

# THE NATIONAL DEVELOPMENT PLAN 2021-2025: AN ANALYSIS OF INVESTMENT AND SUSTAINABLE FINANCING PLAN AND LEGAL CONSTRAINTS TO SOCIO-ECONOMIC ADVANCEMENT IN NIGERIA

*Dr. Fatima Bello\**

## **Abstract**

*In 2021, Nigeria released its mid-term National Development Plan (NDP) 2021 – 2025 to replace the Economic Recovery and Growth Plan (ERGP) 2017 - 2020. Implementing the plan is estimated to require an investment of the sum of ₦348.1 trillion,<sup>1</sup> out of which government, at all three levels is expected to contribute ₦49.7 trillion while private sector investment is expected to contribute ₦298.3 trillion which amounts to 85.7% of the country's investment needs.<sup>2</sup> It depicts a private sector-driven development strategy which, if properly harnessed, can provide the vital infrastructure needed to create the enabling environment to drive production, productivity and economic growth. Critical to the effective implementation of this plan is efficiently financed investments. Investment and financing needs vary on a sectoral and project basis which*

---

\* Senior Research Fellow, Nigerian Institute of Advanced Legal Studies, Abuja, email: fatimabello599@gmail.com.

<sup>1</sup> National Development Plan 2021 – 2025, <[https://nationalplanning.gov.ng/wp-content/uploads/2021/12/NDP-2021-2025\\_AA\\_FINAL\\_PRINTING.pdf](https://nationalplanning.gov.ng/wp-content/uploads/2021/12/NDP-2021-2025_AA_FINAL_PRINTING.pdf)> accessed 17 May 2022 p.03

<sup>2</sup> Ibid,4.

*makes it pertinent to have a plan that responds to these diverse needs. Adopting a desk review approach, this article analyses the NDP and the legal framework for its implementation to determine if it has provided the foundation that can support the financing of the necessary investment that is required for sustainable implementation of the Plan. The paper finds that a legal framework exists with which the NDP can be sustainably financed. It further finds that although some of the laws require amendments to enable them to effectively align with the NDP financing strategy, they however provide the foundation to sustainably finance the NDP. Furthermore, the socio-economic dimension of the plan via targeted Sustainable Development Goals SDGs and the nexus between laws and accountability for public financing of the plan allows the article to explore some legal constraints to socio-economic development in Nigeria. It found that expressly allowing the full enforcement of Chapter 2 by the 1999 Constitution can create a clear path to effective enforcement of socio-economic rights and ensuring the effective implementation of the NDP.*

**Keywords:** investment, sustainable finance, sustainable development, economic development, catalyst investor,

## **1. Introduction**

Over the years, Nigeria has had several long-term development Plans to guide it towards economic growth, poverty alleviation and improvement in the quality and standard of living of Nigerians

generally. The last long-term economic development plan was the Vision 20:20 which forms the strategy for transformation and supports economic growth.<sup>3</sup> Various medium-term implementation plans were developed to implement the Vision 20:20 starting with the first Strategic Implementation Plan which was in place from 2010 – 2013.<sup>4</sup> The implementation of Nigeria’s development plan at that time appeared to be guided by several implementation instruments.<sup>5</sup> There also appeared to be a gap in instruments up until 2017,<sup>6</sup> when the Economic Recovery and Growth Plan (ERGP) 2017 – 2020 was developed to take the country out of recession, restore economic growth, and put the country on an accelerated path toward sustainable development.<sup>7</sup>

Towards the end of the ERGP, the Coronavirus (Covid - 19) pandemic unleashed catastrophic harm to health and the Nigerian economy which necessitated an emergency response to prevent a total collapse of the economy and protect public health. This resulted in the development of the Economic Sustainability Plan (ESP) 2020, which is a short-term development plan.<sup>8</sup> Its objective was to stimulate the economy, retain jobs, undertake selected

---

<sup>3</sup> NIGERIA VISION 20:20: Economic Transformation Blueprint, <<https://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/laws/1516.pdf>> accessed 22 May 2022

<sup>4</sup> See (n1) 22.

<sup>5</sup> Ibid, 22.

<sup>6</sup> Ibid, 22.

<sup>7</sup> Economic recovery and Growth Plan 2017 – 2020, <<https://www.nipc.gov.ng/ViewerJS/?#./wp-content/uploads/2019/01/Economic-Recovery-Growth-Plan-2017-2020.pdf>> accessed 22 May 2022

<sup>8</sup> Bouncing Back: NIGERIA ECONOMIC SUSTAINABILITY PLAN 2020, <<https://nipc.gov.ng/wp-content/uploads/2020/09/NG-Economic-Sustainability-Plan-2020.pdf>>, accessed 22 May 2022 p.11

growth-enhancing and job-creating infrastructural investment, promote manufacturing and protect the poor and vulnerable.<sup>9</sup> This plan was succeeded by the NDP 2021 – 2025 which is a mid-term implementation plan for the long-term development plan, Nigeria Agenda 2050 which builds on the country's socio-economic transformation<sup>10</sup>

When it comes to national development, two things can be distilled from the above historical contextual overview. Firstly, continuity in developing short to mid-term implementation plans, and the integration of elements of preceding midterm plans to successor ones from 2017 appear to indicate consistency in the pursuit of transformational and sustainable growth. Secondly, it presents policy coherence that could assist investors in decision-making. Translating this transformational transition into reality requires an effective legal and regulatory regime that provides legal consistency and further provides assurances to investors by indicating and ensuring sustainable policy implementation. It also creates an enabling legal environment for the businesses that are required to make the desired investment which will implement the plan.

