

A CRITICAL EVALUATION OF THE LEGAL FRAMEWORK FOR SME's LOAN REDEMPTION IN NIGERIA

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ABSTRACT

Small and medium scale enterprises (SMEs) scheme has been recognised as a vehicle for rapid sustainable economic development, industrialisation, employment generation, poverty alleviation, to mention but a few. No doubt, the country is in dire need of these indices of peoples' welfare. Yet, conventional banks are reluctant to grant credit facilities to SMEs in order to boost their capital base and sustain their enterprises. The reason is that the existing legal framework is inadequate in ensuring efficient, effective and prompt loan recovery by the banks from the SMEs. This is more so that the beneficiaries of the SMEs loans are not required to pay interests when repaying the loan. Consequently, the positive effects of viable, effective and efficient SME schemes are not felt in the country. Based on this premise, this paper critically evaluates the adequacy or

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otherwise of legal/policy frameworks on SME loan redemption in Nigeria. To achieve this, it assesses the enforcement mechanism against beneficiaries of the SMEs scheme. The paper finds that the legal framework for redeeming loans against SMEs in Nigeria is inadequate owing to weak and ineffective enforcement mechanisms. It concludes that there is a need for a dependable, viable, effective and justly-balanced legal framework that would ensure smooth and reliable loan redemptions from SMEs.

Keywords: *SMEs, Enforcement, loan redemption or recovery.*

PENILAIAN KRITIS KE ATAS KERANGKA PERUNDANGAN BERHUBUNG PENEBUSAN PINJAMAN PKS DI NIGERIA

ABSTRAK

Skim perusahaan kecil dan sederhana (PKS) telah diiktiraf sebagai pemacu kepada pembangunan ekonomi yang pesat dan mapan, perindustrian, penjana peluang pekerjaan juga menurunkan kadar kemiskinan, sekadar menyebut beberapa kepentingan. Tidak syak lagi, negara inisangat memerlukannyabagi mengukur indeks kesejahteraan rakyat. Namun begitu, bank-bank konvensional enggan untuk memberi kemudahan kredit kepada PKS untuk meningkatkan asas modal mereka dan mengekalkan perusahaan mereka. Alasannya adalah kerangka undang-undang yang sedia ada tidak memadai dalam memastikan Bank-bank mendapatkan semula pembayaran balik pinjaman dari PKS secara cekap, berkesan dan cepat. Lebih-lebih lagi waris pinjaman PKS tidak dikehendaki untuk membayar faedah apabila membayar balik pinjaman. Akibatnya, kesan positif daripada Skim PKS yang berdaya maju, cekap dan efektif tidak dirasai dinegara ini. Berlandaskan premis ini, kertas kerja ini menilai secara kritis kecukupan dan kekurangan dalam kerangka polisi/undang-undangberhubung penebusan pinjaman PKS di Nigeria. Bagi mencapai matlamat ini, kajian ini menilai mekanisme penguatkuasaan

terhadap waris skim PKS. Kajian ini mendapati bahawa kerangka undang-undang untuk menebus pinjaman terhadap PKS di Nigeria adalah tidak memadai disebabkan mekanisma penguatkuasaan yang lemah dan tidak berkesan. Ia merumuskan bahawa terdapat keperluan bagi mewujudkan kerangka perundangan yang boleh dipercayai, berdaya maju, efektif dan saksama yang akan memastikan penebusan pinjaman yang lancar dan boleh dipercayai daripada PKS.

Kata kunci: PKS, Penguatkuasaan, pembayaran/penebusan pinjaman.

INTRODUCTION

There is a high correlation between the levels of poverty, hunger, economic stability and unemployment of the citizens of countries when taken in contradistinction with the level of efficacy of the respective countries' SMEs. Thus, if Nigeria is to achieve significant success towards attaining the much hyped Vision 2020 and the Millennium Declaration Goals for 2015, one of the sure ways would be to vigorously pursue the development of its SMEs. There is an urgent need to do something surgical and realistic to the situation of the SMEs in Nigeria, given the aggravating level of poverty in Nigeria and the need to meet up with various commitments.

Small and Medium Enterprise is a kind of business whose total cost is not more than N200, 000,000 (two hundred million) Naira¹ or an enterprise that has an asset base (excluding land) of between N5 million (five million) Naira to N500 million (five hundred million) Naira. This category of business has a labour force of between 11 and 300² as one of its characteristics. The definition of the concept (SMEs) is not straight jacketed as the rule guiding its nature varies in different jurisdictions.³

¹ The sum indicated here excludes land. See Basil A.N.U, "Small and Medium Enterprises (SMES) in Nigeria: Problems and Prospects," (PhD Diss, St. Clement University, 2005).

² See paragraph 6.0 of the 2010 CBN Small and Medium Enterprises Credit Guarantee Scheme (SMECGS).

