPC Act); the Economic and Financial Crimes Commission (Establishment) Act Cap. E1, LFN 2004 (EFCC Act); Code of Conduct Bureau and Tribunal Act Cap. C15, LFN 2004; the Criminal Code Act, Cap. C38, LFN 2004 (CCA); and Public Service Rules***. These were more than sufficient to achieve the objectives that the currency exchange also sought to achieve. In fact, it can almost be argued that the currency exchange policy underpinning assumed that Nigeria has no extant ***MLA*** in operation, which is not the case. The ***MLA*** apart from limiting cash payments, imposing reporting obligations, including thresholds and suspicious transactions, providing for personal liability of target directors/employees, surveillance, etc etc; it also has a strict penal regime *vide* its ***Part IV (Offences and Penalties)***, amongst other provisions. ***Per section 1(2)(c) EFCC Act***, the EFCC *"is the designated Financial Intelligence Unit (FIU) in Nigeria, which is* ***charged with the responsibility of co-ordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria****."* Emphasis supplied. The ***ICPC Act*** established the ICPC, vests it with powers and duties, and then copiously provides for ***Offences and Penalties (Part II), Investigation, Search, Seizure and Arrest (Part III)***, amongst others. The ***CCA*** can also provide the catch all omnibus basis for any election related criminal conduct that there may not be specific provision for.

The FG, CBN and other agencies like the EFCC not acting on the significant credible information already at their disposal,[70] but seeking to find 'an easy way out' to the grave prejudice of citizens and the national economy, is to say the least, reprehensible.[71] As custodians of public trust, the government and its MDAs ought to be acting without fear or favour; whereas, the currency exercise showed nothing but government cowering before powerful interests. Directly confronting electoral malpractice for example by following through on threats to enforce electoral breaches would have been much better.[72]

It was dismal that the President and Commander-in-Chief of the Armed Forces not only abdicated his responsibility in this regard,[73] but eventually the 2023 elections ended up having credibility challenges[74] with a litany of election litigation in its trail; covering the State, National Assembly, Gubernatorial and Presidential elections. With the 2023 elections arguably the most controversial in recent memory,[75] this meant that all the avoidable pains *cum* economic losses suffered by citizens and gargantuan costs incurred by government in furtherance of a flawed

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[70] That the EFCC's performance has been far from stellar is not in doubt, nor is the perception a recent one. According to a 2011 report: *"Despite its promise, the EFCC has fallen far short of its potential and eight years after its inception is left with a battered reputation and an uncertain record of accomplishment."* See, **'Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission'**, *Human Rights Watch, 25.08.2011*: https://www.hrw.org/report/2011/08/25/corruption-trial/record-nigerias-economic-and-financial-crimes-commission. Part of *"Key Take Aways"* in the *Executive Summary* of a 2021 study is that *"The EFCC is also too vulnerable to disruptive high-level political influence."* See Matthew T. Page, ***Innovative or Ineffective? Reassessing Anti-Corruption Law Enforcement in Nigeria: Global Integrity Anti-Corruption Evidence Project (Fighting High-Level Corruption in Africa: Learning from Effective Law Enforcement)***, *Chatham House, 21.01.2021*: https://ace.globalintegrity.org/wp-content/uploads/2021/02/Page-Nigeria-workingpaper9-1.pdf (all accessed 12. 12.2023).

[71] Analogy can be drawn with arguments for border closure or subsidy removal because the FG cannot control smuggling, including due to corruption of and in the public service, inefficiencies or maladministration that negates effectively border patrols, etc. Subsidy removal because of associated corruption or that Nigerian petroleum products were smuggled and sold for higher prices in neighbouring countries represents an admission of failure and another instance of regulatory irresponsibility. Removal should be predicated on real substantive (admittedly justifiable) grounds, not these 'failure' associated extraneous considerations.

