

**AN ANALYSIS OF FINANCIAL LEGAL REGIME VIS-A-VIZ COMMERCIAL BANKS
BAILOUT: THE NIGERIAN PERSPECTIVE**

BY

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ABSTRACT

Nigeria learnt to rescue its commercial banks from failing in 2008-2009 through the practice called bailout which was applauded in several quarters and greeted as well with criticisms on several reasons, among which is on moral ground of using public funds to resuscitate failing banking businesses, part of the reasons being the failure traced to the reckless, fraudulent and other corrupt attitudes of few rich individuals, managers and their cronies. The policy threatened lives and welfare of the majority impoverished Nigerians whose funds can be channeled to other infrastructural developments. The bailout is arguably implemented pursuant to a legal regime that sanctioned same. The regime in Nigeria comprises of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Banks and Other Financial Institutions Act 2020, the Central Bank Act 2007, Nigerian Deposit Insurance Act 2023, and the Assets Management Corporation Act 2019. This article, employed doctrinal research methodology and subject the regime to jurisprudential tests using the utilitarian theories of wealth maximization and public choice to analyze the worthiness of the existence of the regime in the country. It has been found that same is justifiable, excusable and defensible taking into consideration the public good of financial stability through rescuing and strengthening the banking industry. Nevertheless, the article has recommended that certain aspects of the regime shall be amended to further explore more ways of rescuing failing banks different from using public funds for the purpose.

Keywords: Bailout, commercial banks, rescue, utilitarian theories, public choice.

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1.0 INTRODUCTION

Financial system stability connotes the resilience of the financial system to internal and external shocks, be it economic, financial, political or otherwise. In this acclaimed civilized time, governments all over the world strive to ensure the existence and sustainability of stable financial systems due to its immense importance, sensitivity and fragility. Banking sector is an essential component and perhaps the strongest pillar of the system. Therefore, failure for whatever reason is never taken lightly by any stable government. In this regard, the existence of a sound and effective banking system in a country is very important. Hence, legal frameworks are being put in place by governments with a view to ensure sustainability of the banking sector. However, banks fail and the consequences affects all spheres of life. The reasons behind the failure ranges from factors caused by poor management, weak regulatory mechanisms, and or external such as the global financial crisis that shock the global financial system which began in the United States of America and rapidly spread to other parts of the world.

Thus, as a result of interconnectedness of the banking system occasioned partly by advancement in information technology that leads to globalization in many respects Nigeria was not spared of the problem. Like many countries Nigeria rescued banks in several ways, notable among which was injecting liquidity into the susceptible banks among other measures. This practice was globally employed applauded in several quarters and greeted with criticisms mostly an account of using public funds to implement the policy.

The aim of this paper is to examine the justifiability of the existence of the legal regime governing the Nigerian financial services sector that governs bailout of commercial banks. Hence, the objectives of the research are as follows:

- a) Subjecting the Nigerian financial legal regime to jurisprudential tests, using the legal theories of wealth maximization and public choice as yardsticks.
- b) Utilizing relevant economic expositions and indices as tools of analysis.

The paper employed a doctrinal research methodology, which involves a systematic analysis of statutory provisions and legal principles derived therefrom¹. It also involves logical and rational

¹Vibhute, K. (et al) Legal Research Methods a Publication of the Ethiopian Justice and Legal System Research Institute, Addis Ababa, (2009) Pg. 72.

ordering of the legal propositions and principles². This entails the use of information; and library materials from existing literature to explain the content and position of law³. The reasons that informed the choice of this methodology are: firstly, it provides quick answers to the problem as the researcher is continuously engaged in the exposition and analysis of legislations and case law and the integration of statutory provisions and judicial pronouncements into a coherent and workable body of doctrine.⁴ Secondly, the research utilizes economic expositions as tools of analysis because of the peculiarity of the subject matter even though the subject of the study is a legal regime. This is apt because even Paton was of the view that law can be better understood by contextualizing it within the study of politics, history and economics.

This article is broadly divided into three parts: the first part entitled Introduction comprises of the brief background to the study, the statement of the research problem, research objectives and methodology. The second part entitled: Main Body contain the subjection of the legal regime to the jurisprudential tests using relevant economic and other indices and analyses as yardsticks or tools of analysis with a view to determine the aim research. The third part referred to as Conclusions reveal the findings, observations and workable recommendations thereto.

2.0 Conceptual Discourses on Bailout

Globally, commercial banks bailout has been criticized and regarded as the ultimate manifestation of privatization of gains and socialization of losses, that exemplifies the fundamental unfairness of a situation whereby a firm that fully enjoyed the benefits of being a free market, participating when things were going well, repudiates the basic rules of the free market when its business decisions bring it to the brink of collapse. Along this line, a critic further submitted that, the well-known notion of moral hazard captures the economic inefficiencies associated with this implicit subsidy; large firms are shielded from the negative consequences of their risk-taking; have an incentive to take greater risks than they otherwise would. It has been observed by MC Donagh⁵ that, bailouts involve large scale socialization of private losses; they are politically toxic, ideologically contrary to market norms, and economically costly to the state.

² Ibid.

