

READINGS

ON

PRIVATISATION

SOCIO-ECONOMIC RIGHTS INITIATIVE (SERI)

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PRIVATISATION

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Foreword

Readings on Privatisation is a publication of the *Privatisation Observatory* of Socio Economic Rights Initiative. The Observatory seeks to provide a forum for interaction and dialogue within civil society and between civil society and government. Civil society, apart from the labour movement, has in the past appeared too busy with other matters thereby failing to provide oversight on the privatisation programme.

The papers published here were presented at a capacity building workshop held in November and earlier roundtables held in August and September. The whole purpose of the publication is to provide literature targeted at policy makers, civil society and ordinary people.

The Privatisation Observatory seeks to interrogate the theoretical, philosophical and practical basis for privatisation; the objectives set by government and whether those objectives have been achieved in already privatised enterprises. It departs from the *end of critical inquiry mindset*, which insists that there is no alternative to privatisation or indeed any other political or economic model. Recognising that the sole end of economic theory, laws and government is the promotion of human welfare and the enhancement of life in larger freedom, the Observatory adopts an approach that raises issues of transparency and accountability, popular participation, value for money, the legal framework, gender concerns, pro-poor concerns and ultimately the greatest happiness for the majority of the citizens. Other issues of concern include whether privatisation has actually attracted economic growth, foreign direct investment, technology transfer, new jobs, efficiency and effectiveness, etc?

Public enterprises have been known to be sources of great waste, corruption and generally have under performed in relation to tax-payers investments in them. But how do we proceed? Do we distinguish between public enterprises in critically essential sectors like water, electricity, health, education, etc and treat them separately from hotels, casinos, banks, paper and pulp and other purely commercial enterprises? In these critical sectors, are there no alternatives to outright handing over to the private sector through privatisation? How can the profit motive (in privatised enterprises) that drives the private sector be made to account to development obligations, which are clearly beyond questions of economic growth? At what stage of the development of productive forces is privatisation feasible? Why is sub-Saharan Africa lagging behind the rest of the world despite privatisation and deregulation? These are some of the posers raised and discussed in the publication.

This publication contains an array of papers; from those that are uncritically supportive, to the sceptical and to papers that disagree with the entire process. The attempt is to stimulate further debate and enquiry that will help in creating the awareness necessary for holding the privatising authorities accountable to the people.

Eze Onyekpere Esq
Executive Director

THE LEGAL REGULATION OF PRIVATISATION IN NIGERIA

*By Emeka Iheme**

INTRODUCTION

In a more extensive work on the legal as well as public policy dimensions of public enterprises and privatisation in Nigeria, I described privatisation as follows:

“In a broad sense, privatisation refers to any of a variety of measures adopted by government to expose a public enterprise to competition or to bring in private ownership or control or management into a public enterprise and accordingly to reduce the usual weight of public ownership or control or management. However, in a strict sense, privatisation means the transfer of the ownership (and all the incidence of ownership, including management) of a public enterprise to private investors. The latter meaning has the advantage of helping one to draw a line between privatisation and other varieties of public enterprise reform. It is also the sense in which the term has been statutorily defined in Nigeria”¹

Thus, in both the Privatisation and Commercialisation Act 1988 and the Bureau of Public Enterprises Act 1993, ‘privatisation’ is defined as “the relinquishment of part or all the equity and other interests held by the Federal Government or any of its agencies in enterprises whether wholly or partly owned by the Federal Government.” The word is not defined in the Public Enterprises (Privatisation and Commercialisation) Act 1999 but there is no doubt that it is in that sense that the word is used in the Act.

Unlike in other countries that have embarked upon a programme of public enterprise reform, the Federal Government of Nigeria introduced privatisation along with a programme of ‘commercialisation.’ Commercialisation was conceived as an alternative to the privatisation of some public enterprises. The Act of 1988 defined commercialisation as “the reorganization of an enterprise wholly or partly owned by the Federal Government in which such commercialised enterprises shall operate as profit making commercial venture and without subventions from the Federal Military Government.”

Privatisation and commercialisation were introduced in Nigeria in 1988. The Privatisation and Commercialisation Act 1988 provided the legal and institutional framework for the programme. In 1993, the Technical Committee for Privatisation and Commercialisation (TCPC), which was set up under the 1988 Act completed its work (i.e. the privatisation and commercialisation of specific enterprises listed in the schedules to the Act) and submitted its final reports. Following the recommendations of the TCPC, the Federal Government designed a new phase of the programme and, by virtue of the Bureau for Public Enterprises Act 1993 (which repealed and replaced the Act of 1988), introduced rules and set up a new agency to continue the programme. In 1999, the Federal Government again revisited the programme and enacted the Public Enterprises (Privatisation and Commercialisation) Act 1999, which in turn repealed and replaced the Act of 1993.

The Act of 1999 is the statute that currently regulates the programme. It creates the National Council on Privatisation under the chairmanship of the Vice President. The Council is vested with far-reaching powers including that of making policies on privatisation and commercialisation, determining the modalities for privatisation and advising the Government accordingly, determining the timing of privatisation of particular enterprises, approving the prices for shares and the appointment of privatisation advisers, ensuring that the

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¹ See Emeka Iheme, *The Incubus: The Story of Public Enterprise in Nigeria* (Lagos: The Helmsman Associates, 1997) p. 60

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commercialised public enterprises are 'managed in accordance with sound commercial principles and prudent financial practices', interfacing 'with the public enterprises, together with the supervising Ministries, in order to ensure effective monitoring and safeguard' of the managerial autonomy of the public enterprises, etc. It also establishes a permanent secretariat for the programme, the Bureau of Public Enterprises, charged with implementing the programme. A Director-General who shall be the chief executive and also serve as secretary to the National Council on Privatisation heads the Bureau, and the staff of the Bureau are entitled to the pension and gratuities enjoyed by those employed in the Federal Civil Service. In order to facilitate the implementation of the commercialisation programme by settling disputes between the management of an enterprise and the Council or the Bureau, the Act establishes a Public Enterprises Arbitration Panel (PEAP).

In appraising the statute and the institutions it established, it is important to bear in mind that an appropriate legal framework may be described as a set of laws and institutions introduced for the purpose of facilitating or enabling the proper conduct of affairs in a particular field or area. Law can be used as an instrument or mechanism for transforming society in accordance with the plan or vision embodied in the law. Therein lies the nexus between law and development - the idea that the former can be used as an instrument for bringing about the latter. In this paper, I will briefly appraise the existing legal framework in terms of:

- (a) its conformity with the Constitution of the Federal Republic of Nigeria 1999;
- (b) the adequacy of the statutory mechanism (the Public Enterprises Arbitration Panel) for settling disputes in connection with the running of the commercialised enterprises;
- (c) the imperative of ensuring that the poor participate in and benefit from the programme;
- (d) the implications of the resulting transfer of land (acquired for public purposes and vested in public enterprises) to private entrepreneurs;
- (e) the imperative of ensuring that the process meets the requirement of transparency.

CONFORMITY WITH THE CONSTITUTION

An indispensable underpinning for the legal framework for a process is that both the process and the law made to facilitate it must be in conformity with the Constitution or basic law of the country. It is therefore important to begin by ascertaining the constitutionality of the privatisation programme and of the Act of 1999 and its provisions.

The Constitutionality of Privatisation: The Constitution of the Federal Republic of Nigeria 1999 does not contain any provision that expressly refers to privatisation. However, as part of the Fundamental Objectives and Directive Principles of State Policy (Chapter II), the 'Economic Objectives' are provided for in Section 16 (1) as follows:

"The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution –

- (a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
- (b) control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
- (c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;

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- (d) without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

Further, section 16 (4) provides as follows:

“For the purpose of [section 16 (1)] –

(a) the reference to the ‘major sectors of the economy’ shall be construed as a reference to such economic activities as may, from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation; and until a resolution to the contrary is made by the National Assembly, economic activities being operated exclusively by the Government of the Federation on the date immediately preceding the day when this section came into force, whether directly or through the agency of a statutory or other corporation or company, shall be deemed to be major sectors of the economy;

(b) ‘economic activities’ includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and

(c) ‘participate’ includes the rendering of services and supplying of goods.”

The foregoing indicates that the Nigerian state is constitutionally mandated to (a) ‘operate or participate’ in sectors of the economy other than the major sectors, and (b) ‘manage and operate’ the major sectors of the economy. Individuals, however, may ‘participate’ in economic activities *both* within and outside the major sectors of the economy. The right of the state to ‘operate or participate’ in economic activities implies that the state may maintain public enterprises, and the right of individuals to ‘participate’ in economic activities in any sector means that private enterprises can be engaged in any sector. In addition, the state is positively obliged under section 16 (1) (d) to ‘protect the right of every citizen to engage in economic activities outside the major sectors of the economy’. These provisions, it is submitted, rightly give the government ample room to decide on how to bring the good things of life to the citizens - whether and how far it wishes to operate public enterprises or dismantle them by way of privatisation and rely on private enterprises. Privatisation, no doubt, is one way in which the government may enable individuals to ‘participate’ or enhance their participation in a sector of the economy. On the whole, however, the Constitution does not oblige the government either to maintain public enterprises or to privatise them. The question is one of policy to be addressed by each government in its own wisdom.²

It deserves to be noted that the foregoing analysis proceeds on the assumption that the provisions of Chapter II are enforceable, an assumption that hardly finds any support in judicial pronouncements. I take this approach in order to make the point that even if those constitutional provisions are mandatory and enforceable, the court will be most unlikely to rule in favour of those opposed to the programme and hold that privatisation is not in conformity with the Constitution.

² The fact that the issue of whether or not to privatise depends on the policy of the government in question is borne out by the history of privatisation in Nigeria. The government of General Ibrahim Babangida (1985-93) introduced the programme but the government of General Sani Abacha (1993-98) was very much unenthusiastic about it. Abacha sought to address the problems of the public enterprises, not by privatizing them – or even ‘commercialising’ them as provided for in the Act of 1993 – but by seeking to apply the flawed approach of intensifying political and bureaucratic control over them. Towards this end, his government enacted the Public Enterprises Regulatory Commission Act 1996, a law that curiously remains in the statute books without being implemented. Under the successive governments of Generals Abdulsalaam Abubakar (1998-99) and Olusegun Obasanjo (1999 to date), privatisation has been favoured.

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The Constitutionality of the Act of 1999: The Public Enterprises (Privatisation and Commercialisation) Act and its provisions must also be shown to be in conformity with the Constitution. The Act is an existing law, within the meaning of section 315 of the Constitution (i.e. it is a law in force immediately before the date when the Constitution came into force and shall be deemed to be an Act of the National Assembly). But by virtue of section 315 (3), and for federal laws, the court has the power to declare invalid any provision of an 'existing law' that is inconsistent with any other Act or a provision of the Constitution. Section 4 of the Constitution vests the federal legislative power in the National Assembly and goes on (in section 4(8)) to provide that the exercise of this power "shall be subject to the jurisdiction of the courts of law or judicial tribunals established by law" and that the National Assembly "shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law".

I submit that the Act is itself valid as an existing law. However, I further submit, it contains some provisions that are not in conformity with the Constitution. Firstly, in section 1 of the Act, the National Council on Privatisation is vested with the power to "alter, add, delete, or amend the provisions of the First Schedule" which contains a list of federal public enterprises slated for privatisation. Similarly, section 6 empowers the Council in like manner to make changes to the Second Schedule, which contains a list of enterprises slated for commercialisation. It must be observed that some of the enterprises listed in these schedules, as well as a good number of the other existing public enterprises that the Council may conceivably add to the lists, are statutory corporations while others are limited liability companies set up by the government without the enactment of a special statute. I respectfully submit that to the extent that the privatisation or commercialisation of an enterprise established as a statutory corporation will most probably entail an alteration of some of the provisions of the statute that established the corporation, neither the Council nor even the President of the Federal Republic of Nigeria can validly exercise this power.

It is only the National Assembly that can constitutionally exercise the power, and even the National Assembly cannot delegate to any person or institution the power to enact or repeal a statute (such as the statutes pursuant to which some enterprises were established). The proper ambit of delegated or subsidiary legislation is the power to make rules under an enabling statute; it does not include the power to, in effect, *inter alia*, repeal any other statute. And it is a trite principle that a subsequent statute – certainly not the decision of an executive body such as the Council - is required to repeal a statute. Where an enabling Act contains provisions in excess of the constitutional powers conferred on the legislature, the offending provisions will be held *ultra vires*.³ The questionable provisions were probably informed by a desire on the part of the then Federal Military Government to continue with the privatisation programme and give the Council a broad power to do the 'needful' at any time, but the power must be in conformity with the (subsequently promulgated) Constitution and laws.⁴

Secondly, section 28 (3) provides that the ruling of the Public Enterprises Arbitration Panel (PEAP), a creation of the Act, on a dispute brought before it, "shall be binding on the parties and no appeal shall lie from a decision of the Panel to any court of law or tribunal." This is clearly in breach of section 4(8) of the Constitution and therefore invalid. Under the general

³ See, for example, the opinion of the Privy Council in *Balewa v. Doherty* [1963] 1 WLR 949

⁴ The legislature probably needs to enact a new statute from time to time to provide for the privatization of specific enterprises, especially the ones that are statutory corporations. Another lawful, if tortuous, approach is to enact a statute for the privatisation of *each* enterprise, as was the practice in the privatisation programme of Britain under Prime Minister Margaret Thatcher. See, generally, John Redwood, *Popular Capitalism* (London: Routledge, 1988)

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law, the court may review the rulings or awards of arbitration panels, especially if an impropriety such as fraud or the lack of fair hearing is established.

THE PUBLIC ENTERPRISES ARBITRATION PANEL (PEAP)

This is a convenient point to look at the commercialisation programme and the place of the PEAP in it. The programme is being implemented alongside the privatisation programme. It seeks to reform public enterprises, not by privatising them, but by reorganizing them to begin to operate in a strict commercial manner and to cease to be dependent on subventions from the government.

A commercialised enterprise is to be managed by a management team under a Performance Agreement and free of interference by the supervising ministry or any other government agency. I have argued elsewhere⁵, and would here restate, that commercialisation is an ill-conceived programme that is bound to fail. Since its introduction in the early 1990s, it has recorded no success, unlike privatisation. Indeed, it is insightful to note that some enterprises (NITEL, for example) that were 'commercialised' in the early 1990s continued to perform badly and are now being privatised. The reason is simply that the mere fact of continued government ownership exacts a huge toll on the management of the enterprise and skews managerial incentives. The managers of public enterprises cannot be insulated from politics, and as their decisions become informed by politics rather than market considerations, the enterprise begins to under-perform, and an under-performing public enterprise can always lobby to receive subventions from the government – so goes the vicious circle. So much for the digression from the legal mechanism of the PEAP.

The Act establishes PEAP⁶ to "effect prompt settlement of any dispute arising between [the management of] an enterprise and the Council or the Bureau" on the interpretation of a performance agreement or the performance or non-performance of an undertaking under a performance agreement. The PEAP shall consist of five members who shall be appointed by the Council and paid such remuneration and allowances as may be determined by the Federal Government.

It is submitted that the major legal flaw in the provisions on PEAP – apart from the issue of the constitutionality of the provision that its rulings shall be final, discussed above - is that the panel is not independent. It is appointed by the Council 'on such terms as the Council may deem fit', and the Council is one of the three parties that may come before it. Yet, even with an independent panel of arbitrators, the very idea of taking the government to the panel would not appeal to many aggrieved managers of public enterprises. They would rather mobilise political support and hope to resolve the matter through 'dialogue'. On the subject of the adequacy of remedies for breach of contract, Hugh Beale has instructively written that:

"while the law usually regards each contract as discrete, in reality the contract may just be one part of a network of commercial relationships between the parties involved and others in the same commercial field. The parties may have interests beyond the immediate transaction: they wish to do business again with each other or with others. The result is that the need to maintain their reputation is a more important incentive to proper performance, and the risk of losing business a more important sanction against default, than any legal remedy. This is not to say that legal remedies are irrelevant: not all parties have these long-term interests, or the interests may not be strong enough to prevent there being some risk of default. However ... legal remedies are frequently of limited significance."⁷

⁵ Emeka Iheme, *ibid.* pp. 78-89 6. See Emeka Iheme, *ibid.* pp.88-89 for an analysis of the PEAP under the Act of 1993. The arguments apply to the PEAP under the Act of 1999.

⁷ Hugh Beale, *Remedies for Breach of Contract* (London: Sweet & Maxwell, 1980)

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PEAP is a completely flawed legal mechanism. It is as ill conceived as the commercialisation programme that it was designed to support. It is a mirage designed to support a bigger mirage. Both will fizzle out with time.

ENSURING THAT THE POOR PARTICIPATE AND BENEFIT FROM THE PROGRAMME

The poor can benefit from the privatisation programme not merely because, as part of the citizenry at large, they will begin to enjoy better quality goods and services produced by the hitherto state-owned enterprises or by private enterprises that are now permitted to compete with them, but also because they can become part-owners of the enterprises being privatised. Sections 2 and 5 of the Act of 1999 permit the sale (i.e. privatisation) of the shares of a public enterprise by private placement or public issue. Where the shares are sold by public issue, the following provisions are made. Firstly, the shares on offer to Nigerians shall be sold on the basis of equality of the states of the Federation and the residents of the Federal Capital Territory, Abuja. Secondly, not less than 1 per cent of the shares to be offered for sale to Nigerians shall be reserved for the staff of the enterprise to be privatised and the shares shall be held in trust by the enterprise for the staff. Thirdly, where there is an over-subscription for the purchase of the shares of the enterprise, no individual subscriber shall be allotted more than 0.1 per cent of the shares in the privatised enterprise.

These are laudable provisions aimed at ensuring that the poor and citizens from all parts of Nigeria acquire shares in the enterprises to be privatised. But it is not enough to have these legal provisions; there must also be the political will and commitment on the part of the Council and Bureau to actually implement the provisions and ensure that the poor participate. Considering the high incidence of poverty in the country, the Government should adopt the complementary policy of granting loans to low-income earners – especially those in paid employment – who wish to acquire shares in the enterprises being privatised. Similar provisions in the Act of 1988 ensured that in the first phase of the privatisation programme (1989-1993), an unprecedented 880,000 new shareholders emerged from the programme. This was quite a feat in a country with an underdeveloped capital market and in which no public issue had ever produced more than 100,000 shareholders.

It is noteworthy that one of the best ways of creating public support for privatisation is to ensure that shares in the enterprises being privatised are sold by public issue to as many citizens as possible. This is the practice referred to as 'popular capitalism'. It was developed in Britain during the privatisation of British Telecom in 1984, an exercise from which 2.5 million shareholders emerged, 1 million of whom had never owned shares before.⁸ However, it is not always a simple matter of the sale of shares by public issue. Especially in specialised industries, it is usually prudent to raise the chances of the survival of the enterprise after privatisation by getting a 'core investor' to acquire a significant amount of shares in the enterprise and to take over the management. The core investor, which would usually be a company that has proven expertise in the management of similar industries, could take about 40% of the shares in the enterprise and take over management of the enterprise while the remaining 60% can be sold by public issue.

THE RESULTING TRANSFER OF LAND TO PRIVATE ENTREPRENEURS: ANY IMPLICATIONS?

It has been suggested that since lands and landed properties belonging to public enterprises were acquired from their original owners (individuals or communities) for public purposes,

⁸ See John Redwood, *ibid.*, p.124

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and these landed properties are being transferred to private investors as a result of privatization, perhaps the original owners should be able to recover the land or receive (more) compensation. This suggestion is entirely without merit. In most cases, lands acquired for public purposes, including the building of the undertakings or premises of public enterprises, were acquired by the state through compulsory acquisition⁹. In just a few early instances,¹⁰ such lands were purchased from the owners by private treaty. Where the state made an outright purchase (in *fee simple*) from the original owners, no doubt the interest of the original owners is extinguished and there can be no question of their expecting a reversion of title or further payment in the form of purchase price or compensation or whatever. The fact that, as in the case of the purchase of the land on which Port Harcourt and the Ikoyi residential area of Lagos were built, the state subsequently transferred substantial parts of the land to private individuals and companies does not in any way entitle the original owners to a reversion or further payment. Indeed, on a trite principle of common law, any covenant in a land transfer document that inhibits the right of the purchaser to transfer the land or any interest therein to a third party is void and therefore unenforceable.

The Public Lands Acquisition Acts authorise cases of compulsory acquisition of land. The state usually acquired the full *fee simple* interest in the land (i.e. outright purchase), thus extinguishing the interests of the original owners. In 1978, pursuant to the Land Use Act, the state took away from individuals and other landowners the right to own land and gave them only the right to own a certificate of occupancy – a right to use land. These laws empower the state to acquire land compulsorily for public purposes but subject to the payment of compensation to the owners. Not only is the payment of compensation provided for, the statutes also seek to ensure that the amount of compensation is fair by empowering the owners of acquired land to go to court for an appropriate assessment of the amount if they are not satisfied with what the state has offered them.¹¹ Professor Nwabueze has explained the legal effect as follows:

“Where compulsory acquisition is conditional upon payment of adequate compensation which ... means full market value or the price which the property will fetch in the open market between a willing seller and a willing buyer, then compulsory acquisition may rightly be described as compulsory purchase, differing from private purchase only in the sense that the consent of the owner to the purchase is dispensed with.”¹²

In the 1970s, the law formally gave the state the *discretion* to resettle persons displaced as a result of the compulsory acquisition of land.¹³ This was in fact a follow-up to an established official practice. The practice of resettlement of persons displaced as a result of compulsory acquisition of land, which came into wide use in post Second World War Britain, had long been adopted in Nigeria. Between 1944 and 1948, persons displaced as a result of the acquisition of lands in the Race Course (now Tafawa Balewa Square) area of Lagos were paid compensation and *in addition* resettled in Harvey Road, Yaba, as monthly tenants. Later, in 1951, persons displaced as a result of the Central Lagos Slum Clearance Scheme were

⁹ Up to 1978, this was under the Public Lands Acquisition Act as well as – in the Northern States – the Land Tenure Law. Since 1978, all over the country, the Land Use Act is the applicable law.

¹⁰ These were mainly acquisitions made before the enactment of the public lands acquisition statutes. They include the purchase from the Diobu chiefs of the land on which the old Port Harcourt township was built, in 1913, and the purchase from the Onikoyi chieftaincy family of Lagos of the old Ikoyi area of Lagos in 1865. See *Wobo v. Attorney General* (1952) 14 WACA 364, *Ajakaiye v. Lieut. Governor* (1929) 9 NLR 1 and *Onikoyi Chieftaincy Family v. Chief Secretary to the Government* (1943) 10 WACA 10

¹¹ See generally G. O. Uduehi, *Public Lands Acquisition and Compensation Practice in Nigeria* (Lagos: Godrace Nigeria Limited, 1987)

¹² B. O. Nwabueze, *Nigerian Land Law* (Enugu: Nwamife Publishers, 1974) p. 216

¹³ See section 5(1) (3) of the Public Lands Acquisition (Miscellaneous Provisions) Act 1976. The provisions were re-enacted in section 33 (1) – (3) of Land Use Act.

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compensated *and* resettled in Surulere as monthly tenants. Probably the biggest single instance of resettlement of displaced persons in Nigeria is that of persons displaced in the 1960s as a result of the building of the Kainji Dam: they were resettled in new and decent houses in 124 well-planned and brand new settlement villages.¹⁴

It is therefore submitted that while owners of lands that have been compulsorily acquired have the right to receive adequate compensation if it has not been paid to them, they have no right to a reversion or further compensation when the state (for instance through the privatization of the public enterprise in occupation of the land) surrenders ownership of the land to a private entity.

SECURING THE LEGITIMACY OF THE PROCESS THROUGH TRANSPARENCY

One of the grounds on which privatisation is criticised is that it is a ploy by those in power to fraudulently appropriate the common heritage of the country for themselves and their friends. The Council and the Bureau should ensure that the privatisation process should be very transparent. In matters like the selection of a core investor, they should ensure that they do not choose a particular investor because it is closely associated with a top government functionary or some one who is known to be close to top government functionaries. It may, in fact, be that a company linked to such a person is qualified to act as a core investor, but great care must be taken. As has been well said, it is of utmost importance that not only must justice be done but also it must manifestly and undoubtedly be seen to be done. Critics of privatisation will immediately latch on to any act that falls short of this standard.

CONCLUSION

While it may in several ways be mishandled, privatisation is by itself a dependable solution for the problems of public enterprise and holds great potential for invigorating the economy and helping to improve the quality of life of the people. Yet it should be carried out in a manner that is not subversive of the constitution and law. More importantly, it must also be carried out in a way that shows clearly that it is *not* intended to enable the rich to appropriate our common heritage but in fact to touch the less privileged and improve their standard of living; this is what will give it popular acceptance or legitimacy. Legitimacy or popular acceptance is an even higher value than legality or mere conformity with positive law. The participation of the poor and the absence of a strong perception that the programme is designed to benefit a few rich and influential persons are factors that will secure legitimacy for privatisation in Nigeria. These are perspectives I have tried to bring out in briefly examining the legal framework for privatisation in Nigeria. I believe we all have a duty – as scholars, activists, lawyers, economists, and administrators – to join hands in seeking more ways of securing the legality and legitimacy of the process.

¹⁴ See G. O. Uduehi, *op. cit.*

INTRODUCTION

Much ink has been utilized in exploring the political, economic, social and cultural dimensions of the privatization project in Nigeria. In this regard, credit must go the Socio-Economic Rights Initiative (SERI) for promoting the on-going multi-disciplinary dialogue on the issue and for incrementally building up a body of literature on this emerging field of study. Expectedly, commentators are never unanimous on the desirability or otherwise of surrendering the national patrimony to a few businessmen of doubtful altruism. The paradox is that opposition to the privatization exercise has been stringent among the victims instead of the rogues who have vested interests in the sustenance of the corruption and kleptomania which are the defining features of our State Owned Enterprises (SOEs). The nagging question has been: Privatization *Qui Bono?* However, while these emotion laden debates are raging, the divestment train which hurriedly left its departure station in 1988 is now arriving its destination with the third phase of the current exercise involving the privatization of government interests in the utilities sector: oil and gas, the ports, telecommunication, energy, water etc.

This paper examines, albeit, tangentially the political, socio-economic and cultural issues while focusing on the legislative framework under-girding the process. It is essentially a critique of the enabling legislation against the backdrop the *grundnorm* of the Nigerian State. It must be kept constantly in view that the decision to privatize, though a deliberate Government policy is usually precipitated by external influences. In Eastern Europe, privatization and other political and economic reforms became inevitable because of the fall of the Soviet Empire and the triumph of liberal democracy. Although, as Francis Fukuyama observed, a liberal revolution in economic thinking has sometimes preceded, sometimes followed the move towards political freedom, there is no doubt that there is a strong correlation between the two.

Russia, Poland and other nations that were under the repressive influence of Soviet Union are now enthusiastically pursuing fundamental economic reforms, top on the agenda of which is privatization. In the case of African Countries and other third world countries commonly described as the Least Developed Countries (LDCs) of the world, privatization came as a Greek gift embedded in the Structural Adjustment Programs (SAP) designed by the International Monetary Fund (IMF) as the elixir for the economies of the perpetually heavily indebted nations who while praying for cancellation of their debts are at the same time demanding more credit. These countries, of which Nigeria is one, were for the most part, nations under authoritarian regimes with scant regard to efficiency and accountability in the management of State resources.

The President while inaugurating the National Council on Privatization in 1999 observed that State enterprises suffer from fundamental problems of defective capital structure, excessive bureaucratic control or intervention, inappropriate technology, gross incompetence and mismanagement, blatant corruption and crippling complacency which monopoly engenders. The policy rationale according to him is that privatization permits governments to concentrate resources on their core functions and responsibilities, while enforcing the “rule of the game” so that the market can work efficiently with provision of adequate security and basic infrastructure as well as ensuring access to key services like education, health and environmental protection. The objective being to assist in restructuring the public sector in a

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manner that will effect a new synergy between a leaner and more efficient government and a revitalized, efficient and service-oriented private sector.

Nevertheless, Sam Amadi (2003) observed the agenda is ostensibly being pursued for the following three basic reasons:

- (a) To deal with the inefficiency of the public sector in order to enhance economic growth.
- (b) To increase government revenue.
- (c) To satisfy a powerful policy or political constituency.

He argues however, that there is a disconnect between the expectation of the IMF and the ruling class in Nigeria since efficiency of public services does not constitute the primary motive for the exercise, rather the overriding consideration has always been the hope that millions of dollars will be realized through the process for the benefit of the ruling class.

We now proceed to look at some constitutional issues thrown up by the high-points of the Privatisation and Commercialisation Act.

PRIVATISATION AND CONSTITUTIONAL ISSUES

The policy decision to privatize is usually, but by no means necessarily, followed by the enactment of an enabling legislation. Privatisation may be successfully pursued without resort to a legislative framework. Professor Derek Asiedu maintains that consideration must be given, among other issues, to the existing legal system, the political climate, the nature and type of enterprises to be privatised and constitutional requirements. In his view, the following are the advantages of having a privatisation legislation:

- (a) Removal of uncertainties regarding the nature and quality of title to the subject matter of the privatisation and the authority of the executing agency to dispose of the property being privatized.
- (b) Generation of dialogue, which will help absorb any ideological and nationalistic ferment, which sometimes characterize the privatisation process (this presupposes parliamentary debates).
- (c) Definition of the scope of authority of the public services in charge of the process.
- (d) Creation of confidence in the integrity of the process.
- (e) Establishment of clear organizational responsibility of the privatisation agency.

Regrettably, enabling legislations which were not products of the popular will of the people, have always foreshadowed privatization exercises in Nigeria; having been imperiously imposed on the people in the form of military decrees, these legislations never enjoyed the support of the majority of Nigerians. The Privatization and Commercialization Decree of 1988 was the first of such legislations. It was subsequently repealed and replaced by the Public Enterprises Decree of 1993, which in turn was repealed and replaced by the Privatization and Commercialization Decree of 1999 (the extant legislation). This extant legislation which comprises five parts is made up of thirty-five sections and three schedules. It establishes three key institutions to oversee the privatization process, namely: the National Council on Privatization; the Bureau of Public Enterprises; and the Public Enterprises Arbitration Panel.

The Act which was signed into law on the 10th of May 1999 has its commencement date as the 31st of December 1998. However the Act appears devoid of any punitive provisions otherwise, such provision would have been of doubtful validity having regard to section 4(9)

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of the Constitution. It must be noted that the retroactivity of the Act smacks of an orchestrated underhand attempt to either protect or overreach certain undisclosed interests.

It has been observed that unlike the Constitutions of Portugal, Mexico and Bolivia which limit the disposition of state assets and designates specific sectors of the economy which are to be managed exclusively by the State, the Nigerian Constitution only speaks of “major sectors” which are to be managed and controlled by the State with the private sectors merely participating. Under the Constitution of Nigeria, private property is however raised to the status of a fundamental right. Thus the Constitution envisages a public/private sector partnership but with the public sector driving the economy through the major sectors.

i). Validity Of The Act As An Existing Law

Section 315 (1) of the Constitution provides that an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of the Constitution and shall be deemed to be:

- (a) An Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by the Constitution to make laws.
- (b) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.

The Public Enterprises (Privatization And Commercialization) Decree 1999 became operative on the 31st of December 1998 while the 1999 Constitution came into effect on the 28th of May 1999. The Decree therefore predated the Constitution and since it was not one of the Decrees repealed by the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree 1999, it was existing as at the 29th of May 1999.

In line with the provisions of section 315(1)(a) of the Constitution, the Decree metamorphosed into an Act of the National Assembly by reason of the legislative competence of the National Assembly over items on Part 11 of the Second Schedule to the 1999 Constitution; paragraph 17 therefore provides in particular that the National Assembly shall make laws for the Federation or any part thereof with respect to the regulation of ownership and control of business enterprises throughout the federation for the purpose of promoting, encouraging of facilitating such ownership and control by citizens of Nigeria.

The Act merely requires minor alterations, not textual modifications to bring it into conformity with the Constitution. For instance, changing the expression “the chief of general staff” to “the vice president”. In *Adigun v. Attorney General Oyo State* (1987) 3 SC 250, the Supreme Court, per Karibi—Whyte, JSC, held that where an existing law does not require any textual change or modification in its application and is otherwise not inconsistent with the provisions of the Constitution, it applies by its own force. If on the other hand, the provisions of an existing law requires minor alterations to bring it into conformity with the provisions of the Constitution, the existing law shall be read with such modification and when so read shall be deemed a law of the National Assembly. Where however, it is necessary to make any textual changes in the existing law to bring the law into conformity with the provisions of the Constitution, the appropriate authority will make such change by way of an “Adaptation Order”.

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There appears to be no need for any Adaptation Order to bring the Public Enterprises (Privatization And Commercialization) Decree 1999 into conformity with the 1999 Constitution, although it is not settled whether the vice president can congruously substitute for the chief of general staff both in terms of the executive power wielded by the latter and the very wide legislative prerogatives attached to his office under the military era when there was a complete absence of a democratic legislature.

It could further be argued that during the military era, the head of state and the Provisional Ruling Council (PRC) of which the chief of general staff was the vice – chairman combined the executive and legislative powers of the Federation. The chief of general staff acted in the absence of the head of state. However under the 1999 Constitution, Section 5 vests the executive powers of the Federation on the President which powers may be delegated to vice – president as well as other executive functionaries. But the legislative power of the Federation is exclusively vested in the National Assembly by Section 4 of the Constitution. The office of the chief of general staff under the Military and that of the vice president under the democratic dispensation are neither equivalent nor co-equal. One may, therefore, be hard pressed to see how the vice president can step into the shoes of the chief of general staff without doing substantial damage to history and perhaps the concept of constitutionalism.

ii) The Act And The Fundamental Objectives And Directive Principles Of State Policy

Emeka Iheme (2003) seems to locate the constitutional justification for privatization in the Fundamental Objectives and Directive Principles of State Policy provisions of the 1999 Constitution in particular section 16 thereof which provides as follows:

- 1.) The State shall within the context of the ideals and objectives for which provisions are made in this Constitution:
 - a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy
 - b) control the national economy in such a manner as to secure the maximum welfare and happiness of every citizen on the basis of social justice and equality of status and opportunity;
 - c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy.
 - d) Without prejudice to the right of any citizen to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

He proceeds to quote the interpretative provision of section 16 (4) of the Constitution to the effect that by the content of section 16(1), major sectors of the economy refers to such economic activities as may be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation; and until a resolution to the contrary is passed by the National Assembly, economic activities being operated exclusively by the Government of the Federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to be major sectors of the economy; while economic activities includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and participate includes the rendering of services and supplying of goods.

