

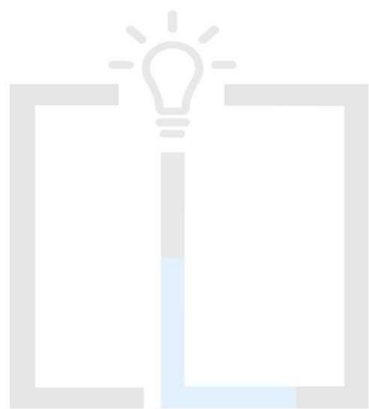
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Has the "cryptocurrency
ban" in Nigeria been lifted?



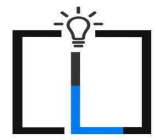
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Has the "cryptocurrency ban" in Nigeria been lifted?

30 June 2023

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Introduction

On 28 May 2023, former President, Muhammadu Buhari, signed the Finance Act 2023 into law. Amongst other changes, the Finance Act 2023¹ introduced capital gains tax on profits made from disposal of digital assets in Nigeria. Immediately after handover to President Bola Ahmed Tinubu on 29 May 2023, the news of a "cryptocurrency tax" in the country hit the public. This was not without its attendant breaking-news, eye-grabbing headlines.² Understandably, many Nigerians appear to believe, albeit wrongly, that the Tinubu administration had introduced a "cryptocurrency tax" in Nigeria. This, as long as many saw it, signaled the acceptance of cryptocurrency by the Federal Government in Nigeria. Across the blogosphere, social media, and some traditional news channels, the news of how the Federal Government has finally lifted the "cryptocurrency ban" spread fast.³

¹ Finance Act 2023, Budget Office of the Federation, Nigeria, [://www.budgetoffice.gov.ng/index.php/finance-act-2023](https://www.budgetoffice.gov.ng/index.php/finance-act-2023), accessed 8 June 2023

² 'TIMELINE: From ban to taxation — FG's journey to cryptocurrency acceptance', The Cable, 7 June 2023, <https://www.thecable.ng/timeline-from-ban-to-taxation-fgs-journey-to-cryptocurrency-acceptance/amp>; 'After introducing a blockchain act, Nigeria's first move is to tax 10% of crypto profits', TechCabal, 11 June 2023, <https://techcabal.com/2023/06/10/crypto-ban-nigeria-crypto-tax/#:~:text=The%20crypto%20tax%20comes%20from,on%20profits%20on%20digital%20assets>

³ 'FG Lifts Ban On Cryptocurrency, Introduces Taxation Instead', Nairaland, 16 June 2023,

The question is: *Has the "cryptocurrency ban" in Nigeria been lifted?*

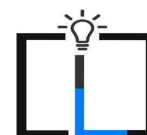
No cryptocurrency ban in Nigeria

First, there was no cryptocurrency ban in Nigeria in the first place. What people commonly refer to as "cryptocurrency ban" in the country is the cryptocurrency circular of 5 February 2021 by the Central Bank of Nigeria (CBN). In that circular, the CBN directed deposit money banks (DMBs), non-bank financial institutions (NBFIs), and other financial institutions (OFIs) to close accounts of persons or entities involved in cryptocurrency transactions on their platforms.⁴ This directive does not apply to the entire country. It is limited to cryptocurrency transactions in Nigeria's banking and financial sector.

Consequently, cryptocurrency transactions outside the banking and financial sector are *not* covered by the CBN cryptocurrency circular. Even the CBN clarified its position shortly after it issued the circular. In March 2021, Adamu Lamtek, Deputy Governor of

<https://www.nairaland.com/7719047/fg-lifts-ban-cryptocurrency-introduces>

⁴ 'Letter to All Deposit Money Banks, Non-Bank Financial Institutions and Other Financial Institutions', CBN, 5 February 2021, https://www.cbn.gov.ng/out/2021/ccd/letter%2520on%2520crypto.pdf&ved=2ahUKewiWu67Mz73_AhVNQ0EAHeKXD1UQFnoECAsOAO&usg=AOvVaw0HlW_f2TFe07tIZ0Lo69vx



the CBN, clarified that the CBN did not ban cryptocurrency activity in the country. According to Mr. Lamtek, “[t]he CBN did not place restrictions from [the] use of cryptocurrencies, and we are not discouraging people from trading in them. What we have done was to prohibit transactions on cryptocurrencies in the banking sector”.⁵ Mr Lamtek was speaking on behalf of the Governor of the CBN at the 30th seminar for Finance Correspondents and Business Editors in Abuja FCT.