[72] Speaking in another context (of political donations), a commentator stated in part that *"The greatest deterrent against breach of the prohibition would have been robust enforcement; non-existent enforcement is a clear message to would be defaulters that they run little or no consequential risk;"*. See the sub-heading ***"Ineffectiveness: Lack of Enforcement Appetite"*** in Afolabi Elebiju, ***'Perplexities: Is the Companies and Allied Matters Act 2020 (CAMA)'s Prohibition of Political Donations by Nigerian Companies Tenable?'***, *LeLaw Thought Leadership, August 2023, p.3*: https://lelawlegal.com/add111pdfs/Afolabi_Elebiju_-_Corporate_Political_Donations_Critique_Article_-_Final.pdf According to Elebiju (at *p.8*), *"The greater focus should be on making sure that our electoral framework is utterly transparent and inspires more than substantial credibility. Even prior to the 2023 elections, a top functionary of INEC had posited that INEC was overburdened and should shed some of its functions." Per footnote 39* therein: *"See Festus Okoye,* ***'The Prosecution of Electoral Offenders in Nigeria: Prospects and Possibilities'****, Friedrich Ebert Stiftung Discussion Paper No. 5, September, 2013:* https://library.fes.de/pdffiles/bueros/nigeria/10405.pdf *(accessed 22.08.2023). At pp. 32-33, he stated: 'The Independent National Electoral Commission has made it clear to the Nigerian people and the National Assembly that they do not have the capacity to prosecute electoral offenders.* ***They insist that they are overburdened with conducting elections, registering political parties and 33 monitoring their activities and their finances, as well as carrying out other activities incidental to the conduct of elections.'*** *Emphasis supplied."* Some authors have also stated that: *"Electoral offence is synonymous with electoral violence. Electoral offence is termed as a crime. … More recently, elections were conducted on the 25th February, and 18th March, 2023 … .* ***The relationship between crime and election in Nigeria is that the two are inseparable. The history of Nigerian elections cannot be completed without mentioning electoral crimes. ... In Nigeria offenders are hardly prosecuted and some get away with impunity on account of their political affiliation, impunity is recycled, people disengaged from the electoral process on account of electoral fraud and violence, and the credibility of the electoral process is called into question****."* See Mustapha Alhaji Bila, *et al*, **'Electoral Offences in Nigeria: Legal Issues and Challenges',** in R. Abdul Rahman et al. (eds.), *Proceedings of the 12th UUM International Legal Conference 2023 (UUMILC 2023)*, pp. *Atlantis Highlights in Social Sciences, Education and Humanities 15, pp. 348 – 360, at 348*: file:///C:/Users/HP/Downloads/125997186.pdf. At *p. 359*, they also stated: ***"****In conclusion, it is our submission that* ***the lesser punishments prescribed by the Electoral Act, 2022 for violations of the provisions of the Act encouraged impunity in the electoral process in Nigeria. That the insufficiency of the punishments provided for by the Act makes it impossible to serve as deterrence and that is why impunity is in the increase in the Nigerian electoral process. Unless these laws are amended and provides stiffer and or stringent punishments, electoral offences will continue as politicians in Nigeria consider elections as a do or die affair and wants to win elections at whatever cost****."* Emphases supplied. See also, Bethel Uzoma Ihugba and Charles Alfred, **'Political Parties and Electoral Offences in Nigeria: A Critical Analysis'**, *Journal of African Elections, Vol. 18, No.2 (2019)*: https://www.eisa.org/pdf/JAE18.2Ihugba.pdf (accessed 15.12.2023).

[73] See Chinedu Asadu, ***'Nigerian Leader Defends Currency Swap as Pain, Protests Grow'***, *AP, 16.02.2023*: https://apnews.com/article/nigeria-government-tokyo-muhammadu-buhari-africa-1389dda330daeb6a1f7d85ba338e80a4. Excerpts: *"As he came under growing pressure to intervene after days of bank attacks by Nigerians who have failed to withdraw their money, Buhari pointed to the expected gains from swapping out the old naira notes, from curbing surging inflation to reducing the influence of money in the Feb. 25 vote to elect his successor. 'This is a positive departure from the past and represents a bold legacy step by this administration towards laying a strong foundation for free and fair elections,' Buhari said."* See also, Kabir Yusuf, ***'New Naira Policy Already Influencing 2023 Elections – Buhari'***, *Premium Times, 16.02.2023*: https://www.premiumtimesng.com/news/top-news/582312-new-naira-policy-already-influencing-2023-elections-buhari.html; ***'People Talk: Can President Buhari Fulfill His Promise to Prevent Moneybags from Influencing 2023 Elections?'***, *Vanguard, 14.09.2022*: https://www.vanguardngr.com/2022/09/video-people-talk-can-president-buhari-fulfill-his-promise-to-prevent-moneybags-from-influencing-2023-elections/ (all accessed 16.11.2023). Note also that the President has been aptly described as *"an Organ of Control"*. See Prof. P.A. Oluyede, ***(supra)****, p.80.*

