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STATEMENT OF THE NBA PRESIDENT, YAKUBU CHONOKO MAIKYAU, OON, SAN ON THE NAIRA REDESIGN POLICY: DEMAND FOR COMPLIANCE WITH THE JUDGEMENT OF THE SUPREME COURT IN SUIT NO.: SC/CV/162/2023 BETWEEN ATTORNEY GENERAL OF KADUNA STATE & 9 ORS. VS. ATTORNEY GENERAL OF THE FEDERATION & 2 ORS. DELIVERED ON 3 MARCH 2023.

1. At the wake of the Naira redesign policy embarked upon by the Central Bank of Nigeria (CBN), on the directive of the President, the NBA engaged in wide consultations with critical stakeholders in the country in order to assess the possible impact of the policy on the economy and the people of Nigeria. The NBA in a letter addressed to the CBN Governor dated 23 January 2023 articulated its position on the Naira Design Policy. The NBA commended the policy as it was expected to help stem corruption, make for easy detection of the funding of terrorism/other criminal activities and limit/allay fears of politicians' using large sums of cash to buy votes in the elections.
2. We wrote another letter dated 1 February 2023 to the CBN Governor where we requested to meet with him and clearly indicated that:

“We intend at this visit to discuss urgent legal and practical matters pertaining to the Naira Redesign and other fiscal policies with a view to working collaboratively to continue to serve the financial and economic aspirations of Nigerians. While we support the objective of the policy and offer the platform of the NBA to do whatever is within our remit in the fight to curb corruption, counterfeiting, vote buying and other criminal activities and stand with you wholly in that regard, we are concerned about the apparent hardship currently experienced by Nigerians and it is absolutely necessary to look into that without compromising the laudable objective of the policy.”

3. In our earlier letter, we noted with concern the possibility that the implementation of the policy in the manner it was being carried out will bring more loss, stifle economic activities, cause panic and generally result in more hardship for the same Nigerians the policy is meant to serve. The NBA, after a review of the experiences of other countries, particularly India, Australia, EU and the United Kingdom on similar endeavours, presented our perspectives and recommendations to the CBN Governor on the implementation of the policy. We stated that:

“Without any intention of challenging the policy which we have admitted at the onset to be laudable, we have considered the provisions of the relevant laws vis-a-vis the available logistical, infrastructural and man power support required for the implementation of the policy, we are of the humble opinion that, there is a need for an urgent review. In our view, the necessary logistical, infrastructural and manpower support, required for the successful implementation of the policy are in short supply and should be greatly improved upon if they are to be leveraged for full implementation of the policy with minimal loss or economic hardship.”

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4. After making reference to the provisions of section 20(3) of the CBN Act 2007, we further observed as follows:

"a) The power of the CBN to call in any of its notes or coins otherwise described as demonetisation, can only become operational upon the directive of the President after giving reasonable notice for the recall. From the clear wording of the section, these two conditions must coexist before the power to call any of the notes or coins by the CBN can crystallise. The questions that have trailed this policy from our consultations include; "was there a directive of the President? And where there was one, could it be said that the notice, given the prevailing circumstances was reasonable? The questions seek to interrogate the process leading to the policy and justify the need for extension of the timelines for its implementation.

(b) There seems not to be any information in the public domain as to what would happen to the old currency in the possession of Nigerians, by or after the 13 January 2023. Section 20 (3) quoted above requires that:

...any note or coin with respect to which a notice has been given under this Sub-section, shall, on the expiration of the notice, cease to be legal tender, but, subject to section 22 of this Act, shall be redeemed by the Bank upon demand. [underlined for emphasis]

The "Bank" indicated above being the CBN, we wish to note at this point that there is no sensitization, or if there is, it is not widespread, as to what Nigerians can do with the old bank notes after the 13 January 2023 even though the law has made clear provisions for what shall be done by the CBN upon demand. Any person who shall be in possession of the old notes which have ceased to be legal tender by 31 January 2023 is at liberty to approach the CBN and make a demand for the redemption of the notes and the CBN is under statutory obligation to "redeem" the notes.

