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A CRITICAL EVALUATION OF THE EFFECTS OF CENTRAL BANK AUTONOMY ON CASHLESS ECONOMY AND PROPERTY TRANSACTIONS IN NIGERIA

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ABSTRACT
Section 20(3) of the Central Bank Act, 2007 provided the statutory authority for the apex bank to initiate and implement fiscal policies. The Act further provides that the Central Bank ("the CBN") shall be a fully autonomous body in the discharge of its functions under the Act. By same token, the Banks and Other Financial Institutions Act was enacted to promote stability and continuity in economic management in Nigeria. It is in the exercise of its statutory autonomy that the CBN conceived and implemented several fiscal policies including policies on mortgage, secure credits, and cashless policy. This article therefore critically investigated the effects of the CBN autonomy on property transactions, especially on property related secured credits and cashless system. It is found amongst others that, some of the CBN policies are somewhat defective and unable to create the enabling grounds for growth of the property market with regards to fixing of interest rates and dealing with inflations. However, that the cashless policy of the CBN is highly beneficial to property transactions. It is thus recommended that a more liberal and steady approach should be adopted to curb the dwindling fiscal capacity of the investors in the property market.

Keywords: Property, Loans, Banks, Secured Credits, Nigeria.

INTRODUCTION

The Central Bank Act of 1958 is widely believed to be the originator of CBN autonomy in Nigeria.[2] The CBN autonomy has continue to garner strength after the attainment of Political independence in 1960. The contemporary CBN autonomy is strengthened by the enactment of the CBN Act of 2007. Some legal and economic scholars for example, Lybek[3] firmly suggested that:

> A central bank should have sufficient authority to formulate and implement monetary policy within the constraints stipulated by its objectives and the autonomy delegated to it. A central bank should be able to control its balance sheet to influence liquidity conditions in the banking system, and thus ultimately influence price stability.

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[2] S. B Falegan. Central bank autonomy: historical and general perspective, 1995. Economic and Financial Review, 33(4), 416-428.

[3] Tonny Lybek. #2257103 v3 - Central bank autonomy accountability and governance--Write-up for Presentation at LEG 2004 Seminar.doc August 18, 2004

The specific allocation of credit should be left to the commercial banks, or the government and the legislature to the extent they want to influence credit allocation via tax and investment incentives. If the financial markets are underdeveloped, the central bank may need to rely on direct monetary instruments; it then becomes even more important to fully isolate the central bank from undue external influence, since such measures usually affect credit allocation.

It has been argued that even the International Monetary Fund (IMF) is in support central bank autonomy across the world in the sense that, "it facilitates price and financial sector stability, which are conducive to sustainable economic growth. In the literature, autonomy is sometimes preferred to the frequently used term independence, as autonomy entails operational freedom,[4] while independence indicates a lack of institutional constraints."[5] However, for autonomy to be legitimate, it must be seen that central banks exist within well-defined and highlighted goals and within appropriate legitimate powers in order to achieve the statutory objectives otherwise the autonomy will not meet the test of credibility.[6] Failure to pass the credibility test would impact negatively on accountability hence, lead to disastrous checks, balances and defective monetary policies.[7]

THE EVOLUTION AND DEVELOPMENT OF CENTRAL BANK AUTONOMY

Fiscal policy has been a tool for socio-economic organization that brings about sustainable growth and development.[8] Financial institutions are encumbered with the obligation of using fiscal policies to propagate the economy.[9] At the heart of national financial system is the Central Bank.[10] The term central bank is often used to construe the legitimate national authority liable for formulation of guidelines and procedures for national distribution of monies and credits.[11]

More specifically, a central bank uses its tools of monetary policy—open market operations, discount window lending, changes in reserve requirements—to affect short-term interest rates and the

[4] Arnone Marco and Laurens, Bernard J. and Segalotto, Jean-François and Sommer, Martin, Central Bank Autonomy: Lessons from Global Trends (April 2007). IMF Working Paper No. 07/88.