His submission is that since section 16(1)(d) positively enjoins the Nigerian state to protect the right of every citizen to engage in economic activities outside the major sectors of the

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economy, the government therefore enjoys the leeway to decide how to deliver the good things of life to the citizen including whether(and to what extent) it wishes to operate public enterprises or whether to dismantle public enterprise by way of privatization thereby relying on private enterprise (presumably to deliver the good things of life to the citizens).

The above submission, with respect, overlooks the provisions of Sections 14(b); Section 16(2) as well as Section 17(2) (d) of the Constitution. Section 14(b) provides that the security and welfare of the people shall be the primary purpose of government. While Section 16(2) provides that the state shall direct its policy towards ensuring:

- a) the promotion of a planned and balanced economic development;
- b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
- c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; (underlining mine for emphasis only) and
- d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions and unemployment, sick benefits and welfare of the disabled are provide for all citizens.

A combined reading of the provisions cited with Section 16(1),(2) and (4) of the Constitution shows that the Constitution envisages a situation where the State will continue to manage and operate the major sectors of the economy while protecting the right of citizens to participate in same to ensure their welfare and the common good. Major sectors are by definition, those economic activities being operated exclusively by the government of the Federation immediately before the coming into force of the Constitution. It is the expectation of the Constitution that the major sectors remain in the hands of the State, but under the privatization programme, the State surrenders management and control of the affected enterprises to a body of businessmen or core or strategic Investors. Specifically Section 4 of the Public Enterprises (Privatization and Commercialization) Act 1999 provides that a privatized enterprise which requires participation by strategic investors may be managed by the strategic investors as from the effective date of privatization on such terms and condition as may be agreed upon.

Strategic investors are businessmen propelled by the profit motive rather than the welfare of the people; they are more interested in quick and huge returns on their investments rather than the common good. The Constitution intended therefore that, private capitalists participate only, not manage or operate the *major sectors* of the economy. Our respectful submission is that the practice of having core/strategic investors particularly in those SOEs providing essential services/utilities is unconstitutional). It is inconsistent with the economic objectives of the Nation as enunciated in the 1999 Constitution.

iii) The Act And Fair Hearing Provisions Of The Constitution

Section 27(1) of the Act establishes the Public Enterprises Arbitration Panel, an ad-hoc-body charged with the responsibility of effecting settlement of disputes arising between an enterprise and the National Council on Privatisation or the Bureau of Public Enterprises. The jurisdiction of the Panel is confined to disputes raising questions as to the interpretation of any of the provisions of a performance agreement; or any dispute on the performance or non-performance by any enterprise of its undertaking under a performance agreement.

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Curiously, Section 28(3) of the Act provides that the decision of the Panel shall not be subject to appeal in any court of law or tribunal. Although this paper's focus is privatization; and performance agreements operate under the sections of the Act dealing with commercialization, it is important to point out that Section 28(3) of the Act violates fair hearing provisions of 1999 Constitution. Section 36(1) of the Constitution guarantees that in the determination of his civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. *Nemo Judex in Causa Sua* (do not be a judge in your own cause) is one of the twin pillars of natural justice which has been codified by the Constitution, yet the Panel is vested with the powers to settle disputes between an enterprise and the Council which appoints its members. What are the chances of such a panel being independent and impartial? Nil.

In addition, section 28 (3) of the Act further provides that the ruling of the panel shall be binding on all the parties and no appeal shall lie from a decision of the panel to any court of law. Again, this flies in the face of section 36 (2) (b) of the constitution in that it makes the determination of the administrative authority final and conclusive.

As the Chief Justice of Nigeria, Hon. Justice M. L. Uwais has observed that this provision smacks of the military era under which the Act was promulgated. He warned that ouster of courts jurisdiction in disputes arising under a democratic set up has no place in the system, if the rule of law, which is the hallmark of democracy is to prevail.

Other provisions of the Act impeding access to justice are the condition precedent, a one month pre-action notice must be given to the Bureau before the institution of any proceedings against the Council or Bureau and the applicability of the provisions of the Public Officers Protection Act to any suit instituted against any officer or employee of the Bureau. These impediments on the road to justice have the effect of insulating the public officers charged with implementation of projects in Nigeria from the supervisory jurisdiction of the ordinary courts- Section 23 of the Act.

iv) The Act And Public Revenue Provisions Of The Constitution

Section 19(1) of the Act establishes in the Central Bank of Nigeria an account to be known as the Privatization Proceeds Account into which shall be paid all proceeds received from the privatization of public enterprises before and after the commencement of the Act. Subsection 2 thereof provides that the funds in the account established under sub-section (1) shall be utilized for such purposes as may be determined by the Government of the Federation from time to time.

Section 19 of the Act does not accord with Section 162 of the 1999 Constitution dealing with the Federation Account. Section 162(a) provides as follows:

The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenue collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the federation, the Nigeria Police Force, the Ministry or Department of Government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.

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Proceeds accruing from the privatization exercise are constitutionally to go to the Federation Account instead of being left to the discretion of the Government to spend as it deems expedient. The reason is that subsection 2 of section 162 of the Constitution expressly provides that the President upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of states, internal revenue generation, land mass, terrain as well as population density.

This provision seeks to ensure that the people through their elected representatives are involved in the process of determining the way and manner public funds are to be utilized. Section 162(3) of the Constitution reinforces this intendment by stipulating that any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government councils in each state on such terms and in such manner as may be prescribed by the National Assembly.

Any revenue accruing to the Government of the Federation through privatization is public revenue from alienation or sale of national patrimony and the tiers of government should partake of the same. The Supreme Court in *A.G. Federation V.A.G. Abia State* (No. 2) (2002) 6 NWLR (Part 764) 542, construed S.162 of the 1999 Constitution to imply that the Government of the Federation is a trustee for the three tiers of government and as a trustee has a duty to render account to beneficiaries of the trust, if and when, called upon to do so.

v) The Act And The Federal Character Principle Of The Constitution

Section 14(3) of the Constitution provides that the composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that Government or in any of its agencies.

However the Act in its Section 9(2) dealing with the composition of the National Council on Privatization does not appear to have reckoned with the Federal Character Principle of the Constitution. Apart from four members to be appointed by the President, all the other members of the council are *ex-officio* members. The danger here is that public offices relevant to the privatization process may deliberately or unwittingly be assigned to persons from a particular ethnic group or geopolitical zone. For instance the Chairman of the Council and the Director – General of the Bureau of Public Enterprises may originate from the same section of the country giving rise to the impression or perception of collusion, nepotism and favoritism in the implementation of the privatization agenda.

vi) The Act And Law Making And Investigative Oversight Powers Of The National Assembly Under The Constitution

Section 4 (1) of the 1999 Constitution provides that the legislative powers of the Federal Republic of Nigeria shall be vested in a Nation Assembly for the Federation which shall consist of a Senate and a House of Representatives. Section 4 (2) and (4) went further to declare that the National Assembly shall have power to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative

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List as well as any matter included in the Concurrent Legislative List to the extent prescribed under the Constitution.

As we have already noted, regulation of ownership and control of business enterprises fall within the Concurrent Legislative List and therefore within the legislative competence of the National Assembly. We have seen that by virtue of Section 315 of the Constitution, the Public Enterprises (Privatization and Commercialization) Decree 1999 qualified as an existing law which continued to enjoy validity under the Constitution albeit with minor alterations to reflect the democratic nature of the present government.

Being an existing law (deemed to be an Act of the National Assembly), it would be unconstitutional for provisions of same to be amended by the National Council on Privatization without reference to the National Assembly whose Act it is. Section 1 (3) of the Act, it is respectfully submitted, is inconsistent with Section 4 of the of 1999 Constitution to the extent that power is thereby conferred on the National Council of Privatization to alter, add, delete or amend the provisions of the First Schedule of the Act. Allied to this is Section II (e) of the Act which gives the Council power to approve the legal and regulatory framework for the public enterprises to be privatized; this in our view constitutes another curious invasion of the law making functions of the National Assembly.

Legislative oversight can mean various things under different circumstances: i.e. watchfulness, review, investigation, evaluation, control. It may involve legislators in hearings, investigations, specific program evaluation of projects, requesting detailed information from the administering agencies, or other research activities- all undertaken to find out whether a governmental programme is doing what it is supposed to do.

It was *Woodrow Wilson* in his classic doctoral treatise, *Congressional Government*, 1885, who said:

'It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function.'

In the United States, unlike Nigeria, there is no provision of the Constitution expressly authorizing either House to make investigations and exact testimony to the end that it may exercise its legislative function effectively. Sections 62, 67(2), S.88 and 89 of the 1999 Constitution sets out the authority of the National Assembly to exercise oversight functions.

PRIVATISATION AND SOCIAL JUSTICE ISSUES

Eze Onyekpere (2003) has pointed out that in Nigeria, the first critical challenge for neo-liberalism and the market economy as reflected in privatization is how to address the intersections between human rights law in economic and social rights, and the policy of giving free unfettered access to market forces. He doubts if there are guarantees in place to ensure that service of privatized utilities are affordable to all segments of the society especially as almost three-quarters of Nigerians live below the poverty line of less than one dollar a day.

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It is regrettable that the extant privatization legislation does not address the social justice implications of the process with respect to the special position of the poor, the disabled, women as well as other vulnerable groups within the society. Neither did the Act ensure that the decision making organs and institutions are compelled to co-opt interest groups within the civil society for the purpose of consensus building in the polity. Questions relating to how much our national patrimony should be sold and who the buyer should be are of immediate concern to the generality of Nigerians. Instead of a conscious effort to carry the people along, these issues are discussed in elitist circles using rarefied language. This situation has led to what Neo-Marxists call social alienation. The source of the alienation is the prevalence of hierarchy as the dominant form of social organization. This leads to a profound loss of the sense of social connection because the possibility of real community is broken and people are forced to a lifelong series of isolating roles and routines within which they are unable to fully recognize one another in an empowering and mutually re-enforcing way.

The legal system perpetuates this feeling of powerless and alienation by the over emphasis on *locus standi* and discouragement of public interest litigation through group or class actions. Attempts made under the Privatization Act to involve the less privileged in the privatization programme are at best half-hearted and cosmetic. For instance, the provisions of section 5;

- (1) Subject to any direction of the Council and without prejudice to the provisions of section (2) of this Act, the shares of the enterprises to be allotted to Nigerians under this Act by public offer shall be in accordance with the provisions of subsection (2),(3) and (4) of this section.
- (2) The shares on offer to Nigerians shall be sold on the basis of equality of States of the Federation and of the residents of the Federal Capital Territory, Abuja.
- (3) Not less than 1 percent of the shares to be offered for sale to Nigerians shall be reserved for the staff of the public enterprises to be privatised and the shares shall be held in trust by the public enterprise for its employees.
- (4) Where there is an over- subscription for the purchase of the shares of privatized public enterprise, no individual shall be entitled to hold more than 0.1 percent equity in the privatized public enterprise.

The concept of equality of states under section 5 (2) of the Act is nebulous. It does not take into account the state of origin of the majority shareholder in the companies that may have been selected as core or strategic investors. Neither does it guarantee that a particular section of group within the state does not constitute the beneficiaries of the share allocated to the state.

Section 5(3) is the only provision in the Act relating to labour. Reservation of one percent of the shares of a privatized public enterprise for the workers, does not address the industrial relations issues of downsizing, severance package, social safety net, retraining, redeployment, new jobs creation and other welfare problems both for either retained or retrenched workers of State Owned Enterprises.

Section 5(4) overlooked the peculiar Nigerian situation where there are a lot of sharp practices. Individuals may use fronts to acquire more than 0.1 percent shares in affected enterprises to the detriment of others. There is therefore no assurance that the restriction on shareholding will be enforced.

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However, it must be conceded that Section 5(2) and (3) create legal obligations against the National Council on Privatization and the Bureau of Public Enterprises with correlative legal rights in favour of any citizen and/or any worker in a privatized public enterprise who may be adversely affected by any administrative decision or act of the NCP and the BPE. Whether other interest groups not directly affected by such decision or acts can muster the *locus standi* to approach the courts for judicial review in such circumstances remains a moot point.

Olayide Adigun (1995) maintains that privatization of social services has an important role to play in the re-conceptualisation of capitalism both in reducing the size of the public sector and in providing a ready made market for the private sector. He sees the programme as an ideological bias to benefit the wealthy at the expense of the poor. If this is so, then it fails the utilitarian test of the greatest happiness for the greatest number. It has been observed that in Nigeria, 20 per cent of the population control 80 per cent of the resources of the nation. The privatization as being implemented will invariably ensure that the rich few control the major sectors of the economy. But Bentham in expounding the utilitarian theory postulated that the behavior of humanity was dominated by the influence of pain and pleasure, therefore by increasing pleasure and diminishing pain, human happiness would be extended; this entails the assessment and calculation of the stock of pleasure and pain which results from a particular course of action.

There can be no doubt that the privatisation programme as currently being implemented will result in more pain than happiness to the majority.

Nor does the privatization programme as conceptualized under the enabling legislation pay any heed to Dworkin's principle of "equal concern and respect" which is aimed at achieving government neutrality and impartiality. Equal concern and respect as a theory of justice postulates that Government must not only treat people with concern and respect but also must not distribute goods or opportunities unequally on the ground that some citizens are entitled to more, because they are worthy of more concern. Under the current privatization exercise, the core investor occupies a pride a place and indeed Section 4 of the Act provides that the core investor takes over the management on the date of privatization. The Government relinquishes its duties to deal with the labour relation issues and other concomitant problems to the core investor to deal with as it may think expedient in the circumstances.

We agree with Sam Amadi (2003) that the Rawlsian two principles of justice should inform the implementation of the privatization legislation i.e. the worse – off amongst the people should be made better off. We further contend that the privatization programme in order to be just must ensure that any differentials occurring must be resolved equally among the various strata of the society or in favour of the disempowered and disadvantaged. It must also address past discriminative economic policies and legislations such as the Nigerian Enterprises Promotion Decree of 1972.

In addition to the foregoing, the privatisation programme should be used as a veritable opportunity to correct distortions in the polity by integrating the disadvantaged, the vulnerable and the dispossessed (whether in the minority ethnic groups or the marginalised major ethnic nationalities) into the available economic opportunities through the adoption of the Sarkissan concept of socio - mix.

CONCLUSION

We have examined the legislative framework for the on-going privatization project in Nigeria and demonstrated that some of the provisions of the enabling legislation fall short of the ideals enshrined in our Basic Law (which serves as the touchstone for the validity of all other legislation). We have also looked at the social justice implications of the provisions of the enabling legislation as well as the current efforts being made to alienate our natural patrimony to a few businessmen.

On both counts the whole exercise was found wanting. There is therefore an urgent need to halt the privatization process until an appropriate legislation that takes cognisance of some of the highlighted concerns is enacted.

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PRIVATISATION IN NIGERIA, KEY ISSUES AND PRINCIPLES
FOR THE NATIONAL ASSEMBLY

*Honourable N.C. Ughanze**

Since the 29th day of May 1999, Nigeria joined the league of democratic nations of the world. This implies that Nigeria came under a government by constitution and the rule of law. The 1999 Constitution of Nigeria is the constitution that ushered in democracy in the country. It makes provision on how the affairs of government will be conducted in all the three departments or organs of government that is to say the Legislature, the Executive and the Judiciary.

The Constitution is the grundnorm of our nation's legal system. All other laws of the nation derive their validity from it. In appreciation of the kingly position of the Constitution, its makers provided in it, what constitutional lawyers refer to as the supremacy clause. Thus Section 1(1) of the Constitution provides that the Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. It goes further in section 1(3) to provide that, if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency be void.

The implication of section 1 sub section (1) and (3) mentioned above is that all authorities and persons in Nigeria to wit; Legislature, Executive, Judiciary or Agency of government or individuals must without exception conform to the provisions of the constitution, otherwise their conduct will be a nullity *ab initio*. In the area of legislation or law – making, neither the National Assembly nor a House of Assembly of a state has power to make laws that are inconsistent with the provisions of the Constitution. Where such a law is enacted, it will be null and void and of no effect whatsoever.

Under the 1999 Constitution, by section 4(1), the legislative powers of the Federal Republic of Nigeria are vested in the National Assembly, which consists of a Senate and a House of Representatives. These powers are exclusive for all matters in the Exclusive Legislative List of the Constitution and concurrent with State Houses of Assembly for matters on the Concurrent List, with supremacy given to the enactment by the National Assembly in the event of inconsistency with that of a State Assembly – see section 4(5).

Apart from section 315 (2) of the Constitution where the President is given power in the case of an existing law e.g. a decree to make modifications to the text as he deems necessary or expedient *only to bring that law into conformity with the provisions of the constitution*, there is no other person or institution or agency that is given power to so tinker with a law deemed to be an Act of National Assembly. For emphasis, all decrees of the past military governments in Nigeria are by virtue of section 315 (1) (a) deemed to be Acts of the National Assembly. One of such Decrees is the Privatisation and Commercialisation Decree No. 28 of 1999, which is the current legal instrument that guides the activities of the National Council on Privatisation and the Bureau of Public Enterprises, both agencies of government that are charged with the privatisation and commercialisation activities of government. Since Decree No 28 of 1999 has been deemed an Act of the National Assembly, it is only the National Assembly that can amend, alter, add, delete or outrightly repeal it and no other body. The President under the section cited above can only modify it in no other circumstances than to bring it into conformity with the provisions of the 1999 Constitution. For instance, subject to the National Assembly

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amending the law, the President can in the interim expunge all the unconstitutional sections of the law to bring it in conformity with the Constitution.

Under Decree 28 (hereinafter referred to as Act No. 28 of 1999), there are two categories of privatisation as well as commercialisation – refer to sections 1(1) and 1(2) and 6(1) and 6(2) respectively of the Act. Under the sections, some enterprises will be partially privatised while others will be fully privatised. The Act went further in Part 1 of the First Schedule to list those enterprises to be partially privatised, while in Part 11 of the same First Schedule those enterprises to be fully privatised are listed. In Part 1 of the Second Schedule, enterprises to be partially commercialised are listed while in Part II, enterprises to be fully commercialised are also listed.

In respect of those enterprises to be partially privatised, the percentage structure after privatisation is clearly spelt out thus: maximum strategic investor participation as a percentage after privatisation – 40%, maximum, Federal Government participation as a percentage after privatisation – 40%, and Nigerian individuals participation as percentage after privatisation – 20%. The question is to what extent has the National Council on Privatisation (NCP) and Bureau of Public Enterprises (BPE) adhered to these provisions of the law? While the two Agencies have done pretty well in the case of the enterprises slated by the law for full privatisation, the same cannot be said of them with respect to enterprises prescribed by the law for partial privatisation. The Agencies have jettisoned the share holding configuration of the law and introduced their own share holding structure, which is both unconstitutional and unlawful. There is nowhere in the Act where it is stated that the percentage participation of a strategic or core investor after privatisation should be 51%. What the Act provides is 40%. Neither the NCP nor the BPE has power *suo motu* to amend the provision of the Act from 40% to 51%. The two Agencies have been selling the shares of the partially privatised enterprises 51% to core – investors, which is wrong and legally unjustifiable. The section of the Act which they claim entitled them so to do is section 1(3) of the Act No. 28 of 1999 which states “the National Council on Privatisation (in this Decree referred to as “The Council”) established under section 8 of this Decree may, from time to time, by order published in the Gazette, alter, add, delete, or amend the provisions of the First Schedule to this Decree”. It is submitted that the power given under this section is legislative power, which is inconsistent with the provisions of section 4 (1) – (5) of the 1999 Constitution which reserves the legislative powers of the Federal Republic of Nigeria for the National Assembly. The NCP cannot amend an Act it did not make. It is an Act of the National Assembly and only the National Assembly can amend it pursuant to the powers granted under section 4 of the Constitution. And being an existing law, under section 315 of the Constitution, this is a trite example where the President and Commander – in Chief could have expunged this legislative function in the Act to bring the Act in conformity with the provisions of the 1999 Constitution – section 4.

Since the Constitution provides under section 1(3) that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law to the extent of the inconsistency shall be void, it therefore follows that section 1(3) of the Act No 28 of 1999 where the NCP and BPE claim to derive power to amend the law, is inconsistent with section 4(1) – (5) of the 1999 Constitution as far as legislative or law making powers are concerned, and is therefore void since May 29 1999 when the Constitution came into force. It follows without saying therefore that any purported increase in the shareholding of a core – investor from 40% to 51% in any privatised enterprises from 29th May 1999 to date is unconstitutional, void, *ultra vires* and without legal backing whatsoever. An action can be maintained in court at any time to declare it so.

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All the above arguments also go for section 6(3) of the Act No. 28 of 1999, which deals with commercialisation. This section also gives legislative or law making powers to NCP and we submit also that it is unconstitutional.

The Act No 28 of 1999 must be followed religiously as it is, without amendment or alteration of any kind. If the NCP or BPE thinks there is need for any adjustment, they should propose an amendment bill to the National Assembly. They should endeavour to remember that Nigeria is now under democratic rule and not military rule where arbitrariness is the order of the day. The Constitution guides the behaviour of institutions and persons under a democracy, and the rule of law also prevails.

Because of the shortcomings in the Act No. 28 of 1999, a new bill to repeal it and replace it with a new one has been proposed by the executive and has been passed by the House of Representatives, the concurrence of the Senate is being awaited before it can be sent to the President for his assent for it to become law. The new bill has taken into consideration all the draconian and unconstitutional provisions of the Act No. 28 like the power to make law treated above which is now replaced by giving same to where it should be, that is the National Assembly – see section I (5) of the bill.

Under the extant law, the NCP alone decides which enterprises are to be privatised or commercialised and BPE goes ahead to do so, without reference to the representatives of the Nigerian people. The NCP and BPE also decide whom to sell the enterprises to as core – investor without input by Nigerians.

But in the new bill, the Privatisation Council which is the new name for NCP, shall at the beginning of every year present to the National Assembly for approval a list of public enterprises to be partially or fully privatised from Part I or II of the First Schedule- see section 1(3) of the bill. The same list is required for the enterprises to be either partially or full commercialised-see section 6(3) of the bill. The new bill also makes provision for the ratification by a simple majority of both houses of National Assembly of a strategic or core – investor after exercising powers of investigations under the 1999 Constitution.

The National Assembly under section 27(3) is given power to appraise, review or take action, as it deems necessary for overriding public purpose in respect of any privatised or commercialised enterprises or the whole exercise or anything done thereunder or pursuant to any law or administrative or public policy. These new provisions when they come into force will make for some checks and balances in the privatisation and commercialisation process as well as afford Nigerians the opportunity of knowing very well who the strategic or core – investors are, and their capabilities, as well as create room for a post mortem of previous actions by NCP and BPE in the interest of the nation. It will demystify the process and make it to be more accountable and transparent. There is also a more elaborate provision for the Public Enterprises Arbitration Panel etc- see section 23 of the bill. Apart from the chairman of the panel being a serving or retired judge of a superior court of record, the Chief Justice of Nigeria shall appoint the members of the Panel. This is unlike in the Act No 28 of 1999 where the NCP is to appoint. This will create bias whenever the NCP or BPE is involved in any dispute where the panel is called upon to arbitrate.

Under section 30 of the new bill, provision is made for an interest free loan for share purchase scheme for Nigerians to the tune of not less than Ten Thousand Naira per qualified person.

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The BPE has already started to implement this section ahead of time in their currently much advertised Privatisation Share Purchase Loan Scheme (PSPLS). This provision will enable most Nigerians to participate in the privatisation programme.

Another important provision of the new bill is section 31, which protects the staff of the privatised or commercialised enterprises with respect to the security of their jobs. It makes for the retention of the staff on no less favourable terms as they enjoyed before the privatisation or commercialisation of the enterprises. It also provides that any staff that resigns voluntarily is entitled to all entitlements based on his conditions of service and no less. All these are irrespective of whether the public enterprise was bought over by a core – investor or not. Finally the new law still saw wisdom in retaining the share holding structure after privatisation of public enterprises to be partially privatised, that is to say 40% for strategic or core – investor, 40% for the Federal Government and 20% for Nigerians.

Finally, from the provisions of the new law mentioned herein and those not mentioned here, one can see that the National Assembly has intervened very pragmatically and proactively to ensure accountability and transparency of the process of privatisation and commercialisation to the tax – payer. With the power of appraisal and review of all processes present and past, in the new bill, value for money is assured. When the new bill comes into effect and the programme is done in accordance with its provisions, it will lead to enhanced respect for the system and protection and fulfillment of economic, social and cultural rights of Nigerians. This is one of the dividends of democracy.

CHALLENGES FOR THE PRIVATISATION PROGRAMME

Eze Onyekpere Esq.¹

INTRODUCTION

At independence in 1960, the new Nigerian government inherited an underdeveloped infrastructure and service delivery/facilities base. Developments in health, housing, education, water and other social services were at a rudimentary stage. The ports, railways, telecommunications, electricity, print and electronic media, etc were hardly developed to meet the demands of the population. In some instances, the railways were simply routed from the hinterland to the ports for the movement of cash crops for export, while connections between cities with large human populations were ignored. The existing services and infrastructure were meant to serve the colonial administration and expatriate community to maximize their benefits from colonization.

At independence, the Nigerian population was largely illiterate and poor; the private sector was still in its infancy and could not be a major player in industrialization and service delivery. There was also the thinking in official circles, in accordance with dominant world thought that, industries whose services will beneficially impact on majority of the population should be run by the state. Within this thought framework, the major sectors of the economy were reserved for the state². Thus, the government was saddled with the task of engineering the overall growth and development of the economy through industrialization and the provision of infrastructure and social services. Government at all levels, particularly federal and state governments became actively involved in the setting up and management of industries and the provision of services.

Some of these industries and services were set up as statutory corporations backed up by Acts of the legislature. They include the National Electric Power Authority (NEPA) and the Nigerian Bank for Commerce and Industry³. The management and boards of these corporations, (most of which were termed parastatals), were appointed by government. In most instances, the statutory corporations were monopolies in their areas of operation⁴ and were virtually immune from suit and legal process in respect of actions arising from their negligence or non-performance of duties.

In the course of time, government officials abused appointments to boards and management of these corporations. Appointments based on merit gave way to mediocrity; poor performance and corruption set in. Otherwise profitable corporations started depending on state subventions and since there was no competitor in the sectors, there was a gross decline in the quality of services rendered. In consideration of the attachment of these corporations to the public service, "the civil service mentality"⁵ crept in leading to the bureaucratization of processes of service delivery. This in turn led to slow response mechanisms to customer needs and poor public rating of these corporations.

These corporations like NEPA and NITEL could neither expand their services to all parts of the country nor enhance the quality of services in areas already covered. The oil boom of

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² See s. 16 (1) © and (d) of the Constitution of the Federal Republic of Nigeria, 1999.

³ Established by the NEPA Act Cap 256, and NBCI Act, cap 296, respectively of the Laws of the Federation, 1990.

⁴ Nigerian Telecommunications (NITEL) and the National Electric Power Authority for example.

⁵ The civil service mentality guarantees that salaries and emoluments will be paid whether workers are productive or not.

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the seventies hid a lot of these inefficiencies as government continued to subsidise these corporations. However, from the eighties to date, with dwindling oil revenues, massive import bills, unsustainable external debts, rising recurrent expenditure, structural adjustment programme, and the shift in dominant Western thought on the role of the market and the private sector in the economy, the Nigerian government had to rethink its participation in these major heights of the economy.

ENTER PRIVATISATION AND LIBERALISATION

The ideas that were mooted following these developments were commercialization, privatization, deregulation and liberalization. Within the framework of full commercialization, state-owned enterprises that were purportedly enjoying subsidy were allowed to charge market rates for their services⁶, operate profitably and raise funds from the capital market without government guarantee. For partial commercialization, the enterprises were expected to generate enough revenues to cover their operating costs while government may consider giving them capital grants to finance their capital projects⁷.

For liberalization, more actors were allowed to come on stream to break the monopoly of state enterprises while privatization (which could be full or partial) concerned government divesting its interest in these enterprises to the private sector.

This was the background to the enactment of laws that govern privatization and its process in Nigeria and the extant law is Decree No. 28 of 1999.

Privatization is generally stated by its advocates as having the following advantages:

- Lower production and delivery costs;
- Achieve greater efficiency in production, service delivery and decision making;
- Provide more flexibility for enterprises to respond to market signals;
- Provide enterprises access to the latest technologies; and,
- Give enterprises a higher capacity to attract domestic and foreign private investment.

THE PRIVATISATION AND LIBERALISATION EXERCISE SO FAR

The Public Enterprises (Privatization and Commercialization) Act of 1999 was enacted to achieve the privatization and commercialization of government enterprises. The Act slated some enterprise for full privatization while others were for commercialization and partial commercialization.

Although the objects of privatization and commercialization were not stated in the Act, the statements, which emanated from government, showed that government was more interested in matters of economic growth and management efficiency. However, government declared *inter alia*, the following as the objects of the exercise:

⁶ The word "purportedly" is used because part of the cost of the services is attributable to corruption.

This would not have been the case if the enterprises were efficiently run.

⁷ National Council on Privatization – *The Privatization Handbook*, Spectrum Books 2000.

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- i. To redefine the role of government in order to allow it concentrate on the essential task of governance which includes the creation of sound legal and macroeconomic frameworks among others;
- ii. To restructure and rationalize the public sector in order to lessen the dominance of unproductive investments in the economy;
- iii. To re-orientate the enterprises slated for privatization and commercialization towards a new horizon of performance improvement, viability and overall efficiency;
- iv. To promote efficiency by fostering well structured markets and competition;
- v. To create more jobs, acquire new knowledge and technology and expose the country to international competition;
- vi. To raise funds for financing socio-economic development in such areas as health, education and infrastructure;
- vii. To ensure positive returns on public sector investments in commercialized enterprises through more efficient management;
- viii. To check the absolute dependence on the Treasury funding by otherwise commercially oriented parastatals and so, encourage their approach to the Nigerian capital market to meet their funding requirements;
- ix. To initiate the process of gradual cession to the private sector, such public enterprises that are better operated by the private sector;
- x. To reduce the fiscal burden of loss-making in public enterprises which undermine fiscal control and macro-economic stability;
- xi. To mobilize domestic resources for developing and deepening financial development;
- xii. To spread and democratize share ownership with the benefits of positive change in labour attitudes and enhanced productivity; and,
- xiii. To lead to fairer pricing.

The privatization and liberalization exercise undertaken by the Technical Committee on Privatization and Commercialization and later the Bureau for Public Enterprises, has so far been dogged by a lot of controversies. Issues of process including accountability and transparency, value for money, double standards and due process, public access to information, popular participation etc, have arisen. It appears that government's stated objectives are yet to be met.

CHALLENGES

Human Rights Law Versus The Market

The first critical challenge for neo-liberalism and the market economy in Nigeria as reflected in privatization is to address the intersections between human rights law in economic and

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social rights and the policy of giving free unfettered access to market forces. Critical policy decisions in economic, social and cultural rights (ESC rights), investment, trade and macro-economics need to be treated in an integrated manner.

The Covenant on Economic, Social and Cultural Rights⁸ (which Nigeria is a party to) in article 2 (1) states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Nigeria is bound under national and international laws to continuously improve the welfare of its citizens irrespective of the economic model it adopts. This is a clear position borne out by General Comment No. 3 of the UN Committee on ESC Rights.

The Committee notes that the undertaking “to take steps...by all appropriate means including particularly the adoption of legislative measures” neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question provided only that it is democratic and all human rights are thereby respected. Thus in terms of political and economic systems, the Covenant is neutral and its principles cannot accurately be described as being predicted exclusively upon the need for or the desirability of a socialist or capitalist system, or a mixed, centrally planned, or laissez faire economy, or upon any other particular approach. In this regard, the Committee reaffirms that the rights recognized in the Covenant are susceptible of realization within the context of a wide variety of economic and political systems, provided only that the interdependence and indivisibility of the two sets of human rights, as affirmed inter alia in the preamble to the Covenant is recognized and reflected in the system in question. The Committee also notes the relevance in this regard of other human rights and in particular the right to development⁹.

The Constitution clearly declares the security and welfare of the people as the primary purpose of government and sections 16 and 17 are clear on the economic and social objectives of government. In the African Charter on Human and Peoples Rights, a plethora of ESC rights are also guaranteed¹⁰.

So what are the guarantees in place to ensure that the services of privatized utilities are affordable to all segments of the society? This question takes cognizance of the fact that over 70% of Nigerians live below the poverty line of less than one dollar a day. How can the state meet the minimum core obligation on ESC rights¹¹ or even attempt to meet the Millennium Development Goals (halve the number of people in absolute poverty and hunger, halve the number of people who cannot access safe drinking water, provide basic education for all and

⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 3 January 1976, in accordance with article 27.

⁹ Paragraph 8 of General Comment No. 3.

¹⁰ Cap 10, Laws of the Federation of Nigeria 1990

¹¹ In General Comment No. 3, the UNCESCR notes in paragraph 10 of the existence of “a minimum core obligation to ensure the satisfaction of, at the very least minimum essential levels of each of the rights is incumbent on every State Party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary healthcare, of basic shelter and housing, or of the most basic forms of education is *prima facie*, falling to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would largely be deprived of its *raison detre*”.

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prevent the spread of major diseases, etc) if it hands over essential ESC rights issues to the private sector, considering that the private sector is driven by the profit motive.

This discourse takes no *apriori* positions but is of the view that if the market can deliver on human welfare, it should be allowed free reign. But empirical evidence from other countries in Africa and the developing world has indicated that the market cannot be trusted to work for the poor who constitute the majority of the population. In the Madlebe tribal area of Kwazulu “bantustan” in South Africa, water was virtually free through a communal system that had no water metres before the introduction of cost recovery. About 700 families joined the “no money, no water scheme” and over 200 families remained unconnected. The result was the outbreak of cholera¹². This goes to buttress the absence of a guarantee for the poor in the privatization process¹³.

