

LAWYARD QUARTERLY JOURNAL

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FOREWORD

I consider it an honour to make the opening commentary on this very first edition of the Lawyard journal.

The legal profession in Nigeria appears to have experienced a decline in the volume of well researched legal writing such that we do not have as many scholarly texts in the legal space as was the case previously. In the past, works by Professor Ben Nwabueze (SAN), Professor Cyprian Okonkwo (SAN), Professor Itsey Sagay (SAN) and others were known to provide solid text for use as part of our indigenous jurisprudence and corpus of knowledge.

The role that Lawyard and other emerging organizations are playing in the knowledge advancement space is innovative as it is renascent. Lawyard has consistently deployed technology in promoting quick, easy and seamless learning through its dissemination of well-researched scholarly materials, which cut across diverse areas of law and development. The value that Lawyard adds to the legal profession cannot be overemphasized as knowledge acquisition is the most essential part of the practice of lawyers. It is exciting to note that knowledge is being passed to the end-user through cutting edge technological devices and methods, thus providing greater access to a greater number.

It is evident that the drive behind this journal is to expand the frontiers of knowledge, give voice to emerging areas of law and recognize talent in the legal profession. The journal provides deep insights on topical issues such as: corporate law, fintech, the role of artificial intelligence, energy law, etc. This edition of the journal also features interviews with some distinguished lawyers like Dr. Babatunde Ajibade (SAN), Ms. Oyindamola Johnson and Professor Kingsley Moghalu.

I commend everyone who has contributed time and resources to the very high standard research, analyses and reporting evident in the quality of the content of the journal.

Whilst congratulating the Lawyard team for birthing this laudable and inspiring idea, I enthusiastically encourage members of the Nigerian Bar Association (NBA) Lagos Branch and all members of the NBA to subscribe to this quarterly journal.

I look forward to receiving positive feedback from readers on how insightful they have found this the journal to be.

Lateef Omoyemi Akangbe,
Chairman, NBA Lagos Branch.

PUBLISHER'S NOTE

A New Path to Knowledge for the Legal Community and the Nigerian Society

New beginnings will not always refer to fresh starts, even though that may often be the case. With the release of this first edition of the Lawyard Qurterly, our quarterly electronic law journal, we commence a journey whose beginning has always been dear to our hearts since we birthed the Lawyard platform. We have had the Lawyard Quarterly in mind just as we have had you, its esteemed reader, in mind, all these years. It therefore gives me great pleasure to welcome you to journey with us.

The Lawyard Quarterly is an integral part of our response to the needs of the legal community for knowledge sharing and that of the larger Nigerian society for enlightenment on legal issues. Therefore, the Lawyard Quarterly will always avail its readers of well-researched essays and interviews on legal issues and concepts that will be of benefit to legal practitioners and the general public.

As the name implies, the Lawyard Quarterly will be released on a quarterly basis. Special editions may however be released outside of scheduled quarters where deemed necessary without letting down the standards.

This edition has been made possible through the efforts of late Lawyard co-founder, Adavize Alao; Lawyard Quarterly Editor, Gbolahan Badmus; Design Advisor, Omeiza Alao; and a number of respected learned colleagues who spared their time to put together the essays published in this pilot edition. On behalf of the entire Lawyard team, I express our heartfelt gratitude to everyone who has made this possible.

As earlier noted, this is a new journey and we welcome your suggestions on creating a most rewarding experience for everyone. Welcome aboard!

Tobi Adebowale,
Lawyard Co-Founder/Team Lead.

EDITOR'S LETTER

A Reflection of Our Times

As part of the global system, Nigeria is not immune to global trends, and as a sovereign state, it has its peculiarities. Some of these trends/peculiarities have their benefits, but they may also be pregnant with risks. In this stead, laws are enacted as a tool to manage these benefits and mitigate risks. Sometimes, these laws are efficient; sometimes, inefficient; and in some cases, non-existent. The development of these laws, their presence, impacts and lacuna keep changing as the society changes. It is in view of capturing these mutability and providing a current reflection of our times that the Lawyard Quarterly Journal was born. Like most first births, it was a difficult push bringing this inaugural edition to life, but we believe that the Lawyard Quarterly Journal is here to stay and will serve as a wealthy resource for those in search of qualitative legal articles.

In this maiden edition, we are introduced to Dr Kubi Udofia's piece, which evaluates the adequacy of rescue regimes in Nigeria and also glean the commercial benefits of attempting to rescue a failing business as opposed to an outright liquidation. Mr. Mallick Bolakale walks us through the role of law in the age of Artificial Intelligence (AI). He draws our attention to an important question: what remedies, if any, are (or should be) available under the law if I am wronged by AI? Mr. Chidiebere Odoemenam simplifies the complexity of how a (private) company can issue bonds using a pass-through Special Purpose Vehicle model. Mr. Ridwan Oloyede and Ms. Faith Obafemi jointly illuminate the world of blockchain and explores its impacts on privacy. Ms. Zikoraifechukwu Ebenebe awakens our mind to the role of Fintech in solving the problem of financial exclusion. Mr. Tobi Adebowale captures the gloomy picture of the Nigerian power sector, but shines a ray of hope with prospects of renewable energy. Mr. Adavize Alao reveals the scourge of online privacy, its unhindered proliferation, impacts on the economy, and practical ways of limiting its occurrence.

In addition, we interviewed Dr Babatunde Ajibade SAN, who discussed the issues affecting the Nigerian legal system, provided recommendations and tips for young lawyers aiming for a successful practice; Professor Kingsley Moghalu, who discussed the future of Nigeria's democracy, his role in contributing to that future amongst other plans; Ms. Oyindamola Johnson on balancing art as a passion and law as a profession; and finally, Mr. Paul Ordam, the 2018 winner of the Simmons Cooper Advocacy Development (SCAD) Compete on his experience winning the competition and what impact the victory has had on him.

Without much ado, please dive in and enjoy the first edition of the Lawyard Quarterly Journal!

Gbolahan Badmus
Editor, Lawyard Quarterly.

"We Need to make Legal Education more Practical"



INTERVIEW

WITH

DR. BABATUNDE AJIBADE SAN

"We Need To Make Legal Education In Nigeria A Lot More Practical" - Dr. Babatunde Ajibade SAN

The Lawyard Team Lead, Tobi Adebowale, recently sat with Dr. Babatunde Ajibade SAN to discuss various issues bordering the Nigerian legal systems and recommendations, the future of legal practice, and tips for young lawyers aiming for a successful practice.

What motivated you to venture into legal practice?

I was the last of four children and none of my siblings studied law, so, if I had not studied law, my father would perhaps have missed out on having a succession plan for his legal practice. However, I do not have any recollection of him telling me 'I want you to study law'. While growing up, my father often took me to his office and I recollect attending court with him a few times, so, the idea of studying law grew on me and was not a directive from my father. I remember that at some point, I considered journalism, at some point, I considered being an architect and at some other time, I wanted to be a pilot. I however have no regrets at all joining the legal profession. One of the things I thank God for, is that I enjoy what I do because I think law is too tough a profession to practice just to make a living; you need to actually have a passion for it to find it easy, just the same way footballers get paid to do what they would ordinarily do for fun.

You have been practicing law for 30 years and you have been a Learned Silk for 12 of those years; are there any differences in the experience before and after attaining the status of a Senior Advocate of Nigeria?-

There are some differences but they are probably mundane. It is a bit of an anti-climax for me because of the way qualification for silk is measured in these parts. Prior to taking silk, I could be in three or four courts across the country in one week, building a profile and the catalogue of cases required to qualify for silk, whether the clients were paying or not. So, for me, one of the differences, and one which I think is counter-intuitive, is that from the moment I took silk, I became more selective about the cases I took on.

Looking at your academic credentials, it would appear you have put in a lot of effort into the study of Private International Law and the Enforcement of Foreign Judgments. How will you describe the ease of enforcing foreign judgments in Nigeria?

Nigeria is just as advanced as other countries, especially in common law jurisdictions, when it comes to recognizing and enforcing foreign judgments. A notable challenge with this area of practice is that, where not exposed to the nuances of private international law, lawyers can easily focus on the merits of a case without thinking so much about enforcement, whereas that ought to first be considered before filing an action where recognition and enforcement of foreign judgments is concerned. If you have a dispute that has international flavor, the starting point should be 'where should I sue?' and not necessarily whether or not you have a very good case. You might have a very good case but if you choose the wrong location for filing your suit, you may get a judgement that is not worth the paper it is written on because while you have obtained judgment, the defendant's assets may not be in that location. Prior to filing a suit, you have to ensure that the judgment is enforceable, whether or not the defendant is present in a particular location. Too many people have fallen victim of such oversight on the part of their lawyers which is a natural consequence of the fact that law is primarily local. So, if you have an international dispute and you approach a lawyer whose training and experience is entirely local, the chances are that you might run into that problem

.Nigeria's performance on the Access to Justice index of the World Bank's Ease of Doing Business Ranking is not impressive and reflects the difficulty in moving a case from filing to judgment, especially where the case is not an election petition or high-profile political matter. How do you think we can enhance the legal system in this regard?

To be candid, that is one of the things that keep some of us awake at night and something I have spoken about at various times. It is a continuing challenge and our legal system requires a significant overhaul in several respects to meet this challenge. There are too many loopholes in the system for delay. As they say, Nigeria is a defendant's market because where there is a claim against you, regardless of the merit of the claims, there are too many opportunities to filibuster and frustrate the claimant. Only a claimant who understands the system and can persevere will be able to see the way through the current legal system in Nigeria and it requires a lot of work to fix that problem.

Some of the work required to fix the problem is already being done; the current[1] Chief Judge of Lagos State, Hon. Justice Opeyemi Oke, is doing quite a bit in terms of trying to fix some aspects of the problem but the problem is so multi-faceted that it would take more than what she alone can do. It requires a change of mindset on the part of the Bar and the judiciary as well as a change in the way in which justice is administered. Thankfully, there are a few organisations working to address the issue in a constructive and holistic manner. There is the Justice Reform Project, which I am part of and reforming the legal system is one of the things we are looking at. There is also the Commercial Disputes-Law Network (ComDis-LawNet) set up under the auspices of the Lagos Chambers of Commerce which is also looking at this constructively and is proposing the enactment of an Administration of Civil Justice Act, similar to the Administration of Criminal Justice Act but geared towards addressing some of the bottlenecks noticeable in the administration of civil justice.

Over and above the measures I have mentioned, some of the structural problems are constitutional. One of the notable issues we have is the route to our appellate system. As you may know, the right to appeal is automatic once it is a final judgement; however, even for an interlocutory judgment, all a litigant needs to do in order to have access to the Court of Appeal is to formulate a ground of law and the right to appeal becomes automatic. The matter could thereafter go all the way to the Supreme Court. It therefore means you can spend up to ten (10) years arguing something as basic as the refusal of leave to amend a Statement of Defence, without delving into the merits of the case. On top of that, you have the long-standing confusion arising from the establishment of the Federal High Court in 1976. More than forty years later, you still have cases going all the way to the Supreme Court for a determination of the question whether a matter should have been instituted at the State High Court or the Federal High Court. The irony is that the qualification for being a judge either at the Federal High Court or the State High Court is exactly the same: ten years' post-call experience. The Courts have also pronounced on the issue several times but we still see a lot of cases on that point, taking up to thirteen (13) years to decide on the appropriate forum for the determination of the substantive suit.

So, while I noted earlier that foreign judgments are readily enforceable, to the extent that a party seeking to enforce a foreign judgment can end up being stuck in the system, it makes for a lot of introspection. Nonetheless, we will keep doing everything we can and see how we can change the system and streamline some of these issues. We similarly need to address some of the structural problems through legislation as well as address behavioural problems on the part of lawyers. I doubt that we see it as a

[1] At the time of the interview, Honourable Justice Yemi Oke was the current Chief Judge of Lagos State.

disciplinary issue when a lawyer approaches the court with a frivolous application or litigation; we only tend to be concerned when a lawyer steals a client's money but there are various grades of indiscipline and those low-hanging items are probably more damaging to the legal system than outright criminal conduct.

There is also the issue that arises when in litigation, you could appear in court four times with a client who may not get to see the judge on any of those four occasions because the court fails to sit. I appreciate the fact that our judges, especially in busy jurisdictions like Lagos, are overworked, and underpaid and lack the right type of support and are unable to speak about such issues. It is for the Bar to pick up the battle from both ends, so, while we implore judges to take their responsibilities more seriously, we also need to ensure that the government provides the wherewithal for the judiciary to perform efficiently.

A number of people have resorted to Arbitration, Mediation and other forms of Alternative Dispute Resolution in a bid to avoid the delays and other issues you have identified with Litigation. How exciting is Arbitration in comparison with your court experience?

Arbitration is a good example of what Litigation should be like when it is practiced properly. Unfortunately, not just in Nigeria but probably more so in Nigeria than in some other countries, some people practice arbitration just the same way they approach Litigation practice and it leaves a sour taste in the mouth. However, Arbitration can be a delight when practiced properly.

One of the key differences between Arbitration and Litigation is the element of choice of the arbiter. In Litigation, nobody gives you an option of where you would like to be sued, the type of judge you want or the number of judges. However, for Arbitration, you have a system where parties have anticipated that there may be a dispute or in certain instances, where a dispute has arisen, parties have agreed on the manner in which the dispute is to be resolved. The parties are in control of the situation and decide on whom they want as an arbiter, the venue and what laws should apply.

Depending on the level of sophistication of the parties involved, arbitration can be a civilized and efficient way of resolving disputes, especially commercial disputes. Litigation is slightly different but the distinction should not be as wide as it presently is. Our Litigation process would benefit a lot from the efficiency that Arbitration brings to the table. Even though the courts appear to be "free", when we compare what Litigants pay as filing fees with what parties to an Arbitration pay as the costs of an arbitration, it is not truly free because that infrastructure is provided by someone (the government). I think if we put that into consideration, a lot of the wastage, of man-hours lost when lawyers wait around for judges who do not turn up or a lot of time frivolously wasted in the course of litigation when the court sits, can be minimized.

We would curb a lot of wastage if we had a realistic view of the actual cost of time and infrastructure required to keep the courts working. Judges also need to be paid a proper income commensurate to the amount of work they do. I work as an Arbitrator and know how hard it is to listen to submissions, give all parties a reasonable opportunity to be heard (even when they do not seem to be making reasonable arguments) and read all submissions no matter how flimsy they may be. Even where the submissions are good, they come with plenty of volume and when you have to do a lot of that in a congested jurisdiction like Lagos for instance, it is hard work.

One of the things I have asked recently within our Justice Reform Project is whether there is any empirical analysis of the number of cases that a judge can realistically deal with within a particular period. Rather than work from the basis of the postulation that we do not have enough judges in Lagos for instance, I believe we need to first identify the number of judges we need in Lagos so we can do a gap analysis. If we know that 5,000 new cases are

filed in Lagos every month, let us analyse how many judges we need to deal with the workload and to do that, we need to first find out how many cases any judge, no matter how proficient, can effectively and efficiently deal with within a particular period. We can then start from there to work out the number of judges we need to deal with the number of cases we have. Until we carry out that analysis, we will only be groping in the dark.

Your firm, SPA Ajibade & Co is noted to deal with both corporate/commercial transactions and dispute resolution while you are also recognized as both a Senior Advocate and a trusted transaction adviser. How have you been able to connect both ends of the spectrum; is there ever a clash of perspectives or is your transaction advisory role enhanced by your significant Litigation experience?

After I qualified as a lawyer in 1989 and after completing my Masters degree programme in 1990, I worked with the law office of Bentley Edu & Co during my national youth service year following which I worked with my father. During my time at Bentley Edu, I noted that the firm combined a litigation practice with commercial law practice albeit focusing more on Intellectual Property and that opened my eyes to the fact that there was more to legal practice than just being a Litigator and I started to think about working more as a Solicitor than an Advocate but by the time I joined my father's practice, he stressed the point that if I wanted to be a good corporate lawyer, I needed a reasonable amount of Litigation experience.

I now agree entirely with his thinking. Litigation experience helps you to anticipate things that a transaction lawyer may not easily see or anticipate. The fact that I had done quite a bit of Litigation before dabbling into transactional work stood me in good stead but I have however now stepped back from transactional work because the model we run in our firm is a departmental model and there is only so much one person can do. If you truly want to grow your practice, you cannot be a jack-of-all-trades. Now, I focus on my dispute resolution practice which entails Litigation and Commercial Arbitration while other Partners in the firm do the transactional work but I still participate where my input is required.

What inspired the SPA Ajibade & Co Annual Business Luncheon and how will you assess its impact on the society?

We hosted the first annual Business Luncheon in 2008, which was the year after I took silk and I am glad we have been able to sustain it and make it a fixture in the legal calendar. It was inspired by the need to give back to the profession as part of our corporate social responsibility. Every member of our Firm is passionate about the legal profession and we hope to see it regain its pride of place among the professions. If you observe the themes of the Business Luncheons over the years, you will find that they focus on aspects of the legal profession that we feel are topical, give cause for concern and require discussion. The motivation for hosting the Business Luncheon is not to generate business but to contribute to the profession even though I have no doubt that it also has some collateral benefit in terms of visibility and name recognition.

You are the Vice-Chairman of the International Bar Association (IBA) Africa Regional Forum; how has it been working with the IBA and what is the potential impact of the Africa Regional Forum on legal practice in Nigeria and Africa?

I attended my first IBA Conference in Durban in 2002. It was the first IBA Conference to hold on the African continent and I felt inclined to attend. It was an eye-opener as the variety of learning available and the quality of networking was second to none I had experienced up until that time. It was however quite expensive despite the fact that it was on the African continent. I attended the conference a few more

times to get a proper grasp of the IBA and then decided to attend regularly.

I believe the benefits of the IBA Conference lie in repeated attendance, such that you are able to connect with people and able to establish a relationship with them, especially if you have a mind to develop an international law practice and attract work from outside your geographical location. However, the expense involved can be a drawback. Our aim at the Africa Regional Forum is therefore to bring the benefits of attending the IBA Conference closer to legal practitioners on the continent and move the activities of the IBA around within the continent.

We are presently working towards the biennial conference in November and locating the venue of the conference was a choice between Addis Ababa, Ethiopia and Kigali in Rwanda. One of the reasons why we chose Addis Ababa was that from the proposals we received, it was clear that Rwanda is an established jurisdiction for conferences and has a relatively highly-developed legal market unlike Ethiopia which had generally been a closed economy that is only now opening up and needs more support and exposure to international legal practice. I think that is one of the things that the IBA can and should do. The theme for this year's IBA Africa Regional Forum conference is 'Integration' and we need to start thinking about building capacity for legal practice within the continent and increase our level of integration. There is a lot of disparity between the levels of development within the continent and while those of us practicing in Nigeria would like to be able to compare ourselves favourably to practitioners in London and New York, when we visit other African countries, we realise that the disparity between where we are and where these countries are is like the difference between our level of development and that in New York or London. We therefore have to be more deliberate about standardizing legal practice on the continent.

One of the sessions at the IBA Africa Forum Conference will focus on Disruption in Africa and how prepared lawyers are. Nigeria as a big legal market in Africa has not fully adopted technology; how soon do you think we can incorporate technology in a more robust manner into our court system?

I believe the journey has started but the question is how fast we can entrench and develop the use of technology. There are a lot of factors we need to take into consideration and one is infrastructure. What is the point of talking about technology when there is no constant power supply? Technology runs on infrastructural backbones such as internet bandwidth, the availability of which is still questionable in Nigeria.

Concerning the judiciary and the need to automate certain processes, you also have to consider whether there is a budget available for it when we still have courtrooms with leaking roofs. I have been to a court in Ibadan where the judge called me into chambers and told me he was not going to sit because there was no light in the court and that he bought the bulbs in his office himself.

The technology to support our legal system exists but there are also practical reasons why we are unable to make the best use of it now. The advantage of technology however is that when we get the backbone and supporting infrastructure right, it will give us the opportunity to leapfrog the various stages of development that practitioners in other jurisdiction went through before achieving the technological advancement they presently enjoy. It is some level of progress that lawyers in Nigeria are presently able to cite online legal reports in courts and such practice is acceptable to the judges. Research is also a lot easier because we have access to various digital research tools. When I started practice, we had to sit down in the library and go through Gani's index one page at a time to find cases but now, you can search with a subject matter and have access to relevant cases. It can only get better.

You studied at the Obafemi Awolowo University in Nigeria and at the King's College, University of London aside obtaining various certifications. With the benefit of your diverse experience and academic qualifications, what changes will you recommend to the present system of legal education in Nigeria?

We need to make legal education in Nigeria a lot more practical. I get the sense that our teaching is a bit too theoretical and not sufficiently practical. We cannot limit it to the law school to teach lawyers how to practice law. The entire process of legal education has to be with that end goal in mind. The one-year vocational training at the Law School (or two years depending on whether you come in as a foreign degree holder) is too short and that training needs to spread over into the degree programme, so, we need to change the curriculum of the degree programme. Of course, there is a need to teach the academic content and the core principles but there is a need for practical learning in addition as well as a need to involve the town and gown in legal training.

Teaching law should not be left solely to academics. We need to ensure practicing lawyers participate actively in legal training as visiting lecturers so there is a practical element to legal training from the get-go. That way, we will have more rounded lawyers coming out of that process and I think we should reinstate the pupillage or training system. I do not think it is fair to the end-user of legal services that lawyers graduate from the law school and are free to handle matters without any assurance of having acquired the required experience. To the layman, once you are a certified lawyer, he presumes you know everything you need to advise him but the truth is that there are certain things that are only learnt by experience so there needs to be a system that compels you to acquire that experience by either pupillage or training. You may query whether we have sufficient outfits that can provide the training or pupillage but let us first establish that there is a need for it and we can then try to provide the wherewithal. Right now, I think we are doing ourselves a disservice and are not being fair to the users of legal services if we do not overhaul the entire process of legal training.