[5] Ibid, p. 1

[6] Capie, Forrest, The Evolution of Central Banking (November 1995). Available at SSRN: https://ssrn.com/abstract=604919 Accessed 21 April 2023

[7] Wisniewski, Tomasz Piotr and Polasik, Michal and Kotkowski, Radosław and Moro, Andrea, Switching from Cash to Cashless Payments during the COVID-19 Pandemic and Beyond (February 28, 2021). Available at SSRN: https://ssrn.com/abstract=3794790 or http://dx.doi.org/10.2139/ssrn.3794790 accessed 23 April 2023; L. Lu, Decoding Alipay: Mobile Payments, a Cashless Society and Regulatory Challenges (January 1, 2018). Butterworths Journal of International Banking and Financial Law (2018), Vol. 33(1), pp. 40-43,

[8] S.I. Ajaji and O.O Ojo. Money and Banking: Analysis and Policy in the Nigerian Context, Second Edition, University of Ibadan, Daily Graphics Nigeria Ltd, 2006.

[9] Anderson Elechi, C A Rufus. Cashless Policy in Nigeria and Its Socio-Economic Impacts. Public Policy and Administration Research, Vol.6, No.10, 2016.

[10] Sajter, Domagoj, Privacy, Identity, and the Perils of the Cashless Society (March 20, 2013). Culture, Society, Identity - European Realities, 2013, ISBN:978-953-69-31-57-6,

[11] Acharya, Suman and Acharya, Suman, Implication of International Law in Electronic Commerce and Cyber Crime: An Experience of Nepal (October 27, 2018). Available at SSRN: https://ssrn.com/abstract=3273915 or http://dx.doi.org/10.2139/ssrn.3273915 Accessed 22 April 2023

monetary base (currency held by the public plus bank reserves) and to achieve important policy goals.[12]

According to Bordo,[13] the first known central bank was the Swedish Riksbank, established in 1668. This was followed by the establishment of Bank of England in 1694.[14] On the other hand, Central Bank autonomy could be traced to the establishment of the Bank of England ("English Central Bank") where the need for the independence of central bank was promulgated by Sir David Richard in 1824.[15] Despite the granting of partial autonomy to the Bank of England, British fiscal policies are mostly under the guidance and control of the national treasury under the close watch of the House of Parliament.[16]

In Nigeria, there is a long history of the evolution and development of central bank autonomy long before the attainment of national independence.[17] In 1892, the British colonial government set up the Committee of Enquiry into banking practice in Nigeria under the chairmanship of Sir Paton. In 1952, the Sir Paton Report led to the proclamation of the first Banking Ordinance which led to the enactment of the Central Bank Act, 1958.

The Central Bank Act, 1958 was amended.[18] Following the military taking of power, the Banking Decree 1969 (as amended) was promulgated.[19] In 1997 the Banking Decree 1969 was amended whereby the CBN was placed under the direct supervision of the Federal Ministry of Finance which meant that, it lacked full autonomy. In 1998, the CBN (Amendment) Decree No. 37 repealed the CBN (Amended) Decree No. 3 of 1997 which became an Act in 1991. Thus, the new law provided partial autonomy for the CBN by removing the overall control of its existence from the Federal Ministry of Finance. The CBN Act, 2007 repealed the CBN Act, 1991.

The Act provides that the CBN shall be a fully autonomous body in the discharge of its functions under the Act and the Banks and Other Financial Institutions Act 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.[20]

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[12] Michael D Bordo. "A Brief History of Central Banks." Federal Reserve Bank of Cleveland, Economic Commentary 12/1/2007.

[13] Ibid

[14] Paech, Philipp, Financial Collateral (April 24, 2018). Available at SSRN: https://ssrn.com/abstract=3046835 or http://dx.doi.org/10.2139/ssrn.3046835 Accessed 1 May 2023

[15] Bell, Abraham and Parchomovsky, Gideon, A Theory of Property (2005). Cornell Law Review, Vol. 90, p. 531, 2005, U of Penn, Inst. for Law & Econ Research Paper 04-05, Available at SSRN: https://ssrn.com/abstract=509862 or http://dx.doi.org/10.2139/ssrn.509862 Accessed 14 April 2023

