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# Cryptocurrency Regulation in East Africa

**Rome, 10 May 2019** - Over the past few years, there has been increased usage of cryptocurrencies such as Bitcoin and Ethereum. A report by Financial Sector Development (FSD) Africa points out that cryptocurrency is a fundamentally new way to carry out value transfers over the internet, which eliminates the need for intermediaries.[1] A cryptocurrency could be seen both as a platform (technology/distributed autonomous entity) that provides a public accounting service in place of institutional actors, and as a financial instrument itself (virtual currency) that in some circumstances may act as a medium of exchange, store of value and measurement of value.[2] Considering this, it is clear that the use of cryptocurrencies would then affect the financial system as their characteristics are similar to what we consider legal tenders but they are not issued by central banks. States are taking different approaches towards virtual currencies and this article will look at whether some of the East African states have developed any regulations that deal specifically with virtual currencies.

## Kenya

In 2015, the High Court of Kenya issued a ruling in the case of *Lipisha Consortium Limited & another v Safaricom Limited [2015] eKLR*. The case was an application by Lipisha Consortium Limited (the 1<sup>st</sup> Petitioner) and Bitpesa Limited (the 2<sup>nd</sup> Petitioner) for conservatory orders. One of the issues at hand in this application was the fact that Safaricom Limited (the Respondent) had suspended the services offered to the 1<sup>st</sup> Petitioner, which in turn affected the services offered to the 2<sup>nd</sup> Petitioner. One of the reasons given by the Respondent for this suspension was the fact that the 2<sup>nd</sup> Petitioner was dealing in Bitcoin without a licence from the Central Bank of Kenya (CBK), which they argued was an illegality.[3] However, the issue on whether approval and regulation from the CBK

was required was to be dealt with during the substantive hearing of the Petition.

At this point, the CBK had not stated their position on cryptocurrencies. In December 2015, after the issuance of the ruling in the aforementioned case, they gave a warning against the use of virtual currencies. They stated that virtual currencies are not a legal tender in Kenya thus no protection existed for individuals and entities that chose to transact using virtual currencies.[4] They also cautioned financial institutions against opening accounts for persons dealing in virtual currencies.[5] However, despite this cautionary approach towards virtual currencies, the Ministry of Information and Communication Technology set up a Taskforce on Distributed Ledgers and Artificial Intelligence in February 2018. This taskforce has suggested the introduction and creation of a digital currency by the CBK.[6]

In June 2017, the Capital Markets Authority (CMA) published the Stakeholders' Consultative Paper on Policy Framework for Implementation of a Regulatory Sandbox to Support Fintech Innovation in the Capital Markets in Kenya. They recognize cryptocurrencies as one of the capital market based Fintech innovations. The regulatory sandbox would enable financial institutions or any interested firms to experiment with innovative Fintech solutions in an environment where actual products or services are provided to the customers within a well-defined regulatory space and for a specified duration.[7]

In December 2018, CMA published a draft Regulatory Sandbox Policy Guidance Note that provides a framework for a Regulatory Sandbox to allow for testing of innovative products, solutions and services that have the potential to deepen or broaden the Kenyan capital markets.[8] More recently, the CMA issued a cautionary statement on the Initial Coin Offering (ICO) and coin trading by Wiseman Talent Ventures stating that such activities were yet to be regulated and approved by the Authority. They urged the public to exercise caution before participating in any ICO lacking regulatory sanction.[9]

As it stands, cryptocurrencies are unregulated and not recognized as a legal tender in Kenya but the approach by the CMA shows that the regulatory aspect might change in the future.

## **Tanzania**

The Bank of Tanzania (BoT) has previously said that dealing in cryptocurrencies is tricky because they are not regulated and it was not clear who controls the market.[10] In 2017, the BoT Governor stated that despite the amorphous nature of cryptocurrencies that could see them used to launder money or fund terrorism, they were working to minimise the risks by developing a co-ordinated approach to regulation of the cryptocurrencies market and restricting the scope of investments and transactions.[11] However, in 2018, BoT issued a warning to the public stating that 'BoT considers the recent surge in the prices of cryptocurrencies to be driven by speculation. The risk of a sharp reduction in prices is high. Investors in cryptocurrencies should be aware that they run the risk of losing all their capital.'[12] Just like Kenya, cryptocurrencies remain unregulated in Tanzania, with no ban or legalization on their use.