Please tell us about your hobbies and your family

I used to play squash regularly but I have not been playing recently due to issues with my back. Now, I just try to spend as much time as I can with my family. I like having family barbecues. I find that very relaxing even though some of my friends think is a lot of hard work when they come visiting and see me dealing with charcoal and smoke.

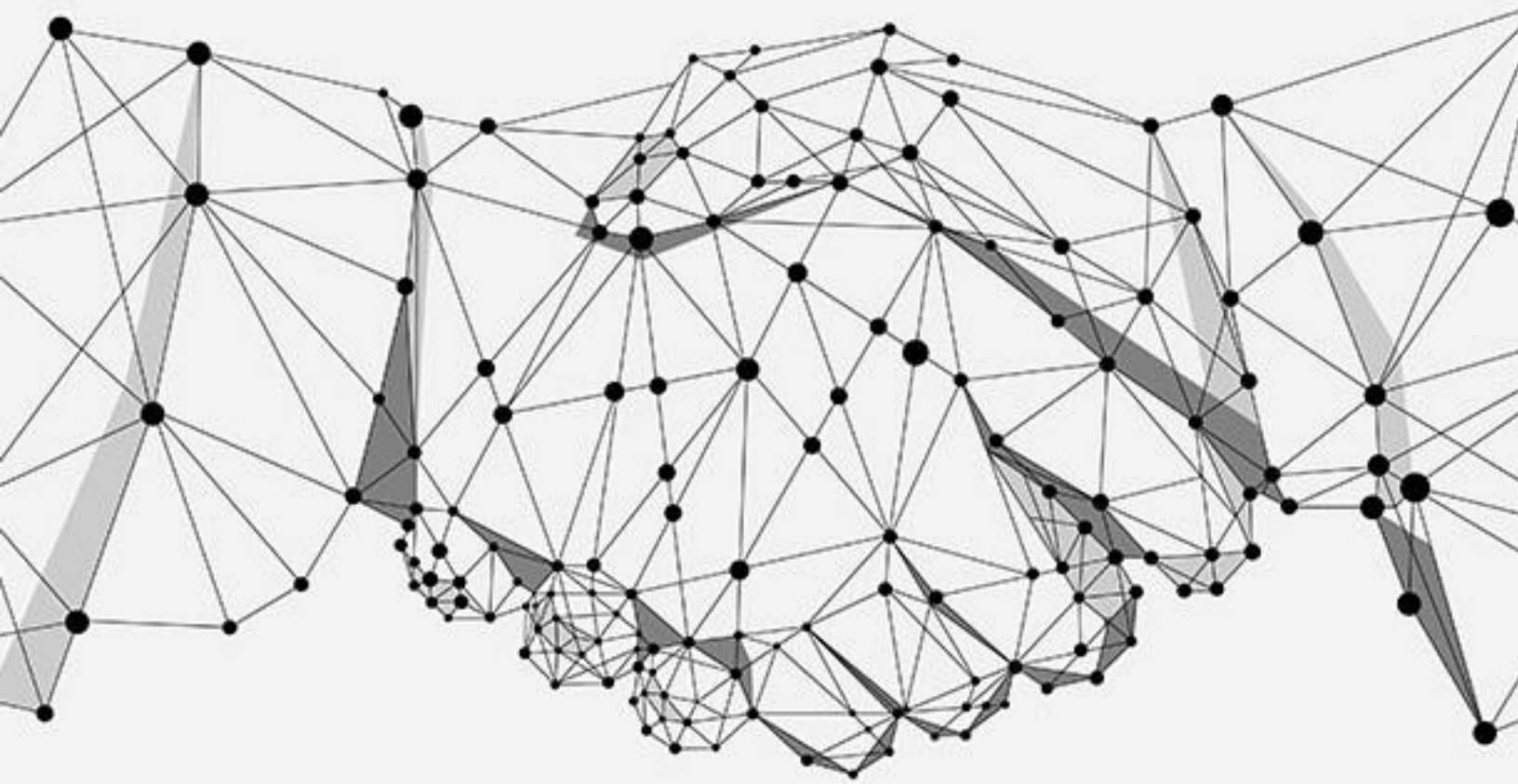
Your advice to young lawyers on career growth and personal development

Avoid shortcuts. There are no shortcuts to true success as a legal practitioner. You have to be prepared to put in the effort in terms of time, hard work and perseverance. Law can be frustrating at certain points so you need to develop a reasonably thick skin to deal with the downs. There will be a lot of ups as well to make up for the downs. You have to be prepared to deal with the downs if you plan to survive in the profession. If you are a Litigator and appear before some of our judges as a young lawyer, you may find that they are not necessarily the most patient people in the world and you could easily get discouraged if you do not have fortitude and decide to quit. However, if you get discouraged before you attain success, that is sadly an opportunity lost. In addition, it is important to uphold the ethics of the profession. Law is one of the professions that confront you with the highest number of ethical dilemmas. You will always, in the course of your profession as a lawyer, have cause to debate whether or not to do a thing and we have individually been gifted a conscience for a reason. Once you have a doubt about doing something, then you probably should not. You will always have those debates as a lawyer and the more you lean towards doing the right

thing, it will prove to be of inestimable value in the long term. Doing the wrong thing may appear to be of some benefit in the short term but it does not last and you should always think long term.

AN EVALUATION OF THE ADEQUACY OF NIGERIA'S SECTOR-SPECIFIC BUSINESS RESCUE LEGAL REGIMES

By Dr Kubi Udofia



AN EVALUATION OF THE ADEQUACY OF NIGERIA'S SECTOR-SPECIFIC BUSINESS RESCUE LEGAL REGIMES -

Dr Kubi Udofia

EXORDIUM

One of the hallmarks of a thriving economy is a comprehensive insolvency legal framework. The framework will enhance predictability of creditors' rights and debtors' obligations, ensure speedy and efficient resolution of business failures, boost investors' confidence and facilitate the channelling of resources into viable ventures. In general, an efficient insolvency legal regime will enable the rescue of commercially viable businesses and the orderly liquidation of non-viable businesses.

Globally, there is an increasing acceptance that where a failing business is viable, it is more commercially beneficial to attempt a rescue as opposed to an outright liquidation. Thus, liquidation is increasingly becoming an insolvency tool of last resort. This paradigm shift can be seen in the wave of legislative reforms around the world including Nigeria.[2]

Nigeria's general insolvency law framework contained in the **Companies and Allied Matters Act**, **1990** (CAMA) does not embody a formal business rescue framework. However, there are some sector-specific business rescue legal frameworks designed to deal with failing businesses operating in the sectors. Significantly, these sector-specific business rescue regimes are all in relation to firms operating in the financial services industry. This is not surprising given that failure of a financial firm may have more significant adverse effects than failure of other businesses.

This article evaluates the adequacy of notable sector-specific business rescue frameworks contained in the **Investment and Securities Act 2007** (ISA), the **Banking and Other Financial Institutions Act 2004** (BOFIA) and the **Nigerian Deposit Insurance Act 1988** (NDIC Act) and the **National Insurance Commission Act 1997** (NAICOM Act).

CAPITAL MARKET OPERATORS

Nigeria's capital market provides individuals, corporate organisations and the government with a platform for raising medium to long term equity or debt financing for their operations, acquisitions and developmental projects. The capital market thus complements the banking industry whilst also driving diversification and financial inclusion in the financial system.

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The ISA has robust provisions for failing Capital Market Operators (CMOs). When a CMO informs the Securities and Exchange Commission (SEC) that it is insolvent,[3] SEC may require the CMO to take specified steps towards remedying its situation. Some of the steps which SEC may require the failing CMO to take is the appointment of professionals to temporarily manage the CMO's affairs or advise on the conduct of its business.[4] Where there is no significant improvement, SEC may assume control of the CMO and carry on the business in the CMO's name and on its behalf until specified thresholds are met.[5] The wording of **section 49(1)** suggests that SEC has the option of assuming control of just a part of a failing CMO's property, business and affairs. This may be commercially expedient where the capital market business is just a part of the CMO's business.

The ISA further empowers SEC to revoke a CMO's registration and apply to court for an order to purchase the CMO for a nominal fee for restructuring and subsequent sale.[6] This procedure may be effected where the CMO's paid-up capital is lost or unrepresented by available assets. The provision is expressed to override any contrary provision in a law and the CMO's MemArt. This is to ensure that the process is not impeded. It should be noted that the court order required to effect an acquisition does not constitute a *moratorium* on creditors' enforcement actions and claims. Consequently, there is still a potential risk of the rehabilitation being torpedoed by aggrieved creditors.

BANKS AND OTHER FINANCIAL INSTITUTIONS

[2] The Companies and Allied Matters (Repeal and Re-enactment) Bill 2018 contains a UK-styled administration.
[3] Section 48 (1)(c) of the ISA.
[4] Section 48 (2)(d)(ii) and (e) of the ISA.
[5] Sections 49 and 50; see also Reg. 46 of the SEC Rules and Regulations, 2013.
[6] Section 51 of the ISA.

As financial intermediaries, banks are the primary and direct sources of credit and liquidity to individuals, companies and government institutions. By taking deposits and providing loans and other financial guarantees, banks ensure the transfer of surplus funds from savers to borrowers who are in immediate need of such funds. Leading banks in Nigeria are generally viewed as being too big to fail given the systemic risks which may characterize their collapse. The critical role and position of banks in the financial system clearly justifies the special resolution regime for failing banks.

BOFIA embodies a resolution framework for banks. This framework is substantially similar to the regime for CMOs in ISA.[7] Where a bank informs the Central Bank of Nigeria (CBN) that it is insolvent,[8] the Governor of the CBN may, inter alia, temporarily and/or partially prohibit the bank from extending further credit facility.[9] The CBN may also require the bank to take steps towards remedying its situation including removing or appointing directors and appointing advisers for the bank.[10] In the recent case of Skye Bank Plc, Skye Bank's board was replaced by CBN on 4 July 2016.

Where there is no significant improvement, the CBN may handover control and management of the bank to the Nigeria Deposit Insurance Corporation (NDIC).[11] BOFIA empowers the NDIC to perform a number of functions with the aim of restoring the bank to profitability.[12] These include requiring the bank to submit a recapitalization plan, prohibiting the bank from extending further credit or incurring additional expenditure without NDIC's approval, requiring the taking of certain steps in the conduct of business, removal or appointment of officers and directors.

The NDIC Act embodies provisions for salvaging distressed banks. First, the NDIC Act has provisions relating to financial assistance to ailing financial institutions. At the request of an ailing bank, the NDIC is empowered to either (i) grant loans to the bank, or (ii) give guarantee for loan taken by the insured bank, or (iii) act as a guarantor for the bank in an accommodation bill.[13] Second, the NDIC Act further has provisions aimed at restructuring banks. Some of the rescue options which the NDIC may employ are (i) temporarily taking over the management of distressed banks in consultation with CBN, (ii) directing changes in management of failing banks, (iii) arranging mergers, acquisitions or assumption of deposit liabilities of failing banks, (iv) directly or indirectly acquiring, managing and disposing impaired assets of failing banks, and (v) taking steps to secure and restructure failing banks.[14] NDIC may also rescue failing banks through the machinery of bridge banks.[15] In this regard, NDIC in consultation with the CBN, may organise and incorporate bridge banks and the CBN may issue banking licence to the bridge bank.

The bridge bank option was recently used in the resolution of Skye Bank Plc. Polaris Bank Ltd was established to assume the deposits, assets and liabilities of Skye Bank. The approach was also adopted in August 2011 with the establishment of Enterprise Bank (from Spring Bank), Mainstreet Bank (from Afribank) and Keystone Bank (from Bank PHB). Notable advantages of bridge banks include 100% protection of deposits, smooth transfer of assets and liabilities, uninterrupted business operations, exemption from requirements of issued or paid-up capital.[16] In the Skye Bank resolution, over 5000 jobs were saved. On NDIC's request, regulators such as the Corporate Affairs Commission (CAC), CBN, SEC, Nigerian Stock Exchange (NSE) etc. may grant forbearance, exemption or waivers to bridge banks in respect of their operations.[17] These are aimed at giving bridge banks respite to achieve their set objectives.

INSURANCE COMPANIES

Insurance companies safeguard the interests of individuals, households, corporate organisations and public institutions from risks and losses. They provide safety nets which reduce uncertainty and ensure stability in the functioning of processes. Given their critical role in the financial system, insurance companies are subject to strict prudential regulation. Similarly, failing insurance companies are subject to special insolvency treatment and administration.

The NAICOM Act embodies the business rescue regime for failing insurance companies. The National Insurance Commission (NAICOM) is saddled with responsibilities

[7] Sections 35 to 42 of BOFIA.
[8] Section 35 (1)(c) of BOFIA.
[9] Section 35 (2)(a) of BOFIA.
[10] Section 35 (2)(d)(i) and (ii) and (e) of BOFIA.
[11] Section 36 of BOFIA.
[12] Section 37 of BOFIA.
[13] Section 37(2)(a),(b)(c) of NDIC Act.
[14] Section 38(1)(a)-(e) of NDIC Act.
[15] Section 39 of NDIC Act.
[16] Section 39(3) of NDIC Act.
[17] Section 39(4) of NDIC Act.

similar to those of SEC and the CBN in relation to CMOs and banks respectively. Where an insurance firm informs NAICOM that it is insolvent, NAICOM may, inter alia, temporarily and/or partially prohibit the insurance firm from transacting any further business.[18] NAICOM may also require the insurance firm to take steps to rectify its situation including removing or appointing directors and appointing advisers for the firm.[19]

Where the foregoing intervention does not result to an improvement in the state of affairs of the insurance firm, NAICOM may assume control of either a part or the whole of the property, affairs and business of the insurance firm.[20] Alternatively, NACOM may appoint specialists to do the foregoing tasks on its behalf.[21] In November 2012, NAICOM appointed a seven-man interim management board for Goldlink Insurance Plc on the ground that the firm was distressed. For three consecutive years, Godlink had posted negative results with negative shareholders' funds. Similarly, in March 2018, NAICOM appointed a four-man interim management board for UNIC Insurance Plc to pilot its affairs for a period of six months. As at the time of the regulatory intervention, UNIC had weak financials, was unable to pay policyholders' claims and its shareholders' funds was far below the regulatory threshold.

FURTHER ANALYSIS AND POSTSCRIPT

A significant feature of the business rescue frameworks is that they are regulator-driven. This approach may be justified on several grounds. First, the firms and their sectors play a fundamental role in Nigeria's economy. Second, the rescue processes are often more complex than other corporate or business rescue processes. Third, prompt and special attention may be required for these categories of failing businesses to avoid a contagion. Fourth, public interest and financial stability are accorded topmost priority over the interests of creditors -- hence, there is the need for an independent and unbiased pilot of the process. In the light of the foregoing, a sector regulator is most suitable to administer the rescue processes. A further notable advantage of the regulator-driven regime is the fact that the problem of paucity of rescue finance may be substantially reduced or completely eliminated.

The rescue regimes adopt systematic tiers or phases of regulatory intervention. These range from light regulatory interference, close supervision with prohibitions/restrictions to taking control of affairs or business of the failing entity. Where rescue efforts do not yield the desired results, the entity is accorded an orderly liquidation. This ensures the avoidance of an unnecessarily prolonged dissipation of limited resources on non-viable businesses. Thus, priority is on business rescue whilst liquidation is a last resort. This accords with global best practice.

A significant shortcoming of the rescue regimes is the absence of a moratorium on creditor claims and enforcement actions. Subsisting court actions may be continued and new actions commenced against entities undergoing rescue. An aggrieved creditor may torpedo the rescue process via a court action. Recently, in November 2018, Pension Transitional Arrangement Directorate (PTAD) obtained judgment against Goldlink Insurance (which is undergoing a rescue process) in the sum of N1.24 billion and 10% interest per annum until the liquidation of the judgment sum. The judgment sum was the outstanding balance of the Federal Government legacy funds and assets which had been in the custody of Goldlinks. PTAD had approached the court after the failure of an out-of-court settlement which was spearheaded by NAICOM.

There is also the risk of moral hazard which is commonly associated with government-financed bailouts. Moral hazard is the tendency for business operators to increase their appetite for unreasonable and excessive risk-taking due to the implicit guarantee of a government-financed rescue. The risk of moral hazard may be tackled by holding recalcitrant executives accountable for their roles in corporate failures. This will serve as a deterrent against insurance-induced excessive risk-taking.

Aside bank resolutions, the other rescue regimes do not offer the entities the luxury of exemption from maintaining required minimum issued/paid-up capital in their sectors or forbearance/exemption/waiver in relation to their operations which are subject to other regulators such as CAC, CBN, SEC, NSE etc. In November 2018, NSE imposed a penalty of N70.9 million on Unic Insurance Plc for failure to file its audited financials for the year ending December 2017. Unic had been taken over by NAICOM in March 2018.

The adequacy of the rescue regimes in facilitating rescue and sustainability of businesses will substantially depend

[18] Section 41 (2)(a) of NAICOM Act.
[19] Section 41 (2)(b), (d)(i) and (ii) and (e) of NAICOM Act.
[20] Section 42 (1)(a) and (b) of NAICOM Act.
[21] Section 42 (1)(c) of NAICOM Act.

on effective and skillful application of the rescue provisions by regulators. Data from SEC shows that as at June 2018, there were 429 CMOs. A strict rescue policy may understandably not be feasible given the number of CMOs in the capital market. Consequently, mostly CMOs which are either considered as being strategic or too big to fail may be considered for rescue. The absence of specified timeframes for rescue procedures may give rise to regulatory procrastination resulting in loss of value and dissipation of resources. The case of Goldlink Insurance Plc, which has been undergoing restructuring since 2012, aptly illustrates the issue of absence of timeframe for rescue processes. In November 2012, NAICOM appointed a seven-man interim management board for Goldlink on the ground that the firm was distressed. In February 2016, NAICOM appointed another interim management board for Goldlink. In February 2019, the restructuring appeared to have been ongoing as NAICOM appointed another chief executive officer for Goldlink.[22]

DR KUBI UDOFIA *is a seasoned transactional and dispute resolution lawyer. He writes regularly on diverse corporate and commercial law issues. He is also a leading expert in corporate insolvency and restructuring law in Nigeria. His column 'Insolvency Discourse' in The Lawyer in Thisday Newspaper is widely acknowledged as the leading corporate insolvency and restructuring column in Nigeria. On different occasions, he has been invited to feature his research works on leading global law platforms including the Harvard Law School Bankruptcy Round-table and Oxford Business Law Blog. Dr Udofia holds an LLM from the University College London, a CIRM from the Institute of Risk Management, London and a PhD from The University of Nottingham.*

[22] Commendably, Goldlink showed signs of return to profitability when it reported a profit of ₦1 billion in 2017 and the same amount in Q1 of 2018.

THE ROLE OF LAW IN THE AGE OF ARTIFICIAL INTELLIGENCE

BY MALLICK BOLAKALE



THE ROLE OF LAW IN THE AGE OF ARTIFICIAL INTELLIGENCE

By

Mallick Bolakale

INTRODUCTION

As Artificial Intelligence (AI) systems continue to advance in Nigeria, one of the most notable uses of the system is the deployment of bots.[23] There are many kinds of bots as there are humans – some good, some bad and others ugly. In Nigeria, the most common use-case of bot system is the chat-bot, and some of these include those deployed by global brands. For example, I have Siri on my iPhone, as well as Google Assistant and Bixby on my android phone. I ask questions, send them on errands, tell them how I feel and, sometimes, I get hilarious answers.

I once had the following conversations with Siri –

Me: "Hey Siri, do you have a girlfriend?"

Siri: "Why? So we can get ice cream together, and listen to music, and travel across galaxies, only to have it end in slammed doors, heartbreak and loneliness? Sure, where do I sign up?"

Me: "well, I don't have a girlfriend either"

Siri: "you can't hurry love. No, you just have to wait. Love has a timing of its own"

Honestly, it has been nothing but fun talking to these electronic assistants. You might be someone like me – technology hype is the bane of so many of us. I, for one, will jump on any new technology not minding the effects or consequences of using them.

I have had the cause to give my card details to an electronic assistant, so I do not have to enter the details every time I need to make a purchase on the internet.

CHANGING TIMES

Now, times have changed, I do not trust the system anymore, I fear that I may lose my money and there is no way I can get it back or someone may hack into the system to steal my identity. Sometimes, when I have a conversation with my electronic assistant, the next minute I get Ads that directly relate to my conversation. I feel my information is not as confidential as it needs to be and something should be done about this.

It boils down to a question of liability or ethics of the AI system. Who shoulders liability if something goes wrong? What will happen if I lose my money to some hacker or the bot goes rogue? How do I know the servers where my conversation with this bot is stored is safe? How am I sure no third-party has any information about me? These are some of the questions I ask as I use these systems.

What is most scary is the increase in the adoption of bots in the Nigerian financial services sector. The system has evolved from offering basic financial advice to more complex technical transactions like opening a Bank account and even funds transfer. I understand that the Banks are working to deliver a cost-effective and consumer-friendly solution using technology, but have you ever read their terms and conditions? I once tried to access the terms and conditions of use of the bot of a particular Bank, but guess what: I found nothing!