[16] Raskin, Max and Yermack, David, Digital Currencies, Decentralized Ledgers, and the Future of Central Banking (May 1, 2016). Peter Conti-Brown & Rosa Lastra (eds.), Research Handbook on Central Banking, Edward Elgar Publishing, Spring 2017, Available at SSRN: https://ssrn.com/abstract=2773973 Accessed 22 April 2023

[17] P.B Akhalumeh and F. Ohiokha. Nigeria's Cashless Economy; The Imperatives. (2011) International Journal of Management & Business Studies. Vol. 2 pp. 12 – 17

[18] M. Arnone and A. Gambini. "Financial Supervisors Architecture and Banking Supervision," in Designing Institutions for Financial Stability: Independence, Accountability and Governance, ed. by D. Masciandaro and M. Quintyn (Cheltenham, UK, Edward Elgar Publishing, 2007.

[19] History of the CBN. https://www.cbn.gov.ng/AboutCBN/history.asp Accessed 3 May 2023

[20] [N. 6]

The Banks and other financial Institutions Act (BOFI) 1991 (as Amended) was replaced by the Banks and other financial Institutions Act (BOFI) 2020. BOFI 2020, strengths the autonomy of the CBN. One of the most significant exercise of the CBN autonomy is the introduction of the cashless policy in 2012.

THE SCOPE AND APPLICATION OF CASHLESS POLICY

The financial system of any country's economy is liable for mustering savings for productive investments and safeguarding competent resource allocation including the execution of cashless policies.[21] The cashless Nigerian society, when fully employed, has many profits. Some of these benefits include: Reduction in money laundering; Check on terrorist financing, Effectiveness of the monetary policy; Creation of more employment opportunities in the financial sector; Provision of evidence against bribe givers and takers, especially the civil servants and politicians; and, Growth in the real sector of the economy increase saving mobilizations.[22]

The banks are the traditional institutions for executing that active role.[23] According to Domagoj,[24] Mitchell,[25] Bergsten,[26] Diebold,[27] Reistad,[28] the concept of 'cashless society' originated in the 1960s. Domagoj[29] explained that:

> Cashless society is a term describing the economic eco-system in which palpable, physical money, namely paper banknotes and metal coins, are replaced with virtual, digital money, and where cash circulation is substituted with payments done by using numerous types of cards (credit, debit, pre-paid, contactless), mobile devices (cell phones1, tablets, and similar), and various other equipment connected to the internet (from desktop PCs to smart refrigerators).

Cashless Policy is an aspect of the global financial technology ("Fintech") which is facilitating the growth of the financial services space ("Techfin").[30] The tools of e-payments is predominantly dependent on internet and mobile payment technologies. According to Tu,[31]

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21 Nabilou Hossein, Central Bank Digital Currencies: Preliminary Legal Observations (February 6, 2019). Journal of Banking Regulation (2019), Available at SSRN: https://ssrn.com/abstract=3329993 or http://dx.doi.org/10.2139/ssrn.3329993 Accessed 30 April 2023

22 O.J Suberu, Afonja; J.A, Akande M.O and Olure-Bank Adeyinka. Journal of Emerging Trends in Economics and Management Sciences (JETEMS) 6(2):144-150

23 Settlements, Bank for International, The Banking Industry in the Emerging Market Economies: Competition, Consolidation and Systemic Stability (August 1, 2001). BIS Paper No. 4, Available at SSRN: https://ssrn.com/abstract=1171364 Accessed 3 May 2023

24 Domagoj Sajter, Privacy, Identity, and the Perils of the Cashless Society. available at: https://ssrn.com/abstract=2285438 Accessed 3 May 2023

25 Maran M, Lawrence A, Fazilah AS, Kishna M and Ng Kean Kok 2011. Cashless Society And The Determinants: An Empirical Investigation, *International Journal of Academic Research*, Vol 3, part 2: 673 – 682

26 Bergsten, Eric E. 1967. Credit Cards: A Prelude to the Cashless Society, *8 B.C.L. Rev. 485*.

27 Diebold, John. 1967. When Money Grows in Computers. *Columbia Journal of World Business,* Nov-Dec: 39-46.

28 Reistad, Dale. 1967. The Coming Cashless Society, *Business Horizons*, Fall 67: 23-32

29 [N. 8] p. 2

30 Dirk A. Zetsche et. al., *From FinTech to Techfin: The Regulatory Challenges of Data-Driven Finance*, 14 N.Y.U. J.L. & BUS. 393, 409 (2018).