This paper seeks to analyse the salient and critical elements of the NDP (which also builds on aspects of predecessor plans), and the legal framework that could support investment and financing of the transformational growth which the NDP is expected to drive as envisaged by Nigeria Agenda 2050. It gives a contextual overview of the NDP and discusses economic development plans and the socio-economic transformation of Nigeria. It will also discuss the

---

<sup>9</sup> *Ibid.*, 22

<sup>10</sup> See (n1) 3.

legal framework for sustainable financing in Nigeria which is applicable to the NDP and demonstrate how its implementation can be impacted by some legal constraints to socio-economic development in Nigeria.

## **2. Overview of the National Development Plan (NDP) 2021 - 2025**

Through the NDP, Nigeria seeks to remove constraints to economic growth and pursue inclusive and sustainable growth.<sup>11</sup>This deliberate focus is meant to address the country's development challenges which include insecurity, weak institutions, insufficient public service delivery, infrastructure deficit, climate change, weak social indicators and low/ fragile economic growth.<sup>12</sup>Key to achieving this is an integrated and coordinated approach to implementation that will allow for inclusivity to help harness the necessary human and natural resources that will drive productivity and realise this lofty ambition.<sup>13</sup>The plan's objective is to leverage inclusivity, a youthful workforce and enhanced human capacity to facilitate economic development.<sup>14</sup>

Some of the objectives of the plan include to diversify the economy, enhance the business environment, growing MSMEs, investing in critical infrastructure, enhance security and governance capacity, invest in social infrastructure, and promote development opportunities across states to bridge economic and social disparities/gaps, among others.<sup>15</sup> The plan sets itself some targets

---

<sup>11</sup> Ibid, 4.

<sup>12</sup> Ibid, 6.

<sup>13</sup> Ibid, 4.

<sup>14</sup> Ibid, 6.

<sup>15</sup> Ibid, 7.

which include a 5% average broad-based growth rate, generate an estimated 21 million jobs to increase employment, and lift an estimated 35million people out of poverty through inclusive growth.<sup>16</sup>

Given the sustainable development approach of the plan, it seeks to make rural areas across the country competitive.<sup>17</sup> This has some capital investment implication that requires well thought through financing strategy and approach. Hence the acknowledgement in the plan that its implementation requires significant resources,<sup>18</sup> and durable partnership between the government and the private sector.<sup>19</sup>

### **3. Economic Development Plans and Socio-Economic Transformation of Nigeria**

The long-term vision of Nigeria is to achieve socio-economic transformation through strategic plans.<sup>20</sup>The pursuit of this vision is increasingly evident as Nigeria's economic development plans evolve. A review of the ERGP, ESP and the NDP indicate that the transformation has taken a sustainable turn by having increased consideration for the environmental, economic, and social dimensions of development.<sup>21</sup>This can be seen in the consistent incorporation of sustainable development goals and strategies into the ERGP, ESP and the NDP to eradicate poverty, create jobs,

---

<sup>16</sup> Ibid, 8.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, 3

<sup>21</sup> Nigeria: Integration of SDGS Into National Planning- A Second Voluntary National Review, 2020, <[https://sustainabledevelopment.un.org/content/documents/26309VNR\\_2020\\_Nigeria\\_Report.pdf](https://sustainabledevelopment.un.org/content/documents/26309VNR_2020_Nigeria_Report.pdf)> accessed 27 May 2022.

increase production and productivity, improve living standards generally, and ensure inclusive access to resources and opportunities. This will ensure that the country achieves several sustainable development goals such as health and education. In this regard, the plans have incorporated Sustainable Development Goals (SDGs) 1, 8,3,4,5,16, and 17 among others.<sup>22</sup> While these featured in the ERGP, focus on them was increased in the ESP, and this momentum was sustained into the NDP as reflected in the overview given in the preceding section. What remains is to ensure effective implementation and monitoring of this impetus. The Voluntary National Reporting on SDG (VNR) allows Nigeria to self-monitor and evaluate the extent to which it has incorporated economic, environmental, and social considerations into its developmental transition.

Another dimension that is apparent from a review of the various development implementation plans in the increase in role given to the private sector to deliver on the implementation of the plans. This will free up the limited resources that the government has and allow the same to be channelled towards other public services. For instance, under Vision 20:20, the total amount of investment that was expected to be made was ₦31.95 trillion.<sup>23</sup> The proportion to be covered by the government was estimated as ₦19 trillion, while that of the private sector stood at ₦12.95 trillion which was reflected in the increase in consolidated public expenditure from 9.4% to 11.80% under the ERGP.<sup>24</sup> Under the ESP, given the dire necessity of the time and the need to prevent the economy from collapsing, the government provided an ₦2.3 trillion dollar

---

<sup>22</sup> Ibid,

<sup>23</sup> Ibid.

