

RETHINKING THE LEGAL AND INSTITUTIONAL
FRAMEWORK FOR DIGITAL FINANCIAL
INCLUSION IN NIGERIA

by

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Thesis presented for the Degree of Doctor of Philosophy in
the Department of Commercial Law, University of Cape
Town

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Constitution of the Federal Republic of Nigeria 1999 (as amended).

Central Bank of Nigeria Act Cap C4 Laws of the Federation of Nigeria 2004 at 2007.

Central Bank of Nigeria Anti Money Laundering and Counterfeiting of Terrorism Regulations Schedule 2 of 2013.

Central Bank of Nigeria Anti-Money Laundering/Counter Terrorism Financing Regulations 2013.

Central Bank of Nigeria Guidelines for Card Issuance and Usage in Nigeria 2014.

Central Bank of Nigeria Guidelines for the Regulation of Agent Banking and Agent Banking Relationships in Nigeria 2003.

Central Bank of Nigeria Guidelines on Electronic Banking in Nigeria 2003.

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Central Bank of Nigeria, Guidelines for the Regulation of Agent Banking and Agent Banking Relationships 2013.

Central Bank of Nigeria Guidelines on Mobile Money Services in Nigeria 2015.

Central Bank of Nigeria Know-Your-Customer Guidelines 2013.

Central Bank of Nigeria National Financial Literacy Framework 2015.

Central Bank of Nigeria Regulatory Framework for Licensing Super-Agents in Nigeria 2016.

Central Bank of Nigeria Regulatory Framework for Mobile Money Services in Nigeria, Regulation 2015.

Federal Competition and Consumer Protection Act 2019.

National Deposit Insurance Corporation Framework for the Establishment of Passthrough Deposit Insurance for Subscribers of Mobile Money Operators in Nigeria 2016.

National Electoral Act 2010.

National Identification Management Commission Act 23 of 2007.

National Identification Management Commission Mandatory Use of Identification Number Regulation 2015.

List of abbreviations

AEPS	Aadhaar-enabled payment system
AFI	Alliance for Financial Inclusion
AI	Artificial intelligence,
AML/CFT	Anti-money laundering and counterfeiting of terrorism
API	Application programming interface
BOG	Bank of Ghana
BSP	Bangko Sentral ng Pilipinas
BVN	Bank Verification Number
CDF	Comprehensive development framework
CGAP	Consultative Group to Assist the Poor
CICO	Cash-in-cash-out
CNIC	Computerised National Identity Card
CBA	Commercial Bank of Africa (CBA)
CPA	Compulsory Pensions Scheme
CRA	Credit Reporting Act
CTC	Competition and Tariff Commission
DFS	Digital Financial Services
DI	Digital identification
DL	Distributed ledgers,
EAC	East Africa Community
EFInA	Enhancing Financial Innovation and Access
FAFT	Financial Action Task Force on Money Launderings
FCCPA	Federal Competition and Consumer Protection Act
FGN	Federal Government of Nigeria
FRSC	Federal Road Safety Commission
FSI	Financial Service Innovators Association of Nigeria
GPF	Global Policy Forum
GMPC	General multipurpose card
GNP	Gross national product
HDI	Human development index
ID	Identification documentation
IFC	International Financial Corporation
INEC	Independent National Electoral Commission
ITU	International Telecommunications Union
KYC	Know-Your-Customer
LGA	Local Government Areas
MFB	Microfinance banks
MNO	Mobile Network Operators
MPOS	Mobile point of sale
MVNO	Mobile virtual network operators
NADRA	National Database and Registration Authority
NAICOM	National Insurance Commission

NBS	National Bureau of statistics
NCC	Nigeria Communication Commission
NDIC	Nigeria Deposit Insurance Corporation
NEFT	NIBSS Electronic Funds Transfer
NFIS	National Financial Inclusion strategy
NFLF	National financial literacy framework
NIBSS	Nigerian Interbank Settlement System
NIMC	National Identity Management Commission
NIN	National Identification Number
NIP	NIBSS Instant Payments
NIPOST	Nigerian Postal Service
NITEL	Nigeria Telecommunications Limited
NSIS	National Security Information System
NSSLA	Non-stock savings and loan associations
NUBAN	Nigeria Uniform Bank Account Number
OTC	Over-the-counter
OTF	Open Technology Foundation
P2P	Peer-to-peer
PENCOM	Pension Commission
POS	Point of sale
PSB	Payment Service Banks
PVC	Permanent voter card
SANEF	Shared agent network expansion facility
SEC	Securities and Exchange Commission
SMEDAN	Small and Medium Enterprise Development Agency of Nigeria
SMP	Significant market power
SMS	Short messaging service
SSNIP	Significant and non-transitory increase in price
TWAIL	Third world approaches to international law
UFA	Universal Finance Access
UIDAI	Unique Identification Authority of India
UNDRD	United Nations Declaration on the Right to Development
USSD	Unstructured Supplementary Service Data
WBG	World Bank Group

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Abstract

About 1.7 billion people globally and 36.8 per cent of Nigerians have no access to financial services due to reasons such as distance, financial illiteracy, irregular income, unemployment and account ineligibility. Justifications for the research include the scale of financial exclusion, the proven capacity of financial inclusion to lift people out of poverty, the need for tailored regulatory policies and the opportunity to harness the value and ubiquity of digital financial services (DFS) for the financially excluded.

This research examines the broad question: how suitable are the enabling laws and institutions for digital financial services in Nigeria for addressing the needs of the financially excluded? In considering this broad question, the reasons as to why many Nigerians remain financially excluded, in spite of the abundance of regulatory initiatives, are addressed. Using a combination of doctrinal and empirical methods, the burden of accessing financial services is highlighted, strategies for financial inclusion are considered and options for suitable legal and institutional frameworks are explored.

In summary, financial inclusion is broadly discussed in chapter one, while a law and development theoretical and analytical framework is constructed in chapter two. Chapter three examines the legal and institutional framework for financial inclusion in Nigeria while the barriers to financial access are discussed in chapter four. The empirical component of the research is analysed in chapter five, and chapter six considers the impact and prospects of eight new and emerging technologies on financial inclusion. The thesis concludes with recommendations and conclusions in chapter seven.

Research results indicate that the path to financial inclusion in Nigeria is characterised by a myriad of laws, slow DFS adoption rates, a bank-centred regulatory model and a wide disparity in the pattern of inclusion across gender and geographical locations. Transaction costs remain high and cash is still king. Recommendations such as adopting a more consumer-centred approach to regulation, permitting alternative providers for on-boarding and adapting laws and regulatory policies tailored to the needs of the excluded are made. Additionally, it is recommended that increased financial literacy and transactional capacity are needed to harness digital financial services. It is expected that the findings of this research will inform regulatory changes that will enable a methodical migration of more of the financially excluded class into the formal finance sector.

CHAPTER ONE

INTRODUCTION

1.1 Introduction

Worldwide, about 1.7 billion people are excluded from formal finance services according to the World Bank Global Financial Index on Financial Inclusion.¹ According to the report, the reasons for this exclusion include a lack of funds, the cost of financial services, distance, account ownership by a family member, the lack of documentation, distrust in the financial system and religious concerns. In Nigeria, the financial exclusion rate stands at 36.8 per cent, with a banked population of only 39.6 per cent.² The Enhancing Financial Innovation and Access (EFInA) survey reveals that factors such as distance to banks, inadequate financial literacy, irregular income, unemployment, the complexity of account opening, a lack of proof of identity documentation, distance and preference for cash are responsible indices for the low rate of financial inclusion in Nigeria.³ Additionally, factors such as geographic location, gender, age, level of education, sources and level of income are also at play in this low level of financial inclusion.⁴

In recent years, financial inclusion has, gained the interest of national governments, development organisations, research institutions, technology corporations, not-for-profit organisations and the academia. The attention does not come as a surprise because financial inclusion promotes seven of the 17 Sustainable Development Goals (SDGs) of the United Nations.⁵ Also, financial inclusion primarily affects the most vulnerable in the society such as low-income earners, rural dwellers, women and youth who are in most need of targeted initiatives by national governments and regulators and financial services providers. These initiatives, therefore, ensure that excluded persons can access quality financial services and obtain the benefits of financial inclusion. Poverty reduction, better financial health, economic empowerment, capacity to adequately respond to family emergencies and economic shocks,

¹Asli Demirgüç-Kunt, Leora Klapper, Dorothe Singer et al *The Global Findex Database 2017: Measuring Financial Inclusion and the Fintech Revolution* (2018) at 5, available at <https://globalfindex.worldbank.org/>, accessed on 16 April 2019.

²Enhancing Financial Innovation and Access in Nigeria (EFInA), *Key Findings: EFInA Access to Financial Services in Nigeria Survey* (2018) at 32, available at https://www.efina.org.ng/wp-content/uploads/2019/01/A2F-2018-Key-Findings-11_01_19.pdf, accessed on 20 June 2019.

³Enhancing Financial Innovation and Access in Nigeria (EFInA) *Key Findings: EFInA Access to Financial Services in Nigeria (A2F) 2016 Survey* (2017) at 52, available at <https://www.efina.org.ng/wp-content/uploads/2019/03/Key-Findings-A2F-2016.pdf>, accessed on 26 June 2019.

⁴Enhancing Financial Innovation and Access in Nigeria (2018) op cit note 3 at 37-48

⁵ World Bank Group *Financial Inclusion: Overview* (2018), available at <http://www.worldbank.org/en/topic/financialinclusion/overview>, accessed on 30 April 2019.

improved quality of life, better financial management and consumption soothing are some of these benefits.

1.2 Research question

This thesis examines the broad question: how suitable are the digital financial services (DFS) enabling laws and institutions in Nigeria for addressing the needs of the financially excluded? In considering this broad question, the reasons as to why many Nigerians remain financially excluded, in spite of the abundance of regulatory initiatives such as guidelines, regulations and policies are examined. Specifically, this thesis explores various considerations for achieving an effective regulatory strategy to improve financial access and usage in Nigeria using the specific channel of digital financial services. Gaps in the legal and institutional framework for DFS that contribute to this exclusion are also identified. Furthermore, policy changes that need to be made to provide more extensive, accessible and sustainable financial inclusion value for users are discussed in the research.

1.3 Background to Financial inclusion in Nigeria

The World Bank and the International Financial Corporation (IFC) launched the Universal Finance Access (UFA) with the goal of ‘providing access to a transaction account or electronic instrument to store money, send and receive payments for adults who are not currently within the formal financial sector by 2020’.⁶ These two organisations have committed to ‘enabling one billion people to gain access to a transaction account through targeted interventions’.⁷ Likewise, the International Telecommunications Union (ITU) hosts focus group meetings on digital financial inclusion to stimulate discussions on digital financial services by regulators, services providers, payment platform providers, international organisations and other industry stakeholders.⁸ The organisation also publishes specialised reports on varied aspects of DFS.⁹

Similar strides have been achieved by not-for profit organisations. The Bill and Melinda Gates Foundation has initiated the Financial Services for the Poor programme to expand low-cost DFS to the poor by helping to improve digital payment systems and lending

⁶ World Bank *UFA2020 Overview: Universal Financial Access by 2020* (2018), available at <http://www.worldbank.org/en/topic/financialinclusion/brief/achieving-universal-financial-access-by-2020>, accessed on 14 April 2019.

⁷ Ibid.

⁸ ITU *Focus Group on Digital Financial Services*, available at <https://www.itu.int/en/ITU-T/focusgroups/dfs/Pages/default.aspx>, accessed on 12 April 2019.

⁹ Ibid

support to strengthen national and regional strategies to foster financial inclusion.¹⁰ The foundation provides funding for DFS programmes including the publication of the World Bank Global Findex on Financial Inclusion and the DFS observatory of the Columbia University.¹¹

Academia is not left behind as universities around the world are involved in research addressing issues around barriers as well as the enablers for financial inclusion. Columbia University, for example, has set up a Digital Financial Services (DFS) observatory to monitor financial inclusion progress globally and additionally maintains a repository of financial inclusion policies and initiatives from countries around the world.¹² Financial institutions such as Credit Suisse are also invested in the topic, by serving as a founding partner for the Centre for Financial Inclusion since 2008 ‘to engage and challenge the financial services industry to better serve, protect and empower clients’.¹³ The Accion Microfinance Bank also hosts the Centre for Financial Inclusion which is dedicated to financial inclusion research, particularly in developing countries. Even management consultant firms such as Accenture, McKinsey and KPMG have dedicated reports on aspects of financial inclusion.

There are also some global collaborations on financial inclusion. For instance, the Alliance for Financial Inclusion brings together financial regulatory institutions, central banks and finance ministries from 90 countries.¹⁴ It is this alliance that introduced the Maya Declaration which is the first global initiative to remove barriers to accessing finance by encouraging nations to commit to a set of target and dates to reach financial inclusion. Similarly, the Consultative Group to Assist the Poor (CGAP) is an international alliance of about 30 development organisations that work to improve financial inclusion using action-oriented research to help build inclusive and responsible financial systems.¹⁵

In Nigeria, the Central Bank of Nigeria (CBN also referred to in this work as the Central Bank) is the main financial services regulator and is charged with ensuring financial inclusion. The bank has been striving to improve the accessibility and availability of quality financial services to suit the needs of the 36.8 million Nigerians presently excluded from

¹⁰Bill and Melinda Gates Foundation *Financial Services for the Poor* available at <https://www.gatesfoundation.org/What-We-Do/Global-Growth-and-Opportunity/Financial-Services-for-the-Poor>, accessed on 14 April 2019.

¹¹Demirgüç-Kunt, Klapper, Singer et al op cit note 1 at xv. See also Columbia University; *The DFS Observatory at Columbia University*, available at <https://dfsobservatory.com/>, accessed on 14 April 2019.

¹²Columbia University *ibid*.

¹³Accion Centre for Financial Inclusion *Mission and Vision*, available at <https://www.centerforfinancialinclusion.org/about/mission>, accessed on 30 April 2019.

¹⁴Alliance for Financial Inclusion *A Policy Leadership Alliance* available at <https://www.afi-global.org/about-us> accessed 10 July 2020.

¹⁵CGAP *About CGAP*, available at <https://www.cgap.org/about>, accessed on 30 April 2019.

financial services. Efforts at achieving this have been two-fold. The pre-2011 era as detailed in chapter 3, was geared towards promoting the wide deployment of distribution channels and the introduction of credit enhancement programmes. Efforts post-2011 have been mainly focused on formulating specialised enabling guidelines and regulations and initiating policies targeted on increasing the ownership of financial accounts and the usage of financial products and services. The next section details these regulatory efforts, showing Nigeria's journey to achieving financial inclusion from a pre-2011 era to the post 2011 era.

1.3.1 Pre-2011 era

In this section, data from before 2010 is utilised to show the state of financial inclusion before specific post-2011 efforts were introduced by the CBN. Significantly, there were no dedicated regulatory policies on financial inclusion or retail agent banking in this pre-2011 era as the CBN focused more on distribution channels such as automated teller machines (ATM), point-of-sale devices (POS) and the regulatory intervention programmes adopted, addressed credit enhancement rather than savings mobilisation.¹⁶ A few regulations, such as the Guidelines on Electronic Banking 2003, which became the first legal instrument that introduced digital finance, as well as the Point of Sales Guidelines 2009 and the Guidelines on ATM Operations 2011, were the few existing guidelines in the finance sector.

The following literature provides insights into the state of financial inclusion in 2010 as well as the state of the industry. Financial exclusion by demography is shown as well as financial exclusion access strands. Tables and charts are placed in appendices 2, 3 and 4 to aid the understanding of the state of the market in this era.

A. Demographic profile of the excluded in the pre-2011 era

This section provides some information on the demographic characteristic of the excluded as at 2010 and shows components relating to age, gender, geographical distribution and access strands. In this section, figures from the Enhancing financial Innovation and Access (EFInA) survey 2010 are used. The survey shows that 39.2 million Nigerians or 46.3 per cent of the adult population did not have access to finance of which 54.4 per cent were males, 73.8 per cent were younger than 45 years, while 34 per cent had not obtained formal education.¹⁷

¹⁶Central Bank of Nigeria *National Financial Inclusion Strategy* (2012) at 9–10 available at <https://www.cbn.gov.ng/Out/2012/publications/reports/dfd/CBN-Summary%20Report%20of-Financial%20Inclusion%20in%20Nigeria-final.pdf>, accessed on 10 April 2019.

¹⁷Ibid at 8.

b. Financial inclusion access strands

In 2010, only 30 per cent of Nigerians were banked, 6.3 per cent were served by other formal financial institutions, 17.4 per cent by informal financial services and 46.3 per cent were excluded.¹⁸

c. Financial exclusion by gender

There was a gender bias towards men in relation to financial inclusion. About 54.4 per cent of females were financially excluded, while about 45.6 per cent of men were included.¹⁹

d. Age range of the financially excluded

Young adults were most likely to be excluded. The figures for financial exclusion reduced as the population aged. According to the CBN, while as much as 32.6 per cent of the population aged 18-24 was excluded, only 5.7 of the population aged 65 and above were excluded.²⁰ Similarly, only 7.8 per cent of the population aged 55–64 compared to 25.1 per cent of the 25-34 age-grade was excluded.²¹

e. Rural/urban exclusion

There was a financial exclusion bias towards the rural population. Rural exclusion stood at a staggering 80.4 per cent of the population while in contrast only 19.6 per cent of the urban population lacked access to finance with factors such as distance, level of formal and financial literacy and lower levels of economic activities in rural areas contributing to this wide gap.²²

f. Financial exclusion by level of education

There was no clear correlation between financial exclusion and the level of education attained by the individual. Remarkably, the population with a tertiary education had an exclusion rate of 3.1 while the group classified as ‘other’ are represented by a 1.8 per cent exclusion rate.²³ According to the survey, the percentage of excluded persons with no formal education at 34 per cent was lower than the population that had completed a secondary school education, i.e. 37.6 per cent and another 23.4 per cent had a primary school education.

¹⁸Ibid at 6.

¹⁹Ibid at 8.

²⁰ Ibid.

²¹ Ibid.

²²Ibid at 7.

²³Ibid at 8.

g. Geographical representation of financial inclusion by geo-political zones

There was an uneven distribution of the included population by region. Urban dwellers were more financially included particularly in the South than in the North-East and North-West where as much as 68 per cent of adults in each region were shown to be excluded.²⁴ The North Central followed at 44 per cent with the South-South at 36 per cent while the South East and South West had the best figures at 32 per cent and 33 per cent respectively.²⁵

h. Stakeholder and industry profile

There were, as of December 2010, 5 797 bank branches, 9 958 ATMs and 11 223 POS terminals.²⁶ There were also 21 deposit money banks operating through 6,000 branches for an adult population size of nearly 100 million.²⁷ Also, there were 866 microfinance banks (MFBs) for 3.8 per cent or 3.2 million adults.²⁸ While the insurance industry only served 1 per cent of the population, the pension industry grew from NGN60 billion in 2006 to NGN 290 billion in four years, with the introduction of the 2004 Pension Reform Act that introduced the Compulsory Pensions Scheme (CPS).²⁹

Stakeholders in the industry ranged from development financial institutions, financial services providers, technology companies, public institutions and donors including the Small and Medium Enterprise Development Agency of Nigeria (SMEDAN), the National Identity Management Commission (NIMC) and the Nigeria Postal Service (NIPOST).³⁰ There were four payment processing companies, namely, Interswitch, Valuecard, Cams, and eTranzact and nine mobile network operators (MNOs) with 3 operators- MTN, Globacom and Airtel collectively dominating 85 per cent of the market share.³¹

From the above discussion, it is clear that prior to the signing of the Maya Declaration, the pace of financial inclusion in Nigeria was slow. There were no initiatives centred on removing the barriers to exclusion and uniform rules were applied to all prospective financial services clients without regard to the burden brought on by these barriers. Again, despite the existence of an extensive array of stakeholders, the figures for financial inclusion remained low and mainly urban-focused. Alternative providers were also

²⁴Ibid at 7.

²⁵Ibid.

²⁶Ibid at 9.

²⁷Ibid at 3.

²⁸Ibid.

²⁹Ibid at 4.

³⁰Ibid at 5.

³¹Ibid at 4.

not favoured by the regulator and so DFS, where available, was offered by banks through branches, ATM and POS devices.

Since the signing of the Maya Declaration at Riviera, Mexico however, the CBN has committed to undertaking a vigorous plan of action to enable excluded populations to access quality and affordable financial services more conveniently. Following this commitment, the bank has rolled out a national financial inclusion strategy accompanied by a plethora of regulations and guidelines. These efforts should help the bank to organically mirror the evolution of the financial sector to ensure the adoption of suitable new rules. These post-Maya efforts are described below in the next section.

1.3.2. The post-2011 era

The specific efforts of the CBN to improve financial inclusion after the slow and untargeted pre-2010 era described above are presented in this section. In 2011, Nigeria, along with other nations, committed to certain country targets on financial inclusion at the Maya Declaration hosted by the Global Policy Forum (GPF) in Riviera, Maya in Mexico. Here, members committed themselves to deliberately pursuing set national targets for achieving and implementing financial inclusion and to sharing outcomes among members.³²

Nigeria's target was to drive down financial exclusion from 46.3 per cent in 2010 to 20 per cent by 2020.³³ In line with the Maya commitments, the bank set up the National Financial Inclusion Strategy (NFIS) in 2012 to facilitate financial access and usage by 2020.³⁴ The CBN considered as a strategic objective of the NFIS, the input, concerns, roles and responsibilities of all stakeholders before defining regulatory policies.³⁵

According to the strategy, financial inclusion is achieved when adult Nigerians can easily access varied, affordable and suitable formal financial services including payments, savings, loans, insurance, and pension products.³⁶ The secretariat was established in 2012 to monitor and evaluate data from stakeholders, develop key performance indicators, compare results with targets, analyse gaps and trends, suggest measures to meet set targets, coordinate stakeholder activities and report on progress.³⁷ The secretariat is further responsible for

³²Alliance for Financial Inclusion *Maya Declaration: Commitments You Can Bank on*, available at <https://www.afi-global.org/maya-declaration>, accessed on 11 April 2019.

³³Alliance for financial inclusion *Maya Declaration: Central Bank of Nigeria* 27 Nov 2011 available at <https://www.youtube.com/watch?v=CX7sx-7ykxs&feature=youtu.be>, accessed 10 July 2020.

³⁴NFIS 2012 at 1.

³⁵Ibid at 1.

³⁶Ibid at vii.

³⁷Ibid at ix, 34 and 41.

‘coordinating the activities of working groups and committees in the implementation of the National Financial Literacy Framework’.³⁸ For the proper functioning of the strategy, various working groups and committees were also established. The working groups shoulder the responsibility of implementation for the committees.³⁹ The technical committee is specifically charged with the responsibility of providing technical advice on implementation and disbursement of approved funding to the secretariat while the steering committee lends oversight in strategy direction in relation to the secretariat’s activities.⁴⁰

The set goal for achieving financial inclusion is pursued by the CBN through a number of initiatives including tiered approach to KYC, agent banking, mobile payments, cash-less policy, financial literacy, consumer protection, Micro, Small and Medium Enterprises support, agricultural lending, entrepreneurship development and credit enhancement programmes.⁴¹ To advance these, the CBN introduced two enabling frameworks. The first, the National Financial Literacy Framework (NFLF) serves to drive economic growth by advancing financial literacy programmes that positively impact financial inclusion policies.⁴² The second, the national consumer protection framework aims to establish channels of redress and direction that ensures fairness in pricing and regulates the market conduct of financial services providers.⁴³ The NFLF further provides a prototype for financial literacy in maintaining financial system stability and implementing the NFIS.⁴⁴ The CBN is also driving financial literacy in schools constituting 20 per cent of primary schools, 50 per cent of secondary schools, and 100 per cent of tertiary institutions by 2020’.⁴⁵

Specific financial inclusion targets to lower access barriers were channelled to three main areas, namely, customer on-boarding, consumer protection and financial literacy. For customer on-boarding, a target date of 2012 was set to introduce tiered bank accounts to lower barriers for clients opening low-value accounts through national ID registration in collaboration with the national identification management commission (NIMC).⁴⁶ A

³⁸Central Bank of Nigeria *Financial Literacy Framework* (2015) at 25, available at <https://www.cbn.gov.ng/out/2016/cfpd/financial%20literacy.pdf>, accessed on 18 May 2019.

³⁹CBN *Financial Inclusion Newsletter*, (2016) 1 I (1), available at <https://www.cbn.gov.ng/Out/2016/CCD/JANUARY%202016%20Volume%201,%20Issue%201%20Web.pdf>, accessed on 21 April 2017.

⁴⁰Central Bank of Nigeria *op cit note 38 at 22*.

⁴¹ NFIS 2020 *vi*, 45.

⁴²CBN *Financial Literacy: Overview*, available at <https://www.cbn.gov.ng/Devfin/finliteracy.asp>, accessed on 28 February 2017.

⁴³CBN National Financial Literacy Framework 1.

⁴⁴CBN National Financial Literacy Framework at xi.

⁴⁵Central Bank of Nigeria *National Financial Inclusion Strategy* *op cit note 16 at 28*.

⁴⁶*Ibid* at 27.

Consumer Protection Framework was introduced to ensure transparent product pricing, curb consumer exploitation by service providers, foster consumer confidence and promote a sound finance sector.⁴⁷

1.4 Policy and regulatory initiatives arising from the Maya Declaration

In 2012, the CBN initiated the cashless policy to advance the payment system, reduce costs associated with banking services, offer better service options, improve reach and manage inflation by appropriately steering monetary policies to foster economic growth.⁴⁸ According to the CBN, cash dependency results in significant cost implications, risks of theft or loss, surplus funds circulating outside the formal economy and inefficiency and corruption.⁴⁹ Again, the bank explains that a cashless policy was necessary to correct the unwarranted cost subsidisation foisted on the entire banking system by the 10 per cent minority of bank customers that went over the NGN150 000 mark.⁵⁰

Thus, this policy introduced a limit on cash deposits, withdrawals and cheque encashment by introducing a fee when transactions go above the prescribed limits of NGN500 000 for individuals and NGN3 000 000 for corporate.⁵¹ The pilot project was launched in Lagos in April 2012, followed by a trial set for July 2013 in one state in each of the six geographical zones, namely, Anambra, Abia, FCT, Kano, Rivers, and Ogun and a nationwide launch scheduled for July 2014.⁵²

To further encourage the deployment and use of DFS, the Central Bank in 2014 initiated an industry-wide incentive scheme which featured cuts in merchant service charges, commission-on-turnover exemptions, purchase with cash back, mystery shopper reward and other incentivising rewards based on frequency of debit or credit card use by customers.⁵³

Shortly before the introduction of this scheme, in 2013 the CBN had introduced two important guidelines. The first, the Know-Your-Customer (KYC) Guidelines of 2013

⁴⁷Ibid.

⁴⁸Central Bank of Nigeria *Cash-less Nigeria*, available at <https://www.cbn.gov.ng/cashless/>, accessed on 10 January 2018. Unfortunately, this exercise was suspended and scheduled to be revived effective 01 April 2020. See Central Bank of Nigeria, Financial Inclusion Newsletter July 2019, Volume 4, Issue 2 at 1 available at https://www.cbn.gov.ng/Out/2019/CCD/Q2%202019%20Financial%20Inclusion%20Newsletter_Final_08.08.19.pdf, accessed 05 May 2020.

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Ibid.

⁵²Ibid.

⁵³Central Bank of Nigeria *Electronic Payments Incentives Scheme and Awareness Campaign Directive BPSD/DIR/GEN/CIR/012* (2014) available at <https://www.cbn.gov.ng/Out/2014/BPSD/CIRCULAR%2000N%20EPAYT%20INCENTIVES%20SCHEME.pdf>, accessed 11 July 2020.

provides for a tiered approach to KYC compliance to ameliorate the burden of customer identification documentation needed for account opening. The second, the Guidelines on Agent Banking and Agent Banking Relations of 2013 was issued to address the barriers of distance and inadequate financial education. Others include the Guidelines on Card Issuance of 2014 and the Guidelines and Framework for Mobile Money Services in Nigeria of 2015. Also introduced was the Nigeria Deposit Insurance Corporation Establishment of Passthrough Insurance for Subscribers of Mobile Network Operators of 2015 which mandates the insurance of mobile money. The CBN initiated the Guidelines on Operations of Electronic Transactions in Nigeria of 2020 to provide standards for ATM, POS, web and mobile services and the Guidelines on Transaction Switching of 2016 to ensure that all financial settlements are completed and switched locally through the Nigerian Interbank Settlement System (NIBSS). These legal instruments as well as many others form the greater part of the discussion in chapter 3.

The Nigerian government has also embarked on facilitating measures, identification management and the establishment of credit bureaux towards the goal of broadening access to financial services.⁵⁴ The Nigeria Central Switch provides interconnectivity and interoperability among finance providers and facilitates inter-scheme card and mobile payments.⁵⁵ Furthermore, Nigeria has shifted to Europay, MasterCard, and Visa (EMV) chip and pin cards to improve security and has adopted the Nigeria Uniform Bank Account Number (NUBAN) to address the problems of automated direct credits.⁵⁶

Similar to this, the Bank Verification Number (BVN) exercise has been launched in 2014 to ensure that all accounts in Nigeria are verifiable and linked across all banks. The NIBSS Electronic Funds Transfer (NEFT) and the real-time NIBSS Instant Payments have also been adopted to facilitate the payment system.⁵⁷ The CBN additionally introduced the mCASH as an innovative solution leveraged on the NIBSS and designed to facilitate low-value electronic retail payments, to a wider range of users including payers and merchants at

⁵⁴Central Bank of Nigeria Payments System Vision 2020 at 12, available at https://www.cbn.gov.ng/icps2013/papers/nigeria_payments_system_vision_2020%5bv2%5d.pdf, accessed on 25 March 2019.

⁵⁵Ibid at 13.

⁵⁶Ibid at 13.

⁵⁷Ibid at 15.

the bottom-of-the-pyramid where cash usage is prevalent.⁵⁸ Mcash leverages on the NIBSS Instant Payments infrastructure (NIP) to provide USSD funds transfer.⁵⁹

Finally, to ease the challenges of accessing credits, the federal government has passed and signed into law, two Acts of the National Assembly, namely, the Secured Transactions in Movable Assets Act (STMA) of 2017 and the Credit Reporting Act 2017. While the STMA is intended to facilitate loan applications, the later enables easier sharing of credit information for loan grants.⁶⁰ The Payment Service Banks Guidelines were also introduced in 2018 to allow non-bank providers to offer finance. The Federal Competition and Consumer Protection Act of 2018 was also signed into law by the federal government with some significant provisions for competition in the financial services sector. The details of some of these guidelines and initiatives will be discussed more profoundly in chapter 3.

1.5 Financial inclusion access strands

Financial inclusion is measurable by assessing whether an individual is banked, formally included, included through the informal sector or totally excluded from financial services.⁶¹ There, however are overlaps such as when financially included persons utilise financial products from banks and other formal institutions or where formally included persons also utilise informal finance channels including rotating savings clubs and money lenders. The meanings of these strands, adopted from the EFINA survey are specified below.

1.5.1. Banked

The banked are ‘persons who currently have access to or use a deposit money bank, in addition to having and using any one of ATM card, credit card, savings account, current account, fixed deposit account, mortgage, overdraft, loan, or Islamic banking product’.⁶²

1.5.2. Formal other

This refers to ‘all adults who have access to or use other formal institutions and financial products not supplied by deposit money banks, including insurance companies, microfinance banks, pension schemes or equity including remittances (via formal channels)’.⁶³

1.5.3 Informal only

These are adults who do not have any banked or formal other products but have access to or use only informal services and products such as savings clubs and

⁵⁸NIBSS, *Mcash*, available at https://www.nibss-plc.com.ng/images/api/mCASH_Press_Release.pdf, accessed on 11 July 2020.

⁵⁹Ibid.

⁶⁰These Acts are discussed in chapter 3

⁶¹Enhancing Financial Innovation and Access in Nigeria (EFInA) 2016 op cit note 3 at 12.

⁶²Ibid.

⁶³Ibid.

pools, *esusu*, *ajo*, or moneylenders; as well as remittances (through informal channels such as a bus transport services or recharge card transfers).⁶⁴

1.5.4 Financially excluded

This term refers to adults not in the banked, formal other or informal only categories, even though the persons may be using or have access to any of the following: loan or gifts from friends or family and loan from employers, as well as remittances via a friend or family member.⁶⁵

1.6. Research justification

This thesis is justified on a number of grounds. First, financial access is essential to the wellbeing of an individual and can foster the financial health and savings and investment habits of citizens. This ensures access to payment, credit, savings, pension and insurance to those in most need of these services. Financial inclusion also has prospects for social inclusion by giving the financially included the opportunity to access additional social services in terms of providing access to payment platforms for utilities (energy, water and television).

Secondly, financial inclusion is a topical global issue which affects 1.7 billion people globally according to the World Bank Global Findex on Financial Inclusion.⁶⁶ From a reading of the report, no country in the world even those that are developed has a 100 per cent financial inclusion rate. The report also reveals that, Nigeria, along with six other countries account for nearly half of the unbanked population globally.⁶⁷ As stated earlier, about 36.8 per cent of Nigerians are excluded from finance and only 39.6 per cent of Nigerians are banked according to the EFINA survey. The scale of financial exclusion in Nigeria is therefore too high to be ignored.

A third justification is the evidence of the proven capacity of financial inclusion to lift persons out of poverty, especially with the emergence of digital financial services (DFS).⁶⁸ Advancing financial products to unserved populations such as SMEs, rural populations and the poor therefore needs research that identifies the specific needs and product expectations of these populations to ensure adoption, usage and sustainability. This additionally saves regulators and providers the economic and resource waste that can arise from a lack of patronage of financial inclusion initiatives.

⁶⁴Ibid.

⁶⁵Ibid.

⁶⁶Asli Demirgüç-Kunt, Leora Klapper, Dorothe Singer et al op cit note 1 at 35.

⁶⁷ Ibid at 35

⁶⁸ Ceyla Pazarbasioglu et al 'Digital Financial Services' April 2020 available at <http://pubdocs.worldbank.org/en/230281588169110691/Digital-Financial-Services.pdf>, accessed 30 January 2021

Fourthly, a study of digital financial inclusion from a Nigeria-specific context provides tailored recommendations that would suit the excluded. The story of Mpesa in Kenya reveals how similar initiatives deployed in different countries can wield completely different results. While Mpesa originated in Kenya and succeeded tremendously there, increasing financial inclusion figures to 83 per cent the deployment of the model in South Africa's financial market failed to make the same impact.⁶⁹ Notably, South Africa's financial market was quite advanced and many already had significant access to traditional providers of finance such as banks unlike in Kenya where the concentration of banking services in the urban centres opened up the opportunity to create a platform for sending remittances to dependents in rural areas. Like Kenya, Nigeria also has a significant unbanked population and high rural exclusion rate which require tailored solutions such as the Mpesa model.

A fifth justification lies in the fact that access to formal financial inclusion ensures that citizens' funds are better regulated and protected by the Central Bank. The findings of this research could therefore help the government to fulfil welfare responsibilities and to improve the economic wellbeing of citizens in need of relief from financial shocks or family emergencies. This could also serve to provide policy recommendations for better fiscal planning as the government is in a better position to understand the spending and investment behaviour and financial needs of the people.

This thesis is also important as it seeks universal inclusion for all, a departure from the present situation of a mainly included urban segment of the population and a predominantly excluded rural population. In Nigeria, the rural financial exclusion rate stands at 78.5 per cent even though 63.3 per cent of Nigerians reside in these areas.⁷⁰ A study on this topic is therefore important to investigate the barriers to inclusion for rural dwellers and determine how regulatory measures can contribute to removing these barriers.

A related justification is the ongoing call by the Alliance for Financial Inclusion through the Maya Declaration for nations to drive financial inclusion by removing country-specific barriers to accessing finance.⁷¹ It is important to follow the Central Bank of Nigeria's fulfilment of these commitments through the National Financial Inclusion Strategy (NFIS)

⁶⁹For figures on financial inclusion, see George Obulutsa, 'M-Pesa helps drive up Kenyans' access to financial services' 03 April 2019, available at <https://www.reuters.com/article/kenya-banking/m-pesa-helps-drive-up-kenyans-access-to-financial-services-study-idUSL8N21L2HK>, accessed on April 2019.

⁷⁰Enhancing Financial Innovation and Access in Nigeria (EFInA) (2018) op cit note 2 at 8 and 47.

⁷¹Alliance for Financial Inclusion, *Maya Declaration, Commitments you can bank on* available at <https://www.afi-global.org/maya-declaration> accessed 3 January 2021

2012 and 2018.⁷² The study of the set targets and the implementation of the adopted country benchmarks is crucial to determine the suitability of the strategy and to foster the attainment of financial inclusion before the target date.

Finally, the research focus on digital financial inclusion is apt as Nigeria's high mobile penetration rate holds potential for Unstructured Supplementary Service Data (USSD), code banking and peer-to-peer financial transactions. Presently, about 68.9 per cent of Nigerians own a mobile phone.⁷³ Additionally, mobile subscription in Nigeria stands at 192 267 890.⁷⁴ Again, the increasing availability and affordability of devices such as ATMs and POS and the relative affordability of internet data plans make the prospects for the success of digital financial inclusion more evident. Significantly, according to the McKinsey digital finance report, financial services providers can usher cost savings of as much as 80 to 90 per cent by deploying digital platforms, compared to using physical branches.⁷⁵ DFS also increases the coverage of remittances including low-value transfers and makes sending funds directly for savings, health and education possible.⁷⁶

It is expected that the findings flowing from this thesis will be beneficial to improving the financial health and well-being of Nigerians and will also inform regulatory changes for universal financial inclusion. Additionally, these findings are expected to provide useful policy strategies for other nations grappling with financial exclusion.

1.7 Research methodology

This thesis applies a doctrinal method of research in the main, as well as some components of empirical research. The doctrinal aspect utilises law and development literature such as texts, statutes, regulations, guidelines, regulatory policies, journal articles and reports of international organisations. Comparative case studies are drawn from the benchmark countries selected by the CBN to formulate Nigeria's financial inclusion strategy using the law and development theory, particularly, legal transplants. Fundamentally, legal

⁷²Enhancing Financial Innovation and Access in Nigeria (EFInA) (2018) op cit note 2 at 8 and 47. See also Efina survey 2012 op cit note 16.

⁷³Ibid at 8.

⁷⁴Nigerian Communications Commission *Industry Statistics* available at <https://www.ncc.gov.ng/statistics-reports/industry-overview#view-graphs-tables-2>, accessed 11 July 2020.

⁷⁵McKinsey Global Institute *Digital Finance for All: Powering Inclusive Growth in Emerging Economies* September 2016 at 6, available at <https://www.mckinsey.com/~media/McKinsey/Global%20Themes/Employment%20and%20Growth/How%20digital%20finance%20could%20boost%20growth%20in%20emerging%20economies/MGI-Digital-Finance-For-All-Executive-summary-September-2016.ashx>, accessed on 13 March 2018

⁷⁶See Carol Coye Benson, Charles Niehaus, Mina Mashayekhi et al *The Digital Financial Services Ecosystem* ITU-T Focus Group on Digital Financial Services May 2016 at 1 available at https://www.itu.int/en/ITU-T/focusgroups/dfs/Documents/09_2016/FINAL%20ENDORSED%20ITU%20DFS%20Introduction%20Ecosystem%2028%20April%202016_formatted%20AM.pdf, accessed 11 July 2020.

transplantation occurs when legislators and regulators borrow, in whole or in part, the laws and foreign policies of other jurisdictions. The thesis examines the extent to which Nigeria mirrors policies from other countries and how these have been adopted in the finance sector to advance financial inclusion.

Using the empirical method of research, the field study conducted in a community which was unserved by a bank, reviews the barriers to finance as well as the coping strategies adopted by the community to access finance. The study was carried out in Ubulu-Uku, a rural community located in the Aniocha-South Local Government Area of Delta State. This community which has no banking services was selected in order to appreciate the burden experienced by the residents in having to travel significant distances to reach bank branches in neighbouring communities or the state capital. The study further sought to understand the coping strategies adopted by the study participants in accessing finance. This study was conducted in October 2018 and analysis was undertaken over the course of three months between January and March 2019. Visits were made to the homes and work places of participants.

The study tried to maintain a relative gender balance, so 12 females and 13 males participated. The formal and informal sectors were represented, with 12 participants representing each segment. An interview guide was prepared in English and administered by the principal investigator in English or Igbo language, depending on the preference of each participant. A total of 24 closed- and open-ended questions were asked. The closed-ended questions were used to gather demographic data about the participants while the open-ended questions were useful to gain insights on user perceptions on accessing and using financial services which formed the basis of the qualitative research. The result and analysis of this study are set out in chapter 5 of this thesis

Although this study was limited to only one community in Nigeria, the research found credence from a nationwide survey conducted biannually on financial access in Nigeria by the Enhancing Financial Inclusion and Access (EFInA), a non-profit organisation focused on improving financial inclusion in Nigeria. The specific study carried out for this thesis was, however, important to portray the plight of a specific community without the presence of banks. Also, the restraints of time, cost and geographical logistics made it impossible to expand the scale of this study. To make up for these limitations, the qualitative method of research was used to draw out in-depth insights from the residents and understand better the reasons for exclusion and patterns of usage of specific financial products.

It is important to state that figures on financial inclusion are mainly sourced from the EFINA surveys of 2010-2018, the CBN National Financial Inclusion Strategies of 2012 and 2018 and the annual reports for the implementation of the NFIS of 2018 and 2019. Some figures are also sourced from the CBN Baseline Survey on Financial Literacy 2015.

1.8 Scope

This research is limited to the financial inclusion efforts of the CBN from 2010 to date. In it is reflected the state of financial inclusion from just before Nigeria committed itself to the Maya Declaration in 2011 to the present time. The focus of the thesis is also on the specific channel of digital financial services (DFS) to achieve financial inclusion. Even though financial inclusion can be attained through other channels, such as micro-finance, these are outside the scope of this work and are not discussed.

Significantly, the use of DFS is selected as a veritable channel as Nigeria has a significant rural population that is unserved or underserved by financial services providers. Channels such as mobile phones, automated teller machines (ATMs) and point-of-sale devices (POS), therefore, hold the promise of universal inclusion as many people own mobile phones and deploying these, costs less than building out a full service bank branch in rural areas. Finally, even though financial inclusion pertains to individuals and small businesses, this work will not address the issues around small business inclusion. The chapter outline in 1.10 defines the scope more fully.

1.9. Description of concepts

For the purpose of this work the following meanings will be applied to the under-listed terms.

A. Financial inclusion

In defining financial inclusion the elements of quality, convenience, availability, affordability and dignity usually receive attention as designing models that are out of the financial reach of the intended users or one that offers a lower quality or a more arduous system of use defeats the purpose of inclusion.

Financial inclusion is described by the Central Bank of Nigeria (CBN) as

enhancing access and usage of financial services at affordable costs to the vast majority of disadvantaged and vulnerable low income groups; it is the availability and accessibility of financial products and services to the entire population without discrimination.⁷⁷

The definition advanced by the CBN stresses the need to design financial services to reach all consumers including the last mile of consumers usually disadvantaged by reason of low

⁷⁷Central Bank of Nigeria *CPD FAQs* at 3, available at https://www.cbn.gov.ng/Devfin/CPD_FAQs.pdf, accessed on 12 May 2019.

income and vulnerability (including social or economic disadvantage) without discrimination. This definition, therefore, envisages that services will be designed in ways that open opportunities for all excluded persons. As outlined in the CBN NFIS, the definition of financial inclusion embodies elements such as ease of access to financial products and services, use of a broad range of financial products and services, financial products designs that meet the needs of clients, and affordable financial services even for low-income groups.⁷⁸

The Centre for Financial Inclusion additionally defines financial inclusion as:

a state in which all who can use them have access to a full suite of quality financial services, provided with quality to everyone who can use financial services with financial capability through a diverse and competitive marketplace.⁷⁹

This definition envisions a situation where consumers are afforded the opportunity to access varied and quality financial services in a competitive environment. Implicitly, the definition takes into consideration, the fact that a competitive market place provides the consumer with the element of choice to select from suitable services according to personal needs. Also, the element of financial capability emphasises the need for consumers to understand clearly the advantages and disadvantages of each service offered, hence, leading to a state where consumers become financially capable of making wise financial decisions independently.

In addition, the International Telecommunications Union (ITU) describes financial inclusion as ‘the sustainable provision of affordable digital financial services that bring the poor into the formal economy’.⁸⁰ Simply, this alludes to designing financial services with the poor in mind to ensure that this category of persons receive admission into the formal financial system.

Furthermore, the Financial Action Task Force on Money Laundering (FATF) 2011 guidance note on Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion defines the term thus,

In general terms, financial inclusion involves providing access to an adequate range of safe, convenient and affordable financial services to disadvantaged and other vulnerable groups, including low income, rural and undocumented persons, who have been underserved or excluded from the formal financial sector. Financial inclusion also involves making a broader range of financial products and services available to individuals who currently only have access to basic financial products. Financial inclusion can also be defined as ensuring access

⁷⁸Central Bank of Nigeria National Financial Inclusion Strategy (2012) op cit note 16 at 1.

⁷⁹Centre for Financial Inclusion *Financial Inclusion Glossary* (2018), available at <<https://www.centerforfinancialinclusion.org/financial-inclusion-glossary>>, accessed on 11 July 2020.

⁸⁰Carol Benson and Nils Clotteau *Digital Financial Services Glossary ITU-T focus group on digital financial services* at 6 available at https://www.itu.int/en/ITU-T/focusgroups/dfs/Documents/201701/ITU_FGDFS_DFS-Glossary.pdf, accessed 11 July 2020.

to appropriate financial products and services at an affordable cost in a fair and transparent manner.⁸¹

This definition provides the broadest range of elements and makes specific reference to persons excluded as a result of being undocumented. Again, the definition brings a new element of the safety of financial products offered to vulnerable consumers and further seeks to expand the range of services offered to financially included persons.

B. Digital financial services

Digital financial services (DFS) are defined as

a broad category that encompasses mobile financial services and all branchless banking services enabled via electronic channels including mobile phones, points-of-sale (POS) devices, electronic cards (credit, debit, smart cards, etc.), and computers.⁸²

Digital financial services are also defined by the International Telecommunications Union as ‘methods to electronically store and transfer funds; to make and receive payments; to borrow, save, insure and invest; and to manage a person's or enterprise's finances’.⁸³

Digital financial services are mainly offered using one or a combination of three models bank-led, MNO-led (provided by a Mobile Network Operator) and the corporation-led models depending on the regulatory strategy adopted in a jurisdiction. Significantly, s 3.0 of the 2015 Regulatory Framework for Mobile Money Services in Nigeria defines the bank-led as

one where a bank or consortium of banks (as lead initiator(s) delivers banking services alone or in partnership with other central bank approved organizations leveraging on the mobile money system while the non-bank-led model, is one where a duly licensed corporate organisation as lead initiator delivers mobile payment services to subscribers.⁸⁴

Such a corporate organisation cannot however be a bank or mobile network operators.⁸⁵

Before the recent introduction of the Payment Services Bank Guidelines of 2018, only the bank-led and corporation-led models were permitted in Nigeria. MNOs were only permitted to provide mobile money strictly in conjunction with licensed deposit money banks. The regulatory foundations and resulting implications of this restriction are discussed

⁸¹Financial Action Task Force *FATF Guidance: Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* (2013) at 38, available at <http://www.fatf-gafi.org/media/fatf/content/images/Updated-2017-FATF-2013-Guidance.pdf>, accessed on 18 May 2018.

⁸²Alliance for financial Inclusion *Basic Terminology* Guideline Note No. 19, August 2016 available at <https://www.afi-global.org/sites/default/files/publications/2016-08/Guideline%20Note-19%20DFS-Terminology.pdf>, accessed 11 July 2020.

⁸³Carol Benson & Nils Clotteau *Digital Financial Services (DFS) Glossary* (2017) op cit note 80 at 6.

⁸⁴Central Bank of Nigeria, Regulatory Framework for Mobile Money Services in Nigeria, Regulation 3.0 of 2015.

⁸⁵Central Bank of Nigeria, Regulatory Framework for Mobile Money Services in Nigeria, Regulation 3.0 of 2015.

further in chapter 3 of this work. The extent of the powers vested in MNOs with the passage of the Act is also detailed in chapter 3.

C. Bank and non-bank institutions

A bank is defined as ‘a chartered financial system within a country that has the ability to accept deposits and make and receive payments into those accounts’.⁸⁶ A non-bank institution on the other hand is as ‘an entity that is not a chartered bank, but which is providing financial services to end users; the requirements of non-banks to do this, and the limitations of what they can do, are specified by national law’.⁸⁷

D. Mobile Network Operator (MNO)

A mobile network operator (MNO) is defined as ‘a telecommunications service provider organisation that provides wireless voice and data communication for its subscribed mobile users’.⁸⁸ These are ‘independent communication service providers that own the complete telecom infrastructure for hosting and managing mobile communications between the subscribed mobile users with users in the same and external wireless and wired telecom networks’.⁸⁹

1.10 Outline of the thesis

A background to the issue of financial inclusion from a global and national perspective is provided in the first chapter. Principally, outlined in it are the efforts aimed at achieving financial inclusion from 2010 to date as well as the dimensions, and the access strands that define financial inclusion. The research justification, methodology and scope of study are also detailed. Equally defined in it, in order to provide a deeper understanding of the work, are six key concepts, including financial inclusion, digital financial services, banking and non-banking institutions and mobile network operators. The chapter ends with an outline of the thesis.

The second chapter titled, ‘Financial inclusion in the context of law and development’ consists of the examination of financial inclusion from a law and development viewpoint using the specific theory of legal transplants. Case examples are drawn from selected

⁸⁶Carol Benson & Nils Clotteau Digital Financial Services (DFS) Glossary (2017) op cit note 80 at 20

⁸⁷Ibid.

⁸⁸Techopedia *Definition: What Does Mobile Network Operator (MNO) Mean?*, available at <https://www.techopedia.com/definition/27804/mobile-network-operator-mno>, accessed on 12 May 2019.

⁸⁹Ibid.

countries from which different aspects of the nation's financial inclusion efforts were adopted.

In chapter 3 the legal and institutional framework for financial inclusion in Nigeria is examined. Specifically, in this chapter the strategy adopted by the CBN to improve financial inclusion is closely considered. The targets set by this strategy as well as the legal instruments and tools adopted to aid inclusion are examined. Also highlighted in this chapter are the roles and responsibilities of regulatory institutions in Nigeria, these being the Central Bank of Nigeria (CBN), the Nigeria Communication Commission (NCC), the National Insurance Commission (NAICOM), the Pension Commission (PENCOM), the Nigeria Deposit Insurance Corporation (NDIC) and the National Identification Management Commission (NIMC). The regulation of digital financial inclusion in Nigeria, the place of the banks as chief providers of DFS and the potential for alternative providers such as mobile network operators and the postal service to aid inclusion, are considered.

In chapter 4, the barriers to financial inclusion are discussed from the demand-side, supply-side and regulatory perspectives. Such demand-side barriers include poverty, lack of awareness of financial products, illiteracy, digital aversion, and individual and community bias such as cultural and religious bias. Supply-side barriers include the cost of accessing finance, distance and availability (e.g. geographical spread of financial services providers and distance to access points), network infrastructure, low quality financial products, safety, illiquidity and other inconveniences (e.g. delays and queues). Finally, regulatory barriers include lack of required ID documentation and tedious KYC procedures.

An analysis of the financial inclusion case study conducted specifically for this thesis in Ubulu-Uku in Delta State is offered in chapter 5. The findings, key messages and implications for financial inclusion flowing from this study are elucidated. As detailed in chapter 5, Ubulu-Uku is a town in the Aniocha-South Local Government Area of Delta State, South of Nigeria. This town is largely agrarian, with a growing population of small and medium scale enterprises. The absence of a bank in this community made it suitable for the study to understand the impact of this absence as well as the coping strategies adopted by the residents to access finance. These were garnered from the experiences of the empirical study participants on access and use of money, extent of engagement with and trust in providers of finance, as well as the knowledge about financial policies of the Central Bank.

Focus in the sixth chapter is on the impact of the new and emerging technology applied to financial inclusion. Initially, the state of the DFS Market in Nigeria is presented. This is followed by an analysis of eight new and emerging technologies: blockchains, digital

identification, data analytics, application programming interface, robo-advising, cryptocurrency and peer-to-peer lending. These trends are projected to aid financial inclusion by applying technological advances to help users overcome the varied barriers to finance. The potential to apply these trends in Nigeria as well as areas of application in financial inclusion will be examined.

In the final chapter, 7, a robust conclusion to the thesis is provided. Linkages between the theories from the conceptual framework and the findings from the empirical study are made, as are the observations gained from the course of the research and policy recommendations for improved financial inclusion.

1.11 Conclusion

Provided in this chapter was an introduction to the state of financial inclusion in Nigeria from the pre-2010 era where financial inclusion efforts were mostly focused on credit enhancement and distribution channels to the post-2011 era when Nigeria committed to the Maya Declaration and made a targeted effort to set up a dedicated national financial inclusion strategy. The legal transplants theory will be used in the next chapter to provide a discourse as to how the Central Bank of Nigeria applied the success stories of financial inclusion in selected countries and to discuss the impact of these transplants on the financial inclusion legal landscape in Nigeria.

CHAPTER 2

FINANCIAL INCLUSION IN THE CONTEXT OF LAW AND DEVELOPMENT

2.1 Introduction

The background to the thesis was described in the previous chapter, as was the state, dimensions and access strands of financial inclusion. Set out in it are both the doctrinal and the empirical research methods used in the work. The doctrinal method is useful for outlining the diverse literature on the subject while the empirical method aids in drawing out consumer perspectives and recommendations for financial inclusion. As an ancillary to both methods, comparative examples are drawn from the benchmark countries selected by the Central Bank of Nigeria (CBN) in devising the National Financial Inclusion Strategy (NFIS). Justification for the work was provided in that chapter, including the scale of exclusion and the need for financial inclusion to lift poor persons out of poverty and lead to economic prosperity for all. Financial inclusion, digital financial services and related terminology were defined and the scope of the thesis was delineated. The aspects of research covered in each of the seven chapters were provided and the present chapter was set as the thesis's conceptual framework.

Set out in this chapter, as set down above, is the conceptual framework using the law and development theory in the context of financial inclusion in Nigeria, with particular focus on legal transplants. Theorised in it is the role of law in development studies broadly and, more specifically, in the formulation of financial inclusion policies that foster economic growth of the financially excluded. At the beginning of the chapter a background to the general theory of law and development is discussed before an analysis of the legal transplantation of financial inclusion laws and practices from other jurisdictions by the CBN is developed.

2.2 The Law and Development Moments

The law and development discourse has since engaged scholars. A crucial point in this discussion has been to determine whether and to that extent, law, is imperative for development. The theory has recently been applied specifically to sectors such as finance, where regulators are seeking to balance the application of legal rules with economic policies that lead the advancement of financially excluded populations. While this balance has taken various shapes in jurisdictions around the world, it is important to note that the relationship

between law and development in general has been in evidence since the 1960s. This field termed 'law and development' has witnessed different moments and drawn the attention of numerous writers. Lizarro-Rodriguez traces the origin of this field to the teaching of law in Asian and African colonial contexts and the United States of America's cooperation programmes of the 1960s followed by the United Nations' recognition of the right to development in 1986 and the introduction of the human development index (HDI).¹ Trubek and Santos trace the origins of the field to the classical thinking of Marx and Weber as well as post-World War II methodical reformation of legal systems and incorporation into the work of international development agencies.²

More specifically, the first moment heralded by the modernisation theorists of the 1950s sought to support the importance of adopting the laws of advanced countries to improve the capacity for rule making by adopting states and corporate in more advanced countries.³ Theorists in this moment viewed development as 'a process of convergence of the institutions of modern Western societies defined by free markets, a bureaucratic welfare state, a multiparty electoral system and the existence of civil and political rights'.⁴ Modernisation theorists stressed that conformity with Western laws was the clear path to development without giving any consideration to the impact of this on local customs and the societal peculiarities of recipient countries.

Trubek and Santos note that the theorists of this era assumed that law could produce economic impacts and social change by focusing on the role of the intervention by the state to manage economies and transform traditional societies.⁵ These assumptions soon became less relevant as it became more evident that 'markets do not create conditions of operation without institutional reform'.⁶ Tamanaha criticises the moment for being ethnocentric, evolutionary, falsely teleological, naive and lacking the political or civic culture in the

¹Liliana Lizarazo-Rodriguez 'Mapping law and development' (2017) 4 (4) *Indo. J Int'l & CompL*764–5 available at https://heinonline-org.ezproxy.uct.ac.za/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/indjic14&men_hide=false&men_tab=toc&kind=&page=761, accessed 22 July 2020.

²David Trubek & Alvaro Santos' *The Third Moment in Law and Development Theory and the Emergence of a New Critical Practice* (2006) at 1, available at <https://scholarship.law.georgetown.edu/facpub/2105>.

³*Ibid* at 5.

⁴Kevin Davis & Michael Trebilcock 'Legal reforms and development' (2001) *Third World Quarterly* 22(1) at 22, available at <https://www.jstor.org/stable/3993343>, accessed on 10 June 2019.

⁵*Op cit* note 2 at 2.

⁶David Trubek *The Rule of Law in Development Assistance: Past, Present, and Future* (2003) at 10, available at https://www.researchgate.net/publication/228338621_The_Rule_of_Law_in_Development_Assistance_past_present_and_future/link/0c96052d423bca21ee000000/download, accessed on 23 May 2019.

developing countries, necessary to maintain western institutions.⁷ According to Baderin, the emphasis placed by modernisation theorists on the need for the transformation of societies to ‘modernity’ as a prerequisite for development had led to the under-exploration of the crucial role that customary and Islamic law could play in the development of regions such as Africa.⁸

The collapse of the modernisation theory led to the emergence of the dependency theory, named the second moment in law, which grew to prominence in the 1970s. Dependency theorists sought to dislodge the notion that countries, though different, should experience development in similar ways and rather supported the notion of varied and complex forms of development arising from economic, political and cultural dealings with developed economies.⁹ To Tamanaha, ‘underdevelopment and the reliance of developing countries on Western produce, technology, foreign investment and capital emanates from the history and structure of the global capitalist system and the colonial exploitation carried on into the global market system’.¹⁰

Thus the moment featured ‘a neo-liberal market and the pursuit of the growth of private markets through fair pricing, fiscal discipline, removal of disruptions in the market occasioned by regulatory interventions, market distortions created by intervention, promotion of free trade and foreign investment’.¹¹ Theorists also emphasised the need for enforcement of contracts, rights in property and a strengthening of the role of the judiciary to restrain the state and facilitate the markets.¹²

Although severely critical of the modernisation theory, the dependency theory also failed to produce the promised results as investments in reformist legal education, did not result in better economic growth or improved social relations for developing countries.¹³

⁷Brian Tamanaha ‘*The lessons of law and development studies*’ (1995) 89 *The American Journal of International Law* at 472 available at <https://www-jstor-org.ezproxy.uct.ac.za/stable/pdf/2204226.pdf>, accessed 29 April 2019.

⁸Mashood Baderin, ‘Law and development in Africa: Towards a new approach’ (2011) *NIALS Journal of Law and Development* at 20, available at https://www.researchgate.net/publication/256086798_Law_and_Development_in_Africa_Towards_a_New_Approach, accessed on 12 May 2019.

⁹Kevin Davis & Michael Trebilcock op cit note 4 at 22.

¹⁰Brian Tamanaha op cit note 7 at 477.

¹¹David Trubek & Alvaro Santos op cit note 2 at 5.

¹²Ibid at 6.

¹³Jan Torpman & Fredrik Jörgensen ‘Legal effectiveness: Theoretical developments on legal transplants’ (2005) (4) *Archives for Philosophy of Law and Social Philosophy* 91 at 515, available at <https://www.jstor.org/stable/23681578>, accessed on 14 June 2019.