³ Ibid

⁴ Ibid

⁵ MC Donagh N, The Evolution of Bank's Bailout Policy to continue of Variation, Selection and Retention Journal of Evolutionary Economics, Institute for International Trade, University of Adelaide Pg.1

A special report of Better Markets ⁶ describe banks bailout as a stunning violation of the most basic rules of capitalism, applicable to virtually every other business in America. To them, failure leads to bankruptcy. They opened that: one might think that receiving trillions of dollars of undeserved and life saving taxpayer bailouts would cause those financial institutions to return to their high-risk destabilizing activities, and they did not bother to end their systemic, wider spread and brazen illegal conduct. Bailout has been also criticized by an American Republican Representative, Ron Paul, to the effect that: in bailing out companies, governments are confiscating money from the productive members of the economy and giving it to the failing ones and by sustaining companies with obsolete or unsustainable business models, the government prevents their resources from being liquidated and made available to other companies that can put them better, more productive use and so on.

It has been opined by the *Economists* also that bailouts increase government borrowing and the national debt which risks causing higher market interest rates and increased taxes in the future⁷. The funds tied up in a bailout could be used to invest in infrastructure or health and education services⁸. It also added weight to the moral hazard⁹ argument to the effect that bailing out a commercial bank may influence their behavior, causing to take higher risks in the future¹⁰. Accordingly, it opines that why should tax payers pay the price for a bailout? Are banks different from steelworks, airlines, travel companies or loss-making retailers? On this note, economists such as Hayek argued that allowing loss-making banks to fail is part of the normal process of capitalism - new banks will take their place perhaps with less risky business models. Hence, bailouts are a form of government failure¹¹.

In Nigeria, the Economic and Financial Crimes Commission (EFCC) was quoted by Henshaw, D. in the *Global Post* to the effect that the leaders of the major banks in the country extended loans to friends and non-existent companies without ever expecting to see the loans been paid back¹². In

⁶Batter Markets Special Report: Wall Street Six Biggest Bailed out Banks: Their RAP Sheets and their Ongoing Crime Spree. P. 4

⁷ The *Economists* pg,76

⁸ The *Economists* pg,76

⁹ Moral hazard happens when an agent is given an implicit guarantee of support in the event of making a loss.

¹⁰ Ibid

¹¹ The *Economists* (n4)

¹² Ibid

this regard, even the government of Nigeria was quoted to have said that: ‘Banks bailouts are not sustainable¹³.

However, the above criticisms notwithstanding, some well-informed scholars and commentators have expressed contrary opinion. In essence, they points out the positive sides of the banks bailout. Accordingly, Richard Posner is of the view that the word bailout is used in different ways and it is sometimes hard to understand what people are complaining about. He argued that bailout is essentially a transfer of money or other resources from the government to a private agent; (or sometimes to another government) such transfer occurs every day and hardly ever causes any one to lift an eyebrow. He opined that the government transfers money or other valuable considerations to solar panel manufactures, dairy farmers; poor people and research universities. While many people disagree about the wisdom of these transfers, they do not regard them as illegitimate in the same way that they often regard bank’s bailout. He also stressed his points thus: If a natural disaster strikes, the government frequently assists victims by supplying them with loan guarantee and other benefits that make it easier for them to pay off their debts while they are rebuilding their lives¹⁴.

Stieglitz has been quoted by Blazseck¹⁵ saying that, it is cheaper for the society to rescue failing banks than to allow the financial system to collapse while sitting idly by. Eric Posner and Adam J. Levites are accordingly of the view that bailout may be employed to save the financial sector from imminent collapse. They however, suggest that there should be an adequate and transparent legal framework among other things for the bailout to be acceptable. Similarly, along this line, the Economists looks into the negative multiplier effect of banking collapse such as loosing thousands of jobs. It might also squeeze lending to small and medium-sized businesses that needs to borrow money to stay in business or finance capital investment. Also, savers and pensioners are at risk if commercial banks fail, this might worsen poverty and lead to increased pressure on government welfare payments. Severe drop in confidence and loss of trust in the financial system risks a deflationary depression rather than a cyclical recession.

¹³ Popoola N. Banks Bailout Not Sustainable. *The Punch Newspaper* Nigeria, Published on October, 22, 2019. P. 1 available at punching.com accessed on the 1st of February 2020.

¹⁴ Posner, R. Framework for Bailout Regulation.

¹⁵ Blazseck, V.

Money spent on bailouts can be recouped as the economy recovers, so the net cost is likely to be smaller as the government unwinds the bailout¹⁶. The above expositions point out that, like most of government policies, opinions have been divided pertaining to the justification of using public funds to execute bailouts to commercial banks.

It is noteworthy at this point to express that, bailout is ideally being implemented pursuant to a legal framework providing the blueprint on how the aim of the policy will be successfully achieved and the accountability of the funds guaranteed.

In this regard, the policy is being implemented pursuant to a legal framework that comprises of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Central Bank of Nigeria Act 2007, the Banks and Other Financial Institutions Act 2020, the Nigerian Deposit Insurance Corporation Act 2023, the Assets Management Corporation Act 2021, the Companies and Allied Matters Act 2020 among other laws and regulations serves as the legal regime governing the bailout. The laws pointed above have established institutions that regulates and supervises banking activities in the country among other things that include the bailouts. On this note, the regime established and governs the Central Bank of Nigeria, (CBN) the Nigerian Deposit Insurance Corporation (NDIC), the Assets Management Corporation of Nigeria (AMCON) through which banks bailout in many forms are being implemented. Finally, commercial banks bailout being a novel practice in Nigeria, the legal regime that sanctions same is also prone to scrutiny with a view to investigate the worthiness of its existence using jurisprudential theories and economic indices as yardsticks.