³ Aigboduwa J.E and Oisamoje M.D, "Promoting Small and Medium Enterprises in the Nigerian Oil and Gas Industry," *European Scientific*

So, the objectives of SME schemes are to maintain price and exchange stability and a healthy balance of payments; fast-track the development of the manufacturing SME sector of Nigeria; provide guarantee for credit from banks to SMEs and manufacturers; reduce lending rates and improve savings; improve the performance of major infrastructural facilities such as power supply, communications and transportation; entrench probity, transparency and accountability in governance; and improve credit delivery and extension services to small and medium scale enterprises.

Notwithstanding the fact that the scheme has been regarded as the opportunity for employment generation and technological development in Nigeria, the sector nevertheless has had its own fair share of neglect with concomitant unsavory impacts on the national economy. Governments at various tiers have in one way or the other focused on the Small and Medium Enterprises. While some governments formulated policies aimed at facilitating and empowering the growth and development and performance of the SMEs, others focused on assisting the SMEs to grow through soft loans and other fiscal incentives. Similarly, there are regulations which guide the operation of SMEs. These regulations include Banks and Other Financial Institutions Act (BOFIA), Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) Act, National Economic Reconstruction Fund (NERFUND) Act, and Central Bank of Nigeria (CBN) guidelines. However, the problem here is the enforcement regime against beneficiaries of SMEs soft loans provided in these regulations and whether the enforcement mechanisms as provided in these Act or regulations are sufficient to enable various agencies meet the objectives of the scheme in the light of failure of some beneficiaries to repay their loans.

Based on the above premise, the objective of this paper is to critically evaluate the adequacy or otherwise of legal/policy frameworks

Journal 9, No.1 (2013): 246. See also Ayaggari. M, Beck. T and Demirgüç-Kunt, A. "Small and Medium Enterprises across the Globe: A New Database." *World Bank Development Research Group. Working Paper 3127*, Washington DC, (2003). See also Fatai. A, "Small And Medium Scale Enterprises In Nigeria: The Problems And Prospects," accessed May 23, 2013, http://www.academia.edu/1406990/SMALL_AND_MEDIUM_SCALE_ENTERPRISES_IN_NIGERIA_THE_PROBLEMS_AND_PROSPECTS.

on SME loan redemption in Nigeria. To achieve this, it first gives a detailed background on the initiative of SMEs in Nigeria. It then analyses the regulatory and policy frameworks on SMEs and the loan redemption paradigm in Nigeria. It concludes therefrom and offers useful suggestions that would address the interests of all stakeholders in SMEs industry.

SMEs INITIATIVE IN NIGERIA

In any nation where a meaningful sustainable development is expected to take place, priority must be accorded to major constraints of small business development. This is applicable to both less developed countries and developing economies of the world. Nigeria has been classified as a developing country and examples of major sources of small business finance in Nigeria are development finance institutions, commercial banking, Non-Governmental Organisations (NGO)-Monetary Financial Institutions (MFIs), Cooperatives and Government poverty eradication outfits to mention but a few. The practice in the banking system in Nigeria is gradually changing to pay attention to microfinance seekers. This position was evidenced by the Bankers' committee meeting⁴ which decided that 10% of the funds accruing to the Small and Medium Industries Equity Investment (SMIEIS) should be channeled to micro enterprises through registered microfinance institutions. The commutative effect of the SMIEIS arrangement is that, banks in Nigeria have agreed to set aside 10% of their pre-tax profit annually for equity investment in small and medium industries.⁵ Interestingly, as at the end of June 2004, over N24 billion (twenty four billion) Naira had been realised, while less than N10 billion had been invested.⁶

⁴ Bankers Committee, "Revised Operational Guidelines for the Operation of Small and Medium Enterprises Equity Investment Scheme (SMEEIS)," (2005).

⁵ See K.D, Isa and Terungwa. A, "An Empirical Evaluation of Small And Medium Enterprises Equity Investment Scheme In Nigeria," *International Conference on Economics and Finance Research (IPEDR)* 4 (2011): 408.

⁶ Onaolapo A.A and Oladejo M.O, "Effectiveness of Millennium Development Goal Programmes on Entrepreneurial Development: An

Furthermore, in 2012, the Federal Government of Nigeria approved the sum of N200 billion (two hundred billion) Naira for the operation of Small and Medium Enterprises Credit Guarantee Scheme (SMECGS) fund.⁷ Accordingly, for the scheme to be operational, the eligibility conditions for applying institutions were to be formulated by the Central Bank and the Microfinance Development Fund (MDF). These are requirements to support micro, small and medium enterprises and they were established simultaneously. Interested SMEs may only benefit from these funds if they are viable and satisfy the expected eligibility conditions.⁸ In a slight departure from the above position, it has been argued that the bane of SMEs in Nigeria is the lack of long-term loans considering the fact that most loans in the Nigerian market are short-term based. SMEs require long-term loans to nurture and certainly will become successful but where this is not guaranteed, SMEs may die a natural death.⁹