Trubek and Santos note that around the 1980s the failure of this line of thinking to yield the expected result of state-led growth, led to a call to empower the private sector.¹⁴

Ordor writes that with the fall of these two theories, the 1990s birthed a new moment with a mix of ideas both from the first two moments and a combination of other elements.¹⁵ The new moment aimed at ‘gaining preferential treatment and development assistance such as trade preferences, debt relief, low interest loans or outright grants and low-cost transfer of technology for developing countries’.¹⁶ Specifically, the third world approaches to international law (TWAAIL) promoted the need for new international mechanisms to solve problems of poverty and global wealth as against the imperialist definition of civil and political rights that fail to address the ills of colonialism.¹⁷

2.3 Law and development intersections

The moments discussed above, though not proving to be a total success individually, have altogether led to a deeper study of law and development as a composite field of study. Ordor describes this field as ‘ideas that seek to connect law and development by creating a framework within which the role of law in development may be better understood and recommended to governments as a way of advancing development’.¹⁸ Trubek also defines this field as ‘the organised efforts to transform legal systems in developing countries to foster economic, political and social development and the academic projects associated with these efforts’.¹⁹ Further, Lee describes the field of study more simply as ‘an area of enquiry into the interrelationship between law and development’.²⁰

Some authors have highlighted the need to study the two pillars of law and development both separately and as a unit, expanding each field to construe scope, and application and then drawing a correlation. According to Lee, law is relevant to development, yet subject to separate analysis and determines the successful implementation of policy.²¹ Ordor stresses that there is no single path to establishing the role that law plays in development, for this depends on the different perceptions about development including

¹⁴David Trubek ‘The political economy of the rule of law: The challenge of the new developmental state’ (2009) *Hague Journal on the Rule of Law* 1 at 29 available at <https://link-springer-com.ezproxy.uct.ac.za/content/pdf/10.1017/S1876404509000281.pdf>, accessed 22 July 2020.

¹⁵Ada Ordor ‘Tracking the law and development continuum through multiple intersections’ (2015) 8(2) *Law and Development Review* at 335.

¹⁶Brian Tamanaha op cit note 7 at 479.

¹⁷Liliana Lizarazo-Rodriguez op cit note 1 at 824–5.

¹⁸Ada Ordor op cit note 15 at 333–4.

¹⁹David Trubek ‘Law and development 50 years on’ Legal Studies Research Paper Series Paper No. 1212 *International Encyclopedia of Social and Behavioural Sciences* at 2.

²⁰Yong-Sik Lee, *Law and Development Theory and Practice* (2019) at 3.

²¹*Ibid* at 4, 5.

norms and facilitating structures as well as the feasibility and barriers to development which must then be contextually fed into the process of rulemaking.²²

According to Lee, law includes statutes adopted by legislature, regulations adopted by regulatory agencies, ordinances passed by municipalities, binding judicial precedents and informal norms observed with an opinion juris.²³ Law is also described by Baderin as ‘a powerful normative system, an effective tool of social order and socio-economic development needed at the centre of social change struggles and instrumental for strategies of social reform on behalf of disadvantaged groups’.²⁴

Development on the other hand is defined by Lee as ‘economic and social progress including economic values that enhance human lives such as political participation, the right to property, gender equality, access to clean and safe environment and the rule of law’.²⁵ Development has received significant expansion to include economic performance and social development. Ohnesorge argues that development in terms of economic performance is determined by law, legality and non-legal factors such as education, technology, demographics, natural resources, geography, domestic and international politics, institutions and economics and social and cultural norms.²⁶

The social dimension of development is highlighted by Baderin, who asserts that, in defining development, the scope should not be limited to economic growth measured by increased gross national product (GNP) as this excludes human and social levels of development.²⁷ To Lee, social and economic development, though not totally separate are able to bear influence on each other given that social issues can emanate from the different distributive effects of economic development from different population groups.²⁸

The social dimension to development was popularised by the introduction of the United Nations Declaration on the Right to Development (UN Resolution 14/128) which bestows on humankind the ‘inalienable universal right to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised’.²⁹ Likewise, the World Bank’s comprehensive development framework (CDF) of 1999 calls for ‘greater attention to the social, structural

²²Ada Ordor op cit note 15 at 345.

²³Yong-Sik Lee, op cit note 20 at 6 and 7.

²⁴Mashood Baderin, op cit note 8 at 309.

²⁵Yong-Sik Lee, *Law and Development Theory and Practice* (2019) at 11–2.

²⁶John Ohnesorge ‘Developing development theory: Law and development orthodoxies and the Northeast Asian experience’ (2007) 28 (2) *U Pa JInt'l Econ L* at 226.

²⁷Mashood Baderin, op cit note 8 at 22, 24 and 28.

²⁸Yong-Shik Lee, ‘General theory of law and development’ (2017) 50 *Cornell International Law Journal* at 430.

²⁹ UN Declaration on the Right to Development resolution 41/128 of 4 December 1986 Article 1.

and human dimensions of development including human rights, gender equity, poverty alleviation, democracy and access to justice'.³⁰

Authors also stress the need to make the connection between the law and these social dimensions of development. To Lee, law needs to be adapted to socioeconomic conditions as development changes these socioeconomic conditions and creates regulatory gaps that require legal adjustment and reinforcement to fill.³¹ Ayua asserts that the law is important to foster social development and distributive justice and improves both the standard of living and participation of people in economic development.³²

Although the study of law and development has garnered substantial debate and growth, this is not without some resistance as a number of writers still decry the capacity of law to bring about development. Lee, for example, dismisses the capability of law to generate developmental solutions besides implementing those initiated by others and further warns that resort to law to solve social and political problems is, in a sense, an attempt to conjure a social agenda into reality by insisting that the law requires it.³³ Ohnesorge gives support to this stance by alluding to the North-East Asian experience where economic success was recorded in the absence of hallowed legal principles such as 'the judiciary, private litigation, laws on insolvency and competition, intellectual property rights, competition law and the legalisation of state-private sector relations through constitutional and administrative law'.³⁴

Writing from the African experience, Baderin maintains that although this field of study has not been a complete success, law is apparent in development but is only undermined by the failure of many African states to put the law to use for development.³⁵ Baderin, therefore, recommends an enquiry that transcends law, economics, politics, sociology and development studies to promote cooperation between countries, both developed and developing.³⁶ In addition, Baderin advocates for a two-pronged self-reliant theory that encourages individual responsibility by African countries to employ domestic laws to foster country-level development on one hand and utilises regionally harmonised laws to develop the continent on the other hand.³⁷

³⁰David Trubek & Alvaro Santos op cit note 2 at 11, 12.

³¹Yong-Sik Lee, *Law and Development Theory and Practice* (2019) at 48.

³²I Ayua, 'Law and Development in Africa' (1998) 3(1) (*International Journal on World Peace*) at 78-9.

³³Brian Tamanaha op cit note 11 at 480, 486.

³⁴John Ohnesorge op cit note 26 at 290.

³⁵Mashood Baderin, op cit note 8 at 4.

³⁶Ibid at 12.

³⁷Ibid at 34.

Ordor also recommends that ‘separate entry points such as the rule of law or legal empowerment of the poor are needed for all countries, regions, communities or cultures, even without coherence with one or more of the law and development theories’.³⁸ Ordor thus asserts that people’s multiple realities should be recognised and the changes in development ushered by activities, values and responses of communities needs to be understood to garner legal evolution and sustainable participation of developing countries in the discipline.³⁹ Finally, Lee proposes the ‘analytical law and development model; to systematically assess the organisation of LFIs and regulatory structure without entrenching to a best practice model from developed countries.’⁴⁰

2.4 Law and development theory in the context of financial inclusion

The role of financial inclusion in the economic development of citizens is currently receiving significant attention. Developing countries, development organisations such as the World Bank and the African Development Bank as well as the non-profit organisation, financial institutions and academia have all weighed in on the topic. Each of these entities emphasizes the proven use of financial inclusion to improve the economic wellbeing of excluded persons, especially women, urban slum dwellers, rural populations and the poor. For instance, in recognition of the role of financial inclusion as ‘a building block for both poverty reduction and opportunities for economic growth’, the World Bank has adopted the Universal Financial Access initiative to address the barriers to financial inclusion by 2020.⁴¹

Kenya has buttressed this empirical association between financial inclusion and economic growth. Significantly, the introduction of mobile money products, such as Mpesa, has contributed to pushing financial inclusion figures to about 83 per cent.⁴² This means that more people have gained access to finance and can better navigate their economic activities.

It is noted, however, that although financial inclusion has long been considered an economist’s topic, the use of law to tackle barriers to finance in general and financial inclusion specifically is a more recent endeavour and the role of the law in this regard is still unfurling. This captures the assertion of Trubek that economists, although they paid little attention to the law in the 60s and 70s, began in the 80s to recognise the importance of law in

³⁸Ada Ordor op cit note 15 at 347.

³⁹Ibid at 348.

⁴⁰Yong-Shik Lee, op cit note 28 at 442-3.

⁴¹World Bank *UFA 2020 Overview: Universal Financial Access by 2020*, available at <https://www.worldbank.org/en/topic/financialinclusion/brief/achieving-universal-financial-access-by-2020> , accessed on 28 December 2018.

⁴²George Obulutsa ‘M-Pesa helps drive up Kenyans' access to financial services’ 3 April 2019, available at <https://www.reuters.com/article/kenya-banking/m-pesa-helps-drive-up-kenyans-access-to-financial-services-study-idUSL8N21L2HK>, accessed on 14 May 2019.

the creation of financial markets.⁴³ This is typified in Nigeria where, before the signing of the Maya Declaration, the CBN tackled the topic mainly from a credit enhancement and finance channel distribution perspective with little regard for the impact of legal rules and policies. Accession to this declaration has now led to the introduction of a plethora of laws, guidelines, regulations and policies as the importance of legal rules to facilitate and implement the financial regulator's policies become manifest.

Remarkably, even now that the role of law has become apparent to development studies, financial regulators still grapple with balancing suitable best legal practices with economic solutions in the specific sphere of financial inclusion. National regulators are still reworking suitable models to address the real needs of excluded as the success of a model or financial product in one market has not historically guaranteed favourable results in another. The experience related to the deployment of Mpesa in Kenya and South Africa is illustrative. The rapid take-up and usage of Mpesa in Kenya could not be replicated on the same scale in South Africa where socio-economic and financial landscapes and client expectations were different.⁴⁴

The CBN has therefore recently had to review the 2012 National Financial Inclusion Strategy (NFIS) to mirror the circumstances of the financially excluded as different take-up and usage patterns of financial services by Nigerians manifest. The emphasis on point-of-sale devices to drive inclusion, the insistence on agent exclusivity and exclusion of mobile network operators from leading mobile money provision are topics that have been revisited to conform to user demands. Specifically, the CBN has now introduced the Payment Services Banks Guidelines of 2020 to align with the calls for the MNO-led model of financial services deployment.

2.5 Legal transplants

To facilitate the process of adopting laws for financial inclusion, it is imperative to note that the CBN adopted policies and practices from select peer countries by applying the concept of legal transplantation. This section traces the background to legal transplants, starting from the time of Alan Watson, the originator. It is noteworthy that while whole frameworks can be imported to serve as the body of laws for a country, it can sometimes be more practical to cherry-pick aspects of the laws that are attuned to local contexts. This not only aids the

⁴³David Trubek op cit note19 at 8.

⁴⁴Gareth van Zyl 'Why Vodacom M-Pesa has flopped in SA' 05 September 2016 *fin24tech*, available at <https://www.fin24.com/Tech/Companies/why-vodacom-m-pesa-has-flopped-in-sa-20160509>, accessed on 09 May 2019. See also Lerato Mbele 'Why M-Pesa failed in South Africa' *BBC Africa Business Report*, Johannesburg 11 May 2016 available at <http://www.bbc.com/news/world-africa-36260348/> accessed on 11 May 2018.

acceptance of the laws in the destination country but additionally ensures that these laws are adhered to. The background to legal transplants and the motivating factors for transplantation of laws from originating jurisdictions to destination countries are outlined below in the next section.

2.5.1 Background to legal transplants

The foregoing has demonstrated that law is relevant to development. However, in formulating laws that usher development, legislators also have to decipher the rules which are relevant and determine how to implement these rules. Besides the time and expertise that rulemaking involves, the cost of engaging in this process can also be daunting. This is especially so when laws are needed for germane or emerging fields. One easy fix that legislators have historically resorted to, is legal transplantation.

The concept of legal transplants was first proposed by Alan Watson referred to as the father of legal transplants and has been espoused by many authors. Legal transplantation according to Mousourakis involves ‘the incorporation of a legal rule, institution or doctrine from one legal system to another and could either be the reception of an entire legal system or occur in a centralist way’.⁴⁵ In the view of Garoupa and Ogus, ‘legal transplants are usually perceived as unilateral changes of a legal order by which one jurisdiction imports legal norms from another jurisdiction’.⁴⁶

It is noteworthy that the possibility of this concept was in any case, severely doubted and criticised in its early days by authors and failed to make much of an impact until the 1980s. A leading sceptic of the legal transplants theory is Pierre Legrande who completely denounces the possibility of transplants and states that integration into another legal order changes the understanding of the law by the host culture as a different culture which is at variance with the earlier one materializes.⁴⁷ Legrande insists that this change in meaning implies that transplants do not survive the passage from one legal order to the next as the ideas, language, rationality and moral interpretation are effectuated using new standards of justification of the receiving state and thus resulting in a new law.⁴⁸ Although conceding that law is defined in diversified terms based on socio-cultural norms, Mousoukaris points out that

⁴⁵George Mousourakis, Legal transplants and legal development: a jurisprudential and comparative law approach’, (2013) *Acta Jur.Hng.*54 at 225.

⁴⁶Nuno Garoupa & Anthony Ogus ‘A strategic interpretation of legal transplants’ (2006) *The Journal of Legal Studies.*35 (2) at 344.

⁴⁷Pierre Legrand ‘The impossibility of legal transplants’ (1997) *Maastricht J. Eur. & Comp. L.* 4 at 117.

⁴⁸*Ibid* at 117–8.

successful transplants have occurred historically and there is rather an importance to strike the delicate balance between the seemingly contrasting viewpoints.⁴⁹

Significantly, renewed interest for legal transplants grew from the attempts of new law and development movements to promote the rule of law, good governance and reform.⁵⁰ This period coincided with the destruction of the Berlin wall and the collapse of the Soviet Empire, leading to the emergence of new states in need of modern legal rules and thus the rebirth of Watson's principles.⁵¹ Legal transplants are now more common and the motivations for adopting laws from other jurisdictions are explained in the next section.

2.5.2 The motivating factors for legal transplants

Legal transplants are common in situations where legislators are faced with a problem that other jurisdictions have had to grapple with and positive results are evident. Mousourakis notes that these laws are adopted to save legislators from guessing possible solutions at the risk of less appropriate results where there already exists an expansive body of laws in other jurisdictions.⁵² According to Watson, borrowing is much easier than thinking as this saves time and effort and aids acceptability of the transplanted laws.⁵³ For instance, in the sphere of financial inclusion, though still evolving, success has been recorded in specific respects in jurisdictions such as Brazil, Kenya and India with regard to agent banking, mobile money and identification documentation respectively and these are increasingly serving as models for adoption in other countries including Nigeria.

Legislators are motivated by different reasons to engage in legal transplantation including reasons such as efficiency, quality of the law, cost of transplantation versus legislation and cultural affinity. To these factors, Grajzl and Dimitrova-Grajzl add heterogeneity of interests, elitist law reforms, legal maturity, ability to complement local reality and the degree of adaptability of the legal system.⁵⁴

On the point of efficiency, legislators could be motivated to transplant from specific jurisdictions based on the efficiency and the robustness of those laws especially where this lessens the burden of drafting legal rules from scratch. Here, motivation is also measured in terms of economic efficiency and the associated cost of adjustment of selected transplants.

⁴⁹George Mousourakis, op cit 45 at 236.

⁵⁰Randall Peerenboom, 'Toward a methodology for successful legal transplants' (2013) *The Chinese Journal of Comparative Law* 1(1) at 4.

⁵¹ John Cairns 'Watson, Walton, and the history of legal transplants' (2013) *Ga. J. Int'l & Comp. L.* 41 at 676.

⁵²George Mousourakis, op cit 45 at 220.

⁵³ Alan Watson 'The birth of legal transplants' (2013) *Ga. J. Int'l & Comp. L.* 41 at 605.

⁵⁴ Peter Grajzl & Valentina Dimitrova-Grajzl, 'The Choice in the lawmaking process: Legal transplants vs. indigenous law' (2009) *Rev. L & Econ.* 5 at 646.

Mousourakis argues that willingness to adopt foreign laws by lawmakers is mostly in considered in relation to economic efficiency.⁵⁵ Transplants are more likely to occur according to Garoupa and Ogus when the costs of importing and adjusting are justifiably low for the destination country.⁵⁶ Where, however, the cost of transplanting legal rules and adjusting these to the recipient country needs outweighs the cost of legislating from scratch, the prospects of transplanting may become bleak.

Another motivation for transplants is the reputation that the originating jurisdiction has. For instance in the sixth century, the Justinian codification of Roman law became the foundation for Western legal cultures and was transplanted to regions in South America, Asia and Africa, remaining relevant till the nineteen century.⁵⁷ There are also considerations for social, economic and political factors, internal pressure from society, legal tradition, and the legislative expertise and legal acumen of local and international law.⁵⁸ Transplantation based on an imperialist mindset often favoured laws of states with super power status.

The imperialist motivation for transplants is, however, coming under scrutiny. Scholars argue that development for these so-called super nations was sustained by an economic model built on slavery and colonialism carried forward without reparation into the global trade market. In the United States and Britain, for instance, industrialisation and ascension to the status of world power became possible as a result of the imposition of forced labour on black slaves who produced textiles such as cotton and other agricultural products including sugar, tobacco and rice.⁵⁹

However, once former world powers began to lose supremacy, the imperialist motivation for legal transplants began receding as the perception of superiority of so-called super powers is now being threatened by emerging world powers such as China, Japan and Qatar. The increasing influence of these emerging world powers in the global development discourse can no longer be ignored or discarded.

A replacement for this motivation seems to be emerging from gravitation towards cultural affinity and the adaptation of laws to local circumstances, social norms and the economic realities of the receivers. Cultural affinity is increasingly becoming acknowledged, because engaging in legal transplantation without the necessary consideration of local context

⁵⁵George Mousourakis op cit note 45 at 227.

⁵⁶ Garoupa & Ogus op cit note 46 at 342.

⁵⁷George Mousourakis op cit note 45 at 226.

⁵⁸Ibid at 232

⁵⁹Ronald Bailey 'The other side of slavery: Black labor, cotton, and textile industrialization in Great Britain and the United States' (1994) *Agricultural History*68 (2) at 36–8, available at <https://www.jstor.org/stable/3744401>, accessed on 26 July 2019.

could result in a completely unexpected and undesired outcome. Transplants are typically more likely where transplanted laws are able to fit in with the cultural nuances of the recipient states. As noted by Mousourakis, to determine if transplants will be accepted and applied properly, it is important to consider the different cultural, socio-economic and political contexts of these laws.⁶⁰ He adds that transplants could be prevented by the ethno-cultural, political and socio-economic distinctions in the originating and destination legal orders but could result in different outcomes depending on the capacity of the destination country to incorporate the transplants.⁶¹

According to Boulanger, law is about the stability of expectations necessitating the assurance that models adapted globally are suitable for the local needs of the destination community.⁶² To Torpman and Jörgensen, adaptation to local conditions is important to foster legal effectiveness and build a strong relationship between what has been defined as legal effectiveness and the process of transplantation.⁶³ Grajzl and Dimitrova-Grajzl also acknowledge that transplants will more often fail where transplanted laws do not suit local contexts and adjustment costs are unjustifiable in comparison to home-grown laws.⁶⁴ The authors insist that the choice between transplants and home-grown laws are dependent upon local contexts as well as legal, political and socioeconomic considerations.⁶⁵

In relation to the preceding point, another motivating factor is acceptance by the host country. Some factors that increase acceptance of transplants include shared linguistic tradition, reputation of the originating legal order and the educational background and legal expertise in the destination jurisdictions.⁶⁶ Importantly, transplants need to mirror the needs of the local communities who are expected to apply these laws. This aids acceptance as the adoption of foreign laws without consideration for local norms may fail for lack of conformity with beliefs and customs

One example is the implementation of a western style financial system policy to economic initiatives that are foreign to the receiving nation. The insistence on stringent Know-Your-Customer (KYC) compliance as well as the exclusion of indigenous savings systems such as the *esusu* and *ajo* by the CBN, buttresses this point. These indigenous

⁶⁰George Mousourakis op cit note 45 at 229.

⁶¹Ibid.

⁶²Christian Boulanger *Law and Development as Practice and as Theory: From Self-estrangement to Alienation?*, available at <https://barblog.hypotheses.org/832>, accessed on 14 June 2019.

⁶³Jan Torpman & Fredrik Jörgensen 'Legal effectiveness' op cit note 13 at 530.

⁶⁴Grajzl & Dimitrova-Grajzl op cit note 54 at 617–8.

⁶⁵Ibid at 646.

⁶⁶George Mousourakis op cit note 45 at 231.

savings systems, for example, have been in existence for several decades and enable users to access financial products such as savings and loans but are still excluded by the regulators as ideal channels of accessing finance. Meanwhile, stringent KYC requirements such as the use of utility bills in proof of identification and address which is considered strange to local people more accustomed to identification by family or community recognition are requested to open and operate an account.

It is therefore important for legislators to make the right considerations in employing transplants to ensure that transplanted laws will not only be accepted by the people but also complied with. Acceptance can ensure that the affected segment of the society take on and apply the policy initiatives aimed at addressing their concerns. For instance, where the rules for specific services lack the needed reception, subscriptions may not occur significantly as people may find other ways to get around the law and avoid compliance.

According to Del Duca and Levasseur, successful transplants are possible where there is some degree of correspondence with the general and legal culture of the recipient country.⁶⁷ In agreeing with this point, Torpman and Jörgensen observe that legal application by a layman tends to occur only if the layman feels confident that legal communications will be validated by reason of availability of law enforcement and the familiarity with law.⁶⁸ The writers opine that the applicability of transplants are predicated first on trust in the system and secondly in personal ability to engage with the system.⁶⁹

Adding to this, Lee alludes to South Korea in observing that compliance with regulation flows from the general quality of law, design and implementation of laws in tandem with the socioeconomic conditions of the people.⁷⁰ According to the author, South Koreans complied with government economic initiatives that encouraged savings and strong work ethics as there was trust in government rewards in terms of higher interest rates, pay augmentation and increased employment opportunities.⁷¹

Penca, however, rejects this notion, insisting rather that a blueprint about how to ensure legal acceptance in the transnational context is futile, and requires legitimacy which is

⁶⁷Louis F Del Duca & Alain ALevasseur 'Impact of legal culture and legal transplants on the Evolution of the U.S. legal system' (2010) *The American Journal of Comparative Law*, 58 at 1, available at <https://www.jstor.org/stable/20744530>, accessed on 14 May 2019.

⁶⁸Jan Torpman & Fredrik Jörgensen op cit note 13 at 528.

⁶⁹Ibid at 518.

⁷⁰Yong-Shik Lee op cit note at 51-2.

⁷¹Ibid at 80.

impossible to inherit or easily replicate from an originating jurisdiction.⁷² Penca, therefore, recommends that attention must be paid to efforts directed at lending legitimacy, the target legitimacy communities and the local contexts and relationships.⁷³ In summary, Niglia stresses the imperativeness of considering the substantive agenda driving each intended legal transplant as well as the feasibility of persisting in the adopted strategy.⁷⁴

The following section specifically describes the financial inclusion legal transplants in Nigeria.

2.6 Financial inclusion transplants in Nigeria

Clearly, regulatory initiatives aimed at improving economic well-being such as financial inclusion; need to be addressed from the perspective of the excluded that are most in need of the interventions. According to Lee, poverty alleviation initiatives need to create an economy that provides economic resources that steer the majority of excluded population out of poverty.⁷⁵ Nigeria has, like many nations since the signing of Maya Declaration in 2011, sought to improve financial inclusion using a target-based strategy set out in the National Financial Inclusion Strategy (NFIS) as recommended by the Alliance for Financial Inclusion (AFI).

The AFI defines ‘a national financial inclusion strategy as a comprehensive public document that presents a strategy developed at the national level to systematically accelerate the level of financial inclusion’.⁷⁶ This is often usually developed by widely consulting with private and public stakeholders of the finance industry to garner information on industry status, barriers, measurable goals, strategies, timelines and the key performance index for measuring the progress of the strategy.⁷⁷

Nigeria’s NFIS 2018 was set up to drive financial services access and usage by the year 2020, deliberate on relevant stakeholders’ inputs and to outline a framework for improving formal financial inclusion from the 2010 figure of 36.3 per cent of the adult population to 80 per cent by 2020.⁷⁸ Remarkably, at the time of setting up the NFIS, Nigeria

⁷²Jemeja Penca, ‘Transnational legal transplants and legitimacy: The example of clean and green development mechanisms’ (2016) *Legal Stud.* 36 at 723–4.

⁷³*Ibid* at 724.

⁷⁴Leone Niglia, ‘Of harmonization and fragmentation: The problem of legal transplants in the Europeanization of private law’ (2010) *Maastricht J. Eur. & Comp. L.* 17 at 127.

⁷⁵Yong-Shik Lee *op cit* note 20 at 15.

⁷⁶Alliance for Financial Inclusion *National Financial Inclusion Strategies: Current State of Practice* (2015) at 2 available at https://www.afiglobal.org/sites/default/files/publications/fisplg-state_of_practice.pdf, accessed on 28 March 2019.

⁷⁷*Ibid*.

⁷⁸Central Bank of Nigeria (CBN) ‘National Financial Inclusion Strategy’ 2012 at vi.

had no dedicated regulatory policies to improve financial inclusion other than some existing regulations and policies such as the ATM and POS regulations and credit enhancement interventions.⁷⁹ The CBN as financial regulator thus assumed the role of drafting laws, guidelines, policies and regulations to address the many barriers to financial inclusion such as complexity of the customer on-boarding process, distance to financial access points, financial literacy and rural reach.

As the use of legal rules was a relatively new approach, the CBN sought international best practices and legal rules from other jurisdictions including Kenya, South Africa, Mexico, Brazil, Indonesia Malaysia, India, the Philippines, Ghana, Pakistan, and Uganda.⁸⁰ The transplantation of these legal rules and practices in the case of Nigeria was not effected as legislative Acts of the House of Assembly but through the CBN governor's power to introduce relevant financial services regulations for Nigerians enshrined in section 2 (d) of the Central Bank of Nigeria Act, 2007 and section 57 (2) of the Banks and other Financial Institutions Act (BOFIA) 2020.⁸¹ Section 2.7 below outlines the rules and practices from the jurisdictions listed above.

2.7 Comparative case studies

According to the CBN, the drafting of the NFIS entailed the consideration of laws and practices from selected jurisdictions such as South Africa and Kenya chosen to represent sub-Saharan Africa and Indonesia and Mexico drawn from the top-twenty economies.⁸² However, best practices were also adopted from Malaysia, Brazil, India, the Philippines, Ghana, Pakistan, and Uganda.⁸³ These countries were selected 'to set specific targets for each financial product and channel for both 2015 and 2020 in areas relating to product use, channel penetration, gender and youth inclusion, and enablers for financial inclusion'.⁸⁴

The CBN further acknowledges that growth in these jurisdictions has been driven by competition, tiered KYC regulation, branch expansion and branchless banking initiatives which were mirrored in the regulations adopted by the CBN.⁸⁵ Agent banking for instance was widely practiced in Brazil and mobile money helped to advance financial access to rural communities in Kenya. Also in India and Pakistan, national identification was observed to be a leading factor for improved access to finance for a majority of the excluded class. In South

⁷⁹Ibid at 9.

⁸⁰Ibid at *vi*. See also Alliance for Financial Inclusion op cit note 76 at 11.

⁸¹Laws of the Federation of Nigeria (2004) Cap. B3.

⁸²CBN op cit note 78 at 23.

⁸³Ibid at *vi*. See also Alliance for Financial Inclusion op cit note 76 at 11.

⁸⁴CBN op cit note 78 at 23.

⁸⁵CBN op cit note 78 at viii and 17.

Africa a low-value account, Mzansi, achieved rural reach and a similar practice of tiered banking in Mexico had the same effect.

These examples, as demonstrated in more detail in chapter 3 were the basis for the adoption of some of the guidelines presently in use by the CBN to regulate financial inclusion. The policy examples from these selected countries are provided below, under 5 subheadings- national identification, multi-party provider model, agent banking, mobile money and entry-level accounts. It is important to state that not all of these countries have attained high financial inclusion figures. Some, like Nigeria, are still grappling with aspects of inclusion, but these models have led to improved reach for the excluded.

2.7.1 National identification

Three countries selected by the CBN as best practice examples have impressive coverage rates on national identification. From the succeeding discussion, India has the largest biometric database in the world while Pakistan employs a self-generating revenue model of recouping some cost of identification management. In Uganda, the identification authority was able to reach a 99 per cent coverage rate within a few years of operation. As shown below, these countries have increased the number of financially included adults as a result of implementing efficient and wide-spread national identification programmes.

A. India

A key driver of financial inclusion in India is the Aadhaar identification system. Aadhaar is a 12-digit random number issued free of cost by the Unique Identification Authority of India (UIDAI) after obtaining minimal demographic information such as name, date of birth, age, gender and address; and biometrics comprising fingerprints, iris scans and facial photograph.⁸⁶ This system is said to be the largest biometrics-based identification system in the world and does not profile registrants based on caste, religion, income, health and geography.⁸⁷ The Aadhaar is issued to all citizens and residents of India to eliminate duplicate and fake identities and aid simple and cost-effective verification of and authentication of persons.⁸⁸

Aadhaar also facilitates account opening and usage for the excluded. The UIDAI-operated Aadhaar-enabled payment system (AEPS) enables Aadhaar cardholders to transfer

⁸⁶Unique Identification Authority of India *What is Aadhaar*, available at <https://uidai.gov.in/what-is-aadhaar.html> accessed on 9 July 2019.

⁸⁷Ibid.

⁸⁸Ibid.

funds, deposit cash, make withdrawals and request account balance.⁸⁹ The AEPS also aids in implementing government initiatives including social security and pension for disabled and aged persons.⁹⁰

World Bank data reveal that financial inclusion in India grew from 40 per cent in 2011 to 80 per cent in 2018 mainly as a result of the introduction of this KYC-compliant nationwide biometric identification database that covers 90 per cent of India's 1.3 billion people.⁹¹ The gender gap in India also dropped substantially from 20 to 6 per cent between 2014 and 2017.⁹²

B. Pakistan

Like India, Pakistan also operates a comprehensive national identification system administered by the National Database and Registration Authority (NADRA). Upon registration, NADRA issues a Computerised National Identity Card (CNIC), bearing a 13-digit identification number to all adult citizens to facilitate the procurement of a driver's licence, bank account, passport, and cellular connection.⁹³

The CNIC is possessed by about 96 million Pakistanis with a coverage rate of 98 per cent of the target population including rural and tribal groups, women, undocumented children, the poor, disadvantaged groups, minority groups, orphaned children, transgender persons, persons in the Diaspora and refugees.⁹⁴ It is noteworthy that NADRA achieved this feat by pursuing an aggressive campaign to get citizens registered despite the varying demographics and geographical challenges existing in the country. The Authority spent about USD162 243 580 to register the target population and employed a diverse range of registration agents including van drivers, bikers, hikers, mountaineers, and skiers to reach remote places and cover the entire breadth of the country.⁹⁵

⁸⁹Ravi Shamika *Accelerating financial inclusion in India* (2019) at 32, available at <https://www.brookings.edu/research/568486/>, accessed on 26 June 2019.

⁹⁰Ibid.

⁹¹Ramesh Iyer *Financial Inclusion in India is Soaring. Here's What Must Happen Next* World Economic Forum available at <https://www.weforum.org/agenda/2019/01/financial-inclusion-in-india-is-soaring-heres-what-must-happen-next/> accessed on 02 May 2019.

⁹²Mayada El-Zoghbi *Measuring Women's Financial Inclusion: The 2017 Findex Story* (2018) available at <https://www.cgap.org/blog/measuring-womens-financial-inclusion-2017-findex-story>, accessed on 24 July 2020.

⁹³NADRA *National Identity Card*, available at <https://www.nadra.gov.pk/identity/identity-cnec/>, accessed on 09 July 2019.

⁹⁴C Leigh Anderson et al *Review of National Identity Programs ITU Focus Group Technical Report* (2016) at 116 available at https://www.itu.int/en/ITU-T/focusgroups/dfs/Documents/09_2016/Review%20of%20National%20Identity%20Programs.pdf accessed 13 August 2019.

⁹⁵Ibid 114 and 116.

Pakistanis are now able to access social transfers, healthcare and voting with this single registration.⁹⁶ Additionally, the NADRA database has been extended to crime fighting, prevention and detection as well as disaster recovery. Through the means of this database, tax evaders and fake voter registration have been discovered.⁹⁷ Again, this database was employed in identifying and disbursing funds to the victims of the 2010 flooding and to identify victims of suicide bombings and air crashes.⁹⁸ NADRA is hailed for its deployment of biometric technology and smartcard programs to help victims of disasters and facilitate financial inclusion programmes for underserved populations.⁹⁹

Significantly, NADRA is able to sustain the system by from consulting services provided to independent public companies.¹⁰⁰ Some costs of the exercise were also recovered by charging the users of the NADRA database (mostly financial institutions) for biometric verification.¹⁰¹ Fees charged for these services thus constitute part of the government's strategy for recouping registration costs.

C. Uganda

Uganda is yet another country with an impressive national identification programme. Although not much information is available on the features of the programme, data from the Ministry of Information and Communications Technology and National Guidance produced evidence of impressive coverage rates. The National Security Information System (NSIS) project, as it is called, is implemented by the Ministry of Internal Affairs which creates a biometric national identification register with the aim of strengthening citizen identity management, promoting national security and advancing social and economic development.¹⁰²

The identity card issued by the authority does not only enable account opening but can also be used as a passport for Ugandans to travel within the five-member East Africa

⁹⁶Ibid at 114.

⁹⁷M Ilyas Khan 'Pakistan's experience with identity management' *BBC News*, Islamabad, available at <http://www.bbc.com/news/world-asia-18101385>, accessed on 23 June 2019). See also Alan Gelb & Anna Diofasi *The Future of Identification and Development: Centre for Global Development Preliminary Discussion Paper* (2015) at 74 available at <https://www.cgdev.org/sites/default/files/identification-development-what-have-we-learned-and-where-are-we-going.pdf>, accessed on 14 May 2019.

⁹⁸Leigh Anderson et al op cit note 94 at 44; Khan op cit note 97.

⁹⁹Hannah Sherman *Old Players, New Game: The Changing Landscape of Financial Inclusion in Pakistan* available at <https://www.centerforfinancialinclusion.org/old-players-new-game-the-changing-landscape-of-financial-inclusion-in-pakistan>, accessed 24 July 2020.

¹⁰⁰Anderson et al op cit note 94 at 114.

¹⁰¹Ibid at 3.

¹⁰²Ministry of Information and Communications Technology and National Guidance (Uganda) *National Security Information System*, available at <https://ict.go.ug/projects-programmes/national-security-information-system/>, accessed on July 10 2019.

Community (EAC).¹⁰³ Interestingly, the programme already covers 99 per cent of the target population (16 and above) even though initiated only as recently as 2014.¹⁰⁴

2.7.2 Multi-party provider model

Enabling a diverse array of digital finance services providers has proved to be beneficial in some countries as exemplified by Ghana and the Philippines. As shown below, the Philippines is one of the first countries to adopt mobile money in the world while Ghana was a fore-runner for mobile money legislation in Africa. The following demonstrates how these two countries advanced financial inclusion by enabling a multiplicity of financial services providers.

A. Ghana

The use of digital financial services (DFS) is one of the main drivers of financial inclusion in Ghana. This is fostered by the admission of a diverse array of financial services providers licensed by the Central Bank of Ghana (BOG). The DFS sphere is represented by both traditional and alternative finance providers including commercial banks, rural and community banks, licensed mobile finance institutions, mobile network operators, nonbank financial institutions (NBFIs) and licensed thrift collectors (*susu*).¹⁰⁵ BOG promotes a ‘cash-lite’ society bolstered on DFS to save transaction costs and ensures geographical coverage using these alternative finance providers.¹⁰⁶

Ghana adopted branchless banking as early as 2008 with the introduction of the branchless banking guidelines to extend banking transactions beyond conventional bank branches.¹⁰⁷ Even though Ghana was an early adopter of mobile money, the success story is only recent. Significantly, three years after the branchless banking launch date of 2009; only 350,000 mobile money accounts were active, leading BOG to conduct the 2013 review of the 2008 Branchless Banking Guidelines.¹⁰⁸ As Ghana had also signed the 2011 Maya Declaration, this review was imperative.

¹⁰³Anderson et al op cit 94 at 53.

¹⁰⁴Anderson et al op cit 94 at 25.

¹⁰⁵Financial Inclusion Insights *Ghana*, available at <http://finclusion.org/country/africa/ghana.html#overview>, accessed 10 July 2019.

¹⁰⁶Kwadwo Boateng, ‘Ghana’s Progress on reaching out to the unbanked through financial inclusion’ (2018) *International Journal of Management Studies* V (Special Issue_2), at [1] and 2.

¹⁰⁷Ibid at 3.

¹⁰⁸Max Mattern *How Ghana Became One of Africa’s Top Mobile Money Markets* (2018), available at <https://www.cgap.org/blog/how-ghana-became-one-africas-top-mobile-money-markets>, accessed 10 July 2019

The review highlighted that poor uptake and usage of banking services was influenced by the limitation of the capabilities of some providers such as MNOs, a particular example being the limitation of agent recruitment to consortiums formed by banks with no incentives for MNOs to get involved.¹⁰⁹ Following this review, the BOG introduced new agent and e-money guidelines to enable MNOs to deploy mobile money networks under the supervisory purview of the central bank and to engage in agent recruitment and customer education.¹¹⁰

The inclusion of diverse providers has led to the extension of services beyond those regions that banks are unable or unwilling to set up branches in. Mobile account ownership in Ghana has witnessed a three-fold increase from 13 per cent in 2014 to 39 per cent in 2018.¹¹¹ The financial inclusion drive has also increased bank patronage. Presently, 58 per cent of the Ghanaian adult population has signed up for a form of formal finance offered by a bank.¹¹²

B. The Philippines

Like Ghana, financial inclusion in the Philippines has been able to reach excluded populations due to the acceptance of a range of providers. Here, ‘in addition to conventional banks; pawnshops, remittance agents, money changers/foreign exchange dealers, non-stock savings and loan associations (NSSLAs), money service business, cooperatives and credit companies are allowed to provide finance’.¹¹³ This model was introduced in response to the observed tendency of banks to locate branches in mostly populated urban centres.¹¹⁴

To promote the expansion of the geographical presence of financial institutions to excluded populations, the Bangko Sentral ng Pilipinas (BSP) introduced the BSP Circular No. 938 and 942, to allow pawnshops and non-bank entities engaged in remittance to operate.¹¹⁵ The BSP approved the application of 17 banks to open 126 new offices nationwide including 76 branch-lite units.¹¹⁶ Thrift and rural banks have also taken advantage of the

¹⁰⁹Ibid.

¹¹⁰Boateng op cit note 106.

¹¹¹Ibid.

¹¹²Oxford Business Group *Increased Use of Mobile Money Boosts Financial Inclusion in Ghana*, available at <https://oxfordbusinessgroup.com/analysis/moveable-feast-expansion-mobile-money-boosting-financial-inclusion>, accessed 12 July 2019.

¹¹³Bangko Sentral ng Pilipinas *National Strategy for Financial Inclusion* (2015) at 5, available at <http://www.bsp.gov.ph/downloads/publications/2015/PhilippinesNSFIBooklet.pdf>, accessed on 08 July 2019.

¹¹⁴Ibid at 5.

¹¹⁵Anti-Money Laundering Council, Republic of the Philippines *Towards Deepening Regulatory Compliance: An Assessment of the Development of Anti-Money Laundering Reporting Compliance of the Pawnshop and Money Service Business Industry: Strategic Analysis Report* at 4, available at <http://www.amlc.gov.ph/images/PDFs/2018%20Strategic%20Analysis%20Report%20on%20Pawnshop%20and%20MSB.pdf>, accessed on 13 July 2019.

¹¹⁶Lawrence Agcaoili ‘Big banks establish more branch-lite units’ October 9, 2018 *Philstar Global*, available at <https://www.philstar.com/business/banking/2018/10/09/1858385/big-banks-establish-more-branch-lite-units>, accessed on 01 July 2019.

branch-lite initiative to introduce 27 new branch-lite units.¹¹⁷ As of September 2018, the combined network of pawnshops and MSBs had reached 16 853 offices.¹¹⁸

To ensure financial integrity with this array of providers, the BSP conducts corresponding prudential scrutiny. For instance, pawnshops have to comply with anti-money laundering (AML) and internal control rules as well as strict standards of corporate governance.¹¹⁹ In like manner, banks are allowed to open extension offices, banking offices and microfinance units subject to capitalisation and documentary requirements.¹²⁰ MSBs are similarly charged with overseeing remittance networks, accrediting agents, maintaining audit trails for large cash transactions and conducting to AML registration.¹²¹ Significantly, the World Bank global findex on financial inclusion reveals that in the Philippines, unlike the situation in many countries, women have a higher probability of having a financial institution account than men.¹²²

2.7.3 Agent banking

The agent banking model permits ‘banks to provide financial services through nonbank agents, such as grocery stores, retail outlets, post offices, pharmacies, or lottery outlets, in rural areas that offer insufficient incentive or capacity to establish a formal branch’.¹²³ Agent banking has been successfully practiced in Brazil, Bangladesh and Mexico and has served as bedrock for financial inclusion.

A. Brazil

The Universal Postal Union provides financial services to about 1.5 billion people using a combination of electronic, financial and physical dimensions to deliver efficient, reliable, secure and affordable electronic payment services such as payment, transfers and savings in

¹¹⁷Bianca Cuaresma ‘More banks opt for ‘branch-lite’ strategy to expand reach in rural areas’ January 2, 2019 *Business Mirror*, available at <https://businessmirror.com.ph/2019/01/02/more-banks-opt-for-branch-lite-strategy-to-expand-reach-in-rural-areas/>, accessed on 01 July 2019.

¹¹⁸Anti-Money Laundering Council, Republic of the Philippines op cit note 115 at 4.

¹¹⁹Ibid at 6.

¹²⁰Agcaoili op cit note 116.

¹²¹Anti-Money Laundering Council Republic of the Philippines op cit note 115 at 6. See also Bankgo Sentral NG Philipinas *BSP Adopts Enhanced Oversight Framework for Money Service Businesses* 20 January 2017, available at <http://www.bsp.gov.ph/publications/media.asp?id=4276&yr=2017>, accessed on 20 July 2019.

¹²²World Bank Group, *The Global Findex Database: Measuring Financial Inclusion and the Fintech Revolution* (2017) at 23 available at <https://openknowledge.worldbank.org/handle/10986/29510>, accessed on 24 July 2020.

¹²³Alliance for Financial Inclusion *Agent Banking in Latin America: Discussion Paper* (2012) at 3, available at https://www.afi-global.org/sites/default/files/discussion_paper_-_agent_banking_latam.pdf, accessed on 22 July 2019.

about 663,000 physical contact points around the world.¹²⁴ This network thereby holds clear potential for financial inclusion as the vacuum caused by the disinterest of banks to locate in rural areas is filled up by the ubiquity of postal networks with proximity to consumers.

Brazil provides a global example for the successful deployment of financial services using the post. Postal banking began in 2001 in Brazil when Banco Bradesco (a large private bank) won a bid to offer financial services through the Banco Postal outlets in the country.¹²⁵ The model allows a network of postal agents referred to as correspondents to provide the necessary distribution channels for the deployment of DFS in Brazil with outlets spread across unserved municipalities.¹²⁶ Correspondents receive payments and deposits, enable withdrawals, accept applications for savings accounts and facilitate disbursement and repayment of loans.¹²⁷ Besides the postal agents, other correspondents allowed to provide financial services in Brazil include supermarkets, pharmacies, bakeries, and hardware stores.¹²⁸

With the introduction of this model, the number of correspondents deploying DFS rose from 19 000 in 2000 to 150 000 in 2010 and now covers all 5 565 municipalities in Brazil, accounting for over half of all financial service access points and resulting in 84 per cent financial inclusion in Brazil.¹²⁹

B. Mexico

Agent banking in Mexico is dominated by chain stores such as Walmart and other large entities amounting to 8 414 separate physical agents.¹³⁰ Here, the use of chain stores provides the advantage of already existing structures and resources to oversee the network, train staff, provide technical support and manage cash flow.¹³¹ To cover rural areas where these stores are not located, companies such as Banamex have engaged in the training of other stores as agents, recruiting a network of 2 916 agents in 889 stores across the country.¹³²

¹²⁴Universal Postal Union *About Financial Services*, available at <http://www.upu.int/en/activities/postal-financial-services/about-postal-financial-services.html>, accessed on 24 July 2020.

¹²⁵CGAP, *Branchless Banking Agents in Brazil: Building Viable Networks*, (2010) at 6, available at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2012/06/agentnetworksinbrazilcgapfgv1_7.pdf, accessed on 16 July 2019).

¹²⁶*Ibid.*

¹²⁷Alliance for Financial Inclusion op cit note 123 at 8.

¹²⁸*Ibid* at 12.

¹²⁹CGAP op cit note 125 at 6.

¹³⁰Alliance for Financial Inclusion op cit note 123 at 16.

¹³¹*Ibid.*

¹³²*Ibid.*

Agents are permitted to accept deposits, offer utilities payments platforms, perform cash-checking and balance enquiries, execute cash transfers, and issue bank statements.¹³³ More people as a result of this now have safer streams of accessing financial services. Notably, in 2011 about 71 million Mexicans (65 per cent) lacked access to formal financial services with a 78 per cent rural exclusion rate and a resultant dependence on unregulated informal finance.¹³⁴ Presently, financial services are available to women, the underprivileged and indigenous populations in rural areas using this model and formal financial services have been extended to 951 municipalities.¹³⁵

C. Bangladesh

Like Brazil and Mexico, Bangladesh is another country that has advanced financial inclusion using the agent banking model. Agent operations was introduced in Bangladesh by the Agent Banking Guidelines in 2013 and commenced in 2016 with 544 536 accounts opened within the first three months of operation.¹³⁶ Agent banking is offered by 16 banks in Bangladesh and agents are permitted to offer cash deposits, cash withdrawal, remittance payments and small loans.¹³⁷

Notably, this model has been observed to promote access to finance for rural populations, accounting for 87 per cent of new accounts.¹³⁸ Also national financial inclusion figures rose by 10 per cent in 2018 to 47 per cent; (17 per cent of this is provided by mobile money providers, 25 per cent by banks and 23 per cent by non-bank providers).¹³⁹

¹³³Alliance for Financial Inclusion op cit note 123 at 8.

¹³⁴ World Bank *Deepening Financial Inclusion in Mexico's Rural Areas*(2018), available at <https://www.worldbank.org/en/results/2018/07/02/profundizar-la-inclusion-financiera-en-areas-rurales-de-mexico>, accessed on 21 July 2019.

¹³⁵Ibid.

¹³⁶Shariful Islam 'The rapid growth of agent banking in Bangladesh Dhaka' *Tribune Sunday*, Jun 09, 2019 available at <https://www.dhakatribune.com/business/2018/06/03/the-rapid-growth-of-agent-banking-in-bangladesh>, accessed on 17 July 2019.

¹³⁷ Ibid.

¹³⁸ Jebun Nesa Alon Deposit through agent banking rises' 14 February 2019 *The Daily Star*, available at <https://www.thedailystar.net/business/banking/news/deposit-through-agent-banking-rises-122pc-1701760>, accessed on 17 June 2019.

¹³⁹ Financial Inclusion Insights *Bangladesh*, available at <http://finclusion.org/country/asia/bangladesh.html>,<http://finclusion.org/country/asia/bangladesh.html#dataAtAGlance>, accessed 13 July 2019.

2.7.4 Mobile money

A. Kenya

Kenya is the leading example of mobile money deployment in the world. Mpesa, the most popular mobile money service in Kenya, was developed in 2007 by Safaricom, the dominant mobile network provider. A unique feature that drives the Mpesa model in Kenya is that mobile accounts offered by MNOs are not necessarily linked to a financial institution account.¹⁴⁰ It is observed that many financial account holders also own a mobile money account and about 40 per cent of the adult population use these mobile money accounts for mobile payments.¹⁴¹ The adoption and usage of mobile money and digital payments is widespread at 97 per cent usage rate which are at par with figures in high-income countries.¹⁴²

One reason for the widespread adoption and usage of mobile money is the use of a diverse class of agents such as local shops, schools and post offices across the country and particularly in rural areas to reach clients. Mpesa has also served as a platform for additional financial products such as Lipa na Mpesa used for buying goods and settling utilities.¹⁴³

Mpesa grew from ‘a basic SIM card-based money transfer application into a fully-fledged financial service, offering loans and savings in conjunction with local banks and merchant payments services’.¹⁴⁴ In conjunction with Equity Bank, Safaricom offers a co-branded interest-bearing savings account named MKesho for funds transfer, savings, credit, and insurance.¹⁴⁵ Similarly, the collaborations between Safaricom and the Commercial Bank of Africa (CBA) birthed MShwari in Kenya in 2012, a product which enables customers of the two companies to apply for loans, top-up the Mpesa wallet and build credit history.¹⁴⁶

¹⁴⁰World Bank Group op cit note 122 at 7.

¹⁴¹Ibid at 60

¹⁴²Ibid at 56

¹⁴³Safaricom, ‘What is Lipa Na M-Pesa’ available at <https://www.safaricom.co.ke/personal/m-mpesa/lipa-na-m-mpesa/what-is-lipa-na-m-mpesa>, accessed 07 November 2020.

¹⁴⁴Reuters ‘M-Pesa helps drive up Kenyans' access to financial services’, available <https://www.reuters.com/article/kenya-banking/m-mpesa-helps-drive-up-kenyans-access-to-financial-services-study-idUSL8N21L2HK>, accessed on 16 June 2019.

¹⁴⁵Alliance for Financial Inclusion, *Mobile Financial Services Regulatory Approaches to Enable Access* at 6–7, available at <https://www.findevgateway.org/sites/default/files/mfg-en-paper-mobile-financial-services-regulatory-approaches-to-enable-access-nov-2010.pdf>, accessed on 23 July 2019.

¹⁴⁶Rory Macmillan *Digital Financial Services: Regulating for Financial Inclusion: An ICT Perspective*, (2016), available at https://www.itu.int/en/ITU-D/Conferences/GSR/Documents/GSR2016/Digital_financial_inclusion_GDDFI.pdf, accessed on 01 July 2018. See also Ken Macharia ‘CBA, Safaricom mark 5 years of M-Shwari with customer savings of Sh12.6Bn’ *Capital Business* December 6, 2017, available at <https://www.capitalfm.co.ke/business/2017/12/cba-safaricom-mark-5-years-m-shwari-customer-savings-sh12-6bn/> accessed on 27 February 2019.

Mpesa has also ‘reduced the cost and risk of domestic remittances compared to existing formal and informal options’.¹⁴⁷ This model benefits women in Kenya, resulting in increased savings, entrepreneurship and reduction of extreme poverty in households headed by women by 22 per cent.¹⁴⁸ It was also observed that DFS helped with financial risk management, simplified remittances and cushioned household expenditure where there was an unexpected drop in income of mobile money users.¹⁴⁹

Kenya presently has about 26 million mobile money accounts, a number which is about half the nation’s total population size of about 52 573.97 million.¹⁵⁰ Mpesa also boasts of more than 18 million active users and 287 400 agents located all over the country including rural areas.¹⁵¹ Kenya has been able to record an increase in financial inclusion figure to 83 per cent with the introduction of mobile money.¹⁵²

2.7.5 Entry level accounts

A. South Africa’s Mzansi example

Although the financial sector in South Africa is quite sophisticated, only four banks dominate the sphere, jointly accounting for more than 80 per cent of accounts but largely located in urban and peri-urban areas with negative effects on competition, innovation and costs of financial services.¹⁵³ Rural financial exclusion seemed to have been masked by the massive banking infrastructure of over 5 000 bank branches and about 30 000 ATMs concentrated in the Gauteng province in Johannesburg and political capital Pretoria.¹⁵⁴

The South African banking industry introduced a voluntary financial services charter in 2004, to develop a racially-inclusive and representative entry-level account known as the Mzansi account in an attempt to resolve this anomaly as well as to avoid government

¹⁴⁷Alliance for Financial Inclusion op cit note 145 at 3.

¹⁴⁸World Bank Group op cit note 122 at 1.

¹⁴⁹Ibid.

¹⁵⁰World Bank *Population Total* (2015), available at <http://data.worldbank.org/indicator/SP.POP.TOTL>, accessed on February 2017.

¹⁵¹CNN *Mpesa at 10*, available at <http://edition.cnn.com/2017/02/21/africa/mpesa-10th-anniversary/index.html>, accessed on 13 August 2018.

¹⁵²Reuters ‘M-Pesa helps drive up Kenyans’ access to financial services – study, available at <https://www.reuters.com/article/kenya-banking/m-pesa-helps-drive-up-kenyans-access-to-financial-services-study-idUSL8N21L2HK>, accessed 25 August 2019.

¹⁵³World Bank Group *Achieving Effective Financial Inclusion in South Africa: A Payments Perspective* at 10 available at <http://www.treasury.gov.za/publications/other/Achieving%20Effective%20Financial%20Inclusion%20in%20South%20Africa.pdf>, accessed at 22 June 2019.

¹⁵⁴Lydie Louis & Chartier Frederic ‘Financial inclusion in South Africa: An integrated framework for financial inclusion of vulnerable communities in South Africa’s regulatory system reform’ (2017) *Journal of Comparative Urban Law and Policy* 1.(1) at 179.

intervention.¹⁵⁵ This account was deployed by a collaboration of the big four banks (Standard, FirstRand, Absa and Nedbank) in conjunction with Postbank with the aim of enabling low-cost payment and savings for financially excluded persons.¹⁵⁶ Participating banks were able to share financial and reputational risk, as well as costs and infrastructure.¹⁵⁷

This account benefitted from brand prominence and offered associated debit card, premium-free access to member banks' ATMs, reduced service fees, a defined basket of transactions, monthly and management fee waivers, free cash deposits and the use of post branches to withdraw funds and perform basic enquiries.¹⁵⁸ Mzansi also thrived as a result of the financial landscape in South Africa at the time featuring the presence of large commercial banks, concentrated retail banking market, a high proportion of the banked and a collaborative response by the banks to a latent threat of political intervention.¹⁵⁹ Over six million of these accounts were opened within four years for a population size of 32 million at the time and about 72 per cent of these accounts were opened by the previously un-served.¹⁶⁰

Although the banks reported losses in maintaining these accounts, the needs of clients were met and Mzansi brought finance within the reach of about 80 per cent of the population.¹⁶¹ A lack of competition, high rate of inactivity, closure of accounts and mass withdrawals of funds using ATMS is leading the partners to replace or amalgamate the Mzansi with specialised entry-level accounts offered by the individual entities.¹⁶² None-the-less, the Mzansi account is still considered a historic success as this social initiative by the banks brought financial access to the unserved.¹⁶³ This also served as a gateway for the excluded to sign up for other financial products and services.

2.8 Conclusion

Demonstrated in this chapter are financial inclusion transplants in Nigeria. In it was traced, the law and development moments and the role that law has been acknowledged to play in development initiatives. The efforts of the CBN in transplanting laws from other jurisdictions with similar financial exclusion struggles were outlined and best practices and legal rules

¹⁵⁵Bankable Frontiers Associates *The Mzansi Bank Account Initiative in South Africa: Final Report* (2009) at 3, available at http://www.finmark.org.za/wp-content/uploads/2016/02/Rep_MsanziBankAccInitiativeSA_2009.pdf, accessed 24 July 2020.

¹⁵⁶World Bank Group op cit note 153 at 46 and 58.

¹⁵⁷Bankable Frontiers Associates op cit note 155 at 4.

¹⁵⁸World Bank Group op cit note 153 at 59.

¹⁵⁹Bankable Frontiers Associates op cit note 155 at 4.

¹⁶⁰Ibid at 2. See also World Bank Group op cit note 153 at 58

¹⁶¹ Bankable Frontiers Associates op cit note 155 at 4.

¹⁶²Maya Fisher-French 'Mzansi accounts reach dead end' 17 Feb 2012 *Mail and Guardian*, available at <https://mg.co.za/article/2012-02-17-mzansi-accounts-reach-dead-end>, accessed on 10 July 2019.

¹⁶³World Bank Group op cit note 150 at 60.

from these jurisdictions were detailed. In the next chapter, therefore, the metamorphosis of these transplants into guidelines and regulations in the DFS sphere in Nigeria and the adoption and revision in 2012 and 2018 respectively of the National Financial Inclusion Strategy is elucidated. These, in addition to a discourse on the relevant stakeholders and regulators as well as the state of DFS regulation in Nigeria and the imperative of healthy competition among finance providers, will be the content of the succeeding chapter 3.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE REGULATION OF FINANCIAL INCLUSION IN NIGERIA

3.1 Introduction

The focus in the second chapter was the formulation of a conceptual framework around the theme of law and development and legal transplants in particular. In it was traced the origin of the law and development moments and the relevance of law to development and economic pursuits of nations. The concept of legal transplants was useful to support the financial inclusion laws and policies that the Central Bank of Nigeria (CBN) adopted in order to develop a National Financial Inclusion Strategy (NFIS) in 2012. In the conclusion of the chapter the transplanted legal rules and practices as applicable in the originating countries were described.

The current chapter three is commenced by the introduction of a review of the new NFIS strategy instituted by the CBN in 2018. The drivers for the revision as well as the new targets set out by the CBN will be summarised. Also explored is the regulation of DFS in Nigeria and the relevant laws and regulators in the field. The chapter additionally addresses the regulatory model adopted by the CBN in the deployment of DFS and its adequacy for assuring effective competition in the industry. The chapter concludes by noting the role that regulatory sandboxes could play in advancing competitive DFS deployment.

3.2 The revised 2018 National financial inclusion strategy (NFIS)

3.2.1 Background to the NFIS refresh

As detailed in chapter 1, the National Financial Inclusion Strategy (NFIS) was set up in 2012 by the Central Bank of Nigeria (CBN) to bring the commitments made at the 2011 Maya Declaration in Mexico into action. The target date of 2020 was set to decrease financial exclusion to 20 percent by 2020. But no interim targets were achieved by 2016 and challenges such as religious and cultural barriers to access, difficulties in profitably extending financial services to the excluded, the low level of unemployment, security challenges in some regions and the high levels of informal finance in the economy still plagued the goal of achieving access to finance.¹ A review was therefore necessary to address these concerns.

¹Central Bank of Nigeria *National Financial Inclusion Strategy Implementation* (2018) at 14 and 15 available at <https://www.cbn.gov.ng/out/2019/ccd/national%20financial%20inclusion%20strategy.pdf>, accessed 08 July 2020.

This review was also in line with the provisions of NFIS 2012 to carry out a backward- and forward-looking comprehensive review of existing research, reports and databases and to consult with a diverse spectrum of stakeholders after four years, in order to apply learnt lessons.² The fact that specific target groups such as formally uneducated persons, women, youth, northerners and rural dwellers were still largely excluded also demonstrated the need for an intervention.³ Again, Nigeria was an early adopter of the Maya declaration and set up a national financial inclusion strategy as early as 2012 and so it was important to champion the course of inclusion.

With the above reasons as a background, the CBN carried out an extensive review utilising industry data and research, as well as consultation with stakeholders to understand the state of financial inclusion and prioritise the most critical regulatory interventions.⁴ The CBN additionally consulted widely with public sector institutions including regulators, government ministries, private sector institutions such as financial service providers and international and regional development partners to obtain wide perspectives.⁵

The CBN was also mindful in the review process to apply lessons on specific practices from other jurisdictions where financial inclusion strides had been made. For instance, in Bangladesh the use of flexible agent business models and pricing was impactful and could be deployed in Nigeria by enabling female agents and by so doing; increase the reach of financial services to women in Northern Nigeria where Islam is practiced.⁶ From the India's experience, Nigeria has seen the need to adopt more inclusive identification enrolment methods by accepting less formal proof of identity, utilising third-party enrolment and reducing enrolment data collection to reduce the barrier of lack of identification in account opening.⁷

The findings from this review have ushered some changes into the bank's approach to pursuing financial inclusion. The agenda for increasing access to and usage of quality and affordable financial services by 2020 has been set from the recommendations, and priorities and access strategies are being tailored to those with the potential to yield results.⁸

²Ibid at v.

³Ibid at viii. Generally, some mainstream financial products such as interest bearing loans and some women may not have the permission from their families, particularly their husbands, to own and operate accounts.

⁴Central Bank of Nigeria *National Financial Inclusion Strategy* (2018) op cit note 1 at v.

⁵Ibid.

⁶Ibid at 59.

⁷Ibid at 60.