[74] Victor Mathias, ***'2023 Elections: EU Observer Mission Identifies Six Areas For Improvement'***, *Channels, 27.06.2023*: https://www.channelstv.com/2023/06/27/2023-elections-eu-observer-mission-identifies-six-areas-of-improvement/. Excerpts: *"Some of the key areas listed by the Mission are ambiguities in the law,* ***the establishment of a publicly accountable process for the selection of the [INEC] members, ensuring real-time publication of results*** *as well as access to election results. It also highlighted the need for protection for media practitioners, while decrying the discrimination against women in elective and appointed positions as well as impunity regarding electoral offences. Andrews said* ***the election exposed enduring systemic weaknesses and therefore signalled a need for further legal and operational reforms to enhance transparency, inclusiveness and accountability****."* Emphases supplied. See also, Gabriele Steinhauser and Gbenga Akingbule, ***'Nigeria Election Criticized by International Observers, Opposition Parties'***, *WSJ, 27.02.2023*: https://www.wsj.com/articles/nigerias-ruling-party-candidate-takes-early-lead-in-slow-vote-count-5875b068 (all accessed 16.11.2023).

[75] ***'Calming Tensions Amid Nigeria's Post-Election Controversy',*** *Relief Web, 26.05.2023*: https://reliefweb.int/report/nigeria/calming-tensions-amid-nigerias-post-election-controversy ; Astha Rajvanshi, ***'The Controversy Surrounding Nigeria's Presidential Election, Explained'***, *TIME, 01.03.2023*: https://time.com/6259326/nigeria-elections-2023-results-inec/ (accessed 16.11. 2023).

election related currency exchange objective, went to waste.[76]

The ***A-G Kaduna State v. A-G Federation***[77] *Angle*

The decision of the SC in this litigation that stemmed from the currency exchange crisis can also provide indirect authority for the claims of aggrieved litigants. At the heat of the crisis, the 1st-3rd Plaintiffs had taken out an originating summons against the 1st Defendant at the SC, following the planned implementation of the currency swap exercise by the CBN.[78] In its judgment of 3rd March 2023 (a week after the Presidential elections on 25th February 2023), the SC held *inter alia* as follows:

- The ***section 20(3) CBN Act*** requirement for *"reasonable notice"* to issue new notes upon prior receipt of presidential directive to so issue new notes, was not met by the CBN Governor's press briefing; such notice ought to have been in FG Gazette or national newspaper advertisements by the CBN. Since *"press remarks"* do not amount to reasonable notice to the public, *"the directive given by the President to withdraw existing Naira notes and introduce redesigned ones without notice to the constituents of the Federation was invalid."*[79]

- Although the ***1999 Constitution*** does not expressly require the President to consult with the States or other bodies such as the National Economic Council, National Security Council or the National Council of State before he can give directive for redesign of the currency, ***section 5(1)*** makes him an agent of the Federation. The States are therefore inherently entitled to be consulted before he exercises any executive power having far reaching effect on the governance, economic and social order of each constituent State of the Federation; otherwise, the President (rather than the Federation), becomes the sovereign and the FG a dictatorship.

