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The Need for a Rights-Based Approach to Cryptocurrency Regulation in Nigeria

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Introduction

Cryptocurrency adoption in Nigeria by the private sector came with legal, social, and economic implications as the government attempted—sadly unsuccessfully—to regulate the industry. While the Central Bank of Nigeria (Central Bank, CBN), Securities and Exchange Commission (SEC), National Information Technology Development Agency (NITDA), Federal High Court (FHC), Economic and Financial Crimes Commission (EFCC) have been the leading regulators of cryptocurrency in Nigeria, the Nigeria Police Force (the Police, NPF) has also been involved, particularly with the implementation of directives of the Central Bank, which they conceived to be a ban. The regulatory approach toward cryptocurrency in Nigeria has been more restrictive than progressive, especially as demonstrated by the Central Bank. One neglected aspect of this approach on the crypto industry is how it impacts on human rights—fundamental, social, and economic. Two important questions to consider are, first, if there any human rights pertaining to digital assets such as cryptocurrencies, and second, if those rights are inherent or conferred; and are they enforceable? This article explores if the enforcement of fundamental human rights in Chapter Four, and the social and economic rights in Chapter Two of the Nigerian Constitution (1999) should be extended to such digital assets as cryptocurrencies. I argue that human rights extend to digital assets and could be both inherent and conferred, and proposes that those rights should be enforced the same way as in Chapter Four of the Constitution, while acknowledging the limitations of those in Chapter Two.

Intersection between Cryptocurrency and Human Rights

This section examines the connection between cryptocurrency and human rights, particularly the applicability of human rights protection to individuals who own, use, and trade in cryptocurrencies. Cryptocurrency operates on the foundation of blockchain technology, which is a decentralized and secure ledger functioning independently without a central authority, effectively eliminating the reliance on trust and intermediaries¹ in transactions. In the words of G'sell and Martin-Bariteau (2022), cryptocurrency is “a virtual currency driven by blockchain technology.”

The inception of cryptocurrency, with Bitcoin being the first of its kind, occurred in 2008 and was launched in 2009. Its creation was motivated by the global financial crisis, which eroded public trust in the existing financial system's checks and balances, as well as governments' ability to provide effective oversight²

As further explained by Nault (2021), cryptocurrencies, often referred to as “crypto,” are digital currencies and/or assets exchanged and stored on distributed ledger technology, also known as “blockchain,” which verifies and records transactions without the need for third-party entities like banks or other intermediaries.³ It is important to note that the terms “digital” and “virtual” are used interchangeably by these authors and refer to the same concept.

Human rights as defined by the United Nations Office of the High Commissioner for Human Rights (OHCHR) mean inherent rights that all individuals possess by virtue of being human and are not subject to the grant of any state. They are characterized by their universality, inalienability, indivisibility, and interdependence.⁴ Of particular relevance to this subject is the principle of indivisibility and interdependence, signifying that the full enjoyment of one set of rights is closely linked to the realization of others.

Cicero argued that human rights are universally applicable, unchanging, and everlasting, and they cannot be altered, repealed, or entirely abolished. He asserted that these rights impose an enduring obligation on both the Senate and the people.⁵ This philosophical perspective, along with the ideas of natural law thinkers in the 17th and 18th centuries, such as Hobbes, Descartes, Leibniz, Spinoza, Bacon, and Locke, who were part of the “Age of Enlightenment” and championed confidence in human reason and the potential improvement of human affairs, contributed to the development of the modern jurisprudence concept of “human rights.”⁶

Weston's definition of human rights aligns with that of the UN, emphasizing that they pertain to individuals or groups simply by virtue of their humanity, in recognition of their inherent vulnerability or their necessity for a just society. He notes that human rights encompass a wide range of values and capabilities aimed at enhancing human agency and safeguarding hum-

an interests, and they are declared to be universal in nature, equally applicable to all human beings, present and future. It is widely acknowledged that people worldwide require the realization of various values and capabilities to ensure their individual and collective well-being.⁷ In light of this rationale, it is crucial for governments to approach the regulation of cryptocurrencies with an understanding that it safeguards human interests, ensuring the well-being of those who own, hold, and use them. Restricting cryptocurrencies could jeopardize the lives and livelihoods of individuals. Inspired by the French Revolution, the French jurist Karel Vasak proposed three “generations” of human rights: civil and political rights (liberty) as the first generation, economic, social, and cultural rights (equality) as the second generation, and solidarity or group rights (fraternity) as the third generation.⁸ All these categories of human rights are applicable to cryptocurrencies in various contexts.