3.0 Rationalizing Nigeria's Legal Regime on Banks Bailout

Rationalization means attempting to explain or justify behavior or an attitude with logical reasons¹⁷. Accordingly, this part rationalizes the Nigerian banking bailout legal regime allowing bailout to commercial banks bailout using public funds. This is in an attempt to achieve the aim of the research pointed out that questions the defensibility of the existence of the Nigerian banking bailout legal regime and the implementation of the policy from the jurisprudential perspectives or

¹⁶ (n7)

¹⁷ Definition provided by Oxford English Digital Dictionary, available at <https://www.google.com> accessed on the 29th of September, 2025 around 4:00 pm

theories. These refers to the utilitarian theories of wealth maximization, public choice and economic analysis of law.

3.1 Nigerian Bailout Legal Regime from the Perspective of Wealth Maximization Theory

This theory postulates that the essence of every financial legislation is to promote wealth in the society. Its existence must therefore to achieve this goal. The theory is championed by Richard Posner in many of his works. Therefore, the existence of the Nigerian bailout legal regime depends on whether it promotes wealth in the country. Thus, in order to properly examine this issue certain questions must be answered to determine the utility of the regime under study and they are: Does the Nigerian legal regime on bailout maximizes the utility of the country's financial services in the country? If the answer is positive, then to what extent? And does the increase in the utility strengthened the Nigerian banking industry? What is the multiplier economic effect of the maximized utility on the economy of the country? Do the positive effect of the bailout outweigh the negative to the point of requiring public funds? However, it is interesting to note that the champion of the theory itself, Richard Posner, has revisited his position on the general and unqualified use of the term 'wealth' by defining it to mean 'utility' in economic sense¹⁸. Utility in economics is the total satisfaction or benefit derived from consuming good or service. The change of position is obviously due to difficulties observed in the theory, among which is the measurement issue. In other words, measuring how wealth is maximized is not always simple or even possible. On this note, these questions are set to be answered below:

3.2. Does the Nigerian Legal Regime on bailout Maximizes the Utility of the country's financial services?

Before answering this question, it is important to note that, the pain of bank failure primarily touches the bankers, customers, bank employees, government and the general public as well¹⁹. Therefore, the effect of the legal regime on bailout and the exercise also affects these stakeholders, and measuring its impact and subsequent satisfaction derived from bank's bailout sanctioned by the legal regime naturally requires taking into consideration their interests and how same are

¹⁸ Posner, R. A. Wealth Maximization Revisited, Notre Dame Journal of Law, Ethics and Public Policy, vol.2, Article 8. February, 2014,Pg.87

¹⁹ Olaniyi, T.A (et al) Causes and Impacts of Global Financial Crisis on the Performance of Nigerian Banks (a Case Study of Selected Banks) Journal of Business Management and Economics, Vol.2(4) 2011 Pg.1

affected by the regime. For example, the primary interests of the employees is job saving and sustainability of same. The customers here involve both the depositors and borrowers whose interests are their deposits and the ability of the banks to continue lending respectively. While the interest of the government and general public is significantly ensuring financial system stability. Therefore, in this sense, attempt to answer this question requires separate treatment of the above interests as follows:

(a) The Depositors

A depositor is a person who keeps money in a bank or building society²⁰. Therefore, depositors in this respect refer to the people that kept their money in various Nigerian banks that were hit by the financial crisis. It has been argued that depositors are more interested in the safety of, and returns of their deposits as well as the quality of services rendered by their banks²¹. On this note, it has also been reported that the Nigerian bailout has made the deposits in the various banks safe. According to the former head of the Assets Management Corporation of Nigeria, Ahmed Kuru, the direct impact of the corporation's action or intervention led to the protection of about N3.66 trillion of depositor's funds²². In essence, not even a single depositor lost a single naira as a result of the crisis. It is good to note that, section 55 of the BOFIA 2020 prioritizes depositor's interests by explicitly providing that 'where a bank is unable to meet its obligations or suspends payment, or its management and control has been taken over by the Central Bank, or its license has been revoked, the assets of the bank shall be available to meet all the deposit liabilities of the bank and such deposit liabilities shall have priority over all other liabilities of the bank'. This means, the legal regime is depositor friendly.

(b) Bank Employees

It is to be noted that, the most notable bailout policy in Nigeria is the intervention carried out largely in response to the global financial crises of 2007-2009 up to 2018 where the government bailed out several banks. This development has significant impact on the bank

²⁰ Oxford English Digital Dictionary, available at <https://www.google.com> accessed on the 29th of September, 2025 around 4:00 pm

²¹ Kanu, C, Financial Instability and Performance of Banking Sector in Nigeria: an Evaluation, African Journal of Accounting, Auditing and Finance, January, 2019 Pg.6