The dearth of venture capital financing in Nigeria has also been identified as aggravating the situation because venture capital provides long-term patient capital which invariably allows a small business to grow¹⁰ as is the case of Ghana and some developed economies like the U.S, and China, until the emergence of SMEs.¹¹ There are other challenges which have been identified as frustrating SMEs in Nigeria that account for the death either within their first two years of operation or having a low turnout and patronage even after surviving in their early years. These challenges are the lack of infrastructural facilities such as

Appraisal of the Nigerian Experience,” *Journal of Emerging Trends in Economics and Management Sciences (JETEMS)* 2, No. 4 (2011): 311-312.

⁷ See the 2010 CBN Small and Medium Enterprises Credit Guarantee Scheme (SMECGS).

⁸ Aigboduwa and Oisamoje, n. 3, p. 249. See also Uko, N.S. (2012): “FG sets up N200bn SME Guarantee Fund.” *Finance Business*, accessed may 20, 2013, <http://www.nigerianbestforum.com/blog/fg-sets-up-n200bn-sme-guarantee-fund/>

⁹ *Ibid.*

¹⁰ Golis, .C, *Enterprise and Venture Capital: A Business Builder and Investment*, Handbook, 3rd edition, (Australia: Allen and Urwin, 1998).

¹¹ Aigboduwa and Oisamoje, n. 3, p. 249.

good roads, water and stable electricity (some households in Nigeria cannot boast of two hours of uninterrupted power supply per day in Nigeria).¹² Others are insecurity of lives and property, inconsistent monetary, fiscal and industrial policies, limited access to markets, multiple taxation and levies, lack of modern technology for processing and preserving products, policy reversals, corrupt practices by regulatory institutions, capacity limitations, data inadequacies, harsh operating environment, fragile ownership base, and fragile capital base.¹³ While some of the challenges that SMEs face are due to the operating environment (government policies, globalization effects, financial institutions, local government policies, and attitude to work),¹⁴ others are driven by the inherent characteristics of the SMEs themselves.

Apart from challenges identified above, a number of factors have been linked to the causes of the non-survival of SMEs in Nigeria. They include inadequate market research; insufficient capital; partly as a result of inadequate access to loan facilities; lack of focus by some SMEs; inadequate succession plans; inexperience on the part of SMEs loan beneficiaries; over-concentration on one or two markets for finished products; lack of proper records; inability to separate business and family or personal finances; inability to distinguish between revenue and profit; inability to procure relevant machineries; inability to engage or employ competent personnel; some of them want to get rich quick; inadequate legal framework on SMEs loan redemption; inadequacy of government's political will to patronage locally produced goods and services and unnecessary interest on foreign goods.¹⁵

It is submitted that where all the above identified causes of the death of SMEs in Nigeria are given adequate attention, the issue of non-survival of SMEs in Nigeria will be greatly reduced. Also, it will greatly

¹² See Sharifah Zubaidah Syed Abdul Kader and Abdulkadir A.O, "Privatization of Maritime Security Surveillance and Enforcement: A Compromise of State Sovereignty," *Journal of Law, Policy and Globalization*, 9 (2013): 21.

¹³ Aigboduwa and Oisamoje, n. 3.

¹⁴ See Solomon G, "Building Small and Medium Scale Enterprise: A Strategy for Economic Development in Nigeria," *Jos Journal of Economics* 4, No. 2: 131.

¹⁵ Aigboduwa J.E and Oisamoje M.D, n. 3.

reduce the challenge of teeming unemployment which has given rise to all forms of hooliganism, armed robbery, and kidnapping. This is because, a sizeable number of organised crimes, like kidnapping in recent times, have been carried out by Nigerian unemployed graduates as was the case in the recent kidnapping of a local government chairman in Lagos State.¹⁶

THE REGULATORY MECHANISMS AND POLICY FRAMEWORK OF SMEs IN NIGERIA

Some regulatory frameworks have been put in place in order to monitor the progress of SMEs in Nigeria. Yet, effectiveness of the regulation of this sector seems to be a mirage. So far, the regulatory mechanisms appear to be ineffective in sustaining the growth and development of the sector. Nevertheless, achieving sustainable entrepreneurship progress

¹⁶ This story was confirmed by the kidnapped council boss, Mr Kehinde Bamgbetan when he said “The guys involved made a very clear point, many of them were graduates, have not been in jobs for years, and many of them have gone to take that risk, according to them, because they cannot match the millions and the billions that we talk about with what comes into their own pockets. They cannot understand why we budget billions of naira and graduates cannot get jobs so they have come to take their anger against the system. In that circumstance, one was just a victim of circumstance, it is clear no one is safe. It can happen to anybody at any time, but I don’t think we are prepared to handle this.” See generally Seun Akioye, “Kidnapped Lagos Council Chairman Relives Ordeal” accessed May 24, 2013, <http://thenationonline.net/new/news/kidnapped-lagos-council-chairman-relives-ordeal/>.