Nigeria’s entire banking and financial system has been enforcing an unlawful CBN circular.

Apart from the CBN cryptocurrency circular only applying to cryptocurrency or cryptocurrency-related transactions in Nigeria's banking and financial sector, the CBN cryptocurrency circular is itself invalid. Being invalid, the CBN cryptocurrency circular is unlawful—if not illegal by virtue of subsequent relevant laws of the National Assembly on digital assets or virtual assets in Nigeria. The Money Laundering (Prohibition, Prevention, etc.) Act 2022⁶ and the Finance Act 2023,⁷ superior to circulars, both recognize "virtual assets" and "digital assets", which include cryptocurrency,

respectively. While section 30 of the Money Laundering act defines "financial institutions" to include virtual assets service providers (VASPs), section 2 of the Finance Act 2023 amended section 3(a) of the Capital Gains Tax Act (the principal Act) to recognize “digital assets”.

CBN’s primary mandates are provided under the Central Bank of Nigeria Act 2007 (CBN Act 2007) and the Banks and Other Financial Institutions Act, 2020 (the BOFIA 2020).⁸ While the provisions of the CBN Act 2007 primarily center on the central-banking role of the CBN, the provisions of the BOFIA 2020 center on the role of the CBN as a regulator. I acknowledge the CBN’s two-pronged statutory roles. On the first part, the CBN as an institution is mandated 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 a banker; and provide economic and financial advice to the Federal Government.⁹ And on the second part, the CBN as a regulator is mandated to administer and supervise licenses and operations of banks, specialized banks, and other financial institutions in the country.¹⁰ These make the CBN one of the most powerful institutions in Nigeria, and necessarily so.

That said, the statutory powers of the CBN must be exercised in a manner that is consistent with the provisions of the

⁵ 'Nigeria's Central Bank: We Didn't Ban Crypto Trading', CoinDesk, May 22 2021, <https://www.coindesk.com/markets/2021/03/22/nigeria-central-bank-we-didnt-ban-crypto-trading/>

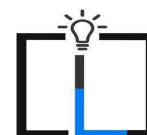
⁶ The Finance Act 2023 was signed into law 28 May 2023 and retroactively took effect 1 May 2023.

⁷ Section 2 of the Finance Act 2023 amended section 3(a) of the Capital Gains Tax Act (the principal Act) by inserting after the word “debt”, the words, “digital assets”. The Finance Act 2023 was signed into law 28 May 2023 and retroactively took effect 1 May 2023.

⁸ Section 1(3) of the CBN Act, 2007

⁹ Section 2 of the CBN Act, 2007

¹⁰ Sections 2 and 3 of the BOFIA, 2020 and the rest of the Act



applicable statutes. This is why when exercising its regulatory and supervisory powers as bestowed on it by the National Assembly by prohibiting, sanctioning, or penalizing a bank, specialized bank, or other financial institutions over an offense, CBN's action is required to be in compliance with the laws establishing and regulating it.

There is no offense, whether under the CBN Act 2007, the BOFIA 2020, or any other written law, relating to cryptocurrency whatsoever, including facilitating or involving in cryptocurrency-related transactions in the banking and financial system. As long as such offense does not exist under Nigerian law, it is unlawful for the CBN or any of its regulated institutions to prohibit, sanction, or penalize any individual or entity over the purported contravention of the nonexistent offense. This is constitutional law.