## **Uganda**

In February 2017, Bank of Uganda (BoU) issued a warning to the public on the operations of One Coin Digital Money in Uganda. In this warning, they stated that whoever wished to invest in any form of digital currency is taking a risk in the financial space where there is neither investor protection nor regulatory purview.[13] At a Roundtable Discussion on Blockchain and Cryptocurrency Regulation in Uganda, the Director of Financial Markets at the BoU gave five discussion points that the Bank considered important on cryptocurrency regulation. These are: the gaps created by current monetary frameworks and why cryptocurrency would then be needed; what it would take to recognize cryptocurrency as a currency and the importance of benchmarking with other countries to assess where cryptocurrencies are being regulated and how they are being classified.[14]

The Declaration adopted at the end of this Roundtable Discussion recognized the need to pay attention to the protection of cryptocurrency users and consumers, while encouraging national efforts aimed at resolving the problems posed by disruptive payments technology including cryptocurrency.[15] The Declaration also stated that Central Bank warnings could be strengthened to give clarity on the obligations of cryptocurrency businesses towards investors, consumers and the public.[16] Despite such efforts to try and put cryptocurrency regulation in place, they remain unregulated in Uganda, but the recognition of the fact that

they are being used coupled with the need to protect consumers could lead to their regulation.

## **Rwanda**

In an article published in BNR's Global Insights, it is stated that if cryptocurrencies continue gaining popularity, they may render the established monetary system obsolete and complicate monetary policy, which calls for action from Central Banks.[17] The article acknowledges that cryptocurrencies are not yet an issue for Rwanda their growth rate shows that this trend will start to emerge.[18] This points to the fact that the National Bank of Rwanda (BNR) is yet to clarify their position on cryptocurrencies, leaving them unregulated in Rwanda. However, the article states that it is inevitable that cryptocurrencies will grow as the tech sector grows and the BNR should be prepared for this.[19]

## **Conclusion**

It is clear that most of the aforementioned East African countries are quite apprehensive towards the use of cryptocurrencies and subsequently, their regulation. However, despite this fact, their usage in these countries has not stopped. Whether these states will ban cryptocurrencies or legalise and regulate their usage is a legal development that we look forward to in the near future.

[1] Financial Sector Development, *Blockchains, Distributed Ledgers and Funds Transfer: An Overview*, August 2017, 9.

[2] Financial Sector Development, *Blockchains, Distributed Ledgers and Funds Transfer: An Overview*, August 2017, 9.

[3] [2015] eKLR.

[4] [2015] eKLR.

- [5] Central Bank of Kenya, Banking Circular No 14 of 2015.
- [6] Kondo V, 'Kenya Blockchain has concluded report on AI, digital accounting integration' Standard Digital, 21 November 2018—<<https://www.standardmedia.co.ke/article/2001303499/blockchain-taskforce-ready-with-report>> on 24 January 2019.
- [7] Capital Markets Authority, *Stakeholders' Consultative Paper on Policy Framework for Implementation of a Regulatory Sandbox to Support Fintech Innovation in the Capital Markets in Kenya*, 2017, 8-10.
- [8] Capital Markets Authority, *Regulatory Sandbox Policy Guidance Note*, 2018, 2.
- [9] Capital Markets Authority, Cautionary Statement on Initial Coin Offering and Coin Trading.
- [10] Kiprop V, 'Tough stance on cryptocurrency despite fast rising popularity' The East African, 6 December 2017—<<https://www.theeastafrican.co.ke/business/Tough-stance-on-cryptocurrency-despite-fast-rising-popularity/2560-4217466-djpajn/index.html>> on 24 January 2018.
- [11] Kiprop V, 'Tough stance on cryptocurrency despite fast rising popularity' The East African, 6 December 2017—<<https://www.theeastafrican.co.ke/business/Tough-stance-on-cryptocurrency-despite-fast-rising-popularity/2560-4217466-djpajn/index.html>> on 24 January 2018.
- [12] Karega V, 'Tanzania issues warning against cryptocurrencies' The East African, 1 March 2018—<<https://www.theeastafrican.co.ke/business/Tanzania-issues-warning-against-cryptocurrencies/2560-4323604-pp4i17/index.html>> on 24 January 2018.
- [13] Bank of Uganda, Warning to the General Public about 'One Coin Digital Money' Operations in Uganda.
- [14] Report of the Second Roundtable discussion on Cryptocurrency and Blockchain regulation in Uganda, 2017, 17-19.
- [15] Report of the Second Roundtable discussion on Cryptocurrency and Blockchain regulation in Uganda, 2017, 43.

[16] Report of the Second Roundtable discussion on Cryptocurrency and Blockchain regulation in Uganda, 2017, 45.

[17] Baker S and Regine N, 'Cryptocurrencies: A threat to the Central Bank system?' National Bank of Rwanda, BNR's Global Insights, 2018, 1.

[18] Baker S and Regine N, 'Cryptocurrencies: A threat to the Central Bank system?' National Bank of Rwanda, BNR's Global Insights, 2018, 3.

[19] Baker S and Regine N, 'Cryptocurrencies: A threat to the Central Bank system?' National Bank of Rwanda, BNR's Global Insights, 2018, 3.

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