¹⁷ Ekpenyong D.B.E and Nyong M.O, “Small and medium scale enterprises development in Nigeria,” paper on economic policy research for policy design and management in Nigeria, NCEMA/APEC, Nigeria (1992), pp. 24-25 April. See also Onaolapo A.A and Oladejo M.O, “Effectiveness of Millennium Development Goal Programmes on Entrepreneurial Development: An Appraisal of the Nigerian Experience,” *Journal of Emerging Trends in Economics and Management Sciences*, (JETEMS) 2, No. 4 (2011): 310.

and development requires compliance with certain regulations and standards.¹⁷ This is particularly so since small and medium scale enterprises (SMEs) have been recognised as indispensable components of national development in both developed and developing economies.¹⁸ The problem here is that most small businesses in Nigeria are not registered to subject them to keen supervision and regulation¹⁹ by the relevant agencies. Yet, SMEs are required to register with Corporate Affairs Commission in line with the requirements of Companies and Allied Matters Act, 2004.

One regulation which benefits the SMEs is the mandatory requirement of the banks to set aside 10% of their annual profits before tax in support of SMEs. The Bank of Industry (BOI), for example, is expected to provide credit to SMEs but not on soft lending rates. It is only the Nigerian Export Import Bank (NEXIM) that provides soft loans to export oriented SMEs. National Economic Reconstruction Fund (NERFUND) is also in this category with the aim of providing medium to long-term loans to participating commercial and merchant banks for on-lending to small and medium-scale enterprises for the promotion and acceleration of productive activities in such enterprises. More importantly the Small and Medium Enterprises Development Agency of *Nigeria* (SMEDAN) was established pursuant to the SMEDAN Act 2003 to provide some measure of confidence that would portray the government's serious engagement and promotion of small and medium scale enterprises. In line with this objective, SMEDAN has completed a nation-wide survey on SMEs as the basis of articulating strategies and ideas for micro, small and medium enterprises policy thrust. Accordingly, the strategies and ideas would enhance facilitation, improvement and capacity building programme and intervention for the small and medium scale enterprises in Nigeria. All these agencies are established to ensure sustainability of

¹⁸ Aigboduwa J.E and Oisamoje M.D, "Promoting Small and Medium Enterprises in the Nigerian Oil and Gas Industry," *European Scientific Journal* 9, No. 1 (2013): 244. See also Abrie, W., and Doussy, E. "Tax Compliance Obstacles Experienced by Small and Medium Scale Enterprises in South Africa," *Meditari Accountancy Research*, 14, No. 1 (2006): 1-13.

¹⁹ Onaolapo and Oladejo, n. 17, p. 310.

SMEs in Nigeria.²⁰ SMEDAN has the power to transform the Small and Medium Scale Industries in Nigeria into a productive and effective entity.²¹ There are many other laws which seek to regulate SMEs in Nigeria. The laws include Customs and Excise Management Act, Industrial Promotions Act, Patent Right and Design Act, and Industrial Development Tax Act, all contained in the Laws of the Nigeria, 2004. It can be said, from these sets of laws, that there is a good prospect for the SMEs industry in Nigeria. Nevertheless, enormous challenges still serve as toll-gates on the wheel of progress of the scheme. So, issues of corrupt practices, frustration and delay (to mention but a few) by government institutions are banes in the wheel of progress of the SMEs. The idea of withholding funds to the entrepreneur after a successful award of it by the government agency is an element of fraud and dishonesty. However, concerted efforts by anti-corruption agencies like EFCC and ICPC could be a lee way to solve this nagging problem.

Thus, the experience in the case of *Oceanic Bank International Plc (Formerly Oceanic Bank International (Nig) Limited) v Broken Agro Allied Industries Limited* is worth revealing.²² The case of the respondent in this matter was that after it had received the loan for the purpose of SMEs from NERFUND, the appellant who was the obligor bank was said to have retained the sum of money for more than six months (notwithstanding the repeated demands for the release made to it by the respondent). The above action of the appellant was contrary to the provisions of section 5 of the NERFUND Act. The appellant was later said to have eventually released only part of the sum, i.e. \$995,741.22 to the respondent, thereby withholding the balance of \$2,848.78. The appellant was also alleged to have failed in its responsibility to provide any working capital for the respondent as required by the Act but rather relied on a “purported private agreement” between itself and the

²⁰ See Fatai. A, n. 3.

²¹ See for example, Section 8 of the Act titled, “Functions of the Agency” function of the Agency. Where section is read in conjunction with Section 9 which deals with the “Powers of the Agency,” one begins to understand that **SMEDAN** is blessed with all that it needs to actualize its dream, however, lacks of redemption paradigm cripples its enforceability.