And this is why under the BOFIA 2020, there is a litany of written offenses and their penalties expressly stated. Some of these written offenses and their penalties are as follows:

- (a) Operating a banking business without license is written and stipulated under section 2(2) of the BOFIA 2020;
- (b) A foreign bank or other entity not having a physical presence in its country of incorporation, or not licensed in its country of incorporation and which is not affiliated to any financial services group that is not subject to effective supervision, are written and penalties

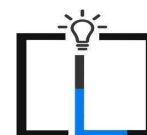
stipulated under section 2 of the BOFIA 2020;

- (c) A licensed bank not complying with the conditions of its license is written and penalties stipulated under section 5 of the BOFIA 2020;
- (d) A bank opening or closing any branch office, cash center, or representative office anywhere within or outside Nigeria without the prior written approval of the CBN are written and penalties stipulated under section 6 of the BOFIA 2020;
- (e) Restructuring, reorganizing, merging, or disposing of a bank without the prior written approval of the Governor or the CBN is written and penalties stipulated under section 7 of the BOFIA 2020; and
- (f) Operating foreign banks in Nigeria and offshore without the prior written approval of the CBN is written and penalties stipulated under section 8 of the BOFIA 2020.

Similarly, from requirement on cash reserves to restrictions on dividends, disclosure of interest by directors to restrictions on certain banking activities, and many others, offenses and penalties are stipulated under the BOFIA 2020. None is arbitrary. This is the point.

The CBN cryptocurrency circular of 5 February 2021, being a mere circular unsupported by any written law, is invalid and unlawful because of the following four (4) grounds:

1. It declared that the act of regulated institutions "dealing in cryptocurrencies or facilitating payments for



- cryptocurrency exchanges is prohibited”;
2. It directed all DMBs, NBFIs, and OFIs “to identify persons and/or entities transacting in or operating crypto currency exchanges within their systems and ensure that such accounts are closed immediately;
 3. Relying on the declaration and directive in the circular, DMBs, NBFIs, and OFIs deny banking and financial services to persons and/or entities transacting in or operating crypto currency exchanges within their systems; and
 4. Relying on the declaration and directive in the circular, CBN sanctions DMBs, NBFIs, and OFIs—by way of fines, revocation of licenses, etc—over the purported contravention of the directive in the circular.

Dealing in cryptocurrencies or facilitating payments for cryptocurrency exchanges is not prohibited by any written law in Nigeria. None of the four (4) actions above are permitted by any written law in the country. The legal consequence is unavoidable: The CBN cryptocurrency circular is arbitrary. It is invalid and unlawful. *Null and void*.

Does this mean that the CBN should simply watch? No. The CBN had other lawful means available to it. For example, contrast the CBN's arbitrary approach of 5 February 2021 to its previous approaches, and the point may become even clearer. In its anti-money laundering-focused circular of 17 January 2017 to banks and other financial

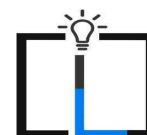
institutions,¹¹ CBN carried out its statutory duty by requiring DMBs, NBFIs, and OFIs to adopt adequate AML compliance with customers who deal in or involve in cryptocurrency. Similarly, the CBN stayed within its statutory bounds in its consumer protection-focused press release of 28 February 2018 to the members of the public.¹² Rather than arbitrarily prohibiting the dealing in virtual assets or facilitation of virtual asset-related transactions, or ordering DMBs, NBFIs, and OFIs to immediately close customer accounts, or fining DMBs, NBFIs, and OFIs, the CBN warned the members of the public about the risks associated with virtual assets. So ensuring that DMBs, NBFIs, and OFIs strictly comply with its directive of 17 January 2017 is—as the statutes permit—the lawful measure the CBN should have continued to enforce and enhance, pending any substantive regulation.

If the CBN must prohibit cryptocurrency in Nigeria's banking and financial sector, it will need more than a circular for this. The CBN must seek the legislative intervention of the National Assembly. If it fails to, the CBN will most likely have very difficult days in court, as it did in *Governor CBN v Rise Vest Technologies Ltd & Others*¹³.

¹¹ 'Circular to Banks and Other Financial Institutions on Virtual Currency Operations in Nigeria', CBN, 12 January 2017, <https://www.cbn.gov.ng/out/2017/fprd/aml%20january%202017%20circular%20to%20fis%20on%20virtual%20currency.pdf>

¹² 'Virtual Currencies not Legal Tender in Nigeria - CBN', 28 February 2018, <https://www.cbn.gov.ng/out/2018/ccd/press%20release%20on%20virtual%20currencies.pdf>

¹³ Suit No. FHC/ABJ/CS/822/2021. Delivered by the Federal High Court (Abuja Division) by Honorable Justice Taiwo O. Taiwo, 18 October 2021



The decision in *Governor CBN v Rise Vest Technologies Ltd & Others* brings the point home.