31 Kevin V. Tu, Regulating the New Cashless World (February 18, 2013). Alabama Law Review, Vol. 65, No. 77-138, 2013, UNM School of Law Research Paper No. 2013-06, Available at SSRN: https://ssrn.com/abstract=2235937 or http://dx.doi.org/10.2139/ssrn.2235937

it is estimated that the global business to consumer e-commerce sales top $1.25 trillion per year from 2013 onward, by which the global annual business to consumer e-commerce sales increased by 20% and higher per annum from 2010. According to Goldman Sachs,[32] the world annual e-commerce and e-payment growth surpassed $963 billion from 2013, and rising annually thereafter with an annual growth rate of not less than 19.4%.[33] Mobile commerce is also rising as a result of the e-cash and cashless systems making an upward curve with analysts anticipating that mobile payment transactions is growing nearly four-fold over the next decade to more than $5 trillion.[34] The rationale behind Nigeria's introduction of cashless policy is summed up by Osazevbaru and Yomere as follows:

> The statistical evidence provided by Central Bank of Nigeria (2012) revealed that, cash related transactions accounted for 99% of customers' activities in Nigeria banks as at December, 2011. It estimated the total cash transaction volume through the conventional five payment channels to be 215,015,005 (two hundred and fifteen million, and fifteen thousand and five). Of this figure, ATM withdrawal accounted for 50.9%, over-the-counter (OTC) withdrawal, 33.72% and cheques 13.56%. Point of sales (POS) and web channels accounted respectively for 0.49% and 1.26%. Obviously, the combination of ATM and OTC withdrawals amounting to 84.96% justifies the claim of the CBN that the Nigerian economy is heavily cash-based and the imperative for cash-less economy.[35]

Despite the aforesaid rationale for Nigeria's introduction of cashless policy otherwise, e-banking, there has been opposing voices elsewhere in the world where the cashless policy is arguably detrimental to economic growth.[36] For instance, Gresvik and Owre[37] investigated the cost implications of cashless banking instruments in Norway and the costs of processing various payment instruments. The study found that payment cards used for cash withdrawals at ATMs cost considerably more since the transactions involve cash replenishment, maintenance and security costs. Furthermore, the study found that the cost of using cheque for cash withdrawals was found to be three times more expensive than cash withdrawals at ATMs.[38]

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[32] Nyoni, Thabani and Bonga, Wellington Garikai, Cashless Transacting Economy: A Necessary Evil for Development! A Zimbabwean Scenario! (April 26, 2017). Dynamic Research Journals' Journal of Economics & Finance (DRJ-JEF), Vol. 2(4), pp. 01-10, April 2017,

[33] ibid

[34] Ibid

[35] Osazevbaru, Henry Osahon and Yomere, Gabriel O. Benefits and Challenges of Nigeria's Cash-Less Policy. Kuwait Chapter of Arabian Journal of Business and Management Review Vol. 4, No.9; May. 2015

[36] Alford, Duncan and Alford, Duncan, Nigerian Banking Reform: Recent Actions and Future Prospects (April 19, 2010).
Available at SSRN: https://ssrn.com/abstract=1592599 or http://dx.doi.org/10.2139/ssrn.1592599

[37] O Gresvik and G. Owre. Banks' Costs and Income in the Payment System in 2001, Norges Bank Economic Bulletin, 2002.

[38] Ernest Simeon Odior and Fadiya Bamidele Banuso. Cashless Banking In Nigeria: Challenges, Benefits And Policy Implications. European Scientific Journal June edition vol. 8, No.12

Humphrey *et al*[39] undertook cross country studies to evaluate the configurations in the use of cash and other e-payment instruments in 14 developed countries. The study suggests that, if payment instruments are considered as customary goods and measured the cost in the same manner as if analogous to prices of various payment methods, the differences in cashless instrument usage across the countries under investigation can be explained by differences in the relative prices of such instruments. Therefore, it was possible to conclude that the price dissimilarities cannot be determined by the norm of e-banking instruments.[40] Simply put, the expediency of using a particular payment apparatus which is "a factor that is not measured may outweigh[s] the price differences that users face."[41]

