Nigeria's Startup Act 2022: A Benchmark Assessment

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EXECUTIVE SUMMARY

The policy brief benchmarks Nigeria's Startup Act 2022 to similar African Country Startup Acts - Tunisia and Senegal – with respect to its potential to catalyse the country's startup ecosystem for market innovation. The analytical framework for the study was based on the innovation ecosystem theory and draws data from secondary academic literature and policy reports, as well as semi-structured interviews with early-stage investors, entrepreneurs, industry trade groups, innovation policy experts and public leadership within Nigeria's digital ecosystem. Key findings from the assessment were that while the Act was developed on a very participatory and collaborative policy basis and provided robust fiscal and regulatory incentives for the startup ecosystem, SMEs were not included within the scope of the Nigerian Startup Act. More so, while there exists a statutory regulatory and policy regime that complements the tech startup ecosystem, there is a threat of policy dissonance with respect to the proposed NITDA Amendment Bill in relation to the the proposed National Information Technology Development Fund. The brief indicates some recommendations in addressing these issues and other pertinent challenges that may affect the effective implementation of the Act, such as the country's intellectual property (IP) regime and the chief responsibility of NITDA for startup labelling.

BACKGROUND

With similar economic characteristics as SMEs, early-stage startups (especially those with high-growth potential) represent significant contributors to the socio-economic growth of developing countries – catalysing market innovation, economic diversification and job creation (World Bank, 2020). Within the confines of this policy brief, early-stage startups are defined as those that have a tested market prototype, a defined business model (that are typically not fully validated nor have optimised product-market fit), and are still within the pre or early revenue stage of their business maturation, at which they may yet not have been profitable (see Figure 1).

This market constraint impedes the evolution of startups to commercially viable enterprises (World Bank, 2019). From a demand-side perspective, a major constraint to developing a VC market is the lack of investor-ready startups (OECD, 2015). Therefore, an innovation policy should focus on deepening access to knowledge networks and linkages at both the local and the global levels for critical entrepreneurial knowledge, skills, and VC investment matches via incubators and accelerators.

FIGURE 1: VENTURE MATURATION GROWTH PATH

SOURCE: WORLD BANK (2020)

Based on the above venture characteristics, early-stage venture capitalists take on a higher investment risk to incubate early-stage startups prior to their scale phase if successful in the long term. While this category of venture funders has existed in developed markets since the late 1990s (Falat–Kilijanska, 2018), they are however still relatively nascent in emerging markets and developing countries, with institutional voids and, in some cases, restrictive regulations that further negate investor risk appetites within these high-risk market segments (OECD, 2015; World Bank, 2020).

In response to the above challenge, Startup Acts are becoming Africa's next frontier for instrumental digital policy innovation (Wolken, 2020; ICReport, 2021). Startup Acts are comprehensive legislation specifically targeted to catalysing high-growth digital entrepreneurship and encompass regulatory frameworks and fiscal incentives for their accelerated development. Tunisia and Senegal passed their Startup Acts in 2018 and 2019, respectively.

The Nigerian Startup Act was signed into Law in October 2022, while fifteen more African countries are in the process of enacting their own (including Rwanda, Ghana, Kenya, Ethiopia, Mali, Benin, DR Congo, Togo and Uganda). Within the above context, the key objective of this policy brief is to benchmark Nigeria's Startup Act to similar African Country Startup Acts - Tunisia and Senegal – with respect to their potential to catalyse the country's startup ecosystem for market innovation.

ANALYTICAL FRAMEWORK

The innovation ecosystem theory underpins the analytical framework for this study. The theory is apt for interrogating how ecosystem stakeholders collectively work to enable technological development and generate innovation. At the national level, it assesses the integrations between economic actors, technologies, institutions, cultural and sociological elements, and external partners in driving ecosystem innovations.

Concerning benchmarking policy, innovation ecosystem theory provides a comprehensive perspective to assessing innovation beyond just input (such as human and financial investment) and output factors (such as GDP and employment contributions). It expands the assessment to incorporate key discriminating elements for driving a successful innovation policy, including stakeholder inclusiveness (collaborative and open leveraging the quadruple helix framework), policy coherence and the implementation strategy (Etzkowitz & Leydesdorff, 1995; Carayannis & Campbell, 2009; Lee et al., 2012; Gretschmann & Schepers, 2016; Budden & Murray, 2019; Yawson, 2021).

Research Design

The research design for this brief draws data from secondary academic literature and policy reports, as well as semi-structured interviews with early-stage investors, entrepreneurs, industry trade groups, innovation policy experts and public leadership within Nigeria's digital ecosystem. This approach provided a more textured understanding of the startup ecosystem in Nigeria in relation to the Nigeria Startup Act 2022. This understanding helped inform policy reforms to improve the Act's overall effectiveness.