As stated above, the CBN cryptocurrency circular is a *mere circular* that is incapable of creating an offense in Nigeria. Thankfully, the Federal High Court's decision in *Governor CBN v Rise Vest Technologies Ltd & Others* emphasizes and illuminates this point.

In that case, the validity and lawfulness of the CBN cryptocurrency circular was considered by the Federal High Court in October 2021. The relevant facts are that the CBN froze the bank accounts of Rise Vest Technologies (sued as 1st Defendant) maintained with Guaranty Trust Bank Plc and Zenith Bank Plc. This was by virtue of an interim freezing order obtained by the CBN from the Federal High Court on 17 August 2021. Dissatisfied with the interim freezing order which was granted *ex parte*, Rise Vest Technologies applied to the Court to set aside or discharge the interim freezing order.

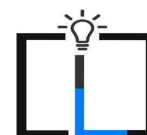
The CBN argued that under section 97(1) of the BOFIA 2020, it has the power to apply for and obtain an *ex parte* order to freeze any account which the CBN has reasons to believe is involved in the commission of an offense under any law. The offense against Rise Vest Technologies, as alleged by the CBN, is that it transferred funds to Buycoins, a cryptocurrency exchange, to purchase cryptocurrency. According to the CBN, this act contravened the CBN cryptocurrency circular of 5 February 2021.

But Rise Vest Technologies disagreed. It maintained that the CBN has not placed any evidence before the Court to show that it engaged in any unlawful conduct. Consequently, Rise Vest Technologies urged the Court to set aside or discharge the interim freezing order.

The Court, *per* Honorable Justice Taiwo O. Taiwo, after acknowledging the powers of the CBN under sections 97(1) and 97(3) of the BOFIA 2020, did not agree with the CBN's argument that Rise Vest Technologies has contravened any law. The Court relied on three reasons.

First, on the requirement that an offense must be written, the Court emphasized that "[t]he law is trite that any conduct that must be sanctioned must be expressly stated in a written law". Therefore, the Court "will not back any alleged infraction of the law which is not written or passed into law". The Court *per* Honorable Justice Taiwo O. Taiwo, is quoted below:

I have stated earlier that the freezing of the account of the applicant is from the facts before the court based on the allegation that the applicant engages in cryptocurrency. The applicant has not denied but the respondent seems to base its reason for approaching the court for ex parte order on the circular issued to Banks and other financial institutions on cryptocurrency. With due respect to the learned counsel to the respondent, there is no reference by the learned counsel to any law on which the allegation is based or that it is illegal in Nigeria to deal in



cryptocurrency as at now. The court cannot speculate. It deals with hard facts.

Second, the Court disagreed with the CBN that its circulars have a force of law. The Court stated that while administrative circulars or notices have their place in government, they cannot create an offense.¹⁴ “Being unknown to law, circulars cannot create an offense because it was not shown to have been issued under an order, Act, Law or Statute”, the Court stated.

Third, regarding CBN’s submission that the interim freezing order should be maintained based on public policy, the Court also disagreed. According to the Court, and rightly so, the Court cannot base its decision solely on public policies. As reasoned by the Court, this is because public policies are ideals which prevail in any community for the time being as to the conditions necessary to ensure its welfare.

Conclusively, the Court, granting the applications of Rise Vest Technologies, discharged the interim freezing order of the Court. Also, the Court ordered both Guaranty Trust Bank Plc and Zenith Bank Plc to immediately unfreeze Rise Vest Technologies Ltd’s bank accounts and “grant the applicant *unfettered access* to the bank accounts”.

A customer’s unfettered access to his, her, or its bank account, particularly considering its

constitutional implications, is not a thing to leave to “contravention” of mere circulars.