- *"The imposition of withdrawable cash limits after collection of the old notes amount to a scheme to entrap and not allow much of such funds come out of the banking system. My attention has not been drawn to any law that permits a bank not to pay cash to a customer on demand on the ground that the 1st Defendant has not been able to print enough new Naira notes or that permits the 1st Defendant to*

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[76] Sodiq Omolaoye, ***'INEC and Burden of Unending Litigations From 2023 Elections'***, *The Guardian, 19.03.2023*: https://guardian.ng/politics/inec-and-burden-of-unending-litigations-from-2023-general-elections/; AfricaNews, ***'Nigeria on Edge as Appeals Court Decides Disputed Presidential Election'***, 06.09.2023: https://www.africanews.com/2023/09/06/nigeria-on-edge-as-appeals-court-decides-disputed-presidential-election// ; Bankole Abe, ***'All Eyes on the Judiciary', Other Issues that Dominate the Bench in 2023'***, *ICIR, 27.12.2023*: https://www.icirnigeria.org/all-eyes-on-the-judiciary-other-issues-that-dominate-the-bench-in-2023/; Excerpts: *"When the [INEC] announced and declared [APC]'s Tinubu as the winner of the Presidential polls, the candidates of other parties went to court to challenge the decision insisting that there was no substantial compliance with the process. Both pre and post election matters were raised and argued vehemently at the tribunal courts until it was finally settled at the apex court in line with the provisions of our Constitution. The Constitution and the Electoral Act provides that whoever is not satisfied with the conduct of the election can go to court to file a complain challenging the declaration of the winner."* See also, Eromo Egbejule, ***'Bola Tinubu Wins Controversial Nigerian Presidential Election'***, *AlJazeera, 01.03.2023:* https://www.aljazeera.com/news/2023/3/1/bola-tinubu-wins-controversial-nigerian-presidential-election; Bolanle Olabimtan, ***'Abba Yusuf's Sack, Atiku/Obi vs Tinubu - Court Verdicts that Sparked Debates in 2023'***, *The Cable, 28.12.2023:* https://www.thecable.ng/abba-yusufs-dethronement-atiku-obi-vs-tinubu-controversial-judgments-of-2023; Leena Koni Hoffmann, ***'Nigeria's Election Results Put Disenfranchisement in the Spotlight'***, *Chatham House, 01.03.2023*: https://www.chathamhouse.org/2023/03/nigerias-election-results-put-disenfranchisement-spotlight. Excerpts: *"The INEC's performance and controversies over these results mean that the electoral reforms and lessons declared to have been learned were not fully applied and, as an electoral body, it was significantly less prepared than it claimed."* (all accessed 16.11.2023).

[77] ***[2023] 12 NWLR (Pt. 1899), 537***: ***A-G Kaduna State & 9 Ors. v. A-G Federation & 2 Ors***.

[78] Per excerpts from ***"Facts" at 544-545***: *"They alleged that the President approved the Naira notes redesign and the withdrawal of the existing Naira notes without first consulting or seeking the advice of the [NCS] and the [NEC], which are bodies to which the Governors of the Plaintiff States belong and without prior notice or reasonable notice to the public.*
The 1st-3rd Plaintiffs also alleged that the President did not call a meeting of the [FEC] or [NSC] to discuss the economic and security implications of the Policy before the President approved it and that there was no consultation between the [FGN] and all stakeholders in the Nigerian economy, including State Governments, Federal and State legislatures, financial institutions, civil societies, professional bodies and other concerned persons before the President directed or approved the Policy.
The 1st-3rd Plaintiffs further alleged that the implementation of the Policy had caused economic hardship for citizens, and made impossible the functioning of the States' governance activities that required cash.
By their originating summons, the 1st-3rd Plaintiffs sought the determination, amongst other questions of whether the President's unilateral approval of the naira redesign and cashless policy was consistent with the provisions of the [1999] Constitution … section 20(3) of the [CBN] Act 2007 and other extant laws on the subject matter.
The 1st-3rd Plaintiffs sought several declaratory reliefs. Principally, they sought declarations that the naira redesign and cashless policy approved by the President … was not consistent with the provisions of the [1999] Constitution, which make provisions for the executive powers of the President … and the extant laws on the subject matter; that the 3 month notice given for the implementation and completion of the Policy did not satisfy the condition set out in section 20(3) of the CBN Act 2007; and that the [SC] should direct the immediate suspension of the Policy.
By order of the [SC], the 4th- 10th Plaintiffs and the 2nd and 3rd Defendants were joined in the Suit. The [SC] also ordered the consolidation of the Suit with several other suits filed by the Attorneys-General of some States … and which raised substantially similar questions for determination and sought reliefs similar to those in the 1st-3rd Plaintiffs' Suit.
The 1st and 2nd Defendants each filed a preliminary objection, on several grounds, praying for the Suit to be dismissed or struck out for want of jurisdiction. Similar preliminary objections were also filed in the other consolidated suits.
On 8th February 2023, the [SC], on the application of the 1st to 3rd Plaintiffs, made an interim order of injunction that the existing Naira notes remained legal tender side by side the redesigned Naira notes pending the determination of the 1st-3rd Plaintiffs' motion on notice for interlocutory injunction. However, the [CBN] repeatedly released statements in the electronic and print media that the existing naira notes had ceased to be legal tender on 10th February 2023.
Further, after a meeting of the [NCS] called by the President on the matter in February 2023 during which the Governor of [CBN] briefed the Council, the President made a broadcast on 16th February 2023 directing that the existing N200 Naira notes should be released back into circulation as legal tender alongside the redesigned Naira notes for 60 days from 10th February 2023 while the existing N500 and N1000 Naira notes remained non-legal tender, but could be deposited by those who still had them into their bank accounts through the [CBN].
The 1st- 3rd Plaintiffs reacted to the President's broadcast by applying, on 17th February 2023, for an order setting aside the President's directive on the ground that it was unconstitutional overreach and usurpation of the judicial power of the [SC] in the pending Suit and was an act of disobedience of the subsisting order of interim injunction binding all parties including the President.
The 5th Plaintiff also applied for an order barring the 1st Defendant from being heard further in the case, and for an adjournment sine die, until the 1st Defendant complied with the order of interim injunction made by the [SC]." Emphases supplied.