⁸Central Bank of Nigeria *National Financial Inclusion Strategy* (2018) at op cit note 1 at 1. The target has now been moved up to 95 per cent with a new target date of 2024. See Central Bank of Nigeria, Financial Inclusion Newsletter July 2019, Volume 4, Issue 2 at 1 available at

CBN has indicated that it is necessary to create an innovative environment to deepen financial inclusion using DFS and microfinance and is also focused on encouraging investments in tailored products, digitising government payments and promoting digital literacy.⁹ In 2018, the TradermonI scheme and the Agri-Business Small and Medium Enterprise Investment Scheme (AGSMEIS) were initiated to offer graduated loan and credit facilities respectively to traders and small and medium enterprises (MSMEs) while the NIRSAL microfinance bank was initiated to facilitate financial access using NIPOST offices located in all the 774 local government areas in Nigeria.¹⁰

The bank has committed to employing an appropriate risk-based regulatory approach to level the playing field for providers with a focus on the activity of all players as well as an understanding that actors should apply comparative advantage to engender high impact.¹¹ Additionally, the CBN is scaling back on the emphasis on the points-of-sale (POS) channel to drive agent banking and is considering the disadvantages that fixed fees, macroeconomic and security situation and cultural and religious perceptions have on exclusion.¹² Significantly, DFS is now recognised as a simple and flexible alternative channel to reach remote and rural areas beyond the present use as an add-on feature for the banked and the need to develop products that appeal to low-income customers has become imperative to harnessing DFS potential.¹³

By approving the Guidelines for the Licensing and Regulation of Payments Service Banks in Nigeria in 2018 (now 2020), MNOs can now ‘incorporate special purpose vehicles to provide payment and remittance services, issue debit and prepaid cards, invest in Federal Government and CBN securities and provide deposit products to micro and small businesses and low income households, using existing mobile and digital services’.¹⁴ The CBN has equally signed a memorandum of understanding in 2018 with the Nigerian Communications Commission to enhance the payment system and has drafted a regulatory framework for

https://www.cbn.gov.ng/Out/2019/CCD/Q2%202019%20Financial%20Inclusion%20Newsletter_Final_08.08.19.pdf, accessed 05 May 2020.

⁹CBN Financial Inclusion Secretariat, *2017 Annual Report National Financial Inclusion Strategy Implementation* (2018) at 16, available at

<https://www.cbn.gov.ng/Out/2018/CCD/FINANCIAL%20INCLUSION.PDF>, accessed 09 July 2020.

¹⁰CBN Financial Inclusion Secretariat, *The National Financial Inclusion Strategy 2018 Annual Report*, (2019) 39 and 47 available at

<https://www.cbn.gov.ng/Out/2019/CCD/Annual%20Report%202018%20Financial%20Inclusion.pdf> accessed 08 July 2020

¹¹Central Bank of Nigeria *NFIS* op cit note 1 at vii.

¹²Ibid at vi.

¹³Central Bank of Nigeria Financial Inclusion Secretariat op cit note 1 at 17 and 65.

¹⁴CBN Financial Inclusion Secretariat op cit note 10 at 62, 47.

Unstructured Supplementary Service Data (USSD).¹⁵ A further collaboration with the Nigeria Inter-Bank Settlement System (NIBSS) is now in place to introduce a regulatory sandbox that permits the testing of digital solutions and products in a controlled environment by financial technology companies.¹⁶ The CBN is also looking to introduce interest earnings to mobile money and to exclude biometrics registration for Tier 1 mobile money accounts.¹⁷

As noted in 3.3.3, tier 1 accounts are low-value accounts that require less documentation to open and operate. Account holders are only required to provide a name, phone number and contact details to open these accounts. There is also no need for further verification by an external organisation such as the Independent National Electoral Commission (INEC) in the case of voter cards or the National Identification Management Commission for national identity cards.

While it is still too early to count the gains of this review, the CBN notes that there are now more drivers for financial inclusion in Nigeria such as the introduction of no-frills savings accounts, USSD, multifunctional ATMs and micro-insurance, and the implementation of the NFIS at federal and state levels.¹⁸ It is expected that with these measures in place, the bank will be on course to reaching set goals.

3.2.2. Current state of financial inclusion in Nigeria

As set out in the figures and tables in appendices 3, 4 and 5, attached to this thesis, financial inclusion in Nigeria is growing at a painfully slow pace. A comparison between the state of financial inclusion as discussed in 1.3.1(a-h) and the present state of inclusion reveals this. The banked population increased from 30 per cent in 2010 to 39.7 per cent in 2018, while the excluded population unserved neither by formal nor by informal financial institutions decreased only to 36.8 in the same year from an initial 46.3 per cent in 2010 (See figure 1 of appendix 2).

As shown in the appendices, the most excluded class in Nigeria remains women, the youth, rural dwellers and persons from the North East and North West. More women are still excluded than men. In 2010, financial exclusion stood at 54 per cent for females and 46 per cent for males (Figure 2 of appendix 2). A slight decrease of male exclusion at 44.1 per cent and 55.9 per cent for females was recorded in 2018. (See figure 6 of appendix 3). Also, the youth aged 18-25 and 26-35 recorded an exclusion rate of 47 per cent and 31.5 per cent respectively (Table 3 of appendix 3).

¹⁵Ibid at 15. This framework has now been released

¹⁶CBN *National Financial Inclusion Strategy* op cit note 1 at 8

¹⁷CBN Financial Inclusion Secretariat op cit note 9 at 62.

¹⁸CBN Financial Inclusion Secretariat op cit note 1 at 8.

In terms of geographical exclusion, table 4 of appendix 4 shows a decline in financial exclusion. In the North East, exclusion is high at 55 per cent and 62 per cent in the North West. This equally shows a decrease from 68 per cent in both regions in 2010. The North Central recorded a decrease of 13 per cent from 44 per cent in 2010 to 31 per cent in 2018 (Table 2 of appendix 2 and table 4 of appendix 3). Similar decline rates can be found in the South-South where exclusion went down 13 per cent from 36 per cent in 2010 to 23 per cent presently. In the South East and West, exclusion dropped from 32 and 33 per cent to 23 and 29 per cent respectively.

Appendix 4 shows that from an exclusion rate of 46.3 per cent in 2010, 36.8 per cent of the adult population remain excluded and in need of suitable financial services. Issues such as economic recessions, barriers to and perceptions about financial services and providers have resulted in fluctuations in the figures. For instance, in 2014, exclusion rates only declined 0.2 per cent to 39.5 per cent from 39.7 per cent in 2012. Again, in 2016, exclusion rate rose to 41.6 per cent following the economic recession and massive account abandonment in the North before falling to 36.8 per cent in 2018 (See Figure 8 of appendix 4).

The next section outlines Nigeria's legal and regulatory landscape for financial inclusion, showing the progress recorded in terms of introducing laws, regulations, guidelines and policies to advance inclusion. The roles that the CBN and other related regulators have played in the quest for increased financial inclusion are detailed.

3.3 Legal landscape for financial inclusion in Nigeria

Nigeria's financial inclusion commitments necessarily imply the formulation of relevant and tailored legal framework. Some of the legal instruments introduced by the CBN include the Guidelines on Electronic Banking 2003, CBN Cashless Policy Framework 2012, Tiered KYC Regime 2013, Guidelines for the Regulation of Agent Banking and Agent Banking Relations 2013, CBN Guidelines on Card Acceptance 2014, the Framework for Mobile Money Services in Nigeria 2015 and the CBN Guidelines for Financial Literacy 2015. The NDIC Passthrough Guidelines on Mobile Money and the Guidelines on Transaction Switching were introduced in 2016. The year 2017 witnessed the passing into law of the Secured Transactions in Movable Assets Act 2017 and the Credit Reporting Act 2017. Most recently in 2020, the CBN has initiated the Payment Services Bank Guidelines 2020 the Regulatory Framework for the Use of Unstructured Supplementary Service Data (USSD) of Financial Services in Nigeria 2020 and the Guidelines on the Operations of Electronic Payment Channels in

Nigeria 2020. Some of these instruments are discussed, followed by a brief commentary on each.

3.3.1 Guidelines on Electronic Banking in Nigeria 2003

The Guidelines on Electronic Banking is one of the earliest DFS instruments introduced in Nigeria. In 2003, DFS was still in the early stages and was deployed strictly by banks and like financial Institutions. The E-banking guidelines were therefore needed to provide clear rules on the broad areas of Information and Communications Technology (ICT), monetary policy, legal issues and concerns around banking regulations and supervision and consumer rights protection. Specifically, the guidelines provide minimum standards for technology and security, computer networks and internet protocol, application and system software, delivery channels and security policy and privacy when offering financial services.

The standards for computer network and the Internet for instance, require banks to meet certain requirements for protecting the integrity and confidentiality of financial data and as such deploy proxy type firewalls to stop backend systems from connecting directly with the internet, connect all infrastructures to firewalls and facilitate appropriate network infrastructure access.¹⁹ Similarly, as regards the standards on delivery channels, banks are responsible for card skimming and counterfeiting while cardholders are liable for misuse of PINs and negligence.²⁰ All ATMs located outside the bank premises are required to be located safely with appropriate lighting and fitted with a mirror to see surroundings.²¹ Additionally, ATMs are generally not allowed to be located outside buildings unless secured to the ground and other structures to prevent removal and passersby should not be able to see the key entry of a user whether directly or through the use of security devices.²² Similar standards and specifications for mobile phones, POS, switches, internet service providers and international card schemes are also provided.²³

In relation to legal issues, guideline 3.0 addresses customer identification and KYC, banker/customer confidentiality, privacy and data protection, stop order standards, insurance and the responsibilities and liabilities of transacting parties. Finally, guideline 4 summarises some regulatory and supervisory issues around risk management in e-banking transactions

¹⁹Guidelines on Electronic Banking in Nigeria 1.1 of 2003.

²⁰Ibid at 1.4.2 d.

²¹Ibid at 1.4 g.

²²Ibid at 1.4 i and h.

²³Ibid at 1.4 4-10.

with emphasis on oversight, due diligence, audit trail, incident report plans, responsible data usage and adequate information on websites to inform client decision.²⁴

By these guidelines, the CBN tried to provide some level of protection in financial transactions. It is also observed that provisions are suited both to consumers and providers. Implicitly, transacting parties are assured of a balance in protection. Additionally, the guidelines address the rights and responsibilities of both parties to protect all interests.

3.3.2 Guidelines for the Regulation of Agent Banking and Agent Banking Relationships in Nigeria 2013

The Guidelines provide as objectives, the minimum standards and requirements for agent banking operations to enhance financial inclusion and provide for agent banking as a delivery channel for offering banking services in a cost-effective manner. According to guideline 3, every agent banking contract should spell out financial institution liability and specify the obligation of both the financial institution and the agent.

Agents are permitted to perform a host of activities including cash deposit and withdrawal, bills payment, funds transfer, balance enquiry, issuance of mini statement, cheque book request and collection, payment of salaries, loans, and retirement benefits and other activities prescribed by the CBN.²⁵

However, specific acts are prohibited. Agents cannot carry out transactions without being connected to principals, charge fees, give guarantees or loans or open accounts for clients.²⁶ Also, agents are barred from ‘undertaking cheque deposit and encashment of cheques, transacting in foreign currency, providing cash advances or carrying out a transaction where a receipt or acknowledgement cannot be generated’.²⁷ Financial institutions are also prohibited from claiming agent exclusivity as agents are given the prerogative to choose the number of financial institutions to work with.²⁸ Financial institutions are also charged with the monitoring and supervision of agent activities to ensure that the stipulated limits and risk control measures are followed.²⁹

The guidelines provide that IT components utilised in transactions must be secure, standard, interoperable and able to generate transaction receipts and deny transactions that

²⁴Ibid at 4.1 a, b, d, e, f and h.

²⁵Guidelines for the Regulation of Agent Banking and Agent Banking Relationships in Nigeria 6.2 of 2003.

²⁶Ibid at 6.3.

²⁷Ibid.

²⁸Ibid at 7. This position has, however, been changed by the new NFIS strategy 2018 which leans towards non-exclusivity.

²⁹Ibid at 8, 13.

exceed set limits.³⁰ Additionally, to guarantee data and security standards, the guidelines address the infrastructure security, service availability, data confidentiality and integrity, PIN encryption, customer accountability and non-repudiation.³¹

Like the guidelines on electronic banking discussed above, this guideline also makes some provisions to safeguard security systems in financial services. This is laudable as cash is still a preferred medium of transaction in Nigeria. Users therefore need the assurance of safe digital systems to make the switch to digital financial services. Another notable provision is the prohibition of agent non-exclusivity provided in guideline 7 above. Non-exclusivity means that financial institutions that invest in the recruitment and training of agents cannot prevent other principals from using these agents. In many jurisdictions, agent non-exclusivity is accepted as a check against market abuse and monopoly by companies with significant market power. However the CBN is reviewing this practice in Nigeria. As noted in 4.3.4 (b), the CBN has discarded this non-exclusivity arrangement to enable finance providers recoup sunk costs of agent training and also to resist the opportunity for free-riding by other providers.

3.3.3 CBN Know-Your Customer Guidelines 2013

To promote and deepen financial inclusion, the CBN in 2013 initiated the tiered KYC Guidelines. These guidelines create a tiered system to account opening, stratifying the accounts into low- and medium- and high-value accounts with restrictions placed on the volume and value of transaction which progressively increase to correspond with transaction amount.³² The respective caps on the account ensure that the socio-economic levels of all citizens are considered while keeping a watch on the risk that accounts without comprehensive identification checks could pose on financial systems integrity.³³

Prospective low-value account holders have to present only basic registration information such as name, address gender, date and place of birth, passport photograph and phone number without the need for additional verification.³⁴ Customers wishing to open the

³⁰Ibid at 11.2.

³¹Ibid at 11.3.

³² CBN Know-Your Customer Guidelines s 2 of 2013. Some parts of the guidelines such as the caps on value and volume of transactions have been reduced Central Bank of Nigeria Review of Restrictions and Limits on Levels I and II of the Tiered Know Your Customer (“KYC”) Accounts, Fpr/Dir/Cir/Gen/06/002 and are reproduced where applicable.

³³Ibid at 3.

³⁴Ibid. The bank verification number (BVN) exercise adopted by the CBN in 2014 has however made this provision redundant as all accounts must be linked to a unique BVN number verifiable across all banks in Nigeria.

medium-value account on the other hand require the same information provided as in the case of low-value clients in addition to an approved document of identity issued by the National Identification Management Commission (NIMC), the Independent National Electoral Commission (INEC) or the Federal Road Safety Commission (FRCS).³⁵

To reduce the risk that could emanate from the presentation of fewer identification documentation, low-value account holders cannot make single deposits exceeding NGN50 000 or maintain a cumulative balance above NGN300 000. In the same way, medium-value account holders are only permitted to lodge the sum of NGN100 000 at a time and maintain a total balance of NGN500 000.³⁶ For both accounts, only domestic and not international transactions are permitted and accounts are only for savings.³⁷ In general, payments are not made to open accounts in Nigeria, but some banks stipulate a minimum balance to open these accounts.

By guideline 3 a high-value account entitles holders to access a full suite of banking products without caps and restrictions at the price of fulfilling full KYC requirements. Unlike the waiver for physical registration for the other two account types, the section provides that high-value account holders must be present to fulfil KYC registration and open accounts. Again, account holders can request current accounts in addition to savings accounts.

These guidelines are important to drive inclusion to numerous excluded persons that were ineligible to access financial services particularly due to a lack of identification documentation. As will be seen in chapter four, the lack of identification documentation requirements stipulated in Anti-money laundering provisions in Nigeria, as well as the practice of banks in requesting utility receipts as evidence of address is exclusionary. These guidelines therefore sought to ameliorate that burden.

3.3.4 Guidelines for Card Issuance and Usage in Nigeria 2014

These guidelines were introduced in 2014 with the objective of stipulating minimum requirements that apply to card issuance in Nigeria, ensuring optimum security, efficiency, cost effectiveness customer friendliness and encouraging effective use of cards locally and internationally.³⁸ The guidelines are applicable to banks and other entities that issue and

³⁵Ibid.

³⁶Central Bank of Nigeria *Review of Restrictions and Limits on Levels I and II of the Tiered Know Your Customer ("KYC") Accounts*, Fpr/Dir/Cir/Gen/06/002

³⁷Ibid at 3.

³⁸Guidelines for Card Issuance and Usage in Nigeria 1.1 of 2014.

process debit, credit, stored value, prepaid and virtual cards.³⁹ Industry stakeholders that store data on cardholders are also required to ensure on an ongoing basis that all terminals, applications and processing infrastructure comply with minimum industry standards.⁴⁰ Likewise, licensed banks wishing to issue payment cards must obtain CBN approval and be responsible for determining usage channels, limits, frequencies and other control measures to suit their risk preferences.⁴¹

Licensed banks are required to furnish cardholders with details of contract terms and conditions including applicable charges and fees, limits on withdrawal, billing cycles, procedure for termination, consequences for default as well as card loss and misuse.⁴² The guidelines further require that the process for card issuance and pins activation be separate and that disputes on domestic card transactions are resolved with a cycle of T + 1 (one day after transaction date) and set a 24 hour timeline for auto-reversing failed debit transactions.⁴³ The guidelines also make provisions for fraud and risk management as well as specifications for stored value, pre-paid, debit and credit cards for individuals and corporate.⁴⁴ Card issuers are also responsible for fulfilling KYC requirements, setting volume and transaction limits and providing information on the use of cards abroad.⁴⁵

These guidelines are also useful to advance security in the financial system. The roll-out of these guidelines coincided with the drive of the CBN to popularise the use of digital channels. The card issuance guidelines helped to advance security when users transact with such digital channels that require cards such as ATM and POS-based transactions.

3.3.5 Regulatory Framework for Licensing Super-agents in Nigeria 2014

To build capacity around agent banking, the CBN enabled entities called super agents to recruit a network of agents to facilitate agent banking across Nigeria. Agent banking specifically makes up for the lack of presence of banks in some communities. By enabling some providers to apply for super agency network, financial services could be easily deployed to regions without banks. Application for super agency is made to the director in charge of the department of banking and payments system at the Central Bank.⁴⁶ To qualify, an applicant must be a registered and operational business for at least 12 months with a

³⁹Ibid at 1.2.

⁴⁰Ibid at 2.0.

⁴¹Guidelines for Card Issuance and Usage in Nigeria 3 of 2014.

⁴²Ibid at 3.2, 3.4 and 3.5.

⁴³Ibid at 3.22 3.23 and 3.24.

⁴⁴Ibid at 4, 5, 7 and 8.

⁴⁵Ibid at 4.1.1, 4.1.2, 4.1.3, and 4.1.4.

⁴⁶Regulatory Framework for Licensing Super-agents in Nigeria 1.0 of 2014.

minimum shareholders' fund of NGN50 million and minimum of 50 agents and must obtain a reference letter from a financial institution.⁴⁷

As principals who bear the liability from wrongdoing arising from the activities of the agents, super agents have to monitor agents closely to ensure compliance with the laws. Accordingly, super agents are obligated to supervise and monitor agent activities, keep records of volume and value of transactions carried out by agents, monitor compliance with laws and contracts and make onsite visits to ensure compliance.⁴⁸ Super-agent platforms may be used to provide cash-in and cash-out (CICO) services and to monitor agent activities but not for holding electronic money value as this is reserved for financial institutions.⁴⁹

Super agency has failed to scale up financial inclusion as anticipated but it is hoped that with the NFIS refresh which recommends the use of mini-banks, more excluded persons can be reached.

3.3.6 Regulatory Framework for Mobile Payments Services in Nigeria 2015

These guidelines were introduced to align the DFS sector to international best practice and standards upon recognising the value of person-to-person payments so that mobile payments are available, accepted and used by the unbanked populations.⁵⁰ The framework has the objectives of creating an environment that enables mobile payments services, decreased cash dependency, fewer technical requirements and delineates participants' roles in the industry.⁵¹ The framework covers business conduct rules for the functioning and governance of the mobile payment system in Nigeria.⁵² Relevant stakeholders covered by this framework include the providers of services, solutions and infrastructure as well as the operators of the scheme and consumers.⁵³ The framework further provides standards for the card, bank and stored-value accounts mobile payment scenarios.⁵⁴

In terms of section 2.1 of the framework, bank-focused, bank-led- and non-bank-led models are the acceptable mobile payment models identified by the framework and the roles, responsibilities and rules pertaining to relevant entities are delineated.⁵⁵ Although mobile network operators (MNOs) are acknowledged as critical in the industry, the guidelines only

⁴⁷Ibid at 2.

⁴⁸Ibid at 4.

⁴⁹Ibid at 6i and ii.

⁵⁰Regulatory Framework for Mobile Payments Services in Nigeria 1.0 of 2015.

⁵¹Ibid at 1.1.

⁵²Ibid at 1.2.

⁵³Ibid at 1.3.

⁵⁴Ibid at 2.2.

⁵⁵Ibid at 2.1.

restrict these entities to activities such as providing network infrastructure and communication paths.⁵⁶ MNOs are not permitted to receive deposit from the public (except in respect of the prepaid airtime billing of subscribers) or to use prepaid airtime value loaded by subscribers as payment or transfer of monetary value.⁵⁷ The discourse of this exclusion is found in section 3.4 of this chapter.

3.3.7 Regulatory Framework for Mobile Money Services in Nigeria 2015

This framework was initiated to harness the mobile channel as a means of reducing the prevalence of cash in the country.⁵⁸ The overriding vision of the framework is to achieve ‘a nationally utilised and internationally recognised payments system to bring informal payment transactions into the formal system’.⁵⁹ The framework also provides business conduct rules for operating mobile payment services in Nigeria.⁶⁰ Additionally, the framework outlines specific objectives to create the right environment for mobile payment services, reduce cash dominance and promote safe and effective mobile money services to enhance the confidence of users.⁶¹

This framework lays out the two models for deploying mobile money services to be the bank-led and the non-bank-led. The bank-led model applies where a bank or consortium of banks provides banking services as leverage on the mobile money system.⁶² Here, the bank serves as lead initiator and is accountable to the CBN and end users.⁶³ The non-bank-led model on the other hand allows a duly licensed corporate organisation to deploy mobile payment services to subscribers.⁶⁴ This corporate has to be licensed by the Central Bank and acts as the lead initiator in the provision of mobile payment services but excludes deposit money banks or MNOs.⁶⁵

Effectively, the guidelines exclude MNOs from deploying mobile money as lead initiator.⁶⁶ This exclusion, according to the guidelines, ‘will enable the CBN to have full control of monetary policy operations, minimise risks and ensure that the offering of financial

⁵⁶Ibid at 2.1.

⁵⁷Ibid at 2.1. This is, however, likely to change with the introduction of the payment service banks guidelines 2018 discussed in 3.3.12 below.

⁵⁸Regulatory Framework for Mobile Money Services in Nigeria 2.0 of 2015

⁵⁹Ibid at 1.

⁶⁰Ibid.

⁶¹Ibid at 2.

⁶²Ibid at 3.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶Ibid at 1.

services are driven by organizations that have been licensed by CBN to do so'.⁶⁷ Some commentary on this is provided in section 3.4 of the thesis.

3.3.8 Guidelines on Transactions Switching in Nigeria 2016

These guidelines set out the procedure for operating switching services in Nigeria and outline the rights and obligations of parties to a switching contract as well as the minimum standards for switching.⁶⁸ According to these guidelines, every switching company operating in Nigeria shall be licensed by the CBN.⁶⁹ Switching companies are mandated to operate open networks for mutually exchanging transactions and messages.⁷⁰ A connection to the central switch is also required.⁷¹ Additionally, switching companies are compelled to plan and embark on bi-annual tests on systems to facilitate seamless switching between primary and back-up systems and to publish a monthly report to show downtimes, causes and remedial actions taken.⁷²

By the provisions of the transaction switching guidelines, the central switch should be EFT-specified to provide statistics on retail payment and the mechanisms for proactive detection of card frauds and to seamlessly integrate the retail payment system.⁷³ Participants of the central switch are also required to 'maintain minimum technical standards on interoperability, messaging, network connectivity, network monitoring, security, disaster recovery, fraud management, and programming interfaces'.⁷⁴

The guidelines also make provisions for the functions of the Nigeria Inter-Bank Settlement System (NIBSS) Plc in relation to switching. The bankers' committee incorporated the NIBSS in 1993 to facilitate funds transfer between banks and discount houses.⁷⁵ Some of the functions of the NIBSS include clearing, settling and automated processing of transfers between banks and enabling switches that foster interconnectivity and interoperability.⁷⁶

It is important that Nigeria has a central switch to keep transactions largely safe and also help the bankers' committee to monitor transactions. Interestingly, all financial

⁶⁷Ibid. As with the regulatory framework on mobile payment systems discussed above, some of these provisions have been made obsolete by the introduction of the payment saving banks guidelines.

⁶⁸Guidelines on Transactions Switching in Nigeria 2.1 of 2016.

⁶⁹Ibid at 2.2.

⁷⁰Ibid at 2.4.3.

⁷¹Ibid at 2.7.3

⁷²Ibid at 2.7.4.1 and 2.7.4.2.

⁷³Ibid at 4.2.2, 4.2.3 and 4.2.5.

⁷⁴Ibid at 2.7.4.5.

⁷⁵Ibid at 4.1.

⁷⁶Ibid at 4.1.1, 4.1.2 and 4.1.3.

institutions are linked to the switch so that transactions are verifiable across banks with gains for financial crimes investigations. There are also cost-savings advantages accruing from this collaborative arrangement.

3.3.9 Secured Transactions in Movable Assets Act 2017

The objectives of this Act according to section 1 are to improve financial inclusion, foster responsible lending to micro, small and medium enterprises, facilitate credit, perfect security interests in movable assets and put in place a collateral registry. By the provisions of section 2, the Act applies to creditors, borrowers, grantors and public registries that deal with movable property. Section 4 provides that a security agreement should identify as well as reflect the intention of the grantor and creditor, describe the secured obligation and collateral adequately and the stipulate the tenor for the obligation. The parties must equally agree to submit to arbitration as first recourse where civil disputes arise.

Section 10 establishes a collateral registry at the Central Bank headed by a registrar who is responsible for operating and administering the Act. Section 11 sets out the functions of the registry to be: receiving and storing information on movable assets and granting information access to persons seeking such stored data. According to the provisions of Part IV, a creditor may with the consent of a grantor, register a financial statement describing the grantor and stating the unique identity number. The statement should also contain the name and address of the creditor, description of the collateral, maximum amount for which the secured obligation is to be enforced and the registration validity period. Part IV also provides the information needed to describe collateral, including the item, type, kind and category.

In case of defaults, the creditor must by the joint provisions of section 40 and 42, give notice of default and intention to repossess to the grantor and 10 days later, take possession of the property or render the collateral inoperative (for collaterals that cannot be easily moved or for which storage facilities are unavailable). Not less than 10 days after sending a mandatory notice stipulated by section 45, section 44 provides that the creditor shall dispose of the collateral by way of sale, lease, licence or other form of disposal. After such disposal, section 48 prescribes other ways in which the surplus proceeds from sale is to be disposed; first to creditors with subordinate interests in order of priority and then to the grantor. Providing false information or sale without disclosure by the grantor under section 58 makes one liable to imprisonment of one year or to pay a fine of NGN100 000 in addition to full indemnity to the tune of any financial benefit accrued.

This Act is crucial for borrowers and creditors in Nigeria. Borrowers for the first time in Nigeria are able to apply for loan facilities without possessing titles to real estate. Borrowers formerly unable to access bank loans for failure to prove ownership of land or other immovable property can now use movable assets including vehicles, furniture, jewellery and livestock.

3.3.10 Credit Reporting Act 2017

The objectives of the Act are set out in section 1 as to facilitate and promote access to credit, enhance risk management in credit transactions, protect privacy and promote access to fair, reliable and accurate information and to set standards for the establishment, operation and regulation of the credit bureau. Other objectives provided by the section include to promote fair and competitive credit reporting, to facilitate the sharing of credit information and to promote responsible borrowing, prevent over-indebtedness and discourage reckless loan grants. Licensing application is covered by section 2 and prohibits the operation of a credit bureau without a licence.

Under section 3, the bureau shall have the responsibility to create and maintain a database of credit and credit-related information, compile and collate information from providers and users, issue credit reports and investigate request for credit information. According to the provisions of section 4, the Credit Reporting Management System is established to carry out some regulatory functions and maintain client data for six years and archive for 10 years in line with section 5.

By the provisions of section 7, information may only be sought from the bureau for permissible purposes such as loan considerations, vetting of guarantors, review or monitoring of credit facilities, employment checks, tenant credit assessment, review of insurance policies and credit or post-paid services contract consideration. Others include, debt collection and judgement enforcement, request by data subject to validate information accuracy, credit scoring, compliance with court orders or other regulatory directive, KYC checks and other uses specified by the Bank.

The Central Bank of Nigeria is vested with powers by section 8 to license and regulate the bureau, make regulations and issue guidelines on issues such as licensing, management, ownership and operation of credit bureaux as well as the powers to review or revoke licences. The CBN is equally empowered by section 8 with the responsibility of publishing information on the activities of the bureau, investigating the bureaux, taking

measures to protect the interests of data subjects and the credit reporting system against abuse and imposing penalties for the contravention of the Act.

Data subjects are ascribed rights by section 9. Here, information disclosure is only possible with the consent of the data subject for specified transactions and permissible purposes. An exception is provided where disclosure is to a bank or in fulfilling court orders or in circumstances of dishonoured cheques. Data subjects are entitled to one free credit report form per year and have the right to contest the accuracy of information on such reports. Additionally, data subjects can by the provisions of section 10, report changes to demographic data. A data subject can also bring a complaint about the accuracy, validity and completeness of a credit information report in writing to a credit provider or bureau which must resolve same within 10 days in accordance with section 13. By this section, unresolved matters must be sent promptly to the Central Bank for a resolution within a further 10 days after which the data subject can approach the court.

Credit information users also have specific obligations set out in section 12 including protecting the integrity and confidentiality of the information obtained from the bureau, using information in the credit report only for permitted purposes and must supply details of a credit bureau which provided the information for which an application was denied.

Contravention of the Act is provided for by section 20. Offences include intentionally or negligently providing incomplete misleading or false information to credit bureaux, credit information providers, users and data subjects or disclosing credit information in contravention of the Act and tampering with or altering information on the database. This section also makes it an offence to obtain or use credit information outside the permitted purpose, disclose credit information without a licence and continue to conduct business as a credit bureau without a licence. For the offence of providing credit information after a licence has been revoked, section 21 stipulates a jail term of not more than 10 years or a fine of not less than NGN10 million. All other offences listed above attract a fine of not less than NGN10 million.

Like the preceding Act, the provisions of the Credit Reporting Act increase the opportunity for accessing loans in Nigeria. Nigerians are now able to build credit scores for use in loan applications. A good credit history means that borrowers are able to demonstrate credibility by showing consistently good credit scores and thus have a better chance to access credit. The objectives of the Act as shown in Section 1 above also demonstrate an intention to 'promote responsible borrowing, prevent over-indebtedness and discourage reckless loan grants' which is beneficial to borrowers. The rigorous licensing provided in section 3, the

powers of investigation of the bureaus by the regulator in section 8 and the requirement for data consent prior to data use in section 9 provide some protection for borrowers. Additionally, the dispute resolution mechanisms put in place in section 13 and the stringent sanctions including jail term and huge fines set out in section 21 are further safeguards. The burden of over indebtedness in Kenya and India where unguarded access to credit and irresponsible lending and borrowing leaves the excluded in a cycle of debt is telling and needs to be prevented in Nigeria.

3.3.11 Guidelines on the Operations of Electronic Payment Channels in Nigeria 2020

These guidelines replace the Guidelines on the Operations of Electronic Payment Channels in Nigeria 2016, issued by the CBN. The guidelines cover four broad DFS delivery channels, namely, ATM, POS, mobile pay and Webpay. Guideline 1 deals with ATM standards and operations. By this guideline, ATM operators are mandated to comply with specified industry standards, dispense all denominations of naira, maintain comprehensive audit trails to aid investigations in reconciling and resolving disputes and to designate 2 per cent of machines to the visually impaired.⁷⁷ Again, guideline 1.2 provides that no provider shall discriminate against any card scheme or issuer or deploy standalone or closed ATMs; ATMs must be accessible, illuminated, and safe, both from the reflection of the sun and privacy intrusion.⁷⁸

By guideline 1.3, providers must fix ATM downtime caused by network failure within 72 hours, deploy helpdesks, disclose all charges, issue requested receipts, disable cash retraction, electronically monitor vault cash levels, ensure the availability of fit notes and enable pin change, free of charge.⁷⁹ The same section provides that ATMs must have cash, back-up power and waste paper disposal at all times and that all ATMs be registered and possess the capacity to ask if user needs more time as well as ensuring users do not forget card by ejecting card first cash.

To maintain security, all ATMs are required to have cameras that view and record the process of selecting transactions, inserting, withdrawing or taking out cards (but not record customer keystrokes) and should be located with due consideration for security and data confidentiality.⁸⁰ ATMs must not be placed outside the building, except if secured to the floor and surrounded by structures to prevent removal and should have the capacity to abort a transaction where the face of a user is covered to avoid camera capture.⁸¹ Finally, by

⁷⁷ Guidelines on Operations of Electronic Payment Channels in Nigeria 1.1 of 2020.

⁷⁸Ibid at 1.2.

⁷⁹Ibid at 1.3.

⁸⁰Ibid at 1.5.

⁸¹Ibid at 1.5.

guideline 1.6, disputes arising from transaction failures on bank's ATM should be responded to instantly, manual reverses due to technical glitches must be resolved within 24 hours and refunds for failed transactions on other bank's ATM should be resolved within 48 hours.

Guideline 2 makes provisions for POS card acceptances. POS terminals are required to be constantly updated to meet best global standards and the resolution of disputes between merchant acquirers and card holders should be within 48 hours.⁸² Cardholders are however responsible for PIN protection, safekeeping of cards and prompt notification of issuer about missing, stolen, damaged, lost or destroyed cards, as well; cardholders can opt out of payment card contracts without notice if no fees are owed.⁸³ Transactions must be routed through the Nigerian central switch and no exclusive agreements between payment services providers is authorised.⁸⁴

Guideline 3.0 makes like provisions for mobile point of sale (mPOS). Minimum standards for operating mPOS, promotion of safety and effectiveness and the delineation of each stakeholder's role are specified.⁸⁵ Like the guidelines on POS, cardholders are responsible for PIN protection, notification of PIN misuse and compromise or the loss, theft, damage or destruction of cards.⁸⁶ The guideline allows 48 hours for the resolution of card disputes.⁸⁷ All transactions must also be routed through the Nigerian central switch.⁸⁸

Finally, guideline 4.0 provides for web acceptance services to include all funds transfer on merchant or payment aggregator website used as consideration for web purchases or payment for services.⁸⁹ This guideline specifies the objectives of providing minimum standards for internet payments, promoting safe web acceptance services, identifying the roles of stakeholders and encouraging the deployments of convenient and low-cost internet payment services at minimal risks.⁹⁰ By the provision of this guideline, card issuance is reserved for deposit money banks which must also ensure that payments are settled, security measures are provided for cardholders and second level authentication, utilised for web transactions.⁹¹

⁸²Ibid at 2.3 and 2.4.

⁸³Ibid at 2.4.6.

⁸⁴Ibid at 2.7.

⁸⁵Ibid at 3.1.

⁸⁶Guidelines on Operations of Electronic Payment Channels in Nigeria 3.4.6 of 2020.

⁸⁷Ibid at 3.4.6.8.

⁸⁸Ibid at 3.7A.

⁸⁹Ibid at 4.1.

⁹⁰Ibid at 4.2.

⁹¹Ibid at 4.5.3.

Webpay issuers are responsible for providing means through which cardholders can, notify a bank of card fraud, loss or theft and stop any further use of the card.⁹² Issuers must also keep a record of internal operations for at least seven years for audit trails and set daily transaction limits on cards.⁹³ Card holders are however responsible for safeguarding PIN and hardware tokens with utmost care and for notifying issuers of card, PIN or token loss or compromise according to guideline 4.5.5.

These guidelines consolidate the guidelines on POS, ATM, mPOS and web services and serves as a comprehensive legal instrument for digital channels in Nigeria. As buttressed above, the CBN by these guidelines prioritises secure transactions in deploying and using DFS channels and provides for the rights and responsibility of the parties. Interestingly, the guidelines also cover dispute resolution.

3.2.12 Regulatory Framework for the Use of Unstructured Supplementary Service Data (USSD) for Financial Services in Nigeria

In recognition of potential for mobile phones to enhance financial inclusion, USSD is adopted in regulation 2 as a cost-effective, user-friendly and handset-agnostic mechanism for opening accounts, checking account balance and enquiries, transferring funds, purchasing airtime and settling utilities without storing or forwarding messages. By regulation 3, the CBN has adopted the common standards to reduce risks inherent in the USSD technology.

Regulation 6 provides for the use of risk mitigation measures including encryption to protect the integrity of the financial information authenticating mechanisms and validate user requests, responses and USSD signals between operators and the system. Regulation 6 provides that sensitive information such as customer PIN is encrypted and customers are given the choice between signing in and out of the service for transfers. By this regulation, a limit of NGN 100 000 a day should be set subject to increase by customers. By regulation 6.10, a second factor authentication service is made compulsory for transactions above NGN 20 000 by adding a PIN.

Dispute resolution is provided by regulation 7. The regulation provides that financial institutions are responsible for setting up dispute resolution mechanisms and resolving conflicts within 3 working days. Also by regulation 9, service providers can allow users to block their accounts so that USSD transactions are not possible. The CBN or NCC are also vested with the power in regulation 10 to impose sanctions for any contravention under these regulations.

⁹²Ibid at 4.5.3.5.

⁹³ Ibid.

The USSD guidelines come at a pivotal time as phone ownership and usage in Nigeria are quite high as shown in both chapter 1 and the empirical study in *Ubulu-Uku* at chapter 5. USSD enables simplified banking which users can complete by dialling a short code and following the prompts. Transaction related information such as transaction amount, recipient's account number or name as well as sender's pin are requested. Some banks in Nigeria already offer this service.

3.2.11 Guidelines for the Licensing and Regulation of Payment Service Banks in Nigeria 2020

The main objective of these guidelines as set out in guideline 2 is 'to enhance financial inclusion by increasing access to deposit products and payment and remittance services to small businesses, low-income households and other financially excluded entities through high-volume low-value transactions in a secured technology-driven environment'.

By the provisions of guideline 3, PSBs are expected to operate mainly in locations with vast unbanked populations and in rural areas with not less than a 25 per cent financial service touch points in rural areas. These banks by this section are also expected to establish ATMs, agent banking networks and other electronic platforms to reach clients, including clusters or other outlets to control agency operations. Section 3 additionally provides for PSBs to deploy consumer helpdesks (physical and online) at its main office and coordinating centres, use the words "Payment Service Bank" to show distinction from other banks and avoid words that link the parent company.

PSBs are permitted to carry out the specific activities set out in guideline 4.1. Some of these activities are to maintain a savings account and accept deposits secured by deposit insurance, enable payment and remittance services including cross-border payments, issue debit/credit cards, operate electronic purses, provide financial advisory and invest in FGN and CBN securities. Specific activities as listed in guideline 4.2 are, however, prohibited. These include granting loans, advances and guarantees, accepting foreign currency deposits, trading in foreign exchange markets (with exceptions), insurance underwriting or establishing subsidiaries outside the prescriptions of the Central Bank.

The eligible promoters envisioned by guideline 5 include banking agents, telecommunications companies, retail chains and mobile money operators postal or courier service, switching companies, Fintechs and financial holding companies. These promoters can apply to the governor of the Central Bank to obtain a licence. By guideline 6, applicants must have a minimum share capital of NGN5 000 000 000 and submit required documentations together with non-refundable application fee of NGN500 000. Applicants

must show evidence of a minimum capital deposit, name reservation and a detailed business plan that contains specified minimum requirements such as information on board members, shareholders and top management officials, five-year financial projections, objectives, and sources of funding.

By the same guideline 6, not later than six months after obtaining an approval in principal, applicants are required to apply for a final licence by paying a sum of NGN2 000 000 in addition to the evidence of the capital contributions of shareholders, the location of the head office and the ability to meet technical requirements. Additionally according to the guideline, applicants must also submit copies of the certificate of incorporation, memorandum and articles of association, staff training programme and comprehensive plan on operation with milestones and timelines.

Fair competition rules are provided by guideline 8 to include the extension of similar services to other PSBs with similar terms and conditions and the avoidance of preferential treatment, failure of which may lead to the revocation of a licence. Preferential treatment is defined by the section to include: precluding competitors from using infrastructure or services and offering lower quality services or differential prices, all of which may lead to a revocation of a licence.

According to guideline 9.4, PSBs must maintain 75 per cent of deposit liabilities in treasury bills or other short-term debt instruments offered by the Federal Government of Nigeria. Finally, KYC provisions are contained in s 11. The PSBs are by this section mandated to conduct KYC on every customer and continuously monitor accounts and report suspicious activities to the CBN.

From the foregoing, these guidelines permit MNOs to provide final services, without insisting on bank collaboration. This can hopefully usher in competition in the sector by enabling MNOs to design niche financial products for the excluded. The insistence for rural deployment without the corresponding burden placed on banks is however not ideal. All providers in the sector need to be given the opportunity of a level playing field to offer services. Innovation, competition rules and consumer protection should be adequate to regulate the sector and the imposition of rural deployment of finance should extend to banks.

3.3 Brief commentary on legal instruments

A reading of these legal instruments adopted to improve financial inclusion reveals many lessons. First, these instruments are varied in scope and try to cover as much financial inclusion concerns as possible. Secondly, each Act is tailored to a particular exclusion issue

and attempts to unlock opportunities for improving financial inclusion by addressing specific barriers. The tiered banking guidelines, for instance, seek to dismantle the hurdle of lack of identification for the excluded class by requiring fewer conditions for account opening. Similarly, the agent banking guidelines help to bring financial services closer to users.

Thirdly, the guidelines demonstrate the willingness of the CBN to fulfil the commitments to advance financial inclusion as decided in Maya. A fourth lesson is that the bank rightly prioritises security of digital channels and safety of funds. This is laudable as trust in digital system needs to grow for the adoption and usage of financial services to scale up. The dependency on cash by Nigerians could also be addressed where there is an assurance of safety in alternatives.

Some challenges are, however, yet to be addressed. For instance, the insistence on a ratio of rural deployment on banks by the PSB guidelines without any such burden on the banks is discriminatory.

Again, the provisions of some guidelines are unable to purposefully result in high quality financial services as because they are in conflict with other CBN policies. For instance, while the tiered KYC guidelines require prospective clients to provide only minimum information, such as a name and phone number to open an account to aid persons without documentation, the 2014 CBN Bank Verification Number (BVN) policy requires all accounts to be operable only upon completion of a biometric verification exercise. The BVN enrolment requires identification documentation and so ushers the same exclusionary effect that the tiered banking guidelines seek to dislodge. Although reduced KYC is offered by some banks to enable the use of these low-value accounts but restrictions as to value and volume of transactions are emplaced.

Furthermore, some guidelines are restricted in wording and, therefore, are unable to yield similar positive strides as observed in other jurisdictions. The agent banking guidelines, for instance, restrict agent banking to financial institutions, thus leaving out alternative providers and preserving the initial problem of bank's reluctance to engage with some rural populations. Again, even the present model prohibits bank agents from opening accounts for users on behalf of the bank thereby missing the opportunity to erase concerns of distance and cost (of transport).

There are also untapped territories such as the use of the extensive post office infrastructure existing in Nigeria and the collaborative deployment of ATMs in rural facilities to help customers surmount concerns around distance. The new NFIS strategy is trying to address some of these gaps with the proposals for the creation of mini-branches in rural areas.

Additionally, CBN collaboration with the Nigeria Communications Commission (NCC) to test MNO deployment of DFS using regulatory sandboxes is underway. The plan is etched out below in section 3.5. The CBN earlier in April 2018 signed an MOU with the NCC to provide a framework for licensing payment service providers, reduce cash transaction, enhance cashless operations and guide stakeholders in both sectors to attain financial inclusion timely.⁹⁴ Collaborations such as these are needed and it is hoped that more such partnerships will be made to provide cooperation for the multi-faceted service.

Lastly, the gamut of laws for the advancement of DFS in Nigeria are found to overlap and can be collapsed into related themes for easier referencing. Relevant themes would include, building blocks for mobile money, competition, channels, proportionate regulation, infrastructure, culture, regulation, consumer protection, digital and economic exclusion, rural and urban divide. The Guidelines on Electronic Banking 2003, Financial literacy Framework, Cashless policy initiative, the NDIC Passthrough Guidelines on Mobile money, the USSD guidelines and the Agent banking and Super agent guidelines can all be merged into one to serve as the building block for mobile money. Additionally provisions on infrastructure can be drawn from the Guidelines on electronic banking, cashless policy, the card acceptance guidelines and the payment services banks.

As for competition, the Transactions switching guidelines, Framework and guidelines for Mobile Money 2015 and the Payment Services banks are related. To assure of proportionate regulation, the provisions of the guidelines on the network and standards for deploying USSD can be merged with those of the guidelines on Electronic banking. Furthermore channels for effectively deploying DFS can be addressed by consolidating the cashless policy initiatives, Guidelines on electronic banking, USSD, card acceptance, agent banking and the guidelines for the operation of electronic channels.

Changing customer perception and culture towards money can be addressed by lessons from the financial literacy framework to learn about consumer perspectives, the cashless policy to dislodge digital aversion, as well as the Secure Transactions in Movable Assets Act and the Credit Reporting Act to improve the loan culture. The cashless policy can also include provisions that help to bridge the rural/urban divide and forestall digital and economic exclusion. Collapsing these laws will serve the purpose of easier referencing and bring clarity to stakeholders. Compliance will also be simplified.

⁹⁴Adeyemi Adepotun, 'NCC, CBN sign MoU on mobile money, financial inclusion' 12 April 2018 *The Guardian*, available at <https://guardian.ng/business-services/ncc-cbn-sign-mou-on-mobile-money-financial-inclusion>, accessed on 27 February 2019.

The next section discusses financial inclusion regulation in Nigeria with a focus on the institutional framework.

3.4 Institutional Landscape for Financial inclusion in Nigeria

The Central Bank of Nigeria as the chief regulator of the finance sector, maintains prudential oversight over all financial institutions in Nigeria in all matters of banking and finance including DFS. By the powers vested in section 2(d) of the Central Bank of Nigeria Act, 2007 and the Banks and other Financial Institutions Act (BOFIA) 2020, the bank is empowered to introduce rules that provide adequate financial services to the public'. This role has been manifested in the introduction of numerous guidelines on financial inclusion, particularly post-2011 discussed in the preceding section. Significantly, the role of CBN as DFS regulator is diverse and needs careful deliberation to carry through. The bank has to make the proper balance between protecting financial system stability and integrity, enabling provider innovation and ensuring consumer protection.

Rules and policies need to be communicated to stakeholders and consultation with other relevant regulators has to be sought continually as DFS requires competence and expertise from other sectors. Remarkably, the uniqueness of DFS regulation lies in the fact that the service cuts across several sectors besides finance and the payment system to include telecommunications, insurance, consumer protection, competition and communications technology which in many cases are overseen by different regulators and crisscross several market concerns. The CBN thus necessarily has to collaborate with regulators in these sectors to ensure the efficient deployment of DFS. These collaborations ensure that DFS, like all other disruptive and fast-paced technological exploits gets the top-notch regulatory expertise needed to weave through the complexities of novel and unfurling issues within the sector.

Regulatory collaboration provides a broad spectrum of resources and specific industry knowledge to make uniform, proportionate and efficient frameworks as well as providing a forum for robust convergence of ideas that considers all stakeholders and creates a level playing field for participants. Furthermore, this type of collaborative effort eliminates duplicity of laws and resources that could emanate from multiplicity of regulatory effort and creates uniform rules across sectors. Scarce regulatory resources can therefore be meaningfully allocated to needed areas.

The following section outlines the relevant regulators whose ambits traverse DFS. The roles of these regulators and relationship or efforts towards financial inclusion are also highlighted.

3.4.1 Central Bank of Nigeria (CBN)

The mandate of the Central Bank of Nigeria (CBN) is derived from the CBN Act of 2007 as amended which vests the bank with the responsibility of administering and advising the government on financial and monetary policies of the government, ensuring price stability, a sound financial system, issuing legal tender and maintaining external reserves.⁹⁵ The bank is the chief financial regulator in Nigeria. The bank administers the Banks and Other Financial Institutions Act (BOFIA 1991) to promote high banking standards and financial stability by optimising the payment system.⁹⁶ The specific objectives of the bank include monetary and price stability, issuance of Nigeria legal tender, maintenance of foreign reserves, promotion of a sound financial system, acting as banker's bank and providing financial and economic advice to the Federal Government.⁹⁷

In relation to financial inclusion, the CBN has been striving to introduce and implement viable policies. The bank has succeeded in rolling out the National Financial Inclusion Strategy in addition to inaugurating relevant committees, working groups and a designated secretariat to administer the strategy. The bank has also carried out geospatial mapping of financial access points in the country and commissioned the revision of the financial inclusion policies related to microfinance, bank charges, tiered KYC, mobile wallet and BVN.⁹⁸ Further, the bank has initiated policies on the licensing of super agents, financial literacy, cashless Nigeria, collateral registration, consumer protection and mobile money.⁹⁹

With the introduction of the 2018 NFIS, the CBN expects to implement agent banking and tiered KYC, disseminate information to stakeholders on regulatory adjustments, advance cost-saving shared services, encourage the deployment of services to rural dwellers through the use of ATMs and drive financial literacy advocacy.¹⁰⁰

3.4.2 National Insurance Commission (NAICOM)

NAICOM is the insurance regulator in Nigeria responsible for administering insurance policies and products. In relation to financial inclusion, NAICOM creates awareness, initiates guidelines for inclusive finance and consumer protection, advocates for the inclusion of

⁹⁵Section 2 Central Bank of Nigeria Act 2007, See also, CBN *About CBN*, available at <https://www.cbn.gov.ng/AboutCBN/Coremandate.asp>, accessed on 20 July 2020.

⁹⁶Ibid.

⁹⁷ Ibid.

⁹⁸Central Bank of Nigeria National Financial Inclusion Strategy (2018) op cit note 4 at 9.

⁹⁹ Ibid.

¹⁰⁰ Ibid at 50

alternative providers, the creation of halal insurance products, the deployment of microfinance banks and the offering of insurance products at banks.¹⁰¹

NAICOM expects in the near future to launch a micro-insurance framework to further awareness about insurance, facilitate speedy dispute resolution, promote compulsory insurance products and encourage companies to develop micro-Islamic and index-based insurance products for rural and low income earners.¹⁰²

NAICOM has an important role to play in advancing financial inclusion as insurance products can guarantee that the formerly excluded have access to long-term financial products that provide insulation from economic shocks or family emergencies. Insurance can also improve confidence of the excluded in taking up financial services and can foster better financial health.

3.4.3 The Nigerian Communications Commission (NCC)

NCC is the chief regulator of the telecommunications industry in Nigeria. NCC is charged with the responsibility of creating the right environment for competitive provision of quality and efficient telecommunications services across Nigeria as well as the licensing of providers and formulation of a framework for the industry.¹⁰³

The commission has contributed to financial inclusion by obtaining super-agent status for mobile network operators to provide mobile money.¹⁰⁴ The commission has also given permission for MNOs to operate special purpose vehicles (SPVs) as super agents using mobile networks and USSD.¹⁰⁵ Additionally, the Commission has launched the Internet Exchange Points (IXPs), the Wire Nigeria Project (WIN) and the States Accelerated Broadband Initiative (SABI) for the benefit of excluded communities.¹⁰⁶ This can provide the needed infrastructure for DFS.

The NCC is currently working on driving investment in fibre optic cables for service providers, deploying mobile payments enabling bandwidth and releasing statistics on network downtime to encourage providers to ensure networks remain active.¹⁰⁷

¹⁰¹Ibid at 9.

¹⁰²Ibid at 51.

¹⁰³NCC *About the NCC* available at <https://www.ncc.gov.ng/about-ncc/who-we-are>, accessed on 02 February 2019.

¹⁰⁴Central Bank of Nigeria National Financial Inclusion Strategy (2018) op cit note 4 at 9.

¹⁰⁵Ibid.

¹⁰⁶ Ministry of Communication Technology, *National Information and Communications Technology (ICT) Policy* (2012) at 22, available at [https://www.researchictafrica.net/countries/nigeria/Nigeria_National ICT Policy \(draft\) 2012.pdf](https://www.researchictafrica.net/countries/nigeria/Nigeria_National ICT Policy (draft) 2012.pdf), accessed 22 April 2020 .

¹⁰⁷Central Bank of Nigeria National Financial Inclusion Strategy (2018) op cit note 4 at 52.

3.4.4 Nigeria Deposit Insurance Corporation (NDIC)

This corporation is a government agency vested with the responsibility of securing deposits and ensuring that insured funds are repaid to depositors when banks are unable to do so.¹⁰⁸ The corporation has the mission of contributing to a stable finance sector by effectively supervising insured institutions, providing the needed technical and financial support, paying deposits promptly and resolving disputes.¹⁰⁹ The corporation also oversees and guarantees deposit liabilities of financial institutions and assists monetary authorities in the issuing and implementation of suitable policies necessary to achieve the functions of the corporation.¹¹⁰

Beyond protecting deposits, the NDIC deposit insurance scheme serves as risk minimiser to avoid financial system disruption and promote competition and innovation in the industry.¹¹¹ Impliedly, where deposits are guaranteed, bank runs will potentially be minimised thus reducing economic crisis. The NDIC however guarantees sums only to a tune of N500, 000.00 per individual subscriber.

In terms of financial Inclusion, the NDIC administers the NDIC Passthrough Guidelines on Mobile Money 2016 which mandates that providers must insure mobile money subscriptions as well as mandatory savings of these funds at a deposit money bank, separate from those of the providers. By these guidelines, mobile money operators are only permitted to invest users' funds in safe assets such as Federal Government financial instruments.

3.4.5 National Pension Commission (PENCOM)

PENCOM is a creation of the 2014 Pension Reform Act with the mandate of overseeing and regulating the effective administration of matters relating to pension.¹¹² The Act was introduced to provide retirement savings for all public servants, to simplify the process of pension payment and establish uniformity of rules on pension.¹¹³ This commission has the power to issues a broad range of legal instruments in managing and investigating the management of funds.¹¹⁴ PENCOM also has the power to stipulate sanctions and fines for administrative matters against employees of pension fund administrators including assigning

¹⁰⁸NDIC About NDIC available at <https://ndic.gov.ng/about-ndic-3/>, accessed on 02 August 2019. See also section 2 of the NDIC Act 2006

¹⁰⁹Ibid.

¹¹⁰NDIC *Mandate, Powers & Functions*, available at <https://ndic.gov.ng/about-ndic-3/mandate-powers-functions/> accessed on 02 August 2019. See also Nigeria Deposit Insurance Corporation Act 2 of 2006. See also Section 2, NDIC Act, 2006

¹¹¹Ibid.

¹¹²Section 17 Pension Reform Act 2014.

¹¹³Ibid at section 1.

¹¹⁴Ibid at section 23.

funds or asset administration to a different custodian or administrator and license revocation.¹¹⁵

The commission issues guidelines for the investment of pension funds; approves licences for pension fund administrators, custodians and other institutions; maintains the national data bank for all pension matters; creates awareness and capacity building for stakeholders and investigates complaints on the administration of pension funds.¹¹⁶

In relation to financial inclusion, the commission is leading the introduction and revision of regulations to drive the adoption of pension schemes and has succeeded in the inclusion of 11 per cent of the working population.¹¹⁷ The micro pension scheme initiated by the commission serves the informal economy which covers 70 per cent of the population and is revising pension rules to cater for small business that have less than five employees.¹¹⁸

PENCOM has indicated some interest in implementing a micro-pension framework for the benefit of low income earners working in the informal sector and to drive consumer protection programmes and extend knowledge on the importance of pensions across all states.¹¹⁹

3.4.6 The Securities and Exchange Commission (SEC)

SEC is the main regulator of the capital market and is administered by the Investments and Securities Act 29 of 2007. The Act vests SEC with the task of regulating the capital market to protect investors and re-organise the market to pave the way for a private sector-led economy.¹²⁰ SEC strives to improve market integrity by ensuring the registration of fit and proper institutions, inspection of sites of operators, surveillance of exchanges to deter breaches, investigation of breaches and enforcement of actions against defaulters.¹²¹

SEC has been able to initiate the publication of a capital market journal and school curriculum to drive awareness and is seeking to formalise informal community-based cooperatives and savings programmes.¹²² Presently, these funds are unregulated and deemed unsafe by the CBN. The commission has also introduced e-dividends to reduce the incidents of unclaimed dividends and increase investor confidence and has launched the first sovereign

¹¹⁵Ibid at 64 and 76.

¹¹⁶Ibid at 23.

¹¹⁷Central Bank of Nigeria National Financial Inclusion Strategy (2018) op cit note 4 at 10.

¹¹⁸Ibid.

¹¹⁹Ibid at 52.

¹²⁰Securities and Exchange Commission *About*, available <https://sec.gov.ng/about>, accessed on 02 August 2019.

¹²¹Securities and Exchange Commission *What We Do*, available at <https://sec.gov.ng/about/what-we-do/> accessed on 02 August 2019.

¹²²Central Bank of Nigeria National Financial Inclusion Strategy (2018) op cit note 4 at 10.

sukuk (Sharia compliant bond) which was oversubscribed by 6 per cent.¹²³ These measures ensure that communities that rely on indigenous savings systems as well as persons in need of Islamic-compliant financial services do not remain excluded from formal finance.

3.4.7 National Bureau of Statistics (NBS)

The bureau houses and collates data on Nigerian statistics. The NBS aims ‘to generate, continuous and sustainable socio-economic statistics on all facets of development in Nigeria’.¹²⁴ In aid of financial inclusion, the bureau collects data and assists in research on the state of financial inclusion.¹²⁵ For instance, the bureau assisted the Enhancing Financial Innovation and Access in Nigeria (EFInA) in respondent selection for the 2016 access to finance survey, collaborated with the CBN to advance financial literacy and carried out research for the NIBSS on POS usage.¹²⁶ The bureau is further committed to including yearly household surveys on financial inclusion indicators and the publication of these indicators.¹²⁷

3.4.8 The National Identification Management Commission (NIMC)

The NIMC is the body designated to create an authentic national identification system for citizens and legal residents to be registered.¹²⁸ By the provisions of section 5 of the NIMC Act 23 of 2007, the commission has the specific duty to assign a unique national identification number to Nigerians and permanent residents and to register births and deaths.¹²⁹ The commission also has the duty to administer and harmonise the national identity database in collaboration with relevant bodies.¹³⁰

The national identity database created by the NIMC helps financial inclusion by providing the necessary identification documentation to access finance.¹³¹ NIMC also issues payment cards enabled by Access Bank and MasterCard to help the financially excluded to access finance.¹³² The commission provides verification services to financial services

¹²³ Ibid.

¹²⁴ Nigeria National Bureau of Statistics *Vision and Mission*, available at <https://nigerianstat.gov.ng/page/vision-mission>, accessed on 02 August 2019.

¹²⁵ Central Bank of Nigeria National Financial Inclusion Strategy (2018) op cit note 4 at 10.

¹²⁶ Ibid.

¹²⁷ Ibid at 53.

¹²⁸ National Identification Management Commission *Vision and Mission*, available at <https://www.nimc.gov.ng/vision-mission/>, accessed on 02 August 2019.

¹²⁹ National Identification Management Commission Act 5 of 2007.

¹³⁰ NIMC *Functions and Powers*, available at <https://www.nimc.gov.ng/functionspowers/>, accessed on 02 August 2019.

¹³¹ Central Bank of Nigeria National Financial Inclusion Strategy (2018) op cit note 4 at 10.

¹³² Ibid.

providers and is harmonising the national identity database in collaboration with NCC and NIBSS.¹³³

3.4.9 The Nigerian Postal Service (NIPOST)

NIPOST was established to provide efficient, effective and reliable postal services in Nigeria.¹³⁴ The agency engages in domestic post transfer, international remittance, agency banking and offers payment services for utilities and school fees.¹³⁵ NIPOST also runs the NIPOST mobile money which provides cash-in and cash-out outlets for mobile payments.¹³⁶

The postal service holds great potential for rural financial inclusion. Significantly, all 774 local government areas in Nigeria have a post office and this wide branch network can effectively be utilised as agent outlets for financial services.¹³⁷ The postal service has partnered with One Network (Super-agent) to use post offices as money agents.¹³⁸ The commission intends to obtain a super-agent licence with which to offer finance across the postal service on behalf of banks, mobile money operators and other financial service providers and serve as distribution centres to disseminate resources for financial literacy.¹³⁹ It is expected that, just as Brazil improved financial inclusion figures using postal correspondents, the local postal service can also facilitate access to finance for Nigerians.