Apparently, under the supervision of the Emezie-led CBN, Nigeria’s entire banking and financial sector has been enforcing an invalid and unlawful cryptocurrency circular. Till date, that unlawful cryptocurrency circular of 5 February 2021, unfortunately, remains in force. In fact, the CBN has been sanctioning banks and other financial institutions in Nigeria by virtue of the invalid and unlawful circular.¹⁵ Also, a number of individual and corporate bank accounts have also been closed since the circular was issued. Others, frozen. This is unlawful. It should not persist in a democratic society.

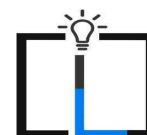
The overzealousness of nonfinancial institutions in wrongfully enforcing the unlawful CBN circular

No thanks to overzealous entities and individuals in the country, the purported cryptocurrency ban has resulted in a situation where any mere mention or use of the word, "crypto", "cryptocurrency", "cryptoasset", or any similar words or phrases, is prohibited. The consequence is outright denial of service.

Service providers who are not DMBs, NBFIs, and OFIs, such as domain registrars and web-hosting providers, ecommerce

¹⁴ The Court cited *Omatseye v FRN* (2017) LPELR-42719 (CA); *Maidaribe v FRN* (2013) LPELR-31861 (SC) (where the Supreme Court cited Prof. W. Wade and C. Forsyth, *Administrative Law Book*, 8th Edition, 851)

¹⁵ 'CBN's Crackdown on Cryptocurrency Trading Results in N1.314bn Fines for Six Banks in 2021', ThisDay, April 9 2022, <https://www.thisdaylive.com/index.php/2022/04/09/cbns-crackdown-on-cryptocurrency-trading-results-in-n1-314bn-fines-for-six-banks-in-2021/>



businesses, and other nonfinancial institutions and platforms continue to enforce the unlawful CBN cryptocurrency circular. This continues to cause undue hardship and inconvenience on Nigerians whose activities involve cryptocurrency in any way. I have also experienced this recently. A Nigerian-owned, web-hosting company threatened to yank off Cryptoassetbuyer.com (CAB), a crypto education and media site, because it contains the word "crypto" and publishes contents relating to crypto. Shocking. After some correspondence between the web-hosting company's legal team and CAB, they agreed to keep hosting CAB. But CAB was given one condition: That CAB must not enable crypto trading on its platform. (Though CAB as a crypto education and media site is not interested in providing crypto trading, it recently moved to a foreign web-hosting service provider in order to avoid any unforeseen disruption of its operations.) Many Nigerians with crypto-related businesses or platforms on the Internet face similar ordeals.

Worse still is the frustrating experience of trying to register an organization with the Corporate Affairs Commission (CAC) with any name or object containing any of the crypto-related words blacklisted above. They are all prohibited, no thanks to the CBN cryptocurrency circular. In fact, the CAC has been reported to have even turned down an application with the word "blockchain".¹⁶ This cited instance was no

¹⁶ "Blockchain is yet to be recognised by Nigerian government", says Nigeria's Corporate Affairs Commission (CAC); queries application for blockchain company registration', Crypto Asset Buyer (CAB), October 20 2021, <https://cryptoassetbuyer.com/blockchain-is-yet-to-be->

exception but the unwritten rule. It has been that bad.

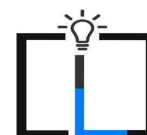
But perhaps not as bad as being confronted by law-enforcement agencies, particularly the Nigerian police, because you are involved in crypto activities in Nigeria, in any way. Stories of discrimination, extortion, harassment, and illegal arrest have been told of such encounters in the country, particularly by young people in mostly southern Nigeria. During my days in office as the president of the Stakeholders in Blockchain Technology Association of Nigeria (SiBAN), I had the duty to attend to such reports from time to time.¹⁷ Sadly, the Buhari administration's poor rating on the rule of law in Nigeria did not help matters in this regard. The CBN cryptocurrency circular reigned and continues to reign, at the time of writing, on the throne of illegalities.

Beyond cryptocurrency, the CBN cryptocurrency circular taints the sacredness of the separation of powers, rule of law, and constitutionalism in Nigeria.