[79] The SC affirmed that (***at 589G***): *"no reasonable notice of the Naira redesign and cashless policy was given as required by section 20(3) [CBN] Act 2007. Therefore, the President's directive and its implementation were invalid."* At ***590G***, *Agim, JSC* held: *"The President's broadcast was silent on their inability to print new Naira notes to meet the demands of the people. Many who returned their old notes have not been able to receive even the little amount prescribed as what can be withdrawn per day or week as [the] case may be."*

direct the imposition of limits on the cash to be paid from a customer's account after deposit of the old Naira notes. To the extent that the directive has continued to deprive all persons and the Plaintiffs access to a substantial part of their funds in banks in form of cash, it forcefully and illegally interferes with their rights of ownership and use of their said funds. Such restriction on an owner's right to freely use his or her property is illegal unless provided for by a law."[80]

- The rule of law of law on which Nigeria's democratic governance is founded becomes illusory if the President or any other authority or person refuses to obey court orders.[81]

In conclusion, the plenitude and breadth of the declaratory and mandatory reliefs granted by the SC in the ***A-G Kaduna*** case will provide additional fortification for public interest litigation by aggrieved citizens seeking damages for their losses since the SC has held that the underlying currency actions were mostly invalid.[82] Consequently, such finding pierces holes in the shields of the Defendants and enhances the prospects of successful claims.

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[80] *Per Agim, JSC* ***at 590G-591B***.

[81] It is trite that actions taken in defiance of court orders can definitely not enjoy statutory defences in response to claims from aggrieved litigants.

[82] *Per Agim, JSC's* rulings at the end of his judgment (***at 591G- 593B***) with which all other Justices concurred: "*In the light of the foregoing, I hold that this Suit has merit. … Accordingly, the following reliefs are hereby granted -*

1. ***A declaration that the demonetization directive/policy by the President of the Federation to wit: withdrawal of the old 200, 500 and 1000 Naira notes is not consistent with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which make provision for the Executive Powers of the President of the Federation and the extant laws on the subject matter.***

2. ***A declaration that the 3-month notice given for the implementation and completion of the said demonetization policy by which time the old N1000, N500 and N200 Naira notes shall cease to be legal tender does not satisfy the condition set out in section 20(3) of the CBN Act, 2007.***