3.5 Opportunities for expanding financial inclusion using digital financial services

3.5.1 Regulation of Digital Financial Inclusion (DFS) in Nigeria

As noted above, the regulation of the DFS sector in many countries is a role that the financial systems regulator or apex bank takes on. In Nigeria, the Central Bank of Nigeria (CBN) occupies this role and exercises the responsibility of choosing a regulatory model for DFS deployment in Nigeria. This choice should ideally be based on a delicate balance between addressing the needs of the excluded and maintaining financial sector stability and integrity. Getting this balance right is a core determinant of whether DFS will scale up.

In choosing a regulatory model for DFS, regulators should also be mindful of the environment for deploying financial services, the geographical location of users and the perception of users about the financial system and financial offerings. There should also be

¹³³Ibid.

¹³⁴ Nigerian Postal Services *Vision and Mission* available at http://www.nipost.gov.ng/Vision_Mission, accessed on 02 August 2019

¹³⁵NIPOST *Financial Services*, available at http://www.nipost.gov.ng/Financial_Services, accessed on 02 August 2019.

¹³⁶Ibid.

¹³⁷Central Bank of Nigeria National Financial Inclusion Strategy (2018) op cit note 4 at 10.

¹³⁸Ibid.

¹³⁹Ibid at 52.

consideration for the readiness of users to adopt digital finance, the flexibility or rigidity of DFS rules and the capacity and motivation of providers to reach excluded consumers.

In Kenya, the non-bank-led model is observed to have thrived as a result of the flexibility of the regulators, the size and customer base of Safaricom, (the parent company of Mpesa) and the need for low-value transfers and mobile money to bridge the dearth of banks in rural areas.¹⁴⁰ On a societal level, there was also evidence of mobile phone ubiquity and a low level of financial inclusion that drove the adoption of mobile money.¹⁴¹

Before the introduction of the PSB guidelines discussed earlier, only the bank-led and the corporation-led DFS models were recognised by the Guidelines on Mobile Money Services in Nigeria, 2015. The bank-led model permits a bank either alone or in partnership with other banks or approved organisations to deliver banking services with the bank as the lead initiator.¹⁴² The corporation-led model on the other hand permits a corporate organisation duly licensed by the CBN to deliver mobile money services to customers as lead initiator.¹⁴³ While some corporations such as PAGA are taking up this space, it is observed that the reach of these entities is not yet widespread, particularly in rural areas.

Also important is the fact that mobile network operators (MNO) were not permitted providers under this category. The payment services bank guidelines of 2020 have changed this practice by allowing MNOs to provide financial services alone especially in rural areas. Approval-in-principle has been granted to 3 entities but PSB structures are underway. It would therefore be interesting to see how these entities compete in the finance sector.

In jurisdictions where this bank-led model is favoured, the need to adhere to requirements such as rigorous licensing processes, capital adequacy and maintenance of financial systems security are cited. Banks, which are required before obtaining a license to fulfil these requirements, are therefore given the prerogative to offer full banking services, intermediate customer funds and invest in a wide range of capital market securities. In contrast, non-bank entities are often only permitted to offer fewer services such as wallet

¹⁴⁰Safaricom, the parent company of the dominant MNO was the biggest telecommunications provider with nationwide presence and a wide customer base and so could leverage these advantages into mobile money provision. Significantly, Safaricom was launched in 2007 with a market share of 80 per cent in active SIM cards and specialised in the niche area of providing low-cost, simple financial products for the poor without any competition from banks in the first two years. See Joseph Kariuki Nyaga 'Mobile banking services in the East African Community (EAC): Challenges to the existing legislative and regulatory frameworks' (2014) *Journal of Information Policy* 4 at 275, available at <https://www-jstor-org.ezproxy.uct.ac.za/stable/pdf/10.5325/jinfopoli.4.2014.0270.pdf?refreqid=excelsior%3Ac9ec4f90e7b2eb489c31cd6e04dd1188>, accessed on 01 June 2018.

¹⁴¹Ibid.

¹⁴²Central Bank of Nigeria Guidelines on Mobile Money Services in Nigeria of 5.0 (a) of 2015.

¹⁴³Ibid at 5.0(b).

savings, utilities settlement and funds transfer without the sanction in some cases to intermediate or invest funds. Funds held by non-bank entities are mostly permitted to be stored in a trust account at a deposit money bank with customers as beneficiaries. Unlike the case with banks, these accounts scarcely yield interests for customers. Providers are also not permitted to charge clients but are expected to mainly profit from commissions on transactions paid by the principal.

Significantly, the CBN Guidelines on Mobile Money Services in Nigeria 2015 outline limited roles for MNOs, including, providing telecommunication network infrastructure, enabling secure communication channels, avoiding anti-competition and preferential treatment in terms of traffic and price.¹⁴⁴ MNOs are also prohibited from receiving deposits from the public unless where it is intended to be used as prepaid airtime but not for the transfer of monetary value between customers.¹⁴⁵ In a similar fashion, the Framework on Mobile Money Services in Nigeria 2015 restricts these entities to infrastructure provision to facilitate messaging in mobile payments transactions.¹⁴⁶

At the time of introducing the mobile money framework and guidelines, the CBN acknowledged the critical nature of the MNO network infrastructure to mobile money services in Nigeria, but maintained that the MNO-led model is rightly excluded to avoid wielding systemic risks on the national security system.¹⁴⁷ The CBN also asserted that MNO exclusion reduces the possibility of loss of customer funds when placed in the care of telecommunications companies.¹⁴⁸ According to CBN, the restriction of MNOs enables the bank to exercise full control over monetary policy operations, minimise financial risks and ensure that financial services are driven by organisations that have been licensed to do so.¹⁴⁹

Therefore, MNOs that wished to provide mobile money were mandated to do so strictly in collaboration with banks. Although this stance is set to give way with the approval of payment services banks guidelines, it is still important to discuss the drawbacks of mandating collaboration between players in the DFS market. An overview of the implications of this forced collaboration is explored below.

¹⁴⁴Central Bank of Nigeria op cit note 142 at 8.4.

¹⁴⁵Ibid.

¹⁴⁶Framework on Mobile Money Services in Nigeria 4(c) 1 of 2015.

¹⁴⁷Mondato *Do Bank-led Models Stall Progress?* (2018), available at <https://blog.mondato.com/do-bank-led-models-stall-progress/>, accessed on 20 June 2018. See also CBN *Frameworks on Mobile Money Services (Framework Objectives)*.

¹⁴⁸ Chima Nwokoji 'We chose bank-led mobile money to protect users from losses – CBN' *The Nigerian Tribune* 5 June 2018, =available at <http://www.tribuneonlineng.com/chose-bank-led-mobile-money-protect-users-losses-cbn/>, accessed on 10 August 2019.

¹⁴⁹Central Bank of Nigeria op cit note 142 at 1.0.

3.5.2 A brief overview of the collaboration debate

Collaboration between providers has some positive aspects such as sustaining meaningful partnerships and fostering the interoperability of systems with the potential to lower costs and reduce customer charges.¹⁵⁰ Also collaboration could enable synergies and increase the chances of wider customer adoption of products/services.¹⁵¹

Banks, for instance, could cushion the cost of building bank branches, operating low-value accounts for the bottom-of-the-pyramid and maintaining dormant accounts by collaborating with MNOs. Banks can also help with long-term financial services as well as providing deposit and insurance facilities. More products can also be offered, leading to sustainability of DFS as more services become available to consumers and alternative sources of revenue are created for providers.¹⁵² Again, while banks can offer access to bank branches, MNOs provide the IT infrastructure and customer base for advancing mobile money. Both entities are thus able to reach full potential by focusing on areas of strength and relying on effective partnerships for other aspects.

In relation to the above, collaboration opens up niche markets representing different consumer interests with profound implications for rural financial inclusion. Agent banking presents an example as there could be a better chance of including the DFS sceptics using close-to-door local agents such as kiosks, gas stations and schools known to and domiciled close to users as practiced in Kenya.

Collaboration between financial services providers equally creates an ecosystem where customers can use financial services in a frictionless manner.¹⁵³ Typically, collaborative products develop faster than products created by individual providers.¹⁵⁴ This is because combined expertise and customer base can lead to faster scale. An example can be found in the collaboration between Safaricom and the Commercial Bank of Africa (CBA) which birthed MShwari in Kenya in 2012, a service that enables customers of the two

¹⁵⁰Rory Macmillan *Digital Financial Services: Regulating for Financial Inclusion: An ICT Perspective: GDDFI Discussion Paper 57* at 50. Available at https://www.itu.int/en/ITU-D/Conferences/GSR/Documents/GSR2016/Digital_financial_inclusion_GDDFI.pdf, accessed on 01 July 2018.

¹⁵¹Accion *Smart Campaign* (2014) at 5, available at http://www.smartcampaign.org/storage/documents/Tools_and_Resources/20140821_EoS_DfS_MFIs.pdf, accessed on 03 June 2018.

¹⁵²UNSW Digital Financial Services Research Team, *Regulatory Handbook: The Enabling Regulation of Digital Financial Services* (2015) at 20.

¹⁵³Ian Pollari *The Rise of Digital Platforms in Financial Services* (2018) at 2, available at <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2018/02/kpmg-rise-of-digital-platforms.pdf>, accessed on 13 November 2018.

¹⁵⁴See GSMA *Success Factors for Mobile Money Services: A Quantitative Assessment of Success Factors* (2016) at 13, available at <https://www.gsmaintelligence.com/research/?file=923539C02F5D39174BA09C6851EFC25A&download>, accessed on 02 June 2018.

companies to apply for loans, receive transfers into the Mpesa wallet and build credit history.¹⁵⁵

However, the practice of mandating collaboration as a business model for MNOs without the corresponding imposition on the banks opens the door for a lopsided direction for the market. The unmatched proportion of four main MNOs to about 22 deposit money banks in Nigeria makes collaboration even more harrowing with consequences for unhealthy competition and a lower quality of DFS. This also affects the business case for MNOs as banks were under no compulsion to negotiate or collaborate.

Furthermore, mandating collaboration can scarcely allow for the realisation of individual company goals especially where the burden to collaborate is foisted on one party alone. For one, the business models of providers would ordinarily be varied because while non-bank entities customarily seek a niche in excluded markets with specific financial needs, banks are observed to majorly concentrate on ‘urban-rich consumers’. In Nigeria, for instance, banks gravitate more to the urban areas with the potential for reaching ‘more profitable’ consumers, resulting in a high rural financial exclusion rate. This obvious disinterest of banks in servicing the financial needs of the excluded persons can make forced collaboration a less dynamic and less developing system.¹⁵⁶

It is therefore submitted that rather than restricting MNO participation by mandating one-sided collaboration, regulators can set minimum standards of eligibility for providers and then watch out for anticompetitive practices perpetrated. For instance, MNOs should not be allowed to over-price or downgrade the quality of mobile communication components such as SIM cards, voice, SMS and USSD to lock out bank competition.¹⁵⁷ Again, banks should not be allowed to restrict MNO access to deposit facilities for subscriber funds. In general, regulators can thus encourage the honing of competitive advantages of the individual entities to ensure that this constitutes the basis for collaboration and providers compete to provide quality and innovative services at a competitive price to users.

¹⁵⁵Macmillan op cit note 150 at 57. See also Ken Macharia ‘CBA, Safaricom mark 5 years of M-Shwari with customer savings of Sh12.6Bn’ *Capital Business* December 6, 2017, available at <https://www.capitalfm.co.ke/business/2017/12/cba-safaricom-mark-5-years-m-shwari-customer-savings-sh12-6bn/>, accessed on 27 February 2019.

¹⁵⁶Sandra Suárez ‘Poor people’s money: The politics of money in Mexico’ (2016) *Telecommunications Policy* 40 at 947, available at https://ac-els-cdn-com.ezproxy.uct.ac.za/S0308596116300027/1-s2.0-S0308596116300027-main.pdf?_tid=19f52bdc-de6d-4664-b420-133ea6c3422b&acdnat=1528174867_101c04ef5f82d09d39da45de9838f027, accessed 12 May, 2018.

¹⁵⁷Ignacio Mas *What is the Telecom Regulator’s Role in Fostering Mobile Money?* (2012), available at <http://www.cgap.org/blog/what-telecom-regulator%E2%80%99s-role-fostering-mobile-money#comments>, accessed on 16 June 2018.

The place of healthy competition by encouraging the exhibition of the competitive advantages of providers towards the goal of achieving greater innovation is explored in the next section.

3.5.3. The place of competitive advantages for DFS providers

Healthy competition in every industry is indispensable as this drives innovation and leads to improved user protection. Enabling alternative providers such as MNOs to provide mobile money alone will bring the needed competition to drive provider efficiency in the DFS sphere. Importantly, every DFS provider, no matter how small, has some competitive advantages over other providers which, if properly harnessed, largely dispenses with the need for regulatory restrictions. Exhibiting these competitive advantages would naturally invite collaboration that is freely entered into without regulatory imposition.

Notably, MNOs have the advantage of owning mobile gateway systems.¹⁵⁸ This advantage also extends to less exposure to strict regulations such as KYC compliance.¹⁵⁹ Again, MNOs supply vital components and also compete directly with banks, so can seamlessly leverage market power from core telecommunications services to mobile money.¹⁶⁰ Further, MNOs can succeed in creating niche markets in simple transactions such as small-value transfers and bill payments in places where banks have not established significant footprints.

MNOs usually have a wide base of telecommunications service clients, numbers, spectrum and access to network infrastructures. MNOs also control crucial mobile networks that are relied upon by other mobile financial services providers as these cannot be easily or cost-effectively duplicated.¹⁶¹ Even though lacking the legal backing in most cases to engage in intermediation, MNOs are able to leverage ubiquitous low-cost network infrastructure to process transactions.¹⁶²

In the same way, banks have the network of branches with the potential for widespread customer reach. Banks also benefit from brand recognition by reason of possessing a deeper historical reputation with finance and long-running relationship with

¹⁵⁸A Bara 'Mobile money for financial inclusion: Policy and regulatory perspective in Zimbabwe' (2013) 5(5) *African Journal of Science, Technology, Innovation and Development* at 349, available at <http://dx.doi.org/10.1080/20421338.2013.829287>, accessed on 01 June 2018.

¹⁵⁹Ibid.

¹⁶⁰Mas op cit note 157.

¹⁶¹Macmillan op cit note 150 at 40 and 43.

¹⁶² Hennie Bester, Christine Hougaard, Jeremy Gray et al *Mapping the DNA: Using Consumer Insights to Unlock the Potential of Financial Inclusion* (2016) note 6 at 10, available at https://cenfri.org/wp-content/uploads/2017/02/MAP-global-insight-note-6_Mapping-the-DNA_Cenfri-FinMark-Trust-UNCDF_2016.pdf, accessed 21 April 2020.

urban clients who can extend network effects to rural dependents through remittances. Banks can thus exert leverage on this trusted brand recognition to grow their customer base. Similarly, banks benefit from first mover effect, having been in the business of providing financial services longer than other alternative providers and as a result easily amass a larger market share. As dominant entities in cash reticulation with direct access to the national currency from the central banks and the relevant infrastructure for moving cash around, banks can easily deploy cash-in-cash-out (CICO) services nationwide.¹⁶³

Additionally, banks are able to offer broader, long-term and more robust financial services such as loans, pensions, trusts and retirement packages as a result of possessing more sophisticated banking licences. These licences enable broader mobile banking services offerings to more financially mature clientele that require DFS. Banks equally offer over-the-counter (OTC) services free of cost unlike MNOs that charge commissions for CICO. Again, banks have the option of building their own network operations or introducing the services of mobile virtual network operators (MVNO). In Kenya, Safaricom collaborated with CBA group and KCB so the banks could offer deposit and loans to customers on the Mpesa platform.¹⁶⁴

These competitive advantages set the stage for the promotion of vigorous competition in the industry which can lead to better innovative products, higher consumer protection and the achievement of financial inclusion goals. Once the environment for effective competition is in place, regulators can be rest assured that competitive advantages will be employed strategically. Collaboration will also be more likely. A safeguard for creating this environment for competition will be for regulators to closely watch the market in order to detect signs of abuse of these competitive advantages, particularly by an entity in a dominant position.

Significantly, the Federal Competition and Consumer Protection Act 2019 makes provisions for competition and the provisions of this Act in relation to competitive advantages and the abuse of dominance will be elucidated in the succeeding section.

¹⁶³Hennie Bester, Jeremy Gray Christine Hougaard, et al, *The King Is (Not) Dead: Why Digital Payments Are Not Replacing Cash* (2016) at 13, available at <http://www.uncdf.org/download/file/127/4223/note05pdf> , accessed on 16 July 2019.

¹⁶⁴Duncan Miriri 'Kenya's Equity Bank, Safaricom team up to expand digital banking' *Reuters* April 29, 2019, available at <https://www.reuters.com/article/us-kenya-equity-group-hol-safaricom/kenyas-equity-bank-safaricom-team-up-to-expand-digital-banking-idUSKCN1S511C>, accessed on 16 August 2019.

3.5.4 Determining dominance and anti-competition in DFS

Dominant companies can wield anti-competition in a sector and drive the market towards individual company gains with detrimental effects on competitors and users. Regulators thus try to curb this by intervening in the market to jettison abuse. In determining anti-competition, regulators first have to ascertain the relevant market and further determine whether a firm is in a dominant position or possesses a significant market power (SMP) to exercise anti-competitive practices. Defining the relevant market helps to identify relevant products and services as well as the relevant geographic coverage pertaining to competitors. ‘A relevant market is a collection of products or services in respect of which a hypothetical monopolist would be able to charge a price significantly above the notional competitive price’.¹⁶⁵

Generally, a relevant market is determined by considering the demand-side substitutes. This assesses the ease of customer switching to the services of a competitor.¹⁶⁶ Another method is the determination of supply-side substitutes, useful in assessing the ease of a supplier entering into new markets within a reasonable time.¹⁶⁷ This increase can be jettisoned by changes in supply methods or volumes of other suppliers. Lastly, the small but significant and non-transitory increase in price (SSNIP) test weighs the ability and willingness of consumers to switch where a hypothetical monopolist increases the price of goods by five to ten per cent above the prevailing competitive price of a product.¹⁶⁸ In other words, the test considers the profitability or otherwise of this hypothetical monopolist after the increase and the sustainability of the price increase.

Notably, the FCCP Act provides in section 71 that regulators in defining a market must consider geographical boundaries that identify groups of buyers and sellers of defined products and services where competition may be restrained.¹⁶⁹ The Act further considers the availability of alternative suppliers and substitutes for goods or services with consideration for characteristics, price and intended use to assess the possibility of dominant companies abusing their position by increasing the price of goods and services or wielding detriments on

¹⁶⁵Desmond Rudman & Sima Ostrovsky *Dominance Test: A Superfluous Jurisdictional Hurdle?* (2010) at 8, available at <http://www.compcom.co.za/wp-content/uploads/2014/09/article-dominance-test.pdf>, accessed on 09 June 2018.

¹⁶⁶Chris Doyle Market Definition and Dominance (2002) at 9, available at <https://www.itu.int/osg/spu/ni/competition/Presentations/Market%20Definition%20-CDoyale.pdf>, accessed on 23 June 2018.

¹⁶⁷Ibid at 10.

¹⁶⁸Rudman & Ostrovsky op cit note 165 at 8.

¹⁶⁹Federal Competition and Consumer Protection Act 71 of 2018.

consumers.¹⁷⁰ These metrics are deemed to place a company in a position of likely abuse of dominance.

After determining the relevant market, the next step is therefore the determination of the existence of a dominant company or one with a significant market power. A dominant company is defined by section 70 of the Act as ‘one that is able to act without taking account of the reaction of customers, consumers or competitors’. Section 70(2) provides that,

A dominant position in a relevant market exists where an undertaking enjoys a position of economic strength to prevent effective competition and possesses the power to behave to an appreciable extent independently of competitors, customers and ultimately, consumers.

A dominant firm can also set price above prevailing market price, decrease innovativeness and offer goods of inferior quality.¹⁷¹ Therefore, without the right regulation in place, a company in a dominant position can exhibit anti-competitive practices that bring adverse effects to the market by attempting through illegal means to take control of the market.

In assessing market dominance the regulator considers the relevant company’s financial power, market share, market and supplier access, market entry barriers both legal and real, connections with other companies, supply and goods switching abilities and the capacity of the opposite market side to deal with other companies.¹⁷²

Before the third step in the determination of anti-competitiveness is discussed, it is important to note that a mere determination of dominance is not necessarily tantamount to anti-competition, but is a call to regulators to watch out for exclusionary behaviour that could usher in anti-competition. As a matter of fact, dominant companies must adopt formidable business strategies to remain relevant as history is replete with tales of dominant companies that experienced shrinkage of their customer base and even market exit in the face of stiff competition from new and smaller entrants especially in the disruptive space.

The 2001 introduction of the Global System for Mobile Communications (GSM) in Nigeria is a telling example. Here, even though the Nigeria Telecommunications Limited (NITEL) enjoyed the status of being a government-funded monopoly with years of experience and a wide customer base, the licensing of two private corporations, namely, MTN and Airtel (both foreign corporations) changed the course of history in the telecommunications sector. These two companies which came through on the prospect of a communication device in the hands of every Nigerian were able to trigger a mass migration

¹⁷⁰Ibid.

¹⁷¹Concurrences *Glossary of Competition Terms: Dominant Position*, available at <https://www.concurrences.com/en/glossary/dominance-notion> accessed on 21 July 2020.

¹⁷²FCCPA op cit note 169 at 72(3).

of users from the conventional landline to a disruptive GSM.¹⁷³ Even the belated move of the telecom giant to deploy MTEL, the GSM component to retain customers failed to impress.¹⁷⁴ Patronage continued to plummet until its eventual liquidation and sale.¹⁷⁵

This example illustrates that regulators should not only focus on dominance of an entity, large market size or a wide customer base. The focus should also extend to the capacity of an entity to successfully use its dominant position to carry out anti-competitive acts to the disadvantage of market competitors or consumers.

A third step to ascertaining anti-competition after determining the relevant market and the dominance of an entity is to analyse the conduct of dominant firms to determine abusive practices that amount to anti-competition. Anti-competition occurs where companies charge excessively, restrict access to crucial facilities without the excuse of economic feasibility, restrict dealings with competitors, refuse to supply scarce goods, place unrelated conditions on transactions, sell below the marginal or average cost or buy up limited market supplies required by a competitor.¹⁷⁶

The FCCP Act specifically prohibits exclusionary acts such as price fixing, dividing the market by allocating consumers, suppliers, territories, goods or services, reducing or placing controls on manufacture and distribution, collusion in tenders and imposing unrelated obligations as conditions for concluding an agreement.¹⁷⁷ However, abuse of a dominant position does not include conducts that improve the production or distribution of goods or services, promotion of technical or economic progress which benefits consumers and the attainment of objectives and acts that do not eliminate competition in the goods or services concerned.¹⁷⁸

Importantly, in the DFS sphere, both banks and alternative providers can be anti-competitive even in a small sense where dominance has been attained. Mobile operators can, for instance drive other providers out of the market or make the provision of services more daunting by leveraging dominance from mobile handset to mobile payments.¹⁷⁹ MNOs can

¹⁷³MTEL was exempt from paying the \$285 million licence fees imposed on the other competitors by inheriting NITEL's licence. See Samson Akintaro, *Goodbye NITEL...Hello! NTEL: New Network Operator Raises Broadband Hope* (2015), available at <https://ittelecomdigest.com/goodbye-nitelhello-nte>, accessed on 27 June 2018.

¹⁷⁴Ibid.

¹⁷⁵Ibid.

¹⁷⁶FCCP Act op cit note 169 at 72(2).

¹⁷⁷Ibid at 59(2).

¹⁷⁸Ibid at 60.

¹⁷⁹Marc Bourreau & Tommaso Valletti, *Enabling Digital Financial Inclusion through Improvements in Competition and Interoperability: What Works and What Doesn't?*, at 16 available at

also exert leverage on dominance in mobile networks to bundle services (merging products or services for sale as a single unit) and other complementary goods including mobile payments together as a unit.¹⁸⁰ Similarly, MNOs can refuse or make it difficult or expensive to interoperate network systems with rival firms.¹⁸¹ This can in turn restrict customers' ability to send money to users on other platforms and effectively result in dominance and lock-in.¹⁸² These entities can further refuse to provide USSD to competitors and could discriminate in pricing or engage in margin squeeze to reduce or eliminate profits of competitors by citing the lack of capacity or technical readiness.¹⁸³

Banks on the other hand can refuse to share credit and identification data (collected for KYC), making it more difficult for MNOs to identify credible customers for financial transactions such as loans, insurance and pensions. Banks can also offer access to deposit and insurance services to MNOs on revised terms. For example, additional rules can be foisted on MNOs for opening and operating trust accounts for mobile money subscribers stipulated in regulations such as the NDIC Passthrough Guidelines discussed above. Banks may also refuse to offer agent services to MNOs interested in building scale through physical branches of bigger banks.

Whatever the type of anti-competitive behaviour, regulators should reserve the power to examine market competition, jettison both monopoly and oligopoly, penalise collusive behaviour, and object to price structures that are uncompetitive.¹⁸⁴ In Zambia, MTN was fined by the regulator for limiting a competitor's access to the USSD of Zoona.¹⁸⁵ Similarly, in Zimbabwe, the Competition and Tariff Commission (CTC) probed Econet for setting access cost to banks at a higher rate than those charged to customers of the Econet's mobile money service (EcoCash).¹⁸⁶ In Uganda also, the commercial court in the 2015 case of *EzeeMoney v MTN*, fined MTN to the tune of UGX 2.3 billion (USD\$ 662000), for threatening Yo!Uganda Ltd. over the supply of MTN's USSD connection to the plaintiff.¹⁸⁷

https://www.researchgate.net/publication/284124402_Enabling_Digital_Financial_Inclusion_through_Improvements_in_Competition_and_Interoperability_What_Works_and_What_Doesn't, accessed on 21 July 2020.

¹⁸⁰See Stijn Claessens & Liliana Rojas-Suarez, *Financial Regulations for Improving Financial Inclusion* (2016) at 11, available at <https://www.cgdev.org/sites/default/files/CGD-financial-regulation-task-force-report-2016.pdf>, accessed on 17 July 2018.

¹⁸¹Rafe Mazer & Philip Rowan, *Competition in Mobile Financial Services: Lessons from Kenya and Tanzania* (2016) at 20, available at <http://www.cgap.org/sites/default/files/Working-Paper-Competition-in-MFS-Kenya-Tanzania-Jan-2016.pdf>, accessed on 16 May 2018 20.

¹⁸²*Ibid.*

¹⁸³Macmillan op cit note 150 at 44-5.

¹⁸⁴Stijns & Claessens op cit note 180 at *xvi* and *xii*.

¹⁸⁵Macmillan op cit note 150 at 43.

¹⁸⁶*Ibid.*

¹⁸⁷*Ibid* at 44. See also Civil suit No 330 of 2013.

3.6 Prospects for sandbox regulation in Nigeria

As noted in section 3.4 the bank-led model was favoured in Nigeria to the exclusion of the MNO-led model and MNOs were only permitted to provide DFS in strict collaboration with banks. The scepticism of the CBN to allow MNOs to provide DFS alone did not take into account the competitive advantages outlined in section 3.4.3 and the opportunity for a healthier and more innovative finance market. Explored in this section, therefore, is the prospect of employing a regulatory sandbox experiment to test out new financial offerings.

Sandboxes are increasingly being deployed in novel and fast-paced spaces to avoid the provider and user burden that could emanate from making laws based on predictions or disrupting a market when detriments ushered by technology manifest. With the use of sandboxes, the scepticism of regulators are allayed as DFS offerings by alternative providers are tested out in a controlled space to monitor market effects before eventual product launch.

Fundamentally, a regulatory sandbox is

a framework set up by a financial sector regulator to allow small scale, live testing of innovations by private firms in a controlled environment (operating under a special exemption, allowance, or other limited, time-bound exception) under the regulator's supervision.¹⁸⁸

Sandboxes could be regulatory or industrial. 'A regulatory sandbox is driven by regulators to increase the adoption of innovations which deliver superior consumer outcomes'.¹⁸⁹ 'An industry or virtual sandbox on the other hand, is supplementary, enabling industry players to self-organise and provide a knowledge-sharing and communication forum, as well as an optional certification facility'.¹⁹⁰

In a sandbox experiment, regulators could adjust rules to weigh up the regulatory impacts of these adjustments which are subsequently introduced into the policy-making process.¹⁹¹ The regulator then concentrates on monitoring key metrics, adjusting regulatory parameters on a periodic basis and providing guidance for product launch.¹⁹² Furthermore,

¹⁸⁸Ivo Jenik and Kate Lauer *Regulatory Sandboxes and Financial Inclusion* (2017) at 1 available at <https://www.cgap.org/sites/default/files/Working-Paper-Regulatory-Sandboxes-Oct-2017.pdf>, accessed 21 July 2020.

¹⁸⁹Sustainable and Inclusive DFS *Innovation Sandboxes as a Tool for Driving Financial Inclusion in Nigeria How Regulators can Foster Innovation without Destabilising the Entire Financial Services Ecosystem* (2017), available at <https://medium.com/@SustainableDFS/innovation-sandboxes-as-a-tool-for-driving-financial-inclusion-in-nigeria-bdb26761944e>, accessed on 20 June 2018.

¹⁹⁰Ibid.

¹⁹¹Deloitte *Regulatory Sandbox Making India a Global Fintech Hub* (2017) at 6, available at <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/in-tmt-fintech-regulatory-sandbox-web.pdf>, accessed on 13 July 2019.

¹⁹²Ibid at 9.

the regulator may relax certain legal requirements and other licensing challenges.¹⁹³ Regulators are also able to create an ad hoc framework with safeguard and performance indicators using a test-and-learn approach to observe how an innovation idea evolves before intervening in the market.¹⁹⁴

Sandboxes offer businesses shorter time to product launch, provides easier access to funding and avoids systemic risks from product failure.¹⁹⁵ These also help to mitigate risk for firms by providing closer regulatory oversight and helping with the adoption of regulations that keep pace with innovation.¹⁹⁶ Again, these experiments have the potential to lessen regulatory requirements and lower entry barriers for providers and improve transparency of licensing by offering regulatory guide.¹⁹⁷

The sandbox experiment has been used in about 20 countries including Singapore, the United Kingdom and Australia to various degrees.¹⁹⁸ In the United Kingdom, the regulators note that the experiment has helped to decrease the cost and time taken to innovate new ideas into the market, a record of about 90 per cent of wider market launch and has improved access to finance for Fintech firms as participation in the programme provides some degree of assurance to investors that projects are backed by regulators.¹⁹⁹

In the specific sphere of financial inclusion, sandboxes have the capacity to measure the potential impact of financial innovations and to intervene in the market in a manner that is beneficial and diminishes risks.²⁰⁰ Again, because the finance sector is innovative and fast-paced, sandboxes help with compliance, thereby reducing penalties for parties and costs to

¹⁹³Ibid.

¹⁹⁴Ivo Jenik *Regulatory Sandboxes: Potential for Financial Inclusion?* (2017), available at <http://www.cgap.org/blog/regulatory-sandboxes-potential-financial-inclusion>, accessed on 23 June 2018.

¹⁹⁵Deloitte op cit note 191 at 9 and 16.

¹⁹⁶Khushboo Agarwal 'Playing in the regulatory sandbox' (2018) *New York University Journal of Law & Business*, available at <https://www.nyujlb.org/single-post/2018/01/08/Playing-in-the-Regulatory-Sandbox>, accessed on 21 June 2018.

¹⁹⁷Mondato *The Regulatory Sandbox* (2016), available at <http://blog.mondato.com/the-regulatory-sandbox/>, accessed on 07 July 2018.

¹⁹⁸Sue McLean *UK: FCA's Regulatory Sandbox – Lessons Learnt* (2017), available at <http://www.mondaq.com/uk/x/643458/fin+tech/FCA+Regulatory+Sandbox+Lessons+Learnt>, accessed on 17 June 2018. See also Chang-Hsien Tsai & Kuan-Jung Peng 'The fintech revolution and financial regulation: The case of online supply chain financing' (2017) *Asian Journal of Law and Society*, 4, (1) at 127–8. See also Australian Securities and Investment Commission *Regulatory Sandbox*, available at <https://asic.gov.au/for-business/your-business/innovation-hub/regulatory-sandbox/>, accessed on 27 February 2019 and Monetary Authority of Singapore *FinTech Regulatory Sandbox*, available at <http://www.mas.gov.sg/Singapore-Financial-Centre/Smart-Financial-Centre/FinTech-Regulatory-Sandbox.aspx>, accessed on 18 April 2019.

¹⁹⁹McLean op cit note 198.

²⁰⁰I Jenik op cit note 194.

consumers.²⁰¹ Significantly, this holds prospects for better outcome as more products and services could be offered at a lower price and providers find easier access to finance.²⁰²

The sandbox experiment in Nigeria has recently been adopted by the Central Bank of Nigeria and the Nigeria Interbank Settlement System, (NIBSS) with the specific aim of giving regulatory support to Fintech companies engaged in innovative exploits to attain wider financial inclusion.²⁰³ This initiative is managed by the Financial Service Innovators Association of Nigeria (FSI) and supervised by the CBN and NIBSS.²⁰⁴ A sandbox experiment for MNOs has also been given approval in practice by the Central Bank as part of the revised national financial inclusion strategy. It is expected that this experiment would bring clarity to the question of MNO restriction and risk justification rhetoric of the CBN.

Although it is still too early to measure the impact of this experiment, it is expected that sandboxes will enable industry players and new entrants to test new products under regulatory supervision.

In spite of the opportunities outlined above, regulators must utilise sandboxes cautiously as challenges such as inadequate resources both in terms of human capacity and financial means to choose proposals, offer guidance, supervise tests and appraise innovations could manifest.²⁰⁵ Again, setting the wrong parameters for these experiments (such as eligibility for candidacy, appropriate duration, accepted levels of innovativeness and mechanisms for evaluating effectiveness of the sandbox could occasion risks and the quest to achieve first-mover status can lead to regulatory capture.²⁰⁶ Further, acquiring a customer base especially for small firms and surmounting the complex conditions for authorisation have been observed as core challenges for some providers.²⁰⁷ Regulators must take these into consideration in setting parameters for a sandbox experiment.

²⁰¹K Agarwal op cite note 196.

²⁰²Herbert Smith Freehills *Hong Kong Launches Regulatory Sandbox in Wake of Developments in Australia, Malaysia, Singapore, and the UK*(2016)available at <https://sites-herbertsmithfreehills.vuturevx.com/103/12430/landing-pages/2016.09.30-apac-fintech-briefing.pdf>, accessed on 13 July 2018.

²⁰³Babajide Komolafe, 'CBN, NIBSS unveil regulatory sandbox to empower fintechs'26 March 2018 *The Vanguard*, available at <https://www.vanguardngr.com/2018/03/cbn-nibss-unveil-regulatory-sandbox-to-empower-fintechs/>, accessed on 13 July 2018.

²⁰⁴Ibid.

²⁰⁵I Jenik op cit note 194.

²⁰⁶Mimi Zhou *Law and Autonomous Systems Series: Innovation without Authorisation? The Regulatory 'Black Box of Cryptocurrencies in China'* 2018, available at <https://www.law.ox.ac.uk/business-law-blog/blog/2018/04/law-and-autonomous-systems-series-innovation-without-authorisation>, accessed on 18 April 2019.

²⁰⁷McLean op cit note 198.

3.7 Conclusion

A brief introduction of the review of the 2018 National Financial Inclusion Strategy began this chapter. This was followed by an outline of the legislations applicable to DFS as well as the relevant regulators of DFS-related sectors including finance, telecommunications, pension, insurance, competition, securities and the postal service. The prospects for creating an enabling regulatory environment for exhibiting competitive advantages and the approach to detecting the abuse of dominance were then addressed. Lastly, the potential for employing sandbox experiments to efficiently test DFS deployment by alternative providers was analysed. An investigation of the barriers to accessing finance will be conducted in the next chapter.

CHAPTER 4

BARRIERS TO ACCESSING FINANCIAL SERVICES IN NIGERIA

4.1 Introduction

A review of the 2018 National Financial Inclusion Strategy (NFIS) undertaken by the Central Bank of Nigeria (CBN) to realign the 2011 Maya Declaration targets for financial inclusion to national realities was introduced in the previous chapter. In it, the relevant legal instruments for implementing digital financial services (DFS) in Nigeria were identified, as were the relevant regulators from finance and related sectors as well as corresponding financial inclusion roles. Additionally, the chapter addressed the DFS regulatory model adopted by the CBN and buttressed the benefits of a multi-party model to accommodate other viable alternative providers such as mobile network operators and the post. To achieve this, the chapter argued for the creation of an enabling environment that breeds healthy competition among traditional (banks) and alternative providers of finance with particular reference to MNOs. The use of sandbox experiments was proposed to test financial products initiated by these alternative providers in order to mitigate or forestall any risk to the financial sector.

In this chapter the barriers to accessing finance in Nigeria are examined. The seven core barriers to accessing finance identified by the Enhancing Financial Innovation and Access (EFInA) survey are discussed. These barriers include- irregular income, unemployment, distance to banks, the complexity of documentation, cost of accessing finance, cash preference, literacy and lack of an identity document.

4.2 Brief overview of financial inclusion barriers in Nigeria

Globally, the drive for financial inclusion has resulted in the decline in exclusion figures from 2 billion in 2014 to 1.7 billion in 2017, led by digital technology and mobile money.¹ Quite unlike the global statistics on financial inclusion, Nigeria has witnessed a rise in the number of persons lacking access to finance.² As noted by the CBN, none of the interim targets set in the National Financial Inclusion Strategy (NFIS) 2012 was reached as at December 2016.³

Commencing in 2015 and continuing into 2016, Nigeria witnessed an economic recession due to the reduction in global oil revenue which wielded a negative effect on

¹Central Bank of Nigeria 2017 *Annual Report National Financial Inclusion Strategy Implementation* (2018) at 13. Available at <https://www.cbn.gov.ng/Out/2018/CCD/FINANCIAL%20INCLUSION.PDF>, accessed 08 July 2020.

²Ibid.

³Ibid at 16.

household consumption, increased inflation and reduced the purchasing power of the populace.⁴ Furthermore, the uprising in North-East Nigeria resulted in the closure of some financial institutions and a general reduction in patronage of banking services due to security concerns.⁵ In the North Central, states such as Abuja, have witnessed a significant decline in the usage of financial institutions as insufficient funds hardly justified using a bank account.⁶ Many of the bottom-of-the-pyramid (BOP) population, having no means to cushion against these socio-economic shocks, had to resort to saving at home.⁷

Financial exclusion was as high as 41.6 per cent in 2016; the majority being women, youth aged 18 to 25, rural dwellers and residents of the northwest and northeast geo-political zones.⁸ Financial exclusion in these two zones is as high as 70 and 62 per cent respectively and both regions make up 56.6 per cent of total national exclusion.⁹ Persons in these regions are mainly debarred from accessing finance due to religious and cultural barriers, high unemployment rate, the lack of security due to the insurgency, the use of informal financial services, and exclusion by profit-driven finance providers.¹⁰

The goal of the CBN in carrying out the NFIS 2018 refresh is to meet the 2012 target of reducing financial exclusion to 20 per cent by 2020.¹¹ By carrying out a national financial inclusion strategy refresh, the bank has committed itself to creating an enabling environment for innovation, expanding finance models and deepening inclusion through tailored offerings, DFS, and digitised government payments.¹² The efforts of the CBN have been complemented by improvement in the macroeconomic environment including monetary, financial and exchange rate stability which could drive financial inclusion especially among underserved populations.¹³ It is expected that this progressive state of affairs will influence positively on financial inclusion before long. Seven major barriers to finance in Nigeria are discussed in the next section.

⁴Ibid at 72.

⁵Ibid.

⁶EFInA *Key Findings: EFInA Access to Financial Services in Nigeria (A2F) 2016 Survey*, available at <http://www.efina.org.ng/assets/A2F/2016/Key-Findings-A2F-2016.pdf> at 38, accessed on 26 May 2019.

⁷Ibid at 16.

⁸Central Bank of Nigeria op cit note 1 at 16.

⁹Ibid.

¹⁰Ibid.

¹¹NFIS 2018 review at 28.

¹²Central Bank of Nigeria op cit note 1 at 16

¹³CBN financial Inclusion secretariat *National Financial Inclusion Strategy 2018 Annual Report (2019)* at 8 available at <https://www.cbn.gov.ng/Out/2019/CCD/Annual%20Report%202018%20Financial%20Inclusion.pdf>, accessed 13 July 2020.

4.3 Barriers to financial inclusion in Nigeria

A nationwide study by EFINA reveals that the main barriers to using deposit money banks in Nigeria are irregular income and unemployment, distance to banks, the complexity of documentation, the cost of accessing finance or reaching a bank, cash preference, literacy and lack of an identity document.¹⁴ Some of these barriers affect access, others affect usage. Access barriers are those that debar people from opening accounts for reasons such as prohibitive costs or stringent eligibility requirements. For instance, irregular income and the lack of employment may not justify owning an account, especially where the cost of banking is considered to be too expensive for the excluded. Additionally, the lack of required documentation for opening an account serves as an access barrier.

Usage barriers such as financial illiteracy also mean that the excluded are unable to understand financial terms or how to engage with provider platforms. Again, distance can serve as a usage barrier where financial access points are remotely located and users are not desirous of using digital platforms to transact. These barriers can also be shared. For example, lack of employment, irregular income and cost of banking can both debar people from opening and using an account. Illiteracy and cash preference are also shared barriers as even though users may be aided in opening the accounts, usage may not necessarily follow, resulting in account dormancy. These barriers are discussed below.

¹⁴EFINA op cit note 6 at 52.

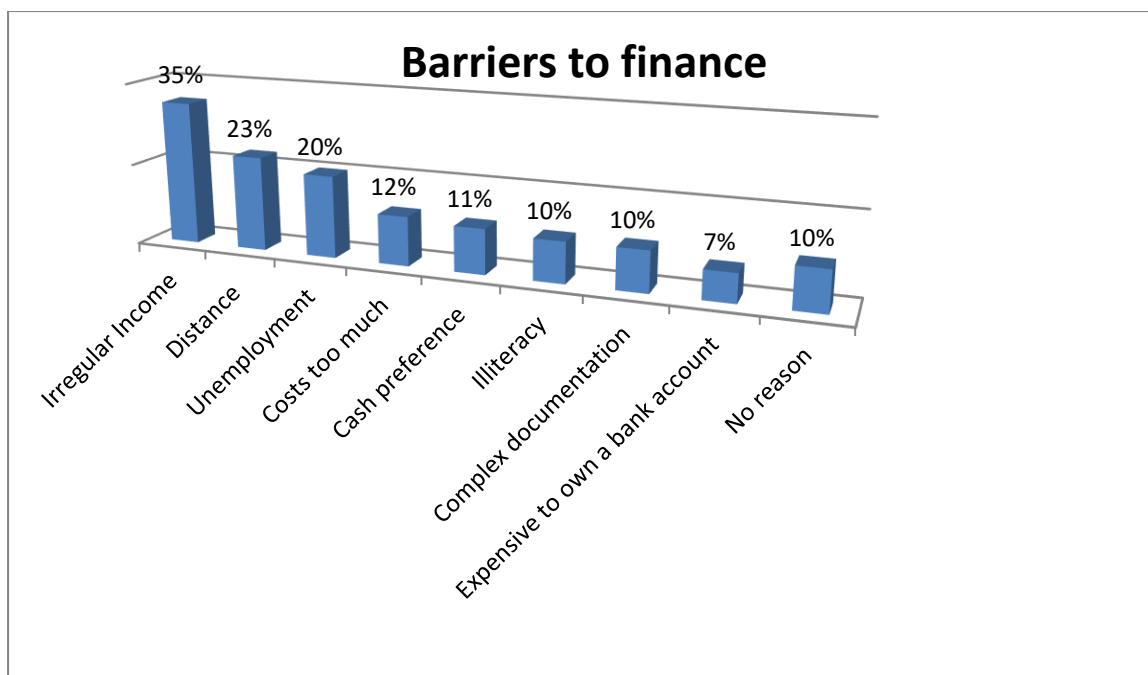


Figure 1: Barriers to finance

Sourced from EFINA financial inclusion survey 2018.¹⁵

4.3.1 Irregular income and unemployment

There is a strong link between irregular income and unemployment and financial exclusion. The EFINA study shows that irregular income, lack of access and unemployment all constitute a major hindrance to the use of deposit money banks.¹⁶ Persons at the bottom-of-the-pyramid have been shown to be the most affected by unemployment and a reduced disposable income.¹⁷ Women have at 26.6 per cent, a higher unemployment rate than men at 20.3 per cent.¹⁸ Similarly, rural areas have a higher unemployment rate of 23.9 per cent than urban centres at 21.2 per cent.¹⁹

The impact of the recession has affected job creation and increased unemployment rates from 18.8 per cent in Q3 2017 to 23.1 per cent in Q3 2018.²⁰ Nigeria's exponentially growing population also means that newcomers such as fresh graduates and housewives are entering the labour rapidly in addition to persons who lost jobs and are seeking new roles.²¹

¹⁵EFINA Key Findings: EFINA Access to Financial Services in Nigeria (A2F) 2018 Survey, available at https://www.efina.org.ng/wp-content/uploads/2019/01/A2F-2018-Key-Findings-11_01_19.pdf at 17, accessed on 2 May 2020.

¹⁶EFINA op cit note 6 at 52.

¹⁷Central Bank of Nigeria op cit note 1 at 72.

¹⁸Nigeria National Bureau of Statistics *Labour Force Statistics: Unemployment and Underemployment Report vol 1 (Q4 2017-Q3 2018)* (2018) at 26 available at accessed 13 July 2020.

¹⁹Ibid at 34.

²⁰Ibid at 6.

²¹Ibid at 7.

For example, in Q3 of 2018, 1 182 000 persons became legally able to work, thereby contributing 1.77 per cent to the total labour force participation rate of 78.3 per cent.²² This inflow of new entrants into the labour market further minimises the effect of any jobs created within the economy.²³

Furthermore, North-Central states such as Abuja and Niger have, witnessed a reduction in the banked segment as well as an increase in the excluded segment as decreasing consumer incomes failed to justify the continued patronage of financial institutions.²⁴ Similarly, in Kano and Jigawa, unemployment occasioned by massive job losses and inflation has led many without sufficient income to abandon existing accounts.²⁵ This spate of account abandonment resulting from unemployment and the lack of funds is understandable because where funds are insufficient to fulfil basic personal and household needs such as food, shelter and energy, the chances of having leftover funds to bank may be bleak.

Therefore, to adequately serve the excluded, there is need to develop financial products that match the economic circumstances of specific users. Since excluded populations already grapple with poverty, unemployment and in general, survival and marginal economic activities, it is important to design tailored products such as savings, micro pension and insurance offered through digital and non-digital means.²⁶ For example, the mainly agrarian rural population in Nigeria can be served better by adapting products that mirror seasonal needs. Agriculture (comprising crop production, livestock, forestry and fishing), contributed 19.4 per cent to nominal GDP in Q2 2019.²⁷ Targeted financial inclusion initiatives in the agricultural sector could therefore help to include poor farmers

4.3.2 Cost of financial services

Another major barrier to accessing finance is cost. A total of 12 per cent of adults in Nigeria do not have financial access because it costs too much and another 7 per cent cite that it is too expensive to own a bank account.²⁸ Cost relates not just to the charges imposed by providers but also to the cost of transportation and other inconveniences associated with getting to a bank. The EFINA survey reveals that while bank charges do not immediately lead to a drop in

²²Ibid at 11 and 14.

²³Ibid at 42.

²⁴EFINA op cit note 6 at 38.

²⁵Ibid.

²⁶Ibid at 26.

²⁷Nigeria National Bureau of Statistics *Nigerian Gross Domestic Product Report (Q2 2019)* (2019) at 14 and 20.

²⁸EFINA op cit note 15 at 17.

exclusion figures, mandatory charges for transactions largely hinder usage of products and result in migration to alternative sources of finance.²⁹

Banks in Nigeria are shown to apply various charges to consumers ranging from third party transfers and current account maintenance fee to ATM charges.³⁰ Some banks still insist on a minimum balance of NGN1 000 (one thousand Nigerian naira) to be maintained on accounts and stipulate minimum account opening amounts. E-wallet users still earn no interest and third-party cash withdrawal is limited to NGN150 000 daily.³¹ As shown in the tables below, bank customers are foisted with a host of fees to access bank services. Though there has been a marked reduction from the charges in 2019 compared to the 2017 Guide to Bank Charges, rates are in some cases still prohibitive. The first table represented below shows the charges imposed on customers in 2017 while the second table shows a comparison between the charges in both 2017 and 2019.

Table 1: CBN Guide to bank charges 2017

Bank charges	Amount charged
Third party transfers	NGN50 per 1 mille (N1,000)
Current account maintenance fee	NGN1 per NGN1, 000
ATM charges after third withdrawal in other banks	NGN65
Monthly current and savings accounts charge	NGN50
Debit and credit card issuance and replacement	NGN1, 000 + negotiable interest charge
Mandatory SMS alerts (except customer agrees to indemnify bank for loss)	NGN50 per SMS
Digitized governments payment of salaries and dividends	NGN50 per beneficiary
Printing of cheque booklet	NGN50 per leaflet

(Sourced from CBN Guide to bank charges 2017).³²

²⁹EFInA *Review of Policies that May Adversely Impact Financial Inclusion in Nigeria: Key Findings* (2016) at 15.

³⁰Ibid at 7.

³¹Ibid.

³²Central Bank of Nigeria *Guide to Bank Charges* (2017) at 10–11. See also EFInA op cit note 6 at 7.

As shown in the table above, before the amendment of the 2019 CBN Guide to Bank Charges, the cost of banking was a source of public dissatisfaction requiring regulatory intervention. Even though these charges are beneficial to government agencies and financial services providers, poor customers could potentially withdraw funds from the formal financial sector to avoid costs.³³ In 2016, as revealed by the EFINA study, the stamp duty fee, current account maintenance fee, ATM withdrawal charge and withholding tax charged on fixed deposits impacted negatively on customer acquisition, retention and experience.³⁴

It is remarkable that in 2017 alone, four commercial banks, namely Zenith Bank Plc, Guaranty Trust Bank Plc, Access Bank Plc and United Bank for Africa Plc generated about NGN49 billion from maintenance charges on savings, current and term deposit accounts.³⁵ Access Bank earned NGN6.45 billion; Zenith earned NGN27.7 billion, GTBank got NGN9.4 billion and UBA charged NGN5.4 billion in addition to a NGN1 billion commission on turnover.³⁶ This does not come as a surprise as GTB, for instance, was charging clients NGN50 commission plus NGN2.50 VAT per funds transfer to other banks' accounts and NGN20 for same bank transfers.³⁷

The introduction of the CBN Guide to Bank Charges in 2017 caused a national outcry. The explanation by the Central Bank that these charges were necessary as cost recovery of banking services has also been criticised as writers argue that cost recovery needs to be holistic and leveraged across other banking services to lower customer costs.³⁸ This is true as banks traditionally make profits from intermediating funds of savers at an interest to borrowers while only offering a paltry interest rate to savers.

The argument that some of these costs such as ATM charges are necessary to migrate to digital banking does not take cognisance of the fact that banks, like other companies, need to spend on technological upgrades to stay abreast of competition and market conventions. This cost of going digital should not be fully imposed on clients. To support this view some

³³EFINA op cit note 29 at 30.

³⁴Ibid at 19 and 26.

³⁵Oyetunji Abioye, 'Four banks earned N49bn from maintenance charges in 2017' *The Punch* 1 April 2018, available at <https://punchng.com/four-banks-earned-n49bn-from-maintenance-charges-in-2017>, accessed 12 May 2019.

³⁶Ibid.

³⁷Guaranty Trust Bank *Instant Transfer FAQs*, available at <https://www.gtbank.com/personal-banking/services/e-banking/instant-transfer-faqs>, accessed on 11 September 2019.

³⁸Chris Enyinnaya 'Lapses in guide to bank charges' *The Guardian* 01 January 2019, available at <https://guardian.ng/opinion/lapses-in-guide-to-bank-charges/>, accessed on 11 September 2019.

writers complain that the practice of imposing ATM charges is akin to billing clients for self-service even though this reduces the strain on bank staff.³⁹

The fact that bank customer can make three withdrawals per month free of charge is not satisfactory as this only encourages bulk withdrawals and increases the propensity for cash dependency with no alignment to the cashless policy preached by the CBN. Even the argument that one can withdraw from one's own bank free of charge defeats the purpose of interoperability as bank clients should be able to withdraw from the most conveniently accessible ATM, irrespective of provider. Encouraging interoperability can also bring benefits to excluded populations that reside in communities served only by a few banks. Again, banks would be incentivised to deploy banking services to un-served and underserved areas in the interest of financial inclusion if the opportunity to maximise profit by serving a wide range of clientele exists.

The exhortation of the Nigerian Senate to banks to suspend ATM maintenance charges and increase ATM single withdrawals to NGN40 000 has not been heeded by some banks as many still peg withdrawals to as little as NGN10 000 to 15 000.⁴⁰ This low maximum means that customers quickly reach the withdrawal limit and fall prey to charges or struggle to stick to own bank despite the inconveniences. Very common in Nigerian banks, are long ATM queues to avoid ATM withdrawal charges in spite of the proximity of other banks, thereby demonstrating the burden on the populace.

The 2019 revised guidelines will hopefully bring some respite to consumers. With the introduction of the guide, some bank charges presented above were reduced and some others removed. The table below shows a comparison between the 2017 CBN guide to charges and the revised guidelines. Fewer charges are now imposed on clients in the 2019 charges as shown below. For instance, the NGN50 monthly charge on accounts are now charged at NGN50 per quarter in the 2019 guide and charges for third-party are now tiered, starting at NGN10 for transactions below NGN5 000 to NGN50 for charges above NGN50 000. ATM charges have equally been reduced to NGN35 in the 2019 guide from NGN65 in the 2017 guide after the third withdrawal in other banks in a month.

³⁹Enyinnaya op cit note 39

⁴⁰Oladeinde Olawoyin 'How bank charges hinder financial inclusion in Nigeria' *Premium Times* 7 May 2019, available at <https://www.premiumtimesng.com/business/financial-inclusion/328817-how-bank-charges-hinder-financial-inclusion-in-nigeria.html>, accessed on August 31 2019.

Table 2: 2019 Comparison between the 2017 and 2019 CBN Guides to Bank Charges

Bank charges	Amount charged in 2017	Amount charged in 2019
Third-party transfers	NGN50 per 1 mille (NGN1,000)	Below NGN5 000 -NGN10 NGN5 001 to NGN50 000 - NGN25 Above NGN50 000 -NGN50
Current account maintenance fee	NGN1 per NGN1, 000	Negotiable subject to a maximum of NGN1 per mille
ATM charges after third withdrawal in other banks	NGN65	NGN35
Monthly current and savings accounts charge	NGN50	-
Debit and credit card issuance and replacement	NGN1, 000 + negotiable interest charge	A once-only charge of NGN1 000 irrespective of card type whether regular or premium card
Debit and Credit card charge	-	Cards linked to current account- No charge Cards linked to savings accounts- maximum of NGN50 quarterly maintenance fee
Mandatory SMS alerts (except customer agrees to indemnify bank for loss)	NGN50 per SMS	Cost recovery (on customer-induced transactions) No charge (for bank-induced transactions)
Digitized government payment of salaries and dividends	NGN50 per beneficiary	-
Printing of cheque booklet	NGN50 per leaflet	NGN50 per leaflet
Reactivation and closure of Account	-	(savings, current, or domiciliary) No charge
Issuance of monthly statement of account on current and savings accounts (mandatory)	-	No charge

Statement of account (as requested by clients outside the mandatory statement)	-	Maximum of NGN 20 per page
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(Sourced from CBN Guide to Bank Charges 2017 and 2019)

4.3.3. Illiteracy

Lack of the needed level of literacy debars 10 per cent of the adult population from accessing finance.⁴¹ In general, the figures for educational levels in the country are still growing. About 29.0 per cent of respondents to the CBN baseline survey have no formal education and only 32.5 per cent have basic education, meaning that at least half of the adult population has no or only basic education with a 10 per cent gender gap in favour of men.⁴² In terms of financial skills, men with basic literacy and numeracy skills have a better probability of being banked and accessing formal finance than women.⁴³

In general, knowledge about financial services such as current and savings accounts, pension and insurance is low. From a digital finance perspective, it is observed that awareness of about and usage of mobile money is still low with only a slight growth since 2014.⁴⁴ Not knowing about financial services as well as access to these services is indicated as the greatest barrier to adopting mobile money in the country.⁴⁵ Even with a high national mobile penetration rate of 75 per cent for telephone subscribers, mobile money usage is still low.⁴⁶

Table 3: Knowledge and awareness of financial services

Knowledge and awareness	Percentage (%)
Have not heard of current account	36.6%
Have not heard of savings account	25.9%
Have no knowledge about pension	36.3%
Have no knowledge about insurance	81.9%
Have not heard of mobile money	70.7 %
Unable to pay and receive money through a mobile phone	82.2%

⁴¹EFinA op cit note 15 at 17.

⁴²Central Bank of Nigeria *Nigeria Financial Literacy Baseline Survey Report* (2015) at 22.

⁴³Olayinka David-West, Immanuel Ovemeso, Umukoro, Olawale Ajai et al *Digital Financial Services: State of the Market Report 2018* available at http://sustainabledfs.lbs.edu.ng/FI-Resources/SoMR_Full_Report_2018.pdf, accessed on 16 May 2019 at 102.

⁴⁴EFinA op cit note 6 at 32-35.

⁴⁵Ibid at 35.

⁴⁶Central Bank of Nigeria op cit note 1 at 72.

Have heard of interest rates	33.3%
Cannot calculate interest	68.5%

(Sourced from CBN financial literacy Baseline Survey 2015).⁴⁷

In relation to mobile money, many users happen to be educated urban dwellers while this remains largely out of the reach of the excluded class. It has been shown that about 82 per cent of the mobile money users in Nigeria are urban dwellers who already have accounts at deposit money banks and are educated beyond the secondary school level with 74 per cent of this population having a university and post-university degree.⁴⁸ This clearly indicates that much work is needed to bring knowledge of digital financial products to the excluded class as the lack of knowledge about these services is still a huge bar to usage. Accordingly, digital finance has not been able to achieve its full potential and only a few products specifically target excluded groups.⁴⁹

On a positive note, however, there are reassuring signs of the advancement of digital financial inclusion in Nigeria. For instance, though adoption of mobile money services is still low, usage level is transitioning from mainly airtime purchase in 2014 to remittances in 2016.⁵⁰ Again, increasing consumer confidence, trust and knowledge of utilising the digital channels is giving rise to a corresponding increase in transaction value and volume on different DFS channels including POS, mobile, ATM and Internet with ATM being the most frequently used channel.⁵¹

In relation to financial capability, participants of the baseline survey demonstrate an impressive level of competence in relation to budgeting. About 60 per cent of the adult population indicated that they have a personal or household budget.⁵² Short-term planning was also impressive, as about 90.9 per cent always or mostly keeps to budget.⁵³ Not having a budget for many was as a result of income pressures and not poor planning or over-spending.⁵⁴ Two-thirds of Nigerian adults have devised financial goals in the long-term and 92 per cent indicate plans to achieve these goals including retirement strategies (97.8 per cent) and strategies for dependent's future (83 per cent) though above half of the respondents

⁴⁷Central Bank of Nigeria op cit note 44 at 5-6.

⁴⁸Central Bank of Nigeria op cit note 1 at 55.

⁴⁹Ibid at 75.

⁵⁰EFinA op cit note 6 at 33-4.

⁵¹Central Bank of Nigeria op cit note 1 at 28-9.

⁵²CBN Baseline survey op cit note 42 at 34-5.

⁵³Ibid at 6.

⁵⁴ Ibid.

have concerns that these plans may not be insufficient.⁵⁵ Interestingly, most respondents were willing to obtain information or be trained on planning and budgeting in the long-term, insurance and management of risks as well as knowledge on financial products and services.⁵⁶

There is likewise an appreciable level of competence in numerical skills with many respondents providing correct answers in basic addition, subtraction, division and multiplication.⁵⁷

Table 4: Numerical skills of Nigerians

Numeric skills	Percentages (%)
Addition	72.9%
Subtraction	72.7%
Division	70.8%
Multiplication	69.8%

CBN Baseline survey 2015.⁵⁸

In terms of language skills, the baseline survey reveals varying levels of competence in the speaking and reading components of English and other local languages, emphasising the opportunity to incorporate local language to further financial education initiatives.⁵⁹ According to the Lagos Business School’s State of the Market Report, ones’ ability to communicate in other indigenous tongues is an additional indication of literacy.⁶⁰

Table 5: Language abilities

Languages	Speaking	Reading
English	48%	40.3%
Hausa	39.9%	17.9%
Yoruba	22.9%	13.6%
Igbo	17.3%	7.2%
Pidgin	18%	3.8%

Source CBN financial literacy Baseline survey.⁶¹

⁵⁵Ibid at 7.

