Introduction

On the 5th of February 2021, the Central Bank of Nigeria (**CBN**) issued a circular[1] to Nigerian banks and financial institutions, which put a hard stop on the dealing, trading and transacting in cryptocurrencies (also referred to in the rest of this article as 'Cryptos'). Furthermore, all financial institutions were directed to identify and close the accounts of all persons and entities that have been used in cryptocurrency transactions ('the **CBN's Circular**'). On the 7th of February 2021, the CBN issued a press release[2] to explain its policy pronouncement on the restriction of cryptocurrencies citing the risk of loss of investments, money laundering, terrorism financing, illicit financial flows, and criminal activities as reasons for the restriction. Since the announcement by the CBN, the questions of how this restriction pairs with the earlier decision of the Securities and Exchange Commission (**SEC**) to regulate cryptocurrencies as securities, and what the CBN's restriction means for the future of cryptocurrencies in Nigeria, have generated a lot of discourse.[3]

This article examines what cryptocurrencies are, what the legal and regulatory framework for cryptocurrency currently is in Nigeria, in comparison to other jurisdictions, and then we shall conclude by making recommendations as to what a balanced regulatory approach to cryptocurrencies would look like in our current financial and regulatory environment.

[1] CBN (2021, February 5) BSD/DIR/PUB/LAB/014/001: Letter to all Deposit Money Banks, Non-Bank Financial Institutions and Other Financial Institutions. https://www.cbn.gov.ng/Out/2021/CCD/Letter%20on%20Crypto.pdf

[2] CBN (2021, February 7). Response to Regulatory Directive on Cryptocurrencies.

[3] SEC (2020, September 14) Statement On Digital Assets And Their Classification And Treatment. https://sec.gov.ng/statement-on-digital-assets-and-their-classification-and-treatment/

What are Cryptocurrencies?

One could describe cryptocurrencies as a digital representation of monetary value, much like a regular currency such as the Nigerian Naira or the Danish Krone. Where we begin to see a significant divergence in these concepts is in its issuance. Cryptos are not issued by a central bank or a public authority, nor is their relative value necessarily pegged or attached to a regular fiat currency. Yet they are regarded as a means of payment, a store of wealth or value, and can be transferred, stored, or traded electronically.[4]

Cryptocurrencies, as digital currencies, exist in the form of digital tokens and coins, and rely on an underlying distributed or decentralised ledger technology known as 'Blockchain'[5], which is enforced by different networks of computers to encrypt, secure, and record online transactions. What this means is that the record of their creation and transactions are contained in several independently owned and controlled computers, within a cryptocurrency network. Thus, unlike much earlier iterations of digital currencies which relied on trusted third parties to book and confirm transactions, transaction volume and size, cryptocurrencies use the decentralised network to mutually, but independently, verify the currency transactions and store the transaction history in inalterable blocks. As an added security feature, the encryption used to secure cryptocurrencies also provides anonymity for the users of the digital currencies.

These features of cryptos mean that they are quite insulated from interference, control, or manipulations by any government, financial institution, regulatory authority, or other entity. The anonymity of the users of cryptocurrencies has made it difficult for governments around the world to fully or properly regulate and control their use, and this has led some countries to prohibit them outrightly.

Although initially designed as a novel and secure means of exchange for goods and services, much of the interest in cryptocurrencies is now driven by speculators who trade them often on a very short-term horizon for profit. This has made many cryptocurrencies quite volatile. Examples of popular and well-known cryptocurrencies are Bitcoin, Ethereum, Tether, USD Coin and Binance Coin.