Researchers argue that blockchain and the assets it supports were developed to address various human needs, including economic, social, and political aspects. According to G’sell and Martin-Bariteau, the “ambition of blockchain technology” has been to overcome the challenges of cooperation and coordination within human communities.⁹ Nault (2021) explores the relationship between cryptocurrencies and the right to development (RTD) in Africa, suggesting cryptocurrencies can empower the poor and expedite the development process in emerging economies. He also highlights that the rise of cryptocurrency is a response to dissatisfaction with the current financial markets, which are dominated by a few powerful currencies, financial institutions, and advanced economies. Nault cautions against viewing cryptocurrency as a panacea for poverty or social issues, as the history of development is rife with abandoned projects and unachieved goals often involving human rights violations. Nevertheless, Nault believes that cryptocurrencies represent a technological innovation that can support both human rights and development.¹⁰ Nault goes on to emphasize that cryptocurrency is not merely a financial tool but also a political space, providing governments with the means to implement effective monetary and fiscal policies, enabling tech companies to gain future technological capabilities, and also offering opportunities for citizens to exercise their political influence within the crypto-space.¹¹ In essence, blockchain

and cryptocurrency offer opportunities for both governments and citizens. If Nigeria strategically approaches the industry, it could serve as a lever for economic and social development.

Rueckert (2019) has explored the relationship between cryptocurrencies, regulations related to anti-money laundering (AML), crime prevention in the context of cryptocurrencies, the prosecution of cryptocurrency-related crimes, and fundamental rights. He points out that legal research has not adequately addressed the connection between AML regulations concerning cryptocurrencies, crime prevention in relation to cryptocurrencies, the prosecution of cryptocurrency-related crimes, and fundamental rights. Particularly in the context of prosecution, law enforcement agencies often impinge upon various rights, including freedom of communication, data privacy (including the right to informational self-determination), freedom of expression, and the freedom of information.¹³ These rights, as noted by Rueckert, are consistently being violated in Nigeria, and many other jurisdictions across the world.

Cryptocurrency Regulation and Human Rights Violations in Nigeria

The impact of cryptocurrency regulation on human rights is a crucial concern. The Nigerian Constitution of 1999 includes provisions for “Fundamental Human Rights” (Chapter IV) and “Fundamental Objectives and Derivative Principles” (Chapter II). Fundamental human rights encompass the right to life, human dignity, personal liberty, fair hearing, privacy, freedom of thought, religion, expression, assembly, association, movement, and freedom from discrimination, as well as the right to own property anywhere in Nigeria (as detailed in sections 33-43). The fundamental objectives and directive principles of state policy aim to ensure social justice, promote economic prosperity, and safeguard human rights.

In the context of cryptocurrency regulation, the government’s actions appear to neglect these fundamental rights and overlook the principles of indivisibility and interdependence as emphasized by the OHCHR. The directives, rules, and regulations introduced by various government agencies have created hardships for the cryptocurrency community, impacting their ability to achieve economic prosperity and their

right to life. Additionally, unlawful actions by law enforcement agencies, such as the police, infringe upon individuals' rights to privacy, freedom of movement, personal dignity, liberty, fair legal proceedings, and property. In some instances, these actions directly affect individuals' lives. Specific examples are discussed below:

Right to Privacy

The right to privacy is a fundamental concern in cryptocurrency regulation, as some cryptocurrencies intrinsically offer users anonymity and privacy. There are two key ways in which crypto regulation affects this right. Firstly, certain regulatory requirements, such as Anti-Money Laundering (AML) and Know Your Customer (KYC) rules, necessitate users to disclose personal information, potentially infringing on their privacy. Regulations like the Nigeria Data Protection Regulation 2019, Money Laundering (Prohibition) Act 2022 (MLA 2022), and Economic and Financial Crimes Commission (Anti-money Laundering, Combating the Financing of Terrorism, and Countering of Mass Destruction for Designated Non-financial Related Matters) Regulations, 2022 (EFCC Regulations 2022) pertain to cryptocurrencies, although they do not explicitly mention them, and outline data collection guidelines for user verification. However, data misuse and mismanagement are prevalent in Nigeria, leading to the illegal exploitation of users' personal information. Blockchain technology, on which cryptocurrencies are built, was designed to address the shortcomings of traditional systems and offers enhanced security. Imposing inadequate systems on crypto users diminishes the essence of cryptocurrency. Additionally, crypto regulation in Nigeria encroaches on the right to privacy through direct stop-and-search operations by security agencies on users, where police officers unlawfully demand individuals they suspect of fraudulent activity to surrender their phones for searches, even when lawful investigations are involved, violating the core principle of cryptocurrency: privacy. The Nigerian Constitution (1999), under Section 37, guarantees the right to privacy, and regulators and law enforcement agencies must respect it.

Rights of Personal Liberty, Dignity, and Right to Life

Similarly, other rights like personal liberty, dignity, and life are violated through unlawful arrests, detentions, and torture of cryptocurrency users. As the government seeks to regulate the industry, it must uphold and respect these fundamental rights. In 2019, Forbes reported on the #StopRobbingUs campaign by the Nigerian Tech Community directed at the police. Jason Marshall, Chief Operations Officer (COO) at Yellow Card Financial, a prominent cryptocurrency trading platform, voiced concerns about the Nigerian Police engaging in harassment and robbery of the company's employees. In a tweet, Jason expressed his apprehension, fearing that official complaints might lead to visa revocation, punitive measures against the business, and personal retaliation against employees.¹⁴

Property Rights

Digital assets, including cryptocurrencies, can be considered as property rights, but their classification depends on the legal definitions set by regulators. In the United States, for instance, cryptocurrencies are regarded as a form of currency but not legal tender. In El Salvador, Bitcoin holds the status of legal tender. However, Nigerian legislation has not yet provided a clear definition for cryptocurrency. The SEC Rules of 2022 define it as a security, while the Central Bank of Nigeria (CBN) has not formally defined its status, aside from what Ihenyen (2021) has termed CBN's "single story."¹⁵ Nevertheless, the CBN's active involvement in the cryptocurrency industry suggests that it is treated as a currency, serving as a medium of exchange, a store of value, and a financial asset. This perspective justifies the protection of cryptocurrencies as a form of property, as guaranteed by the Nigerian Constitution under Section 43. Arbitrary seizures of cryptocurrency assets violate this constitutional right. In Nigeria, these seizures take an indirect form. In the 2021 circular, when the CBN directed commercial banks to freeze the accounts of individuals identified as cryptocurrency traders, it affected funds generated from cryptocurrency trading. Regulatory frameworks for cryptocurrencies must ensure safeguards against such arbitrary seizures of assets.

It is essential to emphasize that such regulatory measures lack due process and disregard the rule of law. The CBN's actions in 2021 were taken

without a court order, which led to an eventual reversal by the Federal High Court following an application by RiseVest Limited.¹⁶ Such arbitrary regulatory approaches, enforced without adherence to proper legal procedures, undermine the rule of law and due process, which are fundamental for the protection of human rights.

Right to Financial Inclusion

Cryptocurrencies offer a valuable opportunity for financially excluded individuals to access financial services that are typically unavailable to them within traditional systems, ultimately allowing them to accumulate wealth. However, stringent regulations, such as outright bans, restrict access to these services, potentially infringing on the fundamental right to financial inclusion. Despite the CBN's claims of a commitment to promoting financial inclusion, their approach to cryptocurrency suggests otherwise. In a jointly authored article with Senator Ihenyen, it was observed that although the CBN Governor had asserted during the launch of the eNaira that it was the "electronic payment channel of choice for financial inclusion and executing social interventions," data does not seem to support this claim.¹⁷ A 2023 report from the International Monetary Fund (IMF), as cited by Ayua and Ihenyen, highlighted that despite the uninterrupted operation of the eNaira in its first year, the Central Bank Digital Currency (CBDC) project had not progressed significantly beyond limited adoption. This indicates that the eNaira is not effectively achieving the goal of financial inclusion. The government's approach to cryptocurrency is falling short of realizing its potential to empower Nigerians and drive financial inclusion. Instead, the CBN appears to be concerned about the rapid adoption of cryptocurrencies, and the restrictions placed on them are impeding the right to financial inclusion and, consequently, economic rights.

Right to Development

Blockchain technology represents a significant opportunity for fostering social and economic development. It spurs innovation and encourages entrepreneurial initiatives. As pointed out by Nault (2021), cryptocurrencies have the potential to enhance the right to development, providing job opportunities, generating wealth, and offering various other benefits.¹⁸ However, stringent regulations, as is the case in Nigeria, impede innovation and discourage entrepreneurship. The government's resistance to cryptocurrencies has

been consistently voiced by the suspended Central Bank Governor Godwin Emefiele. In his justification for the CBN's decision to prohibit financial institutions from facilitating cryptocurrency trading and transactions in February 2021, he characterized cryptocurrency operations as "dangerous and opaque," emphasizing that the anonymity, obscurity, and concealment associated with cryptocurrencies make them appealing to those engaged in illegal activities such as money laundering, terrorism financing, procurement of small arms and light weapons, and tax evasion.¹⁹ Regrettably, the CBN, the primary regulator of cryptocurrency in the country, has adopted one of the most restrictive stances on the matter, resulting in both direct and indirect impacts on human rights. It is crucial for the government, including agencies like the Central Bank, to adopt an approach that is rights-based, focused on consumer protection, and driven by development objectives. Thankfully, the National Blockchain Policy introduced by the Federal government appreciates the need for Nigeria to leverage cryptocurrencies for economic development, although the implementation of the policy in respect of cryptocurrency adoption and regulation in the country remains unattended till date.

Regulators Can Avoid Human Rights Violation

Effective regulation of cryptocurrencies in Nigeria has the potential to mitigate the current adverse effects on human rights. In a commentary regarding the Israeli Securities Authority's (ISA) proposal to regulate the cryptocurrency industry in 2022, I identified five essential lessons that Nigeria and other nations can draw from this approach: 1) Regulators must remain up-to-date with technological advancements. 2) Regulators should utilize their existing resources and capabilities to effectively oversee the sector. 3) Regulators should strive to gain control over the sector without stifling innovation in the process. 4) Regulators should seize the current legitimate opportunities within the cryptocurrency industry. 5) Regulation should adopt a comprehensive approach and involve all pertinent stakeholders.²⁰ Instead of consistently imposing restrictions on cryptocurrency, Nigerian regulators should commit to a risk-based regulatory framework. This approach should encourage collaboration between various agencies and the public and private sectors. Tho-

ugh the SEC introduced a regulatory framework for digital assets in May 2022, it remains unimplemented largely due to obvious regulatory inconsistency with the rather unhealthy and unprogressive CBN stance. Government actions should focus on promoting innovation, ensuring consumer protection, and requiring accountability among operators to ensure market efficiency and integrity.

Conclusion

Human rights violations within Nigeria's cryptocurrency regulation have been overlooked. The Central Bank's stringent and uncertain approach, along with law enforcement actions, negatively affect the fundamental, social, economic, and developmental rights of citizens. To address this, the government should prioritize human rights and prevent their infringement through a balanced approach to cryptocurrency regulation. This approach should acknowledge the potential benefits of cryptocurrencies while addressing issues such as fraud, money laundering, and consumer protection. As highlighted by Rueckert, actions in and around cryptocurrency networks are protected by several fundamental rights, including the right to property, data protection, and private life—rights safeguarded by the Nigerian Constitution and only subject to restriction in accordance with the Constitution. Rueckert recommends that governmental restrictions on fundamental rights must meet the criterion of necessity, respecting these requirements.²¹ Regulators should strike a balance between fundamental rights and the legitimate interests they seek to protect.

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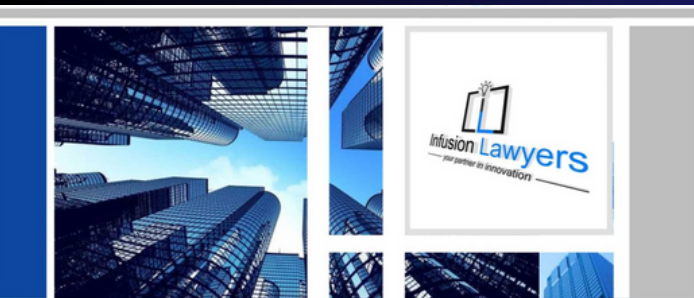


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