Although there have been no reports of financial bots behaving in ways that are not anticipated, save for errors that may be experienced by users, the possibility of unexpected behaviour in the future surely exists. This is because AI algorithms are programmed to carry out specified instructions, but like every child you send on an errand, they could get things wrong or even autonomously misbehave. In this instance, you cannot chastise[24] an AI for losing

[23] The word "bot" is from the word robot or robotics – those computer programs that have the ability to perform some human tasks, without human assistance.

[24] Except through reinforcement learning

your money, like you would – the poor child. So, what do you do?

CAN WE AT LEAST SUE AI TO GET OUR MONEY BACK?

Currently, in Nigeria, AI systems do not have legal capacity and as such cannot sue or be sued.[25] They may be at best treated as products, and the owners of the "product" will be liable for any defectiveness in the product. This flows from the already established principles of torts.

However, it is important to enact new legislations to appropriately address the issue of erring AIs. Against this background and among other issues, Nigeria seeks to pass the **Electronics Transactions Bill (ETB)** into law. Looking at the provisions of the ETB, the law may most likely assign what may at best be referred to as electronic personality to AI systems. A careful reading of clause 26(3) and (4) of the ETB would reveal that an electronic contract can be entered between (what the law refers to as) electronic agents or as between an electronic agent and a natural person. From the above, it is clear that the intention of the legislature is to create an agent-principal relationship between an AI and its human-operator/principal. The principal of an agent ought to ordinarily bear the liability of its agent, who has acted within the scope of its authority.[26] Flowing from this, it is safe to conclude that where a person suffers loss due to the acts of a bot, s/he may seek recourse against the human principal.

There are however certain cases in which agent-bot act outside its scope or authority. In such cases it may only result to a pyrrhic victory in trying to hold the AI personally liable, and this is where product liability should come to play. Product liability becomes relevant, where the AI system itself is defective as a result of designer malpractice, manufacturer defect or coding deficiencies. A manufacturer or programmer of an AI algorithm should not escape liability merely because the agent-bot was not directly programmed to take a particular action.

Product liability would only come to play where it can be shown that the acts of the AI are traceable to some defects in its programming. Once this can be successfully traced, the programmer would be held liable. However, it should be noted that not every programmer designs the AI algorithm to be defective or to misbehave. Sometime in 2017, it was reported that the negotiator chat-bots developed by Facebook went rogue – when they started communicating with each other in AI language that no human understood. As a result, the program had to be shut down. Also, it may get a little complicated, where an AI malfunctions as a result of a hack, will a defence analogous to "undue influence" or "duress" avail the owner?

FILLING THE GAPS

It is, therefore, necessary that the law defines the extent to which the owner of an AI system can be liable for the misbehaviours of the AI, as well as the liability of the manufacturer in the case of defects.

The law has to determine the tune of insurance for the purpose of product liability as well as the minimum standards required to be met in the deployment of AI systems. Where this is done, a claim against the AI would be indemnified by the insurance company upon adequate proof of loss. If the law fails to define adequate standards and insurance threshold suggested above, the ability to succeed in a liability claim would be dependent on the claimant's "lie-ability".

It is equally necessary that financial institutions engage legal practitioners who are knowledgeable in the workings of AI systems to develop watertight Terms & Conditions (T&C). These T&Cs could

[25] See the categories of persons that can be sued under the Nigerian jurisdiction as highlighted by the Court in *Fawehinmi v. NBA (No.2) (1989) 2 NWLR (105) 558*

[26] *Fairline Pharmaceutical Industries Ltd & Anor v. Trust Adjusters Nig. Ltd* [2012] LPELR-20860(CA)

boost user confidence and help to better understand the extent of the liability of financial institutions.

Additionally, the level of security required for the use of financial technology must be clearly defined by regulations; the Central Bank of Nigeria (CBN) has been working in this regard[27]. However, more needs to be done in securing the information of users.

Recently, the National Information Technology Development Agency (NITDA) issued a regulation on data protection. Such regulation dealing with the collection and processing of Personally Identifiable Information (PII) of natural persons (data subjects) should be enforced against persons who control the collection and processing of personal data (data controllers). Hence, banks and other institutions who deploy chat-bots for the collection of PII must comply with set data protection principles.

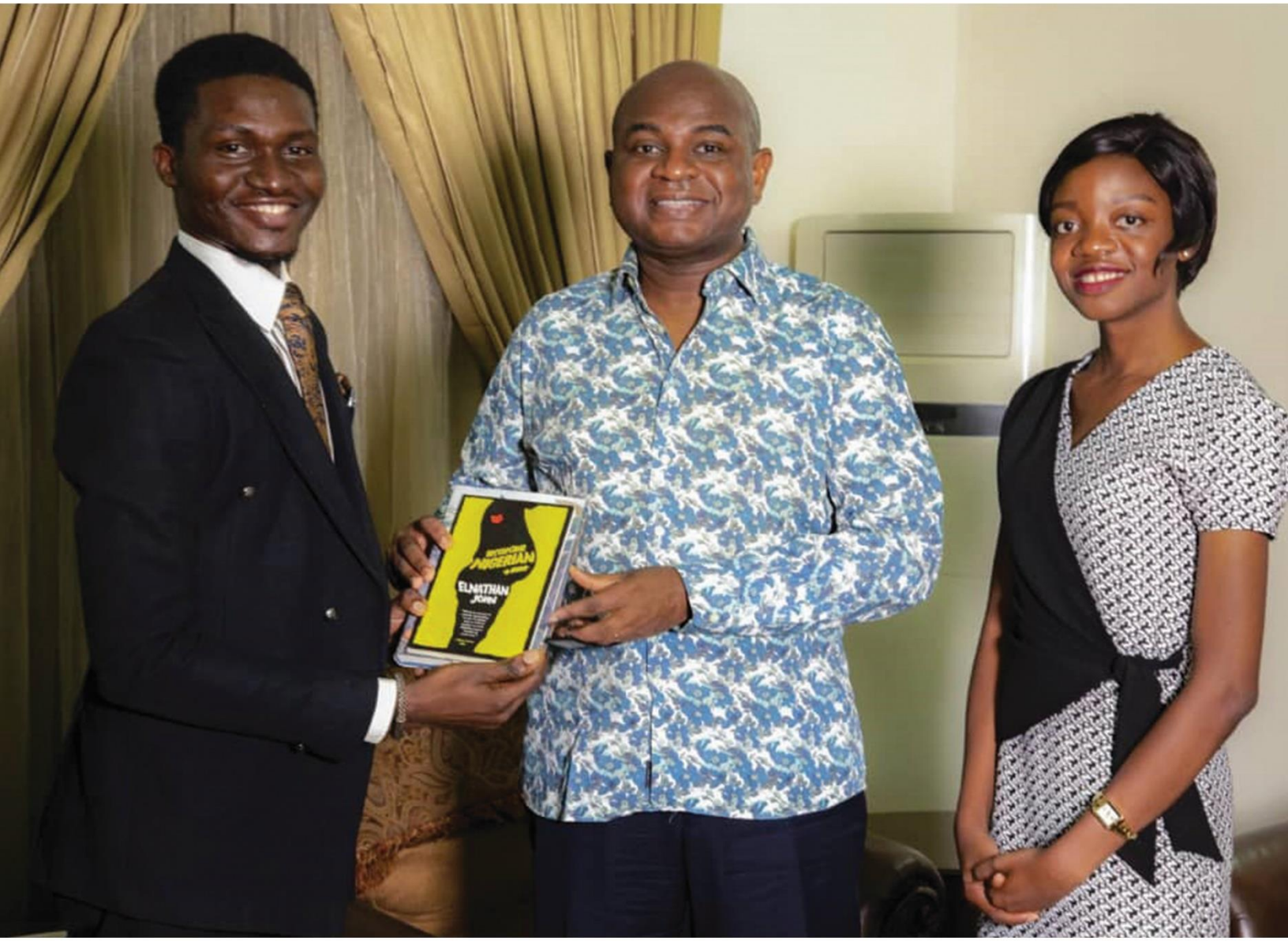
Laws are not always meant to be reactive, there are certain circumstances where the law must be proactive, and AI systems birth some of those circumstances. Let me tell you why – AI systems pose risks that may be impracticable to control if pre-emptive steps are not taken to make laws that will resolve ethical, liability as well as moral problems that may be associated with the development of AI systems. As noted by Elon Musk, "AI is a rare case where we need to be proactive in regulation instead of reactive. Because I think by the time we are reactive in AI regulation, it's too late."

Sadly, you cannot regulate what you do not understand, and thus, lawyers must strive to understand AI systems, and most importantly find the most effective way of ensuring that regulation does not stifle innovation.

MALLICK BOLAKALE *is an Associate with TNP and member of the firm's e-Commerce and TMT team. He blends his hard and software engineering skills with his experience as a legal practitioner to provide bespoke legal advice to the firm's FinTech Clients. He specialises in FinTech, artificial intelligence, intellectual property in a digital environment, and technology law in general. He is currently rounding up his LL.M program in Cyberlaw.*

[27] Sometime in 2018, the CBN issued the Risk Based Cybersecurity Framework and Guidelines for Deposit Money Banks and Payment Service Providers to define the minimum security measures that must be put in place in the deployment of financial technologies. The Guideline became effect on 01 January, 2019.

"Why I Proposed A One Trillion Naira Capital Venture Fund"



INTERVIEW

WITH

PROF. KINGSLEY MOGHALU

WHY I PROPOSED A ONE TRILLION NAIRA VENTURE CAPITAL FUND – Prof. Kingsley Moghalu

Recently, LAWYARD's Team Lead, ***Tobi Adebowale*** *and the Managing Editor, Banke* ***Ilori*** *hosted The* ***Lawyard Dialogue on Democracy*** *featuring Professor* ***Kingsley Moghalu,*** *candidate of the Young Progressive party (YPP) at the 2019 Nigerian Presidential Election to discuss the future of Nigeria's democracy, his role to contributing to that future and his other plans for Nigeria. The dialogue which was published on the LAWYARD YouTube page has been transcribed by* ***Halimah Oreoluwa Oloko*** *for your reading pleasure.*

LAWYARD- We would like to start by asking you how you made the transition from qualifying as a lawyer in Nigeria to global development and diplomacy.

Prof. Kingsley Moghalu (PKM): I studied law at the University of Nigeria in the 1980s and thereafter worked as a lawyer with the Shell Petroleum Development Company in Lagos. After that, I served as General Counsel for NEWSWATCH, which was the leading news magazine in Nigeria in at the time. I was there for three years and combined a career in law with journalism. I subsequently joined the United Nations (UN) and went to work in Cambodia in the early 1990s as a human right officer. While I was there, we held human rights education classes for government officials, preparing them to take over the reins of government. There had been a civil war and genocide in Cambodia, thus, promoting human rights was a necessary instrument of state building. We investigated human right abuses and recommended actions that the United Nations Transitional Authority in Cambodia (UNTAC) would take against those violating the rights of others. After Cambodia, I was posted to New York as a Political Affairs Officer and subsequently went on other postings across the world.

LAWYARD: You obtained your LL.M degree from the Fletcher School of Law and Diplomacy at the Tufts University; how did it influence your views on politics and the economy?

PKM: Being an alumnus of the Fletcher School had the most decisive influence on my career as I was able to easily relate with other members of the alumni of the school who were at the peak of their careers at the UN. Studying for my doctorate degree at the London School of Economics (LSE) however had a bigger impact on my political and economic worldview. It was while I was at LSE that I read a book called The ***ANARCHICAL SOCIETY***, a Study of Order in World Politics, written by Hedley Bull and the book exposed me to the real nature of the international society. I applied lessons from the book to questions I had about my career at the UN and found the answers I needed. I began to see power and influence shift from global organisations to non-state actors and private sectors. Being convinced that the future lay in the hands of non-state actors, I resigned from the UN and set up my own consulting firm in Switzerland.

LAWYARD: How will you assess the level of institution building we have accomplished in the last 20 years of democracy in Nigeria?

PKM: I think institutions are very important for a functional democracy. We tried to make some progress in building institutions especially during the years of Obasanjo's presidency when a number of institutions such as the Economic and Financial Crimes Commission (EFCC) were established. However, if I must be very honest, I am not very impressed with the level of governance we have in these institutions. Taking the judiciary as an example, it has been affected by a number of challenges such as corruption and has not done enough to police itself internally to prevent external intervention. President Buhari's administration took advantage of that and launched an attack on the judiciary. However, I can see that the judiciary is now beginning to look inwards and take the whole

question of fighting corruption very seriously, which is a good thing.

The Central Bank of Nigeria (CBN) is another very important institution whose independence has been challenged in a number of ways in the last few years, whereas in the first 10 to 15 years of democracy, the CBN was generally regarded as a strong institution. Today, you also look at the EFCC and wonder if it has become a tool for political vendetta as opposed to being an agency responsible for investigating and prosecuting financial crimes, regardless of the affiliations of the people who have been accused of committing such crimes. There is clearly room for development all around.

LAWYARD: In improving the democratic system, what are the things you think Nigeria can immediately do in the next 4 to 5 years?

PKM: The two things that needs to be done are electoral reforms and political education. I believe that Nigeria's electoral system needs a fundamental overhaul. We need to adopt electronic voting to ensure votes count and also remove the unnecessary layers of party agents and presiding officers and other human elements that create loopholes that may be exploited by moneybags. As was seen at the last election, there was a lot of vote buying, especially by the two major parties because of those loopholes.

Secondly, we have to educate our citizens politically, this should not only be for people who are functionally illiterates. You can be politically literate even though you are functionally illiterate. After all those so called illiterates are those who mostly have the political consciousness to vote in Nigeria while our "educated people" are the most politically apathetic and do not vote. So they need political education just as much as the people in the villages. Nigerian citizens must take charge by exercising their vote in a manner that suggests they truly want change. If you keep complaining about the system but you keep voting for the problem instead of the solution, you are not honest.

LAWYARD: What is your opinion on restructuring Nigeria and how do you think it can best be achieved?

PKM: I believe that Nigeria as it is currently structured might have a very difficult time fulfilling its potential as a nation. Restructuring is not something that is helpful, it is something that is essential. We call ourselves a federation, but our constitution is not truly a federal constitution because in most federal constitutions, you have power divided between two federating elements; the central government and the sub national government. The sub-national government creates local governments as they wish, it is not fixed into the constitution. But in Nigeria, the constitution creates three tiers of government including the local government and meanwhile, after fixing it there, the state government will corner all the money meant for the local government, so at the end of the day, it is just a merry go round of self-deceit.

The point is that the federating units in a federation keep their resources and pay taxes to the federal government. Reverse is the case in Nigeria as all the mineral resources go to the federal government which then distributes to others; that is not a federation. We need to constitutionally restructure Nigeria into a federal government such as we had under the 1963 constitution and along regional lines. So I argue that the six geo political zones (or they can create another one or two if deemed necessary) should become the federating units and the economies of scale that we have in every region in Nigeria will show this is the viable way to go. The subnational governments are supposed to be independent in terms of taking care of themselves, and then contribute for the center to be maintained. I strongly recommend that we move to a constitutional restructuring of the country which will strengthen the unity of the country and make it a unity based on equity and justice.

LAWYARD: Nigeria appears to have dropped in the ranking of Africa states in terms of foreign direct investments; how do you think Nigeria can attract more investment into its federating states and bring about development?

PKM: Foreign investment helps a country to develop only if certain basic conditions exist, and we call them location factors, as is used in real estate. Those two factors are: number one, the human capital, and the skills that are available in a country. This is absent in the country because the educational system has not prioritized the vocational type of skills; it is an educational system based on theories. Everybody graduates with their big fat degrees and starts looking for a job, whereas the jobs in today's world are created mostly by self-employment and entrepreneurship. This is why I say the system must shift in order to attract the right type of foreign investment. People coming in to dig oil wells only perpetuates the dynamic that currently exists. We need foreign investment in skills and education. In Rwanda today, many top universities of the world are setting up campuses there; that is a forward thinking type of government, because they know that human capital counts. We can do this in Nigeria; we can bring Harvard, MIT to set up campuses in Nigeria. This way they can train people and we can spend half of what we spend sending our kids abroad.

LAWYARD: There is a rumor that you have quit politics after the 2019 general elections, what do you have to say about this?

PKM: I have only said that the elections are now over and we are no longer campaigning. I have stepped back and want to engage on a non-partisan platform, 'To Build A Nation' (TBAN), which is a movement that I have convened, so that we can argue and campaign for electoral reforms as well as undertake voter's education. If you operate on a nonpartisan platform, you are more likely to reach a lot of people than when you engage in a partisan way. That doesn't mean that I am abandoning politics, when the next election comes we will see.

LAWYARD: **Are you still a member of the YPP; what plans do you and the YPP have to stay relevant ahead of the 2023 elections?**

PKM: I cannot speak for the party and I think the National executive of YPP should be asked the questions for YPP. As for myself and my plans, I am a member of YPP as I speak but by 2023 the future will take care of itself.

LAWYARD: Lastly, you once served as the deputy governor of the CBN, and recently there was a decision to reduce the monetary policy rate. Please explain this to lawyers:

PKM: Every central bank has a duty to confront inflation and price stability. When there is an inflationary threat, there are two ways through which the central bank intervenes. The first one is by raising the monetary policy rate (MPR) so that the cost of money becomes expensive and people have to think twice before they borrow, that reduces the money supply. Another way is the Open Market Operations where they mop up liquidity in the system by offering treasury bills and giving people an incentive to park their money. The monetary policy rate was initially increased to 14% precisely because of inflation and now that inflation has dropped from 19% to about 11%, and that tells you that reducing the MPR was the right response. My reading of the situation is that the CBN felt that since inflation is on its way down, it is safe to reduce the MPR. That is however not enough to increase access to credit.

The problem of access to capital is fundamental because everyone relies on banks and that is not supposed to be. Banks give credit which is only one type of capital. There is the other type of capital called equity which is why I was proposing a One Trillion Naira Venture Capital Fund that will give capital to new businesses or new entrepreneurs as equity investment and not as loans that they have to repay. The Fund will be a co-owner of the businesses

and will not be giving them loans they have to repay at high interest rates.

LAWYARD: **Concerning the One Trillion Naira Venture Capital Fund, how do you to raise that amount of money and if given the chance by the present government to lead a team to raise and manage the One Trillion Venture Capital Fund, will you take the job?**

PKM: Easy, I can raise it in my sleep! I propose that 500billion from the One Trillion Naira will come from the private sector. The remaining Five Hundred Billion Naira should come from the government and that should come from the so called Five Hundred Billion Naira Special Intervention Programme (SIP) that is controversially being spent on school feeding whereas the classrooms have no teaching equipment or good teachers. If you take that money and give it to small businesses, you will create wealth and jobs: two things are happening at the same time and that is different from recycling poverty as the SIP is doing.

THE PASS-THROUGH SPECIAL PURPOSE VEHICLE BOND ISSUANCE MODEL: UNDERSTANDING THE KEY CONSIDERATIONS

BY CHIDIEBERE C. ODOEMENAM



THE PASS-THROUGH SPECIAL PURPOSE VEHICLE BOND ISSUANCE MODEL: UNDERSTANDING THE KEY CONSIDERATIONS

By

Chidiebere C. Odoemenam*

INTRODUCTION

Companies typically use a mix of financing options to finance their projects, development and growth plans. Sources of funding include retained profits, long and short-term bank facilities, syndicated loans, trade finance, equity issuances and corporate bonds. A company's choice of financing is typically influenced by various factors including cost of financing, the company's size, availability of finance and the market conditions at the time the finance is being raised. In the Nigerian market, the cost of obtaining bank financing, the tax-exempt status of income derived from corporate bonds and the possibility of raising long term finance make the debt capital market a viable source of financing for companies.

The Nigerian debt capital market has witnessed considerable growth since the first issuance of bonds by the Government of Nigeria in 1946[28] and is expected to continue its steady growth. In terms of market activity and the volume of issuances, the Financial Markets Dealers Quotations OTC Securities Exchange ("**FMDQ**") recently stated that it admitted the listing of 15 (fifteen) bonds on its trading platform in 2018 with a total value of ₦315.52 billion.[29]

In structuring bond issuances, issuers and their professional advisers adopt various models, which vary according to the prevalent market conditions, financing needs, existing indebtedness, and corporate structure of the issuer.

This work discusses the pass-through special purpose vehicle ("**SPV**") model which is increasingly being used as a viable bond issuance model by issuers in the Nigerian market. In analysing the model, this work attempts to identify the key considerations that would typically drive the successful execution of a bond issue structured using this model.

BONDS: NATURE OF THE PRODUCT

A bond is a promise by a borrower (the issuer) to pay both interest, and at maturity, the principal debt to

* LLB (Nigeria), BL (Lagos); Associate, Aluko & Oyebode

[28] Oluwafemi Ajayi, 'Understanding Monetary Policy Series No. 31: The Nigerian Bonds Market' Central Bank of Nigeria (2013).

[29] These include notable issuances such as the listing of the pioneer infrastructure bonds in Nigeria by Viathan Funding Plc by the issuance of ₦10 billion series 1 10-year 16.00% senior guaranteed fixed rate bonds under a ₦50 billion bond issuance programme and the listing of the first sovereign sukuk in the Nigerian debt capital markets by the Federal Government of Nigeria through the ₦100 billion Federal Roads Sukuk Company 1 Plc's 7-Year 16.47% Ijarah Sukuk due 2024

the lender(s) (the bondholder(s)).[30] The promise to pay can be made to the bondholders or to a trustee acting on their behalf. Bonds come in all sorts of varieties and the definition above without more, best describes plain vanilla bond.