Effectiveness Of Regulatory Mechanisms

Second, how effective are the regulatory mechanisms that should protect consumer rights to wit; the effectiveness of monitoring and regulation? The experience of consumers at the hands of mobile telephone operators indicates that a regulatory agency like the Nigerian Communications Commission¹⁴ despite its wide-ranging powers¹⁵ appears helpless in controlling the operators. The issues that demand attention include refusal of the operators to meaningfully interconnect, poor call completion rate and bills for dropped calls due to the fault of the operators, etc. Despite public outcry, the mobile operators ECONET and MTN, refused to introduce per second billing until GLOBACOM introduced it as their unique selling point. They former were forced by competition to introduce per second billing. Nigeria Communications Commission played and still plays a great role in the privatization and liberalisation of the communications sector. However, there is a strong impression that its regulatory and oversight functions have been abandoned in favour of investors and operators.

Market As A Means To An End And Not The End Itself

Flowing from the above should be the third challenge, which is the fact that the market is a means to an end and not the end itself. If the market can guarantee the welfare and happiness

¹² Cholera is a disease of the gastrointestinal tract caused by ingesting cholera bacteria that are spread by contaminated food and water. Cholera is associated with conditions of extreme poverty where inadequate or non-existent water supply and sanitation facilities result in poor hygiene.

¹³ See *The Cost of Living; How Selling Basic Services Excludes the Poor in South African People and Environment in the Global Market*, Booklet 3, August 2002.

¹⁴ Established by Decree 75 of 1992.

¹⁵ The objectives of the Commission (by s. 2 of the Decree) include:

**To create a regulatory environment for the supply of telecommunications services, facilities and to promote fair competition and efficient market conduct;*

**To facilitate the entry into markets for telecommunications services and facilities of persons wishing to supply such services and facilities.*

The functions of the Commission (by s.4 of the decree) include:

**The responsibility for economic and technical regulation of the privatized sector of the telecommunications industry;*

**To ensure the safety and quality of telecommunications services by determining technical standards and regulating technical execution and performance;*

**The responsibility of giving advice and assistance to the entire Nigerian telecommunications industry.*

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of all, then let the market be. But if it guarantees profit for a few and misery for the majority, then it cannot be adopted as the economic basis of governance.

Will the market guarantee services for the rural poor in terms of electricity, telephones, potable water, adequate housing¹⁶, etc since the scale of operations may not be profitable enough to drive the market to extend these services over sparsely populated areas separated by a large land mass. To effectively serve this segment of the population will ultimately demand state subsidies. If privatisation results in a general decline in living conditions for the majority and in the absence of accompanying compensatory measures, then it would be clearly incompatible with the desired end of enhancing human dignity through enhanced standards of living¹⁷. Also, increases in the cost of attaining basic social services without a corresponding increase in individual and family incomes will clearly decrease living standards.

Apparently rolling back the state in accordance with privatization and adjustment will involve cutting expenditure on education, housing, health, water, etc. All these expenditure go a long way to facilitate the enjoyment of the right to an adequate standard of living.¹⁸ However, massive public expenditure in such areas as social infrastructure and the utilities is required to kickstart the comatose economy, provide jobs, cut down the cost of production and enhance earning power and capacity. The strong advocates of privatization and adjustments are the trio of the World Bank, the International Monetary Fund and World Trade Organisation.

On the other hand, agencies like the United Nations Development Programme (UNDP), United Nations Fund for Children (UNICEF), World Health Organization (WHO), United Nations Education, Scientific and Cultural Organisation (UNESCO), have advocated and require Nigeria and other developing countries to meet minimum standards and benchmarks for budgeting in social services and infrastructure. Examples are WHO's requirement of 5% of the gross domestic product on health, UNESCO's 26% of the total budget on education, etc. UNDP has even linked the human development index to the freedom index and asserted that human development and freedom are inextricably linked.

Nigeria is a signatory to the treaty components of the international bill of rights¹⁹, which elaborates the United Nations Charter's reference to human rights and fundamental freedoms²⁰. Most of the rights in the bill of rights have come to be accepted as peremptory norms of law recognized by most civilised nations, if not as rights strictly so called, as aspirations to which all humanity aim.

Considering that states are under an obligation to ensure that future treaty obligations do not negate duties under international human rights law, particularly under the international bill of rights²¹, treaty obligations from the WTO and the Breton Woods which contradict obligations under the international bill of rights raises a conflict issue, a need to determine priorities on a

¹⁶ A study undertaken by Socio Economic Rights Initiative (*Affordable Housing and the Market- Basic Issues*) indicates that the market as presently functioning cannot address the housing needs of over 75% of the population who live on less than N150 a day. At the minimum wage of N6000 a month, a whole working life savings will not be able to buy the cheapest two bedroom flats valued at over N2m, put out by building organizations.

¹⁷ See paragraph 11 of General Comment No.4 of the United Nations Committee on Economic, Social and Cultural Rights on the right to adequate housing.

¹⁸ Article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

¹⁹ The international bill of rights comprises the Universal Declaration of Human Rights 1948, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966.

²⁰ See articles 1, 3, 55 and 56 of the United Nations Charter, which made reference to human rights and fundamental freedoms without elaborating a definition or an articulation of what the concept meant.

²¹ A human rights impact assessment was recommended in General Comment No.2 of the Committee on Economic, Social and Cultural Rights (International Technical Assistance Measures under article 22 of the ICESCR) before countries sign development cooperation and trade agreements.

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scale of preference. It is submitted that the provisions of the international bill of rights are in national law like the provisions of the fundamental rights chapter and derogations are only permissible in exceptional circumstances clearly defined by law for legally permissible objectives. The rights provided in the international bill of rights trumps other legal claims.

Public And Social Goods Versus Private Goods

Some public goods like the right to basic education cannot be handed over to the private sector without doing grievous harm to a critical section of the community²². Although there are currently in Nigeria, private initiatives rendering basic education, consumers of basic education (children) do not have perfect information about the nature of the product, about prices and about the future (manifest and latent functions of education). If education is not regulated through a broad-based policy framework, the preferences of parents for their children's education may be inefficient because the parents may not have perfect information to guide their preference and may be influenced by family rather than the child's interest. It should be acknowledged that what is good education is best defined by public policy. Ordinarily people associate price with value. The market, which determines prices, cannot be a suitable yardstick for choosing because the decision is too technical for a parent to make correctly. So it is more efficient to set out, collectively the price of a good education at any level. In our kind of setting, it is evident that parents do not have adequate information about the future, hence occurrences like poor school enrolment, low male enrolment and school dropouts. It is therefore important that what is universal basic education should be defined by public policy.

Basic education cannot be feasibly provided under a competition (market) situation. Perhaps in urban areas, a market for education on a private demand and supply basis may thrive among the middle and upper classes. But in the rural areas and among the urban poor, privatization of education may create monopolies and inefficiencies, as profit maximization becomes the objective. Also in a market situation, not all will be capable of purchasing *socially efficient amounts* of education. Any under consumption of education by a significant portion of a population on account of financial weakness will lead to inequity. To remove this possibility, subsidies, scholarships, bursary awards and loans ought to be provided as a matter of policy and embodied in the policy document. Under-consumption of education, which manifests as illiteracy and poor numerical capacity undermines social intercourse, productivity and civic duties.

We can therefore conclude that there are positive externalities of basic education accruing to society, which cannot be captured if it is privately provided through the market system. Also the negative externalities of under-consumption are present. These results are obtained because of what economists call market failure. So to overcome market failure, there is need for public policy that pays for the estimated and desirable positive externalities of basic education.

Country Specific Versus Universal Models

The fifth challenge is to guarantee an understanding that liberalization needs to be country-specific, based on social, economic, political and cultural contexts of the community. There are no magic wands and mantras that would simply work in Nigeria because it worked in Britain, Canada and the United States. Despite globalization, we are aware that not all stakeholders in the World experience things the same way. While some countries profit, others hold the short end of the stick. Flowing from this is the fact that privatization does not have a single model.

²² The whole of this section on *Public and Social Goods Versus Private Goods* is reproduced from *Overview of National Education Policy of Nigeria* by Stan Ukeje, SEBN News, Vol 1 No.8 of the South East Budget Network.

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In some countries, single models were used while in others, a mix of various models were employed. There is the management employee buy out scheme²³, partial sale to the public, mass privatization programme, sale of assets, public offerings, voucher systems²⁴, contract leasing, deferred public sales, direct sale to the public, etc. The challenge is that if you must privatize, there is the need to determine the method and process that will yield the maximum result (apart from efficiency and growth concerns) of promoting human welfare. Privatisation also needs to take cognizance of the specific nature of the enterprise to be privatized- be enterprise specific.

Allied to the above is the poser; at what stage of a country's development is privatization feasible? For a country with a rudimentary development of its productive forces- what does privatization of state owned enterprises portend, particularly if they are sold to non-nationals?²⁵

Consistency In Policy Implementation

The sixth challenge is the issue of consistency in policy implementation. While trumpeting privatization and allowing the private sector take over the major sectors of the economy, government is busy floating another national airline following the demise of Nigeria Airways. Akwa Ibom state is busy building a new five star hotel. If there are any benefits from privatization, it will be wiped off by these inconsistencies.

Privatisation And Other Reforms

The seventh challenge is the linkage between privatization and other reforms to wit, a composite and integrated approach to reforms. Can the market which privatization extols work without an effective administration of justice system; a rent seeking economy where access to resources is divorced from work and striving, where good governance is generally lacking? Obsolete laws and a non-reformed bureaucracy will obviously rubbish whatever gains that may accrue from the programme.

Privatization also needs new legislation on Anti-Trust, Competition and Monopolies. All these are currently unavailable in Nigeria. In many sectors, the Nigerian privatization programme seems to be privatizing without liberalizing. Thus, there is a transfer of economic power from the state to a company that now becomes the dominant player in such a way that can be aptly described as a monopoly. The sugar and cement sector being virtually parceled out to Dangote Group of companies is a case in point.

Under the prevailing Land Use Act²⁶, people and communities have been resettled for development projects. To resettle involves a voluntary or involuntary movement of a people from their normal place of abode, to a new site. Within the context of this discourse, the resettlement is not by choice but people are compelled by the sheer force of "development" to move leaving their land for the setting up of structures and facilities of a public nature. It is pertinent at this stage to mention that in almost all the cases, communities and settlements that are compelled to move on are invariably communities of the poor, not of the rich or even

²³ Widely used in Hungary, Poland, Romania and Russia.

²⁴ Used in the United states, Czechoslovakia and the Soviet Union.

²⁵ Nigeria started a process of indigenising foreign owned enterprises in the seventies but today, the privatization programme is reversing the gains of that process.

²⁶ Chapter 202 of the Laws of the Federation 1990; the Land Use Act from its recitals is:

"An Act to vest all lands comprised in the territory of each state (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the state and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Governments".

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the middle class. This flows from the jurisprudence and logic of poverty to wit; that the poor are always made to bear the inconvenience of change. When the state wants to acquire land for new roads, power stations, dams and commercial agriculture, it will definitely look for where they will get the least resistance and this will invariably be the land of the poor.

This attitude is also further fuelled by the fact that payment of compensation or the resettlement of the rich and powerful may be too expensive and prohibitive to justify the continuation of a public project. These “public projects” like dams, power stations and stadiums were projects built for public purposes to benefit a wide spectrum of society and the acquisition of lands were for public purposes.

Essentially, the issue of vesting all lands in the Governor as a trustee on behalf of all²⁷, the acquisition of land for public purposes and payment of minimal (non market value) compensation as allowed under the Land Use Act in an economy heading towards a private sector, market oriented format appears to be a contradiction in terms because the state is simply using its power to acquire the land of the poor and later hand it over (after privatization) to the capitalist class who may even be foreigners, without payment of adequate and market value compensation. Provisions of the Land Use Act that deny the attribute of land as a factor of production are retrogressive. Payment of a pittance as compensation for unexhausted improvements on undeveloped land does not address issues of livelihood rights for the poor who depend on the land for their subsistence. Privatization, deregulation and liberalization must not seek to favour one set of actors to the detriment of others.

Privatisation Versus Labour

The eighth challenge is the attempt to wish away labour and the existing problems in the enterprises slated for privatization. In many instances, there has been a long drawn battle with labour over terminal benefits and earned pensions and gratuities. The case at the Federal High Court Lagos, involving the National Union of Printing, Publishing and Paper Products workers and the Attorney General of the Federation and four others²⁸ over the privatization of Daily Times and New Nigeria Newspapers is instructive. The National Union of Electricity Employees and the National Union of Air Transport Employees are also in court over their entitlements. To continue pretending that these issues don't matter gives the privatization programme a very bad image.

Privatisation also comes as part of a package of adjustments and reforms. In Nigeria, privatization has been joined by “home grown agenda that puts the people and their well-being first by satisfying their basic needs”²⁹. However, the first part of NEEDS has seen increases in the prices of petroleum products by over 50%; “rightsizing³⁰” of state employees by over 40% has been ordered by the President. Yet incomes have not increased and NEEDS considers the people's welfare as paramount! The *contradictory logic* is; increased cost of basic services accompanied by loss of jobs without a social safety net amounts to welfare.

Privatisation, Accountability And Corruption

The ninth challenge is that in some countries, public enterprises emerged through nationalization of otherwise private concerns as in Britain, while in Nigeria apart from nationalization and takeovers, they emerged through direct state investments or transfers of civil service departments. What guarantees are there that those who mismanaged these

²⁷ S.1 of the Land Use Act.

²⁸ Suit No. FHC/L/CS/1081/2000 at the Federal High Court, Lagos.

²⁹ National Economic Empowerment and Development Strategy (NEEDS).

³⁰ An euphemism for reducing the labour force.

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state owned enterprises and enriched themselves at the public expense³¹ are not the ones buying up the privatized enterprises? Are we rewarding rather than punishing corruption? There is a thin line demarcating the political and economic elites in Nigeria. With the monetised political space, business and politics have become siamese twins. Cronies and political jobbers are therefore settled into big business by government through the divestiture process.

In the case of Sheraton Hotel which was built with a public loan of \$300m and which has added to Nigeria's debt stock, it has been revealed that the project was overvalued; it was eventually sold for less than one fifth of the sum. Yet, no one has been considered for prosecution. This is clear case of the government abdicating its duties and using that abdication as reason to support the divestiture process.

It is also pertinent to note that the public sector has been portrayed as inherently and irredeemably corrupt, hence the necessity for putting the private sector in the engine room. But commentators have rightly stated that:

Promoting the private sector as more accountable rests on claims that the public sector is inherently corrupt and unaccountable, nepotistic and incompetent. As a result of these alleged characteristics, the public sector cannot be left to regulate itself.

Instead it is argued, private sector providers and independent regulation and monitoring offer better prospects for accountability against a transparent set of rules, in a system without conflict of interests. Again, the international experience shows that this is not necessarily so. In fact, private firms tend to be less accountable, and processes of contracting out and privatization tend to reduce public accountability. Corruption is hardly unique to the public sector. And governmental capacity for regulation is steadily being eroded anyway, so enforcing accountability is increasingly difficult. Finally, if the public service is held to be inherently corrupt, there is little reason to believe that regulatory bodies, however independent, will not be too³².

The operation of privatised enterprises raises the question of accountability to who; to the people or to the market? Apparently they are only accountable to profits and the market and not to the people.

Gender Versus Privatisation

The tenth challenge is the gender dimension. Despite reeling out figures of hundreds of thousands of new shareholders in the first phase of the privatization programme, how many of these new shareholders are men and how many are women? Are we merely re-inforcing male dominance and ownership of property in our society? What structures and specific activities are targeted at the female section of the population?

The few faces of the ownership and management of newly privatized enterprises are mainly masculine and nothing points in the direction of women and the less privileged being in the vanguard of the new investments³³.

Empirical evidence has demonstrated that the privatization of utilities when it results in making their services unaffordable to the poor creates additional burden on the time and resources

³¹ Most of the officials who mismanaged these enterprises are still alive and should have been prosecuted for corrupt practices but the government decides to look the other way.

³² See *The Cost of Living; How Selling Basic Services Excludes the Poor in South African People and Environment in the Global Market* p.7 of Booklet 3, August 2002.

³³ No official disaggregation exists of the male and female participation in the privatization process in Nigeria, but there has been recent calls for an Affirmative Action Fund to encourage women's participation in the privatization process.- Communique of the Capacity Building Workshop, SERI, November 19-21, 2003.

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of women. Women and men experience human settlements differently according to their roles, responsibilities and access to resources. And it is a fact that when basic services are lacking, it is the women who take on such responsibilities as providing water, energy resources, refuse collection and disposal, etc³⁴.

Value For Money And Set Objectives

The eleventh challenge is that of a value for money audit; did we get appropriate prices for the privatized enterprises? The audit process with which this discourse is concerned, belongs mainly in the monitoring, evaluation and review phase and may be seen essentially as a quality assurance and control process. Value for money audit is a critical component of the privatization process. It has been described as an examination into the economy, efficiency and effectiveness with which the audited body has discharged its functions; carried out under a set of approved guidelines; and conducted in a regular programme of work performed using a structured approach.

Value for money audit also focuses on the following concepts and processes to wit; the authority upon which the policy objectives have been determined and policy decisions taken; are there satisfactory arrangements for considering alternative options in the implementation of policy? It also dwells on whether established policy aims and objectives have been properly implemented; how far policy aims and objectives have been translated into operational targets and measures of performance.

In the selection of core investors for the privatized Nigerdock and Ajaokuta Steel, were the published guidelines followed? Core investors have played a significant role in the privatization process. They are described as “formidable and experienced groups with the capabilities for adding value to an enterprise and making it operate profitably in the face of international competition. They should possess the capabilities of turning around the fortune of such an enterprise, if by the time of their investment, the enterprise is unhealthy”³⁵. Thus, they must possess the technical know-how, financial muscle and management expertise.

In some cases, labour contradicted the claims of technical competence, financial muscle and managerial expertise of core investors alleging that many core investors are merely fronts for those in the corridors of power.³⁶ Even in respect of the management consultancy of Pentascope for NITEL, what experience and capacity did Pentascope bring to bear on the corporation; has there been an improvement in services since the takeover?

Even though, one may not agree with all the promises of privatization as desirable, the government having set lofty promises for the programme; to what extent have these promises been realized?

CONCLUDING REMARKS

There is the need to situate the privatization programme within the context of overall reforms and re-engineering of Nigeria’s economic and governance system and the goal of enhancing the security and welfare of the people through a democratic process that liberates the energy

³⁴ *Update on Women’s Socio Economic Rights* by Socio Economic Rights Initiative, p13-14, 1999.

³⁵ *The Privatization Handbook*, May 2000 Edition published by the Presidency, the Bureau for Public Enterprises, page 61, para 13.1.

³⁶ The case of the privatized Niger Dock shipyard clearly demonstrates labour’s assertion- over two years after its privatization, the new owners are still looking for funds to run the shipyard and have recently sold it to a third party for a huge profit. Solgas who are the core investors to Ajaokuta Steel apparently do not have the financial muscle to turn around such a huge project.

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of the people, creating and redistributing wealth sustainably while erecting social safety nets and caring for all.

PRIVATISATION IN NIGERIA: CRITICAL ISSUES OF CONCERN TO CIVIL SOCIETY

*Otife Igbuzor**

1. PREAMBLE

The participation of the state in enterprises in Nigeria dates back to the colonial era. The task of providing infrastructural facilities such as railways, roads, bridges, water, electricity and port facilities fell on the colonial government due to the absence of indigenous companies with the required capital as well as the inability or unwillingness of foreign trading companies to embark on these capital – intensive projects.¹ This involvement was expanded and consolidated by the Colonial Welfare Development Plan (1946 – 56) that was formulated when the labour party came to power in the United Kingdom. This trend continued after independence such that by 1999, it was estimated that successive Nigeria Governments have invested up to 800 billion naira in public owned enterprises.²

For a large part of the twentieth century, there were countries in the world (Eastern Bloc) that promoted state ownership of the means of production while others (Western Bloc) promoted private ownership of the means of production. A good number of countries practised what was termed a mixed economy i.e. a combination of public and private ownership of the means of production. However, at the end of the twentieth century, with the end of cold war between the Eastern and Western blocs, private ownership of the means of production took ascendancy. Today, the received wisdom is that the state should recede and that private ownership of the means of production is the only viable approach to efficient production of goods and services, economic growth and development. Consequently, there is a move all over the world to privatise erstwhile public enterprises. In this paper, we examine the practice of privatisation meant to promote private ownership of means of production in Nigeria and the critical issues of concern to the civil society. But first, let us examine the concept of privatisation and its philosophical basis.

2. THE CONCEPT OF PRIVATIZATION

Although the concept of privatisation is an emotive, ideological and controversial one evoking sharp political reactions, its political origins, meaning and objectives are not ambiguous. Iheme defines privatisation as:

..... any of a variety of measures adopted by government to expose a public enterprise to competition or to bring in private ownership or control or management into a public enterprise and accordingly to reduce the usual weight of public ownership or control or management. However in a strict sense, privatisation means the transfer of the ownership (and all the incidence of ownership, including management) of a public enterprise to private investors. The later meaning has the advantage of helping one to draw a line between privatisation and other varieties of public enterprise reform. It is also the sense in which the term has been statutorily defined in Nigeria.³

In a similar vein, Starr defines privatisation as a shift from the public to the private sector, not shifts within a sector.⁴ According to him, the conversion of a state agency into an autonomous

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¹ Iheme, E. (1997), *The Incubus: The Story of Public Enterprise in Nigeria*. Lagos, The Helmsman Associates.

² Obasanjo, O.(1999), An Address delivered during the inauguration of the Council on Privatisation at Presidential Villa, Abuja on 20 July 1999.

³ Iheme, 1997 ibid

⁴ Starr, P. (1998), *The Meaning of Privatisation*. <http://www.paulstarr>.

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public authority or state owned enterprise is not privatisation neither is conversion of a private non – profit organisation into a profit making form.

The Privatisation and Commercialisation Act of 1988 and the Bureau of Public Enterprises Act of 1993 defined privatisation as the relinquishment of part or all of the equity and other interests held by the Federal Government or any of its agencies in enterprises whether wholly or partly owned by the Federal Government. Although privatisation is not defined in the Public Enterprises (Privatisation and Commercialisation) Act of 1999, we can assume that it is deemed to have the same meaning.

From the definitions above, three things are clear. First, for privatisation to take place, there must be in existence public enterprises, which need to be converted into private enterprises. Secondly, there is the reasoning that private ownership or control or management would be better than public ownership. Finally, privatisation is premised on the fact that there are problems with public ownership of enterprises and privatisation is part and parcel of a reform agenda to turn around these enterprises so that they can deliver goods and services more efficiently and effectively. As we shall show later, this kind of reasoning is ideologically loaded and cannot be substantiated by the existential reality of Nigeria.

3. PHILOSOPHICAL BASIS OF PRIVATISATION

As noted above, the concept of privatisation is heavily loaded with ideology. According to Rodee et al, ideology refers to ideas that are logically related and identify those principles or values that lend legitimacy to political institutions or behaviour.⁵ Ideology may be used to justify the status quo or to justify attempts (violent or non – violent) to change it. For a major part of the twentieth century, there were two opposing ideologies on how society should be governed and developed: capitalism versus socialism or ideologies of the right versus ideologies of the left. Capitalist ideology typified by neo – liberalism insists that a self – regulated system of market will bring about a spontaneous process of development. On the other hand, the Socialists and many other variants such as the interventionists argue that unregulated capitalism will always bring about poverty, unemployment and human misery and there is the need to intervene to regulate the market. At the end of the 20th century with the end of the cold war, there is an ascendancy of capitalism and neo – liberalism hence the renewed drive for privatisation.

4. PRIVATISATION IN NIGERIA

Many countries of the world have embarked on privatisation programmes at different times. Chile introduced a privatisation programme in 1974. The United Kingdom implemented a rigorous privatisation programme during the regime of Margaret Thatcher in the 1980s. As Iheme has argued, the British decision to embark on a privatisation programme was largely informed by the need to cut back on public spending rather than the need to promote efficiency and competition.⁶ The 1990s witnessed the implementation of privatisation programmes in many countries of the former Eastern Bloc like Russia, Romania, Czechoslovakia, etc. It has been documented that more than 8,500 State owned enterprises in over 80 countries have been privatised in the past 12 years.⁷

⁵Rodee, C. C. et al(1983), *Introduction to Political Science*. Tokyo, McGraw – Hill International Book Company.

⁶ Iheme, *ibid*.

⁷ World Bank, 2003.

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Privatisation in Nigeria was formally introduced by the Privatisation and Commercialisation Decree of 1988 as part of the Structural Adjustment Programmes (SAP) of the Ibrahim Badamosi Babangida administration (1985 – 93). As McGraw has argued, SAP is a neo – liberal development strategy devised by international financial institutions to incorporate national economies into the global market:

The vision of a “global market civilization” has been reinforced by the policies of the major institutions of global economic government .. up to the mid 1990s. Underlying the structural adjustment programmes has been a new – liberal development strategy – referred to as the Washington Consensus which prioritizes the opening up of national economies to global market forces and the requirement for limited government intervention in the management of the economy.⁸

One of the main objectives of SAP was therefore to pursue deregulation and privatisation leading to removal of subsidies, reduction in wage bills and the retrenchment of the public sector ostensibly to trim the state down to size.⁹

The Privatisation and Commercialisation Decree of 1988 set up the Technical Committee on Privatisation and Commercialisation (TCPC) under the chairmanship of Dr. Hamza Zayyad to privatise 111 public enterprises and commercialise 34 Others. In 1993, the TCPC concluded its assignment and submitted a final report having privatised 88 out of the 111 enterprises listed in the decree. Based on the recommendation of the TCPC, the Federal Military Government promulgated the Bureau for Public Enterprises (BPE) Decree 1993 to implement the privatisation programme in Nigeria. In 1999, the Federal Government enacted the Public Enterprise (Privatisation and Commercialisation) Act 1999 which created the National Council on Privatisation under the chairmanship of the Vice President. The functions of the council include:

- ☞ Making policies on privatisation and commercialisation;
- ☞ Determining the modalities for privatisation and advising the government accordingly;
- ☞ Determining the timing of privatisation of particular enterprises;
- ☞ Approving the prices for shares and the appointment of privatisation advisers;
- ☞ Ensuring that the commercialised public enterprises are managed in accordance with sound commercial principles and prudent financial practices;
- ☞ Interfacing with the public enterprises, together with the supervising ministries, in order to ensure effective monitoring and safeguard of the managerial autonomy of the public enterprises.

The Act also established the Bureau of Public Enterprises (BPE) as the secretariat of the National Council on Privatisation. The functions of the Bureau include:

- ☞ Implementing the Council's policy on privatisation and commercialisation.
- ☞ Preparing public enterprises approved by the council for privatisation and commercialisation;
- ☞ Advising the Council on further public enterprises that may be privatised or commercialised;
- ☞ Advising the Council on capital restructuring needs of the public enterprises to be privatised;

⁸ McGrew, A. (2000), “Sustainable Globalisation? The Global Politics of Development and Exclusion in the New World Order” in Allen, T and Thomas, A. (Eds), *Poverty and Development into the 21st Century*. New York, Oxford University Press Inc.

⁹ Egwu, S. G. (1998), *Structural Adjustment, Agrarian Change and Rural Ethnicity in Nigeria*. Research Report NO. 103. Uppsala, Sweden, The Nordic Africa Institute.

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- ☞ Ensuring the update of accounts of all commercialised enterprises for financial discipline;
- ☞ Making recommendations to the Council in the appointment of consultants, advisers, investment bankers, issuing houses, stockbrokers, solicitors, trustees, accountants and other professionals required for the purpose of either privatisation or commercialisation;
- ☞ Ensuring the success of the privatisation and commercialisation exercise through effective post transactional performance monitoring and evaluation.
- ☞ Providing secretarial support to the Council.

5. CRITICAL ISSUES OF CONCERN TO CIVIL SOCIETY

The civil society in Nigeria is not homogenous. It is made up of different kinds of people who undertake civil society activities for different reasons. There are at least five categories of people in the civil society movement in Nigeria. First, there are those who are interested in transforming society and they see civil society activism as an avenue to accomplish this. Secondly, there are those who build their career as civil society workers. They therefore see civil society activism as a career or profession just like any other career or profession. Thirdly, there are those who utilise civil society activism as a means of survival. They have no job and have no option but to hang on to civil society work as a means of survival. They are prepared to leave civil society work as soon as they find a good job. Fourthly, there are stooges who utilize NGOs to promote the interest of government (GONGOs) or individuals. Finally, there are quasi – government NGOs formed principally by wives of the President, Vice – President, Governors and Local Government Chairman. The concern of a particular civil society organisation is therefore dependant on the category of civil society and their orientation. For instance, NGOs formed by the wives of chief executives are not likely to be opposed to any government policy such as privatisation.

In this paper, we shall discuss the critical issues of concern to civil society about privatisation in Nigeria under three headings:

- a. Concerns about the philosophical and constitutional basis of privatisation.
- b. Concerns about equity and gender Issues
- c. Concerns about implementation problems.

a) Concern About The Philosophical And Constitutional Basis Of Privatisation

There are civil society activists who are concerned about the philosophical basis of privatisation. They argue that privatisation is a neo – liberal approach to development, which is imposed by the Bretton Woods institutions as part of globalisation that can only favour rich countries and individuals. They argue that privatisation is anti – labour and will always lead to unemployment. In addition, privatisation is always anti – poor. It is clear that in most cases, privatisation particularly of public utilities like roads, electricity, water etc, will always lead to increase in prices. Meanwhile, it has been documented that whenever user fees are introduced in the provision of social services, utilisation by the rich increases while utilization by the poor decreases.¹⁰ This is compounded by the fact that there is a lot of double talk and hypocrisy in the whole business of privatisation. While Government is busy selling off public enterprises on the one hand, it is simultaneously investing in old / new public enterprises eg. Ajaokuta

¹⁰ Igbuzor, O. (1992), *Drug Revolving Fund as a Strategy to Achieve Health for all Nigerians: A Case Study of University of Maiduguri Teaching Hospital* - An unpublished Masters of Public Administration thesis.

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Steel Complex and Railways. Only recently, the Delta State Government announced the purchase of African Timber and Plywood (A.T and P) Sapele and the Osun State Government announced that it will soon start the production of drugs.

There is also the concern for the disregard of the Constitution and rule of law in the whole privatisation process. The 1999 Constitution not only provides that the state should operate in a way to prevent the concentration of wealth or the means of production and exchange in the hands of few individuals or groups but also that the state should operate and manage the major sectors of the economy (Section 16). The privatisation process in Nigeria appears to abuse this provision of the Constitution.

In addition, privatisation of public enterprises is being undertaken with little regards to the laws of the country. For instance, attempts were made to privatise the National Electric Power Authority when the law that set it up prohibits private ownership of electric companies in Nigeria.

b) Concerns About Equity And Gender Issues

Civil society in Nigeria are concerned that the privatisation exercise in Nigeria will lead to further widening of the gap between the rich and the poor in Nigeria. Already, Nigeria is among the 20 countries in the world with the widest gap between the rich and the poor. The Gini index measures the extent to which the distribution of income (or in some cases consumption expenditure) among individuals or households within an economy deviates from a perfectly equal distribution.¹¹ A Gini index of zero represents perfect equality while an index of 100 implies perfect inequality. Nigeria has one of the highest Gini index in the world. The Gini index for Nigeria is 50.6. This compares poorly with other countries such as India (37.8), Jamaica (37.9), Mauritania (37.3) and Rwanda (28.9). There is the fear that privatisation will further widen the gap between the rich and the poor.

One argument that has always been used to promote privatisation and used to counter the argument for equity is the argument that the private sector is more efficient. But the Senior Staff Association of Statutory Corporations and Government owned companies showed that the experience of Nigeria Ports Authority (NPA) does not support this claim. According to them:

The case of RORO Port when it was in private hands is still fresh in our minds as a glaring testimony of the anathema of privatisation. The RORO terminal, which was for many years managed by a private company, claimed to have generated paltry monthly revenue of forty four million naira (44,000,000.00). Out of this amount, it claimed that about thirty eight million naira (representing about 80 percent of the total income) was used to pay salaries and other sundry expenses. This left a profit of six million naira (N6,000,000.00) about 50 percent of which was paid to the NPA as profit. However, when the NPA took over operations, NPA recorded a staggering sum of sixty million naira as revenue. Out of this amount, only six million was used for payment of salaries and other overhead cost leaving a total of fifty – four million naira in the coffers of government. The Consultants in Port Management that operated in both Apapa and Tin Can Island Ports are equally glaring examples of the folly of privatised operations in Port management.

In view of the foregoing, we hereby submit that anybody advocating for the privatisation or concessioning of the Nigerian Ports Authority (NPA) is a saboteur to the socio – economic growth of this country.¹²

¹¹ World Development Indicators, 2002.

¹² Senior Staff Association of Statutory Corporations & Government Owned Companies, Nigeria Ports Authority Branch, Open letter to the President, Vanguard September 15, 2000.