The National Assembly had summoned the now-suspended CBN Governor, Godwin

[recognised-by-nigerian-government-says-nigerias-corporate-affairs-commission-cac/](https://www.cac.gov.ng/recognised-by-nigerian-government-says-nigerias-corporate-affairs-commission-cac/)

¹⁷ 'Press Release: Blockchain Technology is Not Cryptocurrency and Cryptocurrency is Not Unlawful in Nigeria: To All Public Agencies, Law Enforcement Agencies, Banks, and Other Institutions in Nigeria', SiBAN, 19 April 2022, <https://siban.org.ng/press-release-blockchain-technology-is-not-cryptocurrency-and-cryptocurrency-is-not-unlawful-in-nigeria-to-all-public-agencies-law-enforcement-agencies-banks-and-other-institutions-in-nigeria/>



Emefiele, over the CBN cryptocurrency circular.¹⁸ But if the eventual result of this engagement was anything to go by, I believe that the National Assembly did not appear to fully understand and appreciate that its constitutionally guaranteed legislative power was being usurped by the CBN. Till date, I still believe that the National Assembly is yet to demonstrate that it fully realizes this.

The issue with the CBN cryptocurrency circular is beyond cryptocurrency and financial institutions. It is beyond disruptive innovations and regulations. It is, beyond anything else, about the sacredness of the law-making process in a democratic society. Here, I speak of the constitutionality to make law and create offenses under Nigerian law. Prohibiting the act of “dealing in crypto currencies or facilitating payments for cryptocurrency exchanges is prohibited” by the instrument of a circular, directing DMBs, NBFIs, and OFIs in the country to deny banking and financial services to all entities and individuals who deal in cryptocurrency, and sanctioning or penalizing the purported contravention of such directive is the act of law-making.

This is *ultra vires* the CBN under the CBN Act 2007, the BOFIA 2020, and any other law. The CBN cannot legally be the lawmaker, the enforcer, and the adjudicator. Graciously, the Federal High Court decision in *Governor CBN v Rise Vest Technologies Ltd*

¹⁸ 'Cryptocurrency Ban: CBN Governor, Godwin Emefiele Honours Senate's Invitation', Channels TV, February 23 2023, <https://www.channelstv.com/2021/02/23/cryptocurrency-ban-cbn-governor-godwin-emefiele-honours-senate-invitation/amp/>

& Others,¹⁹ as shown above, has helped to draw the lines. These are the same lines by which executive lawlessness is checked and executive powers balanced in any democratic society.

The National Blockchain Policy has a role to play.

In the recently approved National Blockchain Policy by the Federal Government, the unlawful CBN cryptocurrency circular is neither recognized nor mentioned.²⁰ Absolutely. This is a welcome development. No unlawful circular should merit any air in a national policy document. Considering the CBN cryptocurrency circular's unlawful status, it must be treated as if it was never made. And rightly so.

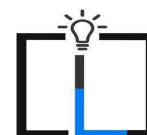
Notably, amongst other policy directions, it is stated in the policy that “[t]he Nigerian Government recognises cryptocurrency as one of the components that will catalyse the adoption of Blockchain Technology”. Hence, the Nigerian Government is to “[provide] a framework for the use of cryptocurrencies, among others, which can help to mitigate risks such as money laundering and fraud”.

Therefore, stakeholders appointed as members of the 29-member Implementation and Steering Committee of the National

¹⁹ Suit No. FHC/ABJ/CS/822/2021. Delivered by the Federal High Court (Abuja Division) by Honorable Justice Taiwo O. Taiwo, 18 October 2021.

²⁰ 'National Blockchain Policy for Nigeria', National Information Technology Development Agency (NITDA)

https://nitda.gov.ng/wp-content/uploads/2023/05/National-Blockchain-Policy.pdf&ved=2ahUKEwiO3Y7d9br_AhURilwKHey5ANcOFnoECA8QAO&usq=AOvVaw0729tf1vT7eI2rn1pa4lqa accessed 8 June 2023



Blockchain Policy, including the CBN, are required to support the successful implementation of the policy in Nigeria.²¹ Until all stakeholders, including regulators and innovators, work together as they should, the ultimate result will remain the same: Taking one step forward, three steps backward. As I have come to understand over the years playing in the technology policy space in Nigeria and understudying other emerging markets, often this is largely the result of conflicting actions by various agencies of the government. From arbitrary circulars to blanket approaches, knee-jerk reactions to poor consultation, we do not only end up asphyxiating innovation but also diminishing regulation in the long run. This causes lack of uncertainty in the regulatory climate, triggering distrust and dysfunctions in an otherwise symbiotic ecosystem.