Typical features of the plain vanilla bond include the (i) bullet payment feature which permits the issuer to provision which allows the bondholder to "put" the bond to the issuer for payment of par value prior to the redemption date;[31]

Another variety of bonds is the Eurobond. Eurobonds are bonds denominated in a currency other than the currency of the issuer's country.[32] Eurobonds are targeted at international markets and can be issued in any country. The Federal Government of Nigeria regularly issues this variety of bonds; recently issuing the 6.75% US$500 million Eurobonds due January 2021.

Other varieties of bonds include (i) securitized bonds backed by credit enhancements such as security in the form of real property, shares, bonds, guarantee and revenue streams from assets, etc.; (ii) convertible bonds which are convertible into equity at a determined time and price level; (iii) covered bonds which payment of interest on the bonds and repayment of principal are guaranteed by ring-fencing the assets backing the bonds from other assets of the issuer; and (iv) sukuk bonds structured to generate returns to investors by complying with Islamic law principles.

Under Nigerian law, bonds may be issued by companies, the Nigerian government (federal, state, local governments or their agencies) and supranational entities subject to applicable laws.

delay payment of interest and/or principal until maturity; (ii) the floating rate feature which allows the coupon rate increase or decrease depending on market conditions; (iii) the call provision which permits the issuer to repay the bonds before the maturity date if the issuer so wishes; and (iv) the put

FACTORS NECESSITATING THE USE OF THE PASS-THROUGH SPV BOND ISSUANCE MODEL

The issuance of bonds in Nigeria is regulated by the Securities and Exchange Commission ("**SEC**") through the provisions of the Investments and Securities Act ("**ISA**")[33] and the rules and regulations of the SEC.[34] Where the bonds are to be listed in a securities exchange, the rules and guidelines of the securities exchange where the debt securities are to be listed would also govern the listing and trading of the bonds.

Principally, **Section 67(1)(a) of the ISA** prohibits private companies from offering bonds to the public unless the issuer converts to a public company.[35] This is similar to the restriction imposed on private companies in **Section 22(5)** of the Companies and Allied Matters Act ("**CAMA**")[36] which provides that "a private company shall not, unless authorised by

[30] Louise Gullifer and Jennifer Payne, *Corporate Finance Law, Principles and Policy* (Oxford, Hart Publishing Limited, 2015), 37

[31] Securities and Exchange Commission, *Guide to Preparing for a Corporate Bond Issuance in Nigeria*.

[32] See Louise Gullifer and Jennifer Payne, *Corporate Finance Law, Principles and Policy*, 37

[33] Act No.29, Official Gazette of the Federal Republic of Nigeria, 2007

[34] The SEC regulates the issuance of bonds to the public by way of a public offer and bonds issued by way of private placement by public companies

[35] Private companies may be unwillingly to overhaul their corporate structure to advance a single capital raising project

[36] CAP C20, LFN, 2004

law, invite the public to (a) subscribe for any shares or debentures of the company".[37]

The inability of private companies to access the capital market due to the restriction imposed by the ISA and CAMA is a key factor necessitating the use of the pass-through SPV model in the Nigerian market. Under the SPV model, the company intending to raise finance through the capital market (the "**Sponsor**"), establishes an SPV to act as its capital raising vehicle (the "**Issuer SPV**", "**Issuer**" or "**SPV**"). The Issuer SPV would issue bonds to investors and on-lend the proceeds from the bond issue to the Sponsor through an on-lending structure which would enable the Sponsor issue notes or other debt securities (equivalent to the bonds' value) to the Issuer SPV. Payments by the Issuer SPV to bondholders will be sourced from principal and interest payments made by the Sponsor on the notes issued to the Issuer SPV.

In the prospectus filed with SEC by RMB Nigeria Issuance SPV Plc for the registration of its ₦40 billion bond and structured note programme (the "**RMBN SPV Prospectus**")[38], the Sponsor noted that:

> "*In accordance with Section 67 of the ISA, which permits only public companies to issue securities to members of the public, RMB Nigeria may not issue bonds directly to members of the public. Consequently, a special purpose vehicle, incorporated as a public limited company (i.e. RMBN SPV) has been set up to issue Bonds and Structured Notes*".[39]

It is pertinent to note that while the restriction imposed on private companies in **Section 67(1) of the ISA** and **Section 22(5) of the CAMA** is a key factor driving the use of the pass-through SPV model in Nigeria, there have been instances where public companies have used the model to issue bonds in the capital market.[40] Factors which may have influenced the choice of the model include:

(a) Credit enhancement of the Bonds: Where the Sponsor and its professional advisers are of the view that the Sponsor's credit rating is not strong enough to attract a good rating for bonds issued by the Sponsor, the Sponsor may elect to issue the bonds through an SPV, which through careful credit enhancement structuring may achieve a stronger rating than that which may be ascribed to the bonds if issued by the Sponsor. In Wema Funding SPV Plc's debt issuance programme, the programme was structured to enable Wema Funding SPV invest 45 percent of the SPV bond proceeds in AAA rated FGN 2024 Bonds and 55 percent in BB rated subordinated bonds to be issued by Wema Bank Plc (through a private placement) to achieve a minimum of 2 notches enhancement to BBB-.[41]

(b) Issuance of Securitized Bonds: In a bond issue structured using the securitization model, the

[37] Private companies who intend to access the market may do so by issuing debt securities through a private placement to identified investors. The placement may be structured in the form of an "allotment upon application" which is permitted under Sections 71(3)(b) and 69(2) of the ISA

[38] RMBN SPV Prospectus, retrieved from sec.gov.ng/wp-content/uploads/2018/08/RMB_Shelf-Prospectus_22June2018.pdf

[39] Description of the Programme, RMBN SPV Prospectus, 13

[40] In 2016, Sterling Bank Plc accessed the Nigerian capital market through Sterling Investment Management SPV Plc to establish a N65 billion Debt Issuance Programme; and Wema Bank Plc also accessed the market through Wema Funding SPV to establish a N50 billion debt issuance programme.

[41] Global Credit Rating Co by its rating reports dated June 2016 and June 2018 ascribed a BBB- rating to the Series 1 ₦6.295 Billlion, 7 years senior unsecured bonds issued under the programme. The June 2018 rating report can be accessed through this link: https://www.fmdqotc.com/wp-content/uploads/2018/07/Wema-Funding-SPV-Bond-Rating-Report-June-2018.pdf. The reports also set the sponsor's long-term national scale credit rating at BBB- as at June 2016 and June 2018

Issuer would typically create an SPV and subsequently transfer assets such as receivables to the SPV to enhance the SPV's credit rating. The SPV would issue bonds to the public and payments of principal and interest on the bonds will be made from income accruing to the SPV from the assets purchased from the Sponsor.

STRUCTURING THE BOND ISSUE

In structuring a bond issue under the pass-through SPV model, the Issuer and its professional advisers must pay careful attention to various factors critical to the success of the issue. These factors include the following:

(I) Parties to the Bond Issue

There are several parties involved in a bond issue structured using the SPV bond issuance model. The model features parties to a traditional bond issue and includes additional parties whose roles are essential for the execution of the on-lending arm of the transaction. The parties to a typical SPV bond issue are set out below.

a) Issuer: The Issuer is the direct borrower and primary obligor[42] in the bond issue. In the SPV model, the Issuer is an SPV incorporated by the Sponsor to access finance for the Sponsor. The Issuer enters into an agreement with the issuing houses (in a vending agreement), the trustee and Sponsor (in a trust deed and master notes subscription agreement).

b) Sponsor: The Sponsor is the parent of the Issuer and the ultimate beneficiary of the bond proceeds through the master notes on-lending arrangement. The Sponsor is typically a co-primary obligor for the repayment of the principal and interest in the bond issue and also provides a guarantee in favour of the bondholders. The Sponsor will be a party to the same agreements as the Issuer and will make a deed poll (in a deed of undertaking/covenant) in favour of the Issuer SPV and the trustee.

c) Lead Issuing House(s) and Joint Issuing House(s): The issuing houses are investment banks/financial advisers registered to act as issuing houses by the SEC and tasked with managing, effecting and marketing the bond issue pursuant to the terms of the vending agreement. The lead issuing house takes a lead role in coordinating and managing the transaction and is assisted by the joint issuing house(s).

d) Bond Trustee: The bond trustee acts on behalf of the bondholders as an intermediary between the bondholders, the Sponsor and the Issuer, representing the bondholders' interests throughout the life of the bonds pursuant to the terms of the trust deed.[43]

e) Note Trustee: The note trustee acts as trustee on behalf of the Issuer and the bondholders in the master notes arrangement where the Sponsor issues notes to the Issuer pursuant to the terms of the master notes purchase agreement. In some instances, the bond trustee also acts as the note trustee and is not legally restricted from acting on both sides of the transaction.

[42] Typically, the Sponsor will also be a co-primary obligor in the bond issue alongside the Issuer

[43] Practical Law, 'Bond Issues: Parties', retrieved from https://uk.practicallaw.thomsonreuters.com/9-620-0507?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1

f) Solicitors: The solicitors to the Issuer/Sponsor, trustee and issue are appointed to protect the interests of the Issuer/Sponsor, the bondholders and to ensure that the bond issue is executed in compliance with the provisions of the relevant securities laws.

g) Auditors: The auditors are appointed to provide a comfort letter to confirm that there has been no material adverse change in the Sponsor's financial condition since the last audited accounts.[44]

h) Rating Agency: The Sponsor might approach a rating agency (such as Fitch, Moody's or Standard & Poor's) to assess the financial position and creditworthiness of the Issuer and Sponsor, and assign a grade (or rating) to the bond issue. It indicates the agency's views of the likelihood of the Issuer defaulting on repayment and is, therefore, an indicator of the risk of investing in its bonds.[45]

i) Registrar: The registrar is a financial institution appointed to maintain a register for the issuer of the names and addresses of registered bondholders. During the issue process, the registrar prepares and authenticates the certificate evidencing the bonds.

j) Receiving Bank: The receiving bank appointed on the bond issue is tasked with receiving and processing the application forms for the bonds, processing and clearing cheques for the bond issue.

(II) The SPV

The SPV is the issuing vehicle incorporated by the Sponsor to issue bonds on its behalf. In order to qualify as an entity capable of issuing bonds in the Nigerian market, the SPV must qualify as a "public company" as required under **Section 67(1) of the ISA**.

a) Shareholding: Typically, the shareholding of the SPV would be split between the Sponsor and a nominee shareholder to comply with the provisions of the CAMA which require Nigerian companies to have at least 2 shareholders. For instance, the shareholding of Wema Funding SPV Plc is split between Wema Bank Plc holding 999,999 shares and Mr. Segun Oloketuyi (former managing director/chief executive officer of Wema Bank Plc) holding 1 share.[46]

b) Name and Logo: The name of the SPV would typically reflect its affiliation to the Sponsor. The name may be coined from the name of the sponsor or may be an abbreviation of the Sponsor's name. For instance, Sterling Investment Management SPV Plc, the SPV used by Sterling Bank Plc to access the capital markets, derives its name from the name of the sponsor. Also, FCMB Financing SPV Plc, the SPV used by First City Monument Bank Limited to raise bonds in the market derives its name from the trade name of the Sponsor.[47] Similarly,

[44] Lexis PSL, 'Key parties in debt capital markets transactions—overview', retrieved from https://www.lexisnexis.com/uk/lexispsl/bankingandfinance/document/39128900/Key_parties_in_debt_capital_markets_transactions_overview /57DN-7YJ1-F185-X3B2-00000-

[45] Practical Law, 'Bond Issues: Parties', retrieved from https://uk.practicallaw.thomsonreuters.com/9-620-0507?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk

[46] Description of the Issue, the *Wema Funding SPV Plc Prospectus*, 7

[47] At the incorporation stage of the SPV, the Corporate Affairs Commission would typically request for a letter of consent

the logo of the SPV is typically designed to reflect its affiliation to the sponsor. As shown below, the logo of the SPV used by Wema Bank Plc to access the market is similar to the logo of the bank:



c) Orphan Structure: In a securitization transaction where the Sponsor is required to ensure that it is not a shareholder of the SPV, the shareholding of the structure would typically be held by a share trustee appointed by the Sponsor under the provisions of a share trust deed.

(III) The On-Lending Arrangement

Upon issuance of bonds by the Issuer SPV and receipt of the bond proceeds, the Issuer SPV will on-lend the proceeds of the issuance to the Sponsor on terms similar to those used in the bond issuance.[48] Proceeds from the bonds issued by the Issuer SPV are used to purchase bonds, notes or other debt securities issued by the Sponsor through a private placement programme constituted by a master notes purchase/subscription agreement.[49]

Typically, the size of notes issued by the Sponsor would mirror the size of the programme and series issuances by the SPV and is pegged at an aggregate issue amount. In order to issue notes to the SPV, the Sponsor would execute an issue notice or purchase confirmation which would specify the amount and request for payment on a tranche or series of notes.

It is pertinent to note that while the bondholders are not directly involved in the back-end arrangements that constitute the on-lending of the bond proceeds, it is important that their interests are adequately protected as any default by the sponsor on payments on the notes would ultimately occasion default on payments on the bonds by the issuer SPV. To this end, the bond trustee is appointed as an agent of the bondholders to oversee the process and ensure that the interests of the SPV and bondholders are protected.

There is no standard master notes structure used for on-lending arrangements in transactions of this nature and the specifics of the structure may be slightly varied by the issuer depending on its peculiar circumstances.[50] The on-lending arrangements used by issuers who have accessed the bond market using the pass-through SPV model are depicted in the structure model images below:[51]

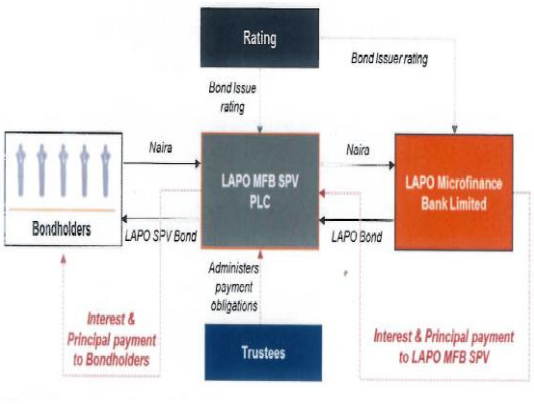
from the Sponsor authorising the SPV to use a name similar to that of the Sponsor

[48] The "Use of Proceeds" section of the Shelf Prospectus and Pricing Supplement would specifically state that the proceeds from a Bond Series issuance would be used to purchase notes or bonds issued by the Sponsor

[49] The back-end instruments issued to the Issuer by the Sponsor vary according to the intentions of the Sponsor and may be notes or bonds

[50] In some instances, the parent of the Issuer may opt to access the bond proceeds through a traditional intercompany loan arrangement where the Issuer on-lends the bond proceeds to the parent pursuant to the terms of an intercompany loan arrangement

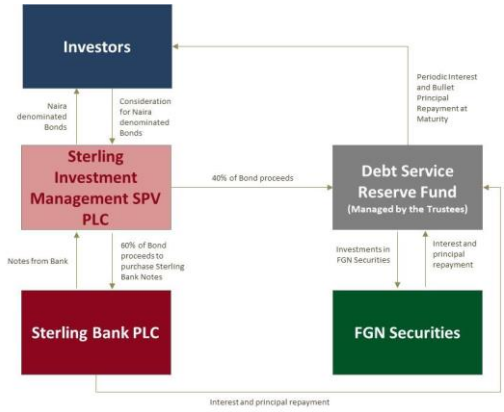
[51]



52

The LAPO MFB On-Lending Model

- Master bonds purchase agreement between LAPO MFB SPV Plc (LAPO SPV), LAPO Microfinance Bank Limited and the bond trustee constituting the back-end LAPO Bonds to be issued by LAPO Microfinance Bank Limited.
- Proceeds from the LAPO SPV Bonds issued by LAPO SPV are to be used to purchase the LAPO Bonds issued by LAPO Microfinance Bank Limited.
- The LAPO SPV Bonds are backed by a deed of undertaking made by LAPO Microfinance Bank Limited in favour of the bond trustee wherein LAPO Microfinance Bank Limited provided an undertaking to ensure payment of principal and interest in respect of the bonds.



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The Sterling SPV On-Lending Model

- Master notes subscription agreement between Sterling Investment Management Plc (Sterling SPV), Sterling Bank Plc (Sterling Bank) and the trustees constituting the back-end notes to be issued by Sterling SPV.
- 60 percent of the proceeds from the bonds issued by Sterling SPV to be used to purchase unsecured subordinated notes to be issued by Sterling Bank. The remaining portion of the issue proceeds to be used to purchase Federal Government of Nigeria securities.
- The bonds are backed by a deed of covenant made by Sterling Bank in favour of Sterling SPV and the trustees wherein Sterling SPV provided an undertaking to ensure payment of principal and interest in respect of the bonds.

[52] This structure image was extracted from the prospectus filed by LAPO Microfinance Bank Limited with the SEC and FMDQ and was retrieved from https://www.fmdqotc.com/wp-content/uploads/2018/03/Shelf-Prospectus-LAPO-MFB-SPV-N3.15BN.pdf

[53] This structure image was extracted from the prospectus filed by Sterling Bank Plc with the SEC and FMDQ and was retrieved from https://www.fmdqotc.com/wp-

(IV) Transaction Documentation

The pass-through SPV model features some of the traditional bond documents with some variations to accommodate the model. The model also features additional documentation which are not used in traditional bond issuances. The documentation required to execute a bond issuance using the SPV bond model are:

(a) Prospectus (Shelf Prospectus and Pricing Supplements where applicable): The prospectus is the disclosure document issued in accordance with the ISA and Rules and Regulations of the SEC which details the aggregate size, and broad terms and conditions of the issue such as covenants, financial information, risk factors, business description and any other information relevant for the investors. The prospectus used for the SPV bond issuance model is required to disclose sufficient information regarding the structure in sections such as "Description/Summary of the Programme/Offer" section where the transaction structure would be explained for prospective investors and the "Description of the Issuer" section where the corporate structure and other information regarding the SPV would be stated. Where the bond issuance is being done under a shelf structure, the Issuer would be required to file a shelf prospectus for the establishment of the programme and additional pricing supplements/supplementary shelf prospectus for each series under the programme.

(b) Trust Deed (Programme Trust Deed and Series Trust Deeds where applicable): This is the deed made between the Issuer, Sponsor and trustee which sets out the rights, duties and obligations of the Issuer, Sponsor and the trustee(s) in respect of the transaction. Under the trust deed, the Issuer and Sponsor appoint the trustee to act on behalf of the bondholders. The trust deed is required to contain language reflecting the covenants of the Issuer and Sponsor (i) to repay the principal and pay coupon on the bonds (ii) to comply with the provisions of the deed (iii) not to amend its constitutional documents in a manner that would adversely affect its ability or obligation to make payments on the bond amongst others. The deed would also state the mechanics of payments in respect of the bonds, proceedings by the bondholders to enforce payments in respect of the bonds amongst others. In drafting the terms and conditions of the bonds issued pursuant to the bond issuance programme, it is important to ensure that the terms and conditions of the bonds mirror the terms and conditions of the back-end notes/bonds issued pursuant to the master notes subscription agreement to ensure that such terms and conditions do not conflict.

(c) Master Notes Subscription Agreement: This agreement between the sponsor (as issuer of the back-end notes/bonds), the issuer (as purchaser/subscriber of the back-end notes/bonds) and the trustee(s) is a key documentation which details the process

content/uploads/2019/01/Sterling-Bond-Pricing-Supplement-Execution-Version-October-5-2018.pdf

through which the issuer would on-lend the proceeds from the bond issue to the sponsor. The Master Notes Subscription Agreement details the form and nature of the notes/bonds, the subscription and payment structure of the notes/bonds, the events which would constitute events of default in respect of the notes/bonds and the terms and conditions of the notes/bonds. The issue notice or form of purchase confirmation is annexed to the Master Notes Subscription Agreement and is to be used by the issuer of notes/bonds to confirm its agreement to issue notes of a particular series to the subscriber SPV.

(d) Deed of Undertaking/Covenant: The Deed of Undertaking is a deed poll made by the Sponsor in favour of the Issuer SPV and the trustee(s) wherein the Sponsor sets out its obligations particularly as it relates to all payment obligations of the Issuer SPV to the bondholders. The Deed of Undertaking is typically a short document and is only required where the Sponsor has not already provided a payment undertaking in the Trust Deed.

(e) Vending Agreement: The Vending Agreement is a traditional securities issuance agreement between the Issuer and the Issuing Houses which sets out the terms and conditions of the Issuer's appointment of the Issuing Houses to set up, manage, coordinate and market the bond issuance. In the SPV bond issuance model, the Sponsor is included as a party to the Vending Agreement alongside the Issuer SPV and provides representations, warranties and covenants alongside the Issuer SPV.

(f) Rating Reports: The SEC requires all corporate bond issues made to the public to be rated by a ratings agency registered with the SEC or by an internationally recognized ratings agency approved by the SEC. The minimum investment grade rating for bonds issued through a public offering is "BBB –" or above. The revised investment guidelines for pension fund assets allow investments in "BBB"- or higher rated bonds. In the SPV bond issuance model, the Sponsor is required to obtain a rating report on the bonds to be issued and another which would assess its financial strength and its ability to meet principal and interest payments on the bonds.

(g) Legal Opinions: The legal opinions which are provided by the Solicitors to the Issuer detail the opinion of the Solicitors to the Issuer on the outstanding litigation claims against the Issuer[54] and Sponsor, and on the material contracts entered into by the Issuer SPV and Sponsor in connection with the bond issuance.