Benchmark Assessment Results

The findings from the benchmark assessment of the Nigerian Startup Act is provided in Table 1.

FACTORS	NIGERIA (2022)	TUNISIA (2018)	SENEGAL (2020)	BENCHMARK PERFORMANCE
KEY INPUTS	• Startup Investment Seed Fund to the tune of 10 billion Naira. • Credit Guarantee Scheme. • Access to Pioneer Status Incentives (PSI) Scheme. • Access to export incentives from the Export Development Fund, Export Expansion grant and the Export Adjustment Scheme Fund. • Investment tax credit equivalent up to 30%. • Personal income tax exemption of 35% for a period of two years. • Startup Portal to ease registration of intellectual property. • Training and capacity building programs. • Establishment of startup innovation clusters, hubs, physical and virtual innovation parks in each state of the Federation.	• $7 million to finance research and innovation. • $3.5 million to fund a state innovation laboratory. • Up to $1 million each to support labelled startups. • The profits from the sale of shares in startups are exempt from the capital gains tax. • The Ministry in charge of the digital economy assumes the direct and indirect costs of intellectual property registration for startups in order to facilitate access to IP registration. • Any promoter of a startup may benefit from a startup scholarship for a duration of one year. • Tax exemption on profits for investors.	• Exemption from the minimum flat-rate tax (Impôt minimum forfaitaire – IMF) for three years. • Exemption from the lump-sum contribution payable by employers (CFCE) for three years. • Reduction (from 25,000 to 10,000) of registration fees for the creation of companies when the capital is equal to a maximum of one hundred (100) million FCFA. • A 5 percent preference margin is granted to any labelled startup participating in a call for tenders for a public contract. • Training and capacity building platform dedicated to legally registered startups. • Startups are supported in research and development activities. • Startups benefit from support in registering the domain name ".sn".	• ***Robust fiscal and regulatory incentives for startup ecosystem***
Stakeholder Inclusiveness	• Co-created as a bottom-up joint initiative by Nigeria's tech ecosystem and the Presidency. • Included the public sector, thriving investors in the private sector, the Federal Ministry of Communications and Digital Economy, the Nigerian Export and Promotion Council, civil and media organisations, large tech companies, multilateral & development agencies.	• Bottom-up, collaborative and participatory approach. • The Startup Act was established by the joint effort between the private sector, the civil society, and the Government (Startup Task Force). • Included entrepreneurs, accelerators, investors, large businesses, relevant public sector administration (such as APII, the Tunisian Agency for the Promotion of Industry and Innovation), and civil society etc. • The policy is tech-ecosystem, and addressed: • Startups • SMEs • Innovative entrepreneurs.	• Participatory process of policy co-creation. • Included entrepreneurs, innovative hubs and policy makers. • Fiscal incentives and support measures for startups and incubators.	• ***A very participatory and collaborative policy effort.*** • ***SMEs were not included within the scope of the Nigerian Startup Act.***

Green text indicates good performance
Red indicates bad performance

FACTORS	NIGERIA (2022)	TUNISIA (2018)	SENEGAL (2020)	BENCHMARK PERFORMANCE
Policy Coherence	• **Enabling** • Companies and Allied Matters Act 2020 • The Finance Act 2020 • The Venture Capital (Incentives) Act [1] 2004 • **Dis-enabling** • Proposed NITDA Amendment Bill • Intellectual Property Regime	• Enabling • Part of the broader "Digital Tunisia 2020" strategy of the Tunisian Government • **Dis-enabling** • Inadequate talent for the digital sector • Risk-averse civil liberties environment	• The Senegalese Startup Act among other things, seeks to promote innovation in the country's economy towards achieving the country's "Digital Senegal 2025" strategy.	• ***Existing statutory regime that complements the tech start up ecosystem*** • ***Policy dissonance with respect to the proposed NITDA Amendment Bill*** • ***Outdated IP Laws***
Implementation Strategy	• Discretionary selection applied for startup labeling • NITDA (Council Secretariat) is responsible for startup labeling, as a member of the National Council for Digital Innovation and Entrepreneurship.	• Discretionary selection applied for startup labeling • • The Startup Task Force reports directly to the Minister of Technology	• Discretionary selection applied for startup labeling. • Under the Startup Act, the label given to a startup may be withdrawn from it when it no longer meets the eligibility criteria. The withdrawal of the label results in the loss of all the advantages linked to the status of labeled startup. The procedures and procedures for withdrawal are specified by the technical standards defined by the Commission.	• ***Sole NITDA responsibility for startup labelling***