⁵⁶Ibid at 6.

⁵⁷ Though these skills are crucial for simple financial services, arithmetic skills also need to be developed to help with calculating interests and budgeting. See Central Bank of Nigeria op cit note 42 at 6.

⁵⁸Ibid at 6.

⁵⁹Ibid at 21.

⁶⁰David-West, Olayinka, Olawale Ajai, Adedoyin Salami et al *Digital Financial Services: State of the Market Report* (2017) at 67, available at https://www.researchgate.net/publication/322315266_Digital_Financial_Services_in_Nigeria_State_of_the_Market_Report_2017, accessed on 23 September 2019

⁶¹ Central Bank of Nigeria op cit note 43 at 22.

Some skills, however, still need to be learned. It is observed that skills on keeping track on income are not as impressive as 53.4 per cent of adult Nigerians cannot tell or can only estimate the spending in the previous week and as much as 50.8 per cent cannot tell or estimate daily spending.⁶² Respondents did not also have a risk management strategy as 58 per cent have not devised plans for large unforeseen expenses, even though about half worried about the occurrence of these expenses.⁶³ Again, respondents were seen to approach mainly family and friends (61.1 per cent), religious leaders (9.5 per cent) and their children (9.4 per cent) for financial advice while only 4.3 per cent approach a finance provider or websites or have a personal tax or financial advisor.⁶⁴

The Lagos Business School State of the Market Report notes that gender bias around financial inclusion needs to be addressed and that ‘women will only need targeted financial literacy skills and the right financial products to bring them into the formal financial system’.⁶⁵ The CBN equally notes that to increase financial knowledge and capability across the socio-demographic populations in the country, there is need to address the areas of concern through financial education interventions.⁶⁶ One such initiative is the introduction of financial literacy to the school curriculum and the engagement of national youth corps members as peer educators to drive literacy.⁶⁷ The CBN has also introduced the national financial literacy framework 2015 which among other things is intended to equip Nigerians with the skills to choose from a growing and increasingly sophisticated and complex array of new financial services and reduce risk exposure.⁶⁸

These initiatives need to be diversified as methods that work for one segment of the population may not be fitting for another. For instance, the CBN Baseline survey finds that ‘upper middle income and wealthy consumers with formal education need information on advanced financial products such as insurance, the capital market and electronic banking and are better reached using print media, websites, radio, workplace programmes, seminars, in-branch flyers and audio-visual’.⁶⁹ According to the survey, rural farmer segments on the other hand, being less likely educated could find it more useful to obtain information on microfinance, savings and credit that is customised to agricultural risk and presented on

⁶²Ibid at 7.

⁶³ Ibid.

⁶⁴Ibid at 48

⁶⁵ Olayinka David-West et al op cite note 43 at 102.

⁶⁶ Central Bank of Nigeria op cit note 42 at 1.

⁶⁷ Central Bank of Nigeria op cit note 1 at 14.

⁶⁸Central Bank of Nigeria *National Financial Literacy Framework 2.1* (2015).

⁶⁹Ibid at 4.2.

media such as radio, TV, mobile phones.⁷⁰ In summary, in conceptualising initiatives for the excluded, peculiar needs of each class should serve as driving force.

4.3.4. Distance

Distance to banks affects 23 per cent of adult Nigerians according to the EFINA 2018 survey. Rural users unlike their urban counterparts grapple with non-proximity to banks and thus have to take long journeys to reach a financial access point. Finance providers tend to locate branches in urban centres where profits seem more likely. This is in spite of the fact that the rural community in Nigeria makes up for 63.3 per cent of the population and the practice misses the opportunity to mop up some funds circulating in informal unregulated sectors and under mattresses in communities unserved by banks.

The CBN does not insist on the location of bank branches. Thus, while many streets are brimming with the presence of banks in urban centres, rural dwellers that are most in need of financial inclusion initiatives have to cover significant distances to access a simple banking service. Rural financial exclusion currently stands at 78.5 per cent.⁷¹ To curb this, regulators in other jurisdictions are introducing policies that mandate a geographical distribution of bank branches as practiced in South Africa, the use of agent banking in Brazil and mobile money agents in Kenya. These practices are discussed in the next section.

A. Geographical spread of financial access points

A financial access point is defined as ‘a regulated access point where cash-in (including deposits) and cash-out transactions are performed and includes traditional bank branches, agents of regulated entities and automated teller machines (ATMs)’.⁷² Banking services are sparse in rural areas where informal financial services predominate.⁷³ To achieve financial inclusion it is important to have a strong network of financial access points comprising commercial bank branches, microfinance bank branches, ATMs, Point-of-Sales (POS) terminals, agent banking outlets and mobile money agents.⁷⁴

As represented by table 6 below, the number of financial access points across Nigeria is still low compared to the adult population size of about 96 million. Only 4 752 bank branches are in place to serve every 100 000 adults and 18 910 in the case of ATMs. The number of POS agent outlets to facilitate rural deployment is also insufficient.

⁷⁰Ibid.

⁷¹EFINA op cit note 15 at 47.

⁷²EFINA *Scoping Study on Super Agents* (2015) at 9 available at <https://www.efina.org.ng/wp-content/uploads/2018/12/EFINA-Super-Agents-Scoping-Study.pdf>, accessed 14 July 2020.

⁷³EFINA op cit note 6 at 23.

⁷⁴Central Bank of Nigeria *Financial Inclusion Newsletter* (2018) volume 3 issue 1 at 7 available at https://www.cbn.gov.ng/Out/2018/CCD/Financial%20Inclusion%20Newsletter_%20MARCH%202018_Volume%203%20Issue%201.pdf, accessed 13 July 2020.

Table 6: Distribution channels per 100 000 adults

Distribution channels	Distribution per 100,000 adults
Commercial banks	4,752
Automated Teller Machines	18, 910
Point of Sale Devices	217, 283
Agents	38, 416

Adapted from CBN 2018 Annual NFIS Implementation.⁷⁵

The distribution of commercial bank branches and mobile money agents across states also varies as represented in table 7 below.

Table 7: Geo-political zone distribution of commercial bank branches and mobile money agents

Geopolitical zones	Commercial bank branches per 100,000 adults	Mobile money agents per 100,000 adults
South East	0.6	4.7
South West	2.3	24
South South	0.9	5.18
North East	0.3	2.37
North West	0.6	6.39
North Central	0.9	9.7

Sourced from 2017 CBN Annual Report on NFIS implementation.⁷⁶

Available data also demonstrate more widespread distribution of financial services in the South and higher figures for financial exclusion in the North.

⁷⁵Central Bank of Nigeria 2018 *Annual Report National Financial Inclusion Strategy Implementation* (2019) at 77. Available at <https://www.cbn.gov.ng/Out/2019/CCD/Annual%20Report%202018%20Financial%20Inclusion.pdf>, accessed 08 July 2020.

⁷⁶Ibid at 65.

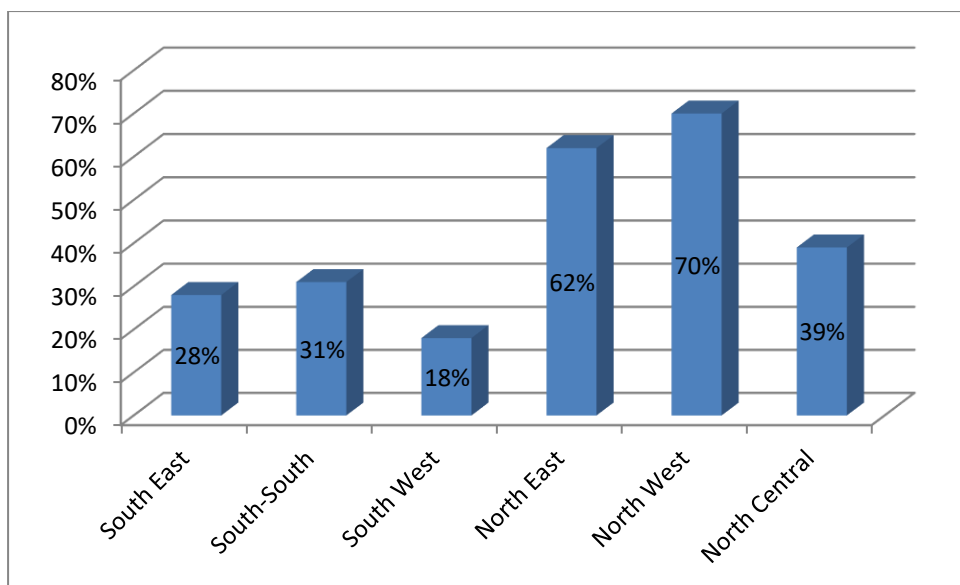


Figure 2: Financial exclusion by geo-political zones

(Adapted from the CBN National Financial Inclusion Strategy 2018).⁷⁷

As represented in the chart above, the North which has been ravaged in recent years by insurgency, leading to the massive closure of banks and invariably increasing the distance to the remaining ones, is lagging behind in terms of inclusion rates. In the North-West for instance, about 70 per cent of the populace do not have access to finance and in 2016 alone, financial exclusion increased by 12 per cent in three states including Kano, Jigawa and Kebbi.⁷⁸ In contrast, the South-West states have already achieved the 2012 NFIS target of reducing exclusion by 20 per cent by 2020.⁷⁹

With the launch of the 2018 NFIS, the CBN has asked banks to extend mini-branch networks to reach underserved customers but this is still fraught with concerns over the necessary capital outlay to comply with this mandate.⁸⁰ The CBN also conducted a geospatial mapping survey of the finance sector to provide a visual representation of active and inactive financial access points as an indication to determine suitable places to locate services.⁸¹ It is necessary to deploy finance particularly with the use of DFS to rural areas.⁸²

B. Agent banking

Agent banking is ‘the provision of financial services to customers by a third party (agent) on behalf of a licensed deposit-taking financial institution or mobile money operator

⁷⁷Central Bank of Nigeria, National Financial Inclusion Strategy 2018 at 12.

⁷⁸EFInA op cit note 6 at 19.

⁷⁹Ibid.

⁸⁰Central Bank of Nigeria op cit note 77 at 50.

⁸¹CBN NFIS Secretariat *NFIS Annual Report* (2019) at 48.

⁸²2017 Annual Report National Financial Inclusion Strategy Implementation at 17.

(principal)'.⁸³ The CBN has since 2013, held out agent banking as one panacea for financial exclusion in Nigeria. In 2013, the CBN initiated the Guidelines for the Regulation of Agent Banking and Agent Banking Relationships and subsequently the Regulatory Framework for Licensing Super Agents in Nigeria. Super agents are expected to facilitate the deployment of finance by banks and other regulated providers of finance to unserved and underserved communities.⁸⁴ The use of super agents is proposed by the CBN to drive agent recruitment on a large scale and scale-up these services in rural and peri-urban areas, manage liquidity and help resolve customer complaints timely.⁸⁵

Additionally, the CBN in conjunction with the bankers' committee launched the shared agent network expansion facility (SANEF) to drive nationwide agent banking growth and achieve the target of deploying 476 agents for every 100 000 adults.⁸⁶ Member banks have agreed to merge resources to rollout new financial access points nationwide and improve financial inclusion especially in the North with a targeted 40 million unserved low-income Nigerians.⁸⁷

Agent banking has the potential to aid liquidity management by facilitating cash-in-cash-out (CICO). Agents bring financial services closer to users and reduce the distance and cost of travelling to financial access points. Agent banking equally helps providers to build brand awareness, educate customers on finance, and improve users' confidence in the service.⁸⁸

In spite of these projected positive benefits, agent banking has been unable to scale up in Nigeria. The EFinA agent banking scoping study carried out in 2016 lists some reasons for the low level of agent banking activities to include inadequate capital, difficulty in managing liquidity, unattractive commissions and return on investment, insufficient knowledge of DFS, poor patronage, inadequate network connectivity leading to frequent transaction down times and complex sign-up documentation.⁸⁹

Agents are also impeded by stringent entry conditions. An applicant for an agent banking licence has to be a company doing legitimate business for at least 12 months and must furnish the CBN with information regarding the name and contact address of the

⁸³Central Bank of Nigeria Guidelines for the Regulation of Agent Banking and Agent Banking Relationships (2013) at 1.

⁸⁴EFinA *Scoping Study on Super Agents* op cit note 72 at 8.

⁸⁵Ibid at 20.

⁸⁶Central Bank of Nigeria NFIS 2018 at 24.

⁸⁷Olayinka David-West et al op cit note 44 at 36.

⁸⁸EFinA op cit note 84 at 6.

⁸⁹Ibid at 17.

company as well as documentary evidence of company registration and the qualifying criteria for engaging agents.⁹⁰ An eligible agent could be a limited liability company, sole proprietorship, partnership, cooperative society, public entity and trust.⁹¹ Faith-based, non-profits, educational institutions or bureau-de-change which by law are not allowed to make profit must first seek consent before offering agent banking services.⁹²

Like the agent banking requirements, super-agents applications to the CBN must be accompanied by documentary evidence such as board approval, certificate of incorporation, company profile and contact information, memorandum and articles of association, shareholding structure, return on allotment of shares, particulars of Directors, curriculum vitae of board and management of company and feasibility Report.⁹³ Applicants must also be registered by the CAC for at least 12 months and must have a minimum shareholders' fund of NGN50 million and 50 agents.⁹⁴ This magnitude of documentation requested by the CBN can deter prospective market entrants from applying for the license.

Another limiting factor for agent banking is the fact that the agent banking guidelines mandate financial institutions intending to employ the use of agents to carry out due diligence on agents and ensure compliance with the guidelines.⁹⁵ Both the agent banking guidelines and the super-agents' licensing framework place the responsibility for monitoring and supervising the activities of the agents in relation to stipulated thresholds on the principal.⁹⁶ In other words, financial institutions and super-agents are vicariously liable for the acts of agents connected with agent banking services. This could, however, be discouraging especially since by the provisions of the guidelines, financial institutions cannot demand exclusivity of agents. Notably, guideline 7 of the Agent Banking Guidelines 2013 permits agents to work for as many banks as possible to open the market to interoperability and competition.

Following the recent NFIS amendment, the CBN has decided to reverse the rule on agent exclusivity.⁹⁷ This move should incentivise the recruitment and training of agents and reduce the trend of free-riding where first-mover financial institutions that bear the burden of training agents, enjoy no advantages in the services of these agents but are rather compelled to share with other providers without financial compensation.

⁹⁰CBN *Guidelines on Agent Banking and Agent Banking Regulations 2* of 2013.

⁹¹Ibid at 4.1.

⁹²Ibid.

⁹³Central Bank of Nigeria *Regulatory Framework for Licensing Super-Agents in Nigeria* (2016) 1 and 3.

⁹⁴Ibid at 2.

⁹⁵Central Bank of Nigeria op cit note 84 at 3 and 4.

⁹⁶Ibid at 8 and 13. See also Central Bank of Nigeria op cit note 93 at 4.

⁹⁷Central Bank of Nigeria op cit note 77 at 59.

But agent exclusivity is not the global norm. Notably, universality of services can scarcely be achieved where individual agents serve single providers with the potential to duplicate agent services in some areas and cause slow entry into others. A better solution could be to have a central agent training and recruitment fund sponsored by all banks. Certified agents can thus set up shop in their local communities and provide any-to-any services across all financial institutions to clients. The Nigerian interbank settlement system and the bank verification number exercise are two of the successfully run centrally-funded collaborations by the bankers' committee and agent training can also fit into this model.

A further limiting factor to agent banking is the financial reward paid to agents. The agent banking guidelines stipulate the sharing formula for interchange fees between the NIBSS, issuer, acquirer, agent and super-agent. Cash-in transactions are deemed to be free to encourage client patronage but a minimum interchange fee of NGN50 to NGN100 is charged for inter-scheme cash-out transactions to incentivise agents.⁹⁸ Agents are observed to overcharge customers with attendant negative effects on adoption and usage of financial services.⁹⁹ This could be in a bid to compensate for low fees. Better pricing structures are however needed. The CBN is also committing to developing mechanisms to help agents in detecting and curbing fraud by engaging in agent training.¹⁰⁰

Also discouraging, is the fact that agents are restricted to some permissible activities. Guideline 6.2 of the mobile money guidelines permits activities such as accepting deposits and withdrawal of cash, bills payment, funds transfers, balance enquiry and printing of mini - statement, cash pay-out and loan repayment, request and collection of cash books or bank correspondence and payment of retirement benefits and salaries.¹⁰¹

Agents are prohibited from operating and carrying out transactions when there is communication failure with the financial institution or a receipt and acknowledgement of transaction cannot be generated.¹⁰² Agents are not also permitted to open accounts, charge customers fees, give guarantees, undertake cheque deposit and encashment or provide cash advances or offer any banking services not sanctioned by the financial institution.¹⁰³ The prohibition from opening accounts is particularly worrisome as this misses the opportunity to

⁹⁸CBN Regulatory Framework for Licensing Super-Agents in Nigeria (2016) op cit note 93 at 7.

⁹⁹EFinA *Scoping Study on Super Agents* op cit note 72 at 12.

¹⁰⁰Central Bank of Nigeria op cit note 77 at 59.

¹⁰¹Central Bank of Nigeria Guidelines on Mobile Money in Nigeria 2015 at 6.2.

¹⁰²Ibid at 6.3.

¹⁰³Ibid.

bring banking services to remote areas lacking access points. This also implies that agents only serve the already banked population without any room to accommodate the excluded.

The potential for agent banking to usher gains such as reducing distance, costs, inconvenience, and achieving simpler access to financial services which have been witnessed in other jurisdictions has therefore not been felt by the excluded population in Nigeria. As trust in agents is still a hurdle, it is important to imbibe practices that improve consumer confidence, particularly in rural areas. In this regard, agents can ‘create viable agent distribution channels by on-boarding trusted agents with a long-term view of the venture’.¹⁰⁴ Explaining financial offerings to users in their local language or demonstrating an understanding of their culture and perception towards finance holds high prospects for adoption and usage. This was a major driving factor for Mpesa in Kenya where it was observed that the use of local agents known to and residing among the community helped to build trust and drive usage.

Additionally, adequate agent distribution should also be strategically offered to areas in need of the service to avoid flooding the market with agents who are then unable to make a profit, to the disadvantage of customers.¹⁰⁵ The Shared Agent Network Expansion Facility (SANEF) initiated by the CBN, banks, mobile money operators and super-agents is expected to employ ‘a network of 500,000 agents to offer basic financial services including cash-in-cash-out, funds transfer, bill payments, airtime sales, bank verification number enrolment services and government payments’.¹⁰⁶ It is hoped that these efforts will culminate in deepening financial inclusion through a more effective agent banking model.

4.3.5 Cash preference

Cash remains the predominant means of payment in Nigeria.¹⁰⁷ Even though the use of POS and USSD for remittances and bill payment are helping to reduce cash dependency, cash still remains king as shown in chapter 5. This is especially so in the informal sector and in carrying out retail transactions, prompting the saying, ‘what are you doing in a Nigerian market without cash?’ Indeed, it would sound strange to ask a petty trader in a Nigerian market to accept digital payment for low-cost wares or non-capital goods such as food items.

¹⁰⁴EFInA *Scoping Study on Super Agents* op cit note 72 at 60.

¹⁰⁵EFInA *Scoping Study on Agent networks* op cit note 72 at 20.

¹⁰⁶Central Bank of Nigeria NFIS 2018 at 8.

¹⁰⁷CBN, *Payment Modes in Nigeria*, available at <https://www.cbn.gov.ng/Paymentsystem/Modes.asp>, accessed on 16 September 2019.

The CBN introduced the Cashless Policy in 2012 to drive down banking cost and effectively advance the nation's monetary policy by reducing the amount of cash circulating in the economy.¹⁰⁸ The cashless policy was also intended to curb corruption, reduce cash within the informal economy and to correct the high subsidy of cash transactions above NGN150 000 (which is incurred by 10 per cent of the population but subsidised for all).¹⁰⁹ For consumers, the initiative promises convenience, more low-cost and less risky options and for providers, increased access to capital, less leakage of funds and lower cash-handling costs.¹¹⁰ It was projected that the government would gain in this way from more revenue from taxes, improved financial inclusion and economic development.¹¹¹

A daily limit on cash withdrawal of NGN500 000 for individuals and N3 000 000 for companies was set by the bank irrespective of channel (counter, ATM and third-party cheques), subject to a cash handling charge borne by account holders.¹¹² The pilot launched in Lagos State from January 2012 and in July 2013 was extended to Rivers, Anambra, Abia, Kano and Ogun states as well as the Federal Capital Territory (FCT).¹¹³ The CBN, however, called for the suspension of the nationwide implementation of the policy in the other 30 states, 21 days after commencement.¹¹⁴

There is a need to develop micro-finance products that allow small transfers without imposing an off-putting charge on users. Additionally, trust needs to be built around digital payment platforms including POS devices and ATMs to discourage cash dependency. Building efficiencies around ICT infrastructure, driving digital literacy, reducing internet data pricing, and ensuring access to low-cost gadgets are also important. Finally, there should be clear information on financial products and redress mechanisms that offer consumers multiple channels to make complaints and obtain reliefs.

¹⁰⁸Central Bank of Nigeria *Cash-less Nigeria*, available at <https://www.cbn.gov.ng/cashless/>, accessed on 19 May 2019.

¹⁰⁹Ibid.

¹¹⁰Ibid.

¹¹¹Ibid.

¹¹²Ibid.

¹¹³Ibid.

¹¹⁴Oyetunji Abioye, CBN suspends cashless policy in 30 states' *The Punch* 22 April 2017, available at <https://punchng.com/cbn-suspends-cashless-policy-in-30-states/>, accessed on 26 June 2019. Notably, the CBN has decided to revive the policy effective from 1 April 2020 nationwide See Central Bank of Nigeria, Financial Inclusion Newsletter July 2019, Volume 4, Issue 2 at 1 available at https://www.cbn.gov.ng/Out/2019/CCD/Q2%202019%20Financial%20Inclusion%20Newsletter_Final_08.08.19.pdf, accessed 05 May 2020.

4.3.6. Identification documentation

The lack of identification documentation (ID) is another barrier. There are four main ID documents required by banks in Nigeria to open accounts, namely, the national identity number (NIN), permanent voter card, driver's licence and international passport. These documents are assigned by different government agencies that apply varying rules. The international passport is mostly sought by persons who intend to travel abroad while the driver's licence is mainly applied for by persons who either have cars or can drive. A fee for these documents is charged to applicants. Since this thesis focuses on financially excluded persons who are often at the bottom-of-the-pyramid, only the NIN and voter card will be considered in this section. This is because these documents can be obtained free of charge and are less prohibitive to obtain by the excluded compared to the other two above.

A. The National Identification Number (NIN)

In Nigeria, the body responsible for assigning the NIN is the National Identification Management Commission (NIMC). The NIMC is responsible for registering citizens and lawful residents on the national identity database.¹¹⁵ This agency was instituted by the Federal Government in 2007 to set up a comprehensive national identification database of citizens and permanent residents.

To assign the NIN, the authority collects information on demographic data, fingerprints and other biometrics, head-to-shoulder facial picture and digital signature and afterwards, issues a chip-readable general multipurpose card (GMPC).¹¹⁶ The eleven-digit identification number becomes for its owner, a foundational piece of identification to access various forms of services including obtaining a driver's licence, applying for visas, accessing the health insurance scheme and for bank transactions.¹¹⁷ The NIN is also usable for paying taxes, accessing pension and government welfare and dealing in land transactions.¹¹⁸

It is an offence to perform any of the above-listed acts without the NIN and offenders are liable to a fine of not less than NGN50 000 or imprisonment for not less than 6 months for an individual offender and a fine of not less than NGN1 000 000 charged on a body

¹¹⁵National Identification Management Commission (NIMC), section 5 Act No. 23 of 2007.

¹¹⁶National Identification Management Commission *Why Your NIN is Important*, available at <https://www.nimc.gov.ng/nin-importance/>, accessed on 22 August 2019.

¹¹⁷National Identification Management Commission (NIMC) Act Mandatory Use of Identification Number Regulation, 9.

¹¹⁸*Ibid.*

corporate with an additional NGN1000 000 charged to the chief executive officer, line manager or any other officer deemed to be guilty in the case of a corporate offender.¹¹⁹

However, with 805 enrolment centres in 556 Local Government Areas (LGAs) and the additional use of mobile vans, the commission has been able to register only about 30 million Nigerians.¹²⁰ One trend that could be responsible for this low number of registered users is the time and inconvenience it takes to obtain the card. Besides the fact that some people have to travel a significant distance to get to designated registration centres (since some local governments are only served by one registration centre), users also need to make repeat visits to finally obtain the permanent general multi-purpose card (GMPC).¹²¹

On the first visit, applicants are registered on the database and asked to return in about one to five working days after which the initial NIN slip is printed, while the e-ID card is issued after a month.¹²² These repeat visits put a strain on the excluded and could be a reason for abandonment of the process halfway by some applicants. Significantly, some LGAs have no enrolment centres and others are only served by one centre.¹²³ This means that applicants from several communities, towns and villages have to queue up to get registered. There is no doubt that many Nigerians will find it rather off-putting to travel significant distances to get registered.

On a positive note, however, the NIMC is harmonising and integrating the commission's data with that of other agencies across Nigeria including the biometric verification number data with already evident results.¹²⁴ In four years of the harmonisation

¹¹⁹Ibid at reg 13.

¹²⁰Emma Okonji 'NIMC registered 21.4 million Nigerians in five years' *THISDAYLIVE*, 13Sept. 2017, available at <https://www.thisdaylive.com/index.php/2017/09/13/nimc-registered-21-4-million-nigerians-in-five-years/>, accessed on 13 July 2020. See also *Vanguard*, '30 million Nigerians get National Identity Number, *Vanguard Newspaper* 4March, 2018, available at <https://www.vanguardngr.com/2018/03/30-million-nigerians-get-national-identity-number/>, accessed 4 September 2019.

¹²¹For information on the enrolment centres across the country, see NIMC *NIMC Enrolment Centres*, available at <https://www.nimc.gov.ng/nimc-enrolment-centres/>, accessed on 14 July 2020.

¹²²NIMC *How to Enrol (Adults)*, available at <https://www.nimc.gov.ng/how-to-enrol-adults/> accessed 15 August 2019. Applicants can however, use the paper slips given as temporary cards until the GMPCs are ready for collection. It is important to note that the timelines envisioned by the commission are at variance with the practice at the enrolment centres. Anecdotal evidence reveals that the invitation to the second visit can be extended for up to two weeks while the eventual collection of the GMPC may be delayed for more than one year.

¹²³NIMC op cit note 122.

¹²⁴National Identification Management Commission (NIMC) *About the NIN* <https://www.nimc.gov.ng/about-nin/>. See also National Identification Management Commission (NIMC) Act s 27 of 2007 and National Identification Management Commission (NIMC) Mandatory Use of Identification Number Regulation, reg 11 of 2015. Available at https://www.nimc.gov.ng/docs/MandatoryNIN_Gazetted.pdf, accessed on 20 May 2019.

exercise, the number of registered persons grew from 7 million in 2015 to 30 million presently.¹²⁵

B. Permanent Voter Card (PVC)

The Independent National Electoral Commission (INEC) is the body responsible for registering and issuing voter cards in Nigeria.¹²⁶ Applicants are first issued the temporary voter cards and afterwards, the permanent voter cards (PVC). This agency was established in 1999 to organise elections into various political offices in the country, register and monitor the activities of political parties, register persons qualified to vote, revise the register of voters and conduct voter and civic education.¹²⁷

The PVC is used to vote at elections and protects user information from unauthorised access by only allowing access via designated card readers.¹²⁸ The PVC is one of the identification documents requested by the banks to open an account and is now accessible to 84 004 084 adults registered in the commission's 119 973 polling units across local government areas in the country.¹²⁹

This impressive registration feat for an adult population the size of about 96 million can be attributed to some degree to political rallies by politicians to gain popularity among voters during national and local election seasons by lobbying for the establishment of polling units in local constituencies. As will be shown in the succeeding chapter 5, these units are often set up to ease the process of obtaining the card and by extension increase the chances of obtaining local votes. A universal coverage is, however, still desired to ensure that everyone has access to identification. Financial literacy will also help the excluded understand how to access financial services using this identification document.

4.3.7. Complexity of account opening

About 10 per cent of Nigerians note that the account opening procedures put in place by financial institutions are complex.¹³⁰ While some of these complexities flow from regulatory policies, others are imposed by financial services providers. In this section, the Know-your-

¹²⁵See *Vanguard* op cit note 120.

¹²⁶Independent National Electoral Commission *About INEC*, available at <https://www.inecnigeria.org/home/about-inec/>, accessed on 14 July 2020.

¹²⁷The Constitution of the Federal Republic of Nigeria 1999 (as amended) Third Schedule, s 15 part 1. See also National Electoral Act of 2010 s 2.

¹²⁸Independent National Electoral Commission *About INEC* op cit note 126.

¹²⁹INEC *INEC Nigeria*, available at <https://www.inecnigeria.org/>, accessed on 16 May 2019. See also INEC, Total Registered Voters and PVC Collection, available at <http://www.inec.gov.ng/>, accessed on 4 May 2019.

¹³⁰EFInA op cit note 15 at 17.

customer compliance and bank verification number registration imposed by the CBN as well as the insistence on proof of address by providers are examined.

A. Know-Your-Customer compliance

The CBN's insistence on know-your-customer compliance implemented by the 2013 KYC guidelines constitutes a significant regulatory barrier to accessing finance. Although these guidelines usher a tiered-accounting system, giving the opportunity for all without identity documents to open low- or medium-value accounts, the purpose of inclusion seems to wane by the restrictions imposed on these accounts.

The low-value account for instance is opened by providing basic information such as name, address gender, date and place of birth, passport and phone number without the need for additional verification.¹³¹ The medium-value account on the other hand, requires the same information provided for the low-value accounts but these have to be verified against records held by the National Identification Management Commission (NIMC), the Independent National Electoral Commission (INEC) and the Federal Road Safety Commission (FRCS) depending on the document.¹³² These accounts are strictly savings accounts and transactions outside Nigeria are prohibited.¹³³ Again, single deposits must be kept at NGN50 000 and NGN100 000 respectively for low and medium-value accounts while cumulative balance at all times cannot exceed NGN300 000 and NGN500 000 for each account.¹³⁴

Therefore, while low- and medium-value accounts are opened with limited documentation, the restrictions placed on thresholds in terms of value and volume of transactions as well as geographical limitations, diminish the quality of financial services offered to account holders. But obtaining a high-value account comes at a cost as prospective clients must present one of the four compulsory documents: voter card, driver's licences, international passport or the NIN and at times a utility bill in addition, to evidence address.¹³⁵

As noted above in section 4.3.6, these compulsory documents are in some cases, especially for the first two, outside the reach of the average financially excluded person. While the voter card and NIN are relatively simpler and less expensive to obtain, the distance

¹³¹Central Bank of Nigeria (CBN) Anti-Money Laundering/Counter Terrorism Financing Regulation 45 of 2013.
¹³²Ibid.

¹³³Central Bank of Nigeria *Know-Your-Customer Guidelines* 3.0 of 2013.

¹³⁴Central Bank of Nigeria *Review of Restrictions and Limits on Levels I and II of the Tiered Know-Your-Customer ("Kyc") Accounts* Fpr/Dir/Cir/Gen/06/002.

¹³⁵Ibid at 50, 72 & sch 2. See also Central Bank of Nigeria Anti Money Laundering and Counterfeiting of Terrorism Regulations sch 2 (2013). Besides the use of utility bills, this schedule additionally stipulates the use of tax assessment, letter from a person in authority and bank statements but utility bills remain the most requested documentation.

and inconvenience associated with getting these documents is daunting and could very well promote under-the-mattress savings among the excluded if left unaddressed.

B. Bank verification number

In 2014, the bank verification number (BVN) was initiated by the CBN as a precondition to opening and operating any account in Nigeria. Applicants can obtain a unique number within 24 hours of presenting particulars, fingerprints and facial image.¹³⁶ The BVN also serves as a security measure against unauthorised access, identity theft and exposure to fraud and helps to lessen waiting time at banks and standardise efficiency of banking operations.¹³⁷ The BVN has the potential to eliminate the practice of opening accounts in fictitious names across multiple banks as biometrics is used to verify user identity.

By tying all customer digital footprints across all banks to one number, the BVN will likely decrease financial risk in the banking sector. So far, the CBN database now houses about 42 414 911 as at 5 July 2020.¹³⁸ A limiting factor to this number is the non-availability to the unbanked.

C. Proof of address

Proof of address is usually requested by banks as a prerequisite for opening an account in Nigeria. Notably, the CBN recommends that in the interest of financial inclusion, documentation such as a letter or statement from a person in a position of authority (including solicitors, doctors, teachers and ministers of religion) can be substituted to prove the identity and address of prospective customers.¹³⁹ However, this has not been observed to be the practice. Banks are observed to obligate prospective clients to provide a utility bill from designated state water, power or waste management bodies such as the Water Corporation and the electricity distribution companies in different states to verify an address.

But demanding utility bills as evidence of address does not necessarily provide the best evidence of residence as there is no real proof or database to verify the claimed address against. Similarly, the insistence on the presentation of utility bills as proof of address does not consider persons who reside in regions without conventional street addressing systems

¹³⁶NIBSS *About* available at <https://nibss-plc.com.ng/bvn/>, accessed on 11 September 2019.

¹³⁷*Ibid.*

¹³⁸NIBSS op cit note 136

¹³⁹See Central Bank of Nigeria op cit note 135 at 2. Besides the use of utility bills, this schedule additionally stipulates the use of tax assessment, letter from a person in authority and bank statements but utility bills remain the most requested documentation.

such as clan-based localities which still rely on the family house addressing arrangements. Again, the specification of the utility receipts of specific corporations such as the water or waste management bodies ignores the fact that not every community is served by these entities. For instance, a number of villages in Nigeria are observed not to be connected to the national electricity grid and many communities still rely on water sources such as wells and streams.

New technologies such as the what3words and the snoocode are currently being deployed around the world and could be good substitutes for utility receipts as proof of address. What3words, for example, ‘helps locate unique addresses by dividing the world into 57 trillion 3m x 3m squares and assigning three random words’ such as ‘///readily.fencepost.lumpiness’ so that each square represents a definite address.¹⁴⁰ With offline capabilities and connection with navigation maps such as Google and Navmii, this application (app) provides a viable solution to prove user address and could additionally aid communities without conventional addresses to access health care, letter and parcel delivery and e-commerce at no cost to the user.¹⁴¹ The Nigerian postal service has already signed up for this service and hopefully banks will also follow suit.¹⁴²

Snoocode is a related free mobile app developed in Ghana and used in Ghana, Kenya, Gabon and Nepal that generates a six- to seven-digit alphanumeric code to identify a person’s location and serves as an alternative address.¹⁴³ It is hoped that Nigerian banks will adopt such trends in order to lessen the burden of accessing finance for the excluded.

4.4 Conclusion

The core barriers to financial inclusion in Nigeria were identified in this chapter. These include irregular income, unemployment, illiteracy, distance, cash preference, lack of identification documentation and the complexity of account opening. Exploring these barriers was necessary to shed some light on areas in need of regulatory consideration. Additionally, the discussion of these barriers serves as groundwork to the empirical study conducted by the author to understand how communities without bank presence cope with accessing finance.

¹⁴⁰What3words Limited *What is what3words?*, available at <https://what3words.com/about-us/>, accessed on 12 September 2019.

¹⁴¹Adeyemi Adepetun *What3words will boost Nigeria’s addressing system* *The Guardian* 16 August 2017, available at <https://guardian.ng/technology/what3words-will-boost-nigerias-addressing-system/>, accessed on 25 May 2019

¹⁴² Ibid.

¹⁴³SnooCODE *About SnooCODE*, available at <https://snoocode.com/about>, accessed on 2 September 2019.

The findings of the empirical research are reported in the next chapter, presenting lessons for financial inclusion in Nigeria.

CHAPTER FIVE

EMPIRICAL STUDY AND DATA ANALYSIS

5.1 Introduction

In the previous chapter, the barriers to accessing financial services were discussed, as well as the regulatory responses to some of these barriers. The delineation of these barriers formed the main basis for this chapter which examines how communities without bank presence cope with accessing finance. User perceptions around the use of digital financial services (DFS) as a solution to greater financial inclusion in Nigeria are also drawn out. Further discussed in the chapter, are the study findings and the implications for financial inclusion.

5.1.1 Outline of study

This study was carried out to provide clarity on some issues considered in the thesis. Generally, the suitability of laws and institutions responsible for regulating digital financial services (DFS) for the excluded class is explored by the author. The empirical study was therefore carried out specifically to garner consumer insights and determine the extent to which the CBN legal and policy initiatives have trickled down to local communities. The study was conducted in Ubulu-Uku, (a town in Delta State, Nigeria). The community bank in the community had closed shortly before the study was conducted and other banks were located outside the community. Ubulu-Uku is a small town in the Aniocha-South Local Government Area. It is located within a 35-minute drive from the capital city, Asaba, and about 15-30 minutes from neighbouring towns such as Agbor, Isele-Uku and Ogwashi-Uku. Government ministries are located in Ogwashi-Uku, a neighbouring town where some residents work.

There are nine primary and four government secondary schools and numerous private schools. The main occupations of Ubulu-Uku residents include farming, weaving of traditional fabrics, poultry farming, food processing and trading. In addition, there is a significant presence of small and medium-sized enterprises that are increasing the level of economic activities within the community. The formal sector is characterised mainly by teachers, health care professionals and lawyers while the informal sector is made up mainly of farmers, hair stylists, tailors, cloth weavers and traders. Some industries can also be found here, particularly in the spheres of oil, food and water processing.

The aim of drawing insights from this community was to determine the missing link between regulatory initiatives and legal instruments on digital financial inclusion and

widespread financial exclusion, especially in rural settings. The data collected was useful to obtain user perspectives on financial inclusion barriers and the coping strategies adopted by the community.

5.1.2 Aims and objectives

As noted in chapter 3, Nigeria has a high financial exclusion rate of 36.8 per cent and an even higher rural exclusion rate of 78.5 per cent according to the EFINA survey of 2018. The aim of the study was, therefore, to identify the barriers experienced by excluded communities in accessing formal finance in order to ascertain the needed policy adjustments for bringing the excluded into formal finance. The specific objectives of the study were to: (i) identify the barriers experienced by excluded communities in accessing formal finance; (ii) gather information about how communities unserved by financial services providers grapple with the challenges of accessing finance; (iii) ascertain the effect of DFS on rural communities; and (iv) identify policy adjustments needed for bringing the excluded into formal finance.

5.1.3 Method of identifying and selecting participants

The empirical method of research was used to gather data on the barriers to accessing finance and the attendant coping strategies employed by study participants. Data collection was done in October 2018 and research analysis from January through March 2019. The purposeful sampling method was used to select the participants to be interviewed to ensure that only participants who met the criteria of the study were covered. Essentially, participants had to be adults who utilised formal or informal finance services.

It was important to interview people who used these financial services in order to achieve the study objectives. Although insights such as the issue of inability to open an account by reason of landlord's refusal to release electricity bills to tenants were drawn from a participant who had no bank account, it was pertinent to draw insights from actual users of financial services. This improved understanding of the level of engagement with available financial institutions' services as well as the coping mechanisms adopted in the absence of these services. Again, because the thesis in general focuses on digital financial inclusion, it was appropriate to interview users to ascertain whether and how they were using digital finance, the barriers encountered and what policy adjustments were necessary. The higher number of the banked population therefore helped the author understand the perspectives of the participants on financial access barriers such as distance, cost and lack of identification documentation.

A total of 25 adult participants (12 females and 13 males) were interviewed from the formal and informal sectors to draw out representative, rich and divergent views within the community. The formal sector was represented by civil servants from the postal, health, judicial, educational and financial sectors while the informal sector participants included fashion designers, farmers, traders, business owners, a printer and a security guard. Some participants overlapped into both sectors. For example, there was a politician/farmer and a teacher/farmer. Some others were formerly employed in the formal sector but had joined the informal sector upon retirement. These include a retired civil servant-turned-trader and an accountant-turned-printer. Participants were aged between 22 and 70 (three were aged between 20 and 35, eleven were in their 40s, four in their 50s, six were in their 60s and one was aged 70). In terms of level of education, seven of the participants had university degrees, eight others had tertiary certificates and diplomas, seven had attained the ordinary school level certificate while the other three had primary six certificates.

Participants were interviewed face-to-face using the in-depth interviews (IdIs) method to draw out profound user insights and compensate for the small sample size. An interview guide comprising 24 open- and closed-ended questions was prepared in English but orally translated to the Igbo language for some participants. The open-ended questions were used mainly to elicit detailed answers on interviewees' experiences and perspectives while the close-ended ones covered user demographics and patterns of DFS media usage. The interview guide was designed with the assumption that financial inclusion is comprised of many dimensions that affect the adoption and usage of financial products. The following themes were thus drawn out: knowledge and awareness of financial services; financial services adoption and usage; barriers to accessing finance; coping strategies; consumer perception; and user recommendations.

Questions on user demographics covered preliminary enquiries detailing age, occupation and highest level of education attained. Adoption and usage of financial services was addressed by questions 1, 2, 3, 4, 5, 6, 7, 8 and 9. Issues around barriers to accessing finance were covered by questions 10 and 13 while the knowledge of financial services theme was answered by questions 12, 14, 15, 16, 17, 18 and 19. Consumer perception of digital financial services was laid out in questions 21 and 22 while user recommendations were covered by questions 11, 20, 23 and 24. Finally, the question on coping strategy was asked as a follow-up to question 22.

5.1.4 Key messages

- Low level of consumer trust in DFS and alternative finance providers such as the postal service and mobile network operators results in gravitation towards banks and indigenous savings systems.
- Efficient use of DFS is important to improve financial inclusion for rural consumers but regulators and providers have to build trust around digital financial services to ensure consumer patronage.

5.2 Background

The Central Bank of Nigeria (CBN) defines financial inclusion as,

enhancing access and usage of financial services at affordable costs to the vast majority of disadvantaged and vulnerable low income groups; it is the availability and accessibility of financial products and services to the entire population without discrimination.¹

Financial inclusion implies that an individual is served by a formal finance institution such as a bank, a formal other entity such as an insurance company or an informal financial institution such as savings clubs, moneylenders or local remittances using a transport service or recharge cards.²

The Enhancing Financial Innovation and Access (EFInA) defines financially excluded adults as persons who do not have or use deposit money banks or other formal or informal financial services; and that save at home and borrow and remit funds through family and friends.³ The biennial quantitative study carried out by EFInA in 2018 provided a nationally-representative data on the state of financial access in Nigeria from 27 470 participants.⁴ According to the study, financial exclusion results from barriers such as distance to a bank, financial literacy, irregular income, unemployment, cash preference, the complexity of account opening and a lack of proof of identity documentation.⁵ A robust discussion of these barriers was undertaken in chapter 4.

The following section builds on EFInA's quantitative data by providing a qualitative dimension, commentary and insights on the linkages between answers obtained from participants and the existing CBN DFS regulatory framework. The discourse on financial

¹Central Bank of Nigeria *CPD FAQs* at 3, available at <https://www.cbn.gov.ng/Devfin/CPD_FAQs.pdf>, at 3, accessed on 12 May 2019.

²Enhancing Financial Innovation and Access (EFInA), *Key Findings: EFInA Access to Financial Services in Nigeria (A2F) 2016 Survey* (2017) at 12, available at <https://www.efina.org.ng/wp-content/uploads/2019/03/Key-Findings-A2F-2016.pdf>, accessed 21 July 2020.

³Ibid.

⁴Enhancing Financial Innovation and Access in Nigeria (EFInA), *Key Findings: EFInA Access to Financial Services in Nigeria Survey* (2018) at 6 and 62, available at https://www.efina.org.ng/wp-content/uploads/2019/01/A2F-2018-Key-Findings-11_01_19.pdf, accessed on 20 June 2019.

⁵Ibid at 17.

inclusion is covered under six themes: knowledge about financial inclusion initiatives, financial services adoption and usage patterns, barriers to accessing finance, coping strategies, consumer perception of DFS and user recommendations.

5.3. Financial inclusion themes

5.3.1 Knowledge about financial inclusion initiatives

Awareness around specific DFS and financial inclusion initiatives of the CBN is low. Even though many users possess digital literacy skills to use some DFS channels such as mobile phones, POS and ATMs, none of the participants could identify a relevant CBN policy or initiative for financial inclusion. It is telling that even participants having jobs relating to finance such as the banker and the school bursar had no idea about these policies. The failure to correctly identify relevant DFS and financial inclusion initiatives of the CBN is evidence of the gap in communicating regulatory instruments to persons that are in most need of the information.

To add context to the lack of awareness by the participants in the finance sector, the school bursar has had no prior experience of working in a bank and the banker had only worked in a community bank. Although under the supervisory purview of the bank, community banks are not imposed with as many regulations as the deposit money banks. The banker was thus able to name some general CBN policies such as portfolio at risk, liquidity ratio and deposit liability but none relating to financial inclusion.

Remarkably, participants were highly informed about the required documentation for opening accounts. As provided by the CBN, a bank can request one of four basic documents to open a high-value account including the national identity card, permanent voter card, driver's licence and international passport. A total of 20 out of the 25 participants answered correctly, identifying at least one identification document requested by the banks to open bank accounts. The international passport and drivers' licence were, however, mentioned by only two participants. Furthermore, utility bills were recurrent answers for the question on identification documentation requested by banks. The electricity bill was particularly cited by 14 participants while waste management bills and house rent were cited by two others. Other requirements mentioned were passport photograph, guarantors, letters of identity and reference forms and letters.

5.3.2 Financial services adoption and usage patterns

The study found that participants utilised bank accounts and additionally used DFS delivery channels such as ATM, POS and Webpay. Almost all participants had bank accounts but two

out of the 25 did not. Of those who had accounts, participants had opened at least one account but some had as much as three. Only two participants had active accounts with the community bank in the town before it was shut down. The others used banks in other communities such as Keystone Bank in Ibusa; First Bank in Ogwashi-Uku and Union Bank in Isele-Uku. These banks were the only banks in these towns while Asaba, the state capital, had branches of almost all banks. Deposit and withdrawal were the most common activities while paying in cheques, requesting loans, making funds transfers, airtime top-up and online shopping were performed to a lesser degree.

The frequency of the usage of bank accounts varied from daily to monthly including branch use, ATM, POS, online shopping and mobile transfer. One participant put the number at 10 to 20 times a month due to her work as a building contractor which required frequent payment of workers. The least frequent usage was monthly, cited by four participants. Some participants made daily use of accounts for activities such as transfers and airtime top-up. Adoption of informal financial services such as rotation savings clubs is also widespread but is discussed as a coping strategy in section 5.3.4.

In relation to savings and borrowing culture with formal financial service providers, the financial behavior of participants revealed a penchant for savings and an aversion for credit. Participants indicated having a savings culture while only four participants had obtained a loan from a bank. To the question, ‘have you ever accessed a loan from bank?’, participants gave such answers as ‘no need’, ‘I do not have enough funds’, ‘high interest rates’, ‘no project’, ‘no guarantor or surety’ and ‘no collateral’. One participant, for instance, mentioned not being confident about getting a loan by reason of not being a civil servant while another indicated the lack of a surety to obtain a loan grant. A participant was also pessimistic about obtaining a bank loan for reason of being a non-indigene of the community. The issue of land ownership and lack of collateral were also recurrent.

Of the four participants who had obtained a bank loan, different reasons were indicated for obtaining the loans namely for paying school fees, starting a small business, as salary advance and for agricultural projects. Accordingly, the study recorded a low level of loan default. These financial behaviours aligned with the CBN 2015 baseline survey on financial inclusion which revealed that Nigerians are positively inclined to savings but averse to credit.⁶ This is also re-stated in the EFinA 2018 survey on financial inclusion in Nigeria which revealed that Nigerians are savings-savvy and credit-averse and that when taking

⁶Central Bank of Nigeria, *Nigeria Financial Literacy Baseline Survey Report* (2015) at 6.

credit, Nigerians favoured borrowing from family and friends over formal financial institutions such as banks.⁷

Only two participants indicated patronizing the community bank which was shut down shortly before the study. Since patronage by the selected participants was low, it was not possible to get a lot of answers from the customers about dealings with the bank. However, one recalled being declined a loan of NGN1 million for being beyond the lending capacity of the bank. The bank is currently shutdown and undergoing investigation by the Nigeria Deposit Insurance Corporation (NDIC) to determine assets and liabilities. As noted by a participant, the bank was unable to meet the Central Bank's mandatory capitalization requirement. In general however, bank customers in Nigeria are entitled to a repayment of deposits to a maximum of NGN500 000 as provided by the NDIC Act.

In relation to the adoption of DFS delivery channels, it was found that all participants owned and used a mobile phone. This does not come as a surprise as Nigeria has a significant mobile phone ownership rate of 68.9 per cent as shown in chapter 1. However, mobile money usage is still limited and mostly comprises electronic transfers. Only one participant indicated using the Webpay channel for online shopping. ATM was a more popular tool as this service was offered by banks while the adoption of point of sale (POS) machines was still growing in acceptance as some participants had trust and safety concerns. One complained about the proximity of a POS provider to a betting facility which he considers unsafe and expresses concerns that bad actors could siphon mobile money simply by being in possession of people's phones.

Significantly, the introduction of POS machines to the community was only recent and thus the question about its popularity was perhaps premature. Two POS providers were however active at the time of the study, one, a finance company and the other a sole proprietor. According to the first, about 20-30 customers came to the facility to withdraw funds daily. Typically, a person wishing to make a POS withdrawal would present a bank card to be debited in exchange for cash of equivalent value. In other words, a cash-back like system is employed and the service is paid for by way of commissions. This provider, charged NGN200 for every NGN10 000 withdrawn. The second utilises a graduated criteria starting at NGN200.00 for a withdrawal of NGN10 000, NGN250 for NGN20 000, NGN500 for NGN30 000 and NGN1 000 for all other amounts capped at a maximum of NGN60 000. The transaction capacity of this business was, however, set at NGN150 000 in line with the

⁷EFinA op cit note 4 at 27 and 28.

CBN limit on daily transactions. As explained by the second, an employee had to travel to the bank daily to withdraw NGN100 000 thousand while the other NGN50 000 was transferred from the proprietor's account.

In general, the capacity of the POS providers to improve financial inclusion is still fraught with low levels of trust and acceptance of residents of the community. But this is improving as the community has welcomed four new POS providers since the conclusion of the study, bringing the total number of providers to six. The present model of only offering a withdrawal service is limiting and does not utilise the opportunity to expand customer base. This service can however be optimized through offering deposit functions by harnessing the cash-in-cash-out (CICO) potential. Clients can for example deposit cash with the agents who will in turn transfer the funds to the account of the customer. The agent then has funds available to offer withdrawal services without the need to travel to get to the bank daily.

5.3.3 Barriers to accessing finance

Participants had varying answers about the barriers encountered in accessing finance including demand-side, supply-side and regulatory barriers explained below.

A. Demand-side barriers

There were a few demand-side barriers, including difficulty in remembering passwords for debit cards and lack of trust in using digital financial services. More of the barriers faced by participants were related to supply-side and regulatory barriers discussed below. The small number of demand-side barriers suggests participants' willingness to use financial services but trust in providers and some provider practices as well as regulatory restrictions create limitations. This is quite telling and implies that if regulators and service providers would fix the other barriers, financial inclusion efforts will likely increase.

B. Supply-side barriers

Participants indicated mostly supply-side barriers related to distance and cost of accessing financial services providers, network system downtimes, low quality financial products, false debits, unexplained charges, safety, distance to banks and attendant transport costs, illiquidity, and inconveniences such as delays and long queues.

Opinion was roughly split on whether cost was a barrier to accessing finance. While about half of the participants expressly stated that cost was not at all a barrier, others found cost to constitute a major barrier which 'reduced residents' financial power'. One reason for this discrepancy may be the fact that some residents were already accustomed to making visits to neighbouring communities such as Isele-Uku, Ogwashi-Uku and Asaba (the state

capital), where these banks are located for other purposes such as to get to work, school, market, petrol stations or government offices. Ogwashi-Uku for instance had government ministries where many residents worked. Hence, there is no additional cost in utilising banking services for such participants. Some participants have also learned to just cope with this reality having been repeating the process for many years. They had therefore become unperturbed by the transport costs.

From the data gathered, the cost of transport to banks in other communities ranged from NGN300 to NGN1000 as stated by different participants. This was also dependent on varying fares for different modes of transport such as bikes, cabs and buses. It is curious, therefore, that participants do not prefer to patronise POS providers. As shown above in 5.3.2, commissions start at NGN200 and peak at NGN1 000. It is also closer to residents and less inconvenient. One participant defended this stance, stating that it costs almost the same to patronise the banks or POS providers as a result of commissions and transport costs.

Their withdrawal charge is so much. It costs N100 to get to the closer one. Also, they charge N300 per transaction. At the end of the day, you spend the same N400 it would cost to go to Asaba. (P11)

The justification for the cost does not, however, explain the time spent in getting to the banks in other communities or the inconvenience or risk of carrying cash in transit, especially on public transport. Sensitisation is still needed to make this medium of financial deployment more efficient especially with the ongoing plans for the CBN cashless policy initiative. As noted earlier, trust in these entities is still low and needs proper nurturing. More on this is detailed in section 5.3.5 on consumer perception

C. Regulatory barriers

Regulatory barriers such as cumbersome KYC requirements including requests for utility bills, demand for collaterals, sureties and guarantors were on top of the list. Four out of the 25 participants were unable to mention any identification document. In general, participants were dissatisfied with the insistence on utility bills as evidence of address, citing peculiarities in the community that made compliance both harrowing and upsetting. One specifically asserted that the request for utility bills as well as questions around whether houses of clients were painted are ‘obsolete’ and ‘disgusting’, particularly as there was no proper addressing system in the community and houses were springing up indiscriminately to further disrupt any existing numbering system. Many compounds in the community were family-owned and members built new houses on available spaces in the compound as they became older or financially capable.

Another added that street addressing was sometimes done by the locals and utility receipts were usually addressed collectively to a clan and not the individual, making proof of address in such cases impossible. Yet another cited the issue of landlords withholding utility receipts as of practice. These examples underscore the weight that insistence on presenting utility bills as proof of evidence, places on communities. Incidentally, one of the participants who lamented the insistence of banks on the presentation of utility receipts happens to be one of the two participants without a bank account. It is also significant to note that this insistence hardly takes note of the condition of homeless persons that neither have a home address or proof of address in the form of utility bills.

In relation to owning the required identification for opening accounts, the community differed from the EFINA survey finding of 2018 which lists lack of identification documentation as a major barrier to access. One reason for this is that the community benefited from the mobile registration services of the National Identification Management Commission (NIMC) that deployed staff on several occasions to primary schools to register individuals for the National Identity Number (NIN). Some other participants registered in Ogwashi, a neighbouring community while others got registered in Asaba, the state capital and Port Harcourt.

The community had recorded an equally high record of owning the permanent voter card. It was remarked that some politicians, in a bid to win elections, ensured the deployment of registration centres to primary schools in the community to drive registration and voting. The timing according to a participant is also marked in four-year intervals to coincide with the country's election cycle. Two participants stated that registration centres were opened in primary schools in the community to facilitate card registration and collection and possibly to also win some goodwill for candidates at the election. The fact that residents benefitted from these registration drives therefore impacted positively on the number of persons who opened bank accounts with the voter card.

This widespread ownership of identification documentation does not however represent a complete picture of state of identification documentation around the country. Even in Ubulu-Uku, some participants recounted how they had to surmount long queues, stress and repeat visits ranging from two days to two years to collect cards. Again, as shown by data from the NIMC website, applicants for the national identity card must make three visits before card collection as described above in 4.3.6A. So far, about 28 million Nigerians

have been registered by the Commission.⁸ This is out of an adult population of about 96 million. Similarly, data from the Independent Electoral Commission (INEC) also shows that 84.2 million Nigerians have been registered and the issuance of the cards is underway.⁹

5.3.4 Coping strategies

There are two main coping strategies adopted by the community, these being travelling to banks located in other communities and the use of indigenous savings systems.

A. Use of banks in other communities

As stated earlier, most of the participants had at least one bank account in branches located in other communities- First Bank in Ogwashi, Union Bank in Isele-Uku, Keystone in Ibusa and the rest of the banks in Asaba, the State Capital. On the average, residents of the community spend about NGN300 to NGN1 000 to reach these banks in varying times depending on the availability of public transport, waiting time for taxis to fill up, traffic and weather conditions. The community bank is no longer an option as it has been shut down.

B. The use of indigenous savings systems

A core coping strategy adopted by the community is to resort to local savings clubs, known by different appellations such as *Otu, Uta, Nsusu, Ajo, Nkeri* (monthly contribution) and Safe. Contribution cycles vary from daily and weekly to monthly and duration of the entire scheme is yearly or seasonally depending on the agreement of the members. Weekly savings cycles are counted either in local four-day weeks using traditional market days or the conventional seven-day Sunday to Monday week. A participant recounted that she engaged in this system in the secondary school and funds were distributed in December to coincide with the Christmas festivities. Other seasonal savings mentioned by participants include Easter and New Year contributions. Contributions from these celebrations are sometimes used to buy food items such as bags of rice or baskets or crayfish for members.

These savings clubs could be large or small and membership is defined by close associations. Some are simple savings circles run by an association of friends and associates while others are more formal groups such as trader and teacher savings groups and others formed by civil servants in government ministries. Funds are collected at agreed intervals and

⁸ NIMC, *NIMC Enrols over 28m Nigerians and Legal Residents* (2019), available at <https://www.nimc.gov.ng/nimc-enrols-over-28m-nigerians-and-legal-residents/>, accessed on 25 August 2019.

⁹ Eniola Akinkuotu '84.2 million registered to vote in 2019, says INEC' *The Punch* September 7, 2018, available at <https://punchng.com/84-2-million-registered-to-vote-in-2019-says-inec/>, accessed on 25 August 2019.

distributed in turns to members. A ballot (*Ngbanye*) is sometimes ‘used to determine turns’. These funds may be collected during meetings or, in the case of *ajo*, recorded on a card by a fund manager (who is entitled to one tenth of the contribution at the end of the agreed interval). A participant notes that card records are a new invention as no records were used in the past because parties were absolutely trusting of one another.

Local savings clubs serve different financial purposes for residents including providing savings, loan facilities and credit history building. Many participants were observed to rely on local savings groups for obtaining loans rather than applying to conventional banks. According to one, ‘*esusu* is better than bank because of the ease of getting a loan’. This preference is attributed to fewer formalities associated with this channel of loan access. For instance, members of savings clubs simply have to apply for loans during periodic meetings without any need to furnish collateral. No documentation is provided by the applicant aside a recording by the secretary of the loaned amount and interest. Similarly, non-members only have to be introduced by an existing member to guarantee repayment of loaned sum plus interest.

Additionally, these clubs offer a return on investment as interests collected from borrowers throughout the savings period are added to the contribution of each member at the end of the term. Interests ranging from 3, 5 and 10 per cent interests are charged to borrowers depending on the club. There were remarks about the clubs accommodating people who do not already have savings within the funds. Loan requests receive a quick response and enabled members to meet urgent financial needs without making formal applications demanded by banks and cooperative societies.

To secure member funds, local administrators have sought ways to minimise risks. For instance, members can only borrow out of turn or before the agreed date to the tune of the maximum amount contributed and non-members must have existing and credible members as sureties. Sums requested by a non-member cannot be higher than that contributed by the club member serving as surety who is also responsible for making good any default by these non-members. In some cases, a request for two sureties is made to guarantee repayment. Some heads of clubs are also departing from the traditional practice of storing funds at home in ‘strong boxes’ to avoid incidents of theft ‘by lending out all funds contributed by members’. While conventional mechanisms of law enforcement such as securing an arrest, instituting a legal action in a court of law or issuing letters of demand are always open to all citizens, these were found to be scarcely utilised in the community.

The study however found a few sceptical participants who did not trust the *esusu* system for fear of other members defaulting as well as concerns around the capacity of these groups to lend out large sums like the deposit money banks. These participants preferred to only store and borrow funds from deposit money banks irrespective of the formality and the inconvenience of distance and travel.

5.3.5 Consumer perception of DFS

It was observed from the study that DFS adoption and usage, though growing, is still affected by a lack of trust. Remarkably, even the idea of deploying bank agents to offer DFS was met with dissatisfaction as some participants preferred to travel to physical branches to ensure they were dealing with the right officials. Some participants even preferred to employ the services of friends to complete bank transactions. Participants were divided concerning the capacity of alternative providers such as post office agents and mobile money operators (telecoms providers) to deploy financial services. Some specifically expressed concerns over the fact that these alternative entities were not connected to a bank and thus lacked the competence to offer financial services. Some perceptions about the MNOs and the post are detailed below.