3. A declaration that ***the President cannot unilaterally give a directive to embark on the demonetization policy pursuant to section 20(3) of the CBN Act, 2007 , in view of Nigeria's fiscal federalism, the economic interests of the constituents of the Federation*** *and without consultation with, and advice from the plaintiffs individually, and in their capacity as members of the National Council of States and National Economic Council, and that* ***the Directive cannot be given without consultation with, and advise from the Cabinet, the National Security Council and other stakeholders.***

4. A declaration that in issuing the directive for demonetization policy pursuant to section 20(3) of the CBN Act, 2007 on behalf of the Federation of Nigeria, ***the President is under an obligation to ensure that adequate structures are put in place for the plaintiffs and Nigerian citizens prior to the implementation of the said directives.***

5. A declaration that t
he demonetization directive/policy by the President of the Federation to wit: withdrawal of the old 200, 500 and 1000 Naira notes unlawfully impedes the exercise of the Executive powers of the plaintiffs' States ***and other obligations to facilitate and protect the welfare of the citizens of the said States pursuant to section 5(2) and other provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as well as other extant laws.***

6. A declaration that ***the directive given by the President pursuant to section 20(3) of the CBN Act 2007 limiting the amount that can be withdrawn and the charges therein without an enabling law is unconstitutional*** *and not binding on the plaintiffs.*

7. A declaration that ***the directive of the President of the Federation exercised is illegal to the extent that it restricts, without an enabling law, the rights of the plaintiffs to freely use their money in various bank accounts.***

8. An order that ***the old version of 200, 500 and 1000 Naira notes shall continue to be legal tender alongside with the new or redesigned version until 31-12-2023.***

9. An order that ***the reception of old 200, 500 and 1000 Naira notes and the swapping of same with new Naira notes shall continue till 31st December, 2023.***

All the consolidated suits listed in pp 12-13 of this judgment shall abide by this judgment." Emphasis supplied.

Conclusion

Hopefully, some of these issues can provide a basis for future amendments to the ***CBN Act***. *"Eternal vigilance is the price of liberty"* is a very popular quote. It is thus very important that all hands be on deck, particularly citizens' advocacy and where necessary, public interest litigation to check or deter prevalence of regulatory irresponsibility that also constitute a form of sabotage to even the regulatory agencies themselves; in addition to other stakeholders.[83]

Undoubtedly, the society is the prime victim and always at the losing end of a pandemic of regulatory irresponsibility;[84] and the dysfunctionalities they engender, will also be a huge impediment to Nigeria's global investment country competitiveness ambitions. The CBN's fire brigade currency exchange exercise was a misnormer that ought to be a standing lesson to government and MDAs *on how not to perform statutory functions.*

For those who suffered great loss during the currency exercise, litigation may be a good way of bringing closure to their trauma; even declaratory reliefs without financial compensation, is still better than nothing.

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[83]The author believes that the Nigerian Bar Association (NBA), especially its NBA – SPIDEL (*Section On Public Interest And Development Law*) and other CSOs can champion the public interest litigation discussed in this article; NBA/NBA-SPIDEL, CSOs having done many such litigations before.

[84]See for example, Olu Abiodun, ***'Dysfunctional Predatory Governance at FRC (1)'***, *BusinessDay, 03.06.2015*: https://businessday.ng/analysis/article/dysfunctional-predatory-governance-at-frc-1/; and ***'Dysfunctional Predatory Governance at FRC (2)'***, *BusinessDay, 04.06.2015*: https://businessday.ng/analysis/article/dysfunctional-predatory-governance-at-frc-2/; Sulaiman Aledeh, ***'The EFCC Gaffes, Media Trials and Politics'***, *The Guardian, 24.11.2021*: https://guardian.ng/opinion/the-efcc-gaffes-media-trials-and-politics/; Olalekan Adetayo, ***'MDAs are Presenting False Information for Promotion – FCSC'***, *Punch, 11.11.2019*: https://punchng.com/mdas-are-presenting-false-information-for-promotion-fcsc/; Deborah Tolu-Kolawole, ***'FG Orders MDAs to Comply with New Service Rules'***, *Punch*, 27.07.2023: https://punchng.com/fg-orders-mdas-to-comply-with-new-service-rules/ (all accessed 16.11.2023).

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