[1] https://techpoint.africa/wp-content/uploads/2021/08/NITDA-Act-.pdf

POLICY ISSUES RAISED AND RECOMMENDATIONS

***Non-inclusion of SMEs*:**
This was noted by ecosystem stakeholders as a gap in the Nigerian Startup Act 2022, but mostly requires that SMEs also have to find a way to align with the digital ecosystem to acquiesce benefits accruing from the policy. Noting that the evolution of startups in Nigeria, like most other tech hubs across Africa, is mirrored mostly around the American Silicon Valley model, where the startups are normally tech-based. However, when those tech startups get off the ground, some of them become SMEs or have a significant impact on the SME ecosystem. For example, if you have a ride-hailing or a food delivery app as a solution, at the end of the day, the downstream impact of their operations will impact on the SME ecosystem as well. So, while tech-based startups and SMEs are different in their nature, with a consequent difference in their resource requirements, they form the same continuum on the entrepreneurial productivity spectrum. More so, the SMEs already have existing policy and regulatory provisions that cater specifically for them.

Policy dissonance with respect to the proposed NITDA Amendment Bill:
Ecosystem stakeholders indicate the proposed 1% levy on technology companies will be complementary rather than dissonant to the Nigerian Startup Act's objective of accelerating startup growth, especially as it is targeted at the high-growth startups within the ecosystem. However, while the purpose of the proposed National Information Technology Development Fund, as stated in Section 13 of the proposed NITDA Amendment Bill, is "for the advancement of the country's digital economy objectives and related purposes contribution…", ecosystem stakeholders submit that to ensure a system of accountability and transparency in terms of how this fund will be dispersed, what the activities of the money that goes into the fund are, that representatives of the same tech companies included in the Third Schedule of the proposed bill should also be included to sit on the NITDA Governing Board, so that they can see and can have input, and also can make recommendations on the utilisation of the fund.

Outdated IP Laws:

Ecosystem stakeholders also emphasised the need to incorporate fit-for-purpose processes in relation to intellectual property patents as pertaining to the Nigerian Startup Act. Right. With the Nigerian startup ecosystem still having one of the lowest numbers of registered patents globally, it becomes imperative to, first of all, fully digitise the process and make it easy, quick and transparent. This mechanism can play a really big role in making the management of intellectual property easier for the ecosystem, and minimise investor risks. Otherwise, the ecosystem will continue to see the trend where foreign inflows of venture investment typically will dictate their company registrations in foreign domains with lower legal risks, such as Delaware in the USA or Estonia, for example, basically making them foreign entities rather than local ones. The current situation does not retain most of the economic value generated within the local ecosystem and requires urgently that the government be focused on addressing the bottlenecks in terms of the IP processes because until we address those truly, there's not much that is going to change, regardless of what kind of startup act or law that we in place now.

In addition, a fit-for-purpose IP regime will engender enhanced collaboration among startup founders within the ecosystem because the current regime does not give room to protecting ideas and innovations the way obtainable in more developed ecosystems. A big step forward in this regard is the recent assent into Law of the Nigerian Copyright Act 2022. Ecosystem players must, therefore, educate themselves and be well informed of the copyright implications of their activities in order to take all fiduciary steps needed to obtain the consent of technology creators before exploiting their online content, media productions, and other forms of innovations.

Sole NITDA responsibility for startup labelling:

While NITDA has the sole discretionary responsibility for startup labelling, the governance structure of the Nigeria Startup Act ensures that there is no decision-making monopoly held by any agency or individual. Through the auspices of the National Council for Digital Innovation and Entrepreneurship, the activities of NITDA, with respect to startup labelling, can be directed in such a way that it addresses all the requirements a company needs to be labelled as a startup. This means that the implementation of the Startup Act will continue to follow a big-tent approach with respect to its stakeholder inclusiveness, with a limiting effect on the politicisation of public bureaucracies in Nigeria that often leads to policy ineffectiveness.

CONCLUSION

While it is still too early to assess the Nigerian Startup Act 2022 in relation to its impact on the country's fledgling startup ecosystem, it is expected that the evolution of the policy environment may necessitate significant amendments as it progresses to an effective implementation phase to reflect current realities as benchmarked regionally. More so, as more States – including Kaduna, Lagos, Kwara, Ekiti, Anambra, Imo, Niger, Nassarawa, Oyo, Rivers, Osun and Zamfara (currently) – indicate interest in beginning the domestication process for the Act, its effectiveness and efficiency can be further enhanced by incorporating the policy recommendations highlighted in relation to the policy issues raised above.

In furtherance, adoption at the state level, according to ecosystem stakeholders, will be the most significant mechanism for the effects and gains of the Startup Act to be easily democratised more broadly.

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METHODOLOGICAL APPENDIX

Interviewee identification relied on a variety of sampling techniques: convenience (based on professional contacts with interviewees); and purposive (to reach interviewees in which there is limited pre-existing connections). The implementation of the interview was done virtually, depending on the availability and convenience of the interviewees. The interview data was thematically coded, analyzed and integrated into the policy assessment.

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