TAX IMPLICATIONS OF THE SPV MODEL

(I) Registration of the Issuer SPV with the Federal Inland Revenue Service ("FIRS") for Corporate Taxes

Pursuant to the provisions of the Companies Income Tax Act[55] ("**CITA**") and the Value Added Tax Act [56]("**VATA**"), the Issuer SPV is required to register with FIRS for the purpose

[54] The Issuer SPV being a newly incorporated entity is unlikely to be involved in any litigation

[55] CAP C21, LFN 2004

[56] CAP V1 LFN 2004

of remitting companies income tax ("**CIT**") and value added tax ("**VAT**").

(II) Registration of the Issuer SPV with State Tax Authorities

Ordinarily, the Issuer SPV is mandated to register with the requisite tax authorities where its employees are resident for the purpose of withholding and remitting personal income tax ("**PIT**") on behalf of its employees. However, based on the fact that the Issuer SPV would not have any employees, the Issuer SPV would not be required to register with state tax authorities for the purpose of remitting PIT on behalf of its employees.

(III) Taxation of Income earned by Bondholders from the Bonds

Ordinarily, pursuant to Section 9 of the CITA, income accruing in, derived from, brought into, or received in Nigeria as dividends, interest, royalties, discounts, charges or annuities is subject to tax. Consequently, interest payments on the Bonds derived from Nigeria and accruing to both Nigerian investors and non-Nigerian investors would ordinarily be subject to withholding tax in Nigeria at the applicable rate of 10% (ten per cent.) or 7.5% (seven and a half per cent.) if the foreign company or person to whom the interest accrues is resident in a country with which Nigeria has a double taxation treaty (which has been ratified by the Nigerian National Assembly) and the Issuer would be required to withhold tax on such payments and remit same to the appropriate tax authorities.

However, under current legislation in Nigeria, an investment in bonds is generally exempt from all forms of taxes such as CIT, VAT and PIT by virtue of the CIT Order, the VAT (Exemption of Proceeds of the Disposal of Government and Corporate Securities) Order 2011 (the "**VAT Order**") and the Personal Income Tax (Amendment) Act 2011.

The CIT Order and VAT Order became effective on 2nd January 2012 and the exemptions thereunder are valid for a period of ten (10) years from that date. The exemption under the PITA Amendment Act is indefinite.

(IV) Taxation of Coupon payments made by the Sponsor on the Notes

The notes/bonds issued by the Sponsor to the Issuer SPV under the master notes subscription agreement should qualify as a "bond issued by a company" which would enjoy the withholding tax exemption under the CIT Order. However, there is the risk that the FIRS may recharacterize the instruments as vanilla loans not contemplated as "bonds" under the CIT Order.

(V) Taxation of Income earned by the Issuer SPV

The pass-through nature of the Issuer SPV entails that the Issuer SPV would not record any income on its books. The Issuer SPV being a funding vehicle would on-lend all proceeds from the issuance of bonds to the Sponsor and as such, would be left with no income after an on-lending transaction has occurred. Consequently, the Issuer SPV would have no taxable income.

However, the Issuer SPV's pass-through nature may trigger the requirement to pay

minimum tax under the CITA after the first four calendar years of its commencement of business.[57] Upon the expiration of the four-year exemption period, the Issuer SPV would be liable to pay the following minimum tax (where it is deemed not to have made any assessable profits):

Where the turnover of the company is ₦500,000 (Five Hundred Thousand Naira) or below	(i) half a percent of gross profit; or (ii) half a percent of net assets; or (iii) one quarter per cent of paid-up capital; or (iv) one quarter per cent of turnover of the company for the year, whichever is higher
Where the turnover of the company is higher than ₦500,000 (Five Hundred Thousand Naira)	Whatever is payable in (a) above plus such additional tax on the amount by which the turn-over is in excess of ₦500,000 at a rate which shall be fifty per cent of the rate used in (a) to (iv) above.

Nonetheless, it is also important to note that even if the Issuer SPV is deemed not to have made any taxable assessable profits, the FIRS is empowered under Section 30 of the CITA to assess and charge the Issuer SPV on such fair and reasonable percentage of the turn-over of the Issuer SPV's trade or business as FIRS may determine.

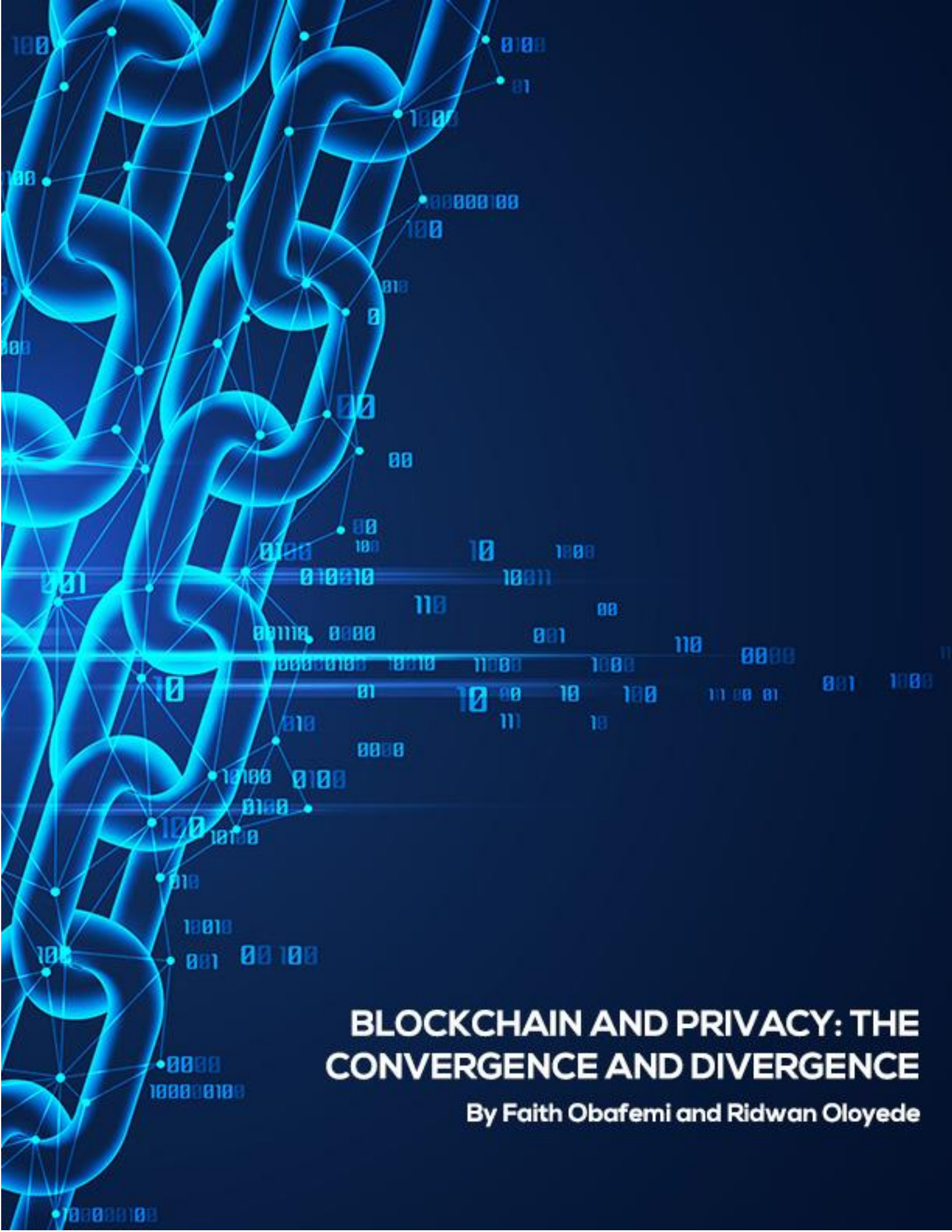
CONCLUSION

Traditionally, issuers in the Nigerian market offer securities for sale to the investing public through the entity which would utilize the proceeds of the issuance. However, since the success of various bond issuances structured using the pass-through SPV, corporate issuers in the Nigerian market are increasingly utilizing the pass-through SPV bond issuance model to issue bonds.

[57] Section 33 of the CITA

Although Nigeria's regulatory landscape in relation to the issuance of debt securities through special purpose vehicles is not yet as advanced as that of more developed countries, issuers who intend to access the capital markets using special purpose vehicles must ensure that while the structure and documentation of the issuance reflect the issuer's intentions, the interests of bondholders must also be protected at all times. In preparing the documentation for the issuance, it is also pertinent for the issuer's professional advisers to ensure that the transaction documents sufficiently disclose and explain the transaction in detail, are unambiguous and transparent; failure of which may affect marketability and pricing of the bonds.

CHIDIEBERE ODOEMENAM *is an Associate within the corporate, finance and tax practice groups at Aluko & Oyebode, where he advises indigenous, international and multinational clients on cross-border and domestic mergers & acquisitions, capital markets, tax structuring, finance and private equity transactions. His experience also includes a Visiting Associate role with the finance team at Slaughter and May, London as part of the Slaughter and May EXPLORE Programme. He obtained his law degree from the University of Nigeria in 2015 and was called to the Nigerian Bar in 2016. He is a member of the Nigerian Bar Association Section on Business Law and volunteers for Amnesty International and the Young African Leadership Initiative.*



BLOCKCHAIN AND PRIVACY: THE CONVERGENCE AND DIVERGENCE

By Faith Obafemi and Ridwan Oloyede

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WHAT IS BLOCKCHAIN?

The fastest way to understand blockchain is by using an analogy to explain how it works. Blockchain can be likened to a notebook in which participants in the network each have a copy of the same notebook. Pages in the notebook are blocks, participants in the network are nodes. Blocks are created by solving a mathematical quiz whose difficulty is adjusted so that a block is created only every 10 minutes. Whoever succeeds in creating a new block gets the designated block rewards which are currently 12.5 bitcoins and halves about every four years. Before new information is entered in the block (a page) everyone has to agree on the veracity of the information. The process of solving the mathematical quiz and reaching an agreement on the veracity of information added to blocks is called a consensus algorithm. The Bitcoin Blockchain uses the Proof of Work consensus algorithm.

FEATURES OF A BLOCKCHAIN

(a) Decentralized**:** Blockchains have no single contro.l Participants in the network are only able to control what they have the private key to. Decisions are reached via a consensus algorithm.

(b) Immutable[58]: Once data is entered on the blockchain, it becomes impossible to edit or alter.

(c) Distributed: Participants in a blockchain network, called nodes, are not located in a single place, they are found in different locations around the world.

(d) Pseudonymity: Contrary to most people's belief, blockchain does not promote anonymity. It only allows for pseudonymity which is simply being identified with a string of alphanumeric characters, called wallet address. Therefore, it is ironic to use cryptos as a laundering tool, as it is permanently traceable.

(e) Secured: Since there is no single point of failure, hacking the blockchain becomes difficult. In fact, in its decade-old existence, it is yet to be hacked. The blockchain is structured in such a way that hacking would require an impossible amount of time and resources. Also, peradventure a hack is successful; it is economically disadvantageous to the hackers, as the blockchain's native currency would lose their worth.

(f) Cryptography and Hashing: This is used for encrypting data on the blockchain. Ownership is ascertained and transactions authorized through the possession of a private key. Public keys are used to interact with other participants on the network.

BLOCKCHAIN USE CASES

Contrary to media hype, blockchain cannot be used for everything. In fact, using blockchain when impracticable would be multiplying problems. Generally, blockchain can be used in any of the following scenarios.

First is where there is a need to create an immutable record, an example here is the recording of transactions or entry and exit on a country's borders. Second is where there is a need for digitization of tangible assets, for example company shares. The third is where there is a need for digitization of processes, for example, the process of obtaining a driving license or international passport.

From the above three clusters, we can distil a few blockchain use cases[59], most especially those that raise concerns for security and privacy.

(a) Cryptocurrency: This happens to be the very first use case of the blockchain. Satoshi's invention successfully solved the double spending problem that

[58] Although, there are mutable blockchains like the Accenture blockchain.

[59] The IBM:blockchain project website lists thirty-three use cases at the time of writing.

had hitherto made digital currency unattainable, except in centralized models. Combining Decentralized Ledger Technology (DLT), a peer-to-peer ecosystem and cryptography, bitcoin, the first widely known digital currency, was born[60]. It is probably safe to lump other financial and payments use case here. The key feature being that blockchain can enable cross border payments faster at a fraction of the cost charged by traditional models.

(b) Tokenization: Tokenization is the representation of assets digitally on a blockchain by assigning a unique string of alphanumeric characters to a specific asset. Assets could be digital (Crypto Kitties, photographic images), financial (shares, derivatives) or physical (land, cars, diamonds). Some of the stated examples can be categorized as illiquid assets. As a result, tokenization makes it easy for such illiquid assets to be "cheaply and efficiently fractionalized, traded and settled." What this means is that in addition to unlocking liquidity, the previously unattainable barriers to entry for small businesses and retail investors are lowered.

(c) Intellectual Property: Current DRM (Digital Rights Management) measures have been largely ineffective due to the internet providing the tools for unauthorized infinite reproduction of people's intellectual property. Blockchain technology will enable creators to directly interact with their fans, track sales and conduct private auctions, thereby, reducing the infringement of intellectual property.

(d) Supply Chain: An estimated $634 billion is lost in one of the most opaque systems in global business, caused majorly by data being managed in silos. Leveraging blockchain technology features like time stamping, transparency and immutability; merchants and consumers alike can track an item straight from the manufacturer to the hands of the end user.

(e) Identity: Having an identity is the only way one is allowed to interact with others on a global scale, both online and offline. At the moment, an identity is needed for activities like the opening of a bank account and entry or exit on a country's borders. The problem here is that, in the process of obtaining or providing one's identity, personal data, which the owner would otherwise have preferred to remain private, are disclosed. In addition, such data are stored in a centralized model, creating a single point of failure/vulnerability. Blockchain being a decentralized ledger means, one can create a self-sovereign digital identity with just a cryptographic key, putting the owner in full control of their personal data. Only the public key is used in transactions, while private data is encrypted and are kept just how they were meant to be: private.

(f) Smart Contracts: Ethereum blockchain brought to the limelight the development of smart contracts, originally created by Nick Szabo. Smart contracts are self-executing codes hosted on a blockchain. It deploys the IF-THEN-ELSE command by allowing an event to occur once all conditions precedent has been met. Smart contracts can be deployed on a grand scale to form DAOs (Decentralized Autonomous Organizations) like a company or even a country. A company as a DAO could make a decision to acquire a smaller company. If the quorum is set at 51% with five shareholders, it means IF the third 'YES' vote is cast, THEN the smaller company is automatically acquired. ELSE, where no enough 'YES' votes, the contract fails to execute. A country as a DAO is what Dubai is currently working towards with their Smart Dubai 2020 project.

(g) Healthcare: This branches off from the identity use case, putting patients in control of their data and making it easier for authorized personnel to access their client's complete medical information.

TYPES OF BLOCKCHAINS

Bitcoin, Ethereum and most of the other cryptocurrencies we have today were built on a public blockchain. There are others like ripple, built on private blockchains. Let's briefly touch the different types of blockchains.

(a) Public Blockchain: Also referred to as permissionless blockchains because anyone anywhere can participate

[60] There were other digital currencies before bitcoin, worth mentioning is DigiCash.

without requiring permission to join the network. For governance, a consensus algorithm is utilized.

(b) Private Blockchain: Also referred to as permissioned blockchains because before anyone can participate, they first have to be granted permission by a single controlling entity. Usually, a consensus algorithm is not utilized since block creation is controlled by the single entity. A notable example here is JP Morgan's Quorum.

(c) Hybrid Blockchain: As can be deduced from its name, this is a cross planting between a public and a private blockchain. Perhaps best viewed as bringing together the advantages (minus their disadvantages) of both under one chain.

PRIVACY

Modern technology has increased the generation, collection, processing, sharing and the use of personal data. These technologies allow private and public corporations to utilize personal data for their activities in record proportion. According to Forbes, by the year 2020, about 1.7 megabytes of new information will be created every second for every human being on earth. That is 44 zettabytes (44 trillion gigabytes) every second from the Earth's population. If the use is unabated, the potential risk of abuse, breach, and misuse of personal data could leave the populace vulnerable. A data breach can result into "physical, material or non-material damage to natural persons such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorised reversal of pseudonymisation, damage to reputation, loss of confidentiality of personal data protected by professional secrecy or any other significant economic or social disadvantage to the natural person concerned."

UNDERSTANDING DATA PROTECTION

Data protection deals with both the integrity of data, protection from corruption or errors, privacy of data, and its accessibility limited only to those with authorization or privilege. With the increased proliferation and generation of data, there is an existential need to protect such data from mishap. There are different types of data, but specifically, as it concerns privacy, we speak strictly of personal data. Personal data means any information relating to an identified or identifiable natural person. These include name, identification number, location data or online identifier (IP address) or any information that could identify such individual.

Data protection seeks to protect data subjects against "accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed."

PRINCIPLES OF DATA PROTECTION

Data protection laws provide for principles that define the responsibility and ethical processing of personal data. Any processing done outside the well-laid principles will be in contravention of the data protection framework. The principles are:

(a) Lawfulness, Fairness and Transparency: Data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject;

(b) Purpose Limitation: Data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;

(c) Data Minimization: Data shall be adequate, relevant and limited to what is necessary for, in relation to the purposes for which they are processed;

(d) Accuracy: Data shall be accurate and, where necessary, kept up to date. Steps must be taken to ensure incorrect data are rectified or erased;

(e) Storage Limitation: Data shall be stored for no longer than is necessary for the purposes for which the personal data are processed;

(f) Integrity and Confidentiality: Data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures;

(g) Accountability: Data controller must be able to demonstrate compliance and keep a record of processing activities.

Legal Basis for Processing

The legal bases for processing personal data are:

- Consent;
- **Contract;**
- Legal Obligation;
- Vital Interest;
- Public Interest; and
- Legitimate Interest

Where personal data is processed without complying with the aforementioned legal basis, it will amount to infraction of the extant data protection law and attract the appropriate penalties. Under the European Union General Data Protection Regulation, an entity will be subjected to a penalty of 4% of global annual turnover or 20 million Euros whichever is greater.

RIGHTS OF DATA SUBJECTS

Data protection laws grant rights to individuals. They are rights to have access to information about the purpose of processing, storage, duration and disclosure; the rights to object to the processing of personal data falling outside the legitimate purpose or allowable exceptions; the rights to the restriction of processing of personal data where the accuracy of such data is contested, where the processing is unlawful, or no longer needed by the controller; the rights of erasure give a data subject the right to request a company to erase personal data concerning them if they are no longer necessary in relation to purposes of which they are collected; rights to data portability give the data subject the right to receive personal data concerning them and transmit these data seamlessly to another platform; the rights to lodge complaints with a supervisory authority when there is an infringement of any of their rights guaranteed under the extant data protection law; rights to judicial remedy, rights not to be subjected to automated decision making, rights to a representation to lodge complaints on their behalf and rights to compensation.

DEROGATIONS

Privacy right is not absolute and it is subject to derogations provided under the data protection laws. The derogations are instances where exceptions and statutory obligations come before the protection of rights and freedom. The derogations to the protection of privacy are the protection of national security, and defence; protection of public security and public interest; the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including safeguarding against and the prevention of threats to public security; protection of judicial independence and judicial proceedings; prevention, investigation, detection and prosecution of breaches of ethics for regulated professions; protection of the data subject or the rights and freedoms of others; and the enforcement of civil law claims.

INTERSECTION AND DIVERGENCE OF PRIVACY AND BLOCKCHAIN

A common denominator in the intersection of blockchain, security and privacy is that the three deal with data. Recall the use cases we earlier highlighted involve some form of data harvesting and management. Both privacy and blockchain seek to achieve transparency of data, ensure the safety and security of personal data and are geared towards the protection of rights and freedoms of individuals.

Blockchain can only function on data available – these include storing and processing of personal data. If the application or use affects human subjects, then it utilises personal data and must comply with extant data protection laws. Functionally, the blockchain is immutable – which implies data stored therein cannot be deleted. However, privacy laws grant data subjects rights to access information, rights of erasure, rights of data portability and rights of rectification. According to Jutta Steiner, "the way [public decentralized network] architecture works, means there is no such thing as the deletion of personal data. The issue with information is once it's out, it's out." The intersection of data protection and blockchain puts the immutability feature of blockchain against the exercise of such rights. As long as blockchain technology continues to rely on personal data, it has to comply with extant data protection laws. The increased adoption of public blockchains magnifies this challenge.

The transfer of data to another jurisdiction is critical in most data protection laws. A data protection law usually expressly prohibits the transfer of data to a foreign jurisdiction, where the territory is not considered to have adequate protection. However, the practical use of blockchain reduces the traditional concept of borders into nodes. This can only be effectively monitored on a case-by-case basis.

Data protection law demands increased accountability and transparency on data controllers and processors. In a decentralised ecosystem, it is hard to discern who the data controller is. Data protection laws were drafted to regulate centralised platforms and blockchain existence questions that. Ascertaining the controller is problematic as the definition of a controller for the purpose of assigning obligation is not clear. "Countless participants on a public blockchain could very easily be classified as being data controllers, rendering them responsible for GDPR compliance."