In another study, Agu and Agu[42] investigated the impact of cashless policy on economic growth in Nigeria, over the period of Q12010 to Q42018 using the quarterly time series data obtained from the World Bank Development indicator and Central Bank of Nigeria (CBN) Statistical Bulletin including the CBN Annual Report and Statement of Account for the year 2019. The study found that Nigeria's cashless policy is an authentic instrument capable of "influencing economic performance, especially as it relates to Automated Teller Machine (ATM) transactions and Point of Sale (POS) payment patterns." However, the study failed to fully explain how data used were protected against "random walk" therefore, the econometric tool namely, Ordinary Least Square (OLS), Dickey-Fuller (ADF) Unit Root, Cointegration and granger causality may have produced fluke outcomes.[43] Nonetheless, cashless economy appears to be gaining supports among the big and medium corporate entities especially, those engaged transactions involving secured credits, mortgage and landed property businesses. The flipside however, is whether laws can effective control the cashless economy nationally and globally. To this end, it is crucial to evaluate the legal and regulatory landscape of the cashless policy nationally and globally.

4. THE LEGAL AND REGULATORY LANDSCAPE OF CASHLESS POLICY

Nigeria's regulation of financial transmission employs the unitary system of federal laws. There are several relevant laws within the framework of fiscal governance in Nigeria including the Companies and Allied Matters Act (CAMA) 2020 which makes provisions to regulate money lending companies in Nigeria; Nigerian Deposit Insurance Corporation Act, 2006 which provides for the deposit liabilities of licensed banks; Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995 (FEMM Act) which made provisions for the Autonomous Foreign Exchange Market and how they should be regulated; Money Lenders Law of various states which stipulates the licensing requirements and regulations, maximum interest rates, and process of debt recovery, for money lenders operating within

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[39] D. B Humphrey, L. B. Pulley and J. M. Vesala. Cash, Study and Electronic Payments: A Cross Country Analysis‖, Journal of Money, Credit and Banking, Vol. 28, Issue 4 Part 2 (November 1996) 914-939

[40] Sater, Stan, Financial Privacy in a Cashless Society (April 3, 2019). Available at SSRN: https://ssrn.com/abstract=3367610 or http://dx.doi.org/10.2139/ssrn.3367610 Accessed 12 April 2023

[41] Osazevbaru, Henry Osahon and Yomere, Gabriel O. Benefits and Challenges of Nigeria's Cash-Less Policy. *Kuwait Chapter of Arabian Journal of Business and Management Review Vol. 4, No.9; May. 2015.* Also in K. A Carow and M. E. Staten, Plastic Choices: Consumer Usage of BankCards Vs Proprietary Credit Cards‖, Working Study, April 2000.

[42] Anthony Ogbonna Agu and Sunday Virtus Agu. Cashless Policy and the Nigerian Economy: A Disaggregated Approach International Journal of Humanities Social Sciences and Education (IJHSSE) Volume 7, Issue 4, April 2020, PP 21-30

[43] Kato Gogo Kingston and Abbiba Prebo Lilly-Tariah. The Causal Relationship between Natural Gas Productions and Impotent Regulatory Framework on Gas Flaring In Nigeria. Cranbrook Law Review, Volume 9(1) 2019 pp. 1- 13

the state. The Nigerian Deposit Insurance Corporation Act, 2006 is responsible for insuring all deposit liabilities of licensed banks. The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995 (FEMM Act) established the Autonomous Foreign Exchange Market and provides the regulatory framework for foreign exchange transactions and controls.

Nonetheless, the prime legislation governing banks in Nigeria, including the CBN are: The Banks and Other Financial Institutions Act 2020 (BOFIA) and the Central Bank of Nigeria (Establishment) Act 2007 (CBN Act) which essentially provides very wide ranging regulatory powers on the CBN covering, money lending activities, interest rates, and the enforcement of mandatory compliance by all financial institutions. Thus, the CBN decides the maximum interest rates on lending by all commercial banks, financial companies, and microfinance banks. Furthermore, it is the sole power of the CBN to regulate all institutions that lend money by constructing Consumer Protection Regulations, which specify the minimum standards that lenders should attain to ensure impartial treatment of the consumers. The CBN monitors the lending institutions to ensure adequate and reasonable disclosure, transparency and utilization of debt recovery processes, customer feedback, and the protection of customers' confidential data.