So what triggered the recent reports that a supposed cryptocurrency ban has been lifted in the country?

The trigger was the Federal Government's imposition of tax on digital assets. The idea of capital gains tax on digital assets was muted in the last quarter of 2022. It was eventually introduced in the Finance Bill in December 2022.²²

²¹ 'Nigeria Launches Blockchain Policy, Inaugurates National Implementation Committee', VON, May 17 2023,

<https://von.gov.ng/nigeria-launches-blockchain-policy-inaugurates-national-implementation-committee/>

²² 'FG to tax cryptocurrencies in Finance Bill 2022', Punch, December 2 2022,

<https://punchng.com/fg-to-tax-cryptocurrencies-in-finance-bill-2022/>

Nigeria eventually introduced capital gains tax on profits generated from digital-asset investments in May 2023.²³ This is by virtue of the provisions of the Finance Act 2023. The Finance Act 2023 was signed into law by President Buhari on May 28 2023, a day to handover to a new administration. Retroactively, the Finance Act 2023 came into force 1 May 2023.

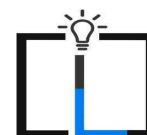
Imposing tax on digital assets, including cryptocurrencies or crypto assets, by a government is generally understood to mean acceptance of cryptocurrencies. This is why, understandably, many followers and observers consider the imposition of capital gains tax on digital assets in Nigeria an automatic lift of the "cryptocurrency ban" in the country.

To ensure that the road is clear for capital gains tax on digital assets however, it is imperative for the Federal Government to finally have the CBN review its anti-cryptocurrency stance in Nigeria's banking and financial sector. It is in the interest of the Federal Inland Revenue Service (FIRS) and the Ministry of Finance particularly to get the CBN on the same page. The rate of crypto adoption in Nigeria has, by no little gap, left 5 February 2021 behind. At the time of writing, over 22 million Nigerians, about 10.3% of Nigeria's total population, reportedly own cryptocurrency.²⁴ There is an elephant in the room.

²³ 'Nigeria will tax digital assets, including cryptos, 10% on capital gains', Nairametrics, May 5 2023,

<https://nairametrics.com/2023/06/06/nigeria-will-tax-digital-assets-including-crypto-10-on-capital-gains/>

²⁴ Global Crypto Adoption: Nigeria, Triple A, <https://triple-a.io/crypto-ownership-data/>, accessed 10 June 2023



Recommendations/ Conclusion

Without mincing words, the Federal Government must address the elephant in the room. That elephant is cryptocurrency or crypto assets in Nigeria. Like the CBN has continued to emphasize, we must ensure a safe and sound financial system. But a safe and financial system will not be so for long without inclusiveness. Excluding an entire sector from access to banking and financial services is not only discriminatory but also a denial of a citizen's constitutionally guaranteed right to property. It also restricts economic freedom. This is an aspect Nigeria has fallen significantly short of. Under the Global Economic Freedom Index 2023, Nigeria has a score of 53.9, making our economy the 124th freest in the world, 0.5 point lower than last year. Out of 46 countries in Sub-Saharan Africa, Nigeria is ranked 22nd.²⁵ Nigeria's overall score is below the world average of 60. Meanwhile, Singapore, Switzerland, and Ireland rank 1st, 2nd, and 3rd, with a score of 83.9, 83.8, and 82.0 respectively.²⁶ The higher the economic freedom in a country, the higher the economic growth in that country, thus improving security.²⁷

Nigeria must learn to dream again. For a start, we must embrace excellence by

²⁵ Economic Freedom Index, <https://www.heritage.org/index/country/nigeria>, accessed 10 June 2023

²⁶ Economic Freedom Index, <https://www.heritage.org/index/ranking>, accessed 10 June 2023

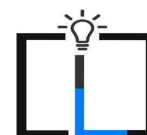
²⁷ Gwartney, James D. et al, 'Economic Freedom and the Environment for Economic Growth', Journal of Institutional and Theoretical Economics (JITE), Vol. 155, No. 4 (Dec. 1999), 643-663, Mohr Siebeck GmbH & Co. KG, <https://www.jstor.org/stable/40752161>

adopting global best practices in the digital assets space, while also considering local opportunities and threats. While there are risks associated with cryptocurrency adoption,²⁸ these risks will not simply go away by driving cryptocurrencies underground or by burying one's head in the sand.