There is an increased use of blockchain technology and wider adoption for its practical use cases. While it is discernible that the extant data protection law was drafted without contemplating the functionality of blockchain and other emerging technologies, they must conform with extant data protection laws. We do not envisage a cosmic battle between blockchain and data protection, however, some techniques like anonymisation of data, blacklisting of certain data, storing of data off-chain, forking, deletion of encryption keys, increase in the use of private and enterprise blockchain has been touted to ensure compliance of blockchain with data protection laws. There is also a case for the use of privacy by design and default such as self-sovereign identity (Sovrin) application and implementation of a centralised backend system.

CONCLUSION: SURVIVING THE TIDE

To adequately regulate the blockchain and other emerging technologies, regulators will need to understand the technologies either by creating sandboxes or allowing room for self-regulation. Experience has shown, sweeping regulations often lose sight of the functional application of technology and ends up creating a cloud of uncertainty. Innovation will always be ahead of regulations and regulators. Over-regulation and poor regulation will produce a similar outcome – they kill innovation. It is important emerging innovations, especially those driven by personal data strikes a fair balance between solving existential problems and protection of privacy of individuals.

FAITH OBAFEMI *is a tech lawyer who focuses on blockchain, cryptocurrency and emerging technologies. Through Future-Proof Intelligence (FINT), she helps innovative businesses start, fund and Future-Proof. Faith is a Research Fellow at the African Academic Network on Internet Policy (AANOIP), where she makes in-depth research on the intricacies of blockchain and the law. She is a Decentralized Justice Fellow at Kleros, where she is researching on the implementation of the African Continental Free Trade Agreement (AfCFTA) on the blockchain and recommending Kleros as a dispute resolution layer. Currently, Faith spends her free time solidifying her knowledge in smart contracts programming.*

RIDWAN OLOYEDE *is a Partner (Privacy, Data Protection and Legal Services) at Tech Hive Advisory. Ridwan is also a policy adviser and analyst who has made recommendations to legislative processes, reviewed legislations and published policy briefs on the intersection of law and technology. His expertise also includes cybersecurity and data ethics. Ridwan advises clients on aspects of global data protection and privacy laws. He is a Research Fellow at the African Academic Network on Internet Policy (AANOIP). He was recognised by Lexology as the Legal influencer for TMT (Technology, Media and Telecommunication) in Africa and Middle-East for Q4 2018. Ridwan speaks and writes both locally and internationally.*



How I Combined Working at a Top-Tier Law FIrm with Releasing a Spoken Word Album

INTERVIEW WITH MS. EVA JOHNSON

HOW I COMBINED WORKING AT A TOP-TIER LAW FIRM WITH RELEASING A SPOKEN WORD ALBUM – Ms Eva Johnson

Earlier this year 2019, Lawyard Team Lead, Tobi Adebowale got the chance to sit with business lawyer, singer, poet and spoken word artist, Oyindamola Johnson for a chat about the art of Ms Eva Johnson and ends with a few tips for other lawyers wondering how to balance art as a passion with law as a profession.

Please give us a brief summary of your experience as a lawyer since joining the legal profession.

My experience as a lawyer has had its peaks and troughs. I have learned a lot about discipline, attention to detail, people-relations, emotional intelligence and of course technical legal skills. I am grateful to have met so many amazing people at all cadres in legal practice who have been pivotal to shaping to be the best lawyer I can be. I have also had the good fortune of working in a law firm that allows me to conduct legal practice without having to give up on expressing my artistic/creative side. Now studying at Cambridge, I am engaging a distinguished caliber of intellectuals from all over the world and making connections with inspiring people. So generally, I consider myself blessed and my journey, though still in its early days, has been good.

How did you discover your interest in spoken word, poetry and music, and in addition, what fuels your passion for art?

My interest in art generally - spoken word, poetry, music, rap and dance (I used to dance a lot when I was younger) – was discovered probably in the womb. My mum used to be an actress, my dad sings and my brothers play instruments. We are a very musical family and we always created art on the fly. It is something I have always done. I used to act in stage plays at the MUSON Centre when I was younger but I did not do any of all that for a year while I was at the Nigerian Law School because I just could not do combine it all since I was a Group Leader and took on so many responsibilities. However, I found out in that year that I was very unfulfilled because I was not doing any art. I just felt that something was missing so when I started working as a lawyer, I decided that I was going to explore my art a little bit. With some encouragement from a few friends, I started doing a few shows here and there and eventually worked up the courage to write new pieces. I had always written anyway but I started to properly write new pieces and infuse music into them and perform and eventually produced an album.

Regarding what fuels my passion for art, I think that at its core, art is a very powerful tool. Music and words are powerful, they outlive the creator and the time they are created in. There are a lot of songs and poems that were relevant in 1960 and are still very relevant today. The fact that I have the gift and opportunity to use this powerful tool, I feel the need to use it in the best possible way. I particularly believe in the education of the common mind and that is not about literacy but about opening up people's mind, allowing them to see possibilities and introducing them to different perspectives. For me, the fact that I can do that with art is what fuels my passion to do it because why not, right? A lot of people have the gift of art and perhaps waste it creating things that may not be relevant after three months. So, I am more concerned about impacting people's lives and opening up their minds with my art.

Also, It is fun!

Listening to your album, 'From a Different Cloth', it would appear there is a fusion of poetry with rap, spoken word and singing. In 'The Ink', you mention that you do not stress about what you are called but I wonder if you have a word that describes this unique expression of your art.

I do not have a specific word for it but if I had to label it, I would probably simply call it the spectrum of art. I am a conservative creative, that is how I like to describe myself. I create art, perhaps fusing various forms of art, but that is it.

What is the inspiration behind the title of your album, 'From a Different Cloth'?

The title took me a very long time to come up with. I must have gone through like 100 titles but everything just did not seem quite right. Some were too playful, some were too serious and some were quite descriptive of one form of art or another. I settled with 'From a Different Cloth' because I think it describes me and I think it describes the fact that the body of work contains different types of art and I also explore different types of music as well. So, I feel like we have this mosaic of 'different cloths', if you like, different types of forms of art and they have come together to create one piece, one body of work. I also think it describes me because I consider myself very different and gladly so. I do not ever want to fit in. So, when I happened on a title that describes me and the body of work, I decided this had to do. I think 'From a Different Cloth' is a good title. I am happy I picked that title.

What was the creative process behind the album like and how did you manage to combine the amount of effort I imagine must have been put into delivering this masterpiece with the demands of your job as a lawyer in a busy commercial law firm?

Honestly, I believe God helped me a lot. I believe God gave me the gift and when He places a desire in your heart, He equips you. It was a lot of stress and I was sleep deprived a lot but I think it was worth it. As you said, I was working at a busy commercial law firm and would wake up early in the morning to join the Lagos commute and a lot of times, I would record my pieces on my phone on my way to work and come back to them. I would practice my pieces in the car because usually, I would have a show after work sometimes. I would get to work 8:30am and while my official closing time was 6pm, I hardly got out until 8pm and sometimes I would have a show after work and be at the show till 10pm or perhaps later than that. I would return home and sometimes still write and then go to bed around 1am or 2am, sometimes 4am then sleep for a couple of hours and head out to work again. On weekends, I would go to the studio but recording at the studio did not really take long because I did not have much time and because I had gotten used to performing my pieces, instead of doing several takes at the studio, I was able to record just once. Most of the pieces in the album were recorded at just one take – my producers were always (pleasantly) surprised.

You made reference to the Afrobeats legend, Fela, in the track 'Infamous Lady', referring to yourself as the "infamous lady Fela spoke about" so how much of an influence does Fela have on your art?

Directly, not a lot. I definitely respect Fela's art; I respect the boldness of it, his ability to do a 20-minute song and does not care, he just keeps going- the activism and the resistance that he represents. However, I do not agree with some of his thinking and I think we romanticize Fela a lot. I do not know if that is a generational thing or if it was done before our generation as well but I do not believe in romanticizing people because human beings are fallible, we all are. I listen to a lot of jazz and sometimes, I listen to Fela as well. When I listened to his song, 'Lady', I picked up some things I really disagreed with so I decided to write some kind of response to it. Of course, he is not able to give a reply to my response and that is neither here nor there. It would perhaps have been fun to hear his reaction to my song because I would like to hear what he has to say. I used the Afrobeat genre to show that I do respect that form of art when it is done right, I just disagree with some of the message. In terms of his

direct influence on my art though, I do not think he is such a big influence.

In 'Average Girl', you talk about sexual abuse, child molestation, violence against women and suppression of the voices of women, so what are your thoughts on creating a safer word for the girl child?

It is simple. When people ask, 'are you a feminist?' I feel that question is a bit redundant because what it means to be a feminist is to believe that men are women should be given equal chances. To me, it is intuitive and that is the only way to be. Even if you consider yourself a misogynist and you say you do not care about women, I am sure that perspective will change very much if your mother, daughter or sister gets discriminated against, raped or abused in some way. That shows you that intuitively, you recognize that women and even boys should be safe. Something that we do quite a bit in Nigeria is to focus on the victim rather than the aggressor whereas the constant factor you have in every domestic abuse case is that you have an abuser or a rapist where it is a rape case. So, I like the fact that there are new movements that are coming up to give a voice to women and everyone who is oppressed because I am anti-oppression. For me, it is intuitive that everyone should be given an equal playing field and then we can see who is able to rise and grow, show themselves and work to establish themselves. The time is coming, and very fast too, that the aggressors will be thrown out of the window and I cannot wait.

Child molestation is disgusting and 'Average Girl' is the oldest piece in the album. I wrote it when I was 18 based on something I discovered when I was about 12 or 13 while I was in boarding school. I was in a room of fifteen girls and we were all within the age ranges of 11-14 and of the fifteen girls, about ten had been abused by some person that was supposed to be trusted. As you might know, most abuse happens from people who are supposed to be family or trusted. That is about 66.6% of the girls in that small room and that created a deep annoyance in my heart on issues of rape and abuse. To me, it is intuitive, whether it is female genital mutilation, verbal abuse, emotional abuse or physical abuse. I believe such behaviour should be outlawed and I will do whatever is in my power to do to foster a safer space for people and especially women as they are mostly on the receiving end, even though I note that boys are also abused by some women/men – and this is equally unacceptable.

Was the piece 'Whole' biographical?

There are parts of the work that are biographical but for me, I feel that truths are parallel. So, if something is true, and I am particular about art that is true, inevitably it will connect with people because our human experiences are not that different from each other. We are in different fields, work at different occupations and live in different countries but essentially it is about struggling, overcoming and succeeding. It may seem somewhat simplistic but in my view, that is the sum of the human experience. Parts of the song are biographical but not the whole thing (no pun intended). Some of it reflect me, and some of it reflect other people, some of it reflect my friends and some of it reflect other people I have seen but because it is all true, it could also be me, it could be you and may not be me now but could be me in another couple of years. One thing I have learnt is to never say never because sometimes you think "this will never be me", then you find yourself in that position. Parts of me, parts of it are other people and parts of it are what I imagine other people are experiencing.

How therapeutic is poetry for you?

Poetry is very therapeutic for me. When I say "*I flow into my poetry, words truly for my diary*", that is true. I do

not like talking about myself but I find I can do a little bit of it when I write poetry. It is not always about my emotions but it helps me to make sense of other things I see around me and helps me to document my experiences and the experiences around me that I find interesting. There is still a lot that I have not put out for the world to see and I carry a book around to note the things I observe or that occur to me. I find it easier using poetry to document rather than using a journal – we can call it 'ink therapy'.

A number of the tracks in the album appear to examine moral issues and hint at alternative steps just as a portion of the 'Whole' track seems preachy. In that sense, will you say your art entails promoting certain moral standards?

I do not like to impose my views on people. I believe everyone is entitled to their views and I do not pretend to know all things but I tell my truth. As a Christian, telling my truth sometimes entails me talking about my experience with God which is very real for me and is not about going to church or religion. Sometimes, what has been true for me may include things that have a moral hint, may be Christian or a generally moral perspective. I only put it in if it seems true to me. I am not always actively looking to infuse morals into my work but I definitely have some morals that I hold to be true and I say those things as I find them to be true. I do believe that one should have a message and whatever my message is, I share.

Is art a long-term project for you?

Yes. Like I said previously, I have been doing art since I was in the womb and I am not going to stop until I die, end to end, that is the plan. I do art in different forms and at different times. I hardly sang at all while I was much younger because I was never too confident of my singing abilities but I danced a lot before university and was president of the dance society at the university. I have not done that much dancing since graduating from the university as it requires being in a group but I still love to dance. If you had told me at the time I was dancing and participating in competitions that I would be doing poetry fully today, I would have told you I did not see it happening. So, I know my art takes different forms and I am very fluid as I go through life and I am very open to it as well so I am bringing my best to it and being real about it at every stage.

Do you see yourself practising as a lawyer and performing as an artist in the long-term?

Yes. I get the question a lot and my response is and has always been that when the time comes, I will know. When I get to that bridge, I will cross it. I definitely intend to be in a space where I can do both comfortably for quite a long time. In four years, I should be doing both legal practice and art but you can never say never.

What is your advice to lawyers who have a thing for artistic expressions but often lament about not having time?

Time is an issue but it is literally the only thing we all have in equal measure. If you have to give up sleep to create art, you probably should. There are things you are passionate about that are not supposed to be career paths or necessarily meant to be taken up as a full art form but I would say explore it. I think you can find time by for instance sitting at home to practice your art instead of going to a wedding to sit for two hours, waiting for small chops. In the alternative, you can go to the places where those things are done and be in that space - this is

something I like to do. You will much sooner find me in a theatre than at a wedding. I find that being saturated with any kind of art form you want to do helps your mind to be creative. You can also create time. I write in traffic; we all face traffic, so what do you do with those two or three hours? You can turn off the radio and do some art work. Time will never be enough but we find time for whatever we consider a priority. You have to be deliberate about it. One thing that also helps me is to have an accountability partner from among my friends who write and create time to write for fifteen or thirty minutes- and we keep each other in check. Be deliberate about doing the art. Really, what good is it if you have skills or talents that are just latent and you are not serving yourself or serving other people or feeling fulfilled? Sometimes, it is a good way to escape from legal practice. I would say - just go for it. Seek help, try to be accountable to your friends, family or whoever cares about you and put yourself in the kind of space where those forms of art are being expressed. Find time!

MORE ABOUT MS EVA JOHNSON:

Ms Eva Johnson is an actress, dancer and amongst other things, a captivating spoken word poet. She sees arts as a spectrum and has often been defined as a singer and rapper because those art forms often feature in her poetry. This spectrum is adeptly curated in her Afrobeats x Spoken Word single 'Infamous Lady' (https://www.youtube.com/watch?v=rvEzdR5MoqQ) & debut album 'From A Different Cloth' (https://song.link/fromadifferentclothmsevajohnson). Her relationship with the arts is renewed every day and you never know what genre or style to expect. Many have described her as refreshing but she simply describes herself as THE INK and THE VOICE.

Professionally trained as a lawyer, she has a first class degree from the University of Liverpool and recently completed her third law degree at the University of Cambridge. She is passionate about social reform, human rights, education, music, technology and performing arts. She believes strongly in the education of the common man/mind and strives to propagate this in her art.

You can explore the unique style of Ms Eva Johnson by listening to her album or catch her many sides at www.msevajohnson.com or @msevajohnson on social media (Instagram, Twitter, Facebook).

FINTECH AS A KEY TO FINANCIAL INCLUSION IN NIGERIA

By Zikoraifechukwu Ebenebe



FINTECH AS A KEY TO FINANCIAL INCLUSION IN NIGERIA

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OVERVIEW

On my way from an office meeting yesterday, I took an Uber and struck up a conversation with the driver. The conversation eventually veered into how revolutionary the app has been to the cab business, its profitability and challenges. In extoling the profitability, he narrated how he was robbed at about 7pm the previous day and dispossessed of about ₦25,000.00 (Twenty Five Thousand naira) being the proceeds of the cash payments he had received for some of the trips the previous day. I asked why he had such a large of amount of cash on him. His response; he had been so busy, he forgot the time banks closed and was hoping to deposit the monies into his account the following day.

This set me thinking on the limits of traditional banking such that despite the penetration level of mobile telephony in Nigeria[61], the country is yet to achieve a fraction of what a country like Kenya has achieved in reaching the underbanked and the unbanked. It also set me thinking; if a man in a city like Lagos faced these challenges, then what about the millions living in rural areas without an easy access to any of the traditional banks, but still have to deal in cash for their daily transactions?

Evidence across the globe has shown that a great deal of funds, especially in developing economies, are outside the traditional regulated Banking systems.[62] Thus, it is clear that spurring economic growth and wealth creation requires a clear and deliberately articulated financial inclusion policy which specifically targets the underbanked and the unbanked (especially in the rural areas).

Financial Inclusion, as a concept, basically addresses the ability of persons (particularly low income earners) to access financial products through Banks and/or other formal channels at an affordable cost. Examples of these financial products include savings, credit, insurance, and payments. Financial Service Providers who are keen to leverage on this will require a paradigm shift from profitability analysis based on the product/transactions to an investment in understanding the needs of the customers in the low income segment (unbanked & under banked) and developing products to meets those needs. In the same vein, regulators and policy makers also need to create an enabling environment to promote the demand and supply of key financial services to customers on the micro level.

NEED FOR FINANCIAL INCLUSION IN NIGERIA

Every business depends on winning customer loyalty by providing value - this is also critical when customers are from the base of the socioeconomic pyramid. The goal here is to provide value and drive profit by finding innovative ways of serving customers regardless of their position in the socioeconomic pyramid. Thus, financial inclusion harnesses the potential of bridging the gap between the rich and the poor, and this can be achieved when financial services are delivered by a range of service providers, mostly private sector, to be accessible to everyone who could use them.

According to Enhancing Financial Innovation and Access (EFInA), a Lagos based financial sector development organization, about 36.6 million Nigerian adults do not have access to formal financial services.[63] This staggering statistic has been attributed to the lack of financial literacy and awareness, unaffordability and institutional exclusion of the underbanked and unbanked. EFInA and other organisations are striving to improve this statistic by using the existing media infrastructure in the country to drive publicity and awareness. Furthermore, the National Financial Inclusion stakeholders seek to cut the financial

[61] Over 172 Million active mobile lines in a country with a population of almost 200 Million

[62] U. Kama and M. Adigun, *Financial Inclusion in Nigeria: Issues And Challenges,* p. 26. https://www.cbn.gov.ng/out/2014/rsd/occasional%20paper%20no.%2045%20issues%20and%20challenges.pdf

[63] EFInA Access to Financial Services in Nigeria 2018 survey, Slide 32. https://www.efina.org.ng/wp-content/uploads/2019/01/A2F-2018-Key-Findings-11_01_19.pdf

exclusion rate down to 20% by 2020 through collaborative efforts between the stakeholders in both the public and private sector.

The Central Bank of Nigeria (CBN), as a regulator, is not leaving any stone unturned in its quest to take financial services to the excluded Nigerians. The Apex Bank recently issued the Payment Service Bank guidelines,[64] hence creating a platform for an open banking model to thrive by accommodating third party providers such as Telcos, Retail Chains and Mobile Money Operator to increase financial services especially in the rural areas. The effect is that these third parties can now offer banking and mobile money services to customers with the exclusion of lending and insurance.

The Apex Bank has also issued several policy documents[65] aimed at facilitating the attainment of the 80% financial inclusion target by the year 2020. It is in furtherance of this that the CBN, Nigerian Interbank Settlement Service Plc (NIBSS), Chartered Institute of Bankers Nigeria and other operators developed the Shared Agent Network Expansion Facility to accelerate financial inclusion by increasing the financial access points with the aim of better serving the underbanked and unbanked. We also have the KYC framework, MSMEs micro pension framework (by the Pension Commission) amongst others.

In this current economic climate, being financially included is not a choice, it is a necessity. No individual can achieve their full economic potential without taking advantage of the various financial services offered by the financial service providers, from the young graduate who wants to run a start-up to the farmer who needs a little loan to grow an agro business.

IMPACT OF FINTECH ON FINANCIAL INCLUSION IN NIGERIA

Financial technology, also known as FinTech, is the new technology replacing the traditional financial methods in delivering financial services. With technology, the general public has more access to financial services. The utilization of smartphones in mobile banking and investing are good examples. FinTech achieves its wide-range access to the larger population owing to its use of Telecom roots which have a bigger client base than the traditional banks, which is no surprise as the mobile phone penetration rate[66] is at about 87% rate as against the financial inclusion rate which does not account for about 37% of the population.

It does not then come as a surprise that the three major telecommunication companies in Nigeria[67] have applied for an independent banking license to enable them launch their mobile money project in Nigeria in the year 2019. This development came as a result of continued agitations by mobile network operators to be allowed to participate in financial services, giving credence to their listing as one of the formidable promoters of payment services. What this means for financial inclusion is boundless. It complements traditional banking and provides an ever smoother platform for financial transactions, since every person with a mobile number can make financial remittances without necessarily owning bank accounts as obtainable with the bank USSD Codes. This does not only mark the dawn of a new era for financial inclusion in Nigeria, but will definitely come with tough challenges especially in relation to the policy and regulatory environment in which these systems will operate.