In addition to the CBN Act, Federal Competition and Consumer Protection Act, 2018 established the Federal Competition and Consumer Protection Commission (FCCPC) which is responsible for the protection of the rights of consumers in relation to financial services. With regards to cashless economy, despite the overall supervisory role of the CBN, it is the direct responsibility of the FCCPC to direct all financial institutions that are engaging in digital money lending to declare the sources of their funds. Furthermore, the Commission do forbid all telecom firms in Nigeria and banks not to provide essential services including hosting services to e-money lending firms without the express authorization. Therefore, all banks, tech-platforms, technology providers, and payment systems must at all relevant times be able to show evidence of regulatory authorization enabling them to provide money lending services.

In February 2020, Nigeria enacted the Finance Act, (FA) 2019, which is a collation of money related laws for individuals and corporate entities doing business in Nigeria. The Act introduced the squeaky capitalization model to Nigeria adopting the 'earnings-stripping' methodology, thus negated deductibility of interest expenditure on foreign interconnected party credits that are above 30% of a company’s earnings before interest, taxes, depreciation and amortization. The FA was enacted to discourage configurations that are usually adopted by multinational companies to fund local subsidiaries in Nigeria in a way which allowed the companies to repatriate maximum non-taxable profits through interest payments. FA also amended the law on withholding tax payments for interest on cross-border credits. The law also provides that, interest on foreign credits are no longer qualified for 100% tax exemption, as the maximum exemption under the law is 70% of the applicable withholding tax.

In furtherance of the regulatory landscape thereof, the National Information Technology Development Agency published the Nigeria Data Protection Regulation in 2019 to support the CBN and the FCCPC. The 2019 Regulation all money lending entities to file audited reports through a licensed data protection compliance organization (DPCO) otherwise, such filing will be illegal. All audited reports so filed by the DPCO must be certified in data science and cyber-security. This led to the creation of Nigeria Data Protection Bureau in 2022 to supervise the implementation of the 2019 Regulation.

Unless an exemption applies under the present laws, any private or corporate entity engaging in an activity that constitutes money transmission must be licensed under the extant national laws and comply with the CBN regulatory requirements involving financial security, recordkeeping, reporting, and examination. As earlier stated, the Cashless policy of the CBN was first introduced in 2012 with the aim of reducing the volume of cash circulation in the Country. At inception, the CBN set a cash hold daily on daily withdrawal above five hundred thousand Naira for individuals and three million Naira for corporate entities. It thus, intended to propel Nigeria into a cashless economy.

A cash based financial system is a system where retail and commercial activities are done by way of cash payments.[44] Conversely, cashless system is where commercial transactions and mostly done electronically with little or no physical exchange of cash. It also extends to electronic banking.

The cashless economic policy of the CBN is arguably created to increase the financial landscape "but in the long run sustainability of the policy will be a function of endorsement and compliance by end-users."[45] One notable features of the cashless policy in Nigeria was the experimentation of the policy in Lagos State on 2012. As part of the experiment, there was the stipulation of daily aggregate limit of cash withdrawal in Lagos State of one hundred and fifty thousand Naira on each bank account and one million Naira on lodgments by an individual and each corporate account respectively. However, customers were allowed to exceed the daily cash withdrawal limits upon payment of stipulated charges. After the experimental phase of cashless policy in Lagos State, the cashless policy was extended to Rivers State, Anambra State, Abia State, Kano State, Ogun State and Abuja (the Federal Capital Territory) on the 1st July 2013 and, implemented nationwide in July, 2014. However, it was not implemented exclusively hence, there were still cash in circulation whereas the electronic cash payment system was permitted to co-exist with the cash flow in the economy.[46] Prior to the 2023 national election, a comprehensive test run of the cashless policy nearly collapse the national economy.