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There are also concerns that the privatisation programme will reinforce male dominance and ownership of property in Nigeria. In fact, it can be argued that women were excluded from the privatisation process from the start. When the TCPC was set up in 1988, it had fifteen members all men.

c) Concerns About Implementation Problems

There are concerns in the civil society that the social environment of Nigeria and the way the privatisation programme has been implemented cannot lead to success. According to the World Bank, the chief architect of privatisation:

Most privatisation success stories come from high income and middle income countries. Privatisation is easier to launch and more likely to produce positive results when the company operates in a competitive market and when the country has a market friendly policy environment and a good capacity to regulate. The poorer the country, the longer the odds against privatisation producing its anticipated benefits, and the more difficult the process of preparing the terrain for sale.¹³

From the above quotation, four conditions are necessary for the success of any privatisation programme. First, the country should be either in a high or middle income bracket. But Nigeria despite its vast human and natural resources is a poor country. The Human Development Index ranking placed Nigeria in 148 out of 173 countries in 2002. Nigeria hosts the third largest number of poor people after China and India. Statistics show that the incidence of poverty using the rate of US \$1 per day increased from 28.1 percent in 1980 to 46.3 percent in 1985 and then to 65.6 percent in 1996.¹⁴ The incidence increased to 69.2 in 1997.¹⁵ If the rate of US \$2 per day is used to measure the poverty level, the percentage of those living below poverty line will jump to 90.8 percent.¹⁶

The second condition is that the country should operate a competitive market. The third is that there should be a good policy environment and finally a good capacity to regulate. Any keen observer of the Nigerian environment will know that these conditions are completely absent. A sincere privatisation programme will therefore begin by creating the necessary environment. This is why some commentators on privatisation insist that the privatisation programme should be part and parcel of a comprehensive public sector reform package. However, it has been argued that the Nigerian Privatisation exercise is not accompanied or preceded by an articulated and properly phased public sector reform and it will therefore not result in more efficient production of public goods nor will it make any significant positive impact to fiscal balance.¹⁷

It is instructive to note that the World Bank gives eight key lessons on experiences of privatisation.

1. Privatisation works best when it is a part of a larger programme of reforms promoting efficiency.
2. Regulation is critical to the success of monopolies.
3. Countries can benefit from privatising management without privatising the ownership of assets.

¹³ World Bank, 2003 *ibid*.

¹⁴ Federal Office of Statistics (FOS) (1996) *Poverty Profile in Nigeria 1980 – 1996*.

¹⁵ Central Bank of Nigeria (1999) p. 95.

¹⁶ World Development Indicators, 2002.

¹⁷ Amadi, S. (2003), *Privatisation Without Reforming*, a paper presented at a Privatisation Roundtable organized by Socio Economic Rights Initiative (SERI) at Airport Hotel, Lagos on Tuesday 22 July 2003.

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4. The sale of large enterprises requires considerable preparation.
5. Transparency is critical for economic and political success.
6. Government must pay special attention to developing a social safety net.
7. The formerly socialist economics should privatise in all possible ways that encourage competition, and they should experiment with all available methods that go beyond a case – by – case approach to privatisation.
8. In changing the public – private mix in any type of economy, privatisation will sometimes be less important than the emergence of new private business.

The Study concludes that:

Privatisation is not a blanket solution for the problems of poorly performing state owned enterprises. It cannot in and of itself make up totally for lack of competition, for weak capital markets, or for the absence of, or inappropriate regulatory framework. But where the market is basically competitive, or when a modicum of regulatory capacity is present, private ownership yields substantial benefits.¹⁸

Civil society activists in Nigeria are concerned that the lessons above are not taken into consideration in the implementation of the Nigeria privatisation programme. As noted above, the privatisation programme is not a part of a comprehensive public sector reform agenda. The question of providing an appropriate regulatory environment is not taken seriously. The implementers of the programme are in a hurry to sell off all state owned enterprises even without adequate preparation taking into cognisance labour, gender and equity issues. Both the political leadership and the implementers of privatisation are carrying on as if privatisation is the only solution to poorly performing state owned enterprises, smuggling and effective distribution of goods and services.

In addition, the standard procedures for privatisation are not followed as can be seen from the scandals that followed the aborted sale of Nigeria Airways to Airwing of UK which had neither solid capital base nor required experience to merit taking over the national carrier.

Finally, people are concerned that effective monitoring and evaluation of the privatisation programme in Nigeria is lacking. For instance, it has been documented that fifteen years after the initiation of the privatisation programme in Nigeria, there has not been a comprehensive assessment of the post – privatisation performance of affected enterprises.¹⁹

¹⁸ World Bank, 2003 *ibid*.

¹⁹ Usman, S. (2002) "Privatisation: Progress , Prospects" in The Post Express. September 3, 2003.

EFFICIENT ALLOCATION OF RESOURCES OR LOOTING THE PATRIMONY: A CRITICAL REVIEW OF PRIVATIZATION IN NIGERIA

*Chom Bagu**

INTRODUCTION

The debate on privatisation in Nigeria has tended to be forbidden in both language and approach. The International Financial Institutions (IFIs) and their local advocates seem to constantly and deliberately change the language and mode of discourse to deny the public the right to participate and vote their issues. Any time attempts are made to identify the interests that are at play in the process, such attempts and their sponsors are tagged “conspiracy theorists.” The impression being created is that any data being presented by the IFIs to justify privatization should be accepted on face value as being objective and accords in full with economic logic.

Privatisation itself both as a concept and as a policy, has traveled a long road in Nigeria. From a taboo word in the 1970s and early 1980s, it has gradually become a cliché in the 21st century where no national economic discourse is complete without reference to it. Indeed, advocates nowadays no more consider it necessary to justify its desirability as it seems to them that it is self evident. The concept and policy of privatization has become so key to the neo-liberal ideology which has taken hold of economics that today, we are often told that market forces upon which privatization is premised, are more intelligent and effective than human reasoning.

As part of an ideology which western capitalism has adopted as a way-of-life, privatisation has increasingly acquired the toga of a political rather than an economic policy. As a way-of-life, it has been placed in the zone of the sacred; beyond interrogation by mere mortals even when their lives and welfare are at stake. In fact Margaret Thatcher in her time admitted the concept to the holy club of “TINA”, meaning, There Is No Alternative. These efforts to deny a free public debate on privatization by such powerful forces, suggests that its potency may not be as obvious as claimed.

The Obasanjo government which can more properly be termed an “off-shoot” of General Babangida’s SAP regime seems to found its economic policy on privatization. No sector of the economy is being exempted, oil, electricity, health, roads, water, you name it. And yet this government was elected in 1999 because of Obasanjo’s claim to nationalism. His spin doctors used to tell us then that Obasanjo can die for Nigeria. His nationalization of key economic institutions like the banks, indigenisation of the “commanding heights” of the Nigerian economy in the late 1970s, were touted as good reasons to elect him. Moreover, on May 29, 1999, the retired general swore by the Bible to uphold the 1999 Constitution in whose chapter 2, section 16, in no precise words mandates the government to control the “major sectors” of the national economy. The question is, why the policy somersaults? Is it that the retired general has truly changed his views or is he dancing to a new tune?

This paper attempts to review the present government’s privatization program and counter pose it with the provisions of the 1999 Nigerian Constitution particularly the Directive Principles of State Policy. To lay the foundation for this review, we will interrogate the philosophy of liberalism from which the policy of privatization is derived. We particularly want to locate the

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concept of market forces in the general functioning of capitalism. This is a necessary part of the paper because we need to know whether privatization is a political or economic policy.

BACKGROUND

For most Nigerians of this generation, the justification for privatization is yet to make sense. Bred in the era of the oil boom when money was said not to be a problem but how to spend it, they cannot just understand the neo-liberal argument that market forces are the most efficient allocators of resources. More so that oil resources are still plenty and the so called economic liberalization program has lasted two decades with things rather than get better, are in fact getting worse. What is more worrisome is that the more the country sells its national patrimony, the more government bureaucracies get corrupt and shirk their constitutional responsibilities of attending to the welfare of the people.

Since privatization is derived from the ideology of liberalism, it may be useful to locate where this ideology emanates. According to Weinstein, a historian of American corporate governance, liberalism has always been the political ideology of the rising and then dominant business groups (Weinstein, J. 1968). Changes in the articulation of the principles have only been due to the changing needs of these groups. Hence the thrust of early 19th century liberalism in the western capitalist world was directed against state chartered monopoly. This was led by small businesses, peasant farmers and artisans. A half a century of laissez faire which came in the wake of this campaign against state chartered monopoly, so-called free competition had created its own monopolies. In response to this new form of monopoly, in the mid 20th century, a movement arose to fight what it considered big business strangulation of free competition, this time championed by a new generation of capitalists whose source of wealth was financial manipulation rather than manufacture.

Key to this ideology of liberalism particularly its new form is the heavy reliance on market forces, which its advocates claim to be the most efficient mechanism for allocation of scarce resources. The efficiency argument proposes a model of development in which resources are allocated on the basis of market forces rather than human needs, that optimizes resource use and enhance productivity. William Greider in his monumental book, "Secrets Of The Temple" (Greider, W. 1987) has however shown that the US Federal Reserve (Central Bank) has never had much confidence in these market forces to do the job, but manipulates money supply and interest rates to modify the behavior of American citizens and consumers and determine their consumption and investment patterns.

By decreasing or increasing the money in supply and the cost of borrowing money, the US Federal Reserve influences the desires of the people of the US, not through market forces, but by arbitrary action:

The idea" Greider says, "of government rationing any commodity was naturally repugnant to the free market ethos of American politics. A system that rationed money in a way that favored the largest enterprises and wealthiest individuals would seem to be especially offensive. Except that very few people understood that this was how monetary policy worked" Yes, how monetary policy works, not through market forces but by government manipulation.(Greider, W. 1987: 138).

As it relates to the third world, matters are even graver. Market forces were not as dependable as the imperialist countries took deliberate steps to deny these countries even the right or the opportunity to develop their economies. Wolf, an investigative journalist working for a left magazine in the US with the title, "Executive Intelligence Review" exposed in an article in the

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magazine's edition of May 24 1996, that faced with the prospects of independence by its colonies in the 1940s, British Imperialism decided to shift the battle from the control of land to the control of the mind. In his article titled "Tavistock's Imperial Brainwashing Project", Wolf quoted Churchill as saying that to control what men think, "offers far better prices than taking other peoples' land or province or grinding them down in exploitation." "The empires of the future" Churchill added, "will be empires of the mind" (Wolf, L. 1996: 24).

To implement this colonialism of the mind, the newly created United Nations and her other agencies were infiltrated and its platforms converted to "the world's longest, continuously run brainwashing program-for third world leaders". Those who entered its bureaucracy, Wolf adds, lost touch with reality and where brainwashing failed as was the case with Nkrumah, Lumumba and Seiko Toure, those leaders were dethroned, isolated or murdered. However, this did not deter other third world leaders as they took the opportunity of independence to build national economies that responded to the needs of their people. This not only created the possibility of these countries firmly taking the route of industrialization, but posed a threat to the imperial control and exploitation of the resources of these countries. The same British Imperialism Wolf reveals, started a process that would keep these countries as semi-industrial, mineral-extractive economies.

The way this worked was through research into psychology on how to get a country to make "critical choices" in which all the choices are bad. Research by Her Royal Majesty's psychologists found that an individual would make such critical choices with equally bad outcomes when placed under extreme stress. The reality was that if a country was put under extreme stress called "social turbulence" or "shock therapy", it could be manipulated to make choices that are against its own interests. Hence, using the UN agencies from the 1960s onward, third world nations were subjected to social, economic, cultural and political shocks to force them to engage in what is called "defensive adaptation." It was for this reason that the IFIs led the third world through so called industrial take-off in the 1960s, import substitution in the 1970s and structural adjustment programs in the 1980s.

It is important to understand this game otherwise we have no hope of ever getting out of the economic woods. Following the IFIs and their esoteric models and formulae of development has not taken any country out of underdevelopment. Only those stubborn countries like Malaysia, India, China and a few others that took their destinies into their hands were able to escape the trap.

JUSTIFICATION FOR PRIVATIZATION

In response to the devastation of the Second World War, most governments in the capitalists world were compelled to take control of the major sectors of their economy partly to be able to effect rapid reconstruction and secondly to provide welfare services to their citizens who had been devastated by war and were on the verge of revolutionary revolt. In the third world also countries coming out of colonialism considered the establishment of state owned enterprises (SOEs) as part of the independence process to extend indigenous control over the economy then dominated by colonial capital. SOEs were also seen as necessary to provide the impoverished citizens with access to employment, education and other social services as a form of dividend of independence (LRR1, 2002:4). Some of the successful cases of this form of development in Ghana, Guinea, Democratic Republic of the Congo where some form of African Socialism was experimented with, met stiff resistance from the imperialist countries. Some were toppled, isolated and even murdered.

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At a general level however, as has been well documented, these newly independent countries were induced to collect loans for elephant projects which was to become a great burden in the 1970s and 1980s. With a debt burden beyond its means and investments that were poorly planned or managed, justification was found to place these countries under socio-economic shocks which were to force them into “defensive adaptation”. To assist in this process, a neo-liberal ideology was articulated mainly by economists in the service of Margaret Thatcher and Ronald Reagan, Prime Minister and President of the United Kingdom and the US respectively. While in western capitalist countries, neo-liberalism engendered the introduction of flexible manufacturing technology, the growth of the service sector, financial speculation and deregulation of labor management, in the third world, neo-liberalism claimed that the state has no business regulating the economy not to talk of owning business itself. This function should be left to market forces more so that government in the third world is inherently corrupt. The second injunction was that government is most effective when it is lean and when they have dispensed with social spending and eliminated budgetary deficits. Third world countries should liberalize and open their economies to foreign trade and investment and allow limitless repatriation of profits so that they can encourage foreign direct investment.

To enforce this new ideology, the IFIs, the US treasury and the European capitalist countries concocted the “Washington Consensus” which imposed the so-called IMF conditionalities for debt forgiveness. Critical among these conditionalities are fiscal austerity, privatization and market liberalization (Stiglitz, 2002:53). These consensus was in response to developments in Latin America where the governments in that continent in 1980s had ran huge debts and budgetary deficits partly from loses incurred from poorly managed state enterprises that were insulated from competition and while charging high tariffs, they provided poor services. Also inadequate monetary policies induced hyperinflation, low incomes and economic stagnation.

Those countries that refused to accept these conditions were placed under extreme stress and in most cases overthrown. Those that accepted were forced to swallow the bitter bills of liberalization, privatization, withdrawal of subsidies from social services, etc. (LRR1, 2002: 9). I am repeating this history because the force and compulsion used to force privatization on third world countries is instructive. If the policy made such economic sense, why did the third world people not adopt it on their own? Why compel them? While it could be said that some of these policies made sense on a case by case basis, the problem is as Stiglitz a former chief economist of the World Bank argues, “these policies became ends in themselves.....pushed too far, too fast and to the exclusion of other policies that were needed” (Stiglitz, 2002: 54).

Even for Stiglitz an insider, there should be some important preconditions that have to be satisfied before privatization can contribute to an economy’s growth. And even the way the policy is executed makes a difference, he argues. The precondition and the approach could only be determined by a concrete study of each country and peculiar economic history and social institutions. However, the IFIs approached the privatisation program from an ideological perspective. Whether the particular form of privatization was ill suited to the economic problems of a particular country was not taken into consideration. Privatization, fiscal austerity and liberalization were placed on the fast lane on the assumption market forces were the solution to every problem facing a developing country.

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Yet, there are examples that markets have failed in many instances and countries. The advanced capitalist countries, if history is anything to go by established their social security and unemployment systems when there were either no private ones or those that existed were inadequate. In the post colonial countries, SOEs were established because no private capital existed or was interested in investing in such enterprises. Without government investment in such sectors, there would have been a wide gap or non-existence of such services.

This is why the result of this neo-liberal scheme has been a disaster. In most cases, though SOEs have changed hands, services are yet to improve while costs have become so prohibitive that large sections of the population can no more afford them. In the essential service sector, withdrawal of government participation and the entry of private capital has brought a lot of suffering. Whether electricity, fuel, telephone, houses, roads or water, increase in prices have hardly improved services significantly. But more serious have been the collapse of critical services like education, health and pipe-borne water. These services have totally collapsed and made it even more difficult for these countries to ever dream of development.

PRIVATISATION AND THE CONSTITUTION

As I have tried to show, privatization has nothing to do with the welfare of the Nigerian people and the best way to gauge this is to counter pose it to the requirements of the 1999 Constitution. This Constitution though imposed on us by the Military, was compelled to recognize the rights of the Nigerian people and the responsibility of government in that regard.

Chapter 2, section 16 of the 1999 Constitution provides among other things that the government shall;

1(b) control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.

2(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good.

2(c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group, and

2(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

These constitutional provisions definitely did not seek to leave the destiny of Nigerians in the hands of some unseen market forces but squarely directs government to positively pursue these objectives. The result of nearly two decades of privatization shows that rather than achieve the goals set by the Constitution, the policy has violated and debased the above state objectives.

The Constitution is not done with the matter. It even goes further to provide for some active steps that should be taken to protect these state principles. Section 16 4(a) adds that “the

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reference to the 'major sectors of the economy' shall be construed as a reference to such economic activities as may from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the government of the federation; and until a resolution to the contrary is made by the National Assembly, economic activities being operated exclusively by the government of the federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to be major sectors of the economy" This is the Constitution that President Obasanjo swore to uphold.

On May 10, 1999, the military government which was leaving office purportedly enacted the Privatization and Commercialization of Public Enterprises Decree NO. 28. The Constitution provides in Chapter 11 Section 16 (3) that "a body shall be set up by an Act of the National Assembly which shall have power to (a) review from time to time the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on same". The unfortunate nature of this decree increases when it is revealed that the National Assembly is yet to enact any law demarcating 'major sectors' of the economy. So where did the Obasanjo government derive its powers to operationalise the National Council On Privatization? When in fact the Constitution mandated the government to create an agency that would serve as a watch-dog for Nigerians against attempts to pilfer and confiscate the national patrimony.

In fact the Constitution goes on to mandate the government to pursue other people oriented policies. Under the Social Objectives, Section 17, 2(d) provides that "exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented."

These two sections alone make it clear that the current privatization program is unconstitutional. The program by making Nigerians unemployed and uneducated and poorer goes against the very grain of the Constitution. The implementation of the program has also seen a lot of illegalities and arbitrariness. The anticipated privatization of NEPA and the Refineries is about to take place without adequate consultation with the people who would be directly affected. Without serious environmental impact assessment or a conflict vulnerability assessment, important measures that would help determine what rights and interests would be breached, so that they could be taken into consideration while evaluating the assets of the companies involved. The haste and manipulative way the privatization has been taking place can only lead this country to more wide spread conflict and the associated suffering by the poor.

What makes this particular phase of the privatization program a tragedy is the fact that the government is not even committed to any principles. While selling off the national patrimony with reckless abandon, its greed makes it to hold tight to centralization of the country. The National Insurance Trust Fund (NISTF), a statutory agency is being threatened by the government. The government has presented a bill to the National Assembly seeking to create a National Social Insurance Commission which will bring both private and public insurance schemes under government control. Apart from the fact that this is against the privatization ethos, the purpose of the Bill is simply to assist it renege on its statutory duty to provide for the pension of its workers who it owes about two trillion naira.

Luckily the people are no more waiting for the so called messiahs; they are taking things into their own hands. Only last week, it was reported (The Comet, 6/11/03 P. 24) that the Organized Private Sector comprised of Manufacturers Association of Nigeria, National Association of

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Chambers of Commerce, Industry, Mines and Agriculture and National Employers Consultative Assembly are opposed to government's pension reforms which wants to harmonize public and private sector pensions describing it as a "recipe for anarchy." The three tiers of government it alleged owe about 2 trillion naira to their retirees. Sections of labour are also fighting this rather fraudulent attempt for the government which after squandering national resources in rigging elections and the 8th African Games is desperately looking for cheap money. The point here is, what is a regime of privatization doing with centralization of pensions? The search for cheap money is assuming a scandalous dimension when the government is now resorting to irrational hikes of the prices of petroleum products and the devaluation of the naira so that government can get more naira from dollar sales to enable government to fund frivolities.

DEFENDING THE PATRIMONY

For a long time, the struggle against imperialist policies like privatization was led by the labor movement under the umbrella of the Nigeria Labour Congress. However, as has become obvious, labour appears to have shifted grounds and seems to support privatization of public enterprises. The current President of the Nigeria Labour Congress is not only a member of the National Council on Privatization, but was part of the Vision 2010 committee that laid the foundation for the present privatization program. All the razzmatazz about labour fighting against fuel price hike is what Claude Ake would have called "defensive radicalism", a radicalism that shrouds duplicity.

The bigger fight waiting to happen over privatization will most likely be related to the privatization of NEPA and the Refineries. The Bureau for Public Enterprises (BPE)'s attempt to manipulate the host communities of the Refineries in the name of sensitizing them in readiness for the privatization process met a stone wall. Rather than accept the fake assurances of the BPE spin doctors, the communities responded with claims for compensation which already run into billions of naira. The communities in Niger State where most of the hydro-electric dams are located have also let it be known that when NEPA will be privatized, they will expect to be paid for their land which was acquired without due compensation. In the haste to confiscate Nigeria's patrimony, the government has failed to do ordinary due diligence. These lands on which national assets like NEPA and the Refineries were constructed were acquired for public use as the 1978 Land Use Act provides for. Now that they will be handed over to private owners to use for private profit, the host communities deserve and are ready to fight for full compensation. Should this not be settled before the privatization process, there is every likelihood of wide spread violent resistance.

CONCLUSION

In conclusion, it is interesting to note that no government in living memory has reversed itself as the Obasanjo government. Apart from reversing nearly every policy his military regime enacted, there is no attempt to balance the expectations of the electorates for social improvements and commitment to the greed of the IFIs and the economic elite. The dividends of democracy which government harps on seem to be exclusively for the elite who held sway under the military. In their arguments, the neo-liberalists that have taken over economic policy conveniently forget that it is this same free market or market forces that created mass poverty

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and destroyed Nigerian owned industry. Even the Central Bank is being privatized under the guise of independence from elected officials. Dogmatic belief in the virtues of foreign capital as the engine of growth blinds the government to the precariousness and vulnerability of such a policy. For instance, a fall in the value of the naira easily wipes out any gains in income and capital formation and leads to a succession of austerity measures.

More important is the fact that government is ready to ignore the Constitution and the voices of Nigerians to force through this reckless program of privatization. To leave the fight to organized labor is to underestimate the gravity of the situation. We need to develop other platforms to respond to this threat to the very survival of the country. This is more so that when those institutions like NEPA, Refineries, etc, that still hold the country together are gone, then the country may as well implode like it happened in Liberia, Sierra Leone and The Democratic Republic of Congo.

It is submitted that the following needs to be done:

1. A referendum for Nigerians to vote on the desirability of the government's economic policy particularly the privatization program.
2. A thorough review of all government owned companies to establish which ones need to be commercialised and which need to remain under state ownership and those that need to be sold off. Any government that cannot manage the national patrimony should be forced to resign, so that those who are willing can take over.
3. Alternative policies to privatization like the Mongolian model where all citizens were given shares in SOEs as social insurance which they can use to source for loans could help to meet some of the requirements of the Constitution, and
4. Rather than privatize, government should set in motion a process of rehabilitating all layers of the Nigerian education system, the Railway system, universal electrification and the expansion of the water system to cover domestic use and agriculture.

These policies will not only meet the mandates of the Constitution, but get our restive youths off the streets and violent crimes and get the economy back on the path of growth.

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*Amakom Uzochukwu**

1.1 ORIGIN AND MEANING OF PRIVATISATION

Adam Smith [1776] in his book *Wealth of Nations* argued that: “*In every great monarchy in Europe, the sale of the crown lands would produce a very large sum of money, which if applied to the payment of the public debts, would deliver from mortgage a much greater revenue than any which those lands have ever afforded to crown....When the crown lands had become private property, they would, in the course of a few years, become well improved and well cultivated.*” The above statement is to sustain the claim that privatization is not new, rather the practice is what seems to be new. To different people and different schools of thought, privatization means different things.

Starr (1987) refers to privatization as a shift from publicly to privately produced goods and services while De Walle, (1989) regards privatization as the transfer of ownership and control from the public to the private. Bailey (1990) regards privatization as a general effort to relieve the disincentives towards efficiency in public sector enterprises by subjecting them to the incentives of the market while to Clarke and Pifelis (1993) it is regarded as the sale to the general public, shares in at least 50 per cent of the assets and earning power of previously state-owned corporations.

According to *The Florida House of Representatives Committee on Governmental Operations*, privatization involves: engaging the private sector to provide services or facilities that are usually regarded as public sector responsibilities; shifting from publicly to privately produced goods and services; transferring government functions or assets, or shifting government management and service delivery to the private sector; attempting to alleviate the disincentives towards efficiency in public organizations by subjecting them to the incentives of the private market and using the private sector in government management and delivery of public services. Summarily it can be seen from all definitions that privatization involves ownership change from public to private.

Presently around the globe¹, privatization occupies a critical place in the efforts of many developing countries including Nigeria who are working towards economic restructuring. It is estimated that since the 1980's, more than 4000 privatization transactions have been completed in Africa with a combined sale of over US\$10 billion (Enweze, 2001). This implies that an estimation of over US\$14 billion of Public-Private Partnership transactions have been undertaken in Africa between 1990-1998 due to impotency of the public sector in creating wealth arising from factors like poor management/sporadic maintenance, high costs, inefficiency, heavy losses, multiple and conflicting objectives determined by politicians, lack of residual claimant to profits amongst others. The issue of privatization then rotates on a financial principle that suggests the government striving towards providing services without creating an undue burden on taxpayers and another principle that suggests free market process offering benefits that are not easily identified within the public sector. Hence the political economy of privatization depends on the available coalitions. In other words, right-wing²

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¹ See figure 1 for the global privatization trend.

² Governments that design privatization to spread share ownership and foster popular capitalism.

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coalitions will be more prone to favour market economy and privatization than the leftist³ governments. This implies that political preferences help in shaping privatization process.

1.2 General Objectives of Privatization: In general terms Privatization is engaged in any economy to accomplish the following:

- ∅ Engage the private sector in providing services or facilities that are usually regarded as public sector responsibilities,
- ∅ Shifting from publicly to privately produced goods and services,
- ∅ Transferring government functions or assets, or shifting government management and service delivery to the private sector,
- ∅ Attempting to alleviate the disincentives towards efficiency in public organizations by subjecting them to incentives of the private market,
- ∅ Using the private sector in government management and delivery of public services.

Also included as part of the general objectives of privatization are the following arguments in favour of privatization:

- Helps governments save money in management and delivery of public services,
- Allows for speedy implementation of certain programmes,
- Provides high-quality services in some areas,
- Becomes necessary when government lacks the expertise or personnel to carry out certain programs,
- Uses more innovative approaches and technology,
- Helps dissolve unnecessary government service monopolies,
- Offers services more effectively due to flexibility and reduced red tape,
- Slows the growth of government or downsizes government expenditure
- Introduces competition between government employees and private providers,
- Provides an alternative to traditional ways of improving government productivity,
- Generates funds for the Treasury,
- Promotes corporate governance,
- Attracts back flight capital,
- Attracts foreign investment,

³ The leftist governments are more inclined towards reducing social inequalities and broadening of government size. The leftist considers privatization justifiable if revenues gained from the process are used for redistribution.

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- Strengthens domestic capital market,
- Reduces corruption,
- Reduces the debt burden and fiscal deficits amongst others.

2.0 Models of Privatization: Models, mode or form of privatization has been observed to depend largely on the objectives of the government and the particular need of the country. Also different political institutions matter in explaining one country's ability of implementing policies with significant distributional consequences such as privatization, with *majoritarian political systems*⁴ as opposed to *proportional systems* more likely to privatize [Bortolotti and Pinotti, 2003]. (See box 4 for details). *The mode of divestiture chosen for a particular enterprise necessarily depends on a blend of political, commercial and strategic objectives* (Agbodo, 1996). Below are some of the models of privatization used by different countries.

2.1 The Management-Employee Buyout Method [MEBO]

The MEBO⁵ system involves the transfer of shares to employees at giveaway or low prices usually employed in transition economies due to the relative ease of administrative and political implementation. This method has been criticized on the ground that it is ill-suited to the restructuring demands of the transition and favoured on the basis of improvement of workers incentives, company loyalty and support for restructuring. According to Earle and Telegdy [2002], if ownership is widely dispersed among employees, it may also facilitate takeovers by outsiders and on the other hand, employees may lack the necessary skills, capital, access to markets and technologies necessary to turn their firms around. The MEBO system has been employed in Romania, Russia, Hungary, Poland, etc with the Romanian case yielding overwhelming employee ownership⁶. Its practice was common in 1994-1995 and it remained the single most important privatization method in Romania. This system provides interesting results in testing the effect of dominant employee ownership in a large number of privatized firms.

2.2 Partial Sale Of Company To The Public

This method exists when privatization process is gradual just like the case of British Petroleum⁷. The number of shares owned by the state in this method reduces from time to time. In some cases, it is often observed that governments sold shares of a state owned firm while still retaining a portion of the company⁸, thereby maintaining a limited degree of control over the company. The practice is common in both OECD and non-OECD countries.

2.3 The Mass Privatization Program [MPP]

This method is referred to as the *voucher method*⁹ and is widely used in Eastern Europe. This method according to Boycko, Shleifer and Vishny, [1994] is favoured for the fact that the speed of privatization could be increased by overcoming the problems of insufficient demand due to low domestic savings and reluctance of foreign investors. The method tends towards

⁴ Majoritarian systems are characterized by a set of institutions which tend to reduce the number of players which in turn provides higher executive stability while the proportional systems tends to disperse decision making power among different actors so that the executives are weaker and characterized by higher turnover

⁵ Evidence suggests that MEBO firms are hybrid organizations, part public corporation and part producer cooperative.

⁶ The fraction obtained by insiders in Romanian MEBOs was frequently 100% as the Public Ownership Fund [POF] often sold their shares simultaneously with the State Ownership Fund (SOF).

⁷ Partial Government ownership dates back to 1914 and in 1977 government ownership was reduced from 66 percent share to 51 percent, to 46 percent in 1979, 31 percent in 1983, 2 percent in 1987 and finally to zero percent in 1995.

⁸ Otherwise referred to as a golden share

⁹ One that ensured maximal dispersion of ownership by prohibiting the trading of vouchers and the formation of intermediaries [Earle and Telegdy 2002]

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jump-starting domestic equity markets with a rapid release of shares, though there is likely to arise the issue of risk of highly dispersed ownership structures. This is normally addressed through the creation of intermediaries either by the state as part of the program or by private parties competing for individual vouchers. Other countries that have applied this method include Poland, Romania, Czechoslovakia, China, etc. This method has the potential of reducing the large stake usually kept by the state especially when more of the shares are offered for sale. Due to the spread of shares, the method usually has an inevitable ownership structure heavily dominated by the state which at long last usually retains the majority while the possibility for a positive firm performance rests on some indirect mechanism¹⁰.

2.4 Privatization Through Sale Of Assets

This can be carried out through a public offering and if successful has a short term immediate benefit to the government in form of increased revenues which it can use to finance expenditures, repay loans or defer tax increases. Also, the long term benefit to the government stems from reduced burden of government, cessation of subsidies and the efficient provision of services or goods by the private sector. This option has a problem because if assets sale replaces public or state monopoly with private monopoly without liberalizing whatever legal restrictions that prevent entry and competition, the efficiency argument for privatization would be meaningless. Also nothing is inherent in the behavior of the private sector that prevents it from seeking subsidy from the government and there is no guarantee that the government will stand strong against the newly organized private interests [Staff, 1990]. It is also criticized on employment ground. This is true because if private sector efficiency means loss of jobs, then unemployment will add to tough social problems hence government is likely to respond by increasing social spending which in effect negates the short-run benefit. See box 1 below for the implications of assets sale in Africa.

Box 1 Implications of Assets Sale in Africa

In the context of Africa, the asset sale strategy will be of limited use. For one thing, many African countries do not have well developed capital markets and sufficient entrepreneurial talent well versed in finance and commerce. Secondly, since domestic capital in the form of private sector savings is scarce, foreign investors must be encouraged to fill the gap. Many Africans do not support sale of SOEs to foreign investors because they view it as another attempt by the West to re-colonize Africa. Of course, one might argue that those who oppose privatization by appealing to economic nationalism are merely protecting their own interests at the expense of the rest of society (Hanke and Walters, 1990). Perhaps, there is no evidence to show that private ownership, domestic or foreign, has produced significant efficiency gains in Africa. Another characteristic of asset sale strategy that would make it less suitable is that equity valuation is a complex and time consuming process and it is virtually impossible to make adequate estimates of firms' current and expected values in a non-market environment.

Source: FekruDebebe, 2000; 11

2.5 Privatization Through Sales To Outsiders

This involves case-by-case sales of large blocks of shares to outside investors with close-bid-tender¹¹ as the most important instrument. Earle and Telegdy [2002] argued that the sales method has intrinsic problems that tend to make it slow and uncertain while multi-criteria tenders that naturally invoke lack of transparency in the process abound since there are no announced or pre-determined weights for the various aspects of the bid¹² and potential

¹⁰ Mostly through secondary sales leading to increased private ownership concentration.

¹¹ This method involves not only the price offer but also the business plan, investment and employment promises and other considerations to be taken into account by the State Owned Fund [SOF] during buyer selection

¹² The bids are not publicly revealed after the tender, making it difficult to monitor SOF's decision.

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participants are left guessing about the trade-offs among them. The selection process can be easily manipulated due to lack of an objective criterion and non-transparency of the procedure. Summarily, this method has a cumulative effect of further reducing demand thereby making sales more difficult as potential investors become more reluctant to participate in a doubtful environment. Romania, Slovenia, Poland, Russia has been known to use this method.

2.6 Privatization Through Public Offerings

The decision to divest an enterprise through public offering is informed by factors like the need for wide share ownership and the development and strengthening of the capital market. Before an enterprise can qualify for public flotation on the Nigerian Stock Exchange, it must have been profitable for five consecutive years with a track record of payment of dividends for three years running, and offer at least 25 percent of the equity capital [Etukudo 2000]. Nigeria and other African countries are known to heavily apply this method. Other countries that practice this method are Chile, South Korea, Malaysia, Singapore, etc.

2.7 Sale Of A State Owned Company To Another Company/Consortium/ Conglomerate

Governments may choose to sell state-owned utilities to companies irrespective of origin¹³. A good example is seen in Bolivia privatizing the state electricity monopoly by breaking it into three electricity generation companies and directly selling them off to foreign, primarily U.S utility companies.

2.8 Deregulation

Deregulation is another form of privatization mostly used in the energy sector.¹⁴ In the United States, it was most recently used in natural gas transportation and electric power generation and transportation. Electric power generation, transmission and distribution have long been held up as a model for the natural monopoly. However as the notion of what constitutes a natural monopoly has evolved, so has the justification for maintaining government controlled utilities.