²² (2008) LPELR.

respondent. Consequently, there was a delay by the appellant in releasing the funds which resulted in the costs of the plant and machinery as well as customs duties were said to have dissipated. The exchange rate of dollars at the period under consideration to the Naira also increased against the Naira from N22 - N80 to \$1.00. The respondent contended that up to the date the court delivered its judgment in this suit, the plant and machinery were yet to be installed and the project for which purpose the loan was provided by NERFUND was yet to take off. The judgment of the court was delivered on 5th April, 2006 against the appellant. It was crystal clear from the parties' pleadings vis-a-vis the evidence before the court that the appellant was directly responsible for the respondent's failure or needless delay in the execution of the project for which it was granted a loan by NERFUND. It is a settled principle of law that a party claiming special damage is duty bound to prove same strictly by way of documentary evidence and in this case the respondent was able to discharge that burden. The needless and undue withholding of the loan granted to the respondent by the relevant agency of the government (NERFUND, in the instant case) for more than six months, by the appellant, had actually caused avoidable and untold hardship, frustration, and loss of income resulting in the annihilation of the project. Therefore, the court was right to have awarded special damages to the respondent.

One policy framework of the government towards SMEs is the direct lending by various financial institutions, the establishment of rural banking programmes, specification of credit guidelines by the Central Bank of Nigeria to banks' lending to SMEs,²³ and indirect lending to SMEs at concessionary rates through participating banks.²⁴ There are other schemes that were established in this category and they include the establishment of the Second-tier Securities market, the Nigerian Industrial Development Banks and the National Economic Reconstruction Fund into the Bank of Industry for providing cheap financial and business support services to SMEs. This is in line with various interventions which

²³ See for example, the 2010 CBN guidelines.

²⁴ E.E. Inang and Ukpong G.E, "A Review of Small-Scale Enterprises Credit Delivery Strategies in Nigeria," *CBN Econ. Financ. Rev.*, 30, No. 4 (1992): 249. See also A.U. Inegbenebor, "Financing small and medium industries in Nigeria: Case study of the Small and Medium Industries," *J. Financial Manage. Anal* 19 (2006): 77.

have been made in different countries of the world to cater for the peculiar needs of SMEs. These interventions include but are not limited to institutional support, tax concessions, training in the relevant skills, technological acquisition and easy access to credit and innovation schemes.²⁵ Surprisingly, all these attempts have not been as successful as anticipated. Based on the research conducted it was established that the lending experience of five major banks in Nigeria from 1990-2006 indicated that non-performing loans and advances range from 40-50% among commercial banks. Similarly, the poor approach of Nigerians to loan settlement/repayment led to reluctance of some banks to grant it to genuine entrepreneurs and real sector in preference for the trade sector.²⁶ It is against this backdrop that this paper is intended to advocate for a more realistic redemption paradigm in the legal regime of SMEs.

The Central Bank of Nigeria and the Banker's Committee had recently attempted to tackle the financial problems of SMEs which culminated in the establishment of Small and Medium Enterprises Equity Investment Scheme (SMEEIS). It is part of the requirements of the scheme that all banks in Nigeria must set aside 10% of their pre-profit tax annually for equity investment in SMEs operating in the productive sector of the economy.²⁷ A prospective beneficiary of the SMEs funds is required to provide: a registered business name (an enterprise for a micro credit loan or a limited liability company for an SME loan facility); a simple feasibility report showing the viability of the business or project is required for a medium scale enterprise and a simple business plan for a small business operator; a pro forma invoice stating the price and source of proposed plant and intended machinery for the business; 10% equity of loan requested, that the intended project shall not be into merchandising

²⁵ Obadan, M.I. and Agba, A.V. "Small and medium enterprises development policy in Brazil, Malaysia, South Africa and South Korea: Lesson for Africa and Nigeria," *Business Publ. Union Bank Nig. Plc* 10(2006): 24.

²⁶ Feese, A.A., "The Problems of Financing Nigeria Enterprises in the 21st century. A Paper Presented at the National Seminar on Entrepreneurship" Organized by the Faculty of Management Sciences, University of Port Harcourt., USA (1994). See also Solomon G, id.

²⁷ Solomon G, 14, p. 138.

or primary agriculture; a site plan for the location of the project; sources and quotation of raw materials expressed in units; and must satisfy all requirements specified by a participating bank.²⁸

A cursory look at the conditions for the eligibility of an applicant of SMEs fund indicates that the only major requirement vis-à-vis collateral security (which is the fulcrum of this paper) is 10% deposit of the amount/loan requested. This is not sufficient as a form or way of compelling beneficiaries to fulfill their obligations under this scheme. With mere presentation of 10%, without more, people would strive to raise the 10% requirement in order to secure the loan and yet fail to repay. The relevant Acts should go further to ensure compliance with rules of the engagement. Where this is not taken into consideration, majority of the beneficiaries may fail to repay the loan thereby making the recovery or redemption a difficult task.