<sup>24</sup> Ibid, 22.

stimulus, while funds to cover other identified gaps were sourced from external sources.<sup>25</sup> That notwithstanding, the plan utilised the opportunity to increase the role of, and spending on sustainable development transformational projects. This could be seen in the objectives of the plan,<sup>26</sup> identification of key projects in various sectors, including agriculture, energy, housing, education, health, information technology, etc.<sup>27</sup> Implementing the NDP is estimated to cost ₦348.1 trillion with the government expected to invest ₦49.7 trillion, while the private sector will invest ₦298.3 trillion.<sup>28</sup> This represents a remarkable increase in private sector investment in implementing sustainable economic development in Nigeria.

The expected increase in the role of the private sector in implementing Nigeria's development plan carried along certain implication. This means that the private sector is expected to provide the bulk of investment that is expected to drive development and transform the economy. At the core of the private sector investment is financing given that it is where the funding for such investments will come from.<sup>29</sup> This makes it pertinent for government to ensure that financing strategy is incorporated into the plan and that a legal framework is in place to give backing to the strategy. A review of the NDP indicates that financing plans have been incorporated for all the interventions identified in every

---

<sup>25</sup> Ibid, 10.

<sup>26</sup> See (n8)10.

<sup>27</sup> For more on the selected sectors, see ESP (n8).

<sup>28</sup> See (n1)N3.

<sup>29</sup> See ERGP(n7); Schoenmaker, Dirk & Schramade, Willem, Principles of Sustainable Finance. 2019, Oxford University Press, <[https://www.researchgate.net/publication/330359025\\_Principles\\_of\\_Sustainable\\_Finance](https://www.researchgate.net/publication/330359025_Principles_of_Sustainable_Finance)> accessed 27 May 2022.



sector. The next section shall analyse financing strategy under the NDP within the wider scope of sustainable financing.

#### **4. Legal framework for sustainable financing in Nigeria**

Law as an instrument of promoting economic, social, inclusive, and sustainable development has a crucial role to play,<sup>30</sup> in attracting the necessary investment that will attract the sustainable financing needed to finance the development plan. It provides the legal conduit through which the NDP can be effectively implemented. In this regard, the legal framework can play two key roles. It can be an enabler here,<sup>31</sup> law can be enacted to actualise the role of government in providing catalytic capital that de-risks targeted investments. Law can also be used as a facilitator,<sup>32</sup> which will create the enabling environment that will attract the desired private investment. This section shall analyse the legal regime for sustainable financing in Nigeria. Although there are numerous financing enabling laws which are of sectoral nature, this section shall analyse some of the financing enabling laws that are general in nature and cut across all the sectors of the economy.

##### **i. The Nigerian Sovereign Investment Authority Act 2011:**

S.4(1) of the Nigeria Sovereign Investment Authority (NSIA) Act empowers the NSIA to establish several ring-fenced portfolio of investments, including those that relate to the development of critical infrastructure and can attract and leverage foreign investment, economic diversification and

---

<sup>30</sup> Muhammed Tawfiq Ladan, 'SDGs Framework as the Blueprint for Climate Change Action and Sustainable Development: Role of Law and Parliamentarians' (2016) 4 Tuma L Rev 243 p.263

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

growth through the Infrastructure Fund (b).<sup>33</sup> Others include appropriate growth investments using the Future Generations Funds (a), and investments using the Stabilisation Fund (c). S.4(2) empowers the Authority to receive, manage and invest the funds described in (1) which are sourced from government allocation to the three levels of government (a); reinvest the proceeds and profits from investments (b); develop and foster skills in asset management, investment, operations and risk management, etc (c); and attract co-investment from various investors, including strategic investors, sovereign and internationally recognised investment funds and private companies to maximise risk-adjusted returns (e), among others. To finance the NDP, S.4(2)(e) empowers the NSIA to attract foreign investment into priority infrastructure projects which the Authority will counter-fund with the allocation derived from S.4(2)(a). This will send a signal to potential investors that the projects of interest are free from government interference, thereby de-risking such projects. By having a financial stake in the priority projects identified in the NDP through the fundings under S.4, the NSIA provides a degree of certainty and guarantees that the projects will be completed and financially viable for investors.

## **ii. Infrastructure Concession Regulatory Commission (Establishment, etc) Act 2005:**

About 80% of funding for the NDP is expected to come from the private sector. The NDP also expects Public-Private-Partnership (PPP) to play a prominent role in crowding-in

---

<sup>33</sup> Section 4(b) NSIA Act 2011, <<https://nsia.com.ng/~nsia/sites/default/files/downloads/NSIA%20Act.pdf>> accessed 24 July 2022.

private funds. This makes the Infrastructure Concession Regulatory Commission (ICRC) Act an important legislation for financing the NDP. The Act is applicable to investment and development projects embarked upon by Ministries, Departments, and Agencies (MDAs) and other government bodies.<sup>34</sup> It expects all government development facility and financially viable projects involving the financing, construction, operation or maintenance of infrastructure to comply with the Act.<sup>35</sup> For an MDAs project to qualify for concession under the Act, the MDAs are expected to prioritise them.<sup>36</sup> The NDP clearly indicates its intention to increase reliance on PPP,<sup>37</sup> this requires thinking and approaching investment and financing from a long-term perspective. By requiring all government financing and development projects to be concessioned in line with S.1&2 of the Act, the NDP financing initiatives are incentivised to adopt a long-term approach to contractual agreements. Complying with S.2 ICRC Act will ensure that the PPPs are entered into for projects that are economically viable through the prioritisation requirement of the Act. The ICRC is expected to play a prominent role in harnessing private financing for the NDP.<sup>38</sup> S.1 and 2 of the Act provide a transparent and objective concession process which could send a positive signal to potential private investors. S. 7 allows for recovery of investment; S.11 prohibits arbitrary

---

<sup>34</sup> See S.1(1)(1) & (2) ICRC Act 2005, <<https://www.icrc.gov.ng/assets/uploads/2018/12/ICRC-Act-2018.pdf>> accessed 24 July 2022.