²² Uzor, N. Amcon,. Intervention saved over 15,000 jobs. Reported by *the Vanguard Newspaper* available at <https://vanguardnews.org> accessed on the 7th of February, 2020 around 6:00pm

employees. It has been reported that the direct impact of the bailout through AMCON's action on the bank employees is that approximately, 15,000 jobs were saved²³. The real impact of this can be assessed better if the adverse economic impact of losing jobs is taken into consideration. In other words, failure to save the jobs is a calamity that is too onerous for labour, adding to permanent unemployment, promoting pressures for flexible hiring and firing practices and creating job insecurity²⁴. Unemployment may result in non-repayment of borrowed loan and the need for new credits in order to meet up with the demand of the households²⁵. The unemployment caused by the 2005 bank recapitalization policy in Nigeria have rendered many people jobless in Nigeria. The jobless have lots of dependents, some are involved in small retail businesses; and as a result, these retail businesses have been forced to liquidate or push to the verge of eventual closure. The sequence of events may result to retrenchment of bank staff and loss of business. The effects are that many Nigerians are out there in the streets jobless, increasing the high incidence of crime in the country²⁶. According to the International Monetary Fund report of 2008, global financial instability has left high unemployment rates and a large weight on economic growth. Most countries, especially the developing countries have not recovered from the shocks of the instability²⁷. Job saving has the same impact with job creation. The benefits of job creation or saving same therefore is to maintain a healthy economic growth²⁸. When jobs are created, the economy grows and whenever people are working and able to provide for themselves, the morale increases and things stabilize²⁹. It is truism that when there is a high level of employment, the economic growth becomes healthy. Hence, small businesses can hire additional staff, which empowers economic growth and significant unemployment rates drops. In this way, citizens can escape poverty as the standards of living grow overtime³⁰. Additionally, when the rate of job creation

²³ Uzor, N. Amcon Intervention Saved Over 15,000 Jobs. Reported by *the Vanguard Newspaper* available at <https://vanguardnews.org> accessed on the 7th of February, 2020 around 6:00pm

²⁴ Kanu, C, Financial Instability and Performance of Banking Sector in Nigeria: an evaluation African Journal of Accounting, Auditing and Finance, January, (2019) Pg.6

²⁵ Ibid

²⁶ Kanu, C, Financial Instability and Performance of Banking Sector in Nigeria: an evaluation African Journal of Accounting, Auditing and Finance, January, (2019) Pg.6

²⁷ Ibid

²⁸ Morka, K.G., Benefits of Job Creation. available at <https://kenmorkafoundation.orgg> accessed on the 1st October, 2026.

²⁹ Ibid

³⁰ Ibid

is high, people will increase spending and this will cause a positive multiplier effect which helps to increase economic growth³¹. It is also imperative to note that economic growth lowers poverty rate³².

(c) Bank Shareholders

These are the 'owners' of the banks and are more interested in their banks profitability, soundness and good health.³³ In this respect, it has been found that the Nigerian banking efficiency improves after a year or two of capital injections³⁴. Thus, the bailout helped the banks by preventing their liquidation, and keeping them as a going concern and subsequent recovery from the crisis is to the best interest of the shareholders. In other words, if the banks were liquidated, the interests of creditors that should be considered first would invariably affects the shareholders' interests in a negative way.

(d) The Government and General Public

Generally, banks bailout helps to avoid or mitigate short –term financial system problems, increase stability, reduce systemic risk and the likelihood and severity of recessions which are often the consequences of financial distress and failures. Bailouts are generally geared to increase credit supply and improve economic conditions by increasing employment and reducing firm and consumer bankruptcies³⁵. General public means all or most people, especially those not part of a specified group, ordinary people as opposed to officials, experts, and politicians³⁶. It has accordingly been observed that the government intervention would not have been justified but for the consideration of the generality of small savers, depositors and the general impact on the economy³⁷.

Now the issue is, does all these developments brought by the regime maximizes the satisfaction of the above stakeholders? Firstly, at this point, it is critical to explain what the

³¹ Ibid

³² Ibid

³³ Morka, K.G. 3 Benefits of Job Creation available at <https://kenmorkafoundation.orgg> accessed on the 1st October, 2026.

³⁴ Shitman, W. (et al) Efficiency of Deposit Money Banks and Banking Reforms in Nigeria, Journal of Advance Financial Management, Volume 19, No.2, 2020, p.1

³⁵ Berger, A. (et al) Toxic Assets Relief Programme and other Bank Bailouts and Bail in around the World available at <https://sciencedirect.com> accessed on the 2nd day of October, 2023 around 7:16 pm

³⁶ Dictionary.com available at <https://www.dictionary.com/browser> accessed on the 9th of September, 2024 around 11:32 am

³⁷ Kuye, O.L, et al. Government Bailout of Financially Distressed Banks in Nigeria: A Justifiable Strategy? International Journal of Business and Social Science, Vol.4, No.8 (Special Issue) July, 2013

word maximize means: It means to make as large or great as possible³⁸. Its synonyms are to augment, bloat, boost, enlarge, escalate and exaggerate³⁹. It is further defined to be: increase to maximum,⁴⁰ or to find a maximum value⁴¹.

Therefore, maximization of value in this context means utmost increase of satisfaction derived by the stakeholders aforementioned from the legal regime and the bailout. In this light it can be safely argued that, the stakeholders and indeed the general Nigerian public cannot be said to have derived maximum satisfaction from the regime. The reason behind this opinion is that, none of the stakeholders discussed above are shown to have had increase satisfaction as a result of banking bailout. Instead, what was obtained by the stakeholders involved is stabilization of interests. In other words, the bailout, sanctioned by the regime can be said to have successfully stabilized the financial system but not increasing any value to the stakeholders. In this light, the regime has failed to maximize the economic value of the country. Therefore, the answer to the above question is in the negative. Accordingly, since the answer is in the negative, attempt to answer the questions that followed the main question does not even arise. Therefore, on this premise, the existence of the legal regime cannot be defended.