LOAN REDEMPTION PARADIGM

Loan redemption is where the relevant government agencies or financing institutions reclaim the loan granted to beneficiaries of SMEs fund who fail to repay after the sum given to them has become due and after the period of moratorium has elapsed. Research has shown that out of N88, 798.000.00, disbursed for the between 2004-2006, only N26,317,024:90 were recovered from the borrowers.²⁹ This shows that the sum of 73,865,108:74, in addition to interest, is still outstanding in the hand of defaulters. However, there is no evidence that any legal action is taken against the defaulters showing that the law may be weak in this circumstance. At any rate, only less than 30% of the total amounts lent out were eventually recovered. Therefore, the methods used for loan redemption is inefficient due to low recovery rate as gathered from the

²⁸ See generally, the 2010 CBN Small and Medium Enterprises Credit Guarantee Scheme (SMECGS).

²⁹ Adeniji O.B and Joshua A.O, "Evaluation Of Loan Disbursement And Repayment Of Supervised Credit Scheme of Nigeria Agricultural Cooperative and Rural Development Bank (NACRBD) in Zaria And Kaduna North Local Government Areas of Kaduna State, Nigeria," *Journal Of Agriculture And Social Research (JASR)* 8, No. 2 (2008).

above scenario. Unless there is specific legal framework governing loan redemption on SMEs fund, there will be a serious erosion of capital.

For the purpose of clarity and better appreciation of the loan redemption paradigm, an attempt is made to classify the nature of business as follows:

a. Agricultural Investment

It should be noted that micro-finance is assuming increasing importance in many parts of the world (including Nigeria) in response to the credit needs of less privileged entrepreneurs that have limited capital base. Previously, operators of small-scale enterprises and cottage industries had no easy access to formal credit.³⁰ In view of limited loan/funds and high transaction costs, these less privileged entrepreneurs were not usually favoured by lenders. Accordingly, the government decided to establish specialised credit institutions for agriculture. These institutions include the Rural Banking Programme, which of course compelled commercial banks to establish branches in the rural areas with the aim of providing credit facilities to rural farmers. Also, in this category are; the Agricultural Credit Guaranteed Scheme Fund, which provides guarantee to commercial banks for loans made for agricultural purpose, the establishment of Nigerian Agriculture and Cooperative Banks (NACB) now known as Nigeria Agricultural Cooperative and Rural Development Bank (NACRDB) and the credit guidelines made it mandatory for banks to ensure that at least 8% of its loans and advances go to agriculture. Accordingly, the NACRDB disburses three types of loan to wit: *Small Holder Loan Scheme* i.e. a subsidised credit scheme for small-scale resource poor farmers which does not require collateral; *Large-Scale or Investment Loan Scheme* designed for medium and large-scale farmers and it requires collateral and a proper investment appraisal on the farmer's side; and *on-lending* Scheme which involves provision of

³⁰ *Ibid.* See also Odedokun, M. (2003) "Economics and politics of official loans versus grants, panoramic issues and empirical evidence," United Nations University (World Institute for development Economics Research (INIDER) discussion paper 2003/2004).

wholesale credit to other on-lending agents (government institutions, apex credit bodies, cooperatives).

Bearing in mind the above types of loan, we can simply say that all three lack effective loan redemption paradigms. Although the first one requires no collateral before it is secured which made it susceptible to non-repayment by beneficiaries, the last two on the list are also devoid of legal regulation on loan redemption. There is a need for NACRDB legislation to spell out the modality for repayment and implications of non-repayment. This will no doubt gear up prospective beneficiaries that the business is no longer the same and SMEs fund should not be seen as a means for unjust enrichment by the operators of SMEs.

The following Table A shows the total number of beneficiaries who failed to repay agricultural soft loan granted to them based on SMEs in certain part of Kaduna State, Nigeria.

Ages	2004	2005	2006
10-45	54	50	56
46-80	32	38	30
81 above	6	6	4
No Response	8	6	10
Total	100	100	100

Source: Adeniji O.B and Joshua A.O³¹

A cursory look at Table A above indicates that substantial number of the beneficiaries of the loan in the years under consideration failed to repay the sum granted to them either in part or whole. This suggests that where the loan is considered as a revolving loan, those who are on the waiting list to benefit from the loan may never enjoy it because earlier beneficiaries have failed to settle their obligation. Undoubtedly, this failure to fulfill obligations will have a great impact on the aims and objectives for the establishment of the Small Medium Enterprises in Nigeria. For this reason,

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Adeniji and Joshua, n. 29.

there is a need to revisit the law (NACRDB) and introduce mechanism for loan repayment.