Regulatory treatment before the CBN's restriction

In Nigeria, the attitude of regulators was initially one of caution, though not resistance, which was expected as most stakeholders were still trying to get a grip on the use and features of cryptos. Perhaps the earliest government caution is

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[4] European Banking Authority (2014, July 4). EBA Opinion On 'Virtual Currencies' https://www.eba.europa.eu/sites/default/documents/files/documents/10180/657547/81409b94-4222-45d7-ba3b-7deb5863ab57/EBA-Op-2014-08%20Opinion%20on%20Virtual%20Currencies.pdf?retry=1

[5] Blockchain is just one form of distributed or decentralized ledger system, though currently the most widely used ledger system for cryptos such as Bitcoin and others. However, other distributed ledger systems may arise in the future.

contained in the CBN circular of 2017[6] in which the CBN raised concerns about the unregulated platforms on which cryptos were traded, and the risk of loss of investment with no avenue for legal redress. The CBN then put in place restrictions on all financial institutions from using, holding, or transacting in cryptocurrencies. It also directed that the cryptocurrency exchangers comply with anti-money laundering KYC (Know Your Customer) procedures such as the identification of customers, monitoring and verification of transactions, and the reporting of suspicious cryptocurrency transactions. The CBN also directed financial institutions to close the account of any cryptocurrency exchanger whose compliance with the said anti-money laundering and KYC procedures were unsatisfactory.

The Securities & Exchanges Commission took a similar position in 2017 and advised the public to exercise extreme caution with regard to digital currencies (cryptocurrencies) as a vehicle for investments, warning that there was no protection against financial losses for investors.

In 2018, again the CBN issued a press release[7] in which it reiterated that cryptocurrencies were not legal tender, and that cryptocurrency exchanges were not licensed or regulated by it. The CBN also reiterated its warning on the risk of loss when investing in cryptocurrencies or trading on cryptocurrency exchanges. These warnings obviously went unheeded by the market because trading in cryptocurrencies surged and became popular, as demonstrated in the fundraising drive for the EndSARs protest in October 2020.[8] By the end of that year, Nigerians had transacted in $400m worth of cryptocurrencies[9] and these were just the documented cryptocurrency transactions; the total figure is probably much larger.

All in all, the use of cryptocurrencies as a legal tender for the exchange of goods and services has never fully been sanctioned in Nigeria. Reacting to the prevalence of investment by Nigerians in cryptocurrencies and the recommendations by the FinTech Roadmap Committee for the regulation of cryptocurrency exchangers,[10] the SEC in September 2020 classified crypto assets as securities that ought to be regulated, with the general objective of ensuring that technology and innovation are not hindered or stifled. What SEC sought to do was to create standards that encourage ethical practices in cryptocurrency trading and to develop a fair and

[6] CBN (2017, January 12) Ref: DPR/DIR/GEN/CIR/06/010: Cirular to banks and Other Financial Institutions on Virtual Currency Operations in Nigeria. https://www.cbn.gov.ng/out/2017/fprd/aml%20january%202017%20circular%20to%20fis%20on%20virtual%20currency.pdf

[7] CBN (2017, January 12) Virtual Currencies not Legal Tender in Nigeria – CBN. https://www.cbn.gov.ng/Out/2018/CCD/Press%20Release%20on%20Virtual%20Currencies.pdf

[8] Handagama, S. (2020, October 21) Nigeria Protests Show Bitcoin Adoption Is Not Coming: It's Here. *Coindesk*. https://www.coindesk.com/nigeria-bitcoin-adoption

[9] Kene-Okafor, T. (2021, January 6) In 2020, Nigerians traded more than $400m worth of crypto on local crypto exchange platforms. *Techpoint.Africa* https://techpoint.africa/2021/01/06/nigerians-traded-more-than-400m-worth-crypto-2020/

[10] SEC (2019, August 28) Report of the FinTech Roadmap Committee of the Nigerian Capital Market. https://sec.gov.ng/report-of-the-fintech-roadmap-committee-of-the-nigerian-capital-market/

efficient market[11]. The SEC stated that all virtual crypto assets are securities unless proven otherwise by the issuer or sponsor in an initial assessment filing. Thus, requiring the registration of all Digital Assets Token Offerings, Initial Coin Offerings (ICOs), Security Token ICOs, and other blockchain-based offers of digital assets in Nigeria, with the possibility of trading these securities on an investment exchange. Further, the SEC identified that it would regulate individuals and entities involved in any blockchain-related and virtual digital asset services, such as the receipt, transmission, and execution of orders on behalf of other persons, dealers on own account, portfolio management, investment advice, custodian, or nominee services.