However, on the other hand, the maintenance of the stability of the financial system is the primary objective of the regime. It is also the reason behind government's intervention everywhere in the world. This is based on the fact that a stable financial system is capable of efficient allocation of resources, assessing and managing financial risks, maintaining employment level close to the economy's natural rate, and eliminating relative price movement of real or financial assets that will affect monetary stability or employment levels⁴². A financial system is in a range of stability when it dissipates financial imbalances that arise endogenously or as a result of significant adverse and unforeseen events⁴³. A stable system will absorb shocks primarily via self- corrective mechanisms, preventing adverse events that

³⁸ Oxford Digital Dictionary available at <https://oed.com> accessed on the 11th day of July, 2024 around 1:22pm

³⁹ Thesaurus. available at <https://thesaurus.com> accessed on the 11th day of July, 2024 around 1:30pm

⁴⁰ Merriam Webster Dictionary <https://www.merriam-webster.com> accessed on the 11th day of July, 2024 around 2:00pm

⁴¹ Ibid

⁴² Understanding Poverty, a document of the World Bank Department of Research and Publications, 2020 Pg11 available at <https://un.doc.org> accessed on the 19th day of August, 2024. Around 12:00 pm.

⁴³ Ibid

may have disruptive effect on the real economy.⁴⁴ Financial stability is paramount for economic growth, as most transactions in the real economy are made through the financial system⁴⁵. The true value of financial stability is best illustrated in its absence, that is - in the periods of financial instability. During these periods, banks are reluctant to finance profitable projects, asset prices deviate excessively from their intrinsic values, and payments may not arrive on time⁴⁶. Major instability can lead to bank runs, hyperinflation, or a stock market crash. It can severely shake confidence in the financial system⁴⁷.

Financial stability relates to healthy and virile banking system is also closely related to poverty alleviation through job creation. In this regard, it has been submitted that the Nigerian banking sector is the greatest employer of labor aside the agricultural sector. Therefore, any crisis in the sector would translate to more joblessness in the economy⁴⁸. Secondly. Banks are key drivers of economies and when their own financial position prevents them from performing this function, economic growth is compromised⁴⁹. As Mackinnon and Shaw observed, in their seminal work on the key roles of banks as propellants of growth and development in developing economies, a feeble banking system is repressive, distortionary and disconnects the intermediation process, thereby precipitating macroeconomic instability⁵⁰.

Banks plays prominent role in the credit intermediation process in most countries, providing funding to firms beyond the cash flow provided by their normal operations. They also play key roles in channeling credit to firms- particularly those firms that are not able to acquire funding from capital markets or other source - and also hold substantial consumer deposits. Specifically, banks perform a maturity transformation function, the banking sector is the agent for financial intermediation, enhances financial intermediation by mobilizing savings (deposits) and channeling them into productive investment in the real sector of the economy (lending). In other words, it performs the function of resource allocation from surplus units to deficit units; increases the allocative efficiency of resources; facilitate risk sharing spreads/ reduces risk faced by economic agents and thereby reducing cost; facilitates generation of

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Kana, U, Banking Sector Crisis And Resolution Options In Nigeria, Bullion, a Publication of the Central Bank of Nigeria, volume 34, No.1 January-March 2010 Pg.7

⁴⁹ Ibid

⁵⁰ Ibid

wealth in the economy; promotes productivity and economic growth, thereby contributing to poverty alleviation.

Banks also facilitates the exchange of goods and services through the provision of effective and efficient systems of payments, and expand and diversify opportunities through innovations.⁵¹ A banking system that is in crisis cannot therefore, carry out its intermediation role effectively as new lending comes to a halt which is known as a credit crunch. It is noteworthy that, two factors affect bank performance; low capital adequacy and shortfall of liquidity. In the first instance, prudential rules set out the risks that banks can take in relation to their capital requirements. During economic and financial downturns, losses may appear that reduces banks capital; this effect may be amplified by the accounting rules that require certain assets to be marked by market. In parallel, the risks often measured on the basis of the credit agencies' ratings that are regularly downgraded during crises, increase and results in higher capital requirements.

Hence, when banks are not sure that they can obtain financing, they stop lending. These two channels could combine and be mutually reinforcing, particularly in the case of build-up of non-performing loans in some institutions that can shed doubts on their solvency. This may lead to bank failures with the associated multiple effects. The whole system then seizes up, and the financing of the economy is jeopardized,⁵² however, it has been found that, rising economic inequality was a major cause of the financial crisis⁵³. Banking sector development can have a significant effect on poverty reduction in the long run⁵⁴. It has been found that, a 1% increase in Central Bank development premised on liquidity ratio, other things being equal, brings about 0.079984% increase in poverty reduction in the long run.

The implication of this result is that the activities of the Central Bank such as interventions, merger of banks, bank recapitalization and bank consolidation reduce poverty incidence in Nigeria⁵⁵.