A. Perceptions about Mobile Network Operators (MNOs)

Although there was an opportunity for mobile network operators to leverage on brand recognition in telecommunications services to offer financial services, many participants could not fathom out how these providers could diversify into finance. In fact, only four of the 25 participants indicated that MNOs could be trusted in offering financial services. It was asserted that MNOs are not established for the purpose of offering financial services and therefore can scarcely fit this role.

Some concerns about the capacity of these MNOs to handle customer funds flowed from fear over the risk of liquidation as some participants consider mobile network agents to be sole proprietors rather than agents of the telecommunications provider. In fact, some participants viewed these agents as mere ‘airtime sellers’. One participant described MNO agents as ‘human beings’ who cannot be individually trusted while another noted that the business of these mobile network agents ‘could fold at any time’. Some, while being a bit more accepting opined that these agents could not go beyond small-funds transfers and lack the capacity to offer more sophisticated services. Many participants are however shown to be open to giving MNOs a chance.

The main concerns about MNOs in the community indicates a gap which calls for regulators to engage in financial literacy programmes particularly with regard to digital financial services. For MNOs to break into many communities including *Ubulu-Uku*, providers need to be manifestly seen to have regulatory backing that funds will be safe to scale up fast.

B. Perceptions about the postal service

Quite like MNOs, the acceptance of the postal service as alternative finance providers was also low. Four participants indicated trust in the capacity of the post, another four were sceptical, and the rest expressed fear and even outright rejection of the idea. When asked about the possibility of re-introducing the Moneygram service which was popularized by the post in the past, some participants described this as a dated practice that could not fulfill modern day financial demands. One participant stated that banks and POS machines were sufficient and so there was no use to re-introduce the postal service as the Moneygram financial services, only worked in the past as a result of the lack of alternatives.

There were also notions that the postal service fulfilled financial needs in the past where locals were able to cash out money orders at the nearest local post offices but are now too obsolete to play the same role with present modernisation and digital sophistication of the financial system. Similarly, some asserted that even in the glory days of moneygram, efficiency was not optimal as it took as much as three months to deliver funds to clients. Again, there were concerns around the lack of affiliation with banks and the impossibility of dealing in large amounts of money.

One obvious fact is that the post is currently underutilised and could be expanded to offer more robust financial services. The postal service has been a catalyst for improving financial inclusion in countries such as Brazil, hence, there is a need to convince excluded persons of the value in deploying financial services using the extensive network of the postal service that stretches across the breadth of Nigeria. More insights on the potential for MNOs and the postal service as finance providers are elucidated in the following section.

C. Insights from Consumer Perceptions

This lack of confidence in these alternative providers could be as a result of the fact that the capacity of these providers is yet to be effectively tested in Nigeria. Although money orders were introduced by the postal service in the past, there was hardly any digital finance innovation to aid the system. Also, the postal service in some rural communities serves the

function of letter and parcel delivery without more. The study found that the post office in the community was as its most basic, with only two members of staff and large unused office spaces, some of which is being occupied by a primary school. Although the interviewed staff indicated that the office had the capacity to deliver letters around the world, many participants held contrary opinions. Similarly, MNOs in Nigeria are still known for delivering airtime and data and have never had the opportunity to diversify into mobile money except when serving as a network for banks to offer digital money or as super agents.

There is, however, every indication that if reintroduced effectively, patronage would increase with dedicated sensitisation and consumer awareness. Significantly, Mpesa, the main mobile payment system in Kenya, was tested in rural communities unserved by banks and contributed to the growth of financial inclusion to about 83 per cent of the population.¹⁰

There were, however, some positive responses for the operation of alternative providers. One of the participants, a telecommunications agent, is confident that alternative providers could efficiently offer financial services using her business as an example. There were also views that financial services such as savings and deposits could be offered by both MNOs and the postal service while post offices could additionally offer credit. Likewise, it was asserted that the postal service could work because phones have reduced the burden of sending letters and so posts could diversify into this new space. It was also mentioned that postal order worked in the past and could thus be re-engineered to meet present-day demands.

5.3.6 User recommendations

The response to the suggestion to bring a bank to the community was resoundingly positive and participants mostly suggested that this had the potential to ease the process of accessing finance. One participant stressed the need for investors to build a bank closer to residents. When asked what type of bank was fitting, many suggested a ‘better bank’ or ‘standard bank’ which was described to include banks such as First Bank, Access Bank and Guaranty Trust Bank.

This does not come as a surprise as a result of the massive industry recapitalisation exercise embarked upon by the CBN to strengthen the financial standing of all banks in Nigeria in the aftermath of the 2008 financial crisis that plagued the world. Since the introduction of this recapitalisation policy, no bank has experienced bankruptcy and the CBN had been quick to mandate banks with signs of weakness to merge with stronger banks or be

¹⁰Reuters ‘M-Pesa helps drive up Kenyans’ access to financial services – study, available at <https://www.reuters.com/article/kenya-banking/m-pesa-helps-drive-up-kenyans-access-to-financial-services-study-idUSL8N21L2HK>, accessed 25 August 2019.

taken over. Some examples include the UBA and Standard Bank merger and the Access Bank and Intercontinental Bank merger. Polaris Bank was also birthed in 2018 after purchasing the assets, and assuming liabilities, of the now defunct Skye Bank.¹¹ More recently in 2019, Diamond Bank has had to merge with Access Bank.

The suggestion by some participants that automated teller machines be installed in the community was telling as distance was a major barrier cited by participants and had to be addressed. According to one, investors could make closer financial services a reality by building out bank branches in the community as participants recounted enduring standing in long bank queues and safety concerns around travelling to withdraw funds. There were also suggestions for a reduction of interest rates and scaling back on the emphasis on collaterals. A seemingly trivial issue such as the employment of friendlier staff was suggested by one participant, indicating the value that clients attach to face-to-face and cordial services.

Regarding DFS use, participants recommended improved trust and the introduction of enabling regulation. There was a call for insurance to secure customer funds and the introduction of door-to-door banking to help disabled or disadvantaged persons. It was suggested that banks should not expect so much profit from rural communities but rather leverage on profits from bigger branches in urban areas. This could also help to scale urban/rural remittances as Nigerians hold a store for sending money to dependant relatives including retired parents residing in rural communities.

Furthermore, participants recommended addressing stringent bank requests such as insistence on land titles as collaterals for loan requests as many rural land owners have no titles or official certificates of occupancy besides the acknowledgement by the community about the ownership of individual and family lands. In noting that other neighbouring communities such as Agbor and Ogwashi-Uku had banks as a result of the presence of government agencies, ministries and a polytechnic (benefitting from a wide clientele comprising civil servants and students), one participant suggested that establishing such entities in Ubulu-Uku could increase economic activities and in turn attract banks. Finally, it was suggested that banks should seek collaborations with entities such as the post to widen reach and mitigate risks.

¹¹Polaris Bank, *Our History*, available at <https://www.polarisbanklimited.com/about-us/our-history/>, accessed on 26 July 2019.

5.4 Lessons for financial inclusion

From the foregoing, it is observed that in this community, as in many other communities, three key elements are evident. First, that conventional banks remain the most trusted financial services providers in rural communities, even though they are not easily accessible. This underscores the emphasis which excluded populations place on safeguarding funds. Secondly, cash is still king in many transactional settings while digital financial services are still playing catch-up. This can only be addressed when the experience of value from DFS offerings equals or exceeds what cash currently offers in terms of convenience, trust and safety. Thirdly, DFS offerings must be tailored to mirror the actual needs of the excluded. The importance of this last point lies in the fact that DFS policies which portray regulatory preferences rather than mirroring the needs of the excluded, even if adopted in early phases, may suffer lack of continued patronage, as is the case with account dormancy. These three elements are discussed below.

A. Conventional banks are trusted but not easily accessible.

Banks have generally demonstrated disinterest in building branches in rural communities leading to a high rural financial exclusion rate of 78.5 per cent as detailed in chapter 4. According to EFINA, informal finance is more dominant in urban centres while rural areas are still largely bereft of banking services.¹² Without a natural incentive to invest in rural communities, there is a need for regulations to drive this. These regulations have to target the peculiarities of the society and incentivise providers to expand branches to rural areas. Participants, for instance, suggested the need to make policies and design banking products that accommodate the needs of a predominantly agrarian society such as Ubulu-Uku. As noted by one participant, the community relies on seasonal products which require ‘entirely different financial policies’.

A participant noted that the community has grown from a village to a town and has the clout of businesses to support the commercial viability of a bank. Similarly, another noted that Ubulu-Uku had the advantage of a ‘booming environment that will patronize the banks’. Presumably, bringing a bank to this community would not only serve this town but will also serve surrounding communities.

If alternative providers are to become relevant in rural communities, the issue of trust must be addressed. Consumer protection mechanisms have to be adopted and relayed to residents. Awareness about channels of redress should also be a priority and speedy redress

¹²EFINA *Access to Financial Services in Nigeria (A2F) 2016 Survey: Key Findings* (2017) at 23.

channels for small claims made available to address issues such as wrong debits and data breaches. These channels should be available at multiple levels starting from channels put in place by specific providers to industry and regulatory level channels to assure fairness, accountability and transparency. Users should be afforded the opportunity to access these services with the usual medium of communication employed by providers and toll-free lines should be made available to report fraud or follow up on reports. Overall, consumers need to be made aware of financial rights and duties. More detailed recommendations are provided in chapter 7.

B. Cash is still king

Cash is still observed to be a key factor among participants and this is evident in the reluctance of some participants to go digital especially where the channels of digitisation are offered by non-banks whose success in core areas is less than perfect. Digital transactions are still perceived to be associated with fraud, as mentioned by one participant who preferred physical contact for financial transactions. Likewise, another expressed dissatisfaction for DFS channels including POS and mobile phone transfers. This aversion for DFS by the participant stems from an unpleasant encounter his wife had had with petty thieves who stole her phone and succeeded in transferring some of her money. The matter had been reported and was under investigation but, according to him, the experience had deterred the couple and both want nothing to do with digital money in future.

Significantly, POS agents in the community, still grapple with residents' acceptance. Improving trust around the safety of DFS is therefore crucial and has the potential to improve adoption and reduce the number of trips residents make to neighboring communities to access financial services. Notably, some participants argued that the acceptance of DFS is dependent on the sort of service offered. For example, handiworks that attract small pay are viewed as incompatible with DFS. Even where participants agree to the use of digital services, there is an observed insistence about getting a credit notification from the bank to confirm the authenticity of a transaction. Some participants stated that cash is important and it will take good practice and patience for DFS to ever replace cash.

Furthermore, acceptance of DFS could be aided by ensuring that service providers are willing to accept DFS. For instance, one participant, a dealer in chicken eggs, though prepared to use DFS for her business must comply with the payment mode prescribed by her egg supplier who insists on payment at a bank in another community and the presentation of bank deposit slips before orders are fulfilled.

C. Tailored regulatory policies are essential

There is still a mismatch between the financial inclusion policies of the Central Bank and the financial behaviour of rural residents. One area of concern is the issue of informal financial services. As revealed by this study, indigenous savings groups are quite popular even though these are regarded by the CBN as unsafe and unregulated. This misses out the opportunity to mirror the preferences of local populations by imposing conventional banking services that are foreign, inconvenient or unacceptable to users. In rural areas, informal services have been observed to be more convenient, flexible, simple, easier to engage with and better able to meet specific needs.¹³ Informal finance makes up for 85 per cent of rural savings systems including money lenders, daily collectors, traders and indigenous credit institutions (*esusu*) with a high rate of loan repayment and low default.¹⁴ Additionally, informal systems such as *esusu* and *ajo* have stood the test of time and provided an longstanding source of capital, loan, savings facility and credit history building opportunity for countless persons, particularly in the rural areas.

Though not considered to be illegal, the CBN still characterises informal savings systems as ‘unregulated, unsecured, unorganised, small, short term, and mostly for activities in the rural areas, households or small entrepreneurial ventures without the capacity to take commercial scale’.¹⁵ The CBN also maintains that large informal markets could create incomplete markets, undermine monetary policy transmission and miss the anticipated objective of the regulators.¹⁶ However, the CBN needs to go beyond these classifications to bring some rules and clarity to these savings systems and improve the safety of funds by outlawing unconscionable commissions, registering savings collectors and bringing to justice, persons who embezzle local funds. This is currently the case in Ghana where the Bank of Ghana now registers *susu* collectors to make funds safer and minimise the incidence of collectors absconding with members’ funds.¹⁷

Furthermore, ATMs are not deployed in the community. Evidently, the 2020 Guidelines on Operations of Electronic Payment Channels in Nigeria prohibit banks from

¹³Hennie Bester, Christine Hougaard, Jeremy Gray et al *Homefield Advantage’: Learning from the Popularity of Local Financial Services Providers* (2016) at 10-11, available at https://cenfri.org/wp-content/uploads/2017/02/MAP-global-insight-note-3_Homefield-advantage_Cenfri-FinMark-Trust-UNCDF_2016.pdf, accessed 14 November 2018 9-12.

¹⁴Adekoge Adeleke *The Informal Financial Markets in Nigeria*, (2014) at 2 and 9, available at <https://www.cbn.gov.ng/Out/2016/MPD/UNDERSTANDING%20MONETARY%20POLICY%20SERIES%20NO%2043.pdf>, accessed on 13 December 2018.

¹⁵Ibid at 2.

¹⁶Ibid at 17.

¹⁷ Financial Inclusion Insights *Ghana*, available at <http://finclusion.org/country/africa/ghana.html#overview>, accessed 10 July 2019.

installing standalone ATMs.¹⁸ However, this misses the opportunity to make use of existing structures such as the post offices to bring finance access points closer to users. This could also address issues related to distance, cost of banking services and transportation and inconveniences of travelling to other communities to access finance.

CBN has the responsibility of addressing the policies according to the specific needs of the excluded. Authors have noted that financial education could be easily included in school curricular for school-age users and provided on mainstream media and technology for more educated persons.¹⁹ Again, it has been recommended that face-to-face interventions such as simple classroom-based group training could be used to reach less literate persons and the use of radio programmes in local languages focused on basic financial terms such as budgeting, planning, savings and credit could also be explored.²⁰ Most importantly, the CBN needs to ensure that financial products deployed by providers adequately mirror the financial access needs of the users and reflect the socio-economic context of communities where these services are deployed.

5.5 Summary of findings

The study found varying levels of adoption of digital financial services among participants. Usage patterns were also found to be different. All participants had mobile phones but only few used these to access finance. POS and ATM use were quite popular unlike internet banking that was only used by one participant. It was also observed that there was a low level of awareness about CBN financial inclusion policies as no participant could name or describe any regulatory policy on financial inclusion. Also, only one participant had heard of a low-value account. Cost, distance and network failure were among the major barriers cited by participants to accessing finance from conventional banks.

Accordingly, residents coped with the dearth of banks in the community by travelling an average of 15-35 minutes to one hour to access banking services in neighbouring communities and the State Capital in Asaba. But the duration of this journey could be longer and is dependent on traffic, waiting time and weather conditions. Another predominant coping strategy adopted by the community was the use of indigenous savings clubs that offer savings and loan facilities to members. Of all the participants interviewed, two had had the unpleasant personal experience of being defrauded by the executives of these clubs but some

¹⁸Guidelines on Operations of Electronic Payment Channels in Nigeria 1.2 of 2020.

¹⁹Adekoge Adeleke op cit note 14 at 1.3.

²⁰Ibid.

of the funds had been recovered. Safety is now being improved in these clubs by lending out all available funds and insisting on credible sureties.

The consumer perception of alternative providers and bank agents is low as many preferred to deal with banks directly in spite of the inconvenience. However, patronage of alternative providers is growing. Ubulu-Uku residents are beginning to accept finance deployed with the use of POS devices around the community. Though scepticism was expressed with regard to financial services offered by MNOs and the postal service, some participants were willing to try out these entities, starting with small funds transfers. Users had proffered a number of recommendations to aid access to finance including building out rural bank branches, investing in related infrastructure and initiating policies that ensure safety of funds.

The issue of trust cannot be over emphasized as users have shown that trust is a primary criterion for using a particular service providers or products on the trust reposed. It is therefore important to address the issue of trust profoundly. Two related concerns are privacy and surveillance, particularly with digital financial services where access to the data of subjects is vital to the proper rendition of the services. For instance, mobile money services require information such as name, card details and pin or passwords. Without the necessary safeguards in relation with privacy, users could become victims of privacy intrusions. Clients also can unfairly come under surveillance without adherence to the necessary data protection standards. These two issues need therefore to be addressed to advance trust in financial service providers using DFS.

5.6 Conclusion

This chapter provided an outline of the empirical study and detailed the aim, objectives and purpose of this study. The method employed in identifying participants was detailed. The study analysis considered six themes, knowledge about financial inclusion initiatives; financial services adoption and usage patterns; barriers to accessing finance; coping strategies; consumer perception of DFS; and user recommendations. Lessons for financial inclusion were discussed in relation to the need for improved trust in DFS, cash as king and the value of tailored regulatory initiatives. This chapter was concluded with a summary of the study findings.

In the next chapter an exploratory approach is adopted to consider the emerging technology around DFS. The eight specific technologies explored include distributed ledger technology, data analytics, artificial intelligence, robo-advising, application programme interface, peer-to-peer lending, cryptocurrency, and digital identity. The purpose of the next

chapter is to understand how emerging technology can facilitate access to finance for the financially excluded as well as to point out any detriments for consumers that could emanate from deploying these trends.

CHAPTER SIX

EMERGING TECHNOLOGY AND IMPLICATIONS FOR FINANCIAL INCLUSION

6.1 Introduction

In chapter five, details are given of the analysis of the empirical study carried out in Ubulu-Uku, a community without a bank. Among other factors the study found that trust was imperative in the choice of financial services providers. While some participants were already using alternative providers such as mobile network providers (MNOs) and the postal service, others still expressed scepticism. MNOs, for instance, were perceived by some participants as sole proprietors that could liquidate easily without supervisory oversight from a head office. Post offices were also not trusted by some in respect of the primary services of letter and parcel delivery, let alone the provision of finance.

Remarkably, the idea of having bank agents deliver doorstep banking was equally not welcomed by some participants who preferred to visit a bank branch. Even community banks were viewed by some as unit banks without supervision beyond the branch level and so with no guarantee of funds safety. The deposit money banks received the highest level of acceptance by participants as a result of factors such as the supervisory oversight of both the head offices and the Central Bank, the promise of deposit insurance guaranteed by the Nigerian Deposit Insurance Corporation (NDIC) and the security of deposits in general. Saving within an indigenous savings system was another popular option utilised by participants.

The present chapter examines some emerging technologies including distributed ledger technology, data analytics, robo-advising, application programme interface, peer-to-peer lending, artificial intelligence, cryptocurrency, and digital identity. The chapter is opened with a description of the background to the state of the financial technology (fintech) industry in Nigeria. Thereafter, the selected technologies are discussed with a focus on the Nigerian context. The intention is to establish whether these technologies offer solutions that ease the burden of financial exclusion in Nigeria. In reviewing each of these trends, the description, benefits, use cases, potential for financial inclusion as well as any likely detriment to consumers is highlighted.

6.2 The financial technology sector in Nigeria: A brief overview

Financial technology (fintech) is ‘the application of technology to financial services in a manner that drives the transformation or disruption of the traditional processes in the financial system’.¹ Emerging financial technology is helping financial institutions address the gaps in the financial market particularly in obtaining rich customer information and determining the suitability of products for different customer segments. Artificial intelligence, distributed ledgers, application programming interface (API) and digital identification are some fintech solutions currently being deployed in financial markets around the world. Big data analytics is helping companies to compute credit scores from credit history for loan applications, while peer-to-peer lending provided by some fintechs and social media platforms enable simplified consumer peer lending and gifting.

In general, the fintech industry in Nigeria is accelerating. Innovation hubs have been set up by both private companies and the government at federal and state levels. Yaba in Lagos is emerging as a community for tech start-ups, including Paga, Konga, Jumia and Andela, all driven by the efforts and investments of private investors and the Lagos State government.² CcHUB, for example, runs ‘a lab and pre-incubation space for technologists, social entrepreneurs, government, technology companies, impact investors and hackers to catalyse creative social technology ventures and co-create new solutions to social problems in Nigeria’.³ The government of Lagos State through the ministries of education and science and technology has also launched a computer programming initiative named Code, to develop a coding curriculum for primary, secondary and tertiary institutions.⁴ Global brands such as IBM, Microsoft and Barclays Bank have equally invested in improving software development and computing skills in Nigeria.⁵

More specifically, financial technology solutions are increasingly evident in the Nigerian financial market with increased collaborations between banks and technology companies. Access Bank and a fintech company launched PayWithCapture, a mobile payment app that facilitates payment transfers across all banks while Zenith Bank is partnering with Reach fintech to develop a group savings tool.⁶ Credpal, Direct Pay Online,

¹Bangko Sentral NG Philipinas *Financial inclusion in the Philippines* (2018) 8 at 5 available at http://www.bsp.gov.ph/downloads/Publications/2018/FIP_1Sem2018.pdf, accessed 15 July 2020.

²KPMG *FinTech in Nigeria: Understanding the Value Proposition* (2016) at 7 available at <https://assets.kpmg/content/dam/kpmg/ke/pdf/idas/thought-leaderships/ng-fintech-in-nigeria-understanding-the-value-proposition.pdf>, accessed 15 July 2020.

³Co-creation Hub *About Us*, available at <https://cchubnigeria.com/about/>, accessed on 27 September 2019.

⁴KPMG opcit note 2 at 7.

⁵Ibid at 11.

⁶Ibid at 12.

onefi and social lender by sterling bank utilise artificial intelligence to personalise services, assess risk and determine credit score.⁷ Similarly, Branch, a mobile financial services provider, offers lending, services using machine learning algorithms to analyse smartphone data (call logs and SMS history), verify customer identity and determine loan eligibility and credit scoring without requiring paperwork or guarantors from clients lacking credit history.⁸ Likewise, PiggyVest, an investment platform uses data from an expense tracker to offer advisory investment services to users.⁹

Some platforms even accept cryptocurrency payment including Gsm2me which enables mobile purchases, Minku, an online boutique and accessories company and Shopnow, an e-commerce platform that facilitates importation.¹⁰ There are also cryptocurrency exchanges such as BitPesa and NairaEx and blockchain-based companies such as Stella and Oradian that seek to offer instant payment services to the financially excluded.¹¹ Chat boxes such as Leo adopted by the United Bank of Africa Group, enable account opening, funds transfer and utilities settlement.¹²

The CBN financial inclusion drive, the increasing rate of smartphone penetration, growing e-commerce sphere, government intervention in establishing innovation hubs, and the regulatory efforts in digital payment services are projected to be fintech growth and investment drivers.¹³ Nigeria's mobile subscription figures stand at 205,252,058 for a population size of about 200 million with a teledensity of 107.53 and Internet subscription rate of 151,063,413 for mobile GSM.¹⁴ Total inflow from Nigerians living abroad is \$2.6

⁷EFInA, 'Overview and lessons learnt from global fintech landscape and Nigerian fintech landscape' *EFInA FinTech Report* December 2018 at 18, available at <https://www.efina.org.ng/wp-content/uploads/2019/04/EFInA-FinTech-Report-Global-and-Nigeria-Landscape.pdf>, accessed on 19 December 2019.

⁸Deloitte *Fintech in Nigeria and the Women who Lead*' (2019) at 9, available at <https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/financial-services/ng-fintech-in-Nigeria-and-the-women-who-lead-29032019.pdf>, accessed on 19 December 2019.

⁹Ibid at 11.

¹⁰Buy Bitcoin worldwide *Popular Exchanges to Buy Bitcoin in Nigeria* available at <https://www.buybitcoinworldwide.com/nigeria/>, accessed 15 July 2020

¹¹KPMG op cit note 2 at 29.

¹²United Bank of Africa *Hi I Am Leo*, available at <https://www.ubagroup.com/nigeria/personal-banking/digital-banking/chat-with-leo/>, accessed on 02 December 2019.

¹³EFInA op cit note 7 at 14.

¹⁴NCC 'Industry Statistics, available at <https://www.ncc.gov.ng/stakeholder/statistics-reports/industry-overview#view-graphs-tables-5>, on accessed 07 December 2020.

billion according to the CBN.¹⁵ This equally improves activity and money circulation within the financial sector.

The following section explores some of the outlined emerging technology as well as possible implications for financial inclusion in Nigeria. A discussion on this topic is important as these technologies are growing in prominence without the needed regulatory rules to provide clarity to providers and protection for users. Detailing the potential detriments will therefore serve as a pointer for future regulatory spaces.

6.3 Emerging trends in technology and potential for improving Financial Inclusion

In this section, emerging trends that are predicted to impact on the finance sector are explored. Distributed ledger technology, data analytics, robo-advising, application programme interface, peer-to-peer lending, artificial intelligence, cryptocurrency, and digital identity are selected. Although the benefits of these technologies are increasingly being promoted by technology companies and are also already in use around the world including in Nigeria, research on the specific benefits for financial inclusion is still sparse. Unlike the preceding section where the digital financial services clime in Nigeria is discussed, a more general overview is given in this present section. Where relevant, the situation in Nigeria is detailed. Potential spaces for deployment as well as likely detriment are indicated.

Notably, some of these technologies bear some similarities. For example, even though distributed ledger technology (DLT) and cryptocurrencies are discussed separately, it is notable that cryptocurrencies are built on blockchains, which is a type of DLT. Likewise artificial intelligence, although discussed separately in relation to loan grants, is an underlying technology for robo-advisors, data analytics, big data and peer-to-peer lending. Where necessary, these similarities are pointed out below in the course of the discussion.

6.3.1 Distributed Ledger Technology (DLT)

Distributed Ledger Technology (DLT) is defined as ‘synchronised digital databases that are replicated across a network of computers’.¹⁶ Using a decentralised ledger, DLT is able to continuously keep details of data at multiple locations.¹⁷ DLT also keeps these data

¹⁵Central Bank of Nigeria, ‘CBN Clarifies diaspora remittances, says official: Inflows is \$2.6bn, not \$26bn’ *Thisday* 13 October 2019, available at <https://www.thisdaylive.com/index.php/2019/10/13/cbn-clarifies-diaspora-remittances-says-official-inflows-is-2-6bn-not-26bn/>, accessed on 5 December 2019.

¹⁶Jim Woodsome & Vijaya Ramachandran *Fixing AML; Can New Technology Help Address the De-risking Dilemma?* (2018) at 46.

¹⁷Bangko Sentral Ng Philipinas op cit note 1 at 5.

permanently in connected blocks of chains that are safe from tampering using sophisticated cryptographic signatures.¹⁸ These blockchains are subsets of a ledger replicated for access by all persons concerned, who are also able to see all alterations made.¹⁹ The DLT manages data securely on a peer-to-peer (P2P) network of computers applying synchronised data sharing, consensus-based governance and cryptography and could be open or closed, permissionless or permissioned.²⁰

One common example of the DLT is the blockchain which could be public, private or hybrid. Public blockchains are open, decentralised, publicly visible and consensus-led with no single owner while private or permissioned ones have a single authority that controls access to read from and write to the blockchain.²¹ The hybrid or consortium model is partly decentralised, open to a privileged group and controlled by a consensus process using a set of rules agreed upon by all parties.²²

Blockchains operate decentralised peer-to-peer (P2P) networks meaning that connected computers are deemed equal and work concurrently as client and server to each other in contrast to most central computing networks that store and distribute information to other client networks.²³ Blockchains are referred to as a single point of truth as every node on a blockchain network stores real-time updates of the ledger and participates in the consensus process.²⁴ Each blockchain records data modifications in time-stamped blocks connected to a

¹⁸Makada Henry-Nickie, *How Artificial Intelligence Affects Financial Consumers* (2019), Available at <https://www.brookings.edu/research/how-artificial-intelligence-affects-financial-consumers/>, accessed on 26 October 2019.

¹⁹Ibid. This technology has been the focus of notable scholars such as Ross Buckley. See for instance, Buckley R; Arner D; Veidt R; Zetsche D, 2020, 'Building FinTech Ecosystems: Regulatory Sandboxes, Innovation Hubs and Beyond', *Washington University Journal of Law & Policy*, vol. 61, pp. 55 - 98, https://openscholarship.wustl.edu/law_journal_law_policy/vol61/iss1/10/; Arner DW; Buckley RP; Zetsche DA; Veidt R, 2020, 'Sustainability, FinTech and Financial Inclusion', *European Business Organization Law Review*, vol. 21, pp. 7 - 35, <http://dx.doi.org/10.1007/s40804-020-00183-y>; Malady L; Buckley RP; Didenko A; Tsang C-Y, 2018, 'A Regulatory Diagnostic Toolkit for Digital Financial Services in Emerging Markets', *Banking and Finance Law Review*, vol. 34, pp. 1 - 30, https://www.researchgate.net/publication/328118839_A_Regulatory_Diagnostic_Toolkit_for_Digital_Financial_Services_in_Emerging_Markets; Zetsche DA; Buckley RP; Arner DW, 2018, 'The Distributed Liability of Distributed Ledgers: Legal Risks of Blockchain', *University of Illinois Law Review*, vol. 2018, pp. 1361 - 1406, <http://dx.doi.org/10.2139/ssrn.3018214>; Zetsche DA; Buckley RP; Arner DW, 2018, 'Blockchain Distributed Ledgers and Liability', *Journal of Digital Banking*, vol. 2, pp. 296 – 308; Zetsche DA; Buckley RP; Arner DW; Barberis JN, 2018, 'From FinTech to TechFin: The Regulatory Challenges of Data-Driven Finance', *New York University Journal of Law and Business*, vol. 14, pp. 393 - 446, <http://dx.doi.org/10.2139/ssrn.2959925>.

²⁰Woodsome & Ramachandran op cit note 16 at 46-8.

²¹Karim Sultan, Umar Ruhi & Rubina Lakhani *Conceptualizing Blockchains: Characteristics and Applications* (2018) at 53, available at <https://arxiv.org/ftp/arxiv/papers/1806/1806.03693.pdf>, accessed on 15 October 2019.

²² Ibid.

²³Michael Pisa & Matt Juden *Blockchain and Economic Development: Hype vs. Reality* (2017), available at <https://emdialogues.org/wp-content/uploads/2020/02/blockchain-and-economic-development-hype-vs-reality.pdf>, accessed on 15 October 2019 7.

²⁴Ibid at 8.

previous block to form a chain which can be updated only cryptographically by the agreement of a majority of the network users (nodes), thereby retaining all the data modification history.²⁵ In other words, changes can only be made by requesting and broadcasting amendments to all parties to the transaction for validation before additions are made to the chain.²⁶

To tamper with this system or cover any changes, an invader has to win numerous proof-of-work contests to publish a particular block and other succeeding blocks.²⁷ Furthermore, as blockchains are represented in a freely distributable file without a master copy, any attempt to alter the file is detected by users as each new block represents a cryptographic pool of transactions, linked to a parent block using a hash digest.²⁸ Therefore, it is both computationally difficult and expensive to change the chain without changing all blocks that follow and so this instils trust without relying on a central authority.²⁹

On the regulatory level, blockchains can reduce KYC compliance costs and increase transparency of transactions as timestamps on each block reveal the transaction history and references to previous blocks.³⁰ Banks and regulators can gain access to transactional and cross-institutional data to investigate financial networks and identify bad actors in real time.³¹ It is also more difficult for criminals to falsify transaction tracks because of the distributed nature of blockchains.³²

Blockchains hold the potential to reduce the time and cost spent by banks on account reconciliation as all transactions are confirmed by parties and are secure from revision and tampering once recorded.³³ Blockchains additionally help to verify user identity for easier customer on-boarding, improving accountability and transparency and reducing costs as well as incidents of error, fraud, data duplication and processing delays.³⁴ Blockchains can also generate databases that are decentralised and enable user data control as well as identities that

²⁵CGD *Fixing AML* op cit note 16 at 48.

²⁶Sultan, Ruhi &Lakhani et al op cit note 21 at 52.

²⁷Pisa & Juden op cit note 23 at 9.

²⁸Sultan, Ruhi & Lakhani et al op cit note 21 at 51.

²⁹Ibid at 52.

³⁰International Finance Corporation *Can Blockchain Technology Address De-Risking in Emerging Markets?* (2017) at 2 available at <https://www.ifc.org/wps/wcm/connect/f0defcac-ebac-487e-912a-8d8a7a8b07ff/EMCompass+Note+38+Derisking+and+Blockchain+5-24+FINAL.pdf?MOD=AJPERES&CVID=IMWVNUO>, accessed 15 July 2020.

³¹Ibid.

³²Ibid.

³³Ibid at 1.

³⁴Ethan Loufield, Dennis Ferenzy & Tess Johnson, *Accelerating Financial Inclusion with New Data: Joint report from the Centre for Financial Inclusion at Accion and Institute of International Finance* (2018) at 24 available at https://content.centerforfinancialinclusion.org/wp-content/uploads/sites/2/2018/08/AcceleratingFINewData_Final_2018.06.26.pdf, accessed 15 July 2020.

are borderless and irreversible with impact on customers and financial inclusion.³⁵ Again, decentralisation discards the need for middlemen and improves accountability and integrity of transactions by permitting public viewing of ledgers.³⁶ Immutability and incorruptibility of data are also guaranteed by a complicated string of mathematical numbers, impossible to be altered without notice.³⁷ Blockchains additionally benefit from tamper-resistance, data integrity and fast information sharing.³⁸ These equally dispense with the need for trusted central authorities such as clearing houses in financial transactions by disseminating copies of the records to all parties.³⁹

On the flipside, blockchains operate anonymous systems in order to protect confidential information of users, but also pose the risk of concealing the identity of users and makes it difficult to track individual payments.⁴⁰ Again non-proof-of-work chains though not being susceptible to adverse disruption on the recent state of the chain, could be vulnerable to long-range attacks which enable a sufficient number of bad actors to efficiently rewrite an entire ledger almost immediately.⁴¹ Furthermore, the immutability of blockchains means that smart contracts can self-execute without giving banks the chance to resolve client problems and misunderstandings such as transfer to the wrong recipients.⁴²

Blockchains are also expensive to deploy and may not be cost-effective for some financial services providers. Authors have also argued that although blockchains have proved useful in enabling secure virtual currencies, the prediction for economic development is difficult and necessitates thoughts around developing compatible industry standards so that the industry is not flooded with incompatible standards.⁴³ It has also been noted that though showing potential promise in the future, this technology may not impact budding customers in the short or medium term.⁴⁴

³⁵Ibid.

³⁶Ilker Koksak *The Benefits of Applying Blockchain Technology in Any Industry* (2019), available at <https://www.forbes.com/sites/ilkerkoksak/2019/10/23/the-benefits-of-applying-blockchain-technology-in-any-industry/#547e32c549a5>, accessed on 23 November 2019.

³⁷Ibid.

³⁸CGD *Fixing AML* op cit note 16 at 50.

³⁹Sultan, Ruhi & Lakhani op cit note 21 at 52.

⁴⁰International Finance Corporation op cit note 30 at 2.

⁴¹Esteban Landerreche & Marc Stevens 'On immutability of blockchains' in W Prinz & P Hoschka (eds) *Proceedings of the 1st ERCIM Blockchain Workshop 2018* (2018).

⁴²Alice Merry 'Women worldwide struggle to access banking services: Bitcoin is only making that worse' October 29, 2018 *Time*, available at <https://time.com/5431809/blockchain-financial-inclusion-gender-gap/>, accessed on 15 October 2019.

⁴³Pisa & Juden op cit note 23 at 34–35.

⁴⁴Loufield, Ferenzy & Johnston op cit note 34 at 24.

From the foregoing, it is shown that blockchains are useful for delivering secure network transactions. However, cost effectiveness, appropriate standards and security measures are still concerns. In Nigeria, some fintechs such as Stella and Oradian are already deploying blockchains to offer instant payment services to benefit the financially excluded.⁴⁵ It is expected that as concerns regarding blockchains are addressed, more companies will adopt this trend and improve transparency, security and trust of clients and regulators.

6.3.2 Data analytics and big data

Data has been described as ‘the new oil of the digital era’.⁴⁶ Data is proving useful in financial transactions for many use cases as troves of datasets now characterised as big data flood the financial market. Big data systems can hold much larger datasets compared to traditional databases, ingest incoming high volume data in real-time and gather and store data in different formats.⁴⁷ Big data have been defined as diverse data having huge volume and speed of accumulation such as client information, social network profiles, e-mails, logs from call centres, tweets and sensor data from mobile phones and smart meters and cars’.⁴⁸ Volume, velocity and variety are the chief characteristics of big data.

To analyse these large data sets, big data analytics are invaluable. Big data analytics employs advanced analytic techniques in testing out a broad range of data that transcend the present capacity of traditional database analysis tools to process large datasets.⁴⁹ Here, client data obtained from phone usage, profiles or social graphs that represent social network relationships, online shopping habits and remittances are used to determine credit creditworthiness.⁵⁰ Specifically, DFS providers obtain data from ‘transactional data, mobile call records, call centre recordings, customer and agent registrations, airtime purchase patterns, credit bureau information, social media posts, geospatial data, and more’.⁵¹

⁴⁵KPMG op cit note 2 at 29.

⁴⁶*The Economist* ‘The world’s most valuable resource is no longer oil, but data’ May 6th 2017, available at <https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longer-oil-but-data>, accessed on 12 November 2019.

⁴⁷Center for Global Development *Fixing AML* op cit note 16 at 25.

⁴⁸Nicola Jentsch *Data Protection in the Context of Digital Financial Services and Big Data* (2016) at 5 available at http://www2.giz.de/wbf/4tDx9kw63gma/Datenschutz-Diskussionspapier_E_140416_Internet.pdf?cv=1.

⁴⁹IBM *What is Big Data Analytics?*, available at <https://www.ibm.com/analytics/hadoop/big-data-analytics>, accessed on 12 November 2019.

⁵⁰Jentsch op cit note 48 at 4.

⁵¹International Financial Corporation & the MasterCard Foundation, *Data Analytics and Digital Financial Services*, available at <https://www.ifc.org/wps/wcm/connect/369c10de-1703-4497-876f-9cdf0367a4d4/IFC+Data+Analytics+and+Digital+Financial+Services+Handbook.pdf?MOD=AJPERES&CVID=1RrkzEd>, accessed on 12 November 2019 11.

With these rapid advances in data capture, transmission and storage, including advanced analytics and machine learning, big data can reduce the time and cost spent on searching, aggregating information and identifying patterns and relationships for KYC compliance and other suspicious investigations.⁵² Insights from data analytics are useful for revealing trends and metrics to optimise business efficiency.⁵³ Big data analysis is also valuable for the real-time identification and recalculation of risk portfolios and for the detection of fraudulent behaviour.⁵⁴ Again, with the use of artificial intelligence which is obtained in real-time from mobile, social, video and audio networks, the Internet of Things (IoT), big data and transactional applications, useful data insights are improved.⁵⁵ This artificial intelligence advances data analytics and deepens financial inclusion in the longer term by effectively providing banks with insightful data for enhanced automation, cost savings and scalability for serving low-income clients.⁵⁶

Specifically, big data acquired by financial services providers can additionally help in ‘strategic business decisions, designing of customised products for clients, client acquisition and cross-selling’.⁵⁷ This can promote customer loyalty, automated processes, decision-making, performance monitoring and accurate risk assessment of persons without credit histories in loan applications.⁵⁸ Big data enables companies to speedily compile large datasets, identify clients, save cost, and assess risk for faster loan consideration and designing specific financial products.⁵⁹ Customer understanding is also increased by the use of ‘alternative data such as social media activity, email usage, utility payments history, mobile phone records, and psychometric testing optimised by advanced data analytics tools’.⁶⁰ Policymakers can additionally obtain detailed insights by using access and usage trends to develop outlook and strategies that drive inclusion.⁶¹

⁵²Center for Global Development *Fixing AML* op cit note 16 at 25.

⁵³Jake Frankenfield ‘Data analytics’ *Investopaedia* (2019), <https://www.investopedia.com/terms/d/data-analytics.asp>, accessed on 12 November 2019.

⁵⁴Philippe Breul ‘Leveraging Big Data for Financial Inclusion: Opportunities and Risks Interview with Digital Finance FinDev Gateway, (2016), available at <https://www.findevgateway.org/interview/2016/nov/leveraging-big-data-financial-inclusion-opportunities-and-risks>, accessed on 13 November 2019.

⁵⁵IBM op cit note 49.

⁵⁶Loufield, Ferenzy & Johnson op cit note 34 at 23, 24.

⁵⁷Breul op cit note 54.

⁵⁸IFC & the MasterCard Foundation op cit note 51 at 12.

⁵⁹Jentsch op cit note 48 at 6.

⁶⁰Loufield, Ferenzy & Johnson op cit note 34 at 7.

⁶¹IFC & the MasterCard Foundation op cit note 51 at 11.

Big data also helps banks with risk management and avoids de-risking.⁶² De-risking is embarked upon by banks to comply with the anti-money laundering and counterfeiting of terrorism (AML/CFT) recommendations of the Financial Action Task Force (FATF). Although the AML/CFT requirements were meant to simplify due diligence by transferring high-risk compliance resources and taking out financial inclusion barriers of lower risk customers, this unfortunately excludes the poor, perceived to generate too small an income to justify compliance costs.⁶³

In spite of the benefits, big data, presents privacy risks for clients as personal and sensitive information such as interests and activities collected may be at risk of exposure or lead to denying loan grants to some, client for previous late repayment without further information on the circumstances that led to the default.⁶⁴ Clients with similar characteristics can also be profiled and denied access to financial products and services.⁶⁵ Additionally, big data aggregation could lead to social exclusion where algorithms are used to determine creditworthiness based on skin colour or place of residence, and applying price discrimination to customers considered too risky or unprofitable.⁶⁶

Big data also ushers information asymmetry as providers acquire huge amount of data without the knowledge of clients, hence drawing profound conclusions without adhering to data protection standards including client consent.⁶⁷ This is imperative and needs to be addressed as a result of the ease of identifying clients in digital transactions. Research has shown that only four data points (such as approximate locations and times) are enough to identify about 95 per cent of users in a database of 1.5 million people and are enough to track daily lifestyles and locations with little consumer safeguards.⁶⁸

Again, there is a lack of market supervision and regulation in addition to unclear legal frameworks on big data, particularly with regard to data protection.⁶⁹ It has also been contended that though banks in many cases are bound by data protection laws, entities such as MNOs and fintech companies are scarcely bound by these rules and could pose a problem

⁶²Karen Gifford *Enhancing Anti-money laundering and Financial Access: Can New Technology Achieve Both?* (2018) at 4 available at https://www.brookings.edu/wp-content/uploads/2018/04/es_20180413_fintech_access.pdf, accessed 16 July 2020.

⁶³Ibid.

⁶⁴Breul op cit note 54.

⁶⁵Ibid.

⁶⁶Jentsch op cit note 48 at 7, 9.

⁶⁷ Ibid.

⁶⁸Ibid at 8.

⁶⁹Ibid at 7.

for responsible client data use.⁷⁰ Data generated by this process also creates black boxes that are complex for both financial institutions and regulators to understand; opening the opportunity for manipulation.⁷¹

Another difficulty arises from establishing who collects, stores or uses data and who should be responsible for data misuse in the chain of actors especially on a cross-sectional and international level. Without this information, it becomes increasingly difficult to pursue consumer safeguards such as data access, the right to object to and correct information use, and data abuse. There is also some difficulty in finding collaboration in data acquisition by entities such as utility companies, MNOs, social media platforms and data vendors.⁷² Significantly, there is evidence of the fact that 82 per cent of users do not read privacy policies before accepting because they are lengthy and written in unfamiliar jargon.⁷³

It has therefore been suggested that countries need to ensure that data collection is transparent, addresses the ‘why’ about consumer behaviour and the power imbalance around data use by providers, including enabling objection to inaccuracies.⁷⁴ Rules for ownership of data also need to be spelt out and ethical use of data, ingrained in the policies of actors in the chain of finance provision.

Big data analytics can help financial inclusion by fact-checking potential customer identity. This is also useful in determining suitability for loans for clients without credit histories. In Nigeria, fintech companies such as Branch and PiggyVest rely on data gathered from transaction logs and related sources to offer lending and financial advisory services.⁷⁵ Data protection and privacy standards must however be respected when dealing with personal and sensitive consumer data.

6.3.3 Robo-advising

Robo-advisors are defined as ‘digital platforms that use automated algorithm to offer financial advice and automatically invest assets based on the financial situation and future goals of clients without human supervision.’⁷⁶ Robo-advisors also refer to low-cost online platforms which serve as alternatives to traditional human advisors and manage clients’

⁷⁰Ibid at 7, 10.

⁷¹Ibid at 7.

⁷²Loufield, Ferenzy & Johnson op cit note 34 at 8.

⁷³IFC and the MasterCard Foundation op cit note 51 at 23.

⁷⁴Breul op cit note 54.

⁷⁵Deloitte op cit note 8 at 9 and 10.

⁷⁶Jake Frankenfield ‘What is a robo-advisor?’ *Investopedia* Oct 1, 2019, available at <https://www.investopedia.com/terms/r/roboadvisor-roboadviser.asp>, accessed on 27 November 2019.

portfolios using automated algorithm.⁷⁷ Some models are strictly machine-automated and do not require any human input or interference. But there are some hybrid models that combine algorithms with human guidance to serve clients that require more complex financial portfolios.⁷⁸

Robo-advising is growing out of an increasing need for scalability, cognitive advice and next-generation user experience.⁷⁹ These platforms, unlike traditional human advisors are always available to clients.⁸⁰ Investment decisions are based on client's investment purpose, timeframes, strategies, goals, risk appetite and risk metrics as well as client's income and years to retirement.⁸¹

Robo-advisors could increase investment habits in citizens. These robots can add transparency to decision-making and investment, improve customer experience using web and mobile applications, provide low-cost products and encourage passive investing.⁸² This service also promises low-cost services in financial transactions.⁸³ Robo-advisors are further praised for their capacity to make investment decisions that are not based on human emotions. Thus, no panic sales or over-excited purchases are made as specified algorithms and client goals are the basis for investment decisions. Again, these employ simple strategies, require no investment knowledge on the part of the users, and are not time-consuming.⁸⁴ Hence, incidents of behavioural biases, human and machine design subjectivity and bias for products that pay commissions are reduced.⁸⁵ Advisors unlike humans are also able to monitor several assets simultaneously.⁸⁶

⁷⁷Facundo Abraham, Sergio L Smuckler & José Tessada 'Robo-advisors: investing through machines' (2019) *World Bank Research and Policy Brief* 134881 at 1, available at <http://documents1.worldbank.org/curated/en/275041551196836758/pdf/Robo-Advisors-Investing-through-Machines.pdf>, accessed on 16 July 2020.

⁷⁸KPMG 'Striking a balance in robo-advisory' (2018), available at <https://home.kpmg/xx/en/home/insights/2018/02/striking-a-balance-in-robo-advisory-fs.html>, accessed at 12 November 2019.

⁷⁹KPMG op cit note 2 at 36.

⁸⁰Frankenfield op cit note 76.

⁸¹Facundo Abraham et al, op cit note 77 at 1.

⁸²Daniel O'Keefe, Jonathan Warmund & Ben 'Robo advising: Catching up and getting ahead' (2016), at 5, available at <https://home.kpmg/content/dam/kpmg/pdf/2016/07/Robo-Advising-Catching-Up-And-Getting-Ahead.pdf>, accessed at 25 November 2019 at 5.

⁸³KPMG op cit note 2 at 36.

⁸⁴Dana Anspach *What Is a Robo Advisor and How Do They Work?* (2019), available at <https://www.thebalance.com/what-is-a-robo-advisor-and-how-do-they-work-4097134>, accessed on 1 December 2019.

⁸⁵Abraham, Smuckler & Tessada op cit note 77 at 3.

⁸⁶*Ibid.*

Robo-advisors, however, usher new regulatory challenges for regulators that are more attuned to dealing with humans rather than machines.⁸⁷ Robo-advisors are criticised for lacking in empathy and sophistication as a result of minimal human presence and operate on the assumption that clients are financially sophisticated, can make defined financial goals and understand financial circumstances.⁸⁸ These advisors also entail costs associated with simplistic and not tailored questions like human assistants and so do not give a comprehensive view of client's financial situation.⁸⁹ Robo-advisors can lead to consumer disengagement as a result of automation and jettison consumer rights in the early stages of the robo-advisory trend.⁹⁰ There are also concerns around the limited investor options, difficulty in getting human-to-human interaction, and the fact that users may have to open multiple brokerage accounts to invest in new stocks.⁹¹

From a financial inclusion perspective, the introduction of robo-advising seems too early for the excluded class. Robo-advising requires some degree of financial capability and digital sophistication on the part of the individual users. Financial capability is needed to decipher financial products and set investment goals that suit individual circumstances while digital sophistication is pertinent to adequately input relevant information, financial goal and preferred risk level to the robots. These robots are, therefore, ahead of the curve for the excluded who may not own smartphones, afford internet services to monitor financial trends or possess the digital financial sophistication to understand complex investment portfolios. It is submitted that simpler financial services be deployed until financial capability is attained to aid informed financial decision-making by the excluded class.

6.3.4 Application programming interface (API)

An application programming interface (API) is 'a simple and standardised means by which technology platforms from different vendors or locations communicate with each other, allowing for the controlled yet seamless flow of data between systems'.⁹² APIs are also defined as 'mechanisms that enable software programs to 'talk' to one another by selling

⁸⁷Tom Baker & Benedict G. C. Dellaert 'Regulating robo advice across the financial services industry (2018) *Iowa Law Review* at 713.

⁸⁸Frankenfield op cit note 76.

⁸⁹Abraham, Smuckler & Tessada op cit note 77 at 3.

⁹⁰Ibid at 3 and 4.

⁹¹Dana Anspach What Is a Robo Advisor and How Do They Work? Op cit note 84.

⁹²Price Waterhouse Cooper (PWC) *The Case for Open Banking in Nigeria*, available at <https://www.pwc.com/ng/en/assets/pdf/case-open-banking-nigeria.pdf>, accessed on 24 October 2019 6.

access to data and systems to third parties'.⁹³ APIs could be classified according to functions. Payment APIs, for example, enable payment and receipt of funds; data APIs share and aggregate data, ecosystem expansion APIs facilitate loan consideration and opening of accounts, while consent and identity APIs aid KYC, data sharing and funds circulation.⁹⁴ MTN Uganda, Finserve (a subsidiary of Equity Bank), and Paystack have all opened a set of payment APIs to drive customer growth and activity.⁹⁵

APIs could be open, private or market places. Open APIs are designed for general, repeatable use, are openly accessible to third parties and are presently deployed by MTN Uganda, Nedbank in South Africa and Equity Bank, Kenya.⁹⁶ Private APIs, on the other hand, are designed to grant specific internal or external, pre-authorised parties access to certain functionality, based on predetermined requirements but lack the feature of repeatability.⁹⁷ Lastly, API marketplace is offered by third parties on behalf of any number of financial institutions and offers services such as document aggregation, KYC compliance, on-boarding and the linking of fintech innovators with financial institutions.⁹⁸

APIs connect innovative app developers and startups with DFS providers looking to reach poor customers.⁹⁹ These partnerships could for instance ensure that financial institutions regulatory approvals and core banking capabilities are effectively combined with fintech innovators' ability to iterate rapidly and develop new products for underserved or unproven customer segments.¹⁰⁰ APIs also ensure slower costs for marketplace participants by spreading the costs of constructing programme interfaces among a larger number of participating financial institutions.¹⁰¹ It is projected that adopting API standards will provide more seamless integration and cost savings for better customer experience.¹⁰²

APIs are largely enabled by open banking which is 'the use of open technologies by third-party providers to build services and applications around financial institutions so that

⁹³Consultative Group to Assist the Poor (CGAP), 'Partnerships explore impact of open APIs on financial inclusion', (2018) *CGAP News*, available at <https://www.cgap.org/news/cgap-partnerships-explore-impact-open-apis-financial-inclusion>, accessed on 25 November 2019.

⁹⁴International Monetary Fund, 'Policy paper fintech: The experience so far' *Press Release* No. 19/255 2019 at 41, available at <https://www.imf.org/~media/Files/Publications/PP/2019/PPEA2019024.ashx> accessed 19 April 2020.

⁹⁵Ibid.

⁹⁶Dan Kleinbaum, *Building Innovation: APIs, Fintechs and Financial Institutions* (2019), available at <https://www.centerforfinancialinclusion.org/building-innovation-apis-fintechs-financial-institutions>, accessed on 23 November 2019.

⁹⁷Ibid.

⁹⁸Ibid.

⁹⁹Consultative Group to Assist the Poor op cit note 93.

¹⁰⁰Kleinbaum op cit note 96.

¹⁰¹Ibid.

¹⁰²PWC op cit note, 92 at 12.

customers can view and manage multiple accounts from a centralised location'.¹⁰³ Open banking has promises for advancing diverse business offerings such as sites for comparing the rates of loans, fixed deposits and returns on current accounts as well as centralised KYC management.¹⁰⁴ Open banking also offers a wider choice of providers, competitive pricing, product innovation and development driven by now ubiquitous client data delivered to participating fintechs.¹⁰⁵ Fintechs additionally have the opportunity to access and share the needed data to understand customer financial behaviour, create new solutions, widen customer base and adequately access borrowers' financial position, goals, purchasing preferences and likelihood of loan repayment.¹⁰⁶

There is potential for this to scale up as the Nigerian fintech space presents several examples of successful collaborations. The CBN, for instance, has been able to encourage collaboration in some banking components such as the Bank Verification Number (BVN), Nigeria Uniform Bank Account Number (NUBAN) and the NIBSS Instant Payment (NIP).¹⁰⁷ Incidentally, Interswitch, and Paga have adopted open banking since partnering with Open Technology Foundation (OTF), a non-profit championing the deployment of this trend in the country.¹⁰⁸

Like all technological trends, however, it is pertinent to consider and address risks that can bring consumer detriment especially in Nigeria's quest for financial inclusion. For instance, there are concerns that open banking can weaken bank/customer relationships and expose customers to fintech competitors.¹⁰⁹ Open banking is also prone to reputational risk in cases of data breaches, even if the breach occurred on the platform of a collaborator.¹¹⁰ There are also concerns that issues surrounding capital and funding could emanate from easy circulation of client deposits among the participating banks.¹¹¹ API can usher significant upfront investment of time and resources in addition to risks of converting from complex

¹⁰³PWC *ibid* at 5.

¹⁰⁴Damola Yusuf *'The Case for Open Banking in Nigeria* (2019), at 25 available at <https://www.pwc.com/ng/en/assets/pdf/financial-focus-2019.pdf>, accessed on 24 November 2019.

¹⁰⁵PWC *op cit* note 92 at 11.

¹⁰⁶*Ibid* at 10 and 11.

¹⁰⁷*Ibid* at 12.

¹⁰⁸Oluchi Chibuzor *Interswitch, Paga Adopt Open Banking to Champion Advocacy in Nigeria* (August 21, 2019), available at <https://openbanking.ng/interswitch-paga-adopt-open-banking-to-champion-advocacy-in-nigeria/>, accessed on 1 October 2019.

¹⁰⁹PWC *op cit* note 92 at 13.

¹¹⁰*Ibid*.

¹¹¹*Ibid* at 11.

legacy IT and core banking systems which were not initially designed to be accessed via API.¹¹²

To address these concerns, there is the need to adopt APIs with caution. Certifications are needed to ensure that APIs adopted by parties are built according to specification.¹¹³ Data protection laws also require strengthening to ensure that consumer consent is granted before personal or sensitive information is shared with partner institutions. This should be augmented by personal information management tools to enable consumers amend incorrect information and update or delete changes in life and financial circumstances. Also regulators must mandate responsible data processing to ensure client safety and privacy.

6.3.5 Artificial intelligence (AI)

As noted in the introduction, artificial intelligence is a versatile technology upon which many digital financial services trends are built. Robo-advising, peer-to-peer lending, data analytics and big data, for instance employ this technology to understand and analyse client data as well as to offer advice. In this section however, artificial intelligence is discussed specifically in relation to the consideration of loan applications by financial services providers.

Artificial intelligence (AI) is ‘a suite of technologies, enabled by adaptive predictive power and exhibition of some degree of autonomous learning, that dramatically advance the ability to recognise patterns, anticipate future events, create good rules, make good decisions and communicate with others’.¹¹⁴ AI is praised for possessing the potential to bring value to business by using intelligent automation to replace repetitive manual tasks, increase workers’ judgement, improve interactions with customers and develop intelligent products.¹¹⁵ ‘A digital financial ecosystem needs regulatory mechanisms to provide feedback and proactive guidance that encourage prioritising consumer financial welfare rather than using supervisory models that overemphasise punitive and reactionary enforcement’.¹¹⁶ AI can serve this function.

In spite of the benefits, AI is argued to potentially usher ‘legacy problems such as product steering, discriminatory pricing, unfair credit rationing, exclusionary filtering, and

¹¹²Dan Kleinbaum op cit note 96.

¹¹³PWC op cit note 92 at 14.

¹¹⁴Deloitte *The New Physics of Financial Services: How Artificial Intelligence is Transforming the Financial Ecosystem*, at 5, available at <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-world-economic-forum-artificial-intelligence-summary-report.pdf>, accessed 14 November 2019.

¹¹⁵Roy Jubraj, Tom Graham & Eve Ryan *Redefine Banking with Artificial Intelligence* (2018) at 2 available at https://www.accenture.com/_acnmedia/pdf-68/accenture-redefine-banking.pdf, accessed 17 July 2020.

¹¹⁶Henry-Nickie op cit note 18.

digital redlining as human input is absent to deal with unintended or nuanced marginal problems'.¹¹⁷ There are also issues around algorithmic bias, especially with the concerns around blanket exclusion of specific classes of consumers by a system that is still under consideration by regulators.¹¹⁸ Further, it has been argued that AI algorithms, though proficient at complex computational tasks, are lacking in the capacity to mimic true human intelligence beyond pattern recognition unlike human intelligence.¹¹⁹

There are several examples of the use of AI in the financial services sector in Nigeria. The Stanbic IBTC Bank PLC's bluebots are used to perform anti-money laundering check, credit risk assessment, cheque confirmation, population of Microsoft Excel templates, launching of web browsers, secure web pages login, scrapping the Web and extracting data.¹²⁰ Similarly, Diamond Bank's Ada provides personalised services to customers using lessons from past interactions and can open accounts, transfer funds, buy airtime, pay utility bills and check stock prices.¹²¹ Leo, the United Bank for Africa personal assistant, additionally helps in social media banking and can open a new account, transfer funds and initiate loan applications for users.¹²² Research on the impact of the use of AI on financial inclusion in Nigeria is still to be seen and will hopefully manifest soon.

Efforts must, however, be made by the regulators to prevent companies from using this advancement in technology to unfairly exclude classes of consumers from accessing finance. Artificial intelligence would, however, be useful to design personalised products suitable for specific consumer segments. This is already in use in some technologies such as robo advising, peer-to-peer lending and data analytics.

6.3.6 Cryptocurrencies

In the introduction to this section, the relationship between cryptocurrency and distributed ledger technology (DLT) discussed in 6.3.1 was shown. Cryptocurrencies are built on blockchains, which is a type of DLT. Cryptocurrencies are however discussed in this section as a medium of exchange in financial transactions. Blockchains were discussed in general in 6.3.1 as an underlying technology for assuring secure and immutable digital audit trails in

¹¹⁷Ibid.

¹¹⁸Ibid.

¹¹⁹Ibid.

¹²⁰Ademola Adeyoju *Financial Technology and Artificial Intelligence: A Disruptive Union vol 2* (2019), at 3, available at https://www.aelex.com/wp-content/uploads/2019/03/FINANCIAL-TECHNOLOGY-ARTIFICIAL-INTELLIGENCE_-A-DISRUPTIVE-UNION-_compressed-1.pdf, accessed 3 December 2019.

¹²¹Ibid.

¹²²Ibid.

financial transactions. Some cryptocurrencies discussed below such as bitcoins and quorum are based on blockchains.