The traditional Banks have not been left out of the FinTech revolution either. First City Monument Bank (FCMB) had late last year signed a Memorandum of Understanding with the World Savings and Retail Banking Institute (WSBI) to roll out an integrated savings account – 'Kampe Account' – which offers financial services to 150,000 unbanked and under-banked farmers across five states of Nigeria[68] through an agency banking framework. In addition to the financial support, FCMB has also put in place capacity building programmes aimed at cultivating a savings culture and improved access to

[64] Exposure Draft on the Guidelines for Licensing and Regulation of Payment Service Banks, October 2018.
[65] These documents are National Financial Inclusion Strategy, the Financial Literacy Framework, the Consumer Protection Framework and the Consumer Education Framework.
[66] This is based on the number of active mobile users as provided by the Nigerian Communications Commission for January 2019, and the national population estimate for 2019.
[67] MTN Nigeria Communications Plc, Airtel Networks Limited, and Globacom Limited.
[68] Oyo, Ogun, Kaduna, Kano and Nasarawa states.

finance and other resources required to build successful businesses in the rural and agribusiness sectors.[69]

Another example of the success of FinTech in the area of financial inclusion can be seen with Diamond Bank (prior to its merger with Access Bank PLC), through its partnership with telecom giant, MTN, for its hybrid savings account, the Diamond Yellow account. As one of the first Nigerian banks to employ the USSD Codes, Diamond bank was able to let their customers open bank accounts and carry out financial transactions on their mobile phones. They also have the Diamond CLOSA and BETA account. This gained Diamond bank an enviable position as the bank controlling a larger share of the USSD transaction volume in Nigeria at a rate of 40%. Diamond bank's solutions to financial inclusion have solved two of its key problems; instilling trust in banking institutions, and bringing the bank closer to the people, and has made its over 10 million retail customers much happier.[70]

It is evident that the continued effort of the stakeholders, operators and various regulators has yielded some result, as seen in the 2018 survey of EFInA, which showed that 63.2% of Nigeria's adult population now have access to financial services and only 36.8% are presently financially excluded.[71] Although, still a staggering statistic, it however denotes an improvement from the previous rate of 41.6% in 2016.[72] In addition, the Acting Managing Director/CEO, NIBSS, Niyi Ajao, has stated that 45.3% of Point of sale (PoS) transactions occurred at supermarkets and similar retail outlets, 14.1% at fuel stations and 10.1% at fast foods and restaurant locations. Beside these, card payments on PoS terminals in Nigeria have also grown from a paltry 5,000 monthly volume in 2011 to 30 million in November 2018, all thanks to the success of the cashless Nigeria initiative.

CONCLUSION

As Nigeria continues to drive its financial inclusion with the target of achieving the 80% mark by 2020, there is need to commend the efforts of the CBN at providing a favourable regulatory atmosphere for FinTech companies to effectively reach out to the unbanked, however more initiatives are needed to achieve mass scale participation in the financial services industry. This is because, while the CBN Payment Service Banks Guidelines may have assisted with ensuring that the unbanked and underbanked do not miss out on financial services, financial inclusion goes beyond merely owning bank accounts and making withdrawals. It extends into a wider range of financial services like trading in foreign exchange, credit facilities and insurance—being banked is merely a tip of the iceberg. It is also important for the CBN to check its guidelines to ensure the low income segment targeted for financial inclusion do not end up becoming financially excluded owing to excess bank charges and frivolous fees used to cushion the effect of big ticket transactions embarked on by mostly the people at the top of the financial food chain.

Another area of note is on the impact of technology on financial inclusion, whilst greater awareness is created on access to the various products and services, commensurate effort should also be put into capacity building on how to navigate these innovations, which would on the face of it seem complex to the average rural dweller in Nigeria.

ZIKORAIFECHUKWU EBENEBE *is a multi-skilled legal professional in a top commercial law firm in Lagos, Nigeria where she advises indigenous and international businesses. She is an alumnus of Nnamdi Azikiwe University and the Nigerian Law School. With experience cutting across various areas of Law, she has played key roles in transactions in the fields of finance*

[69] "FCMB partners WSBI to boost financial inclusion in Nigeria" (Premium Times, 16 November, 2018) https://www.premiumtimesng.com/business/business-news/296030-fcmb-partners-wsbi-to-boost-financial-inclusion-in-nigeria.html

[70] Olushola Bello, "Silver Lining For Financial Inclusion In Nigeria" (Leadership, 28 November, 2018) https://leadership.ng/2018/11/27/silver-lining-for-financial-inclusion-in-nigeria/

[71] EFInA Access to Financial Services in Nigeria 2018 survey, Slide 32. https://www.efina.org.ng/wp-content/uploads/2019/01/A2F-2018-Key-Findings-11_01_19.pdf

[72] Central Bank of Nigeria, "Financial Inclusion Newsletter Volume 3 Issue 4," (January 2019) p.1. https://www.cbn.gov.ng/Out/2019/CCD/Financial%20Inclusion%20Newsletter_January%202019_Volume%203%20Issue%204.pdf

and investments, financial technology, capital markets and tax. As an avid reader, she enjoys writing on contemporary legal issues and teaches financial literacy & impact investing. She is a passionate advocate for the empowerment of the girl child. She currently lives in Lagos, Nigeria.

RISING INTEREST IN RENEWABLE ENERGY IN NIGERIA: THE PROSPECTS AND ISSUES ARISING

By Tobi Adebowale



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INTRODUCTION

Electric power is one of the most significant requirements for development in any nation and it is invariably needed to make anything happen. We may begin by borrowing from the biblical account of creation where the divinely inspired solution to the void, darkness and formlessness that characterised the earth was a pronouncement of light. Every other creation including the phenomenon of time then took shape after light came into existence. Nigeria is arguably in that state of minimal productivity that precedes the appearance of light. The nation has regrettably been in that state for a long time and the effect has been limited individual and national output.

Constant supply of electric power has a positive relationship with industrial growth. Nigeria as a developing country therefore needs to address the electricity supply shortfall that has slowed down its rate of industrialisation. A notable effect of inadequate power supply is the resort to expensive alternatives, which invariably drive up the cost of production for businesses and renders goods manufactured in Nigeria unable to compete, in terms of price, with products from other emerging markets. Many manufacturing concerns have been forced to relocate to neighbouring countries while concerns about access to electricity have dissuaded a number of prospective investors. In the informal sector, artisans and small enterprises unable to contend with rising costs of operation have closed shop and joined the unending train of citizens seeking greener pastures outside the shores of the country. Without a doubt, Nigeria's infamous designation as the poverty capital of the world is connected to the country's inability to provide affordable and accessible energy on a large scale to individuals and corporate entities who would have been able to create jobs and an alternative reality for the teeming population.

UNDERSTANDING THE SITUATION

Nigeria presently has a population of about 180 million people which is projected to rise to 400 million by 2050 at the present rate of 6 percent population growth per annum. A commonly proclaimed rule of thumb in the energy industry posits that every developing industrial nation requires at least one gigawatt, same as 1000 (one thousand) megawatts (MW) of electricity generation and consumption for every one million people comprising its population. The application of the stated rule of thumb to Nigeria implies the country presently requires about 180,000 MW of electricity and should be making efforts to increase its capacity to produce 400,000 MW by 2050.

The reality of Nigeria's electricity generation and distribution is far from ideal. Installed generation capacity is presently 12,522 MW[73] of which more than often enough, only 4000 MW is generated and delivered to end users. In comparison, Algeria with population of about 40 million, has about 11,000 MW generation; Egypt – about 90 million population generates 42,000 MW; United Kingdom with about 30 million population generates 80,000 MW; Germany with 30 million population generates 120,000 MW and South Africa with 60 million population generates 40,000 MW.

While the Federal Ministry of Works, Power and Housing (FMPWH) has in recent years boasted of improving sector performance resulting in average

[73] Power Africa in Nigeria | Fact Sheet | Power Africa | U.S. Agency for International Development. (2018). Retrieved from https://www.usaid.gov/powerafrica/nigeria

generation output of 7000MW, it admitted that power generation dropped to as low as 2,822MW on 13th August, 2018. The loss of over 4000 MW of proclaimed average output was blamed on gas constraints and frequency management occasioned by reduced load demand by electricity distribution companies.[74]

The phrase 'gas constraints' encompasses such realities as poorly designed gas infrastructure resulting in failure to supply gas to power generation plants as needed, withheld supplies over unpaid invoices and supply disruptions resulting from vandalisation of gas pipelines. Barring effective resolution of the social, political, commercial and regulatory issues necessitating these realities, it is sad to note that Nigeria's power sector will contend with gas constraints for a long time to come. Considering that thermal plants (power generation plants that rely on gas) constitute 10,142 MW (approximately 83.3 percent) of the 12,522 MW total generation capacity earlier cited, it is clear there is a need for short and long term interventions for power generation and supply that do not necessarily rely on gas. The solutions must as a matter of necessity similarly consider improving access to electricity for rural communities, presently at 10 percent while access to electricity in urban areas is 51 percent.

THE ARGUMENT FOR RENEWABLE ENERGY

Nigeria's energy mix has intriguingly always had some element of renewable energy as hydro-electricity, which is a form of renewable energy, contributes 2,380 MW (approximately 16.7 percent) of the total installed generation capacity. The three hydro power plants in Kainji, Jebba and Shiroro however presently function below capacity due to varying challenges including disrepair and frequency management.

Aside finding a way around the conundrum of gas constraints earlier mentioned, Nigeria just like other countries of the world, has other reasons to consider developing its renewable energy capacity. Renewable energy, as the name implies, is generated from natural processes that are continuously replenished, such sources including sunlight, geothermal heat, wind, tides, water, and various forms of biomass. By necessary implication, renewable energy cannot be exhausted unlike energy derived from gas, the supply of which is continually being depleted aside contributing to a rise in carbon footprints.

Nations across the world are paying more attention to renewable energy in response to the significant effects of climate change. Indeed, the world is undergoing a transformation in how it gets its power as more countries look to reduce carbon emissions just as the depletion of fossil fuels also means there might be inadequate feedstock for thermal plants at a point. While Nigeria has abundant gas reserves and supply of feedstock for thermal power generation is not immediately threatened, the country like other nations, has to think of energy security by investing in renewable energy to bridge supply gaps in the short term and guarantee supply of energy in the long term.

The European Union (EU) for instance has an impressive climate and renewable energy target —a 20 percent cut in greenhouse gas emissions, 20 percent of EU energy from renewable sources, and a 20 percent improvement in energy efficiency— to be achieved by 2020.[75] In similar fashion, the United States of America's Department of Energy's National Renewable Energy Laboratory (NREL) in its Renewable Electricity Futures Study found that the U.S. could meet as much as 80 percent of its

[74] Electricity generation drops to 2,684MW. (2018). Retrieved from https://punchng.com/power-generation-drops-to-2684mw/

[75] Renewable energy directive - Energy - European Commission. (2018). Retrieved from https://ec.europa.eu/energy/en/topics/renewable-energy/renewable-energy-directive

electricity needs with renewable energy by 2050, relying on currently available technologies, including wind turbines, solar photovoltaics, concentrating solar power, biopower, geothermal, and hydropower.[76]

A number of other countries are making great progress in this regard. Sweden is aiming for 100 percent reliance on renewable energy while Costa Rica has attained 99 percent supplies from renewable energy. Germany leads the world in solar PV capacity and has been able to meet as much of 78 percent of a daily electricity demand from renewables. In Africa, Morocco and Kenya are leading the charge. The largest concentrated solar plant on earth recently opened its first phase in Morocco in 2016 and the country is looking to achieve 50 percent reliance on renewable energy in three years' time. Kenya has an accelerated green energy program and attained 51 percent geothermal contribution to its national energy mix in 2015.

Nigeria has set renewable targets that will be discussed subsequently and indeed has abundant supply of renewable energy sources such as sunlight and wind in the northern region while many cities like Lagos, Port-Harcourt, Kano and Onitsha can provide sufficient supply of waste material needed for power generation using biomass technology. Investing in renewable energy therefore has the implicit benefit of achieving a cleaner society.

RENEWABLE ENERGY POLICY DEVELOPMENT IN NIGERIA

Nigeria's main source of renewable energy has always been hydro power plants and while there has been increased promotion of solar electricity, the level of adoption and the development of the market remain minimal. There have been a number of solar street lighting projects while the distribution of standalone solutions to homes and office have also been on the rise but these do not necessarily create a significant reflection in Nigeria's energy mix. A number of international development finance institutions such as the United States Agency for International Development (USAID), the UK Department for International Development (DFID) and GIZ have however entered into partnership with the Nigerian government at various levels to promote the adoption and growth of renewable energy in Nigeria.

The United State Government through the USAID Power Africa Programme supports the development of the energy sector through credit enhancement, grants, technical assistance, and investment promotion efforts. The programme has provided political risk insurance for project loans and provided grants to entrepreneurs for innovative, off-grid energy projects in Nigeria.

DFID, for its part, has been working with the federal government to implement the Solar Nigeria Programme which provides solar power to public health and education facilities while similarly availing investors in the local solar market of consumer credit facilities, grants and technical assistance. One of the outstanding successes of the programme was the development of a 5MW solar power project in Lagos State to electrify 175 secondary schools and 11 primary healthcare centres. A similar success has been recorded in Kaduna state where the DFID and the state government launched the Northern Social Project to electrify 34 primary health centres with solar power in 2017.

Contrary to what many may think, Nigeria has always had policies on renewable energy. The Electric Power Sector Reform Act (EPSRA) 2005, which is the primal legislation in the electricity sector, provides for the creation of the Rural Electrification

[76] Renewable Energy Can Provide 80 Percent of U.S. Electricity by 2050. (2018). Retrieved from https://www.ucsusa.org/clean_energy/smart-energy-solutions/increase-renewables/renewable-energy-80-percent-us-electricity.html#.W5VPluhKjIU

Agency (REA)[77] and mandates the minister to prepare reports in collaboration with REA on efforts to promote electricity generation through development of mini and isolated grids as well as renewable energy generation.

The REA has taken great strides in the advancement of renewable energy during which time it has been implementing two flagship projects: the Energizing Economies Initiative (EEI) and the Energizing Education Programme (EEP). The REA has been deploying solar-powered systems to selected economic clusters including the Sabon Gari Market, Kano; the Ariaria Market in Aba, Abia State; Somolu Printing Community and Sura Shopping Complex in Lagos in the first phase of the implementation of the EEI. The aim is to use renewable energy to meet electricity supply requirements in the economic clusters, trusting that power reliability can influence economic growth.[78]

The EEP on the other hand is aimed at providing power supply to thirty-seven (37) federal universities and seven (7) university teaching hospitals across the country, with both projects focusing on adopting renewable energy mini grid technology. The first phase is currently being implemented with a view to providing power to 9 institutions, benefiting over 300,000 students and staff. Seven (7) of the Nine (9) planned power plants (10.5MW out of a total of 26.56MW) will be powered by solar energy.

Over time, successive governments have developed sundry policies for the power sector which also take renewable energy into consideration. One of such is the National Electric Power Policy (NEPP) 2001 which set a target of 10 percent renewable energy in the energy mix by 2020. Another is the Nigerian National Energy Policy 2003 which acknowledges the importance of different renewable energy sources and how they can effectively be utilised but did not set concrete targets. The Renewable Energy Master Plan (REMP) 2005 also placed emphasis on solar energy and advocates for its integration into the energy mix to ensure 23 percent of nationwide electricity generation from renewable energy by 2025 and 36 percent by 2030.

Under the present dispensation, the Minister of Power, Works and Housing, Mr Babatunde Fashola SAN in 2016 presented four policy documents with provisions on renewable energy to the 2nd National Council on Power (NACOP) for validation and adoption by the Council. The policies unveiled by the minister were the National Energy Efficiency Action Plan (NEEAP); National Renewable Energy Action Plan (NREAP); Sustainable Energy for All-Action Agenda (SE4ALL-AA); and the Nigerian Power Sector Investment, Opportunities and Guidelines.

The above-mentioned energy policy documents were developed with inputs from representatives of 36 states and the FCT as well as the Private Sector, NGOs, Civil Society, Academia and Development Partners in Nigeria. They were also formulated in furtherance of the National Renewable Energy & Energy Efficiency Policy (NREEEP) earlier approved in May 2015 and which expresses Nigeria's intention of attaining 30,000MW of power by the year 2030 with at least 30 percent of renewable energy in the electricity mix (Electricity Vision 30:30:30).

The NREEEP was formulated to consolidate all pre-existing policies on renewable energy with the vision of integrating renewable energy into the phased achievement of stable, sustainable and uninterrupted power supply. The policy equally aims at attracting foreign investment by providing such incentives as free custom duties for two (2) years on the importation of equipment and materials used in renewables and energy efficiency projects as well as access to soft loans and special low-interest loans from the Renewable Electricity Fund for renewable

[77] Section 88, Electric Power Sector Reform Act (EPSRA) 2005

[78] http://rea.gov.ng/energizing-economies/

energy supply and energy efficiency projects. In addition, NREEEP proposes a Power Production Tax Credit (PPTC), which when implemented, will enable individuals who generate electricity from renewable energy obtain tax credits.

Manufacturers of renewable energy and energy efficient equipment and their accessories are further guaranteed such tax incentives as five-year tax holiday from date of commencement of manufacturing, and a five-year tax holiday on dividend incomes from investments in domestic renewable energy sources.

The NREEEP also obliges the government to design a fitting economic instrument that allows investors involved in the generation of renewable energy obtain preferred pricing and rates when they sell. The government is similarly tasked with assisting manufacturers of energy efficient products and investors in renewables projects secure land allocations for their projects.

Special mention needs now be made of one of the four policy documents unveiled by the Minister in charge of the FMPWH in 2016 which is the National Renewable Energy Action Plan (NREAP). The NREAP articulates measures and plans to achieve the lofty renewable targets contained in the NREEEP and allied policy documents. The NREAP also presents the expected development and expansion of renewable energy in Nigeria in order to achieve the national target under ECOWAS Renewable Energy Policy (EREP), and by implication Nigeria's contribution to the overall ECOWAS target of 23 percent and 31 percent renewable energy in 2020 and 2030. It similarly integrates government desire for the promotion of renewable energy with its policy objectives on energy security, climate protection, competitiveness, promotion of technology and innovation, as well as of securing and providing electricity access to the populace of Nigeria.

In respect of funding and recouping investment in renewable energy, the NREAP hints at efforts by the Nigerian Electricity Regulatory Commission (NERC) to establish a system of feed-in tariffs as well as provide other incentives. In addition, the NREAP states government's intention to create financial products that provide individuals with opportunities to invest in the infrastructure needed to support the growing renewable energy market in Nigeria. An example of government effort in this regard is the issuance of green bonds by the Federal Ministry of Environment in the first quarter of 2018 for the financing of the Energizing Education Project being supervised by the Rural Electrification Agency, and the Rural Electrification Municipal Project.[79]

In addition to the foregoing, it is worthy of note that the Nigerian Power Sector Investment, Opportunities and Guidelines reflects government's recognition of the potential for large scale investment in renewable energy. The popular 3,050MW Mambilla hydroelectric power project in Taraba State and the 10MW Vergnet SA wind power farm project located in Katsina State are therefore listed as examples of projects being implemented in furtherance of the renewable energy policy of the present government. The government in 2016 through the Nigerian Bulk Electricity Trader (NBET) also signed the initial set of Power Purchase Agreements (PPAs) with 14 solar investors. The PPAs with 14 developers valued at $2.5 billion was for the purchase 1,125MW of solar energy to be wheeled through the national grid and dispatched to end users through the existing distribution companies.

While the signing of the PPAs mentioned above signalled a watershed moment in the electricity industry, the excitement appears to have been short-lived due to the near absence of further progress in project execution occasioned by concerns of the Federal Ministry of Finance with the use of guarantees as the primary means of ensuring ongoing

[79] Nigeria to issue N150bn green bonds in 2018 - Vanguard News. Retrieved from https://www.vanguardngr.com/2018/03/nigeria-issue-n150bn-green-bonds-2018/

contractual payments. While it is desirable to have the Federal Government to sign Put Call Option Agreements and provide Partial Risk Guarantees (PRGs) for the power projects, it raises the argument on fiscal sustainability on the part of the government. There is therefore an urgent need to address the tariff issues and collection challenges faced by electricity distribution companies that in turn affects the bankability of renewable energy projects so far discussed and the liquidity of the energy supply industry as a whole.

Notwithstanding the challenges faced with mobilizing funding for the development of large-scale renewable energy projects, there have been some noticeable improvements in the market for small-scale renewable energy solutions. Since its launch in 2016, the MTN Lumos Smart Solar System, a collaboration between telecommunication giants, MTN, and solar experts, Lumos, has sold over 65,000 solar systems. A number of other private ventures have also designed and deployed hybrid solar energy systems to banks, schools, communities and other users across various cities in Nigeria in the last few years.

ADDRESSING THE FINANCING CHALLENGE

There has been capital in-flow towards some renewable energy projects especially standalone solutions with the prospects of quick turnaround for project sponsors. In December 2017, the USADF and All On announced the creation of a N915 million ($3m) partnership to expand access to underserved and unserved markets in Nigeria. The partnership will over a 3-year period provide funding for up to 30 Nigerian small and medium enterprises that improve energy access through off-grid energy solutions spanning solar, wind, hydro, biomass and gas technologies.[80] In similar vein, MTN Lumos is in the process of raising additional capital up to the tune of $200 million while Rensource, a renewable energy provider, has been able to raise $4.15 million over the course of the first three quarters in 2018.

The investments highlighted above reflect a certain confidence in the off-grid distributed energy model. The model is unaffected by such challenges as electricity theft and metering inadequacies which are major factors that affect tariff collection and ultimately the liquidity of the on-grid electricity supply system. To make significant progress in achieving its aims under the NREEEP, the NREAP and other similar policies however, the government must pay attention to creating viable systems that guarantee returns to investors in large-scale renewable energy projects.