Table B showing collateral submitted by beneficiaries of agricultural soft loan in Table A

Types of Collateral	2004	2005	2006
Cash in bank	-	-	-
Buildings	8	12	10
Farm Products	6	4	6
Guarantors	64	60	66
Others	8	4	6
No response	14	20	12
Total	100	100	100

Source: Adeniji O.B and Joshua A.O³²

Needless to say, the collateral submitted by various beneficiaries as shown in Table B above is not impressive. Table B shows that that none of the beneficiaries submitted cash in bank as collateral. While an insignificant number used their farm products, a substantial number took advantage of guarantors. However, there is no evidence as to whether these guarantors were required to enter into the shoes of the beneficiaries in the case of default by the latter. Experiences abound where people who have not genuinely undertaken any agricultural production participated in the SMEs scheme. All they do is to present fictitious proposal and even non-existent farms or provide farms that are not theirs. Hence, there is a need for the government to overhaul the project in order to meet the aims and objectives of the project.

b. Business Group

Government agencies allocate grants/funds for SMEs to make long and short term micro-credit loans available to individuals. Skilled men and

³² *Ibid.*

women, retirees, young graduates, business groups involved mainly in manufacturing, mining, quarrying, industrial support services, equipment leasing and others, are under this category. However, such small and medium enterprises (SMEs) must be wholly Nigerian owned. The main objectives are to increase the quantum of goods and services available for local consumption and export, provide needed employment, expand local production base and value to the economy.

The Bank and other Financial Institutions Act (BOFIA), in its attempt to promote SMEs in Nigeria, provides that a bank may hold 10% of its share capital for the purpose of acquiring medium scale industry, agricultural enterprise or venture capital company of any other business approved by the Bank.³³ How the bank that has invested or attempts to invest up to 10% will be recovering its investment in the event of failure of the SMEs' business is never mentioned in the Act. In the same vein, the Central Bank of Nigeria (CBN), as part of its developmental role, established the Small and Medium Enterprises Credit Guarantee Scheme (SMECGS), for promoting access to credit by SMEs in Nigeria with a sum of N200 billion to be wholly financed by the Bank.³⁴ Admittedly, one of the objectives of the CBN gesture is to increase the access to credit by promoters of SMEs and manufacturers,³⁵ but the guidelines left the issue of collateral to the discretion of the participating banks.³⁶

³³ See BOFIA section 21(1) (c) which provides: s. 21(1) "A bank may acquire or hold part of the share capital of any agricultural, industrial or venture capital company subject to the following condition, that is; "(c) the shareholding by the bank in any medium scale industry, agricultural enterprise or venture capital company of any other business approve by the Bank shall not be more than ten per cent of the bank's shareholders fund unimpaired by losses and shall not exceed forty per cent of the paid-up share capital of the company, the shares of which are acquired or held."

³⁴ See paragraph 1.0 and 2.0 of the 2010 CBN Small and Medium Enterprises Credit Guarantee Scheme (SMECGS) guidelines.

³⁵ *Ibid* at paragraph 3.0 (iii).

³⁶ *Ibid*, paragraph 9.0.

Weaknesses of the Redemption Paradigm

A compromise in granting a soft loan to SMEs requires certain considerations like adequate monitoring of beneficiaries and a viable legal framework that will ensure redemption of collateral security. It is gratifying that the government has made it obligatory, as identified earlier, that Small and Medium Enterprises must register as a limited liability company to benefit from the fund.³⁷ It needs to be emphasised that government policies do not actually define SMEs in the nature of enterprises; rather, it is on the basis of industrial enterprises.³⁸ Nevertheless, all the legislations regulating SMEs in Nigeria as presently constituted appear to have left a huge gap between the government intention on one hand, SMEs and the practice of loan redemption mechanism on the other. Some beneficiaries may fail to fulfill their obligations, but the legal framework is silent and the matter is left to the discretion of banks.

Furthermore, it has been asserted that a good legal framework regulating SMEs has the task to determine the role to be played by each player in the SMEs sector. This is because formulation and implementation of appropriate legal, fiscal and regulatory policies for stimulating the development of SMEs should, as a matter of fact, be reviewed.³⁹ There appears to be a gap in the Nigerian legal framework on the role to be played by different players of SMEs especially enforcement of collateral redemption paradigm. Nigerian laws like Customs and Excise Management Act, Nigerian Export Promotion Act, SMEDAN Act, must accommodate a practical paradigm in this perspective.

It has been stated that reasons for loan default by farmers in the case of agricultural investment was a result of many factors including recurrent displacement of people as a result of religious conflict⁴⁰ being witnessed in the Northern part of Nigeria. It was reported that some of the beneficiaries of the fund lost most of their agricultural investment during the religious riot in Kaduna town and that the majority of those

³⁷ Boldbaater .D, *Role of Central Bank in Promoting Small and Medium Enterprises in the SEACEN Countries* (Kuala Lumpur: The South and East Asian Central Banks Research and Training Centre, 2005), 226.