Our recommendation, on this issue therefore, is that in addition to educating Nigerians on demonetisation itself, a campaign on what happens to old bank notes after 31 January should be launched so as to adequately inform the public on what to do and prevent or reverse the rising panic or agitations caused by concerns about the inability of Nigerians to swap out their old notes for the new notes by 31 January. This may be achieved, in line with the CBN's power in Section 1(3) of the Banks and Financial Institution Act (BOFIA) 2020, to delegate any of its functions, by utilising the 36 branches of the CBN across the country as currency processing centres after 31 January and using those centres to coordinate designated DMBs and the centres in each local government area, per the CBN's recently introduces (sic) cash swap program. This would expand coverage and improve the success of the program. Section 1(3) of BOFIA states thus:

"(3) The Bank may, either generally or in any particular case, appoint any person who is not an officer or employee of the Bank to render such assistance as it may specify in the exercise of its powers, the performance of its functions or the discharge of its duties under this Act or the Central Bank of Nigeria Act or to exercise, perform or discharge the functions and duties on behalf of, and in the name of, the Bank."

Incidentally, the CBN's cash swap program which took effect on 23 January 2023 has not addressed the concerns of Nigerians post- 31 January 2023. While appreciating the actions of the CBN which are based on the enabling law, it is important to adhere strictly to the spirit and intent of the law as we must not deploy the laws made to serve the course of Nigerians to become an instrument to inflict harm, loss, injury and stifle economic activities. This would go against the spirit of the policy and penalise Nigerians who have legitimate reasons to transact in cash without affording them the education, infrastructure or opportunity to do otherwise. Similarly, Nigerians must be offered the opportunity to demand the CBN to redeem any cash in their possession post 31 January 2023.

Our considered view is, after 31 January 2023, Nigerians can still swap their old notes to new ones at any CBN branch or designated locations as provided for in both the CBN Act and BOFIA. By the CBN acknowledging that the swap can continue, circulation of old notes (which Nigerians are already beginning to reject) can continue. Also, as it regards the implementation of the cash swap, to avoid chaos in the branches/designated locations and to forestall a complete shutdown of the rural economy, the CBN must sensitise citizens on these legal provisions and make adequate arrangements for the swaps to continue at their branches. By this, Nigerians will be put in a comfortable place to participate in the process and fully migrate to digital payment platforms and continued use of the new bank notes without any panic or agitation whatsoever” (Underlining mine for emphasis)

5. As the hardship and difficulties encountered by Nigerians on this policy bite harder, we witnessed some feeble attempts at ameliorating the situation but as it is with every policy which fails to properly reckon with the law upon which it is meant to operate, the outcome will hardly be beneficial. The manner in which the CBN proceeded with the implementation almost without regard for the apparent sufferings of the people as could be seen across the country began to raise questions as to the true motive of the cash redesign policy. Nigerians did not have to die and neither should there be any loss of properties on account of the implementation of a Naira redesign policy if properly undertaken. Unfortunately, and sadly so, that was our experience; Nigerians died, properties were destroyed and lost; there is hunger in many homes as people are unable to use their hard-earned funds which they deposited in the banks because of the apparent high handedness of the policy. The rural economy was stifled. Economic activities have dwindled, many farmers engaged in dry season farming have not been able to cultivate their farmlands – only about one out of every ten hectares of rice fields have been cultivated in most parts of North-western States. Food security has come under threat as the cash crunch has affected ability of rural farmers to engage in farming activities. Simply put, the implementation of the policy appears not to have a human face.
6. It is the negative impact of the policy that led to the institution of the action before the Supreme Court by some States against the Federal Government in **Suit No.: SC/CV/162/2023 Between Attorney General of Kaduna State & 9 Ors. Vs. Attorney General of the Federation & 2 Ors.** In the Judgment delivered on 3 March 2023, dealing with the rights of the Plaintiffs, the Supreme Court noted at page 35 of the judgement in no unclear terms that:

“The rights they assert in this suit are the right to be first consulted by the President as constituents of the Federation and the right to reasonable notice

as such constituents before the President gave the directive or approval to the CBN to implement the change of currency notes, the right to protection of their states' governance, economic and social order against massive disruptions and hardships that has resulted from the hasty and not well thought through and organized implementation of the change and the right to the establishment of adequate infrastructure and measures to prevent the said disruptions and hardships. It is obvious that the directive has been carried out. The fact is common knowledge, is not reasonably open to question and does not require proof, that the implementation of the directive has continued to deprive all persons and the plaintiffs access to a substantial part of their funds in banks, thereby forcefully and illegally depriving them their rights of ownership and use of the said funds for state functions. The President's national broadcast of 16-2-2023 confirms this."