First, the Federal Government should leverage the recently approved National Blockchain Policy to get the CBN to immediately withdraw or review the unlawful cryptocurrency circular of 5 February 2021. Until that unlawful circular, with all its misleading consequences, is out of the picture, Nigeria's vision for blockchain-technology applications in the country will continue to face challenges. Obviously, CBN's stance on cryptocurrencies currently impairs the Security and Exchange Commission's (SEC) ability to effectively regulate the digital assets industry. It also impairs efficient and effective law enforcement in this area.

Second, the Federal Government should help ensure that the Money Laundering Act 2022 is allowed to operate. It recognizes virtual assets and requires VASPs to embrace anti-money laundering (AML) compliance. Being an act of the National Assembly, the provisions of the Money Laundering Act 2022, I believe, effectively *illegalizes* the CBN cryptocurrency circular. (The Finance Act 2023 which also recognizes

²⁸ Ihenyem, S., 'Analyzing the Use of Cryptocurrencies in Nigeria for Illegal Activities: Before We Kill the Goose that Might Lay the Golden Egg', March 21 2021, <https://infusionlawyers.com/analyzing-the-use-of-cryptocurrencies-in-nigeria-for-illegal-activities-before-we-kill-the-goose-that-might-lay-the-golden-egg/>



'digital assets' under the amended Capital Gains Tax Act similarly illegalized the CBN cryptocurrency directive). The Money Laundering Act 2022 is consistent with best practices as, amongst other things, it promotes accountability and transparency in the crypto ecosystem. Contrastingly, the current illegal CBN cryptocurrency circular, in effect, encourages opacity in the crypto industry. The Nigerian Financial Intelligence Unit (NFIU), particularly, should be given all the support it needs to implement the Money Laundering Act 2022 on VASPs. Basically, this is asking the CBN to reconsider readopting its AML-focused circular of 12 January 2017 to DMBs, NBFIs, and OFIs.²⁹ This is consistent with global best practice, including the recommendations of the Financial Action Task Force (FATF).

Third, there is a need for capacity building in digital assets in both the private and public sectors in the country. On the one hand, in the private sector, DMBs, NBFIs, and OFIs should be particularly encouraged to invest in capacity building in digital assets, particularly compliance. Rather than being fined by the CBN over cryptocurrency-related transactions, the CBN should require these DMBs, NBFIs, and OFIs to ensure that they have systems in place to ensure AML compliance. The Nigerian banking and financial sector is no stranger to AML and countering financing of terrorism (AML-CFT) compliance. On the other hand, in the public sector, the staff of

agencies relevant to blockchain technology need to be well-trained too, and regularly so. This should involve law-enforcement agencies in the country, including the Economic and Financial Crimes Commission (EFCC), NFIU, and the Nigeria Police.

Lastly, open, collaborative, and continual multi-stakeholder engagements in the emerging digital assets industry in Nigeria is presently lacking. Regulators and innovators need to improve the level of engaging each other. This, amongst other things, will help boost transparency and trust in the space. In a jurisdiction and ecosystem where regulators and innovators have regular roundtables, I imagine that this will benefit both innovation and regulation. It will create a healthier climate for the growth and development of Nigeria's fledging digital economy, under which the digital assets industry is emerging. *The future belongs to those who create it.*³⁰

²⁹ 'Circular to Banks and Other Financial Institutions on Virtual Currency Operations in Nigeria', CBN, 12 January 2017, <https://www.cbn.gov.ng/out/2017/fprd/aml%20january%202017%20circular%20to%20fis%20on%20virtual%20currency.pdf>

³⁰ Malcolm X, influential African American human rights activist (1925-1965)



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