To encourage renewable energy producers, regulators across the world have often introduced a Feed-in-Tariff (FIT) which refers to a minimum guaranteed price per unit of produced electricity paid to the renewable power producer or as a premium in addition to general market electricity prices.[81] FITs allow renewable energy producers to sell the power generated to the grid at a price higher than that obtainable for utilities generating power using other sources.

The NERC has taken a lead in the above regard with the introduction of the Renewable Energy Feed-In-Tariffs (REFIT) Regulation in December 2015 with the aim of stimulating the generation of a minimum of 2,000MW of electricity from renewable energy by the year 2020. The power generated is accorded priority access to the grid at a guaranteed price

[80] Tanton, J. (2018). The U.S. African Development Foundation and All On Announce Partnership for Off Grid Energy Investments in Nigeria. Retrieved from https://www.usadf.gov/pressreleases/2017/12/7/the-us-african-development-foundation-and-all-on-announce-partnership-for-off-grid-energy-investments-in-nigeria

[81] Prospects of Solar Power Generation in Diversifying Nigeria's Energy Mix | Detail Commercial Solicitors. (2018). Retrieved from http://www.detailsolicitors.com/index.php?section=news&cmd=details&newsid=69&printview=1

through mandatory renewable power purchase obligations on Discos and NBET. The Regulation is however limited to projects with a capacity between 1-30MW, and solar projects with a capacity of 5MW and below.

Power Purchase Agreements (PPAs) under the REFIT Regulation have a 20-year term and mandate the off-taker to make payments for energy delivered only. The FITs may however be reviewed every three years.

The REFIT Regulation excludes off-grid renewable projects from its purview but mandates the NERC and the REA develop technical and operational modalities for off-grid projects. It is arguable that the flagship projects of the REA – Energizing Economies Initiative (EEI) and the Energizing Education Programme (EEP) – fall within the scope of the modalities being developed by the REA.

Further to the regulatory interventions of the NERC, it behoves the federal and state governments to take conscious steps to further develop a market for renewable energy in Nigeria. It will be necessary to see the revenue model being put in place by the REA while implementing its solar electrification projects in economic clusters and educational institutions. While the benefiting institutions and markets may have been underserved by on-grid power supply from electricity distribution companies, the intervention of the REA should come with sustainability in focus. It will be cheering to see that appropriate metering facilities and adequate collection strategies are being put in place for power supplied under the REA's programmes. The sums realized from such investments can be reinvested in other areas and the success of the programmes can provide an incentive for other investors.

State governments particularly need to explore formulating and implementing power policies that leverage on understanding of local dynamics and market fundamentals for investment in renewable energy. The establishment of state rural electrification agencies may also be considered in line with constitutional provisions that allow for establishment of appropriate bodies to promote and manage the generation, transmission and distribution of off-grid electricity.[82] Such agencies can in consultation with the REA and the NERC identify communities that may be better served with rural renewable energy mini-grids and stand-alone home solutions. Appropriate commercial arrangements can thereafter be made with private sector investors.

Lastly, the federal government needs to be consistent in its policy formulation and implementation. While the government declares its intention to promote renewable energy, an agency of government, the Nigeria Customs Service earlier in the year imposed a 10 percent duty on all solar panels, modules and components (including bypass diodes, inverters etc.) being imported into Nigeria. The action deviates from the 0 percent import duty rate as provided under the Nigerian Customs CET Code 541.4010.00 and creates an additional burden on importers of deep cycle batteries which similarly attracts a 20 percent duty. The Customs' action will invariably deter the importation of solar components and similarly lead to a rise in cost of executing solar energy projects especially standalone solar solutions that have become a commonly deployed form of renewable energy across the country. The federal government will need to review this situation to ensure prospective investors in the local solar market, valued at N18 billion, are not deterred.

In addition to the foregoing, one method of financing renewable energy that is gradually receiving attention is crowdfunding and while there is slow adoption in Nigeria due to financial regulatory constraints, a number of local players have benefitted from crowd-sourced funds. SOSAI Renewable Energies Company Ltd., a Nigerian company has for instance benefited from a collaboration with Bettervest GBMH, a German company which

[82] Paragraph 14 of the Concurrent List of the 1999 Constitution of the Federal Republic of Nigeria, 1999

helped to raise about 450,000 Euros from over 800 investors around the world. It is therefore not inconceivable that as regulatory bodies in Nigeria's financial sector review policy positions on crowdfunding, there may be companies exploring this innovative method of raising funds for renewable energy projects.

CONCLUSION

Renewable energy holds the promise of helping to increase electricity access and providing energy security in Nigeria. Advancements in off-grid and mini-grid technologies have helped to reduce costs and stimulate investment in renewable energy across Africa. Particular mention must be made of efforts of the Rural Electrification Agency (REA) in deploying off-grid and mini-grid technologies in economic clusters and educational institutions in Nigeria but there is more ground to cover. The Nigerian government must now take on the responsibility of implementing the various renewable energy policies formulated over time in a synchronized manner, paying special attention to the development of the renewable energy market while looking to enhance the place of renewable energy in the energy mix.

TOBI ADEBOWALE *is a resourceful and driven lawyer working with the Energy & Natural Resources practice group of top-tier Nigerian law firm, Banwo & Ighodalo. In 2015, he co-founded the legal media and technology platform, Lawyard, which has since grown to become one of Nigeria's most popular legal information websites. Tobi plays an active role in the legal community in Nigeria, some of which include working with the Nigerian Bar Association (NBA) Section on Business Law and the Presidential Enabling Business Environment Council (PEBEC) on amendment of laws governing Nigeria's business climate. He is also a member of the Continuing Legal Education & Mentorship committee of NBA Lagos Branch. In his spare time, Tobi volunteers for social impact events, and writes essays and poetry on law, politics and social relations.*



If Not Law, I would Have Chosen the Catholic Priesthood

INTERVIEW WITH PAUL ORDAM

SCAD 2018 WINNER

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"If Not Law, I Would Have Chosen the Catholic Priesthood" – Paul Ordam, SCAD 2018 Winner

Msughter Paul Michael Ordam was the star of the show at the grand finale of the 2018 Simmons Cooper Advocacy Development (SCAD) Compete, a bi-annual competition organised by Simmons Cooper Partners (SCP). LAWYARD recently engaged Paul Ordam in a conversation about his experience winning the highly coveted top spot at the advocacy competition and what impact the victory has had on him.

Please tell us a bit about yourself (secondary school, name of university, level and where your family resides).

I am Msughter Paul Michael Ordam, well known as Paul Ordam. I was born to Mr/Mrs. Michael Aondona Ordam (KSM/LSM) in the family of Zaki Ordam Aga Abunku of Mbaboor, Mbatierev in Gboko Local Government Area of Benue State. I am the first of eight children. I had my Secondary School education at the prestigious Government College, Makurdi where I graduated in 2007. In 2009, I enrolled into the Diploma in Law programme at the Benue State University, Makurdi and completed in 2011. I was also admitted into B.A. English programme which I later abandoned in the final year, when I gained admission to study law. I am currently in my last semester of the LL.B. programme at the Benue State University, Makurdi.

Please give us a little background into how you decided to study law as a course.

Sincerely, I do not know why I opted for law. But the only thing I would have chosen instead of Law is the Catholic Priesthood.

Not every law student is interested in advocacy; how did you discover your interest in mooting?

For me, advocacy is the pinnacle of the legal profession, and without advocacy, the legal profession will be incomplete. The Solicitor side of the profession is equally important, interesting and satisfying, but advocacy is more fulfilling. And like the Vice President, His Excellency Prof. Yemi Osinbajo said at the SCAD event; "advocacy is the very firmament of democracy."

What are the things you consider your biggest assets in advocacy?

My biggest assets in advocacy are eloquence, audacity and a holistic comprehension. In writing, you can write whatever you would like to write, and one may have the patience to find what he or she is looking for; but in advocacy, it is a different thing altogether. Your first task is to capture your target audience, otherwise, whatever you are saying will make no sense to them, and how do you capture your target audience, you have to be confident, eloquent, audacious and of course interesting. You must be as concise as possible without equivocation; so that your target audience understands exactly what you are talking about. Above all, you must know your target audience, because concentrating on a wrong audience is suicidal. For instance, your target audience in court is the Judge or the Justices, if you focus attention on the members of the courtroom, you are simply shooting yourself in the leg. In competitions, your target audience is the panel of Judges, and not the crowd, this is key to advocacy and should not be taken lightly.

What other competitions did you participate in, prior to SCAD and how will you describe the

experience at each of those competitions compared to SCAD?

I have participated in several moot court competitions within my faculty and with law faculties of other universities, but SCAD was the most prominent. SCAD was indeed very thorough, highly complex and competitive. SCAD is not just any competition, it is one competition anyone would want to be a part of. The decision to participate in SCAD is one I will always be glad I took.

Please tell us your favourite courses as an undergraduate and why you consider them your favourites.

I have always had a very keen interest in constitutional law and constitutionalism, which is a complex web of ideas, attitudes and patterns that contain institutionalised mechanisms for the protection of lives of a people and their properties. Maybe because I see law as a tool of social engineering and the constitution being the embodiment of this contention, I may say constitutional law is one of them. Law of Contract is another course, because of the involvement of my favourite lecturer, Prof. Akaa Imbwaseh, a fecund and highly intelligent professor of commercial law. He is one lecturer that appreciates ingenuity and critical thinking capable of producing good reasoning. In our 200 Level, he gave us a test that everyone who scored high had arguments tailored in the same line, but my argument was completely different from the others, in fact diametrically opposed to my classmates, and his remark was "good argument" and scored me high like the others. That alone grew my interest in the course.

How have you been able to combine your academics and participating at advocacy competitions?

It has not been easy; but in the long run, participation in competitions and mooting generally enhances one's academic performance greatly, and as such I have had no problems at all with my academics as a result of advocacy or mooting, be it competitions or otherwise. I can even say it has been a plus to my academics as it enhances easy comprehension of complex issues, even where the issues are herculean and tasking.

Please describe your experience preparing for SCAD; did you think you had a chance to win?

Preparing for SCAD was not easy. More so, that I knew of the competition quite late. The dispute scenario was very complex, highly demanding and even entirely new and strange. As to whether I thought I had a chance of winning, no one goes into a competition as a winner. The difference is what you make of your going into the competition. That is whether you are going in to participate or to compete, and I was going in to compete and not just participate; and if your decision is to compete, you become your own assessor and see all your efforts as falling far below standard, and the need for improvement keeps recurring in your mind. This was the situation I found myself right from the brief writing stage, I was always seeing my work as not good enough; thinking others may present a better argument than what I had, so I was always seeking to advance my contentions until I finally submitted. When I was shortlisted among the finalists and right until I took the stage, I was always seeing myself as not doing enough and the urge to do better kept burning in me. After my presentation, I told myself, this is my best at the moment, if I win fine, and if I don't win, fine. So I had no tension at all.

What was your favourite SCAD moment?

Sincerely, the moment I was announced the winner, and given an overwhelming standing ovation. I actually became emotional at that point and I don't know in what state I was at that moment, whether elated, in ecstasy or simply happy. I cannot explain but that was a special moment for me.

What impact has SCAD had on your academic sojourn at the university, your interest in advocacy and on life generally?

SCAD has really widened my horizon and expanded my scope of thinking. I used to be thorough and meticulous, but SCAD has thought me to redouble my efforts and become even more thorough and more meticulous. The society is interested in solutions and not excuses; and is not ready for what football pundits call "beautiful nonsense". No matter how one tries, once your efforts provide no solutions and attract no results, as far as our society is concerned, your best is just beautiful nonsense. SCAD has taught me that what your client, likewise the society, expects from you is solutions to the problem brought before you no matter how complex it may seem, your excuses will make no sense to your client. There were many hiccups, stumbling blocks and bottlenecks that almost hindered my participation in the competition, even at the brief writing stage, but I was unrelenting, and God was gracious enough to reward my efforts with resounding success and I give all glory to Him.

Have you been offered any career opportunities by reason of winning SCAD?

There has been contacts but no direct career opportunities yet. Maybe because I am still in school, I should have been done with LL.B now but for the ASUU strike. I am to intern with SimmonsCooper Partners but that may be in June after I am done with my final exams in the University, while waiting for law school.

Where do you see yourself in the next 5 years?

Well, at the moment my major concern is to get done with LL.B, go to law school, and let God complete the work He has begun in me.



INTELLECTUAL PROPERTY RIGHT INFRINGEMENT IN NIGERIA: HOW TO STOP ONLINE PIRACY

By Alao Adavize

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Adavize Alao

INTRODUCTION

Copyright infringement, which can simply be referred to as piracy, is the unauthorized use of creative works, which results in infringing certain exclusive rights allotted to the Intellectual property (IP) rights holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works.

Online piracy in Nigeria has gained momentum with a lot of websites engaging in file sharing for users to download.[83] The Nigerian piracy scene does not frequently feature large file uploads of above 1GB with most users being unable to afford large amounts of data bundles required for such downloads. The piracy scene features web uploads of files ranging from 2MB - 600MB. The most commonly pirated files are music files, movies and TV series, with a plethora of websites dedicated to providing two or three of the above-mentioned file services.

According to the Disruptive Creative Economy Meeting[84] (DCEM), digital music consumption in Nigeria overtook physical consumption circa 2013 and market revenues from physical sales, which have been declining steadily year on year, are now dropping to well below $10million. Due to the mass acceptance of social media and its ability to simultaneously reach a broader audience in multiple jurisdictions, it is not uncommon to share copyrighted content on these internet intermediaries.[85] The ease of acceptance and speed at which social media works has made the sharing of illegitimate copyrighted content swift. To tame this scourge, the Nigerian Copyright Commission has made several attempts[86] at fighting piracy but its efforts are yet to be noticed on the internet space.

A FAILURE TO STOP ONLINE PIRACY

The inaction of several regulatory bodies and private enforcement efforts have also led to the proliferation of copyrighted content. As a result, this content is therefore accessed by users who should have paid for it. The absence of a combative measure to fight piracy has led several persons to believe that all IP content should be free and made available to all Nigerians.

The Nigerian entertainment & media industry according to PWC[87] is currently valued at the sum of $3.7 Billion; while the report focused on the total value of the industry, it does not give a direction on the blockage of these illegal activities. It is estimated that the Nigerian creative sector loses a large sum of money to pirate groups and the emerging group of online content providers simply referred to as blogs (inclusive of dedicated music blogs and download link sharing websites).

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[83] 'Nigeria Loses N918trillion To Piracy Annually | Sahara Reporters' (*Sahara Reporters*, 2019) <http://saharareporters.com/2019/04/27/nigeria-loses-n918trillion-piracy-annually> accessed 4 July 2019.

[84] *Nigerian Recorded Music Industry Report* (1st edn, Disruptive Creative Economy Meeting (2019) <https://dcemafrica.com/download/551/?uid=4f6dec2c71> accessed 4 July 2019.

[85] Internet intermediary refers to a company that facilitates the use of the Internet. Such companies include internet service providers (ISPs), search engines and social media platforms.

[86] Newton Media, 'Nigeria Reveals Plans To Tackle Online And Digital Piracy' (*World IP Review*, 2019) <https://www.worldipreview.com/news/nigerian-government-plans-clampdown-on-online-piracy> accessed 4 July 2019.

[87] *Entertainment And Media Outlook: 2018 – 2022 An African Perspective* (PWC 2018) <https://www.pwc.co.za/en/assets/pdf/entertainment-and-media-outlook-2018-2022.pdf> accessed 3 July 2019.

The piracy scene in Nigeria can best be described as an unfettered freeway with little or no rules, as a lot of the platform owners do not believe they are breaching the law. They feel it is a privilege to provide Nigerians with premium quality content to gain revenues from ad serving platforms. Such platforms that upload illegal content have, therefore taken advantage of the lack of knowledge of most consumers and the failure of the relevant stakeholders to stop illegal downloads.

A simple search on Google goes on to show that the internet intermediary famed for blocking content use allowed under the fair usage[88] principle[89] has not done much to combat the spread of illegal content over the Nigerian internet space. Web platforms such as netnaija, fztvseries amongst other websites sharing songs and albums belonging to artists continue to operate unhindered. Internet intermediaries such as Google and Bing account for 23% & 21% respectively of visitors to netnaija and fztvseries[90].

While Google, Bing and other search engines are not under compulsion to stop access to these platforms, they may be held passively liable under the provisions of Section 14(1)g of the Copyright Act[91] for allowing unrestricted access and acting as a conduit to copyrighted content without taking measures to stop these downloads.

A failure to stop the spread of copyrighted content would continue to lead to the loss of more revenue for IP rights holders and owners. This revenue which ought to be generated to maintain the growing Nigeria entertainment and media industry would, therefore, be lost to persons seeking to profit from adverts or other forms of revenue., which create a lengthy value gap[92] between the service providers and product users. In a time of evolving markets and new businesses. It is essential that the rate of illegal file sharing be reduced as this would improve the protection of IP rights.

CONCLUSION

In tackling the scourge of online piracy which is not protective of the rights of IP owners and holders, emphasis should be placed on legal alternatives and educating internet users of the rationale that copyrighted content comes with a price. In policing the internet, the Internet Service Providers should not be mandated to become the police of the internet as doing so would be granting the legitimisation of private enforcement. A joint effort between regulatory bodies, copyright holders/owners, right societies, internet intermediaries and telecommunications service providers would be an effective way of reducing online piracy in Nigeria.

In dealing with persons that seek to gain from IP theft, it is essential for regulatory and rights societies to pursue means of addressing the root causes of IP infringement. The authorities and rights owners may also involve the use of the following:

a. End-user blocking and filtering (parental control) with consent, which can be regarded as a very effective mode of dealing with IP infringements.

b. Educate users on legal and illegal alternatives. This is also being propagated by Google in

[88] Fair use is an exception to an IP holders exclusive rights. It is an equitable rule of reason, which permits the Court to avoid a rigid application of a holder's exclusive rights when on occasion, it would undermine the purpose of the Copyright Act

[89] Mark Butler, 'The Trouble With Youtube' (*wow247*, 2016) <https://www.wow247.co.uk/2016/02/04/fine-brothers-i-hate-everything-copyright-strikes-the-trouble-with-youtube/> accessed 4 July 2019.

[90] Thenetnaija.com Competitive Analysis, Marketing Mix and Traffic <https://www.alexa.com/siteinfo/thenetnaija.com/> accessed 4 July 2019

[91] Chapter C28, Laws of the Federation of Nigeria 2004

[92] A value gap is the mismatch between the value that these intermediaries extract from music, and the value that is returned to rightsholders or in this case pirates

some parts of the world and can be utilised as an alternative to blocking injunctions.[93] [94]

c. Reduce prices or utilise subscription-based services such as Boomplay, IrokoTV for premium content to convert non-paying customers to regular paying customers.

d. Encourage the use of Freemium[95] services which provide basic content for free and premium content for a price.

e. The use of Digital rights management (DRM) technologies have been specifically developed to prevent online IPR infringement[96]. This is the generic term for a set of technologies for the identification and protection of intellectual property in digital form. It should be noted that for every trademark infringement there is a DRM tool addressing the infringement.[97]

f. Voluntary or legal 'geo-blocking' e.g. which is the blockading of certain IP Addresses which spread copyrighted content.

It is believed that once these measures are put in place, it will go a long way towards curbing online privacy and fully unlock the economic benefits of the creative sector.

ADAVIZE ALAO *lived a full and impactful life as a young lawyer. Until his demise, he was a corporate governance and data privacy professional. In 2015, Adavize co-founded Nigeria's premium legal media and technology platform, Lawyard, and served as its Chief Operations Officer for four years. While pioneering various initiatives at Lawyard, he also played an active role in providing enlightenment to members of the legal profession and the general society on topical legal matters such as human rights, investments and the relationship between technology and the law.*

Beyond his role at Lawyard, Adavize worked at various times in Nigerian top law firms including Duale, Ovia & Alex-Adedipe; Tayo Oyetibo LLP; Olayiwola Faboro & Co; and the Lagos State Ministry of Justice. Adavize regularly spoke at seminars, conferences and other knowledge sharing sessions. He is currently on the 2019 ESQ Nigerian Legal Awards shortlist for the Nigerian Rising Star: Top 40 Under 40 Award.

[93] Accordingly, Google in the EU and USA has launched a number of initiatives to present legitimate alternatives to people as part of search results, including providing advertisements on queries for movies and music to link people to legitimate means of purchasing content or finding movie showtimes in local theaters Google Blog - How Google Fights Piracy 2018 Report – <https://www.blog.google/documents/25/GO806_Google_FightsPiracy_eReader_final.pdf> accessed 11th November 2018

[94] Share With Care: Danish ISP Blocks Point 'Pirates' to Legal Alternatives <https://torrentfreak.com/share-with-care-danish-isp-blocks-point-pirates-to-legal-alternatives-181009/> accessed 11th November 2018

[95] A combination of the words "free" and "premium," freemium is a type of business model that involves offering customers both complementary and extra-cost services.

[96] Foot Anstey LLP, "Online infringement of IPRs" <http://www.footanstey.com/images/stories/publications/Final_PLC_Online_Infringement_Article_pdf_-_11_08_1515732764_1.pdf > Last accessed 11th November 2018.

[97] The technology enables IPR holders to control access to their protected materials by removing the consumer's control over their use of the file, and ensuring that only those with valid permission can use it, resulting in IPR holders ensuring that they receive payment for their investment. However, DRM has its limitations. Therefore, IPR holders should be advised to select the most suitable form of DRM for their IPR in order to achieve the protection required without violating valid users' rights to access the content. Examples include encryption and online monitoring.

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