2.9 Removal Of Subsidies

Removal of subsidy is also a form of privatization exercise that has been applied by some countries. A good example is the removal of subsidies for the European coal operations, which precipitated the construction of Europe's coal mining industry and encouraged a large shift in coal investment from European mines in the United States, Australia and Latin America.

2.10 Voucher Schemes

Communist countries widely used this method of privatisation. It is a mechanism designed to increase the purchasing power of selected groups of consumers and under this scheme, the government distributes vouchers to eligible consumers so that they can purchase goods and services from private suppliers [FekruDebebe, 2000;13]. This method is adopted where ownership of an industry is simply transferred to the general public with no cash exchanged. This method arose due to lack of developed equity markets. After the initial distribution of vouchers, individuals have been allowed to buy or sell share vouchers, thereby encouraging the creation of stock exchanges. Most times the transfer of ownership has been implemented with labour and management being allotted favoured shares. Countries that have applied the voucher system of privatization include United States, Czechoslovakia, Romania, Soviet Union, etc.

¹³ Foreign or domestic

¹⁴ See *Energy Privatization of the United States*.

2.11 Contracting And Leasing

This is another less visible form of privatization than asset sale. The government in this method uses private enterprises for the provision of goods and services. The private contractor is expected to deliver goods and services to the government or to the public according to the terms and conditions specified in the contract. In this method, if the low cost providers win the bid, contracting results in cost savings to the government and vice versa. To ensure greater internal efficiency, retention and continuity of private management should be predicted upon performance. The strategy is less visible, avoids suspicions often associated with foreign ownership of African assets and diffuses the re-colonization issues [FekruDebebe, 2000; 11]. It has proved effective and feasible in Africa especially *management contracting*¹⁵. Other variants of contracting include franchising¹⁶ where the government grants an exclusive right to a private firm to produce and deliver the service. African countries that use this form of privatization are Benin, Burundi, Congo, Cote d'Ivoire, Gambia, Kenya, Madagascar, Mali, Niger, Nigeria and Senegal. The process widens the options of government and to some extent it could retard the adoption of the more market based forms of privatization in Africa.

2.12 Deferred Public Sales

Deferred public offerings are common in Ghana, Nigeria and Zambia. Under this system, the sole purchaser is expected to sell, after a stipulated period, a certain percentage of shares to the general public so as to enable a large proportion of the population to benefit from the privatization programme. Pre-emptive sales practice is instead common in Kenya while in Uganda, the public auctioning of shares prevails since this method makes for a greater participation of Ugandans in the sale.

2.13 Direct Sale Of The Entire Company To The public

Direct sales in Sub-Saharan Africa for example constitute virtually the only technique, and this signifies a reflection of low value of assets, the underdevelopment of local capital markets and the widespread use of privatization by liquidating the firm and selling the assets [Sader, 1994]. This involves the transfer of ownership of industries or companies swiftly and completely to the public. The market in this method is allowed to determine the value of companies through the bidding process. The auctioning off of a company in some cases has revealed a divergence between newly discovered market value and the previous book value of the company as recognized by the government. Countries other than Sub-Saharan Africa that used the method include Argentina, United Kingdom, Chile, New Zealand, etc.

The method of privatization conclusively is directly related to the objectives of the economy in question and the ultimate transparency of the tender method depends more on the honesty and competence of its administrators than the stock issuing. Table 1 below shows the frequency of each method of privatization employed in Africa. Empirical results have shown that the effect of the model adopted is not the problem. The problem lies in transparency in administering it.

¹⁵ In this case enterprises remain in the hands of governments but their operations are privatized through management contract.

¹⁶ Commonly used for public utilities.

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Table 1: Methods of Privatization in Africa (1991-2001)	
<i>Method of Divestiture</i>	<i>Number</i>
Shares sold on competitive basis	728
Asset sold on a competitive basis	454
Liquidation	386
Shares sold to Existing Shareholders with Pre-emptive Rights	158
Lease	104
Direct sale of shares (i.e. non-competitive)	94
Shares sold through public floatation	69
Not specified	48
Restitution to former owner	47
Management contract	42
Management/Employee Buyout	33
Direct sale of assets (i.e. non-competitive)	29
Joint-venture	28
Free transfer of assets	12
Transfer to Trustee	11
Debt-Equity Swap	10
Concession	8
JV(D)	5
Lease /Management contract	2
Merger	2
TOTAL	2270

Source: Nellis 2003; 21

3.1 Expectations from Privatization

At the firm¹⁷ or micro level, privatization is expected to alter managerial incentives, change the behaviour of enterprises and finally raise efficiency because deep restructuring according to Grosfeld and Roland (1996) requires new resources for investment in machinery, technology and reorganization, which at least in the initial stage have to come from sources outside the enterprise. For other expectations from privatization see table 2, box 2 and 3 below:

¹⁷ Enterprise

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Table 2: Expectations and Theoretical Underpinnings

Expectation [Indicator]	Theoretical Underpinnings
Profitability	As firms move from public to private ownership, their profitability should increase. First, given that shareholders wish the firms to maximize profit, newly privatized firms' managers should place greater emphasis on profit goals (Yarrow, 1986). Second, privatization typically transfers both control rights and interest for profits and efficiency relative to pleasing the government with higher output or employment (Boycko, Shlefer and Vishny, 1996)
Operating Efficiency	Following privatization, firms should employ their human, financial and technological resources more efficiently because of a greater stress on profit goals and a reduction of government subsidies (Kikeris, Nellis and Shirley, 1992; Boycko, Shlefer and Vishny, 1996).
Capital Investment	Government expects that greater emphasis on efficiency will lead the newly privatized firm to increase its capital investment spending. Once privatized, the firm should also increase its capital expenditures because it has greater access to private debt and equity markets and it will have more incentives to invest in growth opportunities (Megginson, Nash and Van Randenborgh, 1994)
Output	Following privatization, output should increase because of greater competition, incentives and more flexible financing opportunities (Megginson, Nash and Van Randenborgh, 1994). On the other hand, the theoretical model of Boycko, Shlefer and Vishny, (1996) predicts a fall in output since the government no longer subsidizes the newly privatized firm to maintain inefficient high output level.
Employment	Government expects the level of employment to decline once the SOE which is usually overstaffed turns out private and no longer receives government subsidies. However, in growing sectors, the newly privatized firms could absorb surplus labour through new capital investment and more productive use of existing assets (Kikeris, Nellis and Shirley, 1992).
Leverage	The switch from public to private ownership should lead to a decrease in the proportion of debt in the capital structure because with the end of government debt guarantees, the firm's cost of borrowing will increase and because the firm has a new access to public equity markets (Megginson, Nash and Van Randenborgh, 1994). Errunza and Mazumdar's (1994) model also suggests that, if bankruptcy costs are significant, once government guarantees are removed, the newly privatized firm should reduce its debt level.
Dividend	Following privatization, dividend payments should increase because unlike governments, private investors generally demand dividends and dividend payments are a classic response to the atomized ownership structure which most privatization programs led to (Megginson, Nash and Van Randenborgh, 1994).

Source: Boubakri and Cosset [1999; 27-28]

At the macro level, apart from efficiency, privatization has an urgent realistic justification behind it. See box 2 and 3 below:

Box 2: Privatization and Macroeconomic Performance

Apart from efficiency, there is a more urgent, pragmatic rationale for privatization: It provides fast cash for governments in need to reduce large budget deficits, cuts taxes and finances public spending. Regardless of whether the need derives from maintaining creditworthiness amidst mounting debt, honoring policy conditionality or meeting Maastricht criteria. Privatization of public enterprises-quite often in sound financial conditions-has offered a relatively easy way out to solve the budget deficit constraint. Yet, the link between bad economic conditions and an increase in the willingness to privatize [World Bank, 1995] should not be taken for granted. Brune and Garrett [2000] find that privatization is surprisingly promoted by good, not bad, economic conditions. Low inflation rates, low levels short-term debt and high per-capita incomes spur privatization. Only low investment levels have the same effect.

Source: Meseguer, 2002; 4

Box 3: Privatization, Fiscal and Macroeconomic Performance

Regarding the contemporaneous impact of privatization proceeds transferred to the budget, there is plausible economic and political arguments supporting both savings and spending hypotheses. The proceeds will be converted to another financial asset, and provided that the government's net worth is unchanged, there would be no change in the overall balance. Pragmatic considerations also suggest that proceeds could be saved for example if the timing or magnitude is either uncertain or unknown, the proceeds could be saved until the subsequent budget can allocate them. As for the spending hypothesis, a liquidation constrained government could find it optimal to use privatization to finance a large deficit. Moreover political economy considerations suggests that a government could be inclined to spend the proceeds, essentially viewing privatization as it would any other source of revenue.

Turning to the more structural questions, the privatization process could also have a direct impact on the structure of government finances. Total expenditure and net lending could change for several reasons, including a reduction in transfers and subsidies to enterprises that are privatized (although this money could be spent elsewhere); a change in interest payments following from either a reduction or increase in the debt stock; the assumption of any quasi-fiscal activities previously carried out by the privatized enterprises; or institutional arrangements that stipulate the terms for spending the proceeds (although such spending may not be captured in the budget accounts). Regarding revenue, the privatized firms could be subject to different tax regimes and potentially a different level of administrative scrutiny, either of which could produce a permanent change in tax revenue. Since tax revenue is measured as a share of GDP in the empirical exercises, higher profitability under private ownership could be hard to detect since both tax revenue and GDP would increase. Tax revenue could also temporarily increase if privatization included the settlement of any outstanding tax liabilities. Finally, non-tax revenue could decline if the privatized firm had previously been transferring profits to the budget.

The overall balance could either move temporarily or there could be concomitant changes in either the revenue or expenditure side of the budget. It could also change if the privatization leads to an increase in the government's wealth. For example, a privatization that leads to an increase in government wealth would allow the government to permanently increase the deficit.

The effect of privatization on real GDP growth, unemployment, and investment is also investigated. While the reasons to expect changes in these variables are readily apparent, the dynamic nature of the impact is also of interest. Therefore, it is important to distinguish between transitory (one period) and more persistent (several period) effects. For example, unemployment could temporarily increase if the privatization leads to significant layoffs in the privatized firms. This effect, however, would possibly be overtaken in time as the higher efficiency and profitability of the privatized enterprises begins to generate jobs. Moreover, the broader structural changes in the economy induced by the privatization could also lead to job creation both immediately and over the medium term (Kikeri 1998).

Source: Barnett (2000), "Evidence on the Fiscal and Macroeconomic Impact of Privatization", IMF Working Paper WP/00/130, p 4-5

3.1 Why Privatization In Nigeria Is Inevitable

In Nigeria, Africa's most populous state, privatization seems to be the only feasible means of salvaging the slumbering and some already dead major public utilities like the telecommunications industry, electricity generation and distribution sector, mining and other activities which the government fruitlessly and profligately funds. Consequently over 55% of non-performing national debts were of public sector origin. About 590 public enterprises exist in the Nigerian public sector with over 5,000 Board appointments attached, which accounts for an estimated 50% of total Gross Domestic product (GDP), 57% of investments and two thirds of formal sector employment. From 1975-1995 over \$100 billion was invested in public sector enterprises, which yielded only 0.5% returns within the period and as at December 2000, the total liabilities of 39 of these enterprises were in excess of N1.1 trillion, with accumulated losses of N92.3 billion [BPE Status Report 2003]. This is aside the cumulative value of Federal Government of Nigeria (FGN) investment by way of equity, loans and other transfers to about 62 enterprises estimated at nearly US \$70 billion-nearly a third of Nigeria's total oil revenue since 1973 (Bureau of Public Enterprises Status Report 2002:6). This implies that more outstanding loss or failure registered in public enterprises with the fruitless spending is likely to throw the economy into an abysmal dungeon if not checked.

As at 1999, N800 billion had been invested to strengthen and stabilize badly run public enterprises over the years aside from a total of N265 billion transfers to public enterprises in 1998 alone through subsidized foreign exchange, import duty waivers, tax exemptions/arrears, un-remitted revenues, loans and guarantees and grants/subventions (Fourth Pan-African Privatization Summit Report: 121-123).

Due to these facts according to Anya (2001) it has become a national policy imperative to disengage the public sector from those areas where the private sector has the comparable advantage to perform, while letting the state concern itself with the provision of infrastructure, security and the enabling environment for business to thrive through enhanced wealth creation.

Privatization, The Poor And The Vulnerable

There is a widespread impression that infrastructure privatization has hurt the poor in Latin America—even if there are many examples where governments have been able to benefit the poor through increased private sector participation [Estache, Gomez-Lobo and Leipziger 2000]. This is especially felt during infrastructure privatizations which are generally part of a wider set of reforms and the status of the poor reflects the interactions of multiple policy factors. Privatization can adversely affect the rural population in such areas as transport, electricity, banking and health. Public utility extends to the rural population as a social service

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with no profit motive. After privatization, the continuation of such services to the rural areas often proves unprofitable. It has therefore been suggested that, like in the case of transport, rather than government subsidizing the entire transport system after privatization, any subsidy should cover “only the lines that cover the poorer regions”. For other services like banking and health, there could be built-in tax breaks and subsidies so as to ensure that the services are profitable. Empirical evidence from *Columbia, Argentina and Chile*¹⁸ proved that privatization of infrastructure does not hurt the poor. Hence, from the microeconomic and macroeconomic standpoints, privatization can affect the poor and vulnerable [see table 3 and 4 below] through several channels as:

- * Losing from joining the formal economy and paying a higher effective tariff
- * Losing from changes in the tariff level and structure
- * Losing from changes in the prices and availability of substitutes and complements
- * Losing discretion in quality decision
- * See Table 3 below for the linkages between increased privatization of infrastructure and the welfare of the poor and the vulnerable.

Table 3: Microeconomic Linkages Between Privatization and the Welfare of the Poor and Vulnerable

Side effects of privatization	Possible sources of increase in cost burden for the poor	Possible mitigating factors and welfare gains for the poor
The cost of increasing formality	Revenue collection and discouragement of informal connections are likely to be more effective and result in increase in effective price paid	<ul style="list-style-type: none"> * A formal connection, even at a cost, may be a true aspiration of vulnerable households. * Safety likely to increase with the formalization of connections. * Informal connection may have been more expensive. * Reform can bring technology choices that lower costs.
The cost of tariff level adjustments	Average tariff levels can increase due to cost recovery requirements and need to finance quality related investments.	<ul style="list-style-type: none"> * Increase in average tariffs depends on pre-reform price levels and the distribution of the benefits of private participation between stakeholders. * Reform can cut cost significantly enough through improvements in efficiency or new technologies.
The costs of tariff structure adjustments	Tariff structures likely to be reformed in ways which could increase the marginal tariff faced by a poor household	<ul style="list-style-type: none"> * Competition likely to decrease average tariffs and may also compensate for any tariff rebalancing that affects the poor.
The costs of increasing the price of substitutes	Privatization may restrict access to some alternative services, especially if connection to public network is mandatory.	<ul style="list-style-type: none"> * Access to other types of alternative services will not be affected if foreseen in contracts. * Availability of communal services may increase as a result of privatization.
The costs of increasing the price of complements	The cost of obtaining a connection to the infrastructure services is likely to increase substantially.	<ul style="list-style-type: none"> * The cost of obtaining other complementary equipments is likely to be unaffected by privatization but will remain high
The costs of improved quality of service	Quality of service likely to improve, but this may make network services unaffordable for the poor	<ul style="list-style-type: none"> * There is considerable evidence showing that poor households are willing to pay reasonable amounts to improve quality of service

Source: Foster [1999], Estache, Gomez-Lobo and Leipziger [2000]

¹⁸ See Velez 1996, Chisari et al 1999, Navjas 2000 and Bolivia, Ajwad and Wodon 2000 for details.

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Table 4: Macroeconomic Linkages Between Privatization and the Welfare of the Poor and Vulnerable

Macroeconomic effect	Expected negative impact on poverty	Ameliorating factors
Economic growth	* May result in difficult transition as a result of tariff rebalancing and service mix changes (more or less standardization) which does not address the needs of the poor, in particular when there are no safety nets in place	* Over the medium to longer run, increased privatization of infrastructure should contribute to growth which in turn tends to reduce poverty levels
Reduction in employment	* Workforce often reduced soon after privatization. * Wages may also decrease for some of the workers during a transition period	* Depends to what extent poor households were employed by public enterprises and on the nature of the compensation provided to workers laid-off
Reallocation of public expenditure	* Reduction in overall subsidy allocation during transition as a result of fiscal adjustment may reflect lower priorities for privatized utilities	* Privatization revenue and better targeting may ease financing of the needs of the poor.

Source: Foster [1999], Estache, Gomez-Lobo and Leipziger [2000]

In cases where privatization turns public monopoly into a private monopoly, there is need for some form of regulation in order to ensure a successful management of the market-based economy. Some governments have therefore put in place regulatory mechanisms to protect the public interest, guard against the abuse of monopoly power, and ensure that the minimum coverage of services is provided [Etukudo 2000]. The regulation of monopoly power of privatized companies and the establishment of an appropriate enabling environment for forces of competition to flourish are essential adjuncts to privatization. Especially in the case of utilities where it is often difficult to have competition, it is essential to ensure that the market power of privatized companies is not deployed to the disadvantage of the consumers. Thus Sri Lanka and Malaysia have set up structures stipulating the form of regulatory regime.

Post-Privatization Performance In Africa

The debates over which privatization model works best and who is the owner of a particular firm should not however take precedence over the issue of what has happened in Africa during the privatization era. How well have these enterprises been performing and how has privatization been affecting the economy. See table 5 below for empirical findings from some African countries. Summarily it is on record that apart from Zambia, privatization has made most difference in other African countries like Mozambique, Cape Verde, Guinea Bissau, and Ghana.

S/No	Country	Author	Number of Enterprises	Empirical	Evidence	Remarks
1.	Cote d'Ivoire	Jones, Jammal and Gokgur [1998]	81	Micro-Level Positive [output, investment, labour productivity and intermediate-input productivity]	Macro-Level Positive [Annual net welfare benefits equivalent to about 25 percent pre- divestiture sales]	Performance met expectations

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2.	Ghana	Appiah [2001]	212	Positive [widespread quality gains for consumers, and increased employment and remuneration post sale]	Positive [Erasing pressure on balance of payments, increase in both allocative and x-efficiency, stimulation of local capital markets, inflow of Foreign Direct Investment {FDI},]	Performance met and even surpassed expectations
3.	Mozambique	Anderson [1998]	54	Positive [change in operating and financial performance]	Positive [productivity gains and improved capacity utilization]	Performance met and even surpassed expectations
4.	Tanzania	Anderson [1998]	63	Positive [change in operating and financial performance]	Positive [productivity gains and improved capacity utilization]	Performance met and even surpassed expectations
5.	Tanzania	Temu and Due [1998 and 2000]	158	Mixed effect [increase in operating efficiency but decrease in employment in 2000 in 16 firms by 48 percent]	Positive [increased government revenue, reduced subsidies to SOEs,	Performance met expectations
6.	30 countries [15 in Africa and the rest in Latin America]	Wallsten [1999]		Positive [competition enhancement]	Positive [regulation in telecommunication reforms]	Performance met expectations
7.	Guinea	Menard and Clarke [2002]	274	Positive [improved quality]	Positive [the poor and all parties benefited from privatization]	Performance met and even surpassed expectations
8.	18 Countries	Megginson, nash and Van Randenborgh [1994]	61	Positive [more profitable, increase in sales, operating efficiency and investment spending]	Positive [increase in employment]	Performance met expectations
9.	21 Developing countries	Boubakri and Cosset [1998]	79	Positive [increase in profitability, operating efficiency, capital investment, real sales and dividends]	Positive [increase in employment]	Performance met expectations

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10.	28 countries	D'Souza and Megginson [1999]	85	Positive [improved financial and operating performance]	Positive [improved competitive environment]	Performance met expectations
11.	12 countries in Africa	The World Bank [1995]		Mixed effect	Mixed effect	A lot still to be done
12.	Nigeria ¹⁹	Jerome [1997]	Telecommunication sector only	Positive [profitability and productivity gains were realized in addition to network expansion and modernization]	Negative [investment level remain low with the prevalent of excess demand]	A lot still to be done especially in the area of appraising the finished ones.

Efforts To Involve The Poor And Vulnerable In Nigeria's Privatization

According to [Etukudo 2000], in Nigeria, the Bureau of Public Enterprises (BPE) makes an effort to attract low-income groups as well as students by setting the minimum order amount of shares at only 100. Likewise as an encouragement to small investors BPE adopts an allotment procedure which reserves from 40 to 60 per cent of the shares to those investors purchasing 100 to 5,000 shares. For example, out of 39,428 applications for shares received in the Flour Mills Nigeria Ltd., 35,186 of these came from low income groups, i.e. 89 per cent to which 74.3 per cent of the total shares on offer were allotted. In the case of African Petroleum 117,544 applications out of a total of 130,476 valid applications, i.e. 90 percent came from the low²⁰ income groups and to this group 68.02 per cent of all the shares were actually allotted. Campaigns were also conducted by the former Director General of BPE *Mallam Nasir El-Rufai* in all the geo-political zones especially the South-East to create awareness of the short and long run benefits of privatization.

Privatization And The Nigerian Economy

The market capitalization of the Nigerian Stock Exchange (NSE) through which the shares were sold grew from N8.9 billion in 1987 (before privatization) to N65.5 billion in 1994 (after the Phase-I) and currently stands at N428.9 billion as at the end of August 2000 while the sale of shares and assets realized over N3.7 billion as gross privatization proceeds from the privatization of fifty five (55) enterprises whose total original investment according to the records of the Ministry of Finance Incorporated (MOFI) was N652 million. This represents less than 2% of the total value of the Federal Government's investments as at 30th November 1990 which stood at N36 billion.

The flotation of shares of privatized enterprises have greatly stimulated the rapid growth of the Nigerian Capital Market and helped to deepen and broaden it. The Bureau for Public Enterprises (BPE) has received payment from four enterprises at the net of N3.4 billion for 51% controlling equity for yet another government funded enterprise (This Day, Wednesday, January 29th, 2003 Vol. 9. # 2838 Page5). Therefore, in Nigeria today, privatization is gradually being seen as a means that will guarantee the most rapid and irreversible progress towards solving and surmounting the legion of problems confronting and antagonizing most public enterprises and at the same time help in reducing the financial burden through government borrowing in order to meet up with its commitments.

¹⁹ Most studies on Nigeria's privatization do not involve more than five or six enterprises. See Jerome 1997, 2000, Soyinbo 2001, Busari 1999, Udeaja 1995, 1998, 2000, Etukudo 2000, Afeikhena 2001, Amakom 2003 etc. It is not really wise to criticize or build without empirical evidence

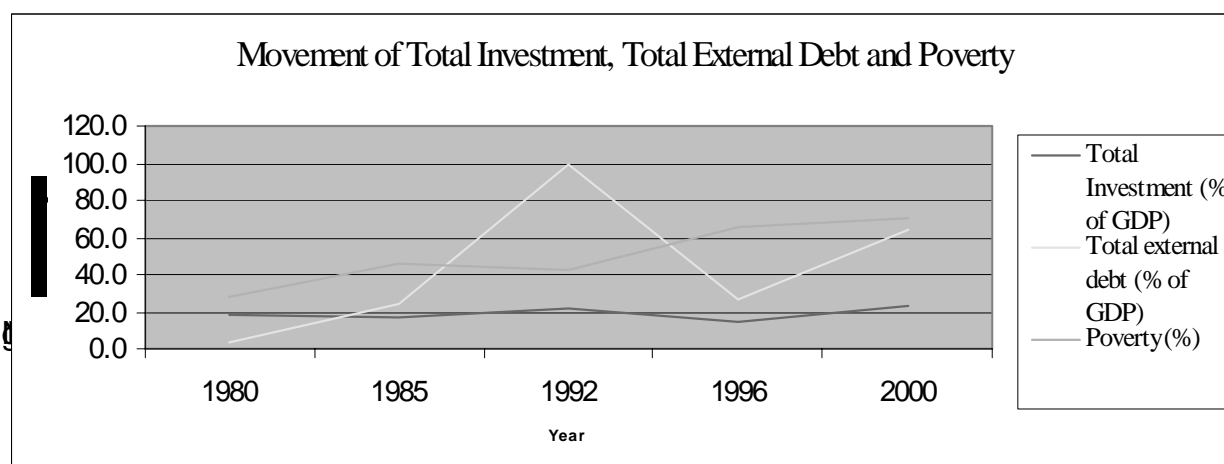
²⁰ The low income group comprises those who applied for between 200 and 1000 shares.

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The success of any privatization programme is only measured in terms of the objectives that motivated it and those objectives are likely to be different for different actors affected by the privatization (Aharoni, 1997). Among the numerous objectives, which Nigeria had in mind before embarking on Privatization Programme, how many of them have been achieved or are near achievement? One of the main aims of the Nigerian privatization programme is to restructure and rationalize the public sector in order to lesson the dominance of unproductive investment and to re-orientate the enterprises for privatization and commercialization towards a new horizon of performance, improvement, viability and overall efficiency. The programme was also embarked upon to ensure positive returns on public sector investments through the commercialized enterprises, which consequently is expected to foster sustainable economic growth and above all help in the maintenance of macroeconomic stability.

Deficits accruing to the economy due to inefficiency of public enterprises have been the major source of the economy's fiscal problems in the past and a drag on economic growth. Fiscal deficits of the order of 1% to 5% of the GDP might be permissible since it can lead to non-inflationary money creation but in Nigeria, deficit has been at an average of 8.8% of GDP from 1986 –1995 and 7.2% of the GDP from 1986 to 2001 (computed from Ibe, 2000 and CBN Annual Report and Statement of Accounts, 2001). Proceeds from privatization are expected to have diluted the deficit level thereby decreasing the public debt and improving the growth rate of the Gross Domestic Product [GDP]. Normally deficits are supposed not to exceed what is reflected in the push for a balanced budget in the USA and the 3% deficit to GDP ratio convergence criteria in the Maastricht Treaty (Sawyer, 1997). Nigeria now is Africa's biggest debtor and owes about \$28.5 billion to its external creditors with debt service payments of 2002 alone being \$3.3 billion which is expected to rise to \$5.3 billion in 2003. This implies that external debt is about 22% of GDP while domestic debt is 19% of GDP. In other words domestic and external debts are respectively 46% and 54% of the nations' total debt burden. (Business Day, September 9th 2002; 35)

The growth rate of total investment in Nigeria has been moving in a gangster swagger from 2.18% in 1992, to –2.7% in 2001 (WEO-data 2001) and the gross capital formation growing at a manageable rate with a sharp negative kink from N6800.8m in 1996 to N2054m in 2000 (WEO-data 2001). Investment /GDP ratio fell from 16.22% in 1990 to 5.4% in 2000 (CBN First Annual Monetary Policy Conference). Below is a graph showing the movement of external debt, public investment and poverty profile in Nigeria.



Source: Poverty Profile for Nigeria (Federal Office of Statistics, 1999), Weo-data 2001, UNDP Human Development Report 2001 and Central Bank of Nigeria Statistical Bulletin/Annual Report and Statement of Accounts

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Aside the issue of deficits, the privatization process is expected to affect the employment and labour growth in an economy either positively or negatively and in Nigeria, the labour growth has been on decline after more than a decade of privatization. According to the International Labour Organization's reports on Nigeria, the labour growth rate declined from 2.7% to 2.6% in 2001 (This Day, 3/2/2003:29).

Table 6 and 7 below gives a clearer picture of the economic and social condition of Nigeria as from 1990.

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Table 6: Nigeria—External Debt Stock & External Debt Service payments, 1991-2001(in millions of US dollars)

Debt Categories	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
A. Debt Stock											
1. Official											
(a) Paris Club	17,793.00	16,454.70	18,160.50	18,334.32	21,669.60	19,091.00	18,980.39	20,829.93	20,507.77	21,480.01	22,092.93
(b) Multilateral	4,016.00	4,518.00	3,694.70	4,402.27	4,411.00	4,665.00	4,372.68	4,237.00	3,933.32	3,460.00	2,797.87
(c) Other	1,454.00	1,226.10	1,647.30	1,456.31	1,311.20	121.00	79.19	65.77	69.34	66.00	121.21
(d) Sub-Total	23,263.00	22,198.80	23,502.50	24,192.90	27,391.80	23,877.00	23,432.26	25,132.70	24,510.43	25,006.01	25,012.01
2. Private											
(a) Promissory Notes	4,479.00	3,246.00	3,159.90	3,178.17	3,148.00	2,140.00	1,612.54	1,597.84	1,486.77	1,446.70	1,291.78
(b) Banks (London Club)	5,988.00	2,120.00	2,055.80	2,057.79	2,045.00	2,043.00	2,043.00	2,043.00	2,043.21	2,043.21	2,043.21
(c) Sub-Total	10,467.00	5,366.00	5,215.70	5,235.96	5,193.00	4,183.00	3,655.54	3,640.84	3,529.98	3,489.91	3,334.99
3. Grand Total	33,730.00	27,564.80	28,718.20	29,428.86	32,584.80	28,060.00	27,087.80	28,773.54	28,040.41	28,495.92	28,347.00
B. Debt Service Payment											
1. Official	2,742.30	1,487.90	1,320.60	1,444.70	1,207.70	1,510.50	1,234.00	928.54	1,338.46	1,437.42	1,798.91
Of which: Paris Club	1,506.70	536.00	234.60	59.20	271.80	359.70	306.10	228.54	644.49	812.67	1,273.62
2. Private	692.70	904.70	451.90	398.30	412.90	366.10	262.60	344.00	386.44	278.59	329.26
3. Grand Total	3,435.00	2,392.60	1,772.50	1,843.00	1,620.60	1,876.60	1,496.60	1,272.54	1,724.90	1,716.01	2,128.17

Source: Debt Management Office (FGN; Abuja; 2002)

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Table 7: Nigeria: General Economic Development Indicators

Economic Indicators	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
GDP Per Capita (₦) (Real)	1064.7	1069.0	1047.5	1041.5	1051.8	1048.4	1041.0	1038.8	1046.8	102.5	1097.2
End of period exchange rate (₦/US\$)	17.3	22.6	21.9	21.9	21.9	21.9	21.9	98.2	110.1	113.0	114.0
Period average exchange rate (₦/US\$)	17.1	22.3	21.9	21.9	21.9	21.9	21.9	96.1	102.1	112.0	113.0
GDP Per Capita (US\$) (Real)											
Average monthly salary (US\$)											
Annual GDP growth rate (percent)	3.0	2.7	1.3	2.2	3.4	3.2	2.4	2.8	3.8	4.2	3.3
Agricultural growth rate (percent)	2.1	1.4	2.4	3.7	4.1	4.2	4.9	4.4	2.9	3.8	5.3
Manufacturing growth rate (percent)	-4.8	-4.1	-8.0	-5.5	0.9	0.3	0.3	3.5	3.6	4.2	4.5
Rate of inflation period average (percent)	44.6	57.2	57.0	72.8	29.3	8.3	10.0	6.6	6.9	18.9	12.9
Current account balance (percent of GDP)	77.2	-5.0	-5.7	-9.5	8.8	13.0	-12.2	1.3	14.6	12.0	...
Gross reserves (months of import coverage)	...	2.4	3.0	2.1	7.6	9.6	9.2	7.6	13.6	12.0	...
Debt/GDP ratio (percent)	20	18	20	4	3	3	4	14	8	12	...
<u>Debt Burden (debt service ratio)</u>	2.1	2.7	20	1.8	3.4	3.4	3.5	17.2	14.9	13.7	12.6
<u>Unemployed Rate</u>											
Social Indicators: Health/Education											
<u>Male life expectancy at birth (years)</u>		52.6	52.6	52.6	52.6	53	54	54	54	54	52.6
Female life expectancy at birth (years)		53.8	53.8	53.8	53.8	53.8	53.8	53.8	53.8	53.8	53.8
Crude death rate (per 1000)		13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9	13.9
Natural increase (per 1000)		28.3	28.3	28.3	28.3	28.3	28.3	28.3	28.3	28.3	28.3
Fertility rate (births per woman)		5.8	5.8	5.8	5.8	5.8	5.8	5.8	5.8	5.8	5.8
Infant mortality rate (per 1000 births)		87.2	87.2	87.2	87.2	87.2	87.2	90.0	75.1	75.1	75.1
Maternal mortality rate (per 100,000 births)		1500.0	1500.0	1400.0	1400.0	1000.0	1000.0	1000.0	1000.0	1000.0	1000.0
Under-five mortality rate		115.2	115.2	115.2	115.2	115.2	115.2	168.0	168.0	168.0	168.0
Immunization rate — Diphtheria, pertussis, tetanus (percent of children under 2)		46.0	25.0	17.0	49.1	81.2	55.1	51.9	72.7	73.3	...
Immunization rate — polio (percent of children under 2)		30.0	...	28.0	40.0	84.0	57.5	51.8	72.5	61.0	...
Immunization rate — measles (percent of children under 2)		36.0	...	32.7	49.9	82.0	53.0	53.3	70.4	92.3	...
Physicians (number per 10,000 population)		...	...	2.2	2.5	2.5	2.6	2.7	2.7	2.7	...
Nurses (number per 10,000 population)		...	...	17.2	20.0	20.0	20.8	21.4	21.4	21.4	...
Number of beds (per 10,000 population)		1277.0	1304.0	1477.0	1555.0	1632.0	17338.0	1564.0	1611.0	2124.0	...
Health expenditure as % of Annual Federal Budget	2.0	2.4	2.7	3.3	2.6	2.1	3.3	4.5	3.1	4.4	4.7

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Social Indicators Continued	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Basic education enrolment rate (percent)		86.0	86.0	81.0	70.0	71.0	76.0	81.0	87.0	69.0	...
Higher secondary and professional education enrolment rate (percent)	4.0	26.6	25.7	26.8	26.6	25.2	25.4	...	...	...	...
Teacher-pupil ratio in basic education											
Education expenditure as % of Annual Federal Budget		7.1	9.3	8.3	8.1	5.8	7.3	8.8	8.7	5.9	35.0
Poverty Indicators											
Gini coefficient	...	...	...	...	...	...	...	...	...	...	...
Human development index	42.7	...	...	...	65.9	...	...	...	...	...	...
Head count ratio of poverty (percent)	38.4	...	...	...	35.8	...	...	...	...	...	...
Poverty gap (percent)	20.2	...	...	...	20.7	...	...	...	...	...	...
Severity of poverty (percent)											

Notes: (1) Data for 2002 are provisional (2)The debt burden is defined as actual debt service payments as a percentage of total earnings from export of goods.(3) The unemployment rates for 1992 to 1998 were based on ILO concept of unemployment defined as those who did not work for at least one hour in the week preceding the survey period. Data for 1999-2001 were based on the concept of not working for at least 39 hours in the week preceding the survey.