<sup>35</sup> See S.1(1)(1) ICRC Act 2005,

<sup>36</sup> See S.2(1) ICRC Act 2005,

<sup>37</sup> See NDP (n1)184.

<sup>38</sup> See (n1) 187.

termination of an agreement entered into in compliance with the Act. Taken together, the Act provides to a large extent the kind of assurances that are capable of attracting investment for the NDP. In terms of regulation, S.20 empowers the ICRC to monitor and ensure compliance, performance, and efficient execution of contractual obligations. S.20 provides a monitoring and evaluation framework that will enable the establishment of monitoring mechanisms for the NDP financing projects.

**iii. Companies and Allied Matters (CAMA) Act 2020:**

In 2020, the CAMA underwent long overdue changes that align it with contemporary business realities. In terms of creating an enabling business environment, the CAMA has, through its innovative changes certainly eased an element of doing business in Nigeria by simplifying business entry requirements and compliance procedures. Notable among the innovative changes made are the single-person company ownership. S.18(2) allows one individual to form a company. This reduces the minimum membership requirement from 2 to 1. S.27 increased the minimum issued share capital to ₦1,000,000 for private companies and ₦2,000,000 for public companies. S.98 empowers companies to decide whether they want to have a common seal. S.101 makes easier the execution of documents by simplifying the authentication process. It disposed of the need for deeds and requires that a document be signed, including electronically, by a director, secretary, or an authorised officer to ensure compliance. In terms of ownership, S.119 requires every person to disclose significant control in a company which will be recorded in a register of significant control. Same applies to persons with

substantial shareholding in public companies by virtue of S.120. This ensures transparency and can also curtail fraud and illegality by companies as it has become easier to unveil and determine who to hold responsible at any given time. Also important is the fact that S.222 has reduced the filing fee for the registration of charges by 65% for private companies and 165% for public companies, thereby reducing the cost of doing business. S.240 waives the requirement of physical meetings for private companies and recognises virtual meetings. Again, reduces the financial cost in terms of logistics for physical meetings. S.330(1) waives the requirement for the appointment of a secretary for small companies. This also reduces the financial burden of employing one on such small companies.

S.394 provides the criteria by which a company will be described as a small company. It includes a company whose turnover is not more than ₦120,00,000 or any sum prescribed by the CAC, or its net asset value is not more than ₦60,000,000. This paves the way for start-ups and other specialised businesses to enter into the business environment and enjoy the concessions and incentives that the Act provides to small businesses. S.402 exempts small businesses and businesses that have not carried out business since incorporation from audit requirements, again reducing the financial burden of compliance with audit requirements. Part C provides for limited partnership and confers legal personality to the partnership.<sup>39</sup> It creates business certainty and ensures continuity through perpetual succession. S.748

---

<sup>39</sup> Section 746 CAMA, <<https://www.cac.gov.ng/wp-content/uploads/2020/12/CAMA-NOTE-BOOK-FULL-VERSION.pdf>> accessed 24 July 2022.

sets a minimum number of partners as 2, while S.749 requires only one of the partners to reside in Nigeria. This provision allows businesses to have foreign partners, which can be harnessed to attract desired skill sets. It also makes it easy for foreign businesses or partners to enter into the Nigerian business environment. S.860 provides for electronic filing which also reduces the cost for businesses. Overall, the changes introduced by CAMA can be leveraged to strategically create financing strategies that will attract targeted investments given that it reduces the cost of entry for new and small businesses.

#### **iv. Finance Act 2021**

The objective of the Act is to ensure an efficient fiscal framework that could stimulate economic growth and development.<sup>40</sup> It amends the provisions of 13 laws in order to align the Act with Nigeria's fiscal plan.<sup>41</sup> The changes made intend to increase to generate revenue generation for the government by expanding its tax base including new tax are of the digital economy, creating incentive for more people to own or formalise their businesses, enhancing coherence of the tax regime, enhance inclusivity through tax equity.<sup>42</sup> Relevance to this article are the changes made in respect of infrastructure and financial services. With regards to infrastructure, the government seeks to boost real estate development. S.16 modified the definition of a Real Estate

---

<sup>40</sup> KPMG, Finance Act 2021, impact analysis, <<https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/finance-act-2021-impact-analysis-e-book-final.pdf>> accessed 24 July 2022 (hereafter referred to as KPGM)

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

Investment Company (REICO) to include Securities and Exchange Commission-approved real estate Unit Trust, enabling such trust to enjoy tax benefits under the Companies and Allied Matters Act (CITA).<sup>43</sup> The benefits include income tax exemption, rental income, and Withholding Tax exemption among others.