For many, the SEC's position on cryptocurrencies provided some much-needed clarity about the future of cryptocurrencies and on the role of Fintech companies as cryptocurrency exchanges. However, in February, the CBN's reversed course on cryptocurrencies and issued yet another circular that would not be characterised by its typical ambivalence. This time around the CBN would institute a total prohibition on any form of financial-institution-aided cryptocurrency transaction in Nigeria

Treatment in other countries

As expected, the regulatory treatment of cryptocurrencies varies from country to country. While some governments overtly support or restrict the use of cryptocurrencies, others have taken a wait-and-see approach, neither endorsing nor condemning it. A cross-section of jurisdictions and their approach to cryptocurrencies are examined below:

1. **The United Kingdom (UK)**

In the UK cryptocurrency regulation allows users to buy and sell cryptocurrencies but bans the trading of cryptocurrency derivatives. The UK's general approach has been to maintain financial system safety stability and integrity, system transparency, and to prevent illicit activity without stifling innovation. In 2018, the UK launched a cross-authority task force, comprising the Financial Conduct Authority, the Bank of England, and Her Majesty's Treasury amongst others ('the Crypto Assets Task Force"),[12] to explore the impact of a rapidly developing crypto-asset market and advise on an appropriate regulatory response. The work of the task force is still ongoing, and it delivered its first report in October 2018[13] In the meantime, the UK has taken interim steps towards cryptocurrency regulation, notably the "*Guidance*

[11] Ibid 4.

[12] Cryptoassets Task Force Final Report, p10. Membership includes senior representatives from the Bank of England, Financial Conduct Authority, the UK Treasury, and also the Payments Systems Regulator.

[13] Some of the key action points in the Report include consultation on guidance for crypto asset activities including those currently within the regulatory perimeter and those that are not, consultation on possible prohibition of the sale of crypto asset derivative to retail consumers, and the issuance of revised guidance on the tax treatment of crypto assets. See Cryptoassets Taskforce: Final Report (2018, October) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752070/cryptoassets_taskforce_final_report_final_web.pdf

on Crypto-assets" issued by the Financial Conduct Authority (**FCA**) in 2019, which requires the registration of cryptocurrency exchanges. The Guidance stresses that entities engaged in crypto-related activities, and which already fall under the purview of existing financial regulations for derivatives (such as futures, forwards, and options), will require prior authorisation by the FCA for such transactions.[14] Similarly, Virtual Asset Service Providers (**VASPs**)[15] are required to comply with a number of regulations including KYC, anti-money laundering and those regulations set up to combat the financing of terrorism.[16]

Although cryptocurrencies cannot be compared to conventional investments or payments, the UK Treasury generally assesses gains or losses on cryptocurrencies in a way akin to the treatment of capital gains tax.[17] Companies and businesses may pay in addition corporation taxes, income tax, stamp duties, and value added tax for engaging in the buying and selling or exchange of crypto assets, mining, and providing goods and services in exchange for crypto assets. Also, individuals are liable to pay income tax on crypto assets that they receive from their employers as non-cash payments, or from crypto mining, airdrops, and transaction confirmation. Businesses and individuals are required to submit the annual company tax return or self-assessment tax return as the case may be.

The UK also permits the use of Bitcoin ATM, on which Bitcoin can be bought.[18] It must be noted that the FCA in 2021 banned the offering of crypto derivative products to retail users in the UK because of a host of inherent risks that the body believes could adversely affect retail customers of cryptocurrency in the UK.[19]

2. The United States of America (US)

The USA is the largest cryptocurrency market in the world[20] and, although cryptocurrencies are not legal tender, the US regulatory treatment of cryptos is quite nurturing of the crypto market and encourages cryptocurrency transactions and the use of Bitcoin ATMs. There is in general no consistent approach to cryptocurrencies in the US as the country is a federalist democracy and both the federal and state

[14] Financial Conduct Authority (2019, July) Guidance on Crypto assets. https://www.fca.org.uk/publication/policy/ps19-22.pdf

[15] VASPs are individuals or entities engaged in any of the business of exchange between crypto assets and fiat currencies or between different crypto assets or transfer of crypto assets, provision of financial services related to an issue, offer and/or sale of a crypto asset, and the safekeeping and/or administration of crypto assets.