Sources: (i) Federal office of Statistics (ii) Central Bank of Nigeria; (iii) Federal Ministry of Health; (iv) Federal Ministry of Education; (v) Debt Management Office

Box 4: The Partisan Dimension Of Privatization

During the last fifteen years political economy has witnessed a growing interest in the positive analysis of the consequences of the political conflict between partisan politicians on economic policy. Within this strand of literature, some contributions analyzed the possibility of strategic manipulation of economic variables by politicians in order to achieve reappointment. (Aghion and Bolton, 1990; Franzese, 2002).

Biais and Perotti (2002) developed a model of privatization where right wing politicians privatize in order to gain future support from the constituencies of shareholders of newly privatized firms. They assume that the right wing party maximizes the utility of the rich, the left the utility of the poor, and each party needs the vote of the median class to win the elections. They show that by allocating a substantial amount of shares of privatized companies to the middle class, the right makes the median voter averse to the redistribution policies of the left, and more prone to vote with the right at future elections. A large-scale privatization program may therefore represent a strategy for switching to forms of “popular capitalism”, by creating a constituency of voters interested in the maximization of the value of their financial assets.

Importantly, Bias and Perotti show that the left can also strategically design privatization to obtain re-election. However, the privatization objectives of the two parties would be different, as the left wing does not have any incentive to under price shares, but instead to maximize revenues available for redistribution. This theoretical argument suggests that while privatization can be a bi-partisan policy, its implementation will be affected by political preferences. On the one hand, right wing governments will tend to privatize by public offer, earmarking (under priced) shares to domestic investors. On the other hand, left wing governments will opt more frequently for private placements (i.e. direct sales of control blocks to strategic investors) or share issues in international (and more liquid) exchanges as both strategies allow for generation of higher privatization revenues (Megginson et al. 2002; Ellul and Pagano, 2002).

The partisan model of privatization yields the following empirical implications:

H2. *Ceteris paribus, right wing governments, as opposed to center or left wing governments should privatize by spreading share ownership among domestic voters.*

Source: Bortolotti and Pinotti, 2003:10-11, *The Political Economy of Privatization, Nota di Lavoro 45. 2003* www.feem.it

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Source: Securities Data Corporation

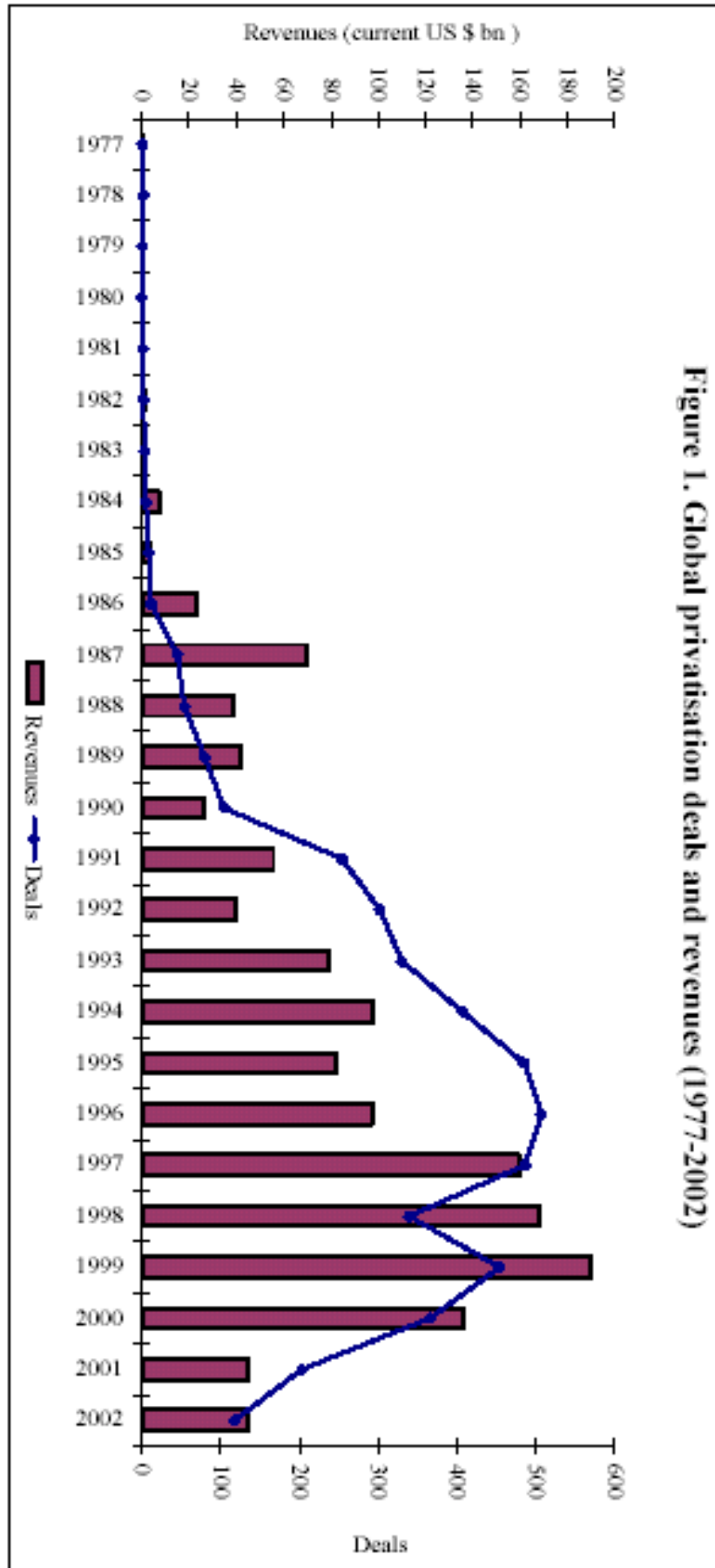
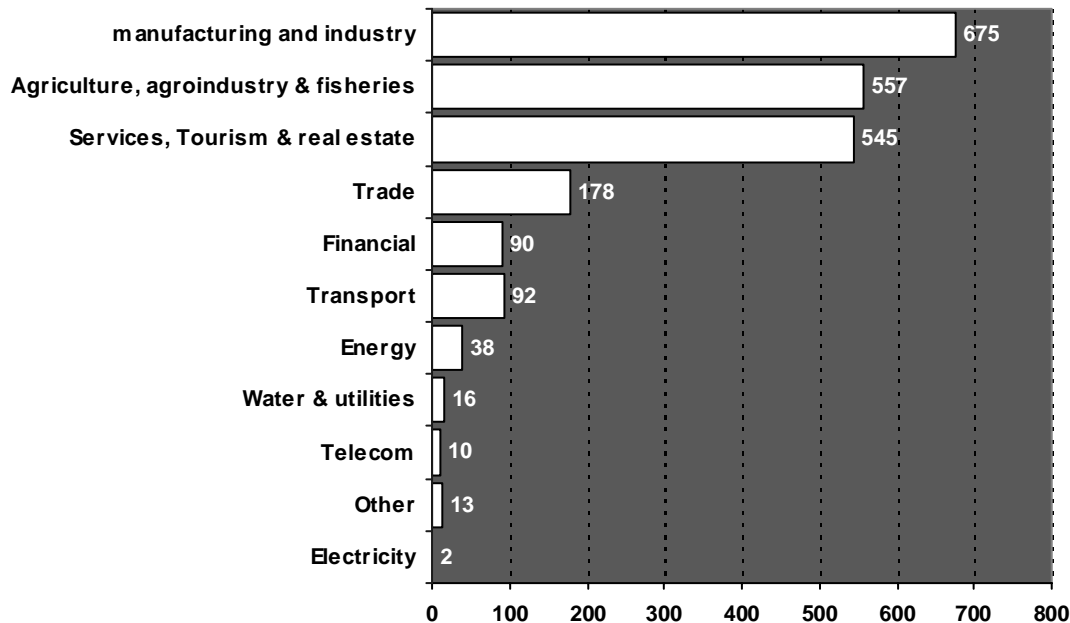


Figure 1. Global privatisation deals and revenues (1977-2002)

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African Privatizations by Sector, 1991—2001



Problems Of Privatization In Nigeria

The problems of Nigeria and other African countries are not peculiar to them alone but to most of the other countries in the developing process. The problems were the outcome of the privatization Study carried out by the World Bank which Nigeria happened to be one of the studied countries. They include:

- ü Lack of political commitment
- ü Poor design
- ü Insufficient resources
- ü Weak management
- ü Corruption

Zambia²¹ in Africa happens to be the country with the most successful privatization process and according to the Study, they were able to clinch the position because of government commitment, the institutional arrangements which give the private sector leadership role in managing and implementing the programme and the coordinated support of the donors .

Way Forward

Privatization in Nigeria for these past years has been for small and some medium sized firms of enterprises. For the country to embark on the third phase of privatization, which involves the divestment of the large firms, there is need to take stock of the privatized enterprises²². From all the studies conducted in Nigeria in particular and Africa at large, there has been a lacuna in public information dissemination. If all the stakeholders are represented while designing the process, there would have been better performance than what is obtained today. Hence stakeholders being better informed and taking active participation in the planning process is very vital for the process and this should be achieved through standard

²¹ Though they were tagged the most successful privatization process in Africa by the World Bank, they are still faced with problems of minimal involvement of their citizens, corruption, loss of employment, etc.

²² A thorough survey that will involve all the divested enterprises' performance and the effect of the privatization process to the economy so far.

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communication or information process. This will help in convincing the public that privatization is necessary and attractive. Hiding the status of most activities and making it inaccessible will only exacerbate the problem. Efforts should be made to publish the performance of the privatized enterprises, the amount of proceeds that have been generated and how they are utilized. Transparency and disclosure will help fight corruption since it will give room to more debate hence a strong input to democratization process. There is need for legal safeguard because its absence allows new owners to steal not simply the flow but the entire stock of the firm.

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PRIVATISATION AND GLOBALISATION: OPTIONS FOR SUB-SAHARAN AFRICA

*Amakom Uzochukwu and Ogujiuba Kanayo**

THE CONCEPT OF GLOBALISATION

Ever since the concept of globalization¹ entered academic circles in the 1980s, debates have centered on its characteristics, origins, implications, and trajectory. Other concepts that have been in the scene include deregulation and getting government off public enterprises management², balancing the budget, cutting back entitlements (non-corporate) and free trade.

Globalisation is propagated simultaneously as an intellectual concept and an ideological community, describing concrete conditions and prescribing particular futures. Used by scholars, artists, politicians, businesspeople, and the media to refer to a wide range of complex and contradictory processes and phenomena characterizing contemporary history, it has become a powerful but malleable metaphor that accommodates widely divergent theoretical, empirical, and ideological paradigms, positions, and possibilities. For its triumphalist supporters, globalization is celebrated as inevitable and progressive, indeed, as making the end of history as we have known it; while for its detractors it reinforces global economic inequalities, political disenfranchisement, and environmental degradation.

Clearly, globalization generates both anxiety and excitement, sometimes within the same individuals or institutions. Depending on how it is defined and perceived, globalization has its advocates, adversaries, and those who are ambivalent to it. The advocates and beneficiaries of globalization are found among the ascending countries and technocrats, the dominant economic enterprises and commercial classes; while the adversaries are concentrated in the dominated countries among peasants, and small business. Those ambivalent about globalization consist of classes and enterprise that both win and lose from specific policies. Intellectuals are not immune from the conflicted perceptions and prognoses engendered by globalization: some are exhilarated by its promises, others frightened by its perils, and many are worried about its implications for their own craft, for globalization as a research paradigm and a paradigm of research that threatens to decompose the old social and spatial units of analysis, and it overwhelms the explanatory power of the conceptual toolkit of many social science and humanity disciplines.

Globalization is a concept or term that is currently very much in use. However, like many popularly used terms, there is no commonly agreed meaning for globalization. Not surprisingly, people who use the concept frequently disagree, not only over the definition of globalization, but also over their assessment of the effects of globalization, that is, whether or not globalization benefits all people, all nations, or all the regions of the world. Globalization is both an active process of corporate expansion across borders and a structure of cross-border facilities and economic linkages that has been steadily growing and changing as the process gathers steam. Globalization³ and privatization together are the *double whammy* that Frank Michelman

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¹ One of an array of concepts and arguing points that have been mobilized to advance the corporate agenda commonly regarded as a structure of cross-border facilities and economic linkages that have been steadily growing and changing as the process gathers steam.

² Getting government off public enterprises management is called privatization.

³ "Globalization" has come to symbolize many different aspects of world integration resulting from reduced costs of transport, lower trade barriers, faster communication of ideas, rising capital flows, and intensifying pressure for migration.

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fears might render irrelevant the legal system's ability to protect—or regulate—persons [Fried 2001]. Like its conceptual partner, “free trade,” globalization is also an ideology, whose function is to reduce any resistance to the process by making it seem both highly beneficial and unstoppable.

And as with free trade, while globalization may sometimes yield economic benefits, both the process and economic-political regime it is helping to bring about threaten progressive ends, and should be recognized as such and fought at every level. Admittedly this is a formidable task, as the economic and political power of its beneficiaries, and its momentum, are great and contesting it seems an almost utopian undertaking. But globalization has its vulnerabilities, and attacking it intellectually, at the local level of plant abandonment and moves, as well as at the national political level, can help build understanding and support for a larger oppositional movement.

Like free trade, globalization has an aura of virtue. Just as “freedom” must be good, so globalization hints at internationalism and solidarity between countries, as opposed to nationalism and protectionism, which have negative connotations. Mainstream economists and pundits exclude the possibility that cross-border trade and investment might be economically damaging to the weaker party, or that they might erode democratic controls in both the stronger and weaker countries, from consideration. It is also unthinkable in the mainstream that the contest between free trade and globalization, on the one hand, and “protectionism” on the other, might be reworded as a struggle between “protections”—of Trans National Corporate (TNC) rights—versus the “freedom” of democratic governments to regulate in the interests of domestic non-corporate constituencies. Successful developing countries not only undertook through globalization, investment in complementary infrastructures, skills etc but also policy reforms such as privatization.

If you are to investigate globalization and its impact on Africa, it is necessary to come up with a general understanding of the concept of globalization. First, globalization is a process of building connections between regions of the world. People argue over how connected specific countries and regions of the world are with other countries or regions, but there is general agreement that networks of global connectivity are increasing. Second, globalization is manifested in different arenas such as communication, culture, politics, and economics. Perhaps the impact of globalization is most dramatically demonstrated in the arena of communications. The development of the Internet, advances in telecommunications, and the explosion of international jet travel have resulted in the ability to communicate instantaneously with many parts of the world. This ability to **communicate widely and quickly**⁴ has also resulted in the spread of a wide variety of cultural forms and expressions.

Thirdly, globalization may lead to greater economic, social, or cultural equality around the world. On the other hand, the process of globalization may result in greater inequality. It may increase the power, wealth, and influence of individuals, institutions, corporations, and nations that are already wealthy, influential, and powerful.

⁴ Young people in Cape Town, South Africa, Nairobi, Kenya, and Lagos, Nigeria, listen to the same music as young people in New York, Kentucky, or Oregon.

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ECONOMICS OF GLOBALISATION

One might come to the conclusion that globalization is nothing new in Africa⁵! Societies in Western Asia have traded⁶ with societies in North and East Africa for thousands of years just as societies in Southern and South-eastern Europe have had economic contact with societies in North and West Africa (via the trans-Sahara trade) for at least 3,000 years. Economic historians who study early economic contact between Asia, Europe and Africa believe that trade benefited both partners in the exchange. Societies (at least the governing classes) in Africa, Asia, and Europe were better off economically as a result of economic contact. There was a dramatic change in the nature of contact between Africa and other regions of the world beginning at the end of the fifteenth century. This was particularly true for the economic relationship between Europe and Africa. Economically, European⁷ societies and nations were very interested in expanding trade with other regions of the world. These factors stimulated European nations, particularly Portugal and Spain, to seek ocean trade routes to Asia and Africa.

In North America, we know the story of Spain's sponsorship of Columbus and his voyages of exploration that brought Europe into contact with the *New World*. Less well studied are the endeavors of Portuguese sailors to reach Asia by sailing around Africa. These Portuguese endeavors brought Europe into direct contact with parts of West, Southern, and East Africa, where Europeans had no prior contact. Five hundred years from the 15th century, the nature of Africa's economic contact with other regions of the world changed dramatically. Europe's expansion into the Americas and Asia embraced Africa in a manner that drastically impacted on many societies and people in Africa. Most dramatic was the Atlantic slave trade that forcibly removed millions of Africans to work as slaves in the farms and mines of South and North America, which in turn produced sugar, tobacco, and cotton, the profits from which fueled the industrial revolution⁸ in Europe.

As detailed above, the next phase in the development of a truly global economic system was the colonization⁹ by Europe of almost all of Africa, most of Asia, and somewhat earlier, South and North America. At independence, you will remember, governments of the newly freed countries were committed to promoting economic growth and development. You looked at two different strategies, import substitution and diversification of exports that governments selected in an attempt to promote economic growth. Although these two policies are quite different, both strategies resulted in a stronger connection to or integration into the global economic system.

At the beginning of the twenty first century, forty years after political independence, the question is, is Africa still globally connected? If so, how has globalization affected Africa? Is there a relationship between globalization and Africa's current economic situation? These are important questions that need our attention.

⁵ People and societies in different parts of Africa have long had contact with Asia, Europe, and in the past millennium, with the Americas while trade, migration, and the exchange of ideas between African nations and societies with the outside world greatly impacted the history and development of Africa. Just as importantly, contact with African societies and peoples significantly influenced the history and development of societies and culture in Asia, Europe, and the Americas

⁶ Indeed, historians have recorded trade between China, South East Asia, and India with East Africa kingdoms and societies beginning over a thousand years ago.

⁷ Europe at the time was in the era known as Renaissance, a period of learning and cultural change.

⁸ This was the beginning of the global economic system!

⁹ As a result of the colonial experience, at the time of their political independence, the new African nations were integrated into an international economic network.

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GLOBALISATION AND RISING INEQUALITY

The issue of rising inequality under globalization has been one of deep concern. What has become clear is that an integrated economy may be more efficient, but it has also been less comfortable for many people. Indeed, globalization has turned out to be a very uneven process, with unequal distribution of benefits and losses. The world has become increasingly polarized between the few countries and groups that gain, and the many countries and groups in the society that lose out or are marginalized. Also notable is the widening gap between the rich and poor – both between and within countries. Globalization, polarization, wealth concentration and marginalization are, thus, linked through the same process. In the process, investment resources, growth and modern technology are focused in few countries.¹⁰ A majority of developing countries are excluded from the process, or are participating in it in marginal ways that are often detrimental¹¹ to their interests.

The uneven and unequal nature of the present globalization process is manifested in the fast-growing gap between the world's rich and poor people and between developed and developing countries, and in the large difference among nations in the distribution of gains and losses. For example, the UNDP's Human Development Report, 1992, estimated that 20 per cent of the world's population in the developed countries receive 82.7 per cent of total world income, while 20 per cent of people in the poorest countries receive only 1:4 per cent. The UNCTAD's Trade and Development Report, 1997 shows that since the early 1980's, the world economy has been characterized by rising inequality, and North-South income gaps have continued to widen. Polarization among countries has also been accompanied by increasing income inequality within countries. And at work here has been a set of forces unleashed by rapid liberalization that make for greater inequality by favouring certain income groups over others, e.g. capital gaining in comparison with labour, the rise of new rentier class due to financial liberalization and rapid rise in debt; traders, rather than farmers, reaping the benefits of agricultural price liberalization. And Khor (2002:12) has drawn attention to two disturbing aspects of the increasing inequality. The first is that the increased concentration of national income in the hands of a few has not been accompanied by higher investment and growth in the poor countries, some of the factors causing greater inequality in a globalizing world at the same time deter investment and slow down growth. Secondly, restrictive monetary policies in the poor countries have led to higher interest rates which have raised investment costs and led entrepreneurs to focus, instead, on commercial activities instead of production.

GLOBALISATION AS AN ATTACK ON DEMOCRACY

The globalization of recent decades was never a democratic choice¹² by the peoples of the world. Governments have helped, by incremental policy actions, and by larger actions that were often taken in secret, without national debate and discussion of where the entire process was taking the community. In the case of some major actions advancing the globalization process, like passing the North American Free Trade Agreement (NAFTA) or joining the European Monetary Union (EMU), publics have been subjected to massive propaganda campaigns by the interested business-media elites. In the United States, public opinion polls showed that the general public was against NAFTA even after incessant propaganda, but the

¹⁰ Mainly in North America, Europe, Japan and East Asian newly industrializing countries.

¹¹ Two examples are unrestrained import liberalization which harm domestic producers and financial liberalization which causes instability.

¹² The process has been business driven, by business strategies and tactics, for business ends.

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mass media supported it, and it was passed. In Europe as well, polls have shown persistent majorities opposed to the introduction of the Euro, but a powerful elite supports it, so that it moves forward, to mention but a few examples.

This undemocratic process, carried out within a democratic facade, is consistent with the distribution of benefits and costs of globalization, and the fact that globalization has been a tool serving elite interests. Globalization has also steadily weakened democracy, partly as a result of unplanned effects, but also because the containment of labor costs and scaling down of the welfare state has required the business minority to establish firm control of the state and remove its capacity to respond to the demands of the majority. The mix of deliberate and unplanned elements in globalization's antidemocratic thrust can be seen in each aspect of the attack process.

THE ECONOMIC FAILURE OF GLOBALISATION

As the globalization process has been engineered by corporate elites, and serves their interests, they have successfully conveyed the impression that globalization is not only inevitable but has been a great success. This is fallacious. Even ignoring for the moment its distributional effects, globalization has been marked by substantial declines in rates of output, productivity, and investment growth. Under the new regime of enhanced financial mobility and power, with greater volatility of financial markets and increased risk, real interest rates have risen substantially. The average rate of the G-7 countries¹³ has gone from 0.4%, 1971-82, to 4.6%, 1983-94 [Herman, 1999]. This has discouraged long term investment in new plant and equipment and stimulated spending on the re-equipment of old facilities along with a large volume of essentially financial transactions—mergers, buybacks of stock, financial maneuvers, and speculative activities. This may help explain why overall productivity growth in the countries that are members of the OECD fell from 3.3%, 1960-73 to 0.8%, 1973-95, or by some 75% [Herman, 1999]. Gross fixed investment fell from 6.1%, 1959-1970, to roughly 3.1% thereafter, or by half. OECD country annual rates of growth of real GDP fell from 4.8%, 1959-1970 to 2.8%, 1971-94, or by 42% [Herman, 1999]

But the elites have done well despite the slackened productivity growth. Because globalization has helped keep wages down, while increasing real interest rates, the upper 5% of households have been able to skim off a large fraction of the reduced productivity gains, thereby permitting elite incomes and stock market values to rise rapidly. But it was a different story for the global majority. Income inequality rose markedly both within and between countries. In the United States, despite a 35% increase in productivity between 1973 and 1995, the median real wage rate was lower in the latter year. Inequality rose to levels of 70 years earlier, and underemployment, job insecurity, benefit loss, and worker speedup under "lean" production systems all increased. Insecurity is functional. As Alan Greenspan complacently explained to Congress in 1997, wage rates were stagnant in this country because workers insecurity was high. That this high insecurity level reduced the well-being of the affected workers did not bother Greenspan, or Congress and the mainstream media.

The gap in incomes between the 20% of the world's population in the richest and poorest countries has grown from 30 to 1 in 1960 to 82 to 1 in 1995 [Herman 1999], and Third World conditions have in many respects worsened. Per capita incomes have fallen in more than 70 countries over the past 20 years; some 3 billion people—half the world's populations live on less than two dollars a day; and 800 million suffer from malnutrition. In the Third World, unemployment and underemployment are rampant, massive poverty exists side-by-side with

¹³ U.S., Britain, France, Italy, Germany, Canada and Japan.

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growing elite affluence, and 75 million people a year or more seeking asylum or employment in the North, as Third World governments allow virtually unrestricted capital flight and seek no options but to attract foreign investment. The new global order has also been characterized by increased financial volatility, and from the Third World debt crisis of the early 1980s to the Mexican breakdown of 1994-95 to the current Asian debacle, financial crises have become more and more threatening. With increasing privatization and deregulation, the discrepancy between the power of unregulated financial forces and that of governments and regulatory bodies' increases and the potential for a global breakdown steadily enlarges. Only an elite perspective permits this record to be regarded as an economic success.

WHY HAS AFRICA LAGGED BEHIND?

Africa has remained poor and lags behind other regions in exploiting the benefits of globalization, namely, increasing the resources available for productive investment, and enhancing efficiency of their use and facilitating the transfer of technologies. A number of mutually reinforcing factors account for the wide gap between African economic integration with the world markets and its potentials, and its stagnation/underdevelopment at large. These relate to the structure of production and export, and the policy and institutional environment. Also, there is the issue of weak initial conditions reflecting lack of domestic economic capacity, and weak social infrastructure following the colonial experience. African countries have been made weaker by low export prices and significant terms of trade decline as well as the heavy burden of external debt servicing. Beside, there is the issue of dictatorial regimes and poor governance characterized by abuse of power and economic mismanagement, all of which undermine the development process. Not least is Sub-Sahara Africa [SSA] countries' lack of or weak bargaining and negotiating power in international economic relations. Three of the above factors are explained further as follows:

Mono-Cultural Economies And Over-Dependence On Primary Commodity Exports

Many Africa countries depend heavily on primary commodities for the bulk of their export receipts¹⁴, and this has often caused serious problems for economic management. This is because primary commodity prices tend to be volatile and are subject to long-term cycle as well as to short-term booms and bursts. Not only are African economies heavily dependent on primary commodities, most of them are also macro cultural¹⁵. The two features of monoculture and concentration in primary commodity export have mutually interacted to hinder Africa's effective participation in the globalization process. Finally, as primary commodity exporters, African countries have yet to find solutions to the challenges posed by the following:

- Ø Volatility of primary commodity prices;
- Ø Secular decline in commodity prices and terms of trade; and
- Ø High income elasticity of demand for African exports in relation to supply which is price elastic.

¹⁴ In 1997, primary commodities (food, agricultural raw materials, fuels, ores and metals, etc) accounted for 42 per cent of developing countries total merchandise exports, compared to 19 per cent for high - income countries and in SSA, primary commodities in the exports of individual countries often exceed 90 per cent (World Bank, 2000b: 104).

¹⁵ Nigeria presents an extreme case with its dependence on one commodity - crude oil - for over 95 per cent of export earning and over 80 per cent for domestic revenue. Also nine other countries derive more than 75 per cent of export earnings from one product, while seven others receive over 75 per cent of their export earning from two products each.

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Low Level Manufactured Exports

The corollary of Africa's heavy dependence on commodity export is the insignificant nature of manufactured exports. Africa currently accounts for less than 3 per cent of the world trade in manufactures and slightly less in service - approximately less than half of its 1980 level (Sachs and Sievers, 1999:15). Yet, manufactured exports have been key to effective participation of the countries in East Asia in the globalization process and the spectacular growth was an important part of the strategy that made dramatic inroads into income poverty in East Asia¹⁶. Therefore, under globalization, the economies need to be diversified by using modern technology to create high - value - added goods and services sold to the world market. However, even though African countries have the advantage of low real wage levels compared to most other regions including Asia, their manufacturing has been uncompetitive internationally and so, the continent has continued to miss out on the process of labour - intensive manufactured exports that has been an important engine of development elsewhere. The policy environment along with institutional factors have not been favourable to manufactured exports in relation to other types. In other words, the national business climate has not promoted a high level of competitiveness of African economies while many other factors raise transactions cost¹⁷ and inhibit manufactured exports. Some of the inhibiting factors to African competitiveness and manufactured exports include:

- High tax rates and numerous regulations
- Infrastructure failings, reflected in poor roads and rail networks, epileptic power supply, inadequate and chaotic telecommunications system and inadequate water supply, etc.
- High level of *corruption and inflation*¹⁸
- Policy instability and political instability.

Under the circumstance, even an efficient manufacturing activity tends to have a low ration of value added to product price.

Low Levels Of Domestic Investment

Investment is significant to an economy in the same way blood is significant to the human body. It provides a basis for economic growth and poverty reduction. Yet, investment rations are far lower in Africa than other regions¹⁹. Considering the SSA countries, the average gross domestic investment relative to income, has been lower than the corresponding average for all developing countries, and especially for the East Asian countries since the 1990s. See table 1 below. Under such circumstances of low savings and investment in SSA, it is hardly surprising that growth rates have been low, the pace of integration into the world economy slow, and the incidence of poverty very high .

¹⁶ In 1975, some 57 per cent of East Asian population was in poverty but by the mid 1990s after two decades or more of rapid export growth, their headcount rate of poverty was 21 per cent (UK-DFID, 2000:20).

¹⁷ The high transactions cost are important because they raise the costs of inputs and lower the firm gate price of output.

¹⁸ Corruption and inflation increase the cost of doing business and un-competitiveness, respectively. Businesses consider bribery to get things done as a tax.

¹⁹ Over the 1993 -97 period, investment as a percentage of GDP averaged 19.5 per cent in Africa compared to 26.9 per cent for all developing countries, 32.6 per cent in Asia, and 23.5 per cent in Europe.

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Table 1: Required Growth and Investment Rates to Halve Poverty in Africa by 2015

Sub-Region	Required GDP Growth Rate [%]	Incremental Capital-Output Ratio [ICOR]	Required Investment Rate	Current Investment Rate	Investment Gap [Extra Investment required as % of GDP]
North	5.60	3.8	21.3		
West	7.61	4.8	36.5	17.6	18.9
Central	6.70	7.3	48.9	20.0	28.9
East	8.12	5.6	45.5	14.6	30.9
South	6.20	6.1	37.8	17.6	20.2
Africa Average	6.79	5.0	33.0	20.5	12.5
Sub-Saharan Africa	7.16	5.8	40.0	17.4	22.6

Source: UN-ECA, 1999. Economic Report on Africa and Soludo (2003:57)

THE CONCEPT OF PRIVATISATION

Privatization as a major fallout of globalization has become a key aspect of the restructuring and adjustment programmes advocated by the World Bank and the IMF as a consideration for lending to developing countries. When talking about privatization, one must be aware that this concept is made up of basically two notions: deregulation of the economy²⁰ and denationalization²¹. Looking back towards the experiences of World Bank programmes during the last ten years, deregulation has so far been dominating as a policy instrument compared to denationalization. Even so, the two processes are to a varying degree and with different emphasis ongoing in most developing countries. However, in the case of both dimensions of privatization, the concepts and analysis applied have had a clear bias towards economic theory and thought.

Privatization is an issue which in later years has been the subject of numerous studies and of an often heated debate. The attention given this subject took its onset in the privatization efforts undertaken by the British Conservative government in the early 1980s and accelerated with the political transformations taking place in Eastern Europe after the fall of the Berlin Wall. In the mainstream literature, privatization has often been treated as synonymous with denationalization. This approach has in recent years been complemented by a more comprehensive approach which, along with deregulation, also relates to non-divestiture options. Still, the definition of "privatization" differs widely, at times referring to de-nationalization and divestiture only, and at times referring to a much broader scope of instruments and reforms related to privatization. This calls for a certain caution when using different sources of information on privatization, as one source might label all types of reform of state-owned enterprises as privatization, while another source might only give outright divestitures this label.

THE OBJECTIVES OF PRIVATISATION

Various objectives for privatization are found in the literature and in policy statements. In short, privatization is related to the fulfillment of two sets of basic objectives: *public finance rationalization* and the improvement of *economic efficiency*. Public finance rationalization implies that privatization is seen as a way of reducing government spending and net budgetary transfers, as the budget will no longer be burdened with expenditures related to the state enterprises. Further, the sale of enterprises to private investors is expected to generate state revenue, thus allowing for the state's resources to be used in other areas or to reduce deficit spending. This objective is most pertinent in countries where the state enterprises are heavily subsidised. In order for this objective to be fulfilled, the sales price of the public enterprise

²⁰ Transfer of decision making on economic parameters like prices and import priorities from the state to the market.

²¹ Transfer of the ownership of economic entities from the state to private agents.

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must exceed the capitalized value of future net resource flows lost by the sale of the assets; otherwise the sale will only yield short-term gains for the state budget.

Improving economic efficiency by means of privatization is an objective which is based on the hypothesis that the production of goods and services will be achieved more efficiently under private ownership than under public ownership. Other objectives often formulated include divestiture seen as a means of getting the private sector more involved in the economy; a way of developing local capital markets; a means of attracting foreign investment capital, and; freeing government administrative capacity from the management of enterprises towards other activities that only governments can perform. The extent to which these different objectives might be met through privatization is still widely discussed in the literature. To sum up this discussion, it might be said that the theories on the subject leaves us with no definite answers to the question of whether these objectives will be fulfilled by means of privatization, whereas empirical studies have shown that the objectives might be met in some cases and not in other cases, depending on a number of economic, institutional and political factors related to each privatization. Finally, it should be stressed that (at least in economic terms) privatization is not a goal in itself, but a means to improve the functioning of a given economy. See Table 2 and Chart 1 for the summary of Africa privatization exercise.

PRIVATISATION AS A SET OF INTERRELATED CHANGES

Privatization is a dynamic process which is related to various types of changes within an economy. Thus, privatization should not be seen within the context of denationalization/globalization alone, but within a broader framework including different forms of marketization of enterprise operations. The question of ownership is central to any analyses of privatization, but more than, this privatization is related to numerous changes in the relations between the state, the market and the enterprise in a given economy. Such changes can be divided into four²². The former two set of changes have been dominant in the literature, while the latter two types have often been the options which in practise have actually been given most attention, not least in many developing countries. These measures will be described in more detail below.