The government seeks to grow the financial services sector by making some modifications and clarifications. For the insurance sector, ‘Paid-up Share Capital’ under the Insurance Act has been modified to read ‘Share Capital’,<sup>44</sup> thereby altering its tax implication and reducing the stifling tax burden that can have a chilling effect on investment in the insurance business. Other changes made in the Act clarify and streamline the taxation of insurance businesses under the CITA. The NDP seeks to crowd-in capital from insurance assets. The fiscal and other regulatory changes can attract more investments in insurance services that will increase its asset base.

When it comes to banks and other financial institutions, changes were made to the penalty regime for default in administrative filings. Removing the requirement of a conviction as a condition precedent to fine.<sup>45</sup> This has removed some procedural and extra burden on both the administrator and defaulting institution, thereby simplifying the process. On harnessing the potential of the digital economy, S.30 CITA has been amended to cover the digital economy. The Act applies the significant economic presence criteria to determine and tax

---

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

non-resident digital service providers.<sup>46</sup>By virtue of S.30,such taxable non-resident entities are also required to comply with Value Added Tax (VAT) for supplies of up to ₦25,000,000 in a year, thereby making changes to the VAT Act and strengthening VAT the remittance structure.<sup>47</sup>The changes made to these laws are designed to close gas in taxation and increase remittances to the government thereby increasing its revenue generation gaps. Doing this is increasing the domestic capital which the government will use to provide catalyst capital that will attract targeted investments which will crow-in the private sector to finance the NDP 2021 – 2025.

#### **v. Nigeria Investment Promotion Commission (NIPC) Act**

S.4 vests the NIPC with several responsibilities, including coordinating and monitoring all investment promotion activities within its scope.<sup>48</sup>Initiate and support measures to enhance the investment climate, investment opportunities information gathering, and dissemination kept a register of investment to which the Act applies to.<sup>49</sup> Importantly, S,4(f) the Act empowers NIPC to identify specific projects and invite interested investors to participate in them. This provides an avenue through which some of the priority investments identified in the NDP can be channelled to attract strategic investments. (h) also empowers NIPC to maintain liaison between investors and MDAs which is also important as it can

---

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> S.4(a) NIPC Act,<<https://www.nipc.gov.ng/wp-content/uploads/2021/10/NIPC-ACT.pdf>> accessed 24 July 2022

<sup>49</sup> S.4(b) – (e) NIPC Act



address administrative challenges and foster collaboration. It is crucially expected to advise the Federal Government on policy matters to promote industrialisation or economic development.<sup>50</sup> This will allow the NIPC to actively participate in developing the implementation strategy investments that are under its purview. S.17 allows non-Nigerians to invest and participate in the operation of any enterprise in Nigeria, and such enterprise must be incorporated under the CAMA by virtue of (19)(1). S.20 requires enterprises that have permitted foreign participation to register with the Commission. Very important to implementing the NDP is that S.22 allows the NIPC to, in consultation with appropriate MDAs, negotiate incentives for identified strategic or major investments. This provision creates an opening to attract foreign investments into some of the priority projects, particularly the infrastructure projects. By virtue of S.24, investors registered under the act will be guaranteed the ability to transfer their funds and guarantees against expropriation by virtue of S.25. S.27 provides a dispute settlement procedure which allows for recourse to arbitration. This can also de-risk the investments that investors under this Act may be incentivised to partake in.

#### **vi. Central Bank of Nigeria Act (CBN) 2007**

S.2 of the Act provides some of its principal objectives to include the promotion of a sound financial system in Nigeria (d), and the Bank to Act as banker and provider of advice to the Federal Government. S.27 empowers the bank to engage in banking operations, including the opening of accounts for and accept deposits from all levels of government, from funds, institutions and corporations of the three levels of government,

---

<sup>50</sup> S. 4(1) NIPC Act

and from banks and other credit or financial Institutions (b). Also important to here is S.31 which empowers the Bank to carry out developmental functions the holding subscribing to, and selling shares and debentures in corporations subject to the approval of the Federal Government to promote the development of money/capital market, or for stimulating financial development. This provision has enabled the Bank to provide debenture facility to the Bank of Industry (BOI) in the sum of ₦300 billion under its infrastructure financing initiative.<sup>51</sup> The BOI makes the funds available to Deposit Money Banks for disbursement under the Power and Aviation Intervention Fund (PAIF), under the technical advice of the African Finance Corporation (AFC).<sup>52</sup> Under the Small and Medium Enterprises (SMEs) Equity Investment Scheme, the Bank channels as the 10% of Profits After Tax (PAT) generated from banks and equity investment in, and use the same for the promotion of SMEs.<sup>53</sup> To further this intervention, the Bank provided guidelines for SMEs Equity Investment Scheme.<sup>54</sup> Also in line with its powers under S.31, the Bank developed the Refinancing and Rediscounting Scheme (RRF) to stimulate development of the real sectors of

---

<sup>51</sup> CBN, Infrastructure Financing, <<https://www.cbn.gov.ng/devfin/infrastructurefinance.asp>> accessed 23 July 2022.

<sup>52</sup> Ibid.