A cryptocurrency is ‘a digital or virtual currency that is secured by cryptography, which makes it nearly impossible to counterfeit or double-spend.’¹²³ Cryptocurrencies are decentralised networks based on blockchain technology that facilitate funds transfer between parties without being offered or managed by central authorities or third parties such as banks, and therefore not subject to interference or manipulation.¹²⁴

Bitcoin is the first blockchain-based cryptocurrency.¹²⁵ Bitcoin is a consensus-led and decentralised peer-to-peer payment network that discards the need for central authorities or middlemen, developed in 2009 by Satoshi Nakamoto (supposedly a pseudonym) to pay for goods or services, purchase, exchange and earn more bitcoins.¹²⁶ Bitcoin can only work correctly with a complete consensus among all users, recorded on a public blockchain ledger that contains every transaction ever processed and thus enables users to compute and verify the validity of each transaction.¹²⁷ The price of bitcoin is determined by the law of supply and demand while lost bitcoin wallets though remaining on the blockchain remain dormant and have the effect of removing money out of circulation as the private keys remain lost and invariably impossible to spend.¹²⁸ Bitcoins have also aided law enforcement in the arrest of criminals involved in illegal online business.¹²⁹

However, concerns about the lack of underlying assets, susceptibility to fluctuation and hacks and use in surreptitious criminal activities are decreasing regulatory acceptance of the coins. This is increased by the semi-anonymous nature of cryptocurrency transactions which has historically concealed illegal activities, such as evasion of taxes and money laundering.¹³⁰ Furthermore, the irreversibility of Bitcoin transactions after execution leaves users without the opportunity to correct even simple mistakes such as a wrong address once

¹²³Jake Frankenfield, *Cryptocurrency* (2019), available at <https://www.investopedia.com/terms/c/cryptocurrency.asp>, accessed on 3 December 2019.

¹²⁴Ibid.

¹²⁵Ibid.

¹²⁶Bitcoin *FAQ*, available at <https://bitcoin.org/en/faq#what-about-bitcoin-and-consumer-protection>, accessed on 3 December 2019.

¹²⁷Ibid.

¹²⁸Ibid.

¹²⁹Frankenfield op cit note 123.

¹³⁰Ibid.

entered in the bitcoin public ledger.¹³¹ There are also issues around low scalability and the amount of transaction time, fees and the energy needed to mine new bitcoins.¹³²

Authors have argued that bitcoins are still not set to fulfil the role of money in relation to serving as a store of value, medium of exchange and unit of account as a result of volatility and the paucity of acceptance by retailers and consumers.¹³³ However, bitcoin proponents are hopeful that as more users apply bitcoins to spending rather than to speculative investing, volatility will diminish and concerns around scalability and transaction time will wane especially following the recent expansion of the block and the introduction of lightning network solutions.¹³⁴

In the meantime, companies such as Facebook and JP Morgan are already looking into more stable coins that are backed by underlying assets and are potentially less prone to volatility. Facebook has announced the intended launch of the Libra cryptocurrency which is said to be designed on safe and stable open-source blockchain, secured by real assets reserved and managed by an independent association made up of diverse entities that have the sole power to create (mint) and destroy (burn) Libra.¹³⁵ According to Facebook, this will ensure that persons or businesses globally can access money quickly, fairly and affordably, transfer funds abroad and make diverse payments ranging from tuitions, rentals and even buying coffee.¹³⁶

This announcement has however been met with criticisms and the early exit of seven partners of the Libra Association including PayPal, eBay, Visa and Mastercard.¹³⁷ World leaders and central bankers have also expressed concerns around the propensity that this could put the global financial system at risk and increase data threats and consumer detriment and further lead to privatisation of money supply.¹³⁸

Notably, Facebook is one of the largest social media platforms in the world and could easily leverage this dominance to the provision of financial services leading to a disruption in

¹³¹Adriana Magdas *Cryptocurrencies and Financial Inclusion – Why I Am a Skeptic... For Now at Least* (2014), available at <https://www.centerforfinancialinclusion.org/cryptocurrencies-and-financial-inclusion-why-i-am-a-skeptic-for-now-at-least> accessed 15 September 2019.

¹³²Michael Pisa 'Questioning the Role of Bitcoin for Financial Inclusion' (2017), available at <https://www.cgdev.org/blog/questioning-role-bitcoin-financial-inclusion>, accessed 14 November 2019.

¹³³Pisa & Juden op cit note 23 at 10.

¹³⁴Pisa op cit note 132.

¹³⁵Libra *Libra White Paper*, available at <https://libra.org/en-US/white-paper/>, accessed 21 December 2019.

¹³⁶Ibid.

¹³⁷Richard Partington, 'How the wheels came off Facebook's Libra project' *The Guardian* 18 Oct 2019, available at <https://www.theguardian.com/technology/2019/oct/18/how-the-wheels-came-off-facebook-libra-project>, accessed on 4 December 2019.

¹³⁸Ibid.

the industry and a loss of financial system control by national regulators. Against the backdrop of the grave Cambridge Analytica incident in 2016 when the data of millions of consumers was leaked, Facebook is yet to demonstrate how future security intrusions will be averted. It will, therefore, be naive to take on a face value, the proposal of the company to improve financial inclusion without the guarantee of accompanying safeguards as to safety of funds, protection of user data and integrity of the financial system. Without these safeguards, it will also be difficult for consumers to bring action for small claims, especially in international transactions.

Furthermore, Libra will potentially usher an entire network of providers and authorised dealers including 'brokers, asset managers, custodians, exchanges, digital identity providers and verifiers' whose identities and qualifications are yet undefined.¹³⁹ Facebook will invariably play the role of a financial services regulator with neither the legal public mandate nor the response to salient questions around which entities determine the weighting of sovereign currencies, reserve governance, maintenance of value and liquidity, resolution of conflicts of interest and exclusive rights to and cost of purchasing new coins.¹⁴⁰ It is also pertinent for regulators to ponder on the question as to why the provision of digital currency and invariably, monetary policy decisions should be outsourced to a private company with the potential to control the entire economy without the guarantee of users' privacy.¹⁴¹

Again, though Libra asserts that customer verification requirements applicable to other finance providers will be complied with, there is still the potential to compete with the legal tender of a nation and weaken the capacity of the national regulators to manage the monetary policy.¹⁴² More so, Libra's promise of speedy payments could compromise KYC, money laundering laws and banks' mandate to monitor accounts for suspicious dealings, restrict money transfer and open up systemic risks without liquidity and deposit insurance safeguards.¹⁴³ Authors have also argued that financial exclusion is not plagued by a lack of

¹³⁹Saule Omarova & Graham Steele 'There's a lot we still don't know about Libra' *The New York Times* Nov 4 2019 available at <https://www.nytimes.com/2019/11/04/opinion/facebook-libra-cryptocurrency.html> , accessed 14 December 2019.

¹⁴⁰Ibid.

¹⁴¹Mehrsa Baradaran 'Facebook's cryptocurrency won't help the poor access banks. Here's what would'. *Washington Post* October 29, 2019, available at <https://www.washingtonpost.com/outlook/2019/10/29/facebooks-cryptocurrency-wont-help-poor-access-banks-heres-what-would/>, accessed on 15 November 2019.

¹⁴²Michael Pisa *Facebook's Big Bet on Digital Currency: What Libra Could Mean for Global Payments and Remittances*(2019), available at <https://www.cgdev.org/blog/facebooks-big-bet-digital-currency-what-libra-could-mean-global-payments-and-remittances>, accessed on 2 December 2019.

¹⁴³Baradaran op cit note 141.

technology that can advance speedy money transfer but by the exclusion of persons perceived to be unprofitable.¹⁴⁴ Libra does not guarantee this.

It is however, imperative to recognise that attempts to meet all the regulatory concerns for building a payment system is also likely to diminish competitive advantages that could make this technology cost-effective and fast.¹⁴⁵

It is against this backdrop that the JP Morgan Bank is seeking to launch a different type of stable currency named Quorum, based on the Ethereum Blockchain technology. Quorum is described by the bank as an open-source blockchain platform with added privacy, strong permissions and one versatile, scalable platform to solve business needs.¹⁴⁶ The Quorum digital coin represents a fiat currency with a value, equivalent to one US dollar and enables instantaneous funds transfer.¹⁴⁷ JP Morgan asserts that, if properly controlled, cryptocurrencies hold advantages for blockchains as this can decrease risks, reduce capital requirements and facilitate real-time funds transfer.¹⁴⁸

Quorum is presently a prototype intended for a small number of institutional clients before expansion to other entities.¹⁴⁹ Quorum rides on some advantages such as being under the purview of the regulator and thus subject to applicable financial regulations and riding on the historic reputation of JP Morgan in assisting to ameliorate the effect of the 1893 economic depression on the financial system.

In general, concerns around cryptocurrency are leading central banks to restrict or totally ban these currencies nationally. In Nigeria, the authorities have warned that investments are unregulated and investors could be at risk of loss. The CBN published a circular to stress that ‘cryptocurrencies such as Bitcoin, Ripples, Monero, Litecoin, Dogecoin, Onecoin and exchanges such as NairaEx are not legal tender in Nigeria and are not licensed or regulated by the CBN’.¹⁵⁰ In the same press release, then bank cautioned that dealers and investors dealing in cryptocurrencies in Nigeria are not protected by law or regulated around the world; hence, loss of client funds without redress could ensue if these entities shut down.

¹⁴⁴Ibid.

¹⁴⁵Richard Partington op cit note 137.

¹⁴⁶Quorum *Evolve with Quorum: The Proven Blockchain Solution for Business*, available at <https://www.goquorum.com/>, accessed 23 September 2019.

¹⁴⁷JPMorgan Chase & Co. *J.P.Morgan Creates Digital Coin for Payments* (2019), available at <https://www.jpmorgan.com/global/news/digital-coin-payments>, accessed on 23 September 2019.

¹⁴⁸Ibid.

¹⁴⁹Ibid.

¹⁵⁰Central Bank of Nigeria ‘Virtual currencies not legal tender in Nigeria – *CBN Press Release*, February 28, 2018, available at <https://www.cbn.gov.ng/Out/2018/CCD/Press%20Release%20on%20Virtual%20Currencies.pdf>, accessed 24 November 2019.

However on 5 February, 2021, the CBN made an official statement in an attempt to ban cryptocurrency and demanded that banks should monitor and report dealings on their networks, but public outcry about this ban led to a reversal shortly afterwards.¹⁵¹ It must be stated that simply demanding that banks ban cryptocurrency cannot yield much success as these coins are universally traded and offered on numerous platforms including foreign bank websites, fintech apps and peer-to-peer exchanges. Consumers can therefore trade on these sites to avoid regulatory sanctions.

In 2017, the Securities and Exchange Commission similarly advised Nigerians to exercise extreme caution when investing in cryptocurrencies as the promoters are not recognised or authorised to receive deposits or provide any investment or other financial services due to the high risk of loss and the possibility of being fraudulent pyramid schemes.¹⁵² In spite of these warnings, it is remarkable to note that bitcoin exchanges (NairaExchange and Bitpesa) are operating in Nigeria and platforms such as GSM2me, Minku and Shopnow accept bitcoins as payment for services.¹⁵³

It should be noted that cryptocurrencies are complex to use compared to simply accessible mobile payment options used by Mpesa. Blockchains and cryptocurrencies are not built for scaling up, and although a private blockchain is being deployed by organisations such as the World Food Programme to help about 100 000 Syrian refugees, the same cannot be replicated to reach large unbanked populations.¹⁵⁴ The speed of completing transactions on blockchains is also slow compared to the state-of-the-art financial systems. For instance while the processing speed for Bitcoins is three to seven for each second, Visa boasts about 24,000 transactions per second.¹⁵⁵ It will, therefore, take some time for cryptocurrencies to advance financial inclusion in developing countries.¹⁵⁶

For cryptocurrency to be successfully deployed and accepted in Nigeria, the backing of the Central Bank is crucial. For instance, the CBN could deploy one. But some adjustment to the present modelling is needed to ensure suitability for the excluded. Concerns around anonymity, volatility, acceptability in varied transactions and tracing of passwords or bad actors require addressing. Catering for these concerns will also increase the chances that

¹⁵¹ Central Bank of Nigeria BSDDIR/GEN/LAB/14/001 5 February 2021

¹⁵² SEC Nigeria *Public Notice on Investments in Cryptocurrencies and other Virtual or Digital Currencies* 12 January, 2017 available at <http://sec.gov.ng/public-notice-on-investments-in-cryptocurrencies-and-other-virtual-or-digital-currencies/>, accessed on 20 November 2019.

¹⁵³ KPMG op cit note 2 at 29.

¹⁵⁴ Merry op cit note 42.

¹⁵⁵ Ibid.

¹⁵⁶ Magdas op cit note 131.

people will adopt this service and that regulators will deploy central bank ones backed by national currency as underlying asset.

6.3.7 Peer-to-peer lending

Peer-to-peer (P2P) lending has been defined as ‘a form of direct money lending to individuals or businesses through an online platform that matches lenders with the potential borrowers without an official financial institution participating as an intermediary’.¹⁵⁷ P2P loans are usually unsecured but some secured loans backed by luxury goods also exist.¹⁵⁸

There are various models deployed by P2P platforms. The information intermediation model matches lenders and borrowers and allows parties to trade directly using agreed terms and incur any credit risks that arise while the guarantee model goes further than merely matching the parties to providing guarantees for principal and interests borrowed.¹⁵⁹ A third model is the asset securitisation model which repackages standard form securities from partitioned cash-generating assets for sale to investors.¹⁶⁰ Lastly, the debt assignment model helps lenders and P2P platforms to deliver loans to clients and subsequently sells the claims from the loans to platform investors.¹⁶¹

P2P lending is driven by advanced credit analytics which lowers default risk and by extension, the interest rate and cost of extending credit, compared to brick-and-mortar establishments.¹⁶² Cost-savings arise also from the lower operating cost and the lower cost of regulatory compliance.¹⁶³ P2P enables lenders and borrowers to identify one another and to agree to personalised terms thereby doing away with intermediary intrusions.¹⁶⁴ Again, P2P provides low-cost lender and borrower acquisition and accessibility to cheaper funds.¹⁶⁵ Online lending is said to humanise the lending process by drawing on a public sense of

¹⁵⁷Corporate Finance Institutes *Peer-to-Peer Lending*, available at <https://corporatefinanceinstitute.com/resources/knowledge/finance/peer-to-peer-lending/>, accessed on 17 September 2019.

¹⁵⁸ Ibid.

¹⁵⁹Chang-Hsien Tsai ‘To regulate or not to regulate? A comparison of government responses to Peer-to-Peer Lending among the United States, China, and Taiwan’ (2018) *U. Cin. L. Rev.* 87 (1077), available at <https://scholarship.law.uc.edu/uclr/vol87/iss4/5> 14, accessed on 20 November 2019.

¹⁶⁰Ibid at 15.

¹⁶¹Ibid at 16.

¹⁶²Tyler Aveni *The Role of Peer-to-Peer Lending in Financial Inclusion* (2014), available at <https://www.centerforfinancialinclusion.org/the-role-of-peer-to-peer-lending-in-financial-inclusion>, accessed ON 14 December 2019.

¹⁶³Kern Alexander *Financial Inclusion: The Role of Fintech and Digital Financial Services* (2017) at 4, available at https://unctad.org/meetings/en/Presentation/c1mem5_2017_115_S3_Alexander_2.pdf 4, accessed on 19 November 2019.

¹⁶⁴Ibid.

¹⁶⁵Corporate Finance Institute op cit note 157.

community and transparency and further encourages repayment as a result of the consciousness that individuals, and not banks will suffer for defaults.¹⁶⁶

However, with P2P lending platforms, credit-worthiness and other client information is more difficult to ascertain, which could result in a higher risk of default and put a strain on lenders seeking compensation.¹⁶⁷ The insufficiency of information on borrowers can also result in the misallocation of credit where viable consumers are excluded while some borrowers who are granted loans accumulate debts beyond repayment capacity.¹⁶⁸ Again, access to credit without proper risk evaluation coupled with high interest rates could lead to over-indebtedness for borrowers.¹⁶⁹

Consequently, P2P has been shown to fail in many economies as fast as it has grown due to reasons such as information asymmetry between parties, insufficient capital, unsanctioned guaranties, inefficient players (mainly drawn by the opportunity for high returns) and improper conduct of due diligence.¹⁷⁰ Even in China where P2P has taken scale, there are still stories of lost funds especially with regard to ponzi schemes disguised as lending platforms. Here, the loosely regulated *Ezubo*, hailed by the media and government officials as the award-winning online credit financial brand is one example that resulted in massive financial losses when it was later discovered to be a ponzi scheme.¹⁷¹

In Nigeria, companies such as Surecredit, Aella Credit and Social Lender developed by Sterling Bank are in operation.¹⁷² KiaKia which is a licensed lender that uses machine learning, big data and artificial intelligence to facilitate peer-to-peer lending and Fint which facilitates borrowing for rent, medical expenses and school fees without the need for collateral are further examples.¹⁷³

¹⁶⁶Tyler Aveni op cit note 162.

¹⁶⁷Kern Alexander op cit note 163 at 4.

¹⁶⁸Liliana Rojas-Suarez & Lucía Pacheco *An Index of Regulatory Practices for Financial Inclusion in Latin America: Enablers, Promoters, and Preventers* (2017) at 44, available at https://www.cgdev.org/sites/default/files/index-regulatory-practices-financial-inclusion-latin-america_0.pdf accessed on 1 October 2019.

¹⁶⁹Corporate Finance Institute op cit note 157.

¹⁷⁰KPMG Siddharta Advisory *The Fintech Edge First Edition: Peer -To-Peer Lending* (2018) at 4, available at <https://assets.kpmg/content/dam/kpmg/id/pdf/2018/11/id-the-fintech-edge-p2p-lending.pdf>, accessed on 23 November 2019.

¹⁷¹Susy Cheston *Why We Aren't Surprised that Ezubo, the P2P Lender in China, Is a Ponzi Scheme* (2016), available <https://www.centerforfinancialinclusion.org/why-we-arent-surprised-that-ezubo-the-p2p-lender-in-china-is-a-ponzi-scheme>, accessed on 20 September 2019.

¹⁷²KPMG op cit note 2 at 26.

¹⁷³'Firm to assist MSMEs' *The Guardian* 19 June 2019 Available at <https://guardian.ng/business-services/firm-to-assist-msmes/> accessed 20 November 2020 See also Chiwete, *Welcome to the NewFint*, available at <https://blog.fint.ng/2019/10/18/welcome-to-the-new-fint/> accessed 10 November 2019.

P2P holds some potential in the Nigerian financial market by creating the opportunity for people to lend outside of social circles. As discussed in chapter 4, Nigerians prefer to borrow from family and friends. Funds are thus limited to the capacity of these small social circles. P2P, therefore, has the potential to expand this network and also helps secure the privacy of financial transactions, especially for women. Notably, women are among the main excluded consumer segments in need of financial inclusion initiatives given the bias in the exclusion rate between the sexes shown in chapter 4. Women can also escape cultural norms and save for future needs, family emergencies and economic shocks. Critical challenges such as lack of trust, inadequate understanding of the relatively new concept, nascent national ID scheme, old laws and lengthy court processes could however, manifest.¹⁷⁴ Nigeria has also had a fair share of ponzi schemes which have made the public weary about some financial offerings.

In Indonesia, the regulators are curbing funds mismanagement as well as high return and interest rates by adopting tighter lending measures such as requiring that borrowers have bank accounts and also encouraging lending platforms to collaborate with banks.¹⁷⁵ With increased financial literacy and sensitisation, this trend can potentially develop in aid of access to finance in Nigeria.

6.3.8 Digital identification

Ensuring a legal identity for everyone including registration of birth by the year 2030 is provided as goal 16.9 of the sustainable development goals of the United Nations. Identity is said to be a public good and a requisite for modern life since proof of identity is crucial for a person's engagement in socio-economic and political life existence.¹⁷⁶ Identification (ID) extends far beyond registration to enable participation in civic duties and legal rights as well as financial inclusion.¹⁷⁷ Official identity also transcends policy and convenience and is a

¹⁷⁴KPMG op cit note 2 at 26.

¹⁷⁵KPMG Siddharta Advisory op cit 170 at 4.

¹⁷⁶ National Identification Management Commission (NIMC) *A Strategic Roadmap for Developing Digital Identification in Nigeria: Approved Report* (2017), at 9, available at https://www.nimc.gov.ng/docs/reports/strategicRoadmapDigitalID_Nigeria_May2018.pdf accessed on 2 November 2019.

¹⁷⁷United States Agency for International Development (USAID) *Identity in a Digital Age: Infrastructure for Inclusive Development*, at 3 available at https://www.usaid.gov/sites/default/files/documents/15396/IDENTITY_IN_A_DIGITAL_AGE.pdf, accessed on 12 on September 2019.

fundamental human right that facilitates voting, education, banking, welfare, health and economic advancement.¹⁷⁸

Identity could be functional or foundational. Functional identification supports specific services and population groups without linking to schemes set up for other purposes while foundational systems are mainly deployed by the government to cater for the entire country.¹⁷⁹ Identity could also be physical such as an identity card or a digital identification.

Digital identity (ID) is defined as

the digital representation of the information known about a specific individual or organisation encompassing a claim (assertion of the truth of something, typically one which is disputed or in doubt), an identifier, knowledge of a secret personally-identifying information and membership of a given group (e.g. people under 16).¹⁸⁰

A digital identity also refers to ‘a collection of electronically captured and stored identity attributes that uniquely describes a person within a given context and is used for electronic transactions’.¹⁸¹ Digital identity is characterised by various features ranging from ‘biographic data (eg name, age, gender, address) and biometric data (fingerprints, iris scans, hand prints) as well as other attributes that are more broadly related to what the person does or something someone else knows about the individual’.¹⁸²

Digital ID ‘provides remote assurance that a person is who they purport to be’.¹⁸³ This also provides the opportunity to boost efficiency and innovation by enabling government and business to deliver services electronically, particularly in reaching disadvantaged groups.¹⁸⁴ Digital ID has the potential to help countries with weak or non-existent national identification systems and additionally helps to create and automate such systems through biometrics, digital databases, digital credentials and mobile, online and offline applications.¹⁸⁵

Significantly, increased digitisation is leading to new ways of identifying people using machine learning and algorithm analysis to gather data from mobile phones, social media

¹⁷⁸World Bank Group, *World Bank Group Brief on Digital Identity* 1 available at <http://pubdocs.worldbank.org/en/413731434485267151/BriefonDigitalIdentity.pdf>, accessed 2 September 2019.

¹⁷⁹USAID op cit note 177 at 12.

¹⁸⁰E. Bertino *Digital Identity Management Techniques and Policies* at 2, available at https://www.itu.int/dms_pub/itu-t/oth/06/04/T06040040040001PDFE.pdf, accessed on 2 November 2019

¹⁸¹World Bank Group G20 Digital Identity Onboarding, available at https://www.gpfi.org/sites/gpfi/files/documents/G20_Digital_Identity_Onboarding.pdf at 3 accessed on 23 September 2019.

¹⁸²Ibid.

¹⁸³Ibid.

¹⁸⁴World Bank Group op cit note 178.

¹⁸⁵Ibid.

participation and e-commerce.¹⁸⁶ Data from connected devices, e-commerce, social and professional platforms can generate detailed data about location, reputation, professional connections and social lives of people even without knowing the name, age or date of birth of persons.¹⁸⁷

Advances in digital technology are also facilitating digital identification verification. Mobile authentication aids MNOs to authenticate client identity digitally rather than with an ID card, while algorithmic ID authenticates identity using patterns and unique features garnered from the digital trails of clients.¹⁸⁸ For humanitarian cash transfers, blockchain-backed ID is usable for permanently recording and accessing transactions, eliminating false asset claims and resolving land title issues.¹⁸⁹

Digital identity also helps individuals to prove and assert identity in an instantaneous and paperless manner, access benefits and services, claim entitlements and equally helps government in fiscal management, revenue generation, accountability and transparency and the removal of fake and duplicate entries.¹⁹⁰ This further facilitates better communication between people and citizens.¹⁹¹ Additionally, digital identity can help in the distribution of public goods, the reduction of corruption and the incidents of ghost or duplicate beneficiaries.¹⁹² Digital ID can decrease the risks of human error or abuse by integrating data and assuring quality control.¹⁹³ Digital ID additionally helps persons to access ‘education, healthcare and labour markets and fosters safe migration’.¹⁹⁴

However, digital ID without the proper design or controls can make specific populations of persons susceptible to unfair targeting for financial profit as well as political manipulation and social control by limiting access to services such as travel, payments and social media sites.¹⁹⁵ Additionally, without mandating data standards such as data minimisation, consent and related standards of protection, data breaches can occur without any redress mechanisms for users. Again, people without the required sophistication or trust

¹⁸⁶USAID op cit note 177 at 42.

¹⁸⁷World Bank et al op cit note 181at 14.

¹⁸⁸USAID op cit note 177 at 43.

¹⁸⁹Ibid at 57.

¹⁹⁰NIMC op cit note 176 at 9.

¹⁹¹World Bank Group op cit note 178 at 1.

¹⁹²Alan Gelb & Anit Mukherjee*The Aadhaar Debate: Where Do We Go from Here?* (2018), available at <https://www.cgdev.org/blog/aadhaar-debate-where-do-we-go-here> accessed 24 September 2019.

¹⁹³Olivia White, Anu Madgavkar, James Manyika et al, *Digital Identification: A Key to Inclusive Growth*, available at <https://www.mckinsey.com/business-functions/mckinsey-digital/our-insights/digital-identification-a-key-to-inclusive-growth>, accessed on 13 September 2019.

¹⁹⁴Ibid.

¹⁹⁵Ibid.

to access these systems may be excluded without alternative manual options.¹⁹⁶ Identity theft which is ‘the use of personally identifying information belonging to one individual by another for financial or personal gain’ is a further concern.¹⁹⁷

One common form of digital identification is biometrics. Biometrics is growing in popularity due to decreasing cost of using technology to capture and authenticate biometric features.¹⁹⁸ Biometrics is defined as ‘metrics related to human characteristics including, fingerprint, face recognition, palm veins, etc’.¹⁹⁹ Biometrics is also ‘the use of electronically captured facial features, iris patterns or fingerprints to authenticate a person’s identity’.²⁰⁰ This is the ‘biological and behavioural characteristic of an individual from which distinguishing, repeatable biometric features can be extracted for the purpose of biometric recognition’.²⁰¹

Biometrics include fingerprints, iris scans and palm prints. DNA matching, iris, retina face and hand geometry, finger print recognition, gait and voice have also been indicated.²⁰² Biometrics use distinctive physiological or behavioural characteristics to authenticate a person’s identity and can monitor system access and aid customer identification, verification, and due diligence.²⁰³ This is comparably more secure and easier to use than other authentication factors such as passwords and tokens and unlike knowledge- or token-based authenticators, biometrics cannot be lost or forgotten.²⁰⁴ Furthermore, biometrics are largely inclusive, even for disabled persons, as research shows that iris scans are not sight-dependent and so are usable even for the blind except in the case of diseases such as cataract.²⁰⁵ In Nigeria, biometrics audits have been used to decrease government pension payouts by about 40 per cent.²⁰⁶

¹⁹⁶Ibid.

¹⁹⁷E. Bertino op cit note 180 at 6.

¹⁹⁸CGD op cit note 16 at 74.

¹⁹⁹Chenshan & Rob Reeve, *DFS Vendor Platform Features* (2017) at 6, available at https://www.itu.int/en/ITU-T/focusgroups/dfs/Documents/201702/ITU_FGDFS_Report-DFSVendorPlatform.pdf, accessed on 16 November 2019.

²⁰⁰World Bank Group op cit note 178 at 2.

²⁰¹Biometrics Institute *what is biometrics* available at <https://www.biometricsinstitute.org/what-is-biometrics/> accessed 18 July 2020.

²⁰²Biometrics Institute *Types of Biometrics* available at <https://www.biometricsinstitute.org/what-is-biometrics/types-of-biometrics/>, accessed 18 July 2020

²⁰³CGD op cit note 16 at 71.

²⁰⁴Ibid at 71, 77.

²⁰⁵Frances Zelazny *The Evolution of India’s UID Program: Lessons Learned and Implications for other Developing Countries* (August 2012) at 15, available at https://www.cgdev.org/sites/default/files/1426371_file_Zelazny_India_Case_Study_FINAL.pdf, accessed on 07 September 2019.

²⁰⁶World Bank Group op cit note 178 at 2.

But biometrics could usher privacy and data protection issues. It is expected that providers would adhere to the provisions of the NITDA Data Protection Regulations 2019 which provide for the responsibility of data controllers and processors as well as consumer data rights.

Technological infallibility is equally a concern. For instance, fingerprint scanners have been tricked to accept reactivated latent prints and artificial fingers made with forged fingerprints, candle wax or gelatine.²⁰⁷ Research by Indian experts, however, demonstrates that the chances of infallibility are low as there is only a 0.057 per cent probability of erroneous duplicates entered against the gallery of 84 million people.²⁰⁸

Similarly, fingerprints can be affected by cuts or burns, significant weight gain or loss, age and medical conditions such as arthritis.²⁰⁹ Loss of fingers and skin pigmentation could also affect fingerprinting and can in rare cases be mistaken.²¹⁰ Privacy cannot also be guaranteed in terms of passive capture where for instance, ‘fingerprints can be retrieved from smooth surfaces, iris templates can be extracted from high-quality facial photographs and simple voice recognition systems might be fooled by a covertly obtained recording’.²¹¹ Again, without independent evaluations, sellers of the devices may not freely provide information on failure rates and anti-spoofing technologies are not always efficient.²¹²

The efficiency of biometrics could, however, be improved by requiring more than one metric of identification to increase the chances of authenticity and also guarantee that even disabled persons such as paraplegic persons and persons with some eye deformities are included. It has also been suggested that eliminating ambient conditions, such as humidity for fingerprinting, reducing excess light for facial capture and controlling band-width, connection quality and language for voice recognition can aid effective capture.²¹³

Notably, the bank verification number (BVN) is a mandatory requirement in Nigeria for operating an account. The national identity management commission (NIMC) in Nigeria

²⁰⁷Xavier Giné, Jessica Goldberg, Shalini Sankaranarayanan et al Use of Biometric Technology in Developing Countries, at 10 and 11, available at http://siteresources.worldbank.org/DEC/Resources/Policy_paper-biometrics.pdf, accessed on 9 September 2019.

²⁰⁸Alan Gelb & Julia Clark *Identification for Development: The Biometrics Revolution* Centre for Global Development (2013) at 10.

²⁰⁹Giné, Goldberg, Sankaranarayanan et al op cit note 10.

²¹⁰Ibid.

²¹¹USAID op cit note 177 at 46.

²¹²Ibid at 47.

²¹³Alan Gelb & Anna Diofasi *The Future of Identification and Development: Centre for Global Development Preliminary Discussion Paper* (2015) at 48 available at <https://www.cgdev.org/sites/default/files/identification-development-what-have-we-learnt-and-where-are-we-going.pdf>, accessed on 14 May 2019.

is trying to harmonise BVN data with that on the national database.²¹⁴ The NIMC became vested with the role of national identification management after two previous attempts by the Department of National Civil Registration (DNCR) in 1978 and subsequently by a private partner in 2001.²¹⁵ NIMC has significantly improved its enrolment capacity, now covering 497 LGAs in 36 states and the Federal Capital Territory (FCT), with an enrolment staff capacity of 2 524.²¹⁶

The cost of conducting national registration can prove expensive but this could be offset by establishing a public-private partnership between government and companies to take care of initial financial burden to ensure revenue flows and sustainability.²¹⁷ Beyond the effort of the NIMC, it is important to note that the identity ecosystem in Nigeria is fragmented with 13 government agencies offering ID services at the federal level and four at the state level at an estimated total cost of USD 4.3 billion and ongoing effort to harmonise records.²¹⁸ It is hoped that as harmonisation improves more people will sign up for financial services resulting in greater financial inclusion.

6.4 Legal Issues Raised by these Financial Service Technologies

Although the legal issues are embedded within the discussion on the emerging issues above, a brief commentary on these issues is necessary. It is important to acknowledge that even though, these technologies bring some benefits to the finance industry, certain risks are also evident. From the foregoing discourse, it notable that Blockchains, although praised for improving the security of financial transactions by maintaining an immutable audit trail, are still laden with high costs, slow processing rates and complexity of deployment. Again, the anonymity offered by blockchains can conceal surreptitious activities such as terrorism financing and money laundering.

Similarly, data analytics and big data raise privacy risks when personal and sensitive data are divulged to third parties without the consent of the data subject. There are also risks from social exclusions of consumer groups including the poor or rural dwellers that may not be perceived as creditworthy by algorithms. Furthermore, artificial intelligence can result in discriminatory pricing and algorithm bias that exclude the poor. There is also the potential

²¹⁴ Central Bank of Nigeria National Financial Inclusion Strategy (2018) op cit note 4 at 10

²¹⁵NIMC op cit note 176 at 6.

²¹⁶Aliyu A. Aziz *Digital Identity: The Cornerstone to Effective Service Delivery*, available at http://www.id4africa.com/2019_event/presentations/PS1/3-Aliyu-Aziz-NIMC-Nigeria.pdf accessed 11, 21

²¹⁷World Bank Group op cit note 178 at 2.

²¹⁸NIMC op cit note 176 at 86.

that the merely reaching decisions with the use of patterns can prove detrimental to consumers.

With regard to robo-advisors, the need for improved financial capability and digital channels sophistication means that it may still take some years before this technology is utilised by the excluded. Furthermore, application programming interface (API) is vital to interoperability between providers and enables consumers to access financial services more conveniently. However, the open banking model could weaken banker-customer relationships and introduce reputational and systemic risks from data breaches on an individual provider's platform, with implications for other providers within the group.

Cryptocurrencies are gaining prominence around the world, but their potential to rival national currencies is being met with resistance. Digital coins are criticised for being deployed by private organisations without public responsibility to protect the financial system. The coins are also fraught with high transaction costs, slow processing times and irreversibility of transactions which makes amendments difficult. The potential to replace national regulators is also being resisted.

For peer-to-peer lending, trust and ascertaining the identity of consumers are still major concerns because the national identification management system in Nigeria is still a work in progress. This issue also affects the use of digital identification in Nigeria. People have been able to circumvent the functionality of technology devices such as iris and fingerprint scanners used in identification verification systems as noted earlier in 6.3.8. Also, unfair targeting, blanket exclusions and data breaches present further detriment to the consumer.

Overall, it is important to ensure that the risks posed by these technological exploits, do not, lodge under the wings of financial services innovation to expose consumers and the financial system to peril.

6.5 Conclusion

This chapter examined technology trends that are emerging in the finance sector. The chapter detailed the capacity of these trends to improve financial inclusion and additionally weighed the suitability for financial inclusion. The chapter started by providing a brief background to the financial technology industry in Nigeria. Emerging technologies such as distributed ledger technology, data analytics, application program interface, robo-advising, peer-to-peer lending, artificial intelligence, cryptocurrency and digital identity were examined. The descriptions, benefits, use cases potential for financial inclusion as well as likely consumer detriments were discussed.

Linkages between the empirical findings in chapter five and the conceptual framework laid out in chapter two are identified in the final chapter. Observations on financial inclusion efforts in Nigeria, recommendations for the improved reach of the excluded and conclusions on the work are also made.

CHAPTER SEVEN

CONCLUSION

7.1 Introduction

Chapter 6 explored eight technology trends in the finance sector including distributed ledger technology, data analytics, application program interface, robo-advising, peer-to-peer lending, artificial intelligence, cryptocurrency and digital identity. The focus of the chapter was to determine the benefits, use cases and flaws of these technologies and ascertain suitability for financial inclusion.

This chapter sets out the outline of the thesis, detailing the contents of each chapter. Linkages between the theories and findings from the empirical study are drawn. Also provided in this chapter, is the conclusion on the six themes from the empirical studies, namely: Knowledge about financial inclusion initiatives, financial services adoption and usage patterns, barriers to accessing finance, coping strategies, consumer perception of digital financial services and user recommendations. Observations on the state of financial inclusion, policy recommendations and concluding remarks are also made.

7.2 Outline of chapters

This research examined the suitability of the current legal and regulatory framework for digital financial services (DFS) in Nigeria. Relevant enabling laws and institutions in Nigeria for addressing the needs of the financially excluded were examined. Significantly, of the 36.8 per cent of the excluded population, the majority are women, youth aged 18 to 25, rural dwellers and residents of the North-West and North-East geo-political zones who are additionally debarred from accessing finance due to religious and cultural bias, high unemployment rate, insecurity occasioned by the insurgency in the North, dependence on informal financial services and exclusion by profit-driven finance providers.¹

In summary, the background to financial inclusion in Nigeria, the access strands, methodology and justification for the research were provided in chapter one, as were the definitions of financial inclusion and related terminology as well as the scope of the thesis. The chapter detailed the drive by the CBN to reduce financial exclusion from the pre-2011 era to the efforts post-2011 after the signing of the Maya Declaration. The Maya Declaration,

¹Central Bank of Nigeria *National Financial Inclusion Strategy* (2018) at 15 available at <https://www.cbn.gov.ng/out/2019/ccd/national%20financial%20inclusion%20strategy.pdf>, accessed 08 July 2020.

as explained in chapter one, was the summit where central banks and financial regulators from around the world committed to removing barriers to financial inclusion. A setting out of the focus of the following chapters concluded the first chapter.

In chapter two, the doctrinal and empirical methods of research were employed to outline the literature on the subject and draw out consumer perspectives and recommendations for financial inclusion, respectively. The conceptual framework was outlined. The theory of law and development, with a focus on legal transplants was examined. This was important to provide some understanding about how the legal instruments including guidelines, regulations and policy initiatives adopted by the CBN to improve financial inclusion and invariably the economic situations of users was influenced by laws in other jurisdictions. As law influences development and vice-versa, the advances in technological devices and platforms including mobile phones, automated teller machines, point-of-sales devices and internet and mobile banking are also leading to the introduction of new laws to accommodate these trends and further drive financial inclusion.

Comparative examples were additionally drawn from some countries selected by the Central Bank of Nigeria (CBN) as benchmark countries for designing the National Financial Inclusion Strategy (NFIS). Laws and practices transplanted from these benchmark jurisdictions to develop the domestic framework in the sphere were also elucidated. Some regulatory practices responsible for driving development in Kenya, South Africa, Mexico, Brazil, Bangladesh, India, Pakistan, Ghana and Uganda were examined. At the time of adopting the 2012 NFIS, Nigeria was yet to introduce specific regulations and policies for financial inclusion. The existing finance regulations and policies merely tackled issues relating to ATM and POS regulations and credit enhancement interventions, therefore buttressing the need for the CBN to look to other jurisdictions. The Bank sought to replicate in Nigeria, practices that had proved successful in various aspects of financial inclusion in these countries.

The use of the legal transplants theory was important to usher cost and time savings for the regulator and helped draw expertise on rulemaking, particularly as the idea of tackling financial inclusion from a legal perspective is still quite recent. Again, using legal transplants helped Nigeria to speed up the process of developing guidelines and policies for the sphere and helped the CBN to cherry-pick best practices. The wide array of selected jurisdictions was also useful to ensure that whole frameworks which bore no local context relationship to Nigeria were not adopted in their entirety but only valuable portions were. As argued in the conceptual framework in 2.3.2, the practice of adopting whole models from seemingly more

developed jurisdictions does not always prove to be the best since the cost of adjustment could be prohibitive and the chances of adoption by the local population, unlikely, where solutions do not meet the needs of the intended users. The adoption of Mpesa in Kenya provides a clear example of this. While Kenya recorded tremendous success, especially with rural inclusion, the same could not be replicated in South Africa, where the banking and finance landscape was quite different.

In chapter 3, titled 'Financial inclusion regulation in Nigeria' the review of the 2018 NFIS strategy introduced by the CBN was done, drawing out the drivers, targets, legal instruments and institutions involved in the financial inclusion discourse. Another important aspect of this chapter is the discourse on the regulatory model adopted by the CBN in driving digital financial services. It was argued in 3.5.3 that it is necessary to widen the ambit of providers to include alternative finance providers such as mobile network operators and the postal service and additionally ensure that a healthy environment is in place to enable all providers to exhibit competitive advantages. Also recommended was that regulatory sandboxes are useful for testing new financial services intended to be deployed by these alternative providers in the interest of the CBN's objectives of securing financial system stability and integrity and fostering consumer protection.

Seven barriers to accessing finance were examined in the fourth chapter. These barriers were identified by the Enhancing Financial Innovation and Access (EFINA) survey 2018, which surveyed the areas, most in need of regulatory consideration. Irregular income, unemployment, distance to banks, complexity of documentation, cost of accessing finance or reaching a bank, cash preference, financial illiteracy and lack of an identity document were addressed. As shown in 4.2, Nigeria's economic recession and the fall in global oil prices were responsible for setting back the efforts made by the CBN in bringing more Nigerians to formal finance as many consumers simply reduced bank patronage or stopped utilising bank accounts. This chapter also served as a precursor to the fifth chapter which highlighted the findings from the empirical study.

The study laid out in chapter five sought to identify the barriers experienced by communities without banks in accessing formal finance; gather information about how unserved communities grapple with the challenges of accessing financial services, ascertain the effect of DFS on rural communities; and identify policy adjustments needed for bringing the excluded into formal finance. Using a representative sample comprising individuals from diverse occupational backgrounds, gender and age groups, the study was able to collect insightful data on the challenges experienced by participants in accessing bank services. The

analysis of the study was done in 5.3 under six themes, namely, knowledge about financial inclusion initiatives, financial services adoption and usage patterns, barriers to accessing finance, coping strategies, consumer perception of digital financial services (DFS) and user recommendations.

Supply-side barriers were those that were mostly mentioned by the participants. These include distance and cost of accessing financial services providers, network system downtimes, low-quality financial products, false debits, unexplained charges, safety, distance and attendant transport costs, illiquidity and other inconveniences such as delays in finding transportation and long queues at banks. Regulatory barriers such as the lack of required identification documentation and complexity of account opening requirements were also indicated. Only a few demand-side barriers such as forgetting passwords and lack of confidence in some service providers were recorded. Also shared in this chapter are the profound insights obtained from residents of the *Ubulu-Uku* study on the coping strategies adopted to access finance. Specifically, the study found that residents accessed banks in other communities, saved at home or utilised indigenous savings systems such as *esusu*.

The study was useful to understand the perception of users towards digital finance. Opinions were divided, with some participants trusting the digital technology and alternative providers and others requiring more time to embrace these trends. As demonstrated in 5.3.4(b), the unavailability of banks and the lack of trust in alternative providers drove some participants to depend on local savings clubs to fulfil various financial needs, including savings, access to loans and financing of capital projects. Some participants, however, were ready to adopt financial services offered by alternative providers. Three insights were evident from this study, namely the need to improve trust in digital financial services, the place of cash as king in rural settings and the indispensability of introducing tailored regulatory initiatives to aid financial inclusion.

Emerging technologies that have the potential to aid financial inclusion were explored in chapter 6. In particular, blockchains, digital identification, big data and data analytics, cryptocurrencies, peer-to-peer lending, robo-advising and artificial intelligence were examined. Furthermore, the meaning, potential, likely detriment and expected use cases of these trends with respect to financial inclusion were also considered.

In the present chapter 7, the outline of the thesis with an elucidation of the contents of each chapter is provided followed by a discourse on the linkages between the law and development theory utilised in the thesis and the research findings from the empirical study. A summary of the conclusion on the six themes from the empirical studies, namely:

Knowledge about financial inclusion initiatives, financial services adoption and usage patterns, barriers to accessing finance, coping strategies, consumer perception of digital financial services and user recommendations are also done. Lastly, the observations on the state of financial inclusion, policy recommendations and concluding remarks conclude the thesis.

7.3 Linkages between the conceptual theory and findings from the empirical study

CBN regulatory initiatives on financial inclusion are aimed at improving the economic wellbeing of Nigerians. This served as the basis for employing the theory of law and development as the conceptual theory for the work to detail the impact that law has on the development of citizens, particularly in relation to improving economic wellbeing through financial inclusion.

There is also the corresponding effect of development exploits to influence advances in the law. Thus, as more people adopt financial services due to progressive laws, the financial lives of citizens improve. Likewise, the patterns of adoption and usage and the choice of financial services determine further innovations in the legal framework. In this section, three key linkages which emerged from the study have to do with the national financial inclusion strategy, the dynamics of the use of legal transplants in developing such a strategy and the bank-centred approach to the deployment of DFS.

i. The National Financial Inclusion Strategy

The 2018 review of Nigeria's National Financial Inclusion Strategy (NFIS) and subsequent efforts by the CBN were initiated to improve financial inclusion among the populace and strengthen the financial system. The 2018 review was conducted to adapt existing financial inclusion initiatives from the original 2012 strategy to the circumstances of the excluded. The extensive review was also useful in determining the needed regulatory interventions.² After trying out some drivers for financial inclusion for four years, the CBN sought a review to measure progress and determine areas in need of adjustment or overhaul.

The Central Bank employed a backward- and forward-looking wide-ranging evaluation of databases, reports and consultation with a diverse spectrum of stakeholders to learn and apply lessons.³ As observed in 3.2, wide consultations were also sought from public

²Central Bank of Nigeria *National Financial Inclusion Strategy* (2018) at v.

³Ibid.

sector institutions (regulators and government ministries), private sector institutions such as financial service providers and international and regional development partners, to obtain diverse perspectives.⁴

Religious bias in Northern Nigeria is now being addressed with the advancement of Islamic banking products offered by Jaiz Bank, a non-interest bearing *Shariah*-complaint finance institute. Remarkably, financial exclusion was observed to be lowest in this region. A focus on financial products that are at par with the tenets of Islam therefore needed to be projected. As Jaiz bank offers products that comply with the prohibition of interests on loans by providers, this will likely advance access to finance in the North.

Financial literacy as shown in chapter 2 is also being introduced in schools with National Youth Service Corps (NYSC) members as ambassadors, to dislodge cultural barriers to financial inclusion at the grassroots. These corps members are youth, aged below 30, fresh out of university or who graduated before attaining 30 years of age and are required to complete a year-long national youth service. Corps members are largely deployed as teachers in the primary and secondary schools as well as government ministries and thus provide the vital and diverse workforce necessary to drive rural financial literacy projects to students and communities.

These efforts at adjusting policies to suit the needs of the excluded are in tandem with the findings of the empirical study. For instance, the participants of the empirical study, though sceptical about using new channels of finance, were open to learning more. Interestingly, the growth of the POS providers from only two during the time of the study to about six presently, buttresses the fact that adoption of DFS is possible with the right information and regulatory direction. As users get comfortable with these systems, usage will grow steadily, especially as trust grows and concerns regarding DFS are removed.

From the findings in the *Ubulu-Uku* study, excluded communities would only adopt financial access channels that are trusted and suited to their specific needs. Thus the introduction of some DFS channels, though demonstrated to be successful in some jurisdictions, can result in low adoption and usage rates when the excluded are not convinced of their appropriateness. For example, the introduction of digital financial services, though shown to bring tremendous success in some jurisdictions, is still struggling to gain acceptance in a community such as *Ubulu-Uku* where residents need time to become confident in using services offered by alternative providers.

⁴Ibid.

Again, the ardent resolve to use banking services in neighbouring communities, in spite of the challenges of distance, cost, time, safety concerns and other inconveniences, demonstrates that when money is concerned, even excluded communities rather seek out trusted parties than yet-to-be trusted alternative providers. Furthermore, the fact that some participants in the study insisted on taking long journeys to the banks to make withdrawals or deposit funds is testament to the fact that the excluded are more interested in safety of funds than in convenience. DFS providers can therefore successfully reach these populations by assuring both. Similarly, the persistence in the use of *esusu*, even without any regulatory protection as described in 5.3.4(b), signals the need to tailor financial services for the excluded to local contexts.

ii. The dynamics of the use of legal transplants in developing a national financial inclusion strategy

The discourse on legal transplants specifically served to demonstrate the process of adoption of the laws employed by the CBN from best practice examples applicable in other jurisdictions as detailed in chapter 2. Drawing on legal frameworks from a wide array of jurisdictions helped to ensure that the local context in Nigeria was considered. In other words, the legal transplants were not applied wholesale. Hence, as shown in 3.2, only few practices were adopted from individual countries to avoid imposing whole frameworks on Nigeria. Agent banking was for instance adopted from Brazil and Mexico to reach rural populations. As shown in chapter four, while the rural population accounts for 63.3 per cent of the populace, financial exclusion is at 78.5 per cent, signalling a need for focus on this class.

Pakistan, Uganda and India were selected as model countries for national identification. India has a large population size and was thus a beacon for the possibility of effectively registering Nigerians despite the large country population of about 200 million. Pakistan like Nigeria also had to grapple with the dynamics of the geography of the country and culture of the people. Mobile registration was therefore adopted using hikers, mountaineers and divers to reach all the crannies of the country including residents of swampy terrains. Mobile registration which is now being adopted in Nigeria as confirmed by the participants in the empirical study, accounts for the high level of voter card and national identity number procurement in *Ubulu-Uku*. Further, Uganda is a developing country like Nigeria, yet it has set a record in near-nationwide registration at 99 per cent in just a few years of commencing registration, which was also deemed worthy of emulation by the CBN.

South Africa was chosen as a model country for its insistence on rural location of bank branches. As shown from the difficulties which the participants in the empirical study had to go through in order to get to banks, the need for bank branches in local communities is re-enforced. The 2018 NFIS review now provides that banks establish mini-branches in rural communities to facilitate financial inclusion. Similarly, the Payment Services Banks Guidelines of 2020 now insist that payment service banks must maintain at least 25 per cent of their branches in rural areas.

iii. The value of regulation-backed deployment of DFS

The sandbox experiment described in 3.6 is worthy of note. There it was noted that regulatory sandboxes have proven useful in the deployment of new technology in some countries as regulators are able to watch out for signs of detriment without restricting innovative providers. Providers on the other hand are able to test out new products in the market without running afoul of the law. Ultimately, consumer protection is assured as regulators can correct detrimental market practices, while providers can gain insights from tests that are used to improve products to better suit observed consumer preferences.

The *Ubulu-Uku* study demonstrates the value of this type of experiment. The scepticism expressed towards DFS and alternative providers in general, emanates from the lack of guarantee of safety from regulators. According to the findings of this study, many participants remarked that the community bank was not regulated by the CBN. There were also concerns about the lack of deposit guarantees when dealing with alternative providers. For instance, mobile agents were considered by some participants to be sole proprietorships that could liquidate easily without any supervision.

These demonstrate the need for regulatory backing if new models of finance are to scale up fast and sustainably. In the next section, the conclusions drawn from the themes analysed in the *Ubulu-Uku* study are presented in detail.

7.4 Conclusion on themes from the empirical study

A conclusion on the themes drawn from the *Ubulu-Uku* empirical research in 5.3 is provided in this section. The themes include knowledge about financial inclusion initiatives, financial services adoption and usage patterns, barriers to accessing finance, coping strategies, consumer perception of digital financial services (DFS) and user recommendations. This section only provides conclusions on the themes obtained from the research in summary

form. Recommendations both for these themes and the rest of the thesis are presented further below in section 7.5.

i. Knowledge about financial inclusion initiatives

On the question of knowledge about financial inclusion initiatives outlined in 5.3.1, the study found that digital literacy skills were needed to effectively utilise some DFS channels such as mobile banking. POS and ATM usage is growing as participants of the *Ubulu-Uku* study reveal varying levels of skills in using these finance channels. Again, there was observed to be a high level of awareness of the documents requested by banks to open an account. Many participants were able to mention the national identity card and voter card which are two of the four mandatory documents required by the CBN to be presented to banks before new clients are permitted to open accounts. Some participants also named utility bills which are requested by banks as an additional document of identification that serves as proof of address.

However, knowledge about the CBN policies in place for financial inclusion is still low, evidencing the gap between regulatory policies and the users of financial services. Remarkably, low-value accounts which were specifically introduced for persons at the bottom-of-the-pyramid who have no access to formal finance could not be described by any of the participants. Financial inclusion concerns persons who are unable to access financial services as a result of specific barriers and so the failure to communicate ameliorating policies to the consumer segment that requires this information affects scale.

It is also important to state that no matter how good laws are, lack of awareness of the existence of these laws implies that these will not be utilised by the intended population. The place of raising awareness about CBN policies on financial inclusion and financial product usage cannot be over-emphasised. There is therefore a need to address these knowledge gaps about suitable products as well as the knowledge of the available array of alternative providers.

ii. Financial services adoption and usage patterns

As far as financial services adoption and usage patterns are concerned, the main digital financial channels used to access bank offerings are mobile phones, ATMs and POS. As noted in 5.3.2, these channels are used mostly to save and withdraw money, purchase airtime and remit funds. Use of DFS for e-commerce is still nascent. Many participants, however, chose brick-and-mortar channels where they could speak to bank staff and be assured of the veracity of transactions.

Thus, participants preferred to sacrifice distance and time taken to reach banks in neighbouring communities as this was a favored channel for accessing finance. Patronage of the community bank is shown to be minimal due to issues such as the low quality of services, poor lending capacity, illiquidity, high bank charges and the unavailability of debit cards which plagued the bank before eventual closure.

iii. Financial access barriers

In relation to the barriers, the study shows in 5.3.3 that the main barriers to accessing finance are supply-side and regulatory barriers. Only few participants noted demand-side barriers such as forgetting passwords and the lack of trust in service providers, demonstrating that participants are willing to use financial services if more suitable products and enabling measures are put in place by regulators and providers. Supply-side barriers such as distance and the cost of accessing financial services providers, network system downtimes, low-quality financial products, false debits, unexplained charges, safety, distance and attendant transport costs, illiquidity and inconveniences such as delays in getting transportation and long bank queues were mentioned by many participants.

Regulatory barriers such as cumbersome KYC requirements and demand for collaterals, sureties and guarantors were also enumerated by some participants. It was observed that community members had a good record of owning at least one of the required identification documentation and most participants were thus able to open accounts as a result of mobile registration and election campaigns that brought enrolment services closer to home.

iv. Coping strategies

In respect of coping strategies, the study found in 5.3.4 that two main strategies were adopted by the community to cope with the absence of a bank, namely, the use of deposit money banks in other communities and the use of traditional savings clubs, such as *esusu*. *Esusu* was found to help users to save, access loans, build credit history and earn interests on saved amounts with less complex application process and without the need to furnish collaterals or provide guarantors compared to banks. Savings clubs are, however, informal savings channels that are not yet recognised by the Central Bank, thereby leaving savers at their peril if managers abscond with funds or fail to collect funds from defaulting members. Interestingly, the practice of loaning out all moneys contributed, maintaining a lending limit and insisting on securing registered members as sureties are measures adopted to safeguard funds within the *esusu* purse.

v. Consumer perception of digital financial services

In relation to the questions regarding consumer perception of DFS, it is observed from 5.3.5 that DFS channels are growing in usage but rural communities still need time to build trust in alternative providers. Additionally, participants are not yet fully on board with financial services offered by bank agents, alternative providers such as post office agents and mobile money operators (MNOs). MNOs are viewed mainly as sole proprietors who can liquidate easily while the posts are perceived as being better suited for letter and parcel delivery. As for the idea of dealing with bank agents, some participants still express scepticism and prefer to visit a brick-and-mortar branch to make certain that they are dealing with designated bank staff.

vi. Recommendations of users

On the last theme on recommendations proposed by users, it was outlined in 5.3.6 that many participants called for the establishment of a bank in the community to aid access to finance. Some also suggested the installation of ATMs to address concerns around distance to the existing banks in other communities and the State Capital. Participants were, however, emphatic that deposit and not community banks were needed.

Further recommendations were proposed including the introduction of insurance products, doorstep banking to help the disabled, lower cost of banking services, and requests for fewer documentation by banks for loan applications including discarding with the need to provide collaterals and land titles especially since rural land owners are only vested with rural rights of occupancy and not with certificates of occupancy requested by banks to evidence ownership. Finally, participants suggested that increasing economic activities in the community by setting up businesses and higher institutions of learning would naturally incentivise banks to set up branches.

7.5 Observations on the state of financial inclusion in Nigeria

In this section, observations are discussed under a number of categories as follows: the misalignment and complexity of regulatory measures, the bank-centred regulatory model, the challenges of alternative service providers, the ubiquity of digital financial services, the dynamics of financial access, high transactional costs in financial services and continued dependency on cash.

i. The misalignment and complexity of regulatory measures

The Central Bank of Nigeria recognises that financial inclusion efforts ought to target the needs of the financially excluded particularly the poor. Hence, the Bank defines financial inclusion as

enhancing access and usage of financial services at affordable costs to the vast majority of disadvantaged and vulnerable low income groups; it is the availability and accessibility of financial products and services to the entire population without discrimination.⁵

By this definition, the CBN confirms that the poor are the most important players in the financial inclusion debate. In a bid to achieve financial inclusion, the CBN has adopted a myriad of laws as detailed in 3.3. For the already banked populations, it must be stated that this plethora of laws on various aspects of financial access ensures that funds are transferred and stored safely and efficiently, data protection and consumer protection laws are in place, and sophisticated products and services are on offer. However, the excluded population comprising primarily the poor, rural, women and the youth (without the financial capability to navigate the financial system or the required digital sophistication), do not fare better by these laws.

The value of the tier one accounts which, for instance, were put in place to help persons without documentation has been diminished by the subsequent roll-out of the CBN bank verification number exercise that insists on specific account opening documentation. Enrolling in the BVN implies that the needed documentary evidence needed for a high-value account is provided. Although some banks conduct reduced KYC for this class, only restricted services are available as restrictions are placed on the volume and value of transactions. Again, only domestic transactions are accepted as detailed in 4.3.7(A). The excluded thus have to grapple with the lack of identification and complexity of account opening to access high-value accounts. Additionally, the pervasive practice by banks of demanding utility bills as proof of address is challenging to the excluded.

As revealed in the analysis of the survey in 5.3.3(c), many people have no access to utility bills for several reasons. Individuals may not have access to receipts where community payments are made or in the case of a tenant, where bills are paid alongside rent to a landlord who refuses to give out receipts for bills. Again, communities that do not access designated utility companies are also cut out from these systems. These concerns need, therefore, to be addressed to bring in the excluded.

ii. The bank-centred regulatory model

A second observation is the mainly bank-centred regulatory model adopted by the CBN. According to the CBN, the bank-focused regulatory model was, in the delivery of financial

⁵Central Bank of Nigeria *CBN FAQs* at 3, available at https://www.cbn.gov.ng/Devfin/CPD_FAQs.pdf, accessed on 12 May 2019.

services, favoured to maintain financial stability and integrity and additionally ensure that entities within the supervisory purview of the CBN are able to provide finance. This stance, however, does some disservice to the excluded as about 36.8 per cent of adult Nigerians cannot access formal finance due to stringent access terms and the unsuitability of channels of providers.

A bank-centred regulatory model means that banks which are mainly located in urban areas adequately serve urban dwellers but largely leave out rural populations. Rural financial exclusion, therefore, stands at 78.5 per cent according to EFINA. Although the effect of the Payment Services Banks Guidelines is yet to be seen, it is noteworthy to recall that consumer protection is an additional objective of the CBN and should not be compromised in favour of financial stability and integrity. These three concepts need rather to be balanced.

Significantly, rural banking in Nigeria is sparse due to reasons such as the negative perception of the poor in relation to creditworthiness, a notion that the poor have no funds to save and the strain of KYC regulation which leads banks to cut off whole consumer groups in a bid to de-risk. The excluded who should really be the subject of financial inclusion initiatives are being shunned by deposit money banks in spite of the evident opportunities to pool community funds and the fact that notions of a higher degree of loan default by the poor is not backed by evidence.

Excluding poor communities increases the amount of money in circulation in the economy with attendant risks on the stability and integrity of the financial system as the excluded begin to patronise informal channels of finance at the risk of being drawn into the hands of unsafe finance providers such as loan sharks, payday lenders and other money lenders that often lend at usury, imposing stringent repayment plans and sinking the poor deeper into a cycle of debt.

Even though poor people may have small means individually, it is interesting to note that pooling these small funds together within the formal sector can result in significant numbers. The Mpesa story detailed in 2.5.4(a) is proof of the fact that poor persons can be commercially viable when small individual funds are pooled together to form a larger and more diversified pool of funds for service providers who dare to invest in this category of persons. Here, micro-payments drove MPesa to a position of dominance in mobile money provision in Kenya. The company's business strategy of targeting the 'shillings' in terms of bringing access to persons at the base of the pyramid in recognition of the commercial

viability that could result from investing in these persons, was instrumental to achieving success.⁶

A similar situation is evident in India where the Graemen Bank financial inclusion model led to the inclusion of numerous excluded and vulnerable persons by providing microcredit without collateral and won the founder, Yunus Muhammad, and the Bank the Nobel Peace prize for 2006 for their efforts in creating economic and social development.⁷ Accordingly, financial services institutions need to recognise the business opportunity in serving the poor including the opportunity for expanding customer base and revenue stream from finance products and more importantly as an income generating medium to receive social transfer payments for the poor.⁸ Again, network effects are possible, particularly with regard to persons sending remittances to dependent relatives.

iii. The challenges of alternative service providers

A third observation is the restriction of alternative providers, especially mobile network operators (MNOs), in the provision of financial services. Before the introduction of the Payment Services banks Guidelines, MNOs could provide finance only in collaboration with banks. Even the recent permission afforded MNOs to launch payment services banks still comes with several restrictions. Understandably, the lower degree of licensing requirements mandated by the CBN regarding MNOs is one reason for these restrictions. However, focus on the activity rather than the entity providing finance has proved to be a better option in many jurisdictions.