⁵¹ Kana, U, Banking Sector Crisis and Resolution Options in Nigeria, Bullion, a Publication of the Central Bank of Nigeria, volume 34, No.1 January-March 2010 Pg.7

⁵² Ibid

⁵³ Martin, A. (et al). Inequality and Financialization, an article of the New Economic Foundation, available at <https://neweconomics.org> accessed on the 9th of September, 2024, around 11:55 am

⁵⁴ Okunade, S.O, (et al) 'Relative Impact of Financial Sub-Sectors on Poverty Level: A Disaggregated Effect of Financial Sector Development in Nigeria, University of Ife Social Science Review, 25(2) 2017, Pg. 1

⁵⁵ ⁵⁵ Okunade, S.O, (et al) 'Relative Impact of Financial Sub-Sectors on Poverty Level: a Disaggregated Effect of Financial Sector Development in Nigeria, University of Ife Social Science Review, 25(2) 2017, Pg. 2

This submission reveals the economic multiplier effect of banks bailout occasioned by the regime in Nigeria because it touches the issue of employment, poverty alleviation and increase in wealth. It shows that there is a strong link between financial system stability occasioned by banks bailout and economic growth, poverty reduction and wealth generation. In this respect, the developments invariably affect the greatest majority citizens of Nigeria in several positive manners and accordingly create greatest happiness and pleasure for them.

The philosophical principle of utility vigorously promoted by Jeremy Bentham and others to the effect that the essence of law is to provide the greatest happiness of the greatest majority is found to be apt here, and accordingly, it can be rightly concluded that the regime that sanctions commercial bank's bailout in Nigeria is excusable, justifiable and has immense utility on ground of public good.

With respect to the justification of using public fund to bailout, commercial banks, however, the opinion of Richard Posner is found to be relevant here. According to him, the word "bailout" is used in different ways, and it is sometimes hard to understand what people are complaining about. A bailout is essentially a transfer of money or other resources from the government to a private agent. Such transfers occur every day and hardly ever cause anyone to lift an eye brow⁵⁶. The government transfers money or other valuable consideration to solar manufacturers, dairy farmers, poor people, and research universities⁵⁷. While many people disagree about the wisdom of these transfers, they do not regard them as illegitimate in the same way that they often regard bailouts⁵⁸.

In this light, the government of Nigeria is also transferring money to several groups of people, organizations and establishments in the form of either a subsidy for a product they supply to the citizens, or the services they rendered. Sometimes, huge amount of public money is being expended as an intervention to private organizations with a view to boost their capability or to enable them remain in business due to their importance to the economic well-being of the country or any other positive consideration which is in a way a form of a bailout.

4.0 Bailout Regime from the Perspective of Public Choice Theory

⁵⁶ Posner, E. A. A Framework for Bailout Regulation, 91, Notre Dame Law Review 479, 2015 Pg. 480

⁵⁷ Posner, E. A. A Framework for Bailout Regulation, 91, Notre Dame Law Review 479, 2015 Pg. 480 available at <https://researchgate.com> accessed on the 18th day of June, 2023.

⁵⁸ Ibid

Public choice theorists challenge the traditional assumption that governments operate in the public interest. Instead, they view the policy making process as a battlefield where legislators, bureaucrats, interest groups, and individual voters compete to maximize their own private interests. It is now appropriate to examine whether the legal regime operates in the interest of majority of Nigerians or the circle of bank executives, political leaders and their cronies.

According to Brian, H. Brix⁵⁹ legal public choice theorists try to see how much of official action can be explained and predicted on the basis that the officials (Legislatures, Judges, and administrator and soon) are acting to further their individual interests. Then, if legislators and other officials are more accurately seen as acting in their narrow self-interest when they legislate, rather than acting for the public good, then there may be reason to change various aspects of the legal system⁶⁰.

4.1 Nigerian Legal Regime on Bailout and Public Interest

This can best be appreciated by considering the impact of the legal regime on the economic growth of the country and its resultant effect on the lives of the majority citizens of the country. In this respect, it has already been discussed that the commercial banks bailout executed in Nigeria, though controversial have successfully stabilized the country's financial system, particularly during the recent global financial crises that resulted in job creation and saving, increased lending to businesses, poverty reduction, wealth generation that have cumulatively led to economic growth and development which is in the best interest of the majority of Nigerians.

This assertion can be proved by statistics. It has thus been statistically found that 63% of persons living within Nigeria are poor⁶¹. Furthermore, 40% of the total population of almost 83 million people live below the country's poverty line of N137, 430, equivalent to \$ 381.75 per year⁶². This clearly shows that the majority of the Nigerian citizens are poor. There is also direct connection between financial deepening in Nigeria and poverty reduction.

⁵⁹ Brix, B.H, Jurisprudence: Theory and Context, Sweet and Maxwell, South Asian 2018 8th Edition Pg. 207

⁶⁰ ⁶⁰ Brix, B.H, Jurisprudence: Theory and Context, Sweet and Maxwell, South Asian 2018 8th Edition Pg. 207

⁶¹ The source of this information is from a collaborative survey undertaken by the National Bureau of Statistics, The National Safety -Nets Coordinating Office, The United Nations Development Program, The United Nations Children Fund and the Oxford Poverty and Human Development Initiative in 2022 and made available to public on the 17th of November 2022, available at <https://un.org.com> accessed on the 11th day of March, 2023 around 3:15pm

⁶² World Bank poverty rating based on an information received from the National Bureau of Statistics, 2019, available at <https://nbs.org> accessed on the 11th day of March, 2023 around 3:45 pm.