<sup>53</sup> CBN, Development Finance, <<https://www.cbn.gov.ng/Devfin/smeeispage.asp>> accessed 23 July 2022

<sup>54</sup> Dee CBN, Small and Medium Enterprises Equity Investment Scheme (SMEEIS), <<https://www.cbn.gov.ng/OUT/PUBLICATIONS/GUIDELINES/DFD/2006/REVISED%20SMEEIS%20GUIDELINES.PDF>> accessed 23 July 2022; see also Guidelines for ₦200 Billion SME Credit Guarantee Scheme (SMECGS) and Guidelines for ₦200 Billion Refinancing and Restructuring of Banks' Loans to the Manufacturing Sector.

the economy. The scheme provides facility to banks that are willing to provide medium to long-term loans to the agricultural and manufacturing sectors.<sup>55</sup> This is crucial to facilitating investment and could support the facilitation of investment in the NDP, particularly to the priority sectors. Still under its development function provided under S.31, the Bank, in collaboration with other stakeholders developed the National Inclusion Strategy to use financial inclusion as a tool to ensure economic development by reducing poverty, generating employment, creating wealth and improving welfare, while reducing exclusion by 20%.<sup>56</sup> Several tools were developed to implement the strategy, they include agent banking, financial literacy, consumer protection, linkage banking and tiered know your customer requirements.<sup>57</sup> This led to the development of entrepreneurship centres, and some of the funding schemes mentioned earlier. It also informed the frameworks that are in place for agent banking, know your customer requirements, MSME Development Fund, Financial Literacy, and Mobile banking Operations. In this same vein, the Bank can apply S. 31 to develop other financing initiatives and interventions to fund the NDPP.

As a development plan, the NDA has come up with strategies to develop infrastructure and build an inclusive and healthy economy. It expects the financial sector to be actively engaged in making these changes happen. As demonstrated above, the

---

<sup>55</sup> CBN, Refinancing and Rediscounting Schemes (RRF), <<https://www.cbn.gov.ng/devfin/refinancing.asp>> accessed 23 July 2022)

<sup>56</sup> CBN, Financial Inclusion, <<https://www.cbn.gov.ng/fininc/>> accessed 24 June 2022

<sup>57</sup> Ibid.

CBN has, in exercising its function under S.31, mobilised funds to the make the earlier discussed initiatives have. Between 2017 to 2020, the Act enabled the Bank to mobilise and channel credit to priority sectors through strategic incentives to financial institutions, thereby making the money making play an important role in the progress made.<sup>58</sup> It has helped develop the legal foundation for a strong payment system, backing the transition to a cashless economy, financial inclusion and digitalisation. Another segment of the financial sector is the Non- Bank Financial Institutions (NBFIs) segment which comprise of Development Finance Institutions (DFIs), Finance Companies, Primary Mortgage Institutions, Pensions (PMIs), and Insurance.<sup>59</sup> By 2020, the value of this segment of the financial sector was ₦122.3 trillion.<sup>60</sup> The government seeks to harness the NBFIs to generate domestic capital to fund critical infrastructure development.<sup>61</sup> S. 31 empowers the CBN to create incentive that will support a legal framework to further harness these funds, in addition to what is being done through the NSIA Act and the Pensions Act. According to the NDP, a Nigeria Investment and Growth Fund (NIG - Fund) will be established as an alternative funding initiative, which will be applicable to prioritised sectors including agriculture, technology, infrastructure, healthcare and education.<sup>62</sup> The CBN will, alongside other sectoral and implementing institutions, play a critical role in facilitating financing and implementing the initiative. Enabling and

---

<sup>58</sup> See NDP (n1) 99.

<sup>59</sup> NDP (n1) 99.

<sup>60</sup> NDP, (n10) 100.

<sup>61</sup> Ibid.

<sup>62</sup> NDP (1) 184.

facilitating financing by the CBN in line with S.31 will enhance the capacity of the private sector as envisaged by the NDP by providing the private sector with access to finance to enable them invest. This is because funding is expected to be drawn from pension funds, sovereign wealth funds, equity funds, private sector and institutional investors, DFIs, endowments, securitisation, and funds under the Voluntary Offshore Assets Regularisation Scheme for infrastructure development.<sup>63</sup> banks will be expected to be largely involved in financing projects under the NG-Fund.

**vii. Banks and Other Financial Institutions Act 2020**

This Act regulates banking and activities of other financial institutions, with the CBN as the regulator. S.9 allows CBN to set criteria for licensing. When it comes to financing the NDP, the Act provides a framework for monitoring and compliance disbursement of funds and provision of credit to facilitate investment and finance the prioritised projects. Part II of the Act imposes duties on banks including, to maintain certain reserve S.15, thereby ensuring that banks are financially capable of withstanding stress and providing efficient service. S.20 allows banks to acquire or own shares in agricultural, industrial, private equity or venture capital company to promote the development of indigenous technology or venture,

**viii. Micro Small and Medium Enterprises (MSMEs) Act**

The Act is responsible for promoting and facilitating development programmes for MSMEs in various sectors of the economy. Its functions under S.8 includes being the focal point for rural industrialisation, poverty alleviation and eradication,

---

<sup>63</sup> NDP (N1)185.

technology acquisition and adaptation, job creation and sustainable livelihood; promote and facilitate development programmes and instruments; mobilise internal and external resources for MSMEs, linking MSMEs to sources of finance, technology, technical skill development and management, this could help match projects to available funding. Its functions also include the promotion and provision of access to industrial infrastructure, provide and promote strategic linkages including between MSMEs and large scale industries, and recommend tax and tariff regimes in consultation with other MDAs.<sup>64</sup> S.9 empowers SMEDAN to enter into joint venture arrangements and memorandum of understanding for the promotion and development of MSMEs.