DEREGULATION

Let us first discuss changes within the overall functioning of the economy. These changes imply that the economy is being deregulated²³. Such deregulation of the economy sets up the basic conditions under which privatization is carried out, through measures such as new investment laws, abolishment of price subsidies, etc. This aims at creating an enabling environment for privatization to be implemented. Deregulation normally constitutes a first necessary (but not sufficient) step in the privatization process, and unless such deregulation is in place, there is an inherent risk that divestitures finish up as an end in themselves without necessarily leading to the realization of their objectives. Deregulation has in numerous developing countries been carried out within the framework of the structural adjustment programmes advocated by the World Bank and the IMF.

²² Changes in the overall functioning of the economy (deregulation), ownership changes (de-nationalization/divestiture), organisational changes and operational changes.

²³ A transfer of decision making on economic parameters like prices and import priorities from the state to the market.

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While it is generally agreed that some sort of deregulation is a necessary pre-condition for privatization to take place, the views on the content, timing and sequencing of deregulation differ widely; this is an ongoing discussion which the authors of this article will refrain from elaborating on. However, it seems appropriate to stress that while deregulation is a *sine quo non* for privatization, this same deregulation might often - at least within a short and medium term perspective - prove to have counterproductive consequences for the pace and success of the privatization process²⁴.

OWNERSHIP CHANGES: DE-NATIONALISATION AND DIVESTITURE {GLOBALISED TRENDS }

Denationalization implies a transfer of ownership of economic entities from the state to private agents. Such ownership measures include total denationalization where the entire state owned enterprise is sold to private investors, joint ventures and management/employee buy-outs. Popular conceptions of privatization suggest that there is a clear and well-defined body of theory, which explains the superiority of private over public ownership. As pointed out by Adam et al²⁵ closer examination, however, reveals that this is not the case. Rather, the economic arguments for privatization rest on a number of hypotheses about the relationship between ownership, information and incentives, and their impact on market structure and performance. However, these arguments can be distilled into two main ideas. Privatization, it is argued, will enhance productive efficiency²⁶ and allocative efficiency;²⁷ it forces down consumer prices so that they are closer to the marginal cost of production. A move towards a regime of freer competition will in most cases improve the allocation of resources rather than make it any worse. But, as pointed out by Paul Mosley, privatization may not be necessary to bring about freer competition, and will only contribute to such an improvement to the extent that it is accompanied by legal and policy reforms which bring freer competition about.

CURRENT EXPERIENCE WITH PRIVATISATION IN DEVELOPING COUNTRIES

The number of empirical studies of privatization has been on the increase in later years, reflecting the rise in the number of countries where privatization programmes have been implemented. Below, main findings from three major empirical studies of privatization in developing countries are presented. These studies have been selected for this purpose due to their impact on the privatization debate, and due to the fact that they focus on the more conceptual and generic issues related to privatization and base their conclusions on a large number of comprehensive country-studies. In the mainstream literature, it has often been taken as a given fact that private entities are per se more efficient than state entities. The empirical studies made in this field show however no such direct causal relationship, and although the World Bank studies referred to above claim that such a relationship can be found, the evidence provided in support of this conclusion is not convincing, not the least in relation to privatization within an African context.

Generally, the case studies of privatization in developing countries highlight the fact that divestiture measures have played only a minor role in the reform of the state enterprises, and that various constraints have been more dominant than actual results. Further, little evidence

²⁴ This might be the case if deregulation measures the effect of price structure within the economy, reducing the purchasing power of the consumer group which is expected to purchase the products of the privatised enterprise, or if deregulation leads to a considerable and sudden increase in international competition which the local industries are not viable enough to respond to.

²⁶ It leads to lower-cost of production.

²⁷ It forces down consumer prices so that they are closer to the marginal cost of production.

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has been found in support of the view that improved efficiency can be met through privatization. In the cross-country conclusion of case-studies undertaken in nine developing countries, Adam et al. states that the options for and value of privatization as an active adjustment policy has been found to be severely limited by a number of constraints, such as: lack of capacity for efficient and credible regulation, small capital markets with little absorptive capacity, and attempts by governments to gain political capital from privatization in countries characterized by narrowly-based private sectors with high levels of effective production and widespread domination of many sectors by state-owned enterprises. The study concludes that the lifting of these and other constraints represent a goal of the development process in general, rather than merely an impediment to the privatization process in particular. Not surprisingly, the countries with the most successful programmes (Jamaica and Malaysia) are far more “developed” than the countries where the programmes have failed (Kenya, Sri Lanka, Malawi and Papua New Guinea). Summarizing other studies of African privatization, Boubakri and Cosset (2002) looked at 16 privatizations on the continent of Africa (none in Zambia). Profitability rose and efficiency fell both by slight percentages. Neither of these shifts was statistically significant, but there was a significant increase in capital expenditures in the divested firms.

THE WAY FORWARD

If globalization and privatization has not yielded much benefits to poor countries, should they turn their back on it? No, as this is not a desirable response. Countries that are unwilling to engage with other nations of the world may risk falling further behind the rest of the world in terms of both income and human development. Thus, autarky is not a viable option. Therefore, under the present circumstances, a strengthening of the policy and institutional environment in SSA is required to improve the region’s competitiveness, accelerate its integration into the world economy, promote rapid economic growth and make a remarkable dent on poverty (Obadan, 2001d). Sound policies play a key role in determining the extent to which countries can draw from the benefits of global economic integration for economic growth. As globalization enhances the reward for good policies, it is necessary to have in place sound macroeconomic, sectoral and structural policies in order to improve macroeconomic stability, ensure external sector viability, make the economies more flexible, encourage diversification, reduce vulnerability to external shocks, and increase overall economic growth. If African countries have to achieve the Millennium Development Goals [MDG] set for 2015, especially the target of halving extreme poverty and significantly improving social conditions, they need to raise their real GDP growth rates significantly - perhaps, to 7-8 per cent a year - on a sustained basis. See table 2 below.

Table 2: Africa: Growth Requirement For 50% Poverty Reduction by 2015

Africa Region	Per Capita Monthly Expenditure (1985 PPP)	Estimated Gini Coefficient (%)	1998 GDP share (%)	1998 Population Share (%)	Growth Elasticity of poverty	Required Per capita Growth (%)	Population Growth Rate	Required GDP Growth Rate (%)
North	122	37.0	40.26	21.7	-1.11	3.60	2.0	5.60
West	53	43.0	17.23	29.2	-0.85	4.71	2.90	7.61
Nigeria	56	45	8.11	15.7	0.71	5.63	2.9	7.61
Central	77	42.3	5.14	3.9	-1.02	3.90	2.80	6.70
East	38	43.4	7.85	30.9	-0.74	5.40	2.70	8.12
South	90	47.4	29.52	14.3	-1.05	3.80	2.40	6.20
Total/Average	76	44	100	100	-0.92	4.19	2.60	6.79
Sub-Saharan Africa	65	43	59.74	78.3	0.95	4.39	2.77	7.16

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To the above end, however, there is the pressing need for each country to design economic strategies and policies that recognize and respect its specific needs and circumstances, and to promote sustainable and inclusive economic and social development that spreads its benefits to all sections of the society. The need for each country to design an appropriate response based on its political and economic realities suggests that SSA countries should be wary of pressures from some notable stakeholders, namely, transnational corporations, international banks and financial intermediaries, and multilateral international financial institutions, in the direction of an all encompassing process of globalization, particularly, financial liberalization which needs to be done cautiously against the background of required pre-conditions being met. The case of Mauritius is a notable one. In spite of defying the “Washington Consensus²⁸” through heavy intervention and targeting in trade, including the creation of export processing zones, Mauritius has made remarkable economic and social progress since the early 1970s (IMF Survey, 2001: 169). It, however, strived to put in place stable macroeconomic policies, neutral incentives between tradable and non-tradable sectors, and an efficient service sector. Nevertheless, it is important for African countries to be prepared to face the challenges of globalization by putting their houses in order, and transforming and invigorating their ailing economies with policies relating to pragmatic liberalization in the context of outward-oriented growth, complementary macro and microeconomic policies, promotion of manufactured exports, regional integration, human capital development, promotion of foreign direct investment inflow, raising the level of domestic saving and investment, development of technology, infrastructures, among others. In other words, a number of basic things must be put right for globalization cum privatization to yield significant benefit to poor countries, SSA countries included. These include the following:

* Orderly, Properly Sequenced And Sensible Implementation Of Out Ward - Oriented Strategy

This means achieving openness and liberalized trade regimes in an orderly and properly sequenced manner and taking cognizance of necessary pre-conditions. Outward-oriented policies brought great dynamism and greater property to much of East Asia, transforming it from one of the poorest areas of the world 40 years ago into one with improved living standards. As their overall living standards rose, these countries reduced poverty dramatically and made progress on all fronts.

* Financial Liberalization

Financial sector and capital account liberalization is an important feature of globalization. This has however, often been done in a misguided manner by some developing countries, resulting in the globalization by-product of bank failures and financial crisis. These are particularly serious for developing countries. They have serious and potentially far-reaching consequences for the local economy, as well as for the social and political governance of the country in terms of political instability. Second, under the circumstance of high level financial integration, financial crisis in one country creates economic, political, and social problems for other countries. The liberalization of the capital account should be predicated on the preconditions of well-developed domestic financial market, sound institutions, good macroeconomic frameworks, adequate and effective regulatory and supervisory frameworks. These can enable countries minimize the risks associated with financial liberalization. The sequencing of the capital account liberalization should be such that inflows is liberalized first and within inflows, foreign

²⁸ An agreed international procedure backed by the multilateral institutions.

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direct investment should be liberalized as against short - term inflows. Such inflows intermediate through the banks and denominated in foreign currencies tend to seem misguided. Indeed, the Chilean - style restrictions on capital inflows or Malaysian - style controls on capital outflows may be unavoidable.

* Continued Reform Of The Domestic Financial Sector

The financial system, particularly the banking sector and capital markets, play a critical role in lubricating a country's wheels for beneficial participation in the dynamics of globalization. This is particularly so in relation to international private capital flows which is a key driving force in the globalization process but then, the financial sector must be adequately prepared to withstand the stresses arising from volatile capital flows. A focus on the quality of the banking industry's assets should help to prevent overvaluation of assets, insider abuses, particularly lending. Also to be avoided is speculative bubbles, massive short - term debt and maturity mismatches.

* Developing A National Capacity For Production And Export Through Private Sector Development

Trade and investment provide the crucial means for effective participation in the globalization process. Successful trade reform and export performance need a dynamic private sector made up of a critical mass of competitive entrepreneurial firms whom Kiggundu (2000) has described as battalions of the global economy while the individual entrepreneurs are the foot soldiers. The state must, therefore, actively support and help to create a positive environment for the development and renewal of entrepreneurship.

* Promotion Of Manufactured Exports

Dependence on primary commodity exports has not significantly aided Africa's integration with the global economy nor minimized its marginalization, though most of the economies are open. The development of the economies will therefore require a major commitment to policies and institutions that promote manufactured exports in areas of comparative advantage, as well as focus on the recovery of the real sectors of the economies.

* Raising The Level Of Domestic Investment

If Africa must realize growth rates²⁹ that will enable it to achieve the international development goals by 2015, and participate meaningfully in the globalization process, then domestic investment levels must be raised substantially beyond what they currently are. This requires raising domestic saving rates and mobilizing private capital, both domestic and foreign.

* Adequate Infrastructure

Policy must give priority to adequate provision and rehabilitation of infrastructure - electricity, fuel supply, water supply, transportation, telecommunication, etc, - as a critical element of an enabling environment for private sector - led growth and the development of entrepreneurship.

* Human Capital Development

Human capital development is critical for the survival of the SSA economies and those of other poor countries in the context of globalization and increasingly knowledge - based economies. There is, therefore, the need to invest heavily in human capital, especially education and health.

²⁹. See table 2 above.

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* Development Of Technology

One of the key driving forces of globalization and privatization is cumulative developments and improvements in information, transport and telecommunications technology. However, for SSA countries to benefit meaningfully from globalization, they must overcome their present situation of low level technological development.

CONCLUSIONS

In sum, we are in the midst of an anti-democratic counterrevolution in which super-citizens, the Trans National Corporations [TNCs], are using globalization and its imperatives to weaken popular and elected authority in favour of a system of domination. Halting this anti-democratic juggernaut will be difficult, not only because of the power of its beneficiaries, but also because it operates within the framework of nominally democratic structures and musters plausible arguments. But these arguments may to some extent be self-serving and wrong, and should be vigorously contested. An agenda should be advanced that serves ordinary citizens rather than the TNCs and financial institutions. Negatively, this agenda will include backbreaking opposition to all supranational preparations that take power out of the hands of democratic governments to serve some alleged economic need. Positively, the agenda requires support for the imposition of serious limits and responsibilities on TNCs, including capital controls and other deterrents to financial speculation. Pursuit of this agenda is going to require a combination of understanding and effective organization of the large majority who are the victims of globalization.

If Africa is to participate effectively as a member continent of the “global village”, its peoples and its government must first undertake two tasks. The first is to borrow a leaf from Friedrich³⁰. In 1825, he wrote that when a gap in know-how and organizational capacities exist between economies carrying on frequent exchanges with each other, or when such a gulf is a consequence of unequal technological and organizational innovations, the more advanced economy is in position to sell its goods (and services) which it turns out with greater productivity and efficiency more cheaply in national and international markets. If no protective measures are put in place, the goods (and services) turned out with lesser productivity will lose out in the competition and the propensity to perform and innovate on the straggler economy will fizzle out completely, since the more competent and leading economy can use its superiority to good advantage in every respect. Thus, any society subject to a competence gap is easily pushed aside. It is marginalized and peripheralised. If it succumbs to peripheralisation, then it either undergoes a disintegration of its traditional life styles or social regression and is overwhelmed, or is converted into an appendage or outpost of the more highly developed economy. In order to catch up, the struggling economy should view the gap between it and the vanguard economy as an opportunity to protectionism precautions and embark on purposive development projects which are designed to reduce or eliminate the gap. The motto then should be, “catch up,” or indeed, “over take,” through the activity of a far-sighted and efficient government that ensures the cohesion of a nation in the process of development.

The second and more important task is that within the protected economies, the African governments should adopt the economic policies similar to those pursued by President Franklin Roosevelt of the United States, during 1933 – 1936. He used the powers of the American Government to jumpstart and reinvigorate the tottering economy of the USA.

30. The 19th Century German American Economist.

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African governments may not be as powerful and as efficient as the USA government was in 1933 – 36, but one thing is clear, America which is the leading champion of the global market, did not rely on the market or on the globe when it was faced with economic problems which were much less than the ones facing African countries today. Rather, the American government in such circumstances was to care for the citizens who found themselves the victims of adverse economic circumstances which denied them the necessities for fair existence.

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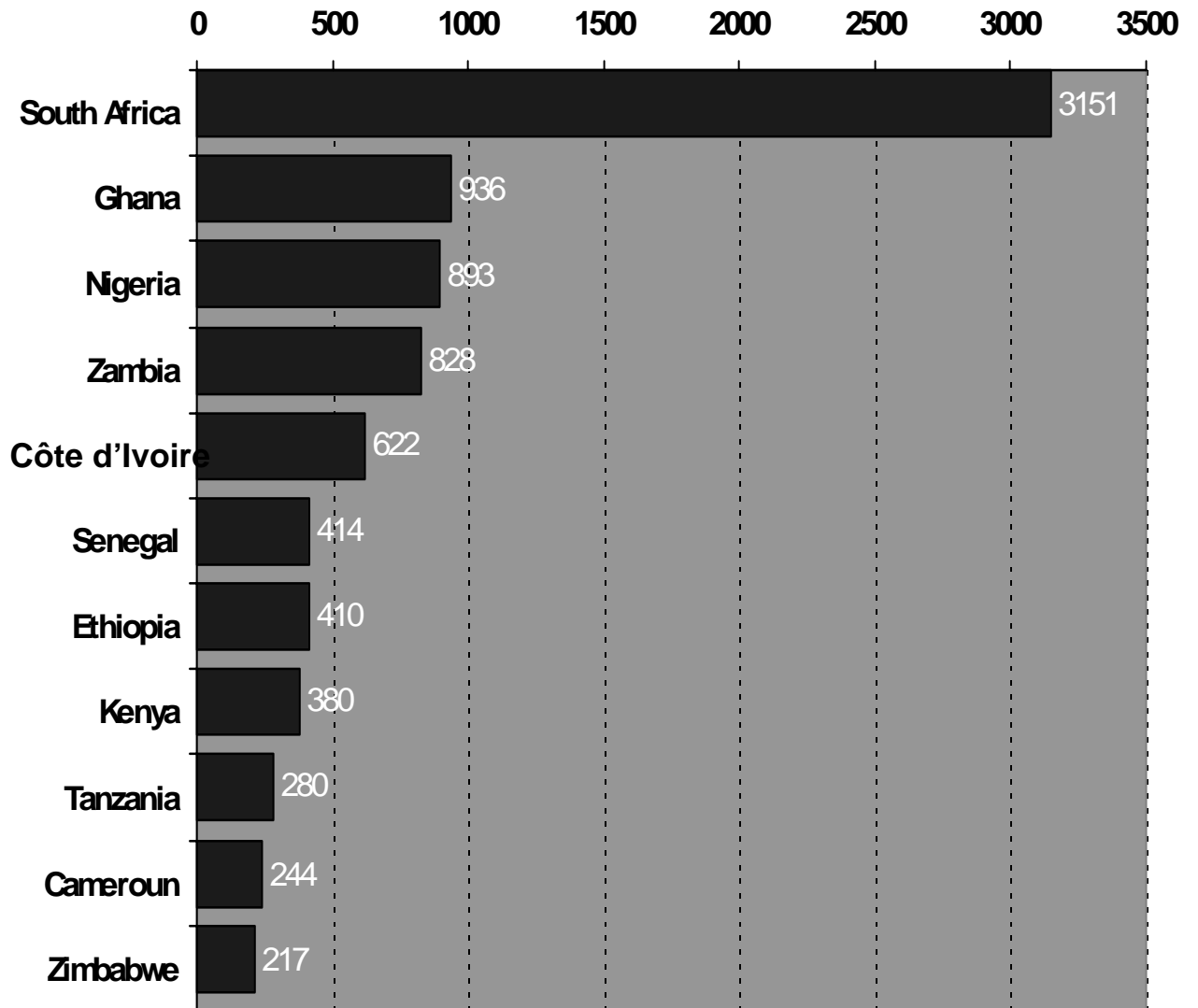
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Table 3: Privatization record in Africa 1991 - 2001

<i>Country</i>	<i>Number of transactions</i>	<i>Sale Value (US\$ mn)</i>	<i>Share of total SOEs divested</i>
Angola	57	6	...
Benin	28	49	38%
Burkina Faso	23	9	32%
Burundi	38	4	...
Cameroon	48	244	28%
Cape Verde	42	53	...
Central African Republic	18	...	50%
Chad	35	12	...
Congo (Brazzaville)	65	50	...
Congo (Kinshasa)	5	...	4%
Côte d'Ivoire	82	622	55%
Etiopia	10	410	6%
Gabon	1	...	6%
Gambia	17	2.4	85%
Ghana	181	936.5	69%
Guinea	31	45	27%
Guinea Bissau	25	0.5	64%
Kenya	189	381	79%
Lesotho	10	6.5	20%
Madagascar	61	16.9	33%
Malawi	11	53.2	44%
Mali	59	67.4	92%
Mauritania	19	1.2	20%
Mozambique	474	135	39%
Niger	10	1.8	18%
Nigeria	30	893.5	6%
Rwanda	1	...	3%
Sao Tome & Principe	4	0.4	...
Senegal	39	415	23%
Sierra Leone	8	1.6	31%
South Africa	8	3151	...
Sudan	32	...	...
Tanzania	199	287	53%
Togo	49	38	89%
Uganda	102	174	79%
Zambia	253	828	90%
Zimbabwe	6	217	10%
Total	2270	9111.9	Average 40%

Source: Nellis 2003; 8

Chart 1: Countries in which total transaction values exceeded US\$200 millions (cumulative, 1991–2001)



Source: Nellis 2003; 9

GENDER AND THE PRIVATISATION PROGRAMME IN NIGERIA

*Saudatu Mahdi**

PROTOCOL

It gives me great pleasure to present this paper on 'Gender and the Privatization Programme in Nigeria'. I must commend the organizers of this workshop for deeming it necessary to bring a gender perspective to privatization in Nigeria. Hitherto, most discussions about privatization in Nigeria hardly consider the gender dimension. This is expectedly so and it is a reflection of the perception of Nigerian women as only a part of the larger picture that needs no definition of its own. To say it for the umpteenth time, there cannot be a comprehensive and successful nation building where the concerns of women, and other vulnerable groups is taken for granted. Nigeria's economic problems and the solutions cannot be defined by men alone without including the concerns and input of women given their numerical strength put at 49.9% of the nation's total population (1991 Census). They are also responsible for the reproduction of the labour force and for producing over 70 percent of the nation's food supply.

According to the National Policy on Women, patriarchy and its related practices constitute some of the major impediments to the full integration of women into the Nigerian economy (Federal Ministry of Women Affairs, 2000). The result is that patriarchy as practiced in Nigeria gives men ascendancy in inheritance, land, authority and decision making in and outside the home. Section 42 of the 1999 Constitution of the Federal Republic of Nigeria guarantees non-discrimination on the basis of sex, among others. However, the unwritten law in Nigeria is that women are discriminated against in education, employment, etc, such that they cannot actualize their rights. This is contrary to the United Nation's Convention on the Elimination of all Forms of Discrimination Against Women, which Nigeria is a signatory to.

Inequality in employment between men and women put the women at a disadvantage. As rightly noted in the National Policy on Women, about 13.3 % of women were employed in the formal sector until the 1980s. This figure has drastically reduced in the process of economic reconstruction as a result of the rationalization of public and private sector workers and cuts in production capacity in industry. It has also been noted that majority of female workers are in lower cadre occupations while those in professional and marginal occupations constitute only 18 percent of that grade of employment. What of the labour laws, which are supposed to protect women in the formal labour market? They are not being effectively implemented and the tax laws also discriminate against women. The situation is not significantly different in the informal sector where most Nigerian women largely engage in micro-enterprises with little or no access to credit, technology and other supports required to build up capital. Even in the formal sector, it is not easy for Nigerian women to access credit facilities.

The implication of all these is that Nigerian women are not financially empowered unlike their male counterparts either in business or other enterprises though they provide an estimated 60 – 80 percent labour input in agriculture, especially in food production, processing and marketing.

It is a sad commentary that there is a feminization of poverty going on. In the mist of a parlous economy, many women have become breadwinners in their homes bearing the responsibility of feeding and providing for their children and husbands who have become jobless. It is in

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this socio-economic context that privatization is going on in Nigeria. This picture is necessary so as to understand how fair the ongoing privatization in Nigeria can be to Nigerian women.

ARGUMENTS FOR PRIVATIZATION

The Federal Government of Nigeria is reported to have spent close to \$1 billion in establishing, between 1975 and 1995, Public Enterprises (PE) with the following objectives:

1. Balance or replace weak private sector
2. Control commanding heights or strategic sectors of the economy
3. Produce higher investment ratios
4. Transfer technology, management and know-how
5. Generate employment
6. Develop otherwise uneconomical areas or sectors
7. Provide goods and services at lower cost.

However, rather than achieve these objectives, the Public Enterprises have not been able to perform creditably well. The points against PEs (Othman 2003) are:

- Creating economic inefficiency
- Consistently incurring financial losses
- Absorbing disproportionate share of credit
- Contributing to fiscal deficits and imbalances
- Facilitating and entrenching parasitism and corruption
- Attracting rapacious military-civilian elites to politics.

In fact, Public Enterprises (Othman 2003) consumed an average of \$3 billion annually in subsidies from 1992-99 and became major stumbling blocks to obtaining debt relief for Nigeria. It is argued that privatization will reverse this situation because of the following benefits it offers:

- Government raises large sums of money from privatization. Nigeria generated N236 in phase one of the privatization programme.
- Consumers enjoy greater access to goods and services previously unavailable to them.
- Employees generally benefit from privatization programme through generous severance packages. It also on the average creates jobs.
- Privatization helps to strengthen the capital markets and widens the ownership of capital.
- Privatization encourages competition in most cases.
- It attracts foreign investment.

In spite of these benefits, labour has always criticized privatization for encouraging reduction in the work force, lower wages and deteriorating working conditions and reductions in other benefits, fears which government often tries to allay.

Accordingly to El-Rufai (2000), the divestiture strategy for the first phase of the privatization programme was sale to core investors combined with public offers, a strategy that allowed the government to maximize revenues and ensure that no leadership vacuum is created by the privatization. A total of over twenty billion naira is expected to be realized from the transactions that had been concluded.

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Othman (2003) notes that post privatization performance of the companies show remarkable improvement in delivery of goods and services compared to their pre privatization years. For example, West African Portland Cement Company (WAPCO) and UNIPETROL are reported to be doing better now after privatization.

IMPACT OF PRIVATIZATION ON WOMEN

Having stated the above, it should be of interest to know how privatization can affect Nigerian women. It should be of concern to us. By the time key institutions providing water, electricity etc. are privatized, what impact will this have on Nigerian women?

One school of thought opines that privatisation will not affect Nigerian women in any special way other than it will affect men. But that is not true. For instance, the recent increase in the prices of petroleum products is affecting both men and women but women as homemakers feel it more. This is because apart from being employees as men, women are also homemakers and have to live with the pressure of maximizing the little money their husbands provide to take care of the home. Whatever husbands provide in most homes is hardly proportional to the percentage of increase in the prices of kerosene, food items, etc, yet wives have to feed the family. The man only provides as much as he can from his income (hopefully) and expects the woman to become a magician or a miracle worker – turn stone to bread or multiply the few loaves of bread and pieces of fish. How can we say women and men are affected the same way?

Although protagonists of privatization argue that it will lead to better delivery of goods and services, they cannot assure us that we will not pay more. Both are important and must be balanced. It amounts to being insensitive to the economic plight of the people not to allay this fear as if better service delivery is all that is important. Service delivery must not only be excellent but must be affordable. There is a justifiable fear that privatization of institutions providing water, electricity etc will lead to increase in prices to be paid for these services by Nigerians going by what has happened with the so called deregulation of the downstream sector of the petroleum industry. Nigerians are surely going to pay more for water, pay more for electricity and the saddest thing is that their incomes do not increase at a percentage proportionate to these increases.

Of course, some may come up with the argument of government regulating the prices or changes. If government could not do it satisfactorily for GSM telephone tariffs and the recent upward pricing of petroleum products, government would not be able to do it for water supply, electricity supply etc. In this circumstance, who bears the brunt ultimately? When the husband comes under financial pressure with legitimate family demands staring him in the face, he readily banks on the wife for support if the wife is employed but there is a limit to how far her contribution to help in the home can go because she is not isolated from the pressure of the vicious cycle created by arbitrarily high cost of living.

I do agree that the present state of public water supply and electricity supply is appalling. In fact, the World Bank (2000) rightly notes that inefficient and inadequate public provision of water has been a glaring problem in many developing cities. According to the World Bank, while 80 percent of high-income urban residents in the developing world have a water supply connection, only 18 percent of low-income residents do, though some share water taps with neighbours. It follows that those without access to safe water must buy from vendors at costs that are many times higher than those for piped city water.

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This is the negative situation that advocates of privatization of water for instance often call attention to justify privatization. While the status quo cannot be commended, government must consider not just the economic benefit to it but the social implications on the society. Nigerians indeed Nigerian women must not allow themselves to be blackmailed to succumb to privatization of every sector on the pretext that public companies/enterprises are offering inefficient and inadequate services.

I am of the opinion that some public enterprises should be seen as rendering social services rather than being engaged in profit driven business and therefore should not be privatized. Rather they should be overhauled to perform better. Inefficiency is not enough reason for privatization of such enterprises. After all, why do we not privatize the Nigerian police because of obvious inefficiency? If we privatize everything, what will government be left with?

As regards the argument of privatization leading to the provision of efficient services, I dare say this is not automatic. It cannot be taken for granted, as users of the GSM telephone will readily attest to. Experience from Britain even negates this argument. The World Bank (2000) reports that by the early 19th century, private water companies had been serving London for over 200 years with eight companies operating in the city at the end of the century. However, people became dissatisfied with private providers overtime because of lack of services in outlying areas, high prices, poor quality, and political corruption.

If the prices of water supply, electricity supply etc goes so high that they put pressure on the finances in the home, Nigerian women will be negatively affected. Even now, there is a lot of tension in homes, which can be conveniently traced to financial matters. A woman who is going through marital crisis induced by financial pressure can hardly give her best at work and contribute optimally to nation building. I also need to add that some women may also lose their jobs as part of the down sizing or right sizing that accompanies privatization. This is not a negative prophecy but it is a reality of privatization. These women will have to face a decision of what to do from then. No severance pay will be enough for them to live on unless they are able to get themselves gainfully employed or they immediately secure another employment.

I am also concerned about the gender pattern of the privatization. I do not have statistics but I will be surprised if the purchases of the companies being privatized either by strategic buyer/core investors or by public offer are not being done by men. This further goes to economically empower the men at the expense of women just in agreement with the belief of our patriarchal society. How would women be able to compete with men economically when there has never been a level playing ground. The discrimination has been long standing such that very many women are disqualified economically. I am not too sure if the ongoing privatization has not essentially compromised the economic rights of women.

As a disadvantaged group, women should have been assisted to take advantage of the privatization programme so that everything is not captured and controlled by men. As it is now, the only saving grace for many women may be the Privatization Share Purchase Loan Scheme (PSPLS) established by the National Council on Privatization to enable Nigerian citizens aged 18 years and above to purchase shares being offered in public offers. I urge Nigerian women to get more information about this and take advantage of the scheme. I also do realize that some women can be very unconcerned about a matter like this even when they have the means to participate. Such non-responsive attitude has made women lose precious opportunities in the past. Women must change. Since the men have started selling government

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business, women who have the wherewithal should partake of it and not just stand aside watching. Nigeria belongs to us all.

CONCLUSION

All over the world, the trend is towards gender parity. The nation's wealth belongs not to the male gender alone but also to the female gender.

Just as the clamour of recent has been for gender mainstreaming, Nigerian women must begin to amplify gender perspectives in the on going privatization. Not until then will gender analysis in this period of privatization be accorded the due place it deserves and women's concerns, perceptions and priorities well addressed.

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GENDER AND PRIVATISATION IN NIGERIA: CONCEPTUAL LINKAGES AND PERTINENT CONCERNS

*Bola O Akanji**

INTRODUCTION

Privatization of Public Enterprises (PEs) in Nigeria was necessitated by clear evidences of their dismal financial failure, managerial inefficiency and inability to deliver the minimal goods and services that ensure basic quality of life in the country. Following the findings of the Onosode Commission in 1984, the institutions for privatization and commercialization of some PEs were set up. The main Institutions were the Technical Committee on Privatization and Commercialization (TCPC) and the Utilities Charges Commission (UCC). There are two dimensions of the privation process can be identified; divestiture and cutback in government financial flows.

THE RATIONALE

The expanding role of PEs into non- traditional areas of investment such as banking, manufacturing, primary production, oil prospecting, hotels and catering, fertilizer production, cement production, rail, air, sea transportation and so on in spite of their inefficiency led to a stranglehold on the whole economy. With growing inefficiency, PEs became a drain on resources instead of creating national wealth. Other reasons for privatisation include;

- The inability of PEs to provide those basic goods and services that guarantee minimum quality of life such as education, health, energy, water, transportation etc;
- Slow bureaucracy that strangulated the management due to government's central role in day-to-day decision of these firms;
- Misuse of monopoly power of the enterprises through inappropriate pricing, which left no room for healthy competition in the market for goods and services;
- Perpetual buttressing of the production system by government funds (tax payers money) while not getting decent service for such was a kind of double taxation on the public (people);
- Defective capital structure resulting in dependence on government treasury for financial operations;
- Large-scale corruption and mismanagement;
- Over –bloated staffing over heads;
- Dwindling crude oil revenue and reducing scope for financial largesse by government.

THE GLOBAL ECONOMIC RATIONALE

Privatisation and commercialization find their root in the growing global move towards liberalization. Neo-liberalism is therefore the order of the day and has been the driving force for national economic policies. It is associated with the “diminishing state and expanding private sector”. It came on as an agenda of the major international financial institutions namely the World Bank/International Monetary Fund (IMF) who faced the challenge of bailing out many nations from reckless indebtedness of government due to fiscal indiscipline, corruption, resulting in declining growth and diminishing standard of living of the citizenry.

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The Theoretical Antecedents

The classical economic ideology of Adam Smith is one of *laissez faire*, based on strict market conditions in shaping the forces of demand, supply and prices. It also assumes '*pareto optimality*'— static and dynamic efficiency and a trickle down effect to all as a natural consequence of economic growth. The private sector is the mover of the economy and the creator of growth while the state 's role is restricted to maintenance of law and order and the creation of institutions for the functioning of the market.

Perennial inability of all to have access to market goods and services (unbalanced growth) however led, in the 1970s to the emergence of liberal economic thoughts which was characterized by subsidization policies, strict ministerial control and regulation of private sector activities. The liberal ideology of Samuelson favoured greater government role in ensuring access of all to basic goods and services. The unprecedented growth of PEs world –wide into non-traditional areas of their operation, and their dismal failure in the process put paid to this liberal ideology from the mid 1980s.

Such failure of public sector –managed economies led to a return to Adam Smith's theory of development but with a caveat: (governance-led development) with the assumption that good governance paves the way for a well guided, people–centered but a more viable private-sector –led economic development. Thus, neo-liberalism has a twist that was absent in classical economics –the central role of the people and people as both the means and the end to development. Also unlike in the classical school, economic management is based on not just economic growth but economic development. In this framework, the stage was more than set to axe any public sector agency that is not cost–effective and which does not deliver the goods and services to the people. Good rational governance dictates that the people should not subsidize the inefficient private sector management in as much as it guarantees delivery of wealth – creation, productivity enhancing and raising the well being of the people. This was the precursor to global economic reforms and structural adjustment programme in Nigeria, with which was packaged the Commercialization and Privatization Decree No 25 of October 1988.