Despite the perceived benefits of cashless economy, the negative[47] effects in Nigeria far outweighs the benefits due to the large size of traditional spread of commerce involving local goods and services where many of the indigenous traders depending on direct subsistence sources of income are illiterates without the electronic skills and lack of skills and knowledge of the electronic commercial systems.[48]

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44 Daniel D Garcia-Swartz and Hahn, Robert W. and Layne-Farrar, Anne, The Move Toward a Cashless Society: A Closer Look at Payment Instrument Economics (October 2004). AEI-Brookings Joint Center Working Paper No. 04-20

45 O. Ejiro. What Nigerians think of the cashless economy policy? (2012) Nigerian journal of economy. 4(6), 67-102; Martin C Okany. The Nigerian law of property: Enugu, Nigeria: Fourth Dimension Pub. Co., 1986; A A Utuama. Nigerian law of real property. Ibadan, Nigeria: Shaneson C.I. Ltd., 1989.

46 Katherine M Porter. Misbehavior and Mistake in Bankruptcy Mortgage Claims. U of Iowa Legal Studies Research Paper No. 07-29, Texas Law Review, Vol. 87, 2008

47 Tu, Kevin V., Regulating the New Cashless World (February 18, 2013). Alabama Law Review, Vol. 65, No. 77-138, 2013, UNM School of Law Research Paper No. 2013-06 Accessed 8 May 2023

48 Awrey Dan, Complexity, Innovation and the Regulation of Modern Financial Markets (September 1, 2011). (2012) 2:2 Harvard Business Law Review 235-294, Oxford Legal Studies Research Paper No. 49/2011, Available at SSRN: https://ssrn.com/abstract=1916649 or http://dx.doi.org/10.2139/ssrn.1916649 Accessed 18 April 2023

5. SECURED CREDITS IN PROPERTY TRANSACTIONS

In the preceding sections of this paper, efforts have been made to assess the impact of the laws, regulations and the effects of the central bank autonomy on cashless economy.[49] This segment extends the narrative into the investigation into the operational overlaps between CBN monetary policies and secured credits with particular focus on property transactions in Nigeria.

Secured loans also known as secured credits are often granted by money lending agencies or financial institutions. It could take the form of personal or corporate loans requiring some type of warranty, security or collateral as the basic condition of borrowing.[50] The lender may in certain circumstances undertake due diligence investigation to vet the credit rating of the borrower to verify the credit scores sufficiency to qualify for an unsecured loan.[51] Nonetheless, secured credits are loans that are secured by a specific form of collateral, including physical assets such as landed property[52] and vehicles or liquid assets such as cash.[53] Both personal loans and corporate loans can be secured, though a secured corporate loan may need personal guarantees.[54] Commercial banks, credit unions, and online lenders can offer secured personal and business loans to qualified borrowers.[55] The interest rates, fees, and loan terms can vary widely for secured loans, depending on the lender and the policies and regulations of the CBN whose autonomy on interest rate is unwavering.[56]

In all circumstances, credits or Loans, be it personal or corporate, can either be secured or unsecured.[57] In the instance of an unsecured loan, there are no requirement for guarantee of any nature. In its place, the lending institution permits the borrower based on the rating of the borrower's credit scores and verifiable positive financial records.[58] On the other hand, secured credits, oblige collateral. Under certain conditions, the collateral for a secured credit could be the property that the first credit to purchase.[59]

The law permits the lender to commerce proceedings for recovery and seizure of the collateral in the event of a default on the credit.[60] However, the first step is for the lender to

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[49] Carmen M Reinhart and Kenneth S. Rogoff, "The Modern History of Exchange Rate Arrangements: A Reinterpretation," 2002, NBER Working Paper No. 8963 (Cambridge, Massachusetts, National Bureau of Economic Research).

[50] Rebecca Lake and Ebony Howard. What Is a Secured Loan? How They Work, Types, and How to Get One. October 2021. Online at: https://www.investopedia.com/secured-loans-5076025 Accessed 10 May 2023

[51] Ibid

[52] I O Smith. Practical approach to law of real property in Nigeria: Lagos, Nigeria: Ecowatch, 1999.

[53] M. Quintyn and M. Taylor. "Regulatory and Supervisory Independence and Financial Stability," 2002, IMF Working Paper 02/46 (Washington, International Monetary Fund).