7. On the need for wide consultations before embarking on this policy given the democratic nature of our nation, the apex court at pages 41 – 42 of the judgement said:

"The identifying character of democratic constitutional governance is the wide consultations and broad consensus behind the exercise of executive powers through bodies established for that purpose by the Constitution. Such bodies include the Federal Executive Council that is required by the Constitution to have at least one indigene of each of the 36 State of the Federation and the Federal Capital Territory and the National Economic Council which consists of 36 States Governors elected by their people and the Governor of the Central Bank of Nigeria, an appointee of the President, as members, with Vice President as Chairman of the Council who is also a member of the Federal Executive Council and the National Council of State. Good governance and economic prosperity cannot thrive in a plural society like ours if executive power of the Federation with far-reaching impact is exercised without inputs from the constituent states on how it affects them."

8. The Supreme Court, held that there was no compliance with the requirement of notice under section 20(3) of the CBN Act 2007. The Court thereafter proceeded to hold the directive of the President and the implementation of the policy as invalid and in its wisdom, and considering the necessity created by the actions of the Federal Government, went on to say:

"Even though the directive and its implementation is invalid, since the new naira notes have already been introduced and the old ones massively withdrawn, for practical purposes, in the face of the situation as it is, the President should direct the recirculation of the withdrawn old 200, 500 and 1000 naira notes and the two versions should continue as legal tender till 31-12-2023, by which time the redesigned ones would have been printed enough to completely replace all the old notes."

9. The court did not mince words on the negative impact of the President's directives which deprived owners of the withdrawn old Naira notes their right to the ownership and use of the funds without an enabling law. This brought hardship to Nigerians and the situation has not abated. The Supreme Court found at page 45 of the Judgement that:

“The President in his 16th February 2023 national broadcast reproduced in pages 27 to 31 of this judgment admitted that the policy is fraught with several difficulties such as lack of enough new naira notes to meet public demand and the resulting lack of cash to meet daily needs that require cash transactions that has continued to persist. The plaintiffs herein contend that the implementation of the President's directive has brought untold hardship to their governments and people. Their states are struggling to run the operations of governance smoothly as it need cash to do certain things. The Banks in the urban areas are not dispensing the new notes in the required amount, while they have mopped up most of the old notes in the states. This pales in comparison with what the people in the rural areas are going through, as a lot of them have not even seen the new notes and this has led to some people trading by barter in this modern age and time. As a matter of fact, there are hardly any banks in the rural areas.”

The Court concluded by saying at page 48 of the judgement that:

“I agree with the views expressed by the Learned writer, Anthonia Ochei (Naira Redesign- the Law and Global best practices, Business Day, Nov.18,2022) that successful currency redesign projects are actualized with the partnership of the public, not handed down. This involves an educational and informational campaign on the steps to be taken both by the issuing authority and the stakeholders as well as the expected outcomes of such a project. It also includes strategies to mitigate and maneuver any temporary hardships that may be occasioned by the exercise. None of these practices to the knowledge of the public, has been calculated into the pace of this naira redesign and withdrawal of existing naira notes. Nigeria's economy continues to be informal even after various redesigns of the currency with the dependence on cash for many transactions. Holding cash is still very popular amongst traders and farmers in rural areas.”

10. Rather than comply with the directives of the Supreme Court, the Federal government stuck to its position despite clear findings that the actions were illegal and unlawful. In the words of the Supreme Court at pages 50 – 51 of the judgement:

“The imposition of withdrawable cash limits after collection of the old notes, amount to a scheme to entrap and not allow much of such funds come out of the banking system. My attention has not been drawn to any law that permits a bank not to pay cash to a customer on demand on the ground that the 1st defendant has not been able to print enough new naira notes or that permits the 1st defendant to direct the imposition of limits on the cash to be paid from a customer's account after deposit of the old naira notes. To the extent that the directive has continued to deprive all persons and the plaintiffs access to a substantial part of their funds in banks in form of cash, it forcefully and illegally interferes with their rights of ownership and use of their said funds. Such restriction on an owner's right to freely use his or her property is illegal unless provided for by a law.”