Accordingly, there is a significant relationship between financial deepening with poverty reduction and unemployment rate in Nigeria⁶³. Financial deepening is a term being used by economists to refer to increasing provision of financial services⁶⁴. Interestingly enough, the coefficient of financial deepening measured using the ratio of broad money supply to real GDP is positively related to the financial stability⁶⁵. Therefore, the financial stability of the Nigerian financial system ably maintained by the regime has immense positive impact on the country's financial deepening that has been proven to reducing poverty in the country. Hence, it can be safely concluded that financial stability occasioned by the Nigerian legal regime on bailout is positively in the interest of the majority citizens of Nigeria because it reduces poverty and the majority of the citizens are poor.

As pointed out above, the regime has, through commercial banks bailout, saved thousands of jobs directly in the banking sector and indirectly through financing several enterprises that would have collapsed for lack of capital. It has also been pointed out that saving and creating jobs have direct positive effect on poverty reduction and wealth generation. With respect to which the extent the regime serves the interests of the majority of Nigerians, however, it has been found, though arguably, by the paper that the regime had enabled the Central Bank of Nigeria to strengthened the banking industry, protect the depositors and creditors and restore public confidence and safeguard the integrity of the Nigerian banking industry⁶⁶.

4.2. Relationship between the Government Officials and the Commercial Banks

There is a statutory connection between the government agencies responsible for commercial banks bailout: the Central bank of Nigeria, the Nigerian Deposit Insurance Corporation, the Assets Management Corporation of Nigeria, the Securities and Exchange Commission to some degree and the Federal Ministry of Finance. Section 43 of the Central Bank Act 2007⁶⁷ established a Financial Services Regulation Coordinating Committee for the purposes of coordinating the

⁶³ Ayofe, B.A. Analysis of Financial Deepening and Poverty Reduction in Nigeria, Arabian Journal of Business and Management Review (Kuwait Chapter) Pg.1 available at <https://arabianjbmr.com> accessed on the 19th day of February 2026.

⁶⁴ Ibid

⁶⁵ Evbomien, A. Financial Deepening and Financial System Stability: Evidence From Nigeria, Accounting and Taxation review, UNN, vol.6 Pg.9

⁶⁶ Kana, U, Banking Sector Crisis and Resolution Options in Nigeria, Bullion, a Publication of the Central Bank of Nigeria, volume 34, No.1 January-March 2010 Pg.10

⁶⁷ Central Bank of Nigeria Act 2007.

supervision of financial institutions. The committee has members that comprise of the Governor of the Central Bank who shall be the chairman, the Managing Director of the NDIC and the representative of the Federal Ministry of Finance among others. Similarly, section 36 of the Banks and other Financial Institutions Act⁶⁸ requires the Central Bank to cooperate with the NDIC and Federal Ministry of Finance among others where it is necessary or expedient to resolve a banking crisis occasioned by illiquidity or related matters. Furthermore, section 39 of the Nigerian Deposit Insurance Corporation Act⁶⁹ that pertains to the powers of the Corporation to take over the management of failing insured institutions requires that such powers are only exercisable after consultation with the Central Bank.

Also, of essence, the Assets Management Corporation of Nigeria is a public corporation owned jointly by the Central Bank of Nigeria and the Federal Ministry of Finance⁷⁰. A community reading of these provisions presupposes that the Central Bank is the most directly involved with respect to bailing out commercial banks in Nigeria. Significantly and invariably, the leadership of the apex bank is highly instrumental towards rescuing failing banks, including of course granting bailout to commercial banks taking into consideration the enormous express and incidental statutory powers and the influence the Governor wields. In this respect, certainly the personality, qualifications, service records and personal connections of the Governor could influence the manner in which the bank bailout legal regime is being implemented.

It is to be noted that, one of the strongest criticisms against Nigerian commercial banks bailout using public fund is that the fund is likely being used to enrich few private individuals. This suspicion is likely to have more base in Nigeria taking into consideration that most Central Bank Governors that have enormous discretionary power and influence in deciding the beneficiaries of the bailout are mostly being appointed from outside the Central Bank. Interestingly, many were appointed from the private sector, specifically from the cliques of the top managers of the Commercial Banks that receives the bailouts. Out of the 11 Governors appointed to lead the Central Bank 7 were from outside and virtually all of them have connections with the commercial banks.

⁶⁸ Banks and other Financial Institutions Act 2020.

⁶⁹ Nigerian Deposit Insurance Corporation Act 2006.

⁷⁰ Ungersboeck, P. Asset Management Corporation of Nigeria (AMCON): Resolution of Nonperforming Loans in Nigeria, *Supra* Pg. 1.

The first in that line is Mr. Ola Vincent that headed the CBN from 1977-1982, was a former Vice-President of the African Development bank. Second is Mr. Paul Ogwuma that led from 1993-1999, he was a Managing Director and Chief Executive Officer of the Union Bank of Nigeria. The third in the list is Dr. J. O Sanusi, 1999-2004, he held leadership position at the United Bank for Africa and the First Bank of Nigeria. The fourth is Prof. Chukuma Soludo, 2004-2009, though an academician, he worked with the African Development bank. The fifth is Sanusi Lamido Sanusi, 2009-2014 who worked with Icon Limited, United Bank for Africa and the First Bank. Then Mr. Godwin Emefiele, 2014 -2023, who was a former Managing Director and Chief Executive Officer of Zenith Bank. Then, Mr. Oluyemi Cardoso appointed in 2023, he was also a former Chairman of the Citibank.