[16] Confirm (2021, January 11) UK Cryptocurrency Regulations. https://www.coinfirm.com/blog/uk-cryptocurrency-regulations/

[17] HM Revenue & Customs (2019) Tax on cryptoassets https://www.gov.uk/government/publications/tax-on-cryptoassets

[18] Helms, K. (2020, August 4) Bitcoin ATM Locations Reaching 9,000 Worldwide. https://news.bitcoin.com/bitcoin-atm-locations-9000-worldwide/

[19] ibid 12; Kaaru, S. (2021, January 12) Digital currency derivatives ban now in effect in UK https://coingeek.com/digital-currency-derivatives-ban-now-in-effect-in-uk/

[20] BIDITEX Exchange (2020, January 21). 7 Countries with the Most Bitcoin Holders. https://medium.com/@biditex/7-countries-with-the-most-bitcoin-hodlers-503b205d926f

governments have approached the issue from different angles. Generally, cryptocurrencies are regulated where they take the form of tradable securities under state or federal law, or where they are considered a money transmission under state law, or a money service business (currency dealing, etc) under federal law.

The US Securities and Exchange Commission considers cryptocurrencies as securities, and the Commodities Futures Trading Commission (CFTC) which has adopted a "do not harm" approach to cryptocurrencies, describes them as a commodity, and allows cryptocurrency derivatives to be traded publicly.[21] The Internal Revenue Service (IRS) treats cryptocurrencies, for the purposes of federal tax, as 'property' other than 'currency'[22]. On the part of the states, many have taken different initiatives on cryptocurrencies. For example, Wyoming has issued licenses to Special-Purpose Depository Institutions (banks) which will act in both custodial and fiduciary capacities to allow businesses to hold digital assets safely and legally,[23] and Ohio permits payment of taxes in cryptocurrencies. [24] Arizona has adopted a 'regulatory sandbox' approach to monitor and guide the development of cryptocurrency, blockchain and Fintech in the state.

The US Conference of State Bank Supervisors (CSBS), which represents all regulators from all states in the USA has launched a regulatory framework for payment and cryptocurrency companies. The regulators in 49 states in the US except Montana have agreed to a single set of supervisory rules for money service businesses including cryptocurrency service providers.[25] Overall, the US provides a friendly and positive regulatory environment to cryptocurrencies.

3. Kenya

In 2015, the Central Bank of Kenya (CBK) issued a statement to the public warning that cryptocurrencies are not recognised as legal tender and that the public should desist from transacting in cryptos as they are not backed by any government or central bank.[26] In February 2018, the Capital Markets Authority (**CMA**) of Kenya issued a notice to caution investors from participating in any initial coin offerings, as such transactions had not been sanctioned. Overall, the Kenyan government has

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[21] Comply Advantage. Cryptocurrency Regulations in the United States. https://complyadvantage.com/knowledgebase/crypto-regulations/cryptocurrency-regulations-united-states/

[22] Internal Revenue Service (2014) https://www.irs.gov/pub/irs-drop/n-14-21.pdf

[23] Brett, J. (2020, September 16). Cracking Landlocked Wyoming, Kraken Wins First Crypto Bank Charter In U.S. History. Forbes. https://www.forbes.com/sites/jasonbrett/2020/09/16/cracking-landlocked-wyoming-kraken-wins-first-crypto-bank-charter-in-us-history/?sh=559092b2afda

[24] Dewey, J. (2021) Blockchain and Cryptocurrency Regulation 2021/US. Global Legal Insight 2021, 3rd Edition https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/usa

[25] Reuters (2020, September 15) U.S. crypto, FinTech firms to benefit from slimmed down regulatory process. https://www.reuters.com/article/usa-regulators-crypto-idUSKBN26624F

[26] Central Bank of Kenya (2015, December 18) Virtual Currencies – Bitcoin https://www.centralbank.go.ke/uploads/banking_circulars/2075994161_Banking%20Circular%20No%2014%20of%202015%20-%20Virtual%20Currencies%20-%20Bitcoin.pdf

taken a wait-and-see approach by refraining from steps that could be interpreted as legitimizing or prohibiting cryptocurrencies. However, there are plans to classify cryptocurrencies as securities by the Kenyan government. In fact, the High Court of Kenya in an application brought in *Wiseman Talent Ventures v. Capital Markets Authority*[27] ruled that cryptocurrencies can be classified as securities, relying on the US Supreme Court decision in *Securities and Exchange Commission (SEC) v. W. J. Howey*[28]. The ruling of the Court classifying cryptocurrencies as securities may serve as a catalyst for cryptocurrencies to come under the regulations of the CMA as securities until an appropriate regulatory framework is drawn up. In the meantime, the CMA has launched its regulatory sandbox to allow for live testing of Fintech products and has so far admitted two blockchain based products.[29] And, within the existing laws, cryptocurrency could find regulation around the taxation of peer-to-peer trading.

4. China

In China, cryptocurrencies are not recognised as legal tender and are not accepted in exchange for goods and services. The Chinese government has taken a series of regulatory measures from 2013 to crack down on activities related to cryptocurrencies with the proscription of initial coin offerings and discouraging the mining[30]of cryptocurrencies. The government has banned financial institutions from directly or indirectly providing services for initial coin offerings and cryptocurrencies, including opening bank accounts, or providing registration, trading, clearing, or liquidation services. These regulations are aimed at protecting investors and preventing financial risks.[31] Furthermore, China has shifted its attention to and now targets foreign cryptocurrency trading platforms by blocking internet access to their websites in a bid to quash cryptocurrency trading in China completely.[32] It must be added however that despite the crackdown on cryptocurrency exchanges, no law or regulation prohibits or makes the holding or trading of cryptocurrencies illegal in China.[33]

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[27] (2019) eKLR http://kenyalaw.org/caselaw/cases/view/182238

[28] Co. 328 US 293 (1946)

[29] Njogu, M. (2021) Blockchain & Cryptocurrency Regulation 2021|Kenya. Global Legal Insights. https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/kenya#:~:text=In%20summation%2C%20cryptocurrencies%20are%20currently,securities%20and%20not%20as%20currencies

[30] Bitcoin mining is the process by which powerful computers create new bitcoin by solving a computational puzzle necessary to maintain the ledger of transactions upon which bitcoin is based.

[31] Zhang, L. (2018, July 12). Regulation of Cryptocurrency: China. *Library of Congress* https://www.loc.gov/law/help/cryptocurrency/china.php#_ftn3

[32] Xie, Y. (2018, February 5). China to stamp out cryptocurrency trading completely with ban on foreign platforms. *South China Morning Post.* https://www.scmp.com/business/banking-finance/article/2132009/china-stamp-out-cryptocurrency-trading-completely-ban

[33] Wenhao, S. (2020, June 12) China: Regulation Of Cryptocurrency In China. *Mondaq.* https://www.mondaq.com/china/fin-tech/944330/regulation-of-cryptocurrency-in-china

Whilst cracking down on cryptocurrencies, the Chinese government through the People's Bank of China began the development of its Central Bank Digital Currency (CBDC)[34] in 2014 with the idea of turning the Chinese Yuan into a digital Yuan. The digital Yuan which was launched on 5th April 2021[35] for trials will help the Chinese government tackle currency counterfeiting by replacing some of the paper and coin money in circulation, as well as give it the tools to monitor economic activities and the users of the currency and make retail payment more seamless. Note that the Central Bank Digital Currencies (CBDC) are not cryptocurrencies. Rather, CBDC are digital versions of the official currency issued by the central bank of a particular country or region. Thus, unlike decentralised cryptocurrency, the CBDC is centralised and regulated by the country's monetary authority/ central bank.

Treatment post CBN's restrictions

In the CBN's Circular, the CBN reminded financial institutions of its earlier directives on cryptocurrencies and went a step further to prohibit financial institutions from dealing or facilitating payment for cryptocurrency exchanges. Furthermore, the CBN ordered financial institutions to identify persons and entities transacting in cryptocurrency within their system and to ensure that such accounts are closed immediately.

Since the CBN issued the fresh restrictions, financial institutions immediately began to close the accounts of cryptocurrency exchanges and those of individuals identified as having transacted in cryptocurrencies. Cryptocurrency exchanges such as Binance have suspended all deposits in Naira. These events generated a volley of heated reactions from Nigerians, especially on its adverse effect on the fast-growing Nigerian cryptocurrency market and the FinTech sector.

In response, the CBN issued a press release to explain and justify its policy pronouncement stating that the prohibition of financial institutions from using, holding, trading, and/or transacting in cryptocurrencies was not new. The CBN stated that cryptocurrencies were not legal tender in Nigeria adding that cryptography prevented oversight, accountability, and regulation thus, making them susceptible to use for money laundering, concealment of crimes such as tax evasion, drug dealings, terrorism, money laundering, and illegal purchase of arms and ammunition. The CBN further noted that the volatility of cryptocurrencies has threatened the stability of financial systems in some countries.

What the restriction means for cryptocurrency trading

At this point, it is important to state that the CBN's Circular did not criminalize the use and exchange of cryptocurrencies. The CBN only restrained/prohibited financial

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[35] Areddy J. T. (2021, April 5). China Creates Its Own Digital Currency, a First for Major Economy. The Wall Street Journal. https://www.wsj.com/articles/china-creates-its-own-digital-currency-a-first-for-major-economy-11617634118

institutions which it regulates from dealing in cryptocurrencies or facilitating cryptocurrency transactions. In fact, the CBN cannot by its circular validly criminalize the holding of cryptocurrencies.[36]

Apart from the obvious effect of CBN's policy in the closure of accounts of individuals and entities engaged in the trading of cryptocurrencies, there are other effects that the restriction brings up. The restriction has effectively closed the door on the possible exchange of cryptocurrency for goods and services in Nigeria but in doing so it has unwittingly encouraged the speculative use and trading of cryptocurrencies. This goes against the grain of the global trends of cryptocurrency regulation and commercial practice. For instance, in the United States, Tesla recently filed its acquisition of $1.5 billion worth of Bitcoin with the Securities and Exchanges Commission (US SEC) and declared that it would accept cryptos as a routine form of payment in the near future.[37]

Also, while the restriction prevents the deposit or transfer of Naira for cryptocurrency transactions, it has not affected secondary market peer-to-peer trading which is where most of the cryptocurrency trading in Nigeria happens. Thus, sellers and buyers of cryptocurrencies are still able to complete transactions themselves and make payments into their personal cryptocurrency wallet.[38]

Further, the restriction has affected the growth of the Fintech sector which spurred Nigeria to one of the top cryptocurrency markets in the world. The restriction would significantly affect the ability to innovate and closes the door on the possible regulatory sandbox approach to monitoring and guiding the release of innovative cryptocurrency products and assets by Fintechs. The desire to encourage the growth of this sector was one of the reasons for the SEC's decision to regulate cryptocurrencies rather than to be ambivalent about the innovation.[39] The SEC's position mirrors the decision of the US District Court (for Eastern District of New York) in *US v. Maksim Zaslavskiy*[40] wherein it was held that cryptocurrencies are securities and under the purview of the US Securities and Exchange Commission.

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[36] Omatseye v. FRN (2017) LPELR-42719(CA) where the Court of Appeal held that administrative circulars and notices cannot create an offence.

[37] Kovach, S. (2021, February 8). Tesla buys $1.5 billion in bitcoin, plans to accept it as payment. *CNBC* https://www.cnbc.com/2021/02/08/tesla-buys-1point5-billion-in-bitcoin.html

[38] Babatunde, G. (2021, February 26). Nigeria's Crypto Vendors Cash in as P2P Trading Volume Swells by 16% Since CBN Order.*Technext* https://technext.ng/2021/02/11/nigerias-crypto-vendors-cash-in-as-p2p-trading-volume-swells-by-16-since-cbn-order/

[39] Ibid 3.