Nigeria is a diverse nation both in terms of geography, religious beliefs, and cultural bias regarding money and, additionally, grapples with a high level of exclusion that necessitates embracing as many channels as are feasible to reach more clients. Making several channels available for the provision of finance not only offers viable alternatives that the excluded can choose from but also ensures that adoption is based on the financial needs of the users to sustain usage.

⁶Kieron Monks 'M-Pesa: Kenya's mobile money success story turns 10' *CNN* 24 February 2017, available at <https://edition.cnn.com/2017/02/21/africa/mpesa-10th-anniversary/index.htm>, accessed on 06 May 2018.

⁷*The Nobel Peace Prize for 2006* (2006), available at https://www.nobelprize.org/nobel_prizes/peace/laureates/2006/press.html, accessed on 06 May 2018.

⁸Lydie Louis & Frederic Chartier 'Financial inclusion in South Africa: An integrated framework for financial inclusion of vulnerable communities in South Africa's regulatory system reform' (2017) *Hult International Business School Journal of Comparative Urban Law and Policy*, 1 (1) at 174, available at https://www.researchgate.net/publication/317095597_Financial_Inclusion_in_South_Africa_An_Integrated_Framework_for_Financial_Inclusion_of_Vulnerable_Communities_in_South_Africa's_Regulatory_System_Reform, accessed 21 July 2020.

As noted in 3.5.2 and 3.5.3, MNOs, have a wide customer base, network infrastructure and brand recognition needed to leverage into finance and can easily create niches for excluded areas. The success of MNOs at increasing financial inclusion in countries such as Kenya and Tanzania is notable. Similarly, postal banks can help reduce financial exclusion in geographically hard-to-reach communities as the postal service is present in most communities in Nigeria.

Therefore, continuing to restrict alternative providers in the face of clear potential for increased inclusion; misses the opportunity to reach the rural population that resides too far away from banks. One can observe how the introduction of agent banking by the CBN to reach rural areas has not proved successful as banks which have been given the mandate to drive this channel continue their practice of concentrating on customers in urban centres, leaving swathes of rural populations unserved.

iv. The ubiquity of digital financial services

Another imperative observation is the spate of growth in the fintech space in Nigeria. There are numerous finance providers in Nigeria, including deposit money banks, microfinance banks, pension administrators, insurance companies, mobile money operators and emerging fintechs. It is, however, remarkable that the use of advanced finance technology such as artificial intelligence, blockchains and cryptocurrency by these entities is, growing amid a regulatory wilderness.

The discussion in 6.2 evinces that there are no laws in place for these new technologies and methods to seek redress for detriments that could accrue from these technology trends are yet to be addressed. For instance, apart from the warnings by the CBN and the Securities and Exchange Commission about the unregulated and risky nature of cryptocurrencies, no other regulations protect investors, nor alternatives emplaced to discourage use. There are numerous coins presently trading in the Nigerian market as well as domestic virtual exchanges such as Bitpesa and NairaEx to easily buy and sell these coins. This is despite the fact that fraud resulting from this trend could leave many financially scarred and put a further strain on trust in the financial system.

Likewise, the use of artificial intelligence to determine suitability for loans can lead to arbitrariness and discrimination without the right rules as stated in 6.3.5. There are presently few rules mandating fintechs to submit documents on internal processes to reflect non-discriminatory client selection for financial transactions such as loan applications and evince adherence to best practices in providing finance when AI is used. Accessible channels such as

complaints platforms or toll-free help lines for redressing misadventures with finance provides (employing new technology especially in relation to small claims) are absent with the attendant impact on consumer engagement, future patronage or network effects.

v. *Dynamics of financial access*

A further observation is the wide disparity in the scale of financial inclusion nationwide depending on gender and geographical locations. Financial inclusion figures show that more men are financially included than women. About 40.9 per cent of females are financially excluded compared to 32.5 per cent of men.⁹ Again, rural populations have lower levels of financial access at 78.5 per cent compared to 21.5 per cent of the urban population.¹⁰ Geographically, also, it is observed that Southern states are more financially included than Northern states. In the North-West regions, for instance, as much as 62 per cent of the adult population is excluded.¹¹

Reasons for exclusion in these areas are likewise varied including religious bias and cultural prejudices regarding forms of finance as well as eligibility for getting banked, high cost of banking and the distance to financial access points. These, therefore, necessitate the availability of diverse channels of accessing finance deployed by a wide array of providers to reach all and assuage prejudices.

vi. *High transactional cost of financial services*

The cost of transacting is still observed to be high, especially for digital channels. As described in 4.3.2, ATM use is charged at NGN35 per withdrawal after the third withdrawal in a month, leading many to withdraw in bulk per transaction and invariably resurrecting the culture of cash dependency in a bid to avoid charges. Funds transfers using USSD are also charged at about NGN50 by some banks and a POS transaction cost of N50 has recently been imposed on consumers. The cost of banking is getting more expensive for the ordinary Nigerian and lands a harder blow on the less well off.

It is remarkable that while the CBN National Financial Inclusion Strategy seeks to improve financial inclusion, using digital financial channels, these channels are being heavily taxed rather than encouraged despite growing popularity among the unserved communities. At the time of the *Ubulu-Uku* study for instance, opinions were found to be mixed about the

⁹Enhancing Financial Access and Innovation in Nigeria *Key Findings: EFinA Access to Financial Services in Nigeria (A2F): 2018 Survey* at 37.

¹⁰Ibid at 47.

¹¹Ibid at 40.

use of POS devices, however, as more people have continued to use these services, patronage has increased. In two years of conducting the study, the number of POS machines deployed in the community have risen from two in October 2018 to six presently. These machines are helping the community to ease the burden of accessing finance in the absence of a bank. For a country racing against time to reach financial inclusion targets and bent on strengthening the formal financial system, there is a need to think clearly about how banking the poor is being sacrificed at the altar of bank enrichment through excessive charges.

vii. Dependency on cash

A final observation is that cash is still king in Nigeria and the prospect of achieving a completely cashless society in the near future is therefore doubtful. This is especially so as cash remains the preferred medium of transacting in Nigeria. The cost of using digital channels such as ATM, POS and funds transfers as described above serves as a further deterrent. Again, the use of digital media in many settings as detailed in 4.3.5 is still impractical or expensive. For instance, roadside vendors and petty traders will hardly accept transfers or offer POS machines as payment options. More so, as discussed above, the cost of using these channels does not economically justify usage particularly in the case of low-cost transactions.

Remarkably, measures put in place by the CBN to redress cash dependency nationwide by the cashless policy initiative have not advanced as expected. The CBN, therefore, has a significant amount of work to do both in lowering the cost of using digital channels of finance and changing mindsets towards alternatives to cash. Whatever the measures chosen, these must prove cheaper and more efficient and convenient than cash. The value provided by alternatives to cash must offer superior value to displace cash. Otherwise, from a consumer perspective, what is the point of going digital?

7.6 Policy recommendations

The CBN has made some commendable inroads in the pursuit of financial inclusion in Nigeria. From an initial target of including 80 per cent of the adult population into formal finance by 2020, the regulator now seeks to include 95 per cent of the adult population by 2024 as discussed in chapter 1. It is, however, submitted that there are still regulatory improvements that need to be emplaced if these goals are to be realised.

One model can scarcely cater for all kinds of customers in varied locations and with different financial needs and expectations, especially considering the divergent and

heterogeneous composition of the Nigerian population. Nigeria is a multi-lingual and multi-cultural country comprising more than 250 ethnic groups, numerous religious affiliations and divergent socio-cultural perceptions of finance and lending.¹² In recognition of the geographical diversity, large size of the population, diverse cultural and religious dynamics and varying financial needs of various consumer segments, it is important to note that recommendations made in this thesis are not exhaustive but serve to bring some useful insights to attain financial inclusion sustainably.

Ten key recommendations are made in this section. In summary the recommendations propose a balancing of the goals of financial stability and integrity with the responsibility of consumer protection, aligning regulatory efforts to the needs of the excluded, encouraging collaboration and leveraging on digital financial services. For these recommendations to work there needs to be an advancement of financial literacy, a change of mind-set around informal financial services and the excluded, a level playing field for all providers and safety of funds within the financial system.

i. There is a need to balance the goal of financial stability and integrity with the regulatory responsibility of consumer protection

First, there is a need for the CBN to balance the goal of protecting the stability and integrity of the financial system with the regulatory responsibility of consumer protection, especially for the financially excluded. One aspect where this balance has had a huge impact is the issue of customer on-boarding. CBN KYC requirements sometimes debar the excluded from opening an account for not possessing required identification documentation or as a result of the complexity of account opening processes. As stated in 4.3.7, 10 per cent of Nigerians have no access to finance as a result of complexity. There is, therefore, the need to seek simpler on-boarding methods.

Biometrics registration is one viable method as everyone possesses biometric features and as shown in chapter 4, the cost of capturing these is relatively inexpensive. The use of biometrics, ensures that everyone can have access to finance. Similarly, mobile SIM registration can be employed by banks in recognition of the ubiquity of phones in Nigeria and the fact that mobile numbers can be identifiers for customers after registration. Importantly, SIM registration in Nigeria entails the capturing of contact details, biometrics and

¹²See United States of America Embassy in Nigeria, *Nigeria Fact Sheet*, available at <https://photos.state.gov/libraries/nigeria/487468/pdfs/Nigeria%20overview%20Fact%20Sheet.pdf> , accessed on 21 April 2018.

photographs of users and can thus be viable in helping clients to access bank services in the absence of other identification documentation. The discussion in 4.3.7(a, b and c) details the strains that some Nigerians have to encounter to get the mandatory documentary requirements imposed by the CBN. More so, physical documentation is subject to loss, theft, compromise, forgery or mutilation and is additionally not universally owned by all.

The request for utility bills as evidence of proof of address also needs to be scaled back in the presence of other efficient alternatives such as attestations by trusted members of the community including religious or political leaders, notaries public and employers. Again, digital alternatives discussed in 4.3.7(c) such as what3words and snocode could be adopted. These have already brought solutions to the problem of lack of ID by dividing up and numbering the world in square metres so that everyone has a definite address without the need for house numbers.

The continued insistence on proof of address, evidenced by utility bills ignores the plight of persons not served by the designated utility companies or who simply rely on alternative sources of accessing these services. For instance, some communities still rely on natural water bodies and personally dispose waste by burning or composting and so will have no receipts from the waste management body or state water corporations. Additionally, electricity distribution companies have community payment arrangements in some localities and in such cases, do not issue bills on an individual basis. Personal addresses of individuals will, therefore, not be appended on the receipts and cannot be used to open accounts.

Again, in situations where landlords collect comprehensive house rents comprising annual bills, agency fees and security deposits, tenants as shown in the *Ubulu-Uku* study are unable to access these receipts and are thus excluded from accessing services where financial services providers insist on these forms of identification. Moreover, utility bills do not in any way guarantee the address of a client and should therefore not be allowed to stand as a stumbling block on the part of the excluded.

It is crucial to bear in mind the fact that consumers grappling with the challenge of engaging with the finance industry could easily feel discouraged when on-boarding requirements become daunting. Obviously, a consumer without any experience of formal finance or knowledge of the value of engaging in this sector may not be willing to suffer inconvenience in order to sign up for the service.

ii. Align regulatory efforts to the needs of the excluded

Secondly, there is a need to ensure that regulatory efforts regarding financial inclusion are fitting for the needs of the excluded populations for which these efforts are meant. There is a plethora of laws and guidelines to aid financial access in Nigeria but the majority of these laws are more suited to persons who are already banked. It is submitted that laws introduced by the CBN should have the capacity to address the needs of the excluded especially with regard to eligibility, efficiency and cost. The CBN's regulatory oversight in the industry must be applied to encourage innovations in financial products that serve the excluded.

These innovations must also meet the expectations of the intended users and not be high-sounding digital innovations, too complex for new entrants in the formal finance sphere. Uniform products cannot be expected to serve the needs of the excluded and included alike but must be varied to mirror the needs of disadvantaged consumer segments- the poor, women, the youth and Northern dwellers. Islamic finance-friendly products are, for instance, useful to include more Northerners who by reason of religious bias towards interest-bearing financial products cannot utilise conventional financial products traditionally offered by financial services providers.

Similarly, rural dwellers that are dependent on informal financial offerings such as savings clubs need better security assurances. *Esusu* collectors can, for instance, be made to register and operate licences to reduce incidences of loss of funds. Banks can also step into this sphere by partnering with fund managers to collect funds and save at the bank in a group account, showing records of the names of all members, contributed amounts, collection schedules and accrued interest for each member with additional incentives to plough back savings. Members can even be provided with the option of investing in joint capital projects that can serve as a further source of earnings for all members. This arrangement can also help members build a credit history with the banks for future financial transactions including loans.

iii. ***Encourage collaboration between DFS service providers***

Thirdly, there is a need to encourage collaboration between financial services providers in financial offerings. Collaboration can ensure that more excluded persons are reached as partnerships increase available offerings and extend to wider market niches. Banks as traditional finance providers should not be favoured above alternative finance providers. In some countries where financial inclusion efforts have taken scale, providers such as the postal service (in Brazil) and mobile network operators (MNOs in Kenya) have played a crucial role. The same can be replicated in Nigeria where a post office exists in most communities

and mobile phone ownership rate is high. Collaboration between banks and these alternative providers can lead to cost savings for banks in building out fewer branches around Nigeria. Banks can also benefit from the wide customer base of MNOs and the extensive presence of the postal service across the nation. Alternative providers in turn, potentially gain from the reputation of banks as trusted parties in the provision of finance and would bear lesser regulatory compliance burdens.

Again, while MNOs can provide the network for deploying digital services, the postal service is necessary where physical branches are needed. For instance, post offices can help banks fulfil the CBN's requirements of onsite biometric verification number registration before accounts are operable. Other spaces for collaboration include infrastructure sharing, billing management, customer services and help lines, deposit functions, data sharing and cost sharing.

Collaboration between providers can result in a new concept of corridor or universal banking where partners decide to collectively float a mini-bank that offers financial services such as deposit, loan offerings, or access to financial access channels such as POS or ATM devices and clients have the opportunity to deal with preferred entities. Members of staff in this arrangement will not be exclusive to any one finance provider but will facilitate transactions depending on clients' preferences. Clients on-boarding can be facilitated in these mini-banks as well as other personalised customer services offered by staff.

A related concept practised in South Africa is called Mzansi as detailed in chapter 2. Mzansi is deployed as an entry-level account by a consortium of the big four banks- Absa, FirstRand, Standard and Nedbank in collaboration with the postal service. Users can apply for these accounts at any of the branches of the banks or post office. Clients can either keep using this account or seek other options by migrating to other account plans offered by the individual entities.

This model can also work in Nigeria where the postal service is more geographically extensive in terms of branches and rural reach than the banks. The model provides a win for all as costs of deploying and promoting the services will be shared and the opportunity for expanding customer base is high. This equally presents an opportunity for the postal service to diversify into financial services as clients will be assured that identical services can be obtained irrespective of the entity chosen.

iv. The importance of inter-regulatory cooperation

Just as collaboration is important for service providers, inter-regulatory cooperation is also critical. Regulators need to embrace the value of regulatory collaboration as vital to an effectively functioning DFS market. This is because several levels of expertise are required to competently regulate the market. Payment regulators, usually represented by the Central Bank, communications and network infrastructure regulators, as well as insurance consumer protection and competition regulators need to operate harmoniously to propagate seamless regulation and avoid regulatory duplication in terms of rules and conditions of operation.

This can also ensure uniformity and clarity of laws for adopting financial services. For instance, in relation to KYC compliance in the registration of prospective clients, a plurality of laws is observed. Here, even though clients are by the provisions of the 2013 CBN KYC guidelines permitted to open low-value accounts by simply submitting minimum identification information such as name, gender and phone number, the introduction of the compulsory Biometric Verification Number (BVN) exercise in 2014 restricts the services that these accounts can be used for. Notably BVN registration is the only way of getting full banking services offered by high-value accounts. The barrier of lack of identification initially sought to be solved by the adoption of the KYC guidelines are thus unsolved with the introduction of the BVN exercise. This confusion can be off-putting for the excluded.

Another advantage of inter-regulatory collaboration is the potential to have a consolidated piece of legislation relating to DFS for ease of reference and for stakeholders. Collaboration between regulators additionally gives providers from relevant sectors the legal clarity on how to effectively deal in the industry and facilitates the process of licensing, approval and operation. However, one regulator, preferably the CBN should lead in formulating these laws while others contribute to rules that answer peculiar industry-specific questions. Aside the cost-effectiveness and time savings that this can usher, it also ensures that no one entity can leverage its powers in the finance sector to wield regulatory capture and drive the market in its favour.

Regulatory collaboration is therefore needed to introduce a well-rounded array of providers and allay whatever fears that may be keeping the finance sector from moving at a deserved pace. The National Identification Management Commission (NIMC), the Nigerian Communications Commission (NCC) and Nigerian Postal Service (NIPOST) are some of the relevant agencies. The CBN's collaboration with the NCC can ensure that alliances between banks and mobile network operators are seamless and that the interests of all providers are protected. Additionally, the NIMC and CBN collaboration can dislodge the barrier of lack of

identification ensuring the registration of all Nigerians on the national database to facilitate customer identification verification when accessing financial services.

NIPOST can also assure that financial services are brought closer to clients especially those that dwell in rural areas by adapting post offices to facilitate access to finance on multiple channels including POS and ATMs. From the findings of the *Ubulu-Uku* study in 5.4(a), conventional banks are trusted but not widely available or easily accessible while mobile services are ubiquitous but MNOs are still trying to gain consumer trust in financial services. One can thus see how effective collaboration can breed both trust and patronage in the financial system as a whole.

Again, the corridor or universal bank model described above, as well as the entry-level account model practised in South Africa will be better facilitated where the postal service is available to take care of the rural finance aspect.

v. *Advance financial literacy and capability*

A fifth recommendation relates to the advancement of financial capability and literacy. Financial capability is a state where clients are able to personally decipher financial services that suit their specific financial circumstances. For instance, even where loans are available for the taking, financial capability ensures that clients do not get into debt by engaging in excessive borrowing but rather sign up for an amount that matches needs and can easily be repaid in order to maintain good credit rating. Again, financial capability helps determine the type of accounts needed by individual clients. While a current account could prove useful to a businessman or entity for such purposes as issuing cheques, a peasant farmer or small-time trader will have better use for a savings account which bears interests on accounts and attracts fewer charges.

Financial literacy on the other hand, involves enlightenment on the types and uses of financial products. This is pertinent to ensure that users understand both the channels available for accessing finance and the proper use of these channels. A core aspect of financial literacy is digital sophistication which ensures that, with the myriad of technological innovations rapidly featuring in the finance sector, the excluded are not overwhelmed but learn to use and interact with these platforms for optimal transaction experience. The use of Unstructured Supplementary Service Data (USSD), web and mobile banking, ATM and POS and even more complex engagements with robo-advisors are some of the benefits that will come with improved digital sophistication through financial literacy. This could also decrease digital aversion in rural communities and change the mindset that digital channels are risky.

In the *Ubulu-Uku* study for instance, it was observed in 5.3.2 that some participants believed that a stolen mobile handset could automatically translate to the siphoning of mobile money. The importance of strong passwords, the privacy of PINs and the safe-locking of devices are some of the crucial lessons for this class. With the proliferation of the Short Message Service (SMS), Unstructured Supplementary Service Data (USSD), shortcode enabled banking on mobile phones, lower phone costs, fewer incidents of service timeout and lower transaction charges, the use of DFS is expected to grow exponentially.

Financial literacy is equally useful in reducing cash dependency. There is a marked preference for cash in Nigeria and many transactions are also performed in cash. There are places where one cannot expect to pay for services without cash. Intra-public transport operators, petty traders in open markets and roadside food vendors are some examples where digital channels can scarcely be used. Cash use is also still the preferred method where a relationship of trust is yet to be established between parties even for more digitally-savvy persons. The continued offering of cash on delivery by some e-commerce companies is proof of this. The need for a paradigm shift through financial literacy is therefore needed.

Furthermore, financial literacy is vital for removing cultural and religious bias which surrounds formal finance. The extremely low level of financial inclusion in Northern Nigeria is telling of the need to deploy Islamic finance products. Here, for instance, the population is predominantly Muslim and lending at an interest constitutes *riba*¹³ which is frowned upon from a religious point of view.¹⁴ Presumably, this population will be more at ease with finance service providers that build upon the tenets of Islam in designing finance products and services. Jaiz bank presently offers Islamic banking financial services.

There are also ways around proposing financial services to this class. For instance, it has been argued that besides the interest component accruing from a loan (which constitutes *riba* and is forbidden), other components such as overhead costs, service costs, risk premium and compensation for inflation are interest-free and can be charged.¹⁵ Again, while an

¹³*Riba* is described as usury or interest for which no counter value is given. See Yahaye Bambale *Islamic Law of Commercial and Industrial Transactions* (2007) ch 15 at 111. This is also often regarded as any unjust, excessive gain or unjustified increase in capital for the earning of which no appropriate effort was made. See MA Mannan, 'Islamic Economic Theory and Practice' (1980) 161.

¹⁴That which ye lay out for increase through the property of (other) people, will have no increase with Allah: But that which ye lay out for charity, seeking the countenance of Allah (will increase): it is these who will get a recompense multiplied". (30:39). See Zahid Zamir *Prohibition of Interest (Riba) in Islam: The Social, Moral and Economic Rationale (Part I)* at 2, available at <http://www.nzibo.com/riba/WHY%20DOES%20ISLAM%20PROHIBIT%20INTEREST%20%28RIBA%29.pdf>, accessed on 21 April 2018.

¹⁵Bambale op cit note 13 at 108–9.

ordinary savings account has elements of interest; a current account has other components besides interest as mentioned above and so does not constitute *riba*.¹⁶

Moreover, the Islamic tenet that forbids lending at an interest has been explained to be predicated upon the assumption that the lender makes a 'cut' from available savings to help a borrower in need but banks as financial intermediaries dealing with public funds cannot be said to be in the same position as the money lender addressed by the tenet.¹⁷ In other words the bank is only in possession of the money, unlike the lender in the tenet, who actually owns the money and it will, therefore, not be out of place for the lender to get paid for the services of intermediation. These ideas can be propagated through financial literacy initiatives.

Furthermore, in communities where women are restricted from going out in the public unaccompanied (as is sometimes the case with women in purdah), or communities that are located at a distance from financial institutions, a model that brings services closer to the populace will be more favoured. The agent network is one such model. Agent networks are beneficial to populations that have low literacy or low technological sophistication rates as agents can play the role of financial literacy providers, educating customers on available services and channels of access.

Accordingly, the need for a broad-based understanding of the barriers to financial services is apt, as failing to holistically address exclusion could lead to a situation where persons faced with more than one barrier to finance remain excluded when only one such barrier is removed, thereby leading to reduced growth in the economy and increase in income inequality.¹⁸ Investing in the financial education of rural dwellers, improving related infrastructure such as telecommunications networks and enhancing user-friendly options such as audio interactions, voice recognition and biometric authentication are other useful strategies.

vi. *Change the regulatory perception towards informal finance*

As a sixth recommendation, there is a need to change the regulatory view towards informal finance. It is submitted that valuable informal channels such as indigenous savings clubs should not be discarded alongside others such as loan sharks that offer stringent lending and repayment plans that lead the excluded deeper into the poverty trap. Significantly,

¹⁶Ibid at 109.

¹⁷Ibid at 110.

¹⁸Demirgüç-Kunt&Leora Klapper *Measuring Financial Inclusion Explaining Variation Across and Within Countries* (2014) at 310, available at https://www.brookings.edu/wp-content/uploads/2016/07/2013a_klapper.pdf, accessed on 26 November 2019.

engagement in informal finance can serve as a precursor to the introduction of the included into the formal finance sector, especially where financial literacy programmes are effectively used to teach the excluded the benefits of formal finance. Furthermore, encouraging the investment of 'idle funds' in the formal sector as opposed to under a mattress or with a friend is more beneficial as interests can be earned and regulators can prudentially oversee these funds.

The informal finance economy in Nigeria is rich in its diversity, with several variations of rotating savings arrangements. The *esusu* and *ajo* stand out as the two most popular models. Usually these savings arrangements are organised between close friends, relatives, business associates and colleagues who contribute prearranged and often times equal amounts for rotational collection by each member of the group. These arrangements have the advantage of growing a savings culture among members and provide a source of funding for capital investment.

As described in chapter 5, the *ajo* system is an arrangement administered by a designated fund manager who usually offers house-to-house collection of contributions and disburses same to members at the end of a predetermined period after collecting a commission (usually 10 per cent). The members of an '*ajo*' group may be aware of the identity of other members and can apply for a loan or collection out of turn from the manager. The *esusu* on the other hand is an arrangement whereby members contribute predetermined amounts held by a trusted member selected by the others for disbursements at the termination of a pre-set period. This would usually range from a few months to a year depending on the number of participants. Contribution could be collected daily, weekly or monthly.

As stated earlier, one clear loophole in these systems is the fact that both rotational savings arrangements do not always bear interests and in the case of *ajo*, a commission is paid to the fund manager for collection and savings services rendered, thereby, depleting the contributed funds. There is therefore room for improvement. For one, the capacity of shopkeepers, post office staff and fuel stations can be harnessed for the collection of members' funds. Again, collectors can partner with banks to encourage members to plough back savings for a chance to earn additional interest and credit history. Other financial products such as loans, insurance and pensions can also be offered on the basis of members' conduct on a convenient and user-friendly digital platform.

This constitutes a win-win situation for all as members benefit by earning interests on savings, receiving full repayment of invested sums and gaining viable credit history with the additional opportunity for other services. Financial institutions that collaborate with these

entities on the other hand benefit from an increased customer base and a wider pool of funds for investment, intermediation and maintaining capital adequacy requirements of the central bank. As for the regulators, funds will be within the formal finance sector and so can be regulated.

vii. Leverage on digital financial services

Providers need to leverage on digital finance services (DFS) especially with the current habit of cash dependency by the majority of Nigerians. Providers will need to offer DFS as more appealing and providing superior value than existing alternatives including cash, to ensure patronage. This can be achieved by making DFS offerings more convenient, user-friendly, efficient and responsive to customer needs and demands. Enabling more merchants that serve the excluded to accept electronic payments for their customers' purchases of everyday goods and services can vastly broaden financial inclusion leading to digital liquidity and reduced reliance on Cash and Cash-in Cash-Out (CICO) services.¹⁹

DFS systems such as mobile phones, personal computers, point-of-sale (POS) machines and automated teller machines (ATMs) are relatively cheaper and easier to deploy on a larger and more extensive scale than constructing physical bank branches. This is especially so considering the vast expanse of rural communities presently unserved or underserved by financial institutions and the array of licensed corporations deploying DFS. According to the McKinsey digital finance report discussed in 1.6, financial services providers can lower the cost of offering finance accounts by as much as 80 to 90 per cent using digital platforms, compared to using physical branches, in terms of the costs relating to opening accounts, transactions processing, deposit and withdrawal services.

It is expected that the DFS media will facilitate frequency of use due to its flexibility and convenience and eliminate the risks that are being ushered by cash dependency. Some of these are increased provider operational costs, higher lending rates for users, the incidents of loss and theft as well as the cost incurred in cash management, currency sorting, cash movements and frequent printing of currency notes.²⁰ The widespread availability and declining cost of mobile phones and increased affordability of internet data means that DFS-enabled financial inclusion can become a reality. Again, the digital finance era is sure to

¹⁹MasterCard *Building Electronic Payment Acceptance at the Base of the Pyramid to Advance Financial Inclusion* (2017) at 6 available at, accessed 21 July 2020.

²⁰Sanusi Lamido 'Banking reform and its impact on the Nigerian economy' (lecture, University of Warwick's Economic Summit, UK) 17th February, 2012 at 10, available at https://www.cbn.gov.ng/OUT/SPEECHES/2012/GOV_WARWICK_150211.PDF, accessed on 15 November 2017.

usher in abundant consumer data, provide user data trails for improved business insights, credit worthiness assessment for loan grants and even better understanding of customer needs and preferences.

The benefit of mobile money could be harnessed in a way that maximises the functionality of the now ubiquitous mobile handsets. Notably, mobile money is mostly employed in buying airtime as well as completing money transfers and bill payment with fewer offerings for more complex financial products such as loans, insurance, pension and other long-term investments for the bottom-of-the-pyramid. Regulators must therefore be concerned about how DFS could enable additional functionalities beyond the common use in transfers, remittances, airtime top-up and utilities payment.

To improve access to DFS, regulators also need to ensure that hurdles to access are as much as possible dismantled. Factors such as distance to access points, language and input options and required registration documentation ought to be addressed to meet the peculiarities of users. People with special needs such as the differently abled could also be reached by ensuring that services are offered in ways that meet their needs. The real opportunity lies in the unavailability of financial products for every need. Deploying these services widely including in rural areas through a digital and sustainable platform holds promises for improved inclusion. Mobile money has been known to be extended to customers even without opening a financial institutions account as witnessed in Kenya where a significant population now use Mpesa.

In view of the above, it is important to advance the innovative use of DFS in Nigeria in a manner that considers the peculiarities of the excluded and offers services that hold a better appeal than the existing systems. DFS offerings must not only be suited to the needs of consumers but must also be profitable to ensure sustainability. Significantly, research has shown that consumers will only adopt digital services when these are preferable to existing services or if there are attached incentives to drive adoption.²¹ Cash is king now only as a means of survival but better DFS offerings have the potential to topple cash.

viii. Provide a regulatory level playing field for all service providers

²¹McKinsey Global Institute, *Digital Finance for All: Powering Inclusive Growth in Emerging Economies* (2016) at 13-4, available at <https://www.mckinsey.com/~/media/McKinsey/Global%20Themes/Employment%20and%20Growth/How%20digital%20finance%20could%20boost%20growth%20in%20emerging%20economies/MGI-Digital-Finance-For-All-Executive-summary-September-2016.ashx>, accessed on 20April 2020.

Providing a regulatory level playing field for providers is the eighth recommendation. To achieve this level playing field, it is recommended that regulators should focus on the activities of the providers rather than the entities providing this service. In other words, regulators should be concerned about how DFS is provided and not solely the entity providing DFS as long as funds safeguards are in place. This focus helps the regulators to look beyond the entities providing DFS to the efficiency of provider models. Setting benchmark rules that apply to all providers offering similar services is one way of achieving this activity-focused model of regulation. Here, the role of the regulators will be directed towards ensuring that all providers satisfy the necessary requirements pertaining to licensing conditions, security of systems and safety of funds to a similar degree.

Ultimately, it is crucial that regulation advances the enabling environment for healthy competition or better still, *coopetition* amongst providers to sustain cooperation. *Coopetition* is a concept that encourages cooperation among entities that are equally competitors. This is indispensable in the DFS sphere as it ensures useful and non-toxic competitive practices that could lead to provider innovation and growth. Furthermore, it is submitted that regulation should create the right environment for healthy and fair competition among providers. This is feasible in Nigeria where banks and other providers such as MNOs can negotiate the provision of complementary services from a position of strength. As laid out more broadly in chapter 3, banks can, for instance, provide KYC and deposit facilities while MNOs provide customer information and network infrastructure.

Effective competitive policies are also needed in the DFS sector to ensure that the market forces of demand and supply aided by customer satisfaction will be the determining factors for price-setting, customer patronage and pace of innovative practices. DFS regulators must rightly watch out for signs of abuse in the market but this should not lead to an overly guarded approach that limits the capacity of individual providers. Significantly, regulation should mature with the market to ensure continuous innovation of service offerings by providers under the watchful eyes of the regulators. Again, this ensures that innovation is not stifled by a rush to regulate on unfurling trends.

Creating a level playing field also avoids regulatory capture by a class of entities. With specific reference to deposit money banks that have the upper hand in the provision of finance in Nigeria, it is easy to see how these entities have indirectly dictated the pace and direction of industry. This is achieved by unfairly excluding specific clients by insisting on the presentation of utility bill and by locating bank branches mostly in urban centres without setting up mini-branches to reach rural dwellers. Financial services offered by these banks are

also not attuned to the needs of excluded populations. Islamic products and entry-level products are just two examples that are largely absent in the financial offerings of most banks. Regrettably, the CBN has not exhibited the capacity to jettison these practices.

With the NFIS review, banks are only encouraged to set up mini-branches in rural areas while the Payment Service Banks Guidelines mandate the newcomers (other alternative providers) on the block to deploy 25 per cent of their branches in rural areas.²² While this provision will clearly drive rural deployment of finance, it is curious that banks which have a better chance of reaching the rural areas in terms of reputation as recognised finance providers, the capacity to offer cash-in-and cash-out functions and the financial strength to build out local branches are only being ‘encouraged’ to expand financial services to rural communities while MNOs are compelled to. As detailed in chapter 3, the place of providing a level playing field for healthy competition to thrive is indispensable in the provision of finance.

Significantly, it is important to note that banks are a strong lobby group and the CBN being a bank in itself has sought to expand the financial system mainly through banks. Where alternative providers are involved in finance provisions, restrictions mostly ensue. The restriction of alternative providers that have made astounding contributions to the adoption of financial services around the world is quite odd and has so far, not resulted in better figures for financial inclusion in Nigeria. In fact, ten years after the signing of the Maya declaration in 2011, financial exclusion has only gone down less than ten per cent from 46.3 per cent in 2010 to 36.8 presently as shown in appendix 4.²³

ix. Financial regulators should ensure the safety of funds within the financial system

The ninth recommendation is the assurance of safety within the financial system. While banks and other financial institutions regulated by central banks more easily fulfil prudential requirements, non-bank institutions have the greater burden of assuring regulators that funds will be safe and the integrity of the financial system maintained. Assuring the safety of customers’ funds is crucial as incidents of fraud occasioning loss of funds can have

²² Guideline 3 of the Guidelines for the Licensing and Regulation of Payment Service Banks in Nigeria 2020.

²³ Enhancing Financial Innovation and Access in Nigeria (EFInA), *Key Findings: EFInA Access to Financial Services in Nigeria Survey* (2018) at 32, available at https://www.efina.org.ng/wp-content/uploads/2019/01/A2F-2018-Key-Findings-11_01_19.pdf, accessed on 20 June 2019.

detrimental effects on the integrity of the financial market especially in nascent markets where clients are still warming up to the functioning of the formal finance sector.

Financial regulators are, therefore, charged with the core responsibility of ensuring that safe mechanisms are put in place to maintain financial stability. Some of these mechanisms include insurance, investment in safe assets such as government bonds, ring-fencing (separating customer funds from other funds of the provider in order to make these unavailable for liquidation claims) and the use of trust accounts. In Nigeria, the National Deposit Insurance Corporation Framework for the establishment of Passthrough Deposit Insurance for Subscribers of Mobile Money Operators in Nigeria mandates that all digital money must be insured by the providers to the tune of NGN500 000 to avoid incidents of loss.²⁴

Additionally, regulators can ensure safety by mandating the setting up of dispute resolution channels to improve customer confidence in the market. Regulators need to compel providers to set up dispute resolution channels for customers on equivalent platforms as those used in communicating with individual customers. For instance, mobile providers can offer dispute resolution channels on mobile platforms.

Providers must also provide access to several channels of communication including SMSes, electronic mail, call-in functions, letter complaints and direct visits to providers or agents as the situation of the customer demands. As much as is reasonably and economically feasible from the provider's perspective, call-in functions should be toll-free to eliminate dispute resolution costs that may discourage consumers. Presumably, unresolved financial complaints can put off users from utilising services with bad reviews from customers that have encountered poorly handled complaints procedures. This can also serve as a deterrent to new or prospective customers especially in situations where these financial services are the customer's first encounter with formal finance. This is seen in chapter 5 from the recount of one of the participants of the *Ubulu-Uku* study who had discarded the idea of using DFS after his wife's phone was stolen and her funds transferred.

Beyond the dispute resolution channels made available by the providers, regulators must also put in place designated units or departments charged specifically with the resolution of financial complaints and similar disputes. Dispute resolution mechanisms should be approached first from an internal procedure before more generalist third-party, and

²⁴National Deposit Insurance Corporation Framework for the Establishment of Passthrough Deposit Insurance for Subscribers of Mobile Money Operators in Nigeria section 7.2 of 2016.

possibly, industry-wide mechanisms are adopted in order to give the service providers a chance to address consumer complains before the issues are externalised.

x. Change institutional mindsets regarding the excluded population

As a final recommendation, it is important to change mindsets regarding the excluded. Specifically in the case of providing finance, the excluded are perceived as poor and having little or no money to save and invest in financial institutions accounts or in long-term financial products such as insurance and pensions. There is also the presumption that poor persons do not possess the capacity to manage credit facilities or honour repayment obligations due to pressing economic conditions and household needs including food, healthcare and shelter.

Furthermore, there is the assumption that poor persons are more vulnerable to economic shocks and are usually unable to recover from emergencies, let alone fulfil financial obligations and that enforcement claims against the poor may not yield the desired results. For instance, in asserting repossession rights, finance providers may find that the poor have few economic assets thereby making it difficult or impossible to enforce rights. In other words, even where there is a court order entitling the provider to a claim, the reality of recovering claims may be bleak.

These assumptions when borne by finance providers can engender an aversion for engaging with this class. This is especially so in view of the fact that banks are profit-oriented institutions with primary commitments to shareholders and, therefore, will scarcely cater for customers who do not readily demonstrate profitability without at least some moral suasion or compulsion by the government or national regulators. Government and regulatory actions such as insisting on the geographical spread of banks to ensure proximity to the poor, especially persons in rural areas, and the allocation of funds to the financial system providers to facilitate loans to the poor have been known to be valuable.²⁵

Again, it will be good to consider where poor people save when these funds are neither in the bank nor in other formal financial services nor within savings clubs. As mentioned in 5.3.2 many Nigerians are savings-savvy and for those without bank accounts, these savings are done at home, in a secret corner such as under a mattress, wrapped in

²⁵See Travikumar *Assessing the Role of Banking in Financial Inclusion Process in India*, available at <http://www.microfinancegateway.org/sites/default/files/mfg-en-paper-assessing-role-of-banking-sector-in-financial-inclusion-process-in-india-may-2013.pdf>, accessed on 30 May 2018.

clothes or in a shelf.²⁶ These funds are therefore unsafe due to theft, fire outbreaks or natural disasters such as flooding. These funds are as well open to impulsive spending which can lead to unbudgeted purchases and affect the financial wellbeing of this class if nothing is saved for emergencies and as an investment for the future. There is therefore an urgent need to ensure that this class has the needed financial services for better financial health, investment and wellbeing.

Importantly, the absence of a positive regulatory drive towards financial inclusion spells some detriment for the nation's economy and the society. For one, responding to social and economic shocks such as the death of a relative, liquidation of business, natural disasters and disease outbreak could prove more daunting if not impossible for excluded persons without adequate savings and could result in greater risk for society as the government would still have to bear the financial responsibility of remedying the situation to avoid further national disasters.

7.7 Concluding remarks

Law is imperative in development and economic exploits such as financial inclusion. Similarly, advances in the financial inclusion sphere as well as changing consumer needs are important for re-shaping applicable laws to foster universal financial inclusion. The place of an adequate legal and institutional framework to address the needs of the financially excluded and protect the right to profit of providers was examined in this thesis.

Additionally, the regulatory mandate of the CBN to maintain the integrity of the financial system and ensure the continued economic stability of the nation was highlighted. The framework in place for financial inclusion has some commendable provisions for reducing financial exclusion. However, some pertinent concerns and barriers that need to be addressed to ensure the suitability of financial rules and offerings to the various population segments were drawn out in the thesis.

Digital Financial Services (DFS) no doubt present feasible means of inclusion for the financially excluded. DFS providers also stand to benefit from the potential for a wider reach in terms of a broader market and larger customer base. Purposeful regulation that caters to consumer concerns and encourages DFS providers to attain total inclusion through innovation is also necessary. Positive indicators such as an increase in the availability of DFS platforms

²⁶ Enhancing Financial Innovation and Access in Nigeria (EFInA), Key Findings: EFInA Access to Financial Services in Nigeria Survey (2018) at 27 available at https://www.efina.org.ng/wp-content/uploads/2019/01/A2F-2018-Key-Findings-11_01_19.pdf, accessed on 20 June 2019.

and devices such as mobile phones and POS devices and the decrease in the cost of Internet subscription make the success of DFS likely.

The careful licensing of an expanded base of alternative service providers for digital financial services will no doubt aid financial inclusion. It is expected that by understanding the right regulatory approach, digital financial services can foster financial inclusion and lead to a methodical migration of more of the excluded class into the formal finance sector. Digital financial services will no doubt aid increased adoption of financial services by the excluded and resultantly expand the finance sector, leading ultimately to a more sustainable economy for Nigeria.

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Appendices

APPENDIX 1

Rural participants interview sheet

Personal Information

Participant's Code No-----

Contact address-----

Phone number-----

Occupation-----

Level of education-----

Types of digital devices used (level of technological and DFS sophistication) (Mobile Phone, ATM, POS, Webpay)

Others-----

Information on formal finance participation

1. Do you have a bank account?

a. Yes b. No

2. If yes, how often do you use your bank account?

3. What are the services you access from your bank?

4. Have you ever accessed a loan or other services from your bank?

a. Yes b. No

5. Indicate the type of loan or service

6. Was there any default on your part in the terms of the service offered (e.g. loan repayment default?)

a. Yes b. No

7. If yes, what was the reason for the default?

8. Do you know of relatives or friends who have defaulted in the past?

a. Yes b. No

9. If yes, what were the reasons?

10. What difficulties do you face in accessing formal financial services from the banks?
(Remittances, transaction queries, accessing loans, etc.)

11. What do you think can be done to make it easier for rural dwellers to get better access to formal financial services from the banks?

12. What identification requirements for account opening do you know?

13. What identification requirements for account opening do you have?

14. Are you aware of the CBN policy on low-value accounts?

a. Yes b. No

15. Please mention and describe the policy

16. Do you know of any other CBN initiatives (policies, regulations and guidelines) that aid excluded persons in accessing finance?

17. If your answer to Q14 is yes, do you have a low-value account?

- a. Yes b. No

18. What services are available to you on this account?

19. Do you think this account serves your purpose? Please give reasons

20. What other services would you like to access from the banks that are presently not offered to you?

21. Would you be open to dealing with an agent working on behalf of a bank? Please give reasons

- a. Yes b. No

22. Do you think that other entities such as post offices and telecommunications companies can offer financial services?

- a. Yes b. No

23. If yes, what services do you think can be offered by these entities?

24. Other comments

*Follow up questions may be asked depending on the answers obtained from the interviewee.

APPENDIX 2

State of financial inclusion in Nigeria in 2010

*All figures in this appendix are sourced from the EFinA financial inclusion survey 2010

1. Financial inclusion Access strands

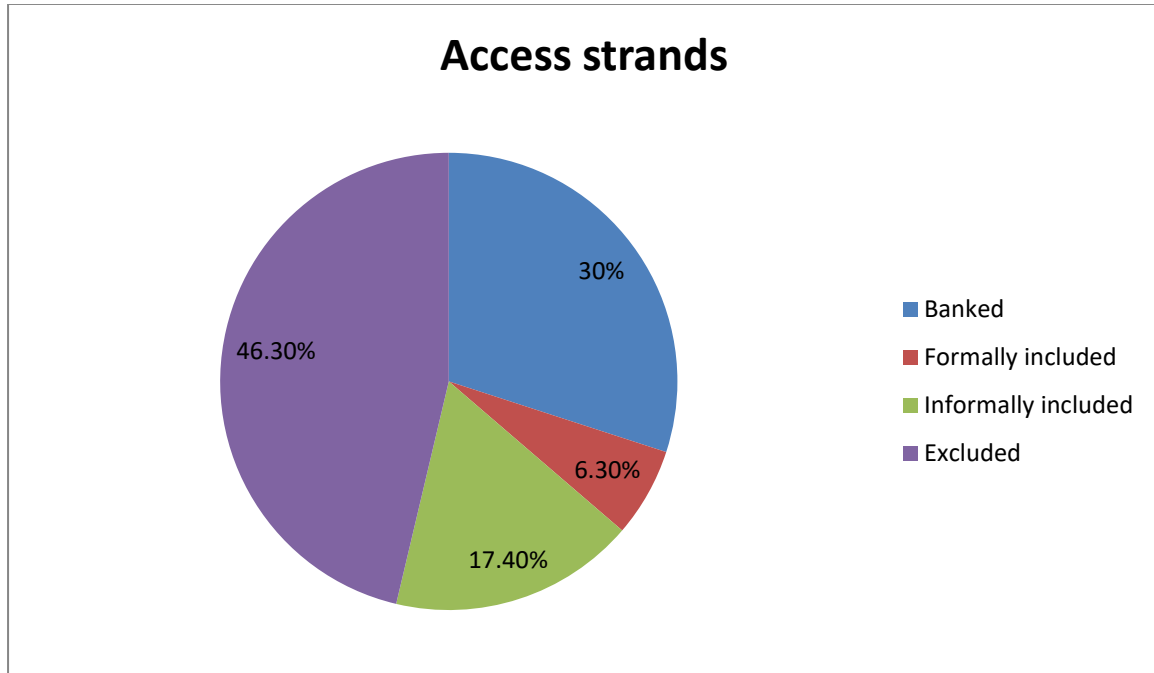


Figure 1

2. Financial exclusion by gender

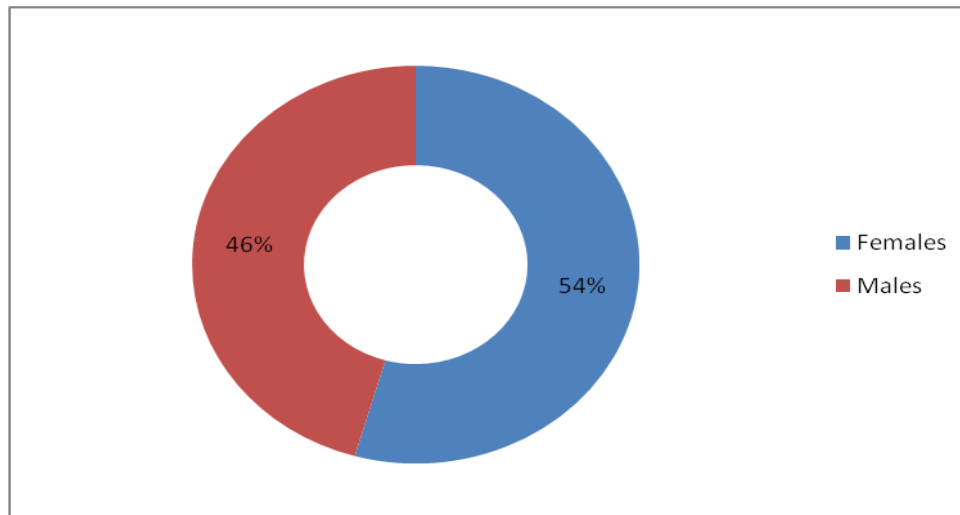


Figure 2

3. Financial exclusion by age

Age	Percentage
18-24	32.6

25-34	25.1
35-44	16.1
45-54	12.7
55-64	7.8
55+	5.7

Table 1

4. Urban/rural financial exclusion

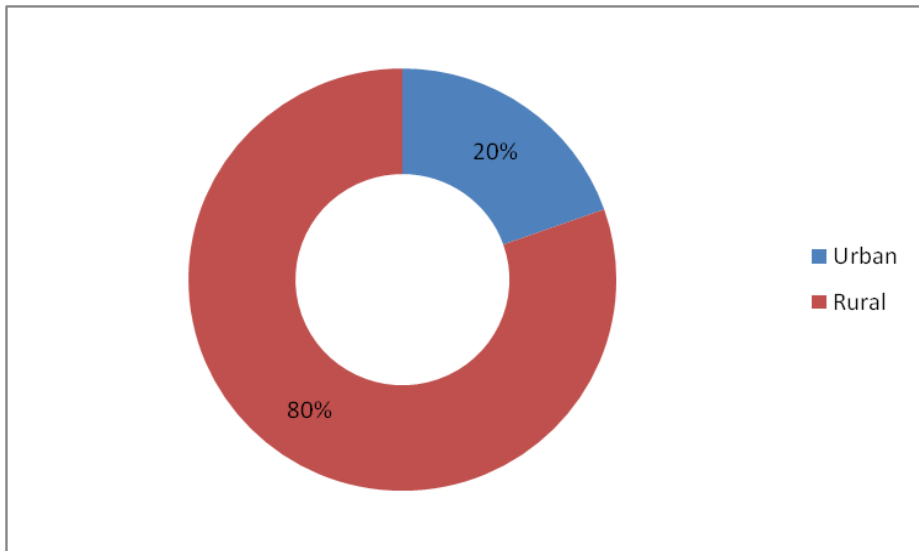


Figure 3

5. Financial exclusion by level of education

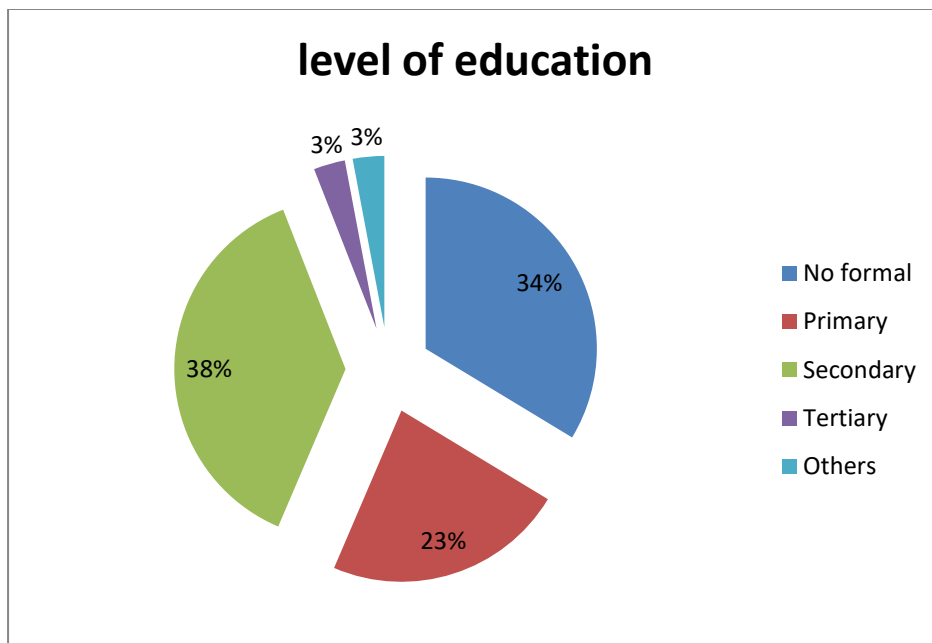


Figure 4

6. Financial exclusion by geographical location

Geopolitical zones	percentages
South-South	36%
South-East	32%
South-West	33%
North-East	68%
North-West	68%
North-Central	44%

Table 2

APPENDIX 3

State of financial inclusion in Nigeria in 2018

*All figures in this appendix are sourced from the EFINA financial inclusion survey 2018

1. Financial Inclusion Access strands

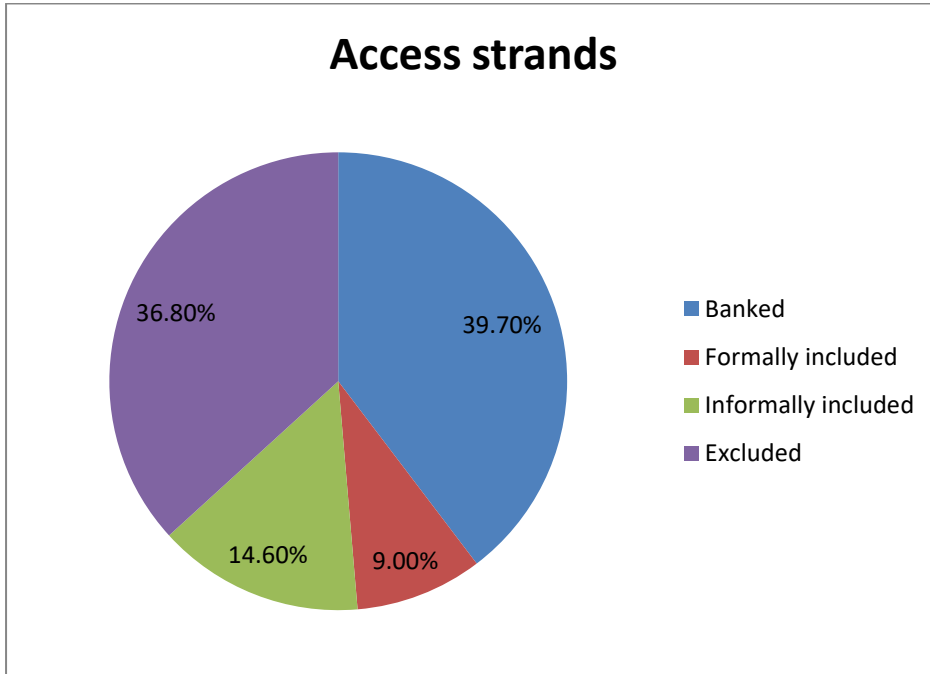


Figure 5

2. Financial exclusion by gender

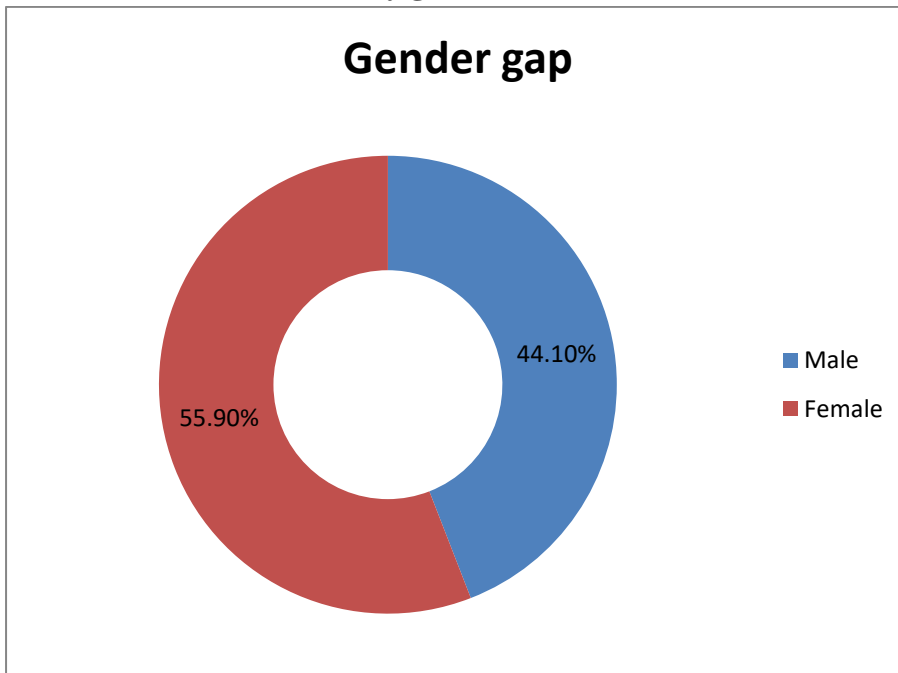


Figure 6

3. Financial Exclusion by age

Age	Percentages
18-25	47.0%
26-35	31.5%
36-45	30.6%
46-55	32.4%
56+	41.4%

Table 3

4. Urban/rural financial exclusion

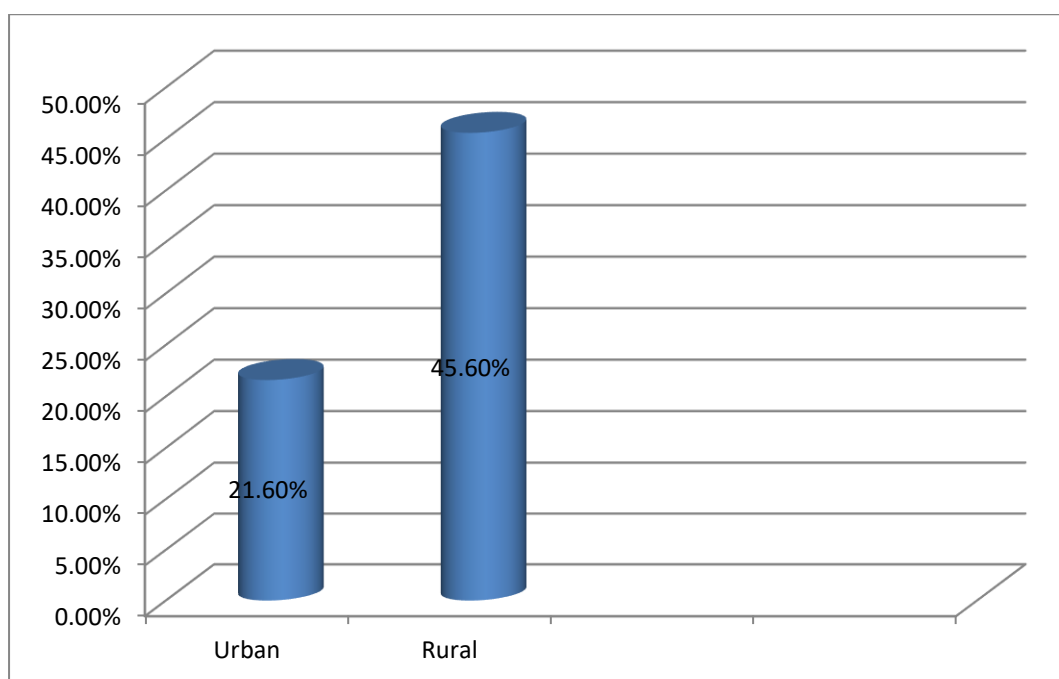


Figure 7

5. Financial exclusion by geographical location

Geopolitical zones	Percentages
South-east	29%
South-west	17%
South-south	23%
North-east	55%
North-west	62%
North-central	31%

Table 4

APPENDIX 4

*All figures in this appendix are sourced from the EFINA financial inclusion surveys of 2010, 2012, 2014, 2016 and 2018

Trends in Financial exclusion (2010-2018)

1. Excluded population

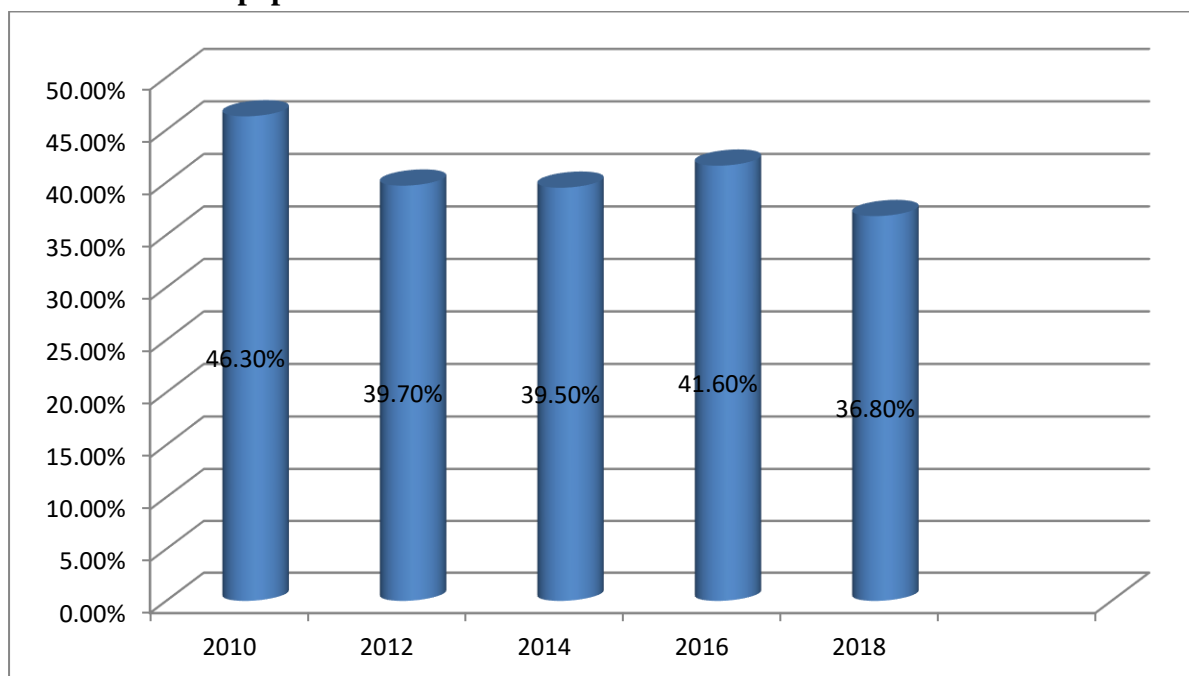


Figure 8