It can however be speculated that, the stints of the aforementioned Governors in the commercial banking may have them to acquire interests in the commercial banks, directly or indirectly that may influence their various decisions pertaining how they exercise their powers, including the issue of granting bailouts using public funds.

In other words, it can be safely argued that there is a serious economic connection between the government officials responsible for granting bailouts, represented by the Central Bank and the commercial banking community. This arrangement may certainly give credence to the theory that government officials in that respect tends to promote the interests of their economic cronies in the commercial banking community through bailout. It has been observed that since 2009, the leadership of the central bank has carried itself and its activities with hubristic predilection under the guise of autonomy. In many respects, the central bank leadership is perceived to have overstepped its bounds of autonomy. Unlike in advanced economies, much of its macroeconomic decisions have to a large extent been informed and mired by self-seeking economic or political orthodoxy rather than altruistic proclivity as commonly found in developed countries⁷¹.

Furthermore, conflict of interest and arbitrariness in such a situation and arrangement is highly likely. It has been submitted accordingly that conflicts of interest and other ethical problems contribute to arbitrariness in government decisions regarding extraordinary bailouts, as officials may mispend public money thereby eroding public confidence in government. This

⁷¹ Herbert, W.E Central Bank Autonomy: Does It Really Matter? In Perspectives on Banking in Nigeria, (Bisi Onasanya, ed) Patrioni Books Limited, Lagos, (2014) Pg.145

unpredictability may also cause capital markets to react adversely⁷². By comparison, in the United Kingdom, the Governor of the Bank of England is mostly being appointed from within the Bank⁷³. Similarly, in the United States of America, pursuant to the provisions of Banking Act 1935, the President may designate a person to serve as Chairman of the Board of Federal Reserve, a position similar to the office of the Governor of the Central Bank for four years' terms with the advice and consent of the senate, from among the sitting Governors⁷⁴. By this arrangement, a fear that the past relationship of the person to be appointed in such sensitive position with financial institutions, particularly commercial banks may have negative influence in his dealings with them has been taken away. On this note, the systems in the United States of America and the United Kingdom is better, compared to that of Nigeria. Accordingly, Nigeria may learn this from the two countries.

5.0 Findings

(a) It has been found that, the regime is justifiable in terms of its utility from the perspective of wealth maximization theory because it has succeeded in ensuring financial stability in the country that invariably and positively resulted in economic growth and development by reducing poverty and wealth stabilization to the majority citizens of the country. This has been found to be achieved by preventing loss of thousands of jobs directly and indirectly related to the banking industry, preventing liquidation of banks, saving depositor's money, shareholders shares, and creditors interests from loss and resolving non-performing loans. This has made the regime to qualify to become a good law because it has brought greatest happiness to the greatest majority of the citizens of Nigeria

(b) It has succeeded in preventing the collapse of the financial system, thereby promoting economic growth for sustainable human development.

(c) It is effective in sustaining the Nigerian banking industry and thereby succeeded in promoting and ensuring financial system stability in the country through providing liquidity supports to

⁷² Painter, R. Bailouts: An Essay on Conflicts of Interest and Ethics When Government Pays the Tab, *Mc George Law Review*, Article 4, Volume 41, Issue 1 2009 pg.1132

⁷³ Vipond, T. Bank of England: Central Bank of the UK available at <http://www.bankofengland.co.uk> accessed on the 5th of March, 2026 around 5:24 am.

⁷⁴ The Federal Reserve System available at <https://researchgate.com> accessed on the 11th day of March, 2026 around 5:13 pm.

illiquid banks among other efforts that eventually engenders public confidence on the banking system.

(d) From the perspectives of the public choice theorists, however, it has been found that there are features in the regime that relate to economic connection between most of the heads of the Central Bank of Nigeria, the principal agency that bails out commercial banks using public funds and the community of commercial banks who are mostly the beneficiaries of the various bailouts granted pursuant to the regime thereby giving the theory a form of credence.

The economic and legal relationship between the heads of the Central Bank of Nigeria and commercial banks adds weights to speculations that the Nigerian bailout is a form of a trick to use public funds by the government officials responsible for the activity and the few rich individuals to enrich themselves at the expense of the impoverished majority citizens of the country.

6.0 Recommendations

It is recommended also that the regime should be amended in a way that ensures that there is no conflict of interest, and the link between government officials responsible for the bailout and their counterpart in the private banking sector should be avoided to safeguard public interest. This can be achieved by amending the Central Bank Act 2007 to prioritize the consideration of the professional career staff of the institution over those that are being brought from the outside.

7.0 Conclusion

Rescuing commercial banks in Nigeria started in 2008-2009 under the guise of a conflicting phenomenon known as ‘bailout’ The concept is being overstretched yet greeted and applauded in several quarters particularly the benefactors whose intent most a times inclined towards misappropriating public funds. This intervention by government is being heavily criticized for many reasons- the law and the notion of public morality as public funds are used to resuscitate the failing banks while in some cases allowing the culprit to go scot-free. The paper’s position acknowledged the firm and robust legal regime capable of dealing with reckless, fraudulent and negligent inactions of the culprits particularly where the recommendations are utilized.