The ENTRY POINT FOR GENDER IN LIBERALISATION/PRIVATISATION

A Structuralist Concern

In any development construct based on liberalism, profit maximization, free market, there is always a structural dimension. This structuralist approach paves way for the interest of the marginalized or less privileged who can not operate on the same playing field as those that are well equipped to compete in a free market system. The lack of a level playing field is often due to disadvantages beyond control of those concerned. It may be due to past misconceptions, marginalisation, lack or loss of entitlement, lack of control over productive resources, disabilities or simply, not being a mainstream interest. Thus, many groups are affected by these structural realities often based on development dichotomies- rural –urban, poor –rich, young –old, literate –non-literate, north –south or other geo-political based differentials, national – foreigner or native – alien and of course, male – female. Gender is not unique in this structural discourse. It cuts across all the other dichotomies.

Achievement Of Growth Or Development?

It is imperative to compare the objectives of privatization to that of economic development:

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Objectives Of Privatisation

- Increase in income and consumption of goods and services
- Increased availability of goods and especially services to fuel productivity and enhanced GDP
- Profit maximization (financial wealth) and thus decrease in social cost and responsibility

Objectives Of Economic Development

- Raising quality of life through increased access to goods and services
- Enhanced social and economic benefit of production processes, thus incorporating the notion of social costs and benefits. The latter may not be in terms of tangible wealth
- Increase in GDP with robust human development indicators
- Creating improvement in human capacity, esteem and dignity
- Freedom and expansion of livelihood choices
- Thus encompassing growth, social equity and human rights

The point of departure is that privatisation does not accommodate the notion of social responsibility and intangible human capacity or wealth. Privatisation is not concerned about equity issues or human rights; therefore vulnerable groups that need social protection, social safety nets and so on cannot be accommodated. This remains a role for the state if economic development is to be achieved.

The implication is that the concept of Public–Private Partnership (PPP) must be embraced in order to consider the gendered dimensions of privatization and indeed other structuralist concerns.

WHY A STRUCTURAL/GENDER CONCERN?

The Weak Link Theory

A chain is only as strong as its weakest links. The weak links are located where lack of entitlement, lack of productive resources, lack of sustainable livelihoods contribute to the social welfare burden of an economy. The weak links are located where the structurally excluded are operating- domestic workers, peasant farm workers, the unemployed youths, the frail elderly, the disabled etc. Reduce the disadvantage and the weak links will be reduced. Overall system efficiency is enhanced when all are empowered to be productive, increase their productivity and participate in national (and household) wealth creation (ADB, 1995).

The Gender Concerns

Some fundamental gendered realities must be confronted in the process of privatization:

- Where are men and women placed in society at the introduction of the policy and what constraints are posed on time, abilities and participation?
- What are the gender differences in the control and ownership of assets and productive resources for participation and benefiting?
- Is there a gendered nature of production itself or a gendered outcome of the production process? For example, which PEs are being privatized and who is more affected positively or negatively?
- How does this outcome affect the expected trajectory of changes or outcomes?
- What are the mechanisms put in place in the policy implementation in order to return to the expected trajectory of outcomes?

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In the case of privatization of PEs, the relevant issues used to assess these gendered concerns are:

1. The ownership structure of the privatized enterprises
2. The extant levels of consumption of privatized goods and services
3. The accessibility and affordability of the goods and services, given gender roles and responsibilities, and endowment
4. The relevance of the sectors or goods and services being privatized to men and women.
5. The impacts or the outcomes of the privatization process on quality of lives.

The Relevant Questions?

- ✓ Is there a level playing field for men and women and under-privileged groups to participate and benefit?
- ✓ Do the outcomes reduce or exacerbate gender disparities?
- ✓ Do the outcomes in terms of access to goods and services affect the structure of poverty (relative poverty of men and women, reduce or increase feminization of poverty)?
- ✓ Do the outcomes in terms of access to goods and services promote sustainable livelihoods and food security?
- ✓ Do the ensuing engagement processes increase empowerment (economic, social, political for women and underprivileged)?
- ✓ Are the effects (positive and negative) short term, medium term or long term?

Framework For Assessing Structural/Gender Impact Of Privatisation

1. Effects Of Changes In The Operations Of Privatized PEs

Characteristic of Privatised PEs	Features	Implications
Efficiency	Cost Minimisation Appropriate Pricing Expanded Output Technology Infusion Formalisation of Processes	Job Cuts Higher Prices Skilled Operations Bigger Market Informalisation of spin-off employment
Structural regulation	Private Shareholding Less Government in Decision Competitive Management Upsizing/Down sizing	Private Capital Inflow Rationalised Employment Policy Equitable interest Individual Interests Group Interests Job cuts Job Creation
Revenue Inflow (Govt)	Expanded Govt Expenditure Budget Discipline	One - off revenue Net flows (less firm upgrading costs) Short term fund flows Public Expenditure Framework affected? Restricted Social Spending
Capital and Technology Infusion	Financial Sector Growth Larger Enterprises Technology Growth Mergers and Acquisitions	Liberalised capital flows Access to capital Globalization of interests Constriction of domestic consumption Relevance of micro-finance Stage of financial economy High Skill Requirement

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		Reduction in labour – intensive processes Rural exclusion
Fiscal Discipline	Transparent Management	Greater Accountability Trickle-down to state Participatory budgets
Efficient Infrastructural Environment	Liberalised Service Sector Energy, Communication, Transportation	Higher prices of services Cut down in social consumption

Source: Akanji Bola: Gender and Privatisation in Nigeria: Conceptual Linkages and Pertinent Concerns

2. Effects Of Changes In The Structure Of Output Of Privatised PEs

Privatised Entity	Nature of Output	Whose Burden
Development Banks	Development Finance Subsidised credit	Women, the poor
Commercial Banks	Market Rated Credit Formal Credit	Low Income Women
Oil Marketing	Industrial energy Domestic Energy Transport Fuel	Consumers Women Low Income
Fertilizer Company	Farm Input	Farmers Food Consumers Agro-Industrial Processors
Transportation Company	Air, Rail ,Road, Services	Commuters/Marketers

Source: Akanji Bola: Gender and Privatisation in Nigeria Conceptual Linkage and Pertinent Concerns

3. Privatisation Of Goods Versus Privatisation Of Services

Services include education, health, finance, insurance, transport, travel and tourism, technical assistance (IT). Goods are basic consumption of food, clothing, leisure items, application, vehicles, spare-parts etc. Gender gaps in access-indicators are highest for services than for goods. The United Nations Commission on Human Rights (2001) emphasized the fundamental importance of delivery of basic services (over goods) as a human rights implication of the current liberalisation and privatisation programmes. The United Nations Commission reiterates that “governments must play a role in the availability, accessibility and quality of basic social services”.

4. What Mechanisms Are Put In Place To Ensure Equitable Participation?

The modalities of the TCPC/BPE are laudable but how have they been implemented, especially to ensure equitable gender spread?

- Large volume of application forms; Using non-traditional outlets to sell forms;
- Radio campaigns in local languages; adverts over a six-week period
- Low units of equity shareholding; Legislation against multiple subscription;
- Attention to geo-political spread in subscription (no other structural disparities considered);
- Setting scale of preference for the most affected - staff of companies, cooperative societies, state and LGA of the PE; civil servants;
- Mandating commercial bank loans and overdrafts;
- The privatization loan scheme etc

CONCLUSION

The gender and other structural effects of the on- going privatization process are yet unclear because of lack of a framework hitherto to analyse such and lack of research on the outcomes

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from a people – centered perspective. There is lack of key indicators to carry out such impact analysis by the existing institutions perhaps due to lack of capacity for such. There is also lack of gender statistics in our public sector accounts and so there are little or no benchmarks to evaluate post privatisation effects.

A need for research is hereby indicated at this stage. A need for continuous monitoring and evaluation of the effects on economic development, not only in terms of financial viability of the emerging enterprises, but also in terms of human development, is also indicated.

The Utilities Charges Commission has not been effective. Its role is very critical especially in defining a role for government price support where this is indicated, based on United Nations recommendations and especially in the area of trade in services where women and children are highly affected by higher prices of basic commodities.

The spin – off effects of privatisation are yet to be taken note of. There are mushrooming commerce activities, informal credit systems, cross border trade in services especially labour and commerce which are not accounted for. The spate of smuggling also needs to be checked by firm enforceable legislation because this has so far rendered the pricing effect to be detrimental to all and more to providers of domestic goods, services and especially utilities.

There is need for the evolution of effective public – private partnerships especially in the service sector. The necessary overlap of roles (common interest space) must be identified. This is a role for the civil society as the mediating force between the fading public sector and the enlarging private sector. The costs and benefits (to people) must be constantly assessed and weighed against the expected trajectories of human – centred development.

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PRIVATISATION: WHAT ROLE FOR THE MEDIA?

*Emeka Anaeto**

PART ONE- INTRODUCTION

The general functions and responsibilities of the mass media in any free society are three fold: informing, educating and entertaining. The last is hardly our focus in this expose but it is by no means a less visible aspect of the media. Therefore, for the purpose of this presentation, we concentrate on the information and educational roles of the mass media in the society.

Some media experts have redefined this dual role to mean communicating and agenda setting. I do not see this redefinition as merely semantic. In fact, it underlines the role of the mass media in every aspect of social life. It means bridging the information gap, which would also mean spreading knowledge and educating the target audience on issues. The critical (may be not more fundamental) aspect of this function as expressed in the redefinition has to do with placing issues in the public domain, in the court of public opinion, and this is usually expressed as agenda setting.

Does the professional definitions entail taking positions or sides by the media or medium on issues? Of course, no. But this, in my opinion actually indicates a weak link in what would have otherwise passed for a very articulate expression of the functions of the media in a free society. The media is essentially a neutral organ, the Fourth Estate in the realm of the social contract. And this takes us to editorial policy /style, the very important feature of the media especially as it is at the heart of our discussion here.

But before addressing the issue of editorial policy /style, it is pertinent to quickly point at editorial comments, news analysis or news commentary as major integral parts of editorial offerings of the media, which appears, technically speaking, a deviation from the tradition of neutrality of the media. Editorials reflect the views of the medium on an issue. In other words, the medium has taken a position. It can also be stretched further to mean that it has favoured one side of the argument. But most media would explain their editorial positions as objective.

The foregoing reveals the place of editorial style, editorial policy and house style in the functions of the media. As a beginning point, each medium would plead objectivity. But a contextual analysis of any news item could easily make a policy controversial and debatable on the extent of its objectivity, while some would easily dismiss such as subjective, speculative, mischievous, or outrightly a hatchet job.

However way one may see it, media houses tend to explain away their editorial content and approach to news presentation as a matter of style or policy. In fact, sensationalism, screaming headlines, speculative reporting, etc can also be house styles.

Nevertheless, within the controversy of objectivity/subjectivity what the media, the readership and the news makers would generally subscribe to is embedded in the concept of responsible

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journalism. I think the easiest way of determining what this concept means is actually by asking the question: who does the media work for?; what purpose does a particular news item serve? You can also extend the question: what are the implications or impact of the news items to the various stakeholders on the issue?

From objective answers to these questions, you can begin to see how responsible or otherwise the medium or the news item is. But this draws to the further amplification of the concept of responsible journalism. Note here that a medium is a commercial enterprise with business interests and objectives as well as business strategies towards achieving the objectives. I would also emphasise the existence of interests other than business, e.g. political. So when a medium defines its interests, objectives and even market, it is expected that its editorial policy/style will be in accordance with the demands of these audience and this also forms the basis of evaluating how responsible its journalism is. Again, this draws us to the issue of professional ethics. Of course, there is journalism ethics, which transcends house style, business interest/objectives and it falls within the precincts of responsible journalism. Ethics defines the minimum acceptable standard of behaviour, decorum and even morals in the issue of duties of a journalist and a medium.

All these put together forms the basis for assessing the role and performance of the Nigerian media in the privatisation programme. They also define and explain the opportunities and constraints before the media in performing its functions in the programme. And finally they point to the way forward, suggesting areas of improvements.

PART II

The main challenge of this paper is to address the problem of promoting the need for effectiveness, efficiency and profit in privatisation while at the same time addressing the State to its duty to protect, respect and fulfill economic, social and cultural rights.

Chapter Two of the Constitution deals with the fundamental obligations of the Government and in section 14 (1) states that “the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice.”

The economic and social justice objectives of the State was stressed in section 16.

16.-(1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution-

- (a) Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self - reliant economy;
- (b) Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status, and opportunity;
- (c) Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy.
- (d) Without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

(2) The State shall direct its policy towards ensuring-

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- (a) The promotion of a planned and balanced economic development;
 - (b) That the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
 - (c) That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and
 - (d) That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.
- (3) A body shall be set up by an Act of the National Assembly, which shall have power -
- (a) To review, from time to time, the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on same; and
 - (b) To administer any law for the regulation of the ownership and control of such enterprises.
- (4) For the purposes of subsection (1) of this section -
- (a) The reference to the "major sectors of the economy shall be construed as a reference to such economic activities as may, from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation until a resolution is made to the contrary by the National Assembly, economic activities being operated exclusively by the Government of the Federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company shall be deemed to be major sectors of the economy;
 - (b) "Economic activities" includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and
 - (c) "Participate" includes the rendering of services and supplying of goods.
- 17.-(1) The State social order is founded on ideals of Freedom, Equality and Justice.
- (2) In furtherance of the social order
- (a) every citizen shall have equality of rights, obligations and opportunities before the law;
 - (b) the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced.
 - (c) governmental actions shall be humane;
 - (d) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and
 - (e) the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.
- (3) The State shall direct its policy towards ensuring that -
- (a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;
 - (b) Conditions of work are just and humane, and that there are adequate facilities for leisure

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and for social, religious and cultural life;

(c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;

(d) there are adequate medical and health facilities for all persons;

(e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;

(f) children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect;

(g) provision is made for public assistance in deserving cases or other conditions of need; and

(h) the evolution and promotion of family life is encouraged.

18.-(1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.

(2) Government shall promote science and technology.

(3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide -

(a) Free, compulsory and universal primary education.

.....

The central issue is to define the role of the media in the privatisation programme considering these duties of state in Chapter Two of the Constitution. It appears that the role of the media in privatisation cannot be separated from its role in a free society. To the above will be added another distinguishing role of the media, albeit, the financial press in the privatisation programme. It is the developmental role/function. Essentially, most public institutions in Third world countries have beyond their traditional functions, a developmental function. A regulatory body such as Central Bank of Nigeria (CBN), Securities and Exchange Commission, (SEC) etc would also play beyond financial market regulatory and supervisory roles to economic development and market deepening functions.

Thus, beyond communicating between the various segments, institutions and groups in the society, the Third world media is also saddled with the function of promoting development, economic, political and socio – cultural. As if to drive home the developmental role, legalise and institutionalise it, the Investment and Securities Act (ISA) 1999 has vested the role of capital market operator on the financial journalist. The implication of this is enormous as can be gleaned from the provisions of the Act.

These form the basis for appraising the role of the media in the privatisation programme. Again, bringing out the salient objectives of privatisation will go a long way in appraising the role the media have played so far in the programme.

The key objectives are: -

- ☞ To promote private sector – led growth;
- ☞ To promote economic democratisation;
- ☞ Open up to foreign investment;

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- ☞ Reduce waste in public expenditure and budget deficit;
- ☞ Eliminate corruption;
- ☞ Eliminate monopolies and promote efficiency;
- ☞ Deepen the capital/financial market.

The role of the media so far in promoting effectiveness, efficiency and ultimately profit along this set objectives can be examined. But before then, it is very important to bring out the basket of stakeholders' interest in the privatisation programme and then ex – ray how these interests have been protected under the exercise and equally how the media have played its role in this regard.

Some of the identifiable stakeholders/interest groups in the privatisation programme include:

- ☞ Staff/Management of the enterprises;
- ☞ The core investors;
- ☞ Other shareholders/investors
- ☞ Capital market operators
- ☞ Capital market regulators
- ☞ Privatisation consultants
- ☞ Enterprise host communities
- ☞ Privatisation Authorities
- ☞ The government.

It must be pointed out here that we should avoid the temptation of narrowing the issue of state's duties/responsibilities and limiting it to the protection of the so called 'Ordinary Nigerian' or put more semantically, 'the vulnerable group' and then expect the role of the media to centre on the interest of this group. At least, the constitutional provisions for economic and social rights did not expressly point to such social classification.

Having therefore, identified the broad range of stakeholders in the privatisation programme, we can now begin to identify their interest, which needs protection by the state and perhaps locate the role of the media in this regard.

Some of the visible economic interests include: condition of service/job satisfaction, employment generation, improved returns on investment, market development/deepening, value – added growth, capacity utilisation, technology transfer; sanctity of contract, transparency/full disclosure, competitiveness, standard/quality services, revenue impact, corporate citizenship. This list is not be exhaustive of the issues. The media is expected to reflect the extent to which these interests are satisfied.

PART III

APPRAISING THE PERFORMANCE OF THE MEDIA IN PRIVATISATION

It is not particularly an easy task assessing the performance of the media in discharging its role in the privatisation programme. But this discourse finds direction by examining how the media has so far applied itself to communicating and setting agenda on the privatisation exercise.

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The first issue to be addressed is the structure of media coverage of the programme from two perspectives, first the “financial media” and then what I call the “privatisation media”, at least for the purposes of this discussion.

The financial media, represented by the news package from the Business Desk of each newspaper, are organised according to the various sectors of the economy otherwise called beats such as Money Market, Capital Market, Insurance, Energy (Oil and Gas), Maritime, Transport, etc. Again the various beats are published on specific days of the week within the daily business news segment of the newspapers. For instance, in Vanguard Newspaper, Money Market and Capital Market are published on Mondays, Energy on Tuesday, Insurance on Wednesday, etc. Reporters are attached to each beat.

With this structure, it is clear that all the privatised enterprises are covered while adequate arrangement is made to ensure that stakeholder’s attention and expertise are brought to bear on news items on the privatised enterprises as events unfold and they are published.

Then on the “privatisation media”, it needs to be explained that whilst no attempt has been made by any medium to designate and deploy reporters specifically to privatisation beat, the privatisation authorities have taken it upon themselves to galvanise and establish concentrated media coverage of the privatisation programme. This is what I call privatisation media.

Under the arrangement, a few journalists drawn from Abuja financial press have been concentrated on the Bureau for Public Enterprises (BPE) activities such that every Tuesday, there is a ‘meet the press session’ at the BPE, Abuja office. Also, until this year, the privatisation authorities have put in place an arrangement for a ‘meet the Business Editors’ Bi – annual meeting in Abuja. Note that Business Editors of 95 percent of the known media houses are based in Lagos.

While the BPE uses the first line meeting to update the financial press on week - by – week developments in the privatisation programme and share information and opinion, they use the Bi – annual Business Editors’ meeting to further consolidate the communication bridge.

All these go hand – in – hand with the several public enlightenment and investors’ fora organised periodically by BPE to which the media are invited. The Bureau also sponsors media visits and research on privatised enterprises and those at the various stages of privatisation across the country.

With these arrangements, it is expected that media access to information on privatisation is not impeded. But the question that still remains is, how the media have been able to make use of the arrangement to inform, educate, indeed communicate the activities to the various stakeholders while also setting agenda for realisation of the privatisation objectives and protection of the various interests of the stakeholders?

Without running the risk of giving undue pass marks to the media, it is submitted that the media have so far discharged its duties within the bounds of its professional ethics and principles, editorial policies and the business realities of the day.

PRIVATISATION: WHAT ROLE FOR THE MEDIA?

*Agustin Uganwa**

INTRODUCTION

The implementers of the privatization programme, the Bureau of Public Enterprises (BPE) defined the exercise as the process of changing the ownership of government companies to private ownership through the sale of the shares and equities of such companies to the private sector who will manage the companies efficiently and profitably.

BPE computed the gains of privatisation to include; reduction in government wasteful spending, strategic investors/ foreigners bringing in money and new technologies to manage the companies leading to the growth of the economy and creation of more jobs.

Apart from cutting down on government's wasteful spending, there is also the impression that government would make money from the sale of the companies and such funds will be used to provide the basic needs of the citizens. BPE also makes us believe that privatisation will improve the quality of services that the privatised companies would render because private individuals /investors will be interested in the performance of their companies to ensure adequate profit.

The poor is also assured that the exercise is not only for the rich, that the shares will be sold to everybody. Besides, the effort is on to make sure that Nigerians from all sectors – civil servants, traders, and students participate in the programme. The extant law is the Privatisation and Commercialization Act 1999.

Many compelling questions arise from the privatisation blueprint: how can Nigerians be aware of their rights and privileges in the privatisation process? How will the voiceless majority, the poor, the downtrodden and indeed the rural dwellers be enlightened, about the exercise, to instil in them the necessary consciousness to participate in the programme, since the law guiding the process provides cover for all segments of society to be involved? How can the government and the implementers be made to be accountable to the people, by ensuring that the exercise is implemented according to the rules? How can certain ills and fraudulent practices that may arise from the exercise be exposed, such that the implementers would be made to embrace accountability and transparency again? Such questions are, indeed, inexhaustible. Suffice to say that the institution that operates to provide the missing link is the media. This underpins the nexus between the media and the privatization exercise.

The challenge facing the media is to ensure that adequate information on the exercise is disseminated, if it must succeed. This is so because the media by their nature have the onerous responsibility of informing, educating and enlightening the public on issues especially those that are significant like privatization. Information makes it possible for the citizens to keep abreast of everything that is going on. Without information, there is no accountability. Information is power and the more people that possess it, the more power is distributed.

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As Theodore White observed in a book entitled: “An Independent and Free Media” access to information on the part of the people is fundamental to a nation’s integrity. Without it, democracy’s structures and indeed the privatisation exercise cannot operate as they should and individuals will be left unable to enforce their rights and in fact not even knowing that their rights have been infringed.

In a nutshell, the media is a major partner in the privatisation process. Through information dissemination, they contribute largely to the nurturing of the exercise and to ensure that the government and the implementers of the exercise are held accountable the people.

REPORTING PRIVATISATION: ROLES AND STRATEGIES OF THE MEDIA

As enunciated above, the media is an essential organic structure in the privatisation process. How it carries out its role goes a long way in making or marring the exercise; for the media to be seen to promote the effectiveness and efficiency of the exercise and the duties of the state to protect the socio – economic rights of the citizens, it should leave the impression that it is free and independent, capable of balanced coverage and objective commentary.

However, one of the major roles expected of the media is the effective public watchdog function over the conduct of the National Council on Privatisation and Bureau of Public Enterprises in carrying out the exercise. Just as the legislature should keep the executive under day to day scrutiny, so the media should carefully monitor the agencies involved in the implementation of the exercise.

Former editor – in – chief of United States Time Magazines, Henry Grunwald once noted: “even a democratically elected...government can easily be corrupted when its power is not held in check by an independent media”.

It is an obvious fact that public servants are likely to be more tempted to abuse their positions for private gains when they are confident that they run no risk of being exposed and called to account by the media.

The media should keep a tab on what is going on within the privatisation exercise carefully and expose scandals, corrupt and fraudulent practices when they occur. Moreover, the media should be at guard to expose government and the implementers when they deviate from the established principles designed to ensure the effectiveness of the exercise.

While carrying out these functions, the media should free itself from the clutches of corruption and irresponsible acts if it must succeed in its watchdog role. In India, for instance, the top officials of the Ministry implementing the privatisation exercise perceive most newspapers as being corruptly induced to criticize the exercise. This has impacted negatively on the watchdog role of the media in the country. The Country’s Minister for Divestment, Arun Shourie remarked: “Corporate rivals created hurdles in the privatisation process when they plant stories in newspapers against bidders for public sector undertakings. The reporters who write the reports, and the members of parliament who raise questions about them have no idea of the intricacies of valuation”.

The media should also play a role of a *Driver* and a *Conductor* in the privatisation process. They should consciously enlighten, inform and educate all the stakeholders such that they

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would all be guided towards the set objectives of the exercise. As vehicles of social change, economic reform, opinion moulding and agents of socialization, the press has the potentiality to drive and conduct all stakeholders – people, government, BPE, NCP, foreign investors, corporate bodies – to ensure the effectiveness and efficiency of the exercise.

Of equal importance is the need for the media to prefigure and prefix privatisation with a positive label, not a negative label. This can be achieved through persistent and consistent commentaries on the subject with a dint of persuasion. “Free – market” and “liberalization” have long been pet labels that evoke images of economic stability and democracy.

In April 2001, newly – elected Prime Minister of Japan, Junichiro Koizumi was identified in US media as a “reformer”. His free – market reforms include the privatisation of Japan’s postal saving system. The United States Government came up with positive labels such as “our global leadership”, “national security” and “globalisation” which the press has adopted and transmitted to the wider society. The media can design positive labels to sell privatisation but this does not mean that they have to be uncritical about the exercise.

The press is also expected to operate in this context based on the tenets of social responsibility, nation building and developmental journalism. Realising that privatisation is a concept introduced to bring about economic reform, it is believed that the idea behind it is to build the economic well being of the nation, aimed towards developing Nigeria. A socially responsible media should be pre – occupied with disseminating privatisation – led information to all the nooks and crannies of the nation; package and process the message such that the exercise will succeed and thereby stimulate national development. In the area of social responsibility, the media plays its basic role, without being induced, to ensure national development.

The manner, privatisation news items or information are processed by the media counts a lot. The media should provide meaning to privatisation news items. They are expected to provide readers and their audience with synthesis, analysis, review and commentary on issues pertaining to privatisation.

In keeping with the liberal paradigm, they should ask why things happen the way they do. This involves interpretative reporting, putting the news items into perspective for the rural man, the man on the street, market women and all manner of people to understand how privatisation affects them.

The man in the village or an illiterate on the street needs to be provided with the analytical mind by a reporter to understand how privatisation will affect him or improve his lot. How can he take part in the exercise? The media should bring to the knowledge of the common person, through interpretative reporting, why privatisation was conceived in the first place. Interpretative reporting involves an objective appraisal based on background knowledge of a situation and analysis of primary and related facts.

For instance, supposing NCP and BPE offer a public company for sale, an interpretative reporter should be able to tell his readers or audience why the company is put up for sale; who can buy it, how people can buy shares from the company – individually or collectively; how the sale of a similar public company in another nation impacted on the economy; what the nation stands to lose or gain if the company is sold; what is beneath the surface; what are the trends; does it have any significance and so on.

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That NCP and BPE have offered National Electric Power Authority or NITEL for sale is straight news. Why they decided to sell the company, the implication of the sale on the economy; what can be the future consequences; does it throw light on any former happenings; how can it be interpreted – these are ingredients of interpretative reporting.

To be a good interpretative reporter, a journalist should have both natural and acquired abilities of observation and reasoning, the basic intellectual skill, and understanding of the socio – economic forces, power systems and group behaviour patterns that help shape the society.

COVERAGE OF PRIVATISATION: NIGERIA MEDIA EXAMPLE

A content analysis conducted on some Nigerian newspaper on how they have been reporting the privatisation exercise indicates a pattern of reporting straight news and in a few cases, feature articles. The news stories lack necessary depth, analysis, background, in fact, the real ingredients of interpretative reporting. Consider Daily Times front page report of November 19, 2002 captioned: “Six Firms Jostle for Government’s 51% Equity shares in NAFCON” and another: “Sale of DTN shares Begin Today” which appeared on the front page of the same newspaper on November 4, 2002.

But This Day’s December 12, 2002 front-page story captioned: “Mints Gets New Managing Director” provided some level of interpretation because the story provided the “why” that the appointment of a new managing director was to facilitate the controversial privatisation of the Mint.

From the reports of the Newspapers content analysed, they to some extent, carried out their watchdog role fairly well. They exposed a lot of perceived ills believed to be evident in the exercise. For instance, they were able to stimulate public outcry against the sale of the Mint and the sale of NITEL to IILL.

The following reports show how the media fared in exposing perceived ills: “IILL unfit to own NITEL” (This Day Wednesday March 20, 2003) front page; NEPA Privatisation Fraudulent (Thisday March 4 2002); NSE, workers move to stop sale of \$74m Agip shares” (The Comet December 11, 2001) front page; “Federal Government may return BCC to State Owner” (Daily Times Nov. 18, 2002) front page.

But the media fails to accord privatisation news items desired attention. They report the issues infrequently based largely on press releases, press conferences or press briefings. There is usually lack of conscious effort to look for the information or investigate the activities of the implementers. For instance, in the August edition of Business Day, the first daily business newspaper in Nigeria, privatisation news did not feature more than once.

Far more worrisome is that this newspaper does not have a department on privatisation. The closest the newspaper has is “Investing Department” that appears once in a week.

The Comet newspaper that started Privatisation Watch on a weekly basis in 2001 soon dropped the idea. There is therefore an urgent need for the print and electronic media to work towards the establishment of a department on Privatisation Watch, if they really want the exercise to be adequately covered and reported to enhance the success level.

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They should also endeavour to report the exercise consistently to enable the media achieve its driver and conductor role.

Given the manner the media are carrying on with the coverage, it is obvious that the rural people, the poor, illiterates who may want to be part of the exercise are cut off. They do not feed them with information about the exercise because the media are predominantly urban based. This calls for a need to review their operational pattern such that they will reach out to the rural areas to create the awareness about the exercise there.

There should be effective use of electronic media in this regard because of its nearness to the people and its use of the local language. On the other hand, NCP and BPE should endeavour to open their doors by allowing journalists access to information. Gone are the days when public office holders deny journalists access to information by merely relying on the Official Secrets Act.

APPENDIX 1

THE PRIVATISATION OBSERVATORY OF SOCIO ECONOMIC RIGHTS INITIATIVE-CAPACITY BUILDING WORKSHOP

Socio Economic Rights Initiative (SERI) is dedicated to the promotion of due process and basic standards in economic, social and cultural rights (ESC rights). Under our Economic Reform Program, we understand that government's economic policies and their implementation have direct consequences for the standard of living, life in larger freedom and the enjoyment of ESC rights by the majority of the population. Nigeria being a member of the United Nations which is *inter alia* dedicated to higher standards of living for the world's peoples, a party to the international bill of rights (including the standard setting Universal Declaration, the Covenant on Economic, Social and Cultural Rights), and the African Charter on Human and Peoples' Rights, it is expected that economic and social policies must be directed towards the achievement of the noble aims enunciated in these standards. Also the *grundnorm* of our jurisprudence, the 1999 Constitution declares the security and welfare of the people as the primary purpose of government.

The world is currently emphasizing issues of good governance, good corporate governance, transparency, accountability, due process and value for money. We are also in a world that is canvassing sustainable development; from the Social Summit, the Earth Summit, New Partnership for Africa's Development, the World Summit for Sustainable Development, etc, the consensus of placing people first has emerged. The human being is the measure and reason for the existence of all other things including theories and principles, and any worthwhile theory or idea must conduce to the welfare of the majority of humans in any given environment.

Since the commencement of the Privatisation Programme in Nigeria, a lot of voices have been raised in different directions as to its suitability to the Nigerian socio-political and economic environment. The fact that it was started during the era of military dictatorship, which did not encourage robust debates did not also help matters. Civil society on its part (apart from Labour) appears too busy with other contending matters as to invest time into monitoring the Privatisation Programme. For the ongoing Privatisation Programme, questions of the suitability of the enabling legislation, transparency, accountability, value for money, gender, national economic sovereignty, the role of foreign direct investment, etc have been raised. Further questions have also been raised about the uncritical enthronement of the market philosophy as an end, rather than as a means to an end; the end being the enhancement of human welfare.

Against this background, SERI established the Privatization Observatory with the goal of civil society oversight over the Privatisation Programme. Its sub objectives include; to work for the mainstreaming of human rights and poverty reduction concerns into the Privatisation Programme, to build the capacity of civil society organizations to engage and monitor the Privatisation Programme, to introduce the gender agenda, to work for more transparency, accountability and access to information in the Privatisation Programme, to ascertain and verify whether government's objectives have been met in the already privatized enterprises and whether the regulatory agencies are playing their proper roles to prevent the exploitation of consumers of the products of privatized enterprises.

Privatisation Observatory

SERI has concluded and published its power mapping and preliminary report; and a series of roundtables have also been concluded. Today's activity is a capacity building workshop, which seeks to examine the details of the Privatisation Programme with a view to empowering civil society into engaging from an informed position. We will seek to understand the key issues, the basic principles, the available options as against the present models deployed in Nigeria, or if the "There is no Alternative" (TINA) ideology guiding the process has worked in other countries particularly those at the same level of development with Nigeria, what are the best practices etc.? There would also be discussions on how civil society can and should engage the authorities.

As we seek the gains of efficiency, effectiveness and leaner government, there is the need to counterbalance these with the interests of the poor who may likely be deprived of access to essential services. We also need to think of the social safety nets for those to be thrown out of jobs. We further need to think about the role of foreign investments that come through privatization in this globalized era and how it will impact on our economy in the long run.

There are a plethora of issues for discussion and it is the sincere hope of SERI that this is the beginning of a learning and engaging process that will ultimately improve the lives of the common people of Nigeria who we are dedicated to serving. On behalf of SERI, I welcome you to this workshop.

Eze Onyekpere
Executive Director.

THE PRESIDENCY
BUREAU OF PUBLIC ENTERPRISES (BPE)
Office of the Special Assistant to the President

***KEYNOTE ADDRESS BY THE SPECIAL ASSISTANT TO THE
PRESIDENT ON BPE AT THE SOCIO- ECONOMIC RIGHTS INITIATIVE
CAPACITY BUILDING WORKSHOP ON THE PRIVATISATION
PROGRAMME IN NIGERIA***

Protocol

On this very important workshop on the Privatisation Programme in Nigeria, I bring to you sincere greetings from the Presidency. I salute the initiators of this programme (the Socio - Economic Rights Initiative) for their foresight and thoughtfulness in putting together this workshop, as privatisation has since become a major economic reform policy of the Obasanjo administration.

The main thrust of privatisation as a major economic policy of the present administration since 1999, is to stem the drain of public resources and encourage mass participation in wealth creation, re-distribution and development of entrepreneurial culture as contained in the Public Enterprises (Privatisation and Commercialization) Act of 1999. It is evident that this policy has accelerated growth and development in some of the erstwhile government owned parastatals and companies.

However, whereas BