A LEGAL APPRAISAL OF CENTRAL BANK OF NIGERIA AND THE PHILOSOPHICAL UNDERPINNING OF ITS AUTONOMY

By

U. S. Bebeji*

Abstract

The regulation of banking industry is becoming more justified as the most important sector of the economy. Since its inception, the Central Bank of Nigeria (CBN) being the regulator agency has grappled to become a powerful and semi-independent body in driving its statutory roles of ensuring monetary and price stability and the promotion of sound financial system. However, the Bank still contends with challenges associated with enforcement and political interference. The perennial attempt to strip it of certain powers by the National Assembly, the suspension of the erstwhile CBN governor, and the political pressure on management of Forex underscore the dangers it portends. The paper therefore, through doctrinal methodology, examines the laws of CBN, traces the underpinning philosophy behind its autonomy and determines how effective it has been positioning Nigeria's financial system towards guaranteeing investments. The paper reveals that central banking is important for the purposes of uniform distribution of risk, over-issue of notes and excessive credit expansion, for rational monetary policy, and promoting sustainable economic development, as captured by its mission and vision statement. The philosophy guiding it largely determines its impact, efficacy, and the direction. The paper also exposes how this philosophy varied with enactments since colonialism and how it has been caught up in the web of power play between politicians in attempt to compromise its autonomy. The paper further argues that as a technical body it must be insulated from political distractions, and to effectively pursue its mandate, it sometimes must take unpopular decisions. However, this quest for professionalism must not shield the institution from being accountable and transparent in the conduct of its affairs. The portion of the law ousting judicial review over its officials is therefore recommended for review. It is also recommended that in the light of its being overwhelmed as a result of its unwieldy nature, its supervisory function can be vested in another agency to be modeled after the United Kingdom's Financial Service Authority (FSA), while it concentrates on monetary policy and other functions.

1.1 Introduction

The banking sub-sector has grappled to become the most important component of the financial sector. It determines not only the pace of growth of modern economic systems; any threat to its stability can wreck devastating havoc on the global economy as seen in the 2007 global economic meltdown largely attributed to unethical practices by sleazy bankers in the United States.[1] Thus, banking regulation vis-à-vis the strength of

* Lecturer, Department of Commercial Law, Faculty of Law, Ahmadu Bello University, Zaria; 08032089270, umarbebeji@yahoo.co.uk.

[1] The resultant liquidity crisis in banks forced the Central Bank of Nigeria (CBN) to inject $4.1billion (USD) into eight insolvent banks. Famuyiwa, O., The Nigerian Financial Crisis: A Reductionist Diagnosis, *Journal of Sustainable Development Law and Policy*, Vol. 2 Iss. 1 (2013), pp. 36-64

regulatory institutions, performing their role of entrenchment of regulations is becoming more imperative.

One of the most important institutional changes in the evolution of the monetary and financial system in Nigeria is the establishment of the Central Bank of Nigeria (CBN) in 1958. At that point Nigeria merely joined the trend in the developing world where the existence of a central bank was seen as a mark of political and financial independence.[2] As a colonial pupil, Nigeria had its own forms of traditional banking activities before its contact with the British. Though informal and not particularly regulated, it was guided by highly internalised ethical principles. But the coming of the British changed all that. They introduced their own system of banking primarily to serve imperial interests of raw material extraction and to effectively administer colonies and protectorates. Bankers were only guided by charter agreements obtained from Britain or the local colonial administrators. There was no specific legislation in place nor institution to administer, regulate and enforce banking regulations. It was much later that indigenous entrepreneurs started to venture into banking business, that they felt the need to enact ordinances. From different banking ordinances to purely domestic legislations, Nigeria has as today two primary enactments regulating banking activities: the Banks and other Financial Institution's Act (BOFIA)[3] and Central Bank of Nigeria Act (CBNA).[4] While the former deals with general principles regulating banking activities in Nigeria, the latter establishes the Apex bank – CBN, as regulatory agency charged with the responsibility of administering both laws, with far reaching powers to make subsidiary legislations.

The philosophy driving the Apex regulator largely determines its impact, efficacy, and the direction of the system. Philosophy is considered to be the study of the fundamental nature of knowledge, reality, and existence.[5] Banking law has over time taken its epistemological place, with its unique jurisprudence developed over time. Moreover, there is a hybrid system of banking incorporating arrays of banking models, ranging from investment banking, merchant banking, micro-finance banking, development banking, Islamic banking, electronic banking, and other less prominent methods. There are also ethical rules specifically designed to regulate the conduct of all stake holders operating within the system to ensure that it continues to play its leading role in the economy. All these, developed under the purview of the CBN's underpinning philosophy. Vested with the power to ensure monetary and price stability; issue legal tender currency in Nigeria; maintain external reserves to safeguard the international value of the legal tender currency; promote a sound financial system in Nigeria; and act as banker to and provide economic and financial advice to the Federal Government, the CBN has come a long way.[6]

---

[2]Igweike, K. I. (2005), *Law of Banking and Negotiable Instruments*, Africana First Publishers Limited, Onitsha, p.22

[3] Banks and Other Financial Institutions Act (BOFIA), LFN, 2004, CAP. B3.

[4]Central Bank of Nigeria Act, No. 7 of 2007.

[5]Definition of philosophy in English: philosophy, retrieved from: https://en.oxforddictionaries.com/definition/philosophy on 12/1/2018

[6] Section 2 of the CBN Act

However, issues associated with enforcement, independence of the CBN and political interference with CBN's powers and functions still remain a great challenge. The perennial attempt to amend CBN Act in order to strip it of certain powers, the suspension of the erstwhile CBN governor and the political pressure on the current governor on management of Forex raise questions regarding CBN's autonomy as it portends dangers on the economy. Garbed with powers to make subsidiary legislations, it is a challenge how the CBN is wriggling around to manage expectations, aspirations and challenges and incidences associated with its core functions such as financial inclusion and capital mobilization into the formal sphere.

The questions are: is the CBN concerned about promoting the enabling environment for banking business to thrive in developing the economy? How has the CBN interacted with stakeholders towards enhancing the banking system and ensuring effective and efficient financial sector to serve as the back-bone of Nigeria's economy? Is the CBN independent enough to effectively carry out its basic functions? It is against this background that this paper seeks to examine the underpinning philosophy behind the existence and autonomy of the Apex bank and lead regulator of banking activities in Nigeria – the CBN - with the aim determining how effective it has been positioning Nigeria's financial system towards guaranteeing investments and protecting depositors and borrowers in the overall interest of the economy. This will be achieved by doctrinally examining the structure and functions of the bank, its brief history the rationale behind its establishment, and its independence in different ramifications. The paper will further be discussing some incidences relating to political interference and how they impact on the discharge of the bank's functions.

1.2 Evolution of Central Bank of Nigeria's Enactments

The increase in international trade along the West African route led to the setting up of Bank of British West Africa (BBWA) in 1894, ushering in some rudimentary form of modern commercial banking. In 1912 the West African Currency Board (WACB) was also established primarily to promote the financing of export trade.[7] This board was intended to serve as a central bank for the Anglophone West African countries. Hence, the board was charged with the primary responsibility of issuing the West African Pound, which served as the legal tender currency in Ghana, Nigeria, Sierra-Leone and Gambia. It was also charged with the management of the reserves held in trust for these colonies. Such reserves were invested by the board on behalf of the West African countries as instruments in the London Money Market. However, the board was weak in that its activities were considered discriminatory against indigenous West African industrialists, and it was not focused on the development of the colonies but on commerce and trade for colonial interest.[8]The board, also, lacked the basic apparatus to control the supply of money and did not have discretionary control over the money stock of the territories under its sphere of influence. It could also not engage in monetary management, neither

---

[7]Igweike, Op. Cit, p.22

[8]Central Bank of Nigeria, Brief History. Retrieved from:http://moneyintheworld.net/geo/africa/banking/central_bank_nigeria.htm on 10/1/2018

was Nigerians trained in that art. It was abolished in 1958 ushering in the era of central banking.[9]

Interestingly before the CBN came into existence, a little politics preceded between the colonial administration and the indigenous political elites. Mr. J. L. Fischer, an adviser to the bank of England was appointed by the colonial administration in 1952 to prepare a report on the desirability and practicability of establishing a central bank in Nigeria for the promotion of economic development in the country. Mr Fischer reviewed the Nigerian financial system and came to the conclusion that it would be inadvisable to contemplate the establishment of central bank at that point in time, as there were no receptive financial conditions for the bank to function effectively. He thus recommended the transfer of WACB and the establishment of Nigerian bank of issue which will graduate into a full-fledged central bank with time.[10] This report was not favoured by the indigenous political elites who made a case to the World Bank. The World Bank then sent a delegation to take a stock of the economic development in the country. It then issued its mission report in 1954 which opined that Mr. Fischer was merely over cautious, thereby recommending an early establishment of a Nigerian bank of issue with limited functions as a first step in the development of central banking system. However, because the colonial administration was not disposed to this latter report, nothing tangible was achieved within that period.

Meanwhile, in another effort, in 1957 another adviser to the Bank of England, Mr. J. B. Loynes, was delegated to visit Nigeria and reported that the situation was more favourable for the establishment of a central bank, Nigerian currency and. other associated matters.[11] Hence, along with G. D. Paton's Report, it served as the basis for the enactment of. the Banking Ordinance of 1958.The ordinance was designed to ensure orderly commercial banking and to prevent the establishment of unviable banks. Draft legislation for the establishment of Central Bank of Nigeria was presented to the House of Representatives in March, 1958. The Act was fully implemented on 1 July, 1959 when the Central Bank of Nigeria came into full operations.[12]

The Central Bank Act, 1958 and the Banking Decree 1969 constituted the legal framework within which the CBN operated and regulated banks. The wide range of economic liberalization and deregulation measures following the adoption, in 1986, of a Structural Adjustment Programme (SAP) resulted in the emergence of more banks and other financial intermediaries. The Banks and Other Financial Institutions (BOFI) Decree,[13] which repealed the Banking Decree 1969 and all its amendments, were, therefore, enacted to strengthen and extend the powers of CBN to cover the new institutions in order to enhance the effectiveness of monetary policy, regulation and supervision of banks as well as non-banking financial institutions. Unfortunately in 1997

[9] Igweike, Op. Cit, p. 22
[10] Ibid, p.23
[11] Ibid.
[12] Central Bank of Nigeria, "History of the Central Bank of Nigeria", retrieved from: https://www.cbn.gov.ng/AboutCBN/history.asp on 16/12/2017
[13] Decrees No. 24 and 25 of 1991

the Federal Government of Nigeria amended the CBN Decree[14]to remove the limited autonomy which the Bank enjoyed since 1991.[15]It made CBN directly responsible to the Minister of Finance with respect to the supervision and control of bank and other financial institutions, while extending the supervisory role of the bank to other specialised banks and financial institutions. The amendment placed enormous powers on the Ministry of Finance while leaving the CBN with a subjugated role in the monitoring of the financial institutions and with little room for the bank to exercise discretionary powers. In 1998, the law was amended[16]which now provided a measure of operational autonomy for the CBN to carry out its traditional functions and enhances its versatility. Thus, effectively reversing the 1997 amendments.

The current legal framework within which the CBN operates is the CBN Act of 2007.[17]The Act provides that the CBN shall be a fully autonomous body in the discharge of its functions under the Act and BOFIA with the objective of promoting stability and continuity in economic management. In line with this, the Act widened the objects of the CBN to include ensuring monetary and price stability as well as rendering economic advice to the Federal Government. Furthermore, the regulatory powers of the CBN were strengthened by BOFIA. Through the amendments, the CBN may vary or revoke any condition subject to which a license was granted or may impose fresh or additional condition to the granting of a license to transact banking business in the country. By the Decree, the CBN's powers on banks, specifically those relating to withdrawal of licenses of distressed banks and appointment of liquidators of these banks, including the NDIC was restored. The law[18] made the provisions relating to failing banks applicable to other financial institution. It also empowers the Governor of the CBN to remove any manager or officer of a failing bank or other financial institution.

1.3 Reasons for Central Banking

Central bank simply refers to a central monetary authority or an apex financial institution within the entire financial structure promoting monetary stability and a sound financial system. The world of central banking is one of a variety of structures, functions and powers, which are in themselves by-product of the economic, political and other realities prevailing in a society.[19]

Smith[20] reviewed the economic controversies around central banking from the nineteenth to the early twentieth century in France, Belgium, Germany, England, Scotland, and the United States. The work made it very clear that central banks are not the result of natural developments in the banking sector, but came into existence through

[14]Amendment Decree No. 3 and BOFI Decree No. 4, 1997

[15] Ibid

[16]CBN (Amendment) Decree No. 37 of 1998 repealed the CBN (Amended) Decree No. 3 of 1997

[17]Repealing the CBN Act of 1991 and all its amendments.

[18]BOFI (Amendment) Decree No. 40 of 1999

[19]Central Bank of Nigeria, Brief History. Retrieved from:http://moneyintheworld.net/geo/africa/banking/central_bank_nigeria.htm on 10/1/2018

[20] Smith, V.C. The rationale of Central Banking and the Free banking economy, Liberty Press, Indianapolis, 1990

government favors. Thus, the reasons are summarized as follows: for uniform distribution of risk, over-issue of notes and excessive credit expansion, as the lender of last resort, as a means to international cooperation, and for rational monetary policy. Based on these, Karl-Friedrich concluded that while it was indeed desirable to have a rational monetary policy, if there has to be one at all, however, no economist has presented a conclusive case for conscious political implementation of monetary adjustments and stimuli. That central banks remain creatures of power politics rather than economic reason.[21] Still, recent experiences prove that central banks do indeed play major roles towards financial stability, management of systemic risks and the taming of ethically challenged bankers. From the management of one form of financial crises to another, central banking has become a conscious player in the determination of economic development. Recently in Nigeria, banking consolidation exercise under Soludo, the intervention of Sanusi's CBN, and Emefiele's management of Forexand the role of CBN in the promotion of agricultural diversification and promotion of investment prove that CBN indeed has economic reason to exist.

This philosophy is condensed in the vision of the CBN to "be the model central bank delivering price and financial system stability and promoting sustainable economic development."In the same vein, the mission statement states that the bank is "to be proactive in providing a stable framework for the economic development of Nigeria, through effective, efficient, and transparent implementation of monetary and exchange rate policy, and management of the financial sector." This unmistakably captures the fact that the central bank is no doubt fully aware of its diverse role in dictating the pace of economic development in the country.[22] How the bank has been able to achieve this is however, a subject of debate, which shall be explored in due course.

1.4 The Role of Central Bank in the Promotion of Sound Financial System

Central banks all over the world have gone beyond the role of regulating the affairs of banks. They perform a much broader and determinate role not only within the financial system but the economy at large. Section 2 of the CBN Act provides that,

> The principal objects of the Bank shall be to –(a) ensure monetary and price stability;(b) issue legal tender currency in Nigeria;(c) maintain external reserves to safeguard the international value of the legal tender currency;(d) promote a sound financial system in Nigeria; and(e) Act as banker and provide economic and financial advice to the Federal Government.

Clearly, its core function is the *promotion of a sound financial system* in Nigeria. Implicit in this function is the promotion of the safety and stability of the financial system to among others, engender and sustain public confidence in it. Towards the realisation of

[21] Karl-Friedrich, I., "Five Reasons for Central Banks: Are They Any Good?" Retrieved from: https://mises.org/blog/five-reasons-central-banks-are-they-any-good 02/21/2017

[22] Central Bank of Nigeria, "Our Mission, Vision and Core Values", retrieved from: https://www.cbn.gov.ng/AboutCBN/mission.asp on 20/12/2017

this important function, the CBN is empowered to grant, vary and revoke the banking license,[23] prescribe minimum paid-up capital of licensed banks,[24] prescribe minimum capital ratio to be maintained by banks,[25] and supervise banks, specialised banks and other financial institutions.[26] The CBN is also empowered to act as banker to other banks[27] and to ensure a high standard of conduct and management throughout the banking system.[28]

In order for the bank to achieve its objective of effectively regulating the banking sub-sector, the law equips it with certain instruments to guide its course. The first instrument is the capital requirement which sets the minimum capital base required for a bank to go into business and also a framework on how banks must handle their capital in relation to their assets.[29] This allows for participation from only investors with sufficient wherewithal in the sector. Secondly, each bank is required to keep minimum reserves to demand deposits and banknotes. This type of regulation has lost the role it once had, as the emphasis has moved toward capital adequacy, and in many countries there is no minimum reserve ratio. The purpose of minimum reserve ratios is liquidity rather than safety. In Nigeria, the current cash reserve ratio was set as 22.5 % in December 2017.[30]

Another veritable instrument used by the CBN is code of corporategovernance. Corporate governance requirements are intended to encourage the bank to be well managed, and is an indirect way of achieving other objectives. In April 2003 the Securities and Exchange Commission (SEC) published a survey which showed that corporate governance was at a rudimentary stage, as only about 40% of quoted companies, including banks, had recognized codes of corporate governance in place. Specifically for the financial sector, poor corporate governance was identified as one of the major factors in virtually all known instances of a financial institution's distress in the country. Hence, the CBN decided to issue a code of corporate governance for banks in 2003[31] to improve transparency, accountability and general ethical conduct of banking

[23]Sections 3, 5 and 12 of the BOFIA.

[24]Section 9, Ibid.

[25]Sections 13 and 14, Ibid.

[26]Sections 31, 32, 33, 34 and 61, Ibid.

[27]Section 41 of the CBN Act.

[28] ibid section 37 (1) (b), now section 42 (1) (b) Ibid.

[29]A commercial bank authorised to conduct business on a national basis shall maintain a minimum paid-up share capital of Twenty Five Billion Naira (₦25,000,000,000.00) or such other amount as may be prescribed by the CBN from time to time. While a regional bank shall maintain a minimum paid-up share capital of Ten Billion Naira (₦10,000,000,000.00) or such other amount as may be prescribed by the CBN from time to timeCentral Bank of Nigeria. Scope, Conditions & Minimum Standards For Commercial Banks Regulations No. 01, 2010, retrieved from: https://www.cbn.gov.ng/OUT/2010/CIRCULARS/BSD/COMMERCIAL%20BANKING%20LICENSING%20REGULATIONS%20-%20FINAL%20RELEASED.PDF on/2/1/18

[30]Cenral Bank of Nigeria, Key Decisions of the Central Bank of Nigeria Monetary Policy Committee November 20 and 21, 2017. Retrieved from: https://www.cbn.gov.ng/monetaryPolicy/decisions.asp o,10/2018

[31] Central Bank of Nigeria, Code of Corporate Governance for Banks In Nigeria Post Consolidation January 5, 2006. Retrieved from: http://www.cbn.gov.ng/out/Publications/bsd/2006/corp.Govpost%20con.pdf on 2/2/2018

affairs. There are also financial reporting and disclosure requirements. In addition to the provisions of the Companies and Allied Matters Act (CAMA) Section 26(2) of the BOFIA requires the financial statements of banks to comply with all applicable standards. The CBN now requires auditors' reports of banks to state categorically that the accounts have been prepared in compliance with relevant standards.[32]The directors of the bank must attest to the accuracy of such financial disclosures, prepare and have registered prospectuses detailing the terms of securities it issues, and the relevant facts that will enable investors to better assess the level and type of financial risks in those securities.

Credit rating requirement and prudential guidelines also serves the purpose of assessing banks. Banks may be required to obtain and maintain a current credit rating from an approved credit rating agency, and to disclose it to investors and prospective investors. Also, banks may be required to maintain a minimum credit rating.[33]Smarting up from the impact of the 2008 global economic meltdown and the consolidation exercise of 2005, the CBN reviewed its prudential guidelines in order to address various aspects of banks' operations, such as risk management, corporate governance, anti-money laundering/ counter financing of terrorism and loan loss provisioning. This initiative subjects the bank's affairs to close scrutiny and rating by professionals. The last tool is that of restriction on large exposures on bank loans. Banks may be restricted from having imprudently large exposures to individual counterparties or groups of connected counterparties. This may be expressed as a proportion of the bank's assets or equity, and different limits may apply depending on the security held and/or the credit rating of the counterparty. For instance,a director or a significant shareholder should not borrow more than 10% of the bank's paid up capital except with the prior approval of the CBN, among other restrictions.[34]. The CBN thus, restricts aggregate large exposures in any bank.

No doubt the Nigerian banking sector witnessed dramatic growth after the 2005 consolidation[35]and the developments brought forth a lot of challenges for the industry and regulation. The initial perception that the Nigerian banking system was sound and insulated from global financial crisis was proved to be superficial. On 14 August 2009, the CBN announced the findings of an arguably belated special examination of 10 consolidated universal banks, which determined that five were insolvent.[36] These banks

[32] See *Financial Reporting Council of Nigeria* Act No. 6, 2011

[33]Central Bank of Nigeria (CBN) Prudential Guidelines for Deposit Money Banks in Nigeria. Effective: 1 May 2010. Retrieved from: http://www.cbn.gov.ng/OUT/2010/CIRCULARS/BSD/Prudential%20Guidelines%205%20May%202010%20Final.pdf 16/12/2017

[34] Central Bank Of Nigeria, Circular to All Banks BSD/9/2004, Large Exposures and Connected Lending, July 16, 2004. Retrieved from: http://www.cbn.gov.ng/out/circulars/bsd/2004/bsd-09-2004.pdf on 12/12/2017

[35]Soludo, C. C. "Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century", Being an address delivered to the Special Meeting of the Bankers' Committee, held on July 6, 2004 at the
CBN Headquarter, Abuja.

[36] The five were, Oceanic Bank, Union Bank, Afribank, Finbank and Intercontinental Bank. Retrieved from: https://www.cbn.gov.ng/OUT/2010/BULLION/BULLION%20VOL%2034%20NO%201%20JAN-MAR%202010.PDF on 20/12/2017

were also heavily dependent on the CBNexpanded discount window, which could be interpreted to mean that they had liquidity problems. To improve their liquidity, the CBN injected N420 billion into these banks as subordinated loans. These affected banks held approximately 30% of the deposits in the Nigerian banking system.[37] This in effect means they were systemically important. A follow up special examination of the remaining 15 universal banks showed that three were insolvent, which necessitated an injection of N200 billion by the CBN. Altogether, the eight insolvent banks received N620 billion (approximately $4.1 billion USD) from the CBN.[38] According to Sanusi[39]the factors that led to creation of extremely fragile financial system that was tipped into crisis by the global financial meltdown include:

a) Macro-economic instability caused by large and sudden capital outflows.
b) Major failures in corporate governance at banks.
c) Lack of investor and consumer sophistication.
d) Inadequate disclosure and transparency about financial position of banks.
e) Critical gaps in prudential guidelines (current prudential guidelines were issued in 1990).
f) Uneven supervision and enforcement.

This led the CBN to introduce a four pillar reform programme in 2010 tailored towards enhancing the quality of banks, establishing financial stability, enabling healthy financial sector evolution, and ensuring the financial sector contributes to the real economy. As part of the initiative to enhance the quality of the banks, the CBN undertook a review of the prudential guidelines, and to address the peculiarities of different loan types and financing to different sectors.[40] With the coming of electronic banking, and in its effort to financial inclusion, the CBN has issued guidelines on different aspects of electronic banking and electronic payment systems,[41] onIslamic banking and finance[42] and consolidated on micro-financing regulations.

(c) Appraisal of the Autonomy of the Central Bank of Nigeria

According to Walsh, central bank autonomy (or independence) refers to the freedom ofmonetary policymakers from direct political or governmental influence in the conduct of policy.[43]Section 1(3) of the Act[44] raises a presumption that the bank is an

[37] Alford, D.(2010), Nigerian Banking Reform: Recent Actions and Future Prospects, retrieved from: http://dx.doi.org/10.2139/ssrn.1592599 on 16/12/2017

[38]Famuyiwa, O., Op. Cit., p.56

[39]Sanusi L. S. Global Financial Meltdown and the Reforms in the Nigerian Banking Sector, CBN Journal of Applied Statistics Vol. 2 No.1, pp 93-108.

[40] Central Bank of Nigeria (CBN) Prudential Guidelines for Deposit Money Banks in Nigeria, Op. Cit.

[41] See Central Bank of Nigeria (2003b), Guidelines on Electronic Banking in Nigeria, Central Bank of Nigeria, Sanctions on Erring Banks/e-Payment Service Providers for Infractions of Payments System Rules and Regulation. BPS/DIR/GEN/CIR/02/007, July 29, 2015, Central Bank of Nigeria, Guidelines for Card Issuance and Usage in Nigeria, May 2014, Central Bank of Nigeria, Standards and Guidelines on Automated Teller Machine (ATM) Operations in Nigeria, April 2010, among others.

[42] Framework for the Regulation and Supervision of Institutions Offering Non-Interest Financial Services in Nigeria, FPR/DIR/CIR/GEN/01/010, January 13, 2011, and Guidelines for the regulation and supervision of institutions offering non-interest financial services in Nigeria

[43] Walsh, Carl E. (2005) "Central Bank Independence", *New Palgrave Dictionary of Economics*, p. 728.

independent body in line with international best practices.But whether or not the bank is independent enough in discharge of its functions is another issue. Thus, autonomy of the CBN can be assessed in four regards: legal independence, goal target autonomy, operational independence, and financial independence.[45]

1.5.1 Legal Independence

Legal independence implies that the central bank must have its autonomy enshrined in the statutes. The CBN Act has ventured to ensure through the years that amendments have been made in line with this objective. However, this type of independence is not usually absolute. It has deference to superior authorities. Under the CBN Act, such authority is the president.[46] Also, because of the supremacy of the constitution, and in the spirit of the principle of *checks and balances*,vesting the powers oversight powers on the National Assembly (NASS), the bank has to bow to some steering from the NASS.[47]Defining degrees of legal independence has proven to be a challenge since legislation typically provides only a framework within which the government and the central bank work out their relationship.[48]

This also means institutional independence. In this regard, Section 52(1) confers judicial immunity on the officers of the bank, the bank, and the government in respect of anything done or omitted to be done in good faith in pursuance of, or in execution of, or intended execution of any power conferred upon the government, or such officer of the bank, or the bank under the Act.[49]Even though this provision is manifestly inconsistent with the Constitution,[50] it underscores the efforts of the law towards making the CBN independent from external interjections.

It is international best practice to ensure that the political establishment does not drag the central bank into the murky waters of politics. To determine the legal independence of any central bank, four indices are queried in the enabling legislations:

---

[44]CBN Act

[45] See Ojo, M. O. 2000. The Role of the Autonomy of the Central Bank of Nigeria in Promoting Macroeconomic Stability.*Central Bank Economic and Finance Review* 38. 1

[46] Section 4 (3) of the CBN Act makes provision for the increase of its authorised share capital as determined by the president, while Section 6(3)(d) provides for appointment of auditors as prescribed in section 49 subject to the approval of the president, The CBN Board reports to the president, the Governor is appointed and can be removed by the president under sections 8,9, 10 and 11 of the CBN Act respectively, among other examples of the deference to the presidential powers exercised over the CBN. See the CBN Act.

[47] For instance section 8 (4), CBN Act, mandates the Governor to appear before the National Assembly at semi-annual hearings regarding the efforts, activities, objectives and plans of the Board with monetary policy. The appointment of the governor and his directors and or his removal is also subject to the powers of the NASS.

[48]Adeyeye, P. O., Ayorinde, O. O. and & Ajinaja, T. Effects of the Proposed Removal of CBN Autonomy on the Nigerian Economy: An Informed Analysis, *International Journal of Business and Management Review* Vol.1 No.2, pp. 79-88, June 2013, p.79.

[49] Section 52 of the CBN Act

[50] Section 52(1) is null and void, having regards to the provision of S.4 (8) of the Constitution, which provides that "...the exercise of legislative powers by the NA.... shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly the NA... shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.".

the first is the appointment of the CBN governor, the length of term and security of his office. These aspects help insulate him from political pressures. Secondly, independence is deemed higher, when policies and decisions made by the board are made independently of government involvement. The third is where price stability is the sole or primary goal of monetary policy as stated in its enabling legislation. The fourth is that independence is greater when there is no allowance by the bank to finance government debt or borrow money to the government.[51]We will now examine how entrenched these principles are under Nigerian laws and practice.

The affairs of the CBN are structured to function under the control of the governor or in his absence one of the deputy governors.[52] The governor shall be answerable to the board for his acts and decisions because the board is responsible for the policy and general administration of the affairs of the bank.[53] The governor, deputy governors, members of the board and the directors are all appointed on a fixed term of office by the president of Nigeria, subject to the confirmation by the senate[54] and can be removed based on specified grounds in the CBN Act not just on any ground.[55]

The CBN Decree of 1991[56] laid the foundation of autonomy by placing it directly under the powers of the president. However, in 1997 the law was amended to bring the CBN under the control and supervision of the Federal Ministry of Finance. For example, the law provided that where there was a disagreement on monetary policy between the CBN and the Federal Ministry of Finance, the CBN would convey such a disagreement to the Head of State through the Minister of Finance and the decision of the head of State on such matters will be final. This was in fact at variance with the recommendations of Okigbo Committee set up in 1994 to re-organise and reform the CBN.[57] However, this was not to last for long as the CBN (Amendment) Decree[58]repealed it and restored operational independence in the CBN to carry out its traditional functions and operations. The 2007 CBN Act repealed the CBN Act of 1991 and all its amendments. It liberallyconfers on CBN the freedom to carry out its functions with much discretion regarding the conduct of its monetary policy. Section 1 (3) states that, "in order to facilitate the achievements of its mandate under this Act and the BOFIA, and in line with the objective of promoting stability and continuity in economic management, the bank shall be an *independent* body in the discharge of its functions."[59]The law, thus, provides for the autonomy of the institution so that the desperation of political actors does not

[51]Olagbegi-Oloba, V. B. , and Oluatuyi, S., Critical examination of Central Bank's Autonomy within the Purview of CBN Act 2007; An Imperative for Economic Stability, Growth and Development in Nigeria, *Akure Bar Journal*, Vol. 1, Issue 1, p.6
[52] Section 7 of the CBN Act 2007
[53]Section 6, Ibid.
[54]Section 10(1), Ibid.
[55]Section 11, Ibid.
[56]Central Bank of Nigeria (CBN) Decree No. 24 of 1991.
[57]Uche, C. U., Does Nigeria Need an Independent Central Bank? *African Review of Money Finance and Banking*, No. 1/2 (1997), pp. 141-158. Retrieved from: http://www.jstor.org/stable/23026384 on 10/1/2018
[58] No 37 of 1998
[59] CBN Act

affect its effectiveness in protecting the economy.In practice however, the reality may be different since the CBN governor is appointed under the hand of the president. In a country where appointments are lobbied for and Senate confirmation is often bought, it is often difficult weathering the murky waters of Nigerian politics by the CBN.

1.5.2 Goal or Target Autonomy

The CBN has also been clothed with the autonomy to formulate its own monetary target and goal without the influence of any fiscal authority. It enjoys the freedom to choose its primary monetary policy objective or goal from the various mandates set by the law. It sets its own priority over other objectives of monetary policy.[60] While this type of independence is more common, many central banks prefer to announce their policy goals in partnership with the appropriate government departments. This increases the transparency of the policy setting process and thereby increases the credibility of the goals chosen by providing assurance that they will not be changed without notice. In addition, the setting of common goals by the central bank and the government helps to avoid situations where monetary and fiscal policies are in conflict.[61]

The government had always been accused of consistent failure to adhere to fiscal discipline, rendering all attempts to harmonise fiscal and monetary policies with the aim of achieving monetary stability the more challenging. The CBN governor had to openly complain that the greatest problem which has severely constrained the effectiveness of monetary and banking policies in Nigeria in the last few years have been the persistence of large Government deficits and its mandatory financing by the CBN.There are still allegations that the FGN under the current administration also flouted the laws by interfering with CBN autonomy.Sanusi recently claimed that the CBN-FGN relationship is no longer independent because the bank kept financing the federal government's budget deficit far and above the legally prescribed ceiling.CBN claims on the FGN topped N4.7 trillion, almost 50% of the FGN's total domestic debt, which was in violation of section 38(2) of the CBN Act capping to the FGN at 5% of last year's revenues.[62] Although Section 38 of the CBN Act allows the CBN to make advances to the FGN, the law only allows for temporary advances for budget purposes which shall not at any time exceed five per cent of the previous year's actual revenue.[63]Sanusi's observation was of substance. It portends a serious danger if the FG continues to violate such a provision.

1.5.3 Management and Operational Autonomy.

This simply refers to the ability of the central bank to choose and use the instruments of monetary control without instruction, guidance or interference from the

[60]Oyejide, T. 2012. Central bank autonomy, accountability and governance in Nigeria. (supra).
[61]Adeyeye, P. O., Ayorinde, O. O. and & Ajinaja, T., Op. Cit.
[62] "Muhammad Sanusi II, Emir of Kano and former Governor of the Central Bank of Nigeria (CBN), says the apex bank is illegally lending to federal government.", retrieved from: https://www.thecable.ng/cbn-illegally-funding-buharis-government-says-sanusion 10/1/2018
[63] Section 38(2) CBN Act

government.[64]The CBN Act confers wide autonomy on the bank in carrying out its operations including facilitation of clearing of cheques and credit instruments for banks in Nigeria and in prescribing rules and regulations for efficiency of this operation.[65]The instrumental autonomy of the CBN to make use of any kind of instrument in the implementation of its formulated monetary policy spans the CBN Act. The Act gives this freedom to utilize any instrument in discharging its functions.[66]Section 32(1) vests the bank with general powers to conduct business as a bank, and do all such things as are incidental to or consequential upon the exercise of its duties under the Act. Operational autonomy is the ability of the central bank to administer itself, pursue its policy without interference from any third party. This entails independence in staff matters, budgeting, staff pension, conditions of staff employment that cannot be manipulated by others.Term of office for Governors and deputy governors; when such officials may or may not be dismissed from office for reasons other than if they no longer fulfil the conditions required for the performance of their duties or if they have been guilty of serious misconduct, and everything related to its management without excessive or any involvement from the government. The Act[67] lays down the terms of office for both the central bank Governor and his five (5) deputies. If a government is in the habit of appointing and replacing the governor frequently, it will clearly impair the capacity to micro-manage the central bank through its choice of governors.

The experience of Uganda under Idi Amin Dada aptly illustrates the repercussions of interfering with central banks in this regard. In 1971, Uganda's Idi Amin Dada ran out of money to run the Government. He was furious when he was told he could not just print money through the Central Bank. He reminded everybody that he was the boss and ordered the Central Bank to print more money. This action caused massive inflation and led to the collapse of the economy. The prices of goods soared while essential commodities simply disappeared from the market.[68] This danger was also experienced in Nigeria when President Goodluck Jonathan decided to "suspend" SanusiLamidoSanusi. The ripples that were sent into the financial system were immediately felt. The financial market was negatively receptive of that political action.[69] From the legal perspective, section 11 of the CBN Act clearly lists the instances where the Governor or any of his deputies can cease to remain in office. None of such instances include suspension by the President. The only mention of the word "suspend" is in

[64]Adeyeye, P. O., Ayorinde, O. O. and &Ajinaja, T., Op. Cit.

[65] Section 47 of the CBN Act

[66] See also section 25 of the CBN Act which allows the bank to maintain external reserve at levels considered by the bank to be appropriate for the economy of the Nigeria.

[67] Section 5 of the CBN Act

[68] "Removal of CBN Governor: Keeping Our Focus on the Issue, By N-Katalyst" Retrieved from: https://www.premiumtimesng.com/opinion/155629-removal-cbn-governor-keeping-focus-issue-n-katalyst.html on 15/12/2017

[69] Nigeria's economic indices fell to negative, the lowest level in 15 years, as the Nigerian Stock market reacted violently to the suspension on Thursday of the Central Bank of Nigeria Governor, Lamido Sanusi. See Oluwaseyi B. and Bassey U. B., "Nigeria: Economic Indices Slip to Negative Following Sanusi's Suspension". Retrieved from: http://allafrica.com/stories/201402241051.html on 15/12/2017

section 11(1)(d) and it relates to the removal of the Governor when he or she is disqualified or suspended from practicing his or her profession in Nigeria. This is where for instance a lawyer is suspended from practicing as a legal practitioner. Even where it was provided that the president could remove the governor,[70] such removal shall be supported by two-thirds majority of the Senate. This support was not sought. The act of the president was clearly in violation of the law and compromised the CBN autonomy.

The Bank's mandate of acting as a lender of last resort may also be threatened by slowed decision-making, reduced effectiveness in respect of the execution of staff training and welfare, recruitment and remuneration, as well as capital spending.[71] A challenge flowing from this is where the CBN is used as a tool for political survival. For instance, it was recently alleged that the CBN governor doled out jobs to children and wards of top government officials[72] in order to keep his job when it was alleged that there was a plot to remove him from office.[73] This opens the flanks of the CBN work force to nepotism and mediocrity with adverse potential consequences.

1.5.4 Financial Autonomy

The last component of the theory of CBN autonomy entails giving the bank room to manage its own financial resources in order to perform its national task without interference from any third party.[74]Financial independence involves four aspects, namely: the right to determine its own budget; the application of central banks specific accounting rules, clear provisions on the distribution of profits and clearly defined financial liability for supervisory authorities. These elements of financial independence of the central bank strongly prove the connection between the strong funding of central bank and the autonomy of the central bank. That the central bank's ability to operate smoothly is adversely affected when it solicits financial aid from the government which in the long run may adversely affect its inflation rate targeting.[75]

Central Banks should therefore ideally be equipped with the financial strength, financial resources and financial mechanisms needed to keep performing its functions. How central banks are financed matters for independence. This is why the Act provides that the governor, or in his absence, one of the deputy governors, will determine administrative matters, including staff pensions, salaries, allowances and any other

[70]section 11(1)(f) CBN Act

[71]Adeyeye, P. O., Ayorinde, O. O. and & Ajinaja, T., Op. Cit.

[72]Ibekwe, N., "CBN recruitment scandal: Job titles for Buhari, Ministers' relatives 'released'" March 30, 2016. Retrieved from: https://www.premiumtimesng.com/news/top-news/201055-cbn-recruitment-scandal-job-titles-buhari-ministers-relatives-released.html on 12/1/2017

[73] Adiele, E. "Secret Plot By Buhari's Men To Remove CBN Boss Emefiele, Replace Him With Hayatudeen", retrieved from: https://www.thetrentonline.com/secret-plot-by-buharis-men-to-remove-cbn-boss-emefiele-replace-him-with-hayatudeen-details/ on 12/1/2017

[74] CBN Act 2007 which gives the CBN the power to determine its operating surplus shall allocate thereto at the end of each financial year one-quarter of its operating surplus for the year to the reserve fund established for that purpose.

[75]Olagbegi-Oloba, V. B. , and Oluatuyi, S., Op Cit.

similar matters, subject to the powers of the Board.[76] Section 6(3)[77] of the CBN Act also states that; "The Board shall be responsible for the consideration and approval of the annual budget of the bank."Without autonomy, the Bank will find it difficult to pressure government in reducing deficit, its spending and volume of public debt; without budgetary independence, the Bank will not avail itself of sufficient financial resources to fulfil its mandate in terms of the volume of resources and speed required to timely respond to systemic crises.[78]

1.6 Legislative Interjections

Over the years the CBN has been caught up in the web of power play between the executive arm of the government and its legislative counterpart. As a result, several attempts have been made to compromise its autonomy. This is worth examining because of its potential in impairing CBN's autonomy and the occasional distraction of the CBN governor away from his primary duties.

To provide an insight, in 2012 Senator ItaEnang sponsored a bill seeking to amend CBN Act to grant the National Assembly the powers to give authorization to CBN before the bank can spend any money.[79] Similarly, the House of Representatives also had its own version purporting to interfere with the budgetary independence of the CBN.[80] The amendment bill sought a alter the provisions of sections 6, 7(1) and 8(3), 49 and 50 of the Act dealing with issues concerning the composition of the Board of the CBN and who should audit its accounts. It also stipulated that instead of the Board of the CBN fixing its salaries and allowances of its governor and deputy governors; it should now be done by the Revenue Mobilization Allocation and Fiscal Commission subject to the approval of the President.

This move was challenged by experts in the fear that such legislative step could be counter-productive. During the public hearing conducted they rose in unison in stout, loud defense of the CBN's "statutory autonomy."[81]Thethen CBN governor argued that if passed, the law would remove Nigeria from international best practices. That the global trend wascentral banks were insulated from vagaries of politics to prevent the economy from collapsing. He illustrated his point with the case of Zimbabwe as the only central bank with budgets prepared with the approval of the minister, and how that accounted for the low value of the country's currency.He further contended that if the Act was amended

---

[76] Section 7 CBN Act

[77] Ibid.