³⁸ *Ibid*, p. 218.

³⁹ *Ibid*, p. 228.

⁴⁰ Adeniji and Joshua, n. 29.

who fell victim to the riot are yet to repay their loan.⁴¹ It is however submitted that mere allegation of displacement because of conflict should not be accepted dogmatically. Further verification by officers of the relevant government agencies should be carried out as some of the claims may be spurious to escape financial commitments already undertaken. Other reasons which have been put forward in this perspective include, lack of proper supervision because of dishonest deals by staff members who fail to verify documents of inputs purchased with the loan by beneficiaries. It is worrisome that proper procedures for obtaining loans often floated because of collaboration of the government agency. Diversion of loans to other private businesses is no longer news as it has become order of the day. Granting of loans to borrowers under SMEs scheme should extend beyond banks and borrowers syndrome that has pervaded the polity, otherwise nothing would be achieved to benefit genuine SMEs practitioners. This calls for a new legal framework or an amendment of the existing ones that will incorporate enforcement of loan redemption paradigm to forestall or discourage ingenuine beneficiaries.

A vivid perusal of the NERFUND Act⁴² shows that NERFUND is an intervention scheme established to ensure the speedy rise of micro enterprises in the country through the provision of medium and long-term loans. The real intention of the government is to harness the large army of Nigerian businessmen and women who merchandise imported consumer goods and re-orientate them to embark on local manufacture of these goods. The BOFIA could not even help the matter as the Act is silent on the paradigm for recovering the value of share capital of the bank already injected into the SMEs. The Central Bank of Nigeria (CBN) guidelines of 2010 is also in the same vein as BOFIA, albeit, one of the objectives of the CBN is to increase the access to credit by promoters of SMEs and manufacturers. The guidelines only maintain that the collateral should be realisable and acceptable to the participating banks,⁴³ in spite of regarding itself as a managing partner.⁴⁴ It is against this backdrop

⁴¹ *Ibid.*

⁴² This Act established NEFUND by decree No. 2 of 1989 Laws of the Federation, 2004.

⁴³ See the CBN guidelines, paragraph 9.

⁴⁴ See paragraph 4.0 of the CBN guidelines 2010, *id*, which provides "The Central Bank of Nigeria (CBN) shall be the Managing Agent and be responsible for the day to day administration of the Scheme.

that this paper recommends that amendment to all these laws to subject SMEs beneficiaries to production of redeemable collateral or security. Accordingly, beneficiaries will not consider the opportunities offered by SMEs scheme as a means to unlawful and unjust enrichment.

CONCLUSION AND SUGGESTIONS

From the foregoing analysis, the legal and policy frameworks for redeeming or recovering loans granted to SMEs are weak, inadequate and ineffective. Yet, funding the SMEs, through loan or credit facilities, is necessary for realising the aims and objectives of the establishments of SME schemes. Efforts have been made by government to strengthen the SMEs. Nevertheless, as it is, the frameworks seem to have left a huge gap needed to sustain the scheme. There is no fine balance between the government's intention to promote the SMEs, the bank's interest in granting a redeemable loan and the SMEs practitioners in funding their business for sustained growth in the country. This is coupled with a series of challenges such as inadequate supervision of the SME schemes, corruption, and insincerity on the part of SMEs beneficiaries as identified in this paper.

In our view, the government should be committed to passing a new enabling, effective and justly balanced legislation that would take care of the interests of all stake holders of SMEs in the overall interest of the economy. SMEDAN should contain concrete provisions on the enforcement of loan redemption rather than leaving it to the discretion of banks as encapsulated in the agreement between banks and beneficiaries. This legislation should include special provisions to facilitate empowerment of those who should benefit from the SME schemes. Similarly, the poor approach of loan beneficiaries to loan settlement/repayment led to reluctance of some banks not to grant same to genuine entrepreneurs and real sector in preference for the trade sector.⁴⁵ There should be a

⁴⁵ Feese, A.A., "The Problems of Financing Nigeria Enterprises in the 21st century." A Paper presented at the National Seminar on Entrepreneurship Organised by the Faculty of Management Sciences, University of Port Harcourt., USA (1994). See also Solomon G, n. 14.

more realistic loan redemption paradigm backed by law regulating the SMEs. Also, issues of corrupt practices, frustration by government institutions which are banes in the wheel of progress of the scheme need adequate attention. The idea of withholding funds to an entrepreneur after a successful award of the same by the government agency is an element of fraud and dishonesty. Concerted efforts by anti-corruption agencies like EFCC and ICPC will assist in reducing corruption and unjust enrichment by some SMEs beneficiaries.