[54] Ibid

[55] Ibid

[56] Ibid

[57] Frederic S Mishkin. "International Experiences with Different Monetary Policy Regimes," 1999 Journal of Monetary Economics, Vol. 43, No. 3, pp. 576–606.

[58] JAcomé, L., and F. VAzquez, 2005, "Any Link Between Central Bank Independence and Inflation? Evidence from Latin America and the Caribbean," IMF Working Paper 05/75 (Washington, International Monetary Fund).

[59] S. Roger. "An Overview of Inflation Targeting in Emerging Market Economies," paper presented at the symposium on "Challenges to Inflation Targeting in Emerging Countries" at the Bank of Thailand, November 13-14, 2006.

[60] G. Mangano. "Measuring Central Bank Autonomy: A Tale of Subjectivity and of its Consequences," 1998, Oxford Economic Papers, Vol. 50, No. 3, pp. 468–92.

start a foreclosure proceeding in a court of competent jurisdiction.[61] In the event of a successful legal outcome, the property would be auctioned off and the proceeds used to repay what was owed on the defaulted loan.[62] "On a collateralized loan, the principal the original sum of money borrowed is typically based on the appraised collateral value of the property. Most secured lenders will lend [sometimes between] 70% to 90% of the value of the collateral."[63]

It is often argued that, the CBN autonomy with regards to setting the interest rates is to accomplish fiscal policy objectives and more specifically, to price stabilize inflation and foster growth. In furtherance of the autonomy, in January 2023, the CBN raised the official interest rate from 17.5 percent to 18 percent on the pretext of controlling inflation. The random increase in interest rate has lasting negative impact on property markets. Troy Segal and Clemon[64] puts it succinctly thus,

> Interest rates have the propensity to drive property prices in a variety of ways. Similar to the discounted cash flow analysis conducted on equity and bond investments, the income approach takes the net cash flow into account. Interest rates can affect the cost of financing and mortgage rates changes in capital flows can also have a direct impact on the supply and demand dynamics for a property. The most evident impact of interest rates on real estate values is in the derivation of discount or capitalization rates, as they are equal to the risk-free rate plus a risk premium.[65]

The values of real properties are largely predisposed by the supply and demand for assets as well as the additional cost of developing new properties.[66] It is also crucial to also emphasize that, "although risk premiums vary as a result of supply and demand and other risk factors in the market, discount rates will vary due to changes in the interest rates that make them up. When the required returns on competing or substitute investments rise, real estate values fall; conversely when interest rates fall, real estate prices increase."[67] Mortgage banking in Nigeria is governed mainly by the Central Bank of Nigeria (CBN) Revised Guidelines for Primary Mortgage Banks in Nigeria.[68]

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[61] T. Lybek. "Central Bank Autonomy, and Inflation and Output Performance in the Baltic States, Russia, and Other Countries of the Former Soviet Union, 1995/97," 1999 IMF Working Paper 04/99 (Washington, International Monetary Fund).

[62] T. Lybek. "Central Bank Governance, Independence and Accountability: Conceptual Framework," paper presented at a seminar on Current Developments in Monetary and Financial Law, May 24-June 4, 2004 International Monetary Fund, Washington.

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6. CONCLUSIONS

This article investigated the effects of CBN autonomy on cashless economy and property transactions in Nigeria. It argued that, the CBN in its use of statutory autonomy provided by the enabling Act considered and executed several financial policies including the guidelines on mortgages, secure credits, and cashless policies. Amongst others, the article found that, some of the CBN policies are to a certain extent faulty and incapable of fostering growth of the property market with regards to fixing of interest rates and dealing with inflations. Nonetheless, the article suggests that the cashless policy of the CBN is very beneficial to all parties involved in property transactions in that, it saves time, reduce interest rates and lower the overall transaction cost. Conversely, the article suggests that the cashless policy of the CBN creates hardship for rural businesses and small scale farmers. It thus, recommend that the CBN should adopt a balance approach is its design of fiscal policies to alleviate hardship and poverty in Nigeria. Hence, there should be a mixture of cash and cashless policy whereby cash should not be totally eradicated.