11. It is sad and disheartening that the Federal Government and its agency, the CBN, will remain so adamant about the plight of Nigerians as a direct consequence of the implementation of the Naira Redesign Policy, in spite of several interventions for

review thereof in order to ameliorate the sufferings of Nigerians, leading to the damning remarks and orders by the Supreme Court as quoted above.

12. Regrettably, not even the clear findings by the Supreme Court as to the unfair and deceptive nature of the policy could make the Federal Government retrace its steps. The Supreme Court went to the extent of not only condemning the actions of the President as contemptuous of the Court, but also held that the actions constitute a threat to the Rule of Law and the existence of our democracy. On this, at pages 51 – 52 of the judgement, the Supreme Court made the following findings:

“Let me consider the issue of the President's disobedience of the 8- 2-2023 interim order that the new and old versions of naira notes continue to circulate as legal tender until the determination of the pending application for interlocutory injunction. It is not in dispute that the 1st defendant refused to obey the said order. The President's 16-2-2023 national broadcast reproduced here in pages 27-31 demonstrates this disobedience. In disobedience of the order, he directed that only the old N200 naira notes be recirculated. Interestingly, there is nothing to show the implementation of even that directive. I agree with the 9th plaintiff, that the 1st defendant should not have been heard by this court when it has refused to respect the authority of this court and the authority of law from which the authority of the President and the Government of Nigeria derives. The rule of law upon which our democratic governance is founded becomes illusory if the President of the country or any authority or person refuses to obey the orders of courts. The disobedience of orders of courts by the President in a constitutional democracy as ours is a sign of the failure of the constitution and that democratic governance has become a mere pretension and is now replaced by autocracy or dictatorship.”

13. I commend the judgement of the apex court in this matter as it not only spoke to the responsibility of the Court to the people but also its bounden duty to protect the Rule of Law and the integrity of the Court. The Supreme Court has by this judgment proven to be the Supreme Court of the people of Nigeria.
14. Whenever public confidence in the other arms of government begins to wane, the legal profession, in particular the judiciary, must rise to the occasion by delivering justice with such courage and precision to provide succour to the people. This is what the Supreme Court has done so boldly and courageously in this instance. Honourable Justice A. M. Ahmadi, the former Chief Justice of the Supreme Court of India, on the role of the Court in such a situation as the one confronted by our Supreme Court had this to say:

“...in recent years, as the incumbent of Parliament have become less representative of the will of the people, there has been a growing sense of public frustration with the democratic process. This is the reason why the (Supreme) court had to expand its jurisdiction by, at times, issuing novel directions to the executive”.

15. The Supreme Court has issued directives to the Federal Government for the benefit of the people and there is no option other than to comply. The President is under constitutional obligation to comply and enforce the decision of the Supreme Court.

Section 287 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that:

“The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by Court with subordinate jurisdiction to that of the Supreme Court.”

16. Nigerians may not be too enchanted with our Judiciary, and this may have arisen from unsubstantiated and spurious allegations of judicial misconduct, the fact however remains that we still must look to the Judiciary as the only and final resort, to protect our rights as a people and secure probity in public life. The Supreme Court has spoken for the people of this nation and has appropriately issued **ORDERS** to the Executive and the orders of the Court must be complied with.
17. We cannot under any guise or pretence accept or tolerate any appearance of autocracy or dictatorship. Our system of democratic governance has come to stay, it must not only be respected by all and sundry but must also be jealously guarded and protected. This is the greatest test or challenge to our constitutional democracy and the Executive cannot afford to disregard the **ORDERS** of the Supreme Court made for the benefit of the people that elected it to power.
18. I therefore on behalf of all Nigerians, call on the President to immediately direct compliance with the terms of the orders made by the Supreme Court in its judgement delivered on 3 March 2023.
19. The Nigerian Bar Association remains committed to the promotion, entrenchment and respect for the Rule of Law, integrity of the Court and the independence of the judiciary. The NBA shall stand up against any action that seeks to undermine the Rule of Law, the integrity of the Court and the independence of the judiciary.

Long live the NBA!

Long live the Federal Republic of Nigeria!!

God Bless you all.



Yakubu Chonoko Maikyau, OON, SAN
PRESIDENT