[78]Adeyeye, P. O., Ayorinde, O. O. and &Ajinaja, T., Op. Cit

[79] A Bill for an Act to amend the Central Bank of Nigeria Act, Cap, C4 LFN, 2007 to compel the bank to submit its annual budget before the National Assembly and for related matters, 2012"

[80] "A Bill for an Act to amend the Central Bank of Nigeria Act, 2007 No.7 to appoint a person other than Governor as Chairman of the Board of the Bank, excludes Deputy Governors and directors as members of the Board, and divest the Board of the power of consideration and approval of the annual budget of the bank, and for other related matters,"

[81]Ogunye, J., CBN's statutory autonomy, powers of the National Assembly and the rule of law By JitiOgunye September 25, 2012. Retrieved from: https://www.premiumtimesng.com/opinion/101478-cbns-statutory-autonomy-powers-of-the-national-assembly-and-the-rule-of-law-by-jiti-ogunye.html on 10/1/2018

as recommended, the CBN would not be able to carry out its core function of maintaining price stability and ensuring a non-inflationary growth and ensuring a sound and stable system. He stressed that the CBN would become a political tool in the hands of politicians and the nation's economy would suffer.[82]This move was needless by the NASS considering that the CBN has not been absolutely independent from the exercise of legislative powers as can be seen under Sections 8 (4) and 50 (1 and 2) of the CBN Act, where it made mandatory for the Governor to appear before it to discuss the Bank's objectives and plans, and submit reports to it.[83]

In fairness to the NASS, while the CBN operational autonomy is essential, the issue of transparency and accountability in the conduct of the bank's affairs remain imperative.[84]The CBN must rest on the pillars of independence, accountability and transparency.[85]However, CBN autonomy should not be misconstrued as latitude for frivolity and unwholesome dabbling into political matters at every turn of events.The credibility of the monetary policy and appropriate reform of central bank legislation is also to a large extent determined by these principles.[86]Tampering with CBN's autonomy always results inthe Bank facing difficulties in delivering its mandate of maintaining price stability, which may in turn heighten inflationary expectations and influence its decisions on the Monetary Policy Rate (MPR), with severe impact on both nominal and real interest rates.[87]

1.7 Conclusion

The Central Bank of Nigeria (CBN) traces its origin to West African Currency Board (WACB). Its mandates include the promotion of a sound financial system in Nigeria, maintaining price stability and ensuring a non-inflationary growth. CBN's philosophy varied with each enactment and amendment. At independence it got concerned with regulation and promotion of local investments in the banking sector. With increasing globalization and the coming of Structural Adjustment Programme (SAP), the bank became preoccupied with allowing foreign investors into banking while pushing for favourable competition to ensure survival of existing investments in the sector. CBN Decree sought to empower the bank to meet the global best practice guaranteeing autonomy and enhancing the role central banks play in driving economic developments. This philosophy still dominates the enactment guiding the bank. Recently, the bank is also pushing for financial inclusion and with the challenges brought forth by electronic banking; customer protection is coming into serious focus.

---

[82] Experts kick CBN autonomy removal bill By Kayode Ekundayo, Lagos, Jun 2 2012 5:00AM https://www.dailytrust.com.ng/news/business/experts-kick-cbn-autonomy-removal-bill/9931.html

[83] See also sections 50, 49, 8(5), 19, 20(3), 10(1), and section 8 of the CBN Act 2007.

[84]Olagbegi-Oloba, V. B., and Oluatuyi, S., Op. Cit. op cit

[85]Amtenbrink, F. (2004) The Three Pillars of Central Bank Governance: Towards a Model Central Bank Law or a Code of Good Governance?*IMF LEG Workshop on Central Banking, and IMF Institute Seminar on Current Developments in Monetary and Financial Law*

[86]Lybek, T. & Morris, J. (2004) "Central Bank Governance: A Survey of Boards and Management", *IMF Working Paper*, WP/04/226

[87]Adeyeye, P. O., Ayorinde, O. O. and &Ajinaja, T.

The CBN is now a regulator, banking supervisor and a development bank. It has the responsibility of ensuring a sound and stable financial system in addition to other developmental functions. These mandates and functions are peculiar to central banks across the globe, and no other institution performs such functions. The CBN is not a political entity. It is strictly a technical one. It is structured to take decisions that are insulated from political distractions. It is established by statute as an independent, autonomous body, although not absolute. To effectively regulate the banking sector, it sometimes must take unpopular decisions.Charles Soludo embarked on a banking consolidation exercise that trampled on many interests, SanusiLamido also consolidated of those foundations, issued regulations on Islamic banking, and enforced rules bringing to an end the tenure of some powerful executives while sending others to face the law courts, Godwin Emefiele stood his ground on Forexpolicies despite pressure from politicians. Without the statutorily guaranteed autonomy by both the CBN Act and BOFIA, these feats would be impossible to achieve. Nonetheless, for different reasons, the CBN autonomy had been a subject of controversy over the years, with the National Assembly seeking to take away its independence for reasons that are clearly political.

While we agree that the autonomy of the central bank is a fundamental pre-requisite in modern economies, especially a nation experiencing economic, political and social volatilities as Nigeria, the issue of transparency and accountability in the conduct of the Bank's affairs remain imperative. Section 52(1) of the CBN Act is clearly too ambitious, ousting judicial review guaranteed in the 1999 Constitution. In this regard, the section should be amended to reasonably restrain other authorities rather than the court.

Nigeria's economy is too big and complex for CBN to satisfactorily deal with issues regarding compliance with regulations by banks and other stake holders. Its supervisory function can be vested in another agency to be established for this purpose. The United Kingdom model vesting in the Financial Service Authority (FSA) supervisory and enforcement function over the insurance, security and banking sectors is worth recommending. The CBN can concentrate on monetary policy and other functions. There is also the need to strengthen the existing relationships between other regulators in the financial sector in order to coordinate and compliment efforts between the monetary and the fiscal authorities to ensure more accountability and transparency.