[40] 2018 WL 4346339; see also, US Department of Justice. (2018, November 18) Brooklyn Businessman Pleads Guilty to Defrauding Investors through Two Initial Coin Offerings https://www.justice.gov/usao-edny/pr/brooklyn-businessman-pleads-guilty-defrauding-investors-through-two-initial-coin

Appeal for clear framework

Since the CBN's Circular was issued, the question of what the Nigerian government central outlook for cryptocurrencies is and how do Fintechs square with the divergent positions of the CBN and the Nigerian Securities and Exchanges Commission (SEC) on crypto assets. Both the CBN and SEC are independent regulatory bodies within their own relative jurisdiction and mandate. However, their policy effects do overlap. The CBN is empowered to promote a sound financial system, ensure monetary and price stability, issue legal tender, and regulate banks and other financial institutions amongst others,[41] while the SEC is empowered to regulate investments and securities business in Nigeria and protect consumers from harm.[42] Thus, where cryptocurrencies are viewed as money, they come within the CBN's regulation, and when they are viewed as investments, they come under the SEC's jurisdiction. The reality is that cryptocurrencies exhibit both characters, thus, putting FinTech which provide crypto-related services in the middle.

The divergent positions of the CBN and SEC evidence the lack of coordination in the approach of the Nigerian government to cryptocurrencies and may be proof that the CBN's Circular might have been a knee-jerk reaction. This is telling from the press release issued by the SEC on 11 February 2021[43] wherein the SEC stated that it has engaged with the CBN and both regulators have agreed to work to further analyse and better understand the risks identified by the CBN to ensure that appropriate and adequate mitigants are put in place, should such securities be allowed in the future. The after-the-fact collaboration between the SEC and CBN would have been more optimal if done before both regulators put out their respective positions on cryptocurrencies. It is hoped that this present collaboration will bring the needed regulatory consistency to secure the growth of the cryptocurrency space.

It must be stated that cryptocurrencies do have the draws and risks identified by the CBN. However, these risks are not all peculiar to cryptocurrencies as fiat currencies are also used in tax evasion, money-laundering activities, and terrorism financing amongst other crimes. The point is that regulations were introduced which make it difficult to use fiat currencies for criminal purposes. In the same way, cryptocurrencies can be monitored and regulated to mitigate their associated risks.

As we await the outcome of the collaborative deliberations of the SEC and CBN on cryptocurrencies, it is suggested that due to case law developments in other jurisdictions, cryptocurrency/ crypto assets should at the least be treated as property in Nigeria for the purposes of dispute and the award of relevant reliefs and remedies. Cryptocurrencies are not illegal and are therefore capable of being held as property. Also, as has been seen in other jurisdictions, cryptocurrencies are potential revenue-generating assets for the government through taxation such as Capital

[41] Section 2 Central Bank of Nigeria Act, 2007; Section 1 Banks and Other Financial Institutions Act, 2020.

[42] Section 13 Investment and Securities Act, 2007

[43] SEC (2021, February 11). Press Release on Cryptocurrencies. https://sec.gov.ng/press-release-on-cryptocurrencies/

Gains Tax and Income Tax. Cryptocurrency transactions are currently not taxed in Nigeria and there is no appetite to do so. Although, cryptocurrency transactions may qualify for value added tax as digital transactions, it remains to be seen how the government may implement the tax while it denies the same transactions the support of the financial system.

In the meantime, the volatility concern about cryptocurrencies is being tackled by innovations around 'stable coin'. Stable coins like Binance coin, USD coin, etc have been introduced which do not reflect the volatility associated with cryptocurrencies like Bitcoin and Ethereum. These stable coins are backed by a reserve asset (i.e., external reference, like fiat currencies, the value of other cryptocurrencies, etc)[44] to maintain their value and may be more appropriate for use in paying for goods and services. However, because these stable cryptocurrencies are not issued by any government or central bank, the question of the regulatory framework under which they are permitted to operate remains an issue.[45]

[44] Hayes, A. (2020, June 30). Stablecoin. *Investopedia.* https://www.investopedia.com/terms/s/stablecoin.asp

[45] Sir. Cunliffe, J. (2020, February 28). It's time to talk about money. *Bank of England.* https://www.bankofengland.co.uk/-/media/boe/files/speech/2020/its-time-to-talk-about-money-speech-by-jon-cunliffe.pdf

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