Overall, a legal framework exists that provides a foundation for the sustainable financing the NDP 2021-2025. Some of these laws create the enabling environment for businesses to come in and operate in the Nigerian business environment. For instance, the CAMA creates market entry opportunities that allow and makes it easy for persons and entities to set up businesses in Nigeria. It also creates an enabling environment for MSMEs to be viable by reducing the financial burden of regulatory compliance for such a category of entrants. Having come into, and operating in the Nigerian business environment, the legal regime also makes the business environment easier to operate in by creating access to finance. Through the various financial instruments analysed above, the CBN, through its enabling law and other supporting instruments make facilities and funds available to banking

---

<sup>64</sup> S.8(a)-(w) SMEDAN Act, <<https://smedan.gov.ng/images/PDF/SMEDAN-ACT.pdf>> accessed 24 July 2022

institutions for disbursement to businesses as loans, etc This makes it easier for business to sustain themselves and operate effectively. As the banking regulator, the CBN also ensures that the banks are appropriately capitalised and durable enough to withstand stress and survive and financial shocks. In terms of channelling funding to finance the NDP, some institutions have been empowered by their enabling laws to harness domestic capital from government resources and use same to catalyse investment in priority areas. For instance, the NSIA Act empowers the Authority to identify and participate in viable infrastructure projects. The PENCOM Act also empowers the Commission to invest in certain projects. The PENCOM sits on a huge reserve of funds. In 2020 for example, pension assets stood at ₦19.8 trillion. However, the enabling Act limits the area where such funds can be invested; these include capital market instruments, real estate and specialised investment funds and instruments.<sup>65</sup>

Hence, the key recommendation of this article observes that the huge pension funds reserve is crucial to financing the NDP. It further observes that the PENCOM Act which is the conduit through which the NDP can access the funds limits the powers of the Commission to invest in some of the strategically prioritised projects. This locks the pension funds and prevents their use for many developmental projects. This notwithstanding, the Commission is empowered to invest in some of the projects identified in the NDP. In terms of closing the housing infrastructure gap. Therefore, to unlock the funds, there is a need to amend the PENCOM Act. Hence, this paper

---

<sup>65</sup> S.86(a)-(i) PENCOM ACT, <[https://www.pencom.gov.ng/wp-content/uploads/2018/01/PRA\\_2014.pdf](https://www.pencom.gov.ng/wp-content/uploads/2018/01/PRA_2014.pdf)> accessed 26 July 2022

recommends that S.86 of the PENCOM Act should be amended to expand the kind of investments that the Commission is empowered to participate in.

## **5 Legal Constraints to the Socio-economic Development in Nigeria**

As demonstrated above, Nigeria has developed a coherent and transparent mid-term economic development plan with a socio-economic dimension that is expected to improve the standard of living of Nigerians and expedite socio-economic development. Although Nigeria has in recent times consistently developed mid-term plans, effective implementation has however been modest. This has been attributed to several hindering factors, including inadequate/ volatile financial resources, low efficiency and ineffectiveness of public spending, and ineffective monitoring of implementation.<sup>66</sup> As with the previous plan, the implementation concerns are the same albeit the clear and transparent nature of the NDP.<sup>67</sup>

While the plan has outlined a monitoring framework, the socio-economic dimension of the NDP warrants a probe into the role that the main beneficiaries i.e. Nigerians can play in ensuring the efficient implementation of the plan thereby enforcing their socio-economic rights. Given that corruption has been identified as a factor in efficient and ineffective government spending, the ability

---

<sup>66</sup> NDP (N1) 22.

<sup>67</sup> Poorly formulated policies have also been identified as an under considered factor in policy failure in Nigeria. For more on this, see Taiwo A. Olaiya, 'Interrogating the Non-Justiciability of Constitutional Directive Principles and Public Policy Failure in Nigeria' (2015)8 (3) *Journal of Politics and Law* available at <http://dx.doi.org/10.5539/jpl.v8n3p23>



to enforce accountability on public finances is important. It allows citizens to oversee the utilisation of public finances. Chapter 4 of the Constitution empowers every Nigerian to enforce the protection of their rights through the courts. The Constitution has also recognised and considered some of the socio-economic rights which the NDP seeks to address such as employment, energy, education and health. However, ensuring accountability of public financing through the enforcement of these socio-economic rights has been controversial.

The Courts in a plethora of cases have asserted that the rights contained in chapter 2 are non-justifiable. This legal constraint is problematic for enforcing accountability for public financing of the NDP. It has been observed that while the rule of law and the doctrine of separation of powers contained in the Constitution create mechanisms for accountability, the categorisation of socio-economic rights in Chapter 2 as non-justiciable deprives such rights of accountability mechanism.<sup>68</sup> Hence, it is recommended that to effectively address socio-economic challenges such as those that the NDP seeks to address including poverty, energy, health, and education, constitutionally enforceable rights should be created to complement existing accountability mechanisms through constitutional amendment<sup>69</sup>

---

<sup>68</sup> Ogunfolu Adedokun Olatokunbo, 'Can Socioeconomic Rights Ameliorate The Accountability Deficit Of The Nigerian State?' A dissertation (Cornell University Law School, NY 2013) <<https://ecommons.cornell.edu/bitstream/handle/1813/34197/aoo26.pdf?sequence=1&isAllowed=y>>accessed 10 September 2022.

<sup>69</sup> Ibid, see also Olaiya, (n67).

In *A.G. Ondo State v A.G. Federation*<sup>70</sup> it was held that Chapter 2 of the Constitution can only be enforced through the enactment of specific legislation by the National Assembly, for instance, the Corruption and other Related Offences Act. It was held further that not all the rights contained in Chapter 2 are suitable for legislation without fundamentally jeopardising the principles of federalism. The court went further to state that the Constitution has placed the entire chapter into the Exclusive List, thereby empowering the National Assembly to give effect to them through appropriate enactments. Through this route, several enactments were made by the National Assembly to enforce socio-economic rights.

Arguments have been proffered for and against the non-justiciability of social rights such as those provided in Chapter 2 of the Constitution. Some of the arguments for non-justiciability are that they are conditional, programmatic and confer no enforceable rights on individuals.<sup>71</sup>Section 6(6)(c) of the Constitution precludes the court from adjudicating on any of the items provided for in chapter 2 except where such is allowed by the Constitution.<sup>72</sup>It is submitted that this vitiates the principle of separation of powers. Arguments against non-justiciability include the fact that Chapter 2 is not exclusive of socio-economic rights as these rights encompass several social rights therefore non-justiciability is only limited to Chapter 2, and not all conceivable socio-economic rights.<sup>73</sup>The exclusionary nature in S.6(6)(c) does not affect the parliamentary powers to make laws that can confer actionable rights on the provisions of Chapter 2. This is demonstrated by the decision in

---

<sup>70</sup> (2002), 9 NWLR (Pt. 772) 222

<sup>71</sup> Olaiye, (n67).

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

*Legal Defence and Assistance Project (LEPAD) v Federal Ministry of Education*<sup>74</sup> where the Court held that enacting the Universal Basic Education Act makes the right to education justiciable and enforceable; and that by implication, the domestication of the African Charter on Human and Peoples Rights make socio-economic rights actionable in courts.<sup>75</sup>

Socio-economic rights can play a crucial role in ensuring successful implementation of the NDP by strengthening accountability. Although, there has been mixed reactions by the courts to the justiciability of Chapter two of the Constitution. It has been observed that exclusionary nature of S.6(6)(c) has had a negative impact on enforcing some socio-economic rights because in many instances the courts have had to interpret the provision literally and denounce jurisdiction over such matters. In line with the suggestions of some authors, this article recommends some constitutional amendment to specifically allow enforcement of such rights. Doing so will also eliminate the loophole created by S.3 of the Constitution which deals with the supremacy of the Constitution that can be applied to override the provisions of any laws made in pursuance of the exception to non-justiciability provided for in S.6(6)(c). This will allow the national assembly to

---

<sup>74</sup> *Legal Defence and Assistance Project (LEPAD) Gte & Ltd v Federal Ministry of Education & Anor* (judgment) (978 of 2015) [2018] (17 April 2018), <<https://nigerialii.org/ng/judgment/high-court-fct-nigeria/2018/2>> accessed 10 August 2022. See also, Femi Falana, 'Justiciability of Chapter Two of 1999 Constitution (as amended): Need for the Nigerian judicial system to be more proactive' (March 2022), Vanguard Newspaper, <<https://www.vanguardngr.com/2022/03/justiciability-of-chapter-two-of-1999-constitution-as-amended-need-for-the-nigerian-judicial-system-to-be-more-proactive/>> accessed 10 September 2022.

<sup>75</sup> *Ibid.*

make laws that can enforce the implementation of socio-economic rights which can impact on policies such as the NDP.

## **6 Conclusion**

As Nigeria's economic development plans evolve, it has taken a sustainable development trajectory. The NDP has reinforced its sustainable transformation with a strategic financing plan. The private sector-driven nature of the plan requires a sustainable financing strategy. The financing plan in the NDP clearly indicates a transition towards sustainable financing. It depicts a framework that will support investment and bankability on a project basis. This is in line with the principle of sustainable development that supports the effective allocation to prioritised sustainable development goals. Sustainable financing has a key role to play in the effective prioritisation of sustainable development projects by directing finance and investment towards tier best use. It is however important to ensure effective monitoring and evaluation to maintain the transition momentum. With the NDP, Nigeria has commenced a sustainable financing transition that will place it firmly on the path to realise sustainable and inclusive development. Critical to this transition is a sound legal framework that can translate the plan to realisation. A legal framework exists to implement the NDP which is dynamic and can be adapted to accommodate the evolving plane of sustainable financing while at the same time undergirding sustainable financing. However, given the socio-economic impact of the NDP, there is a need to ensure effective enforcement of accountability for public finances which will be deployed in implementing the plan. The courts can play a crucial role in enforcing accountability for public finances through progressive interpretations of laws, including the constitution. Expressly allowing for the enforcement of socio-economic rights

by the constitution will remove the obstacles to enforcing accountability through enacted laws by eliminating conflict between the Constitution and any socio-economic rights enforcing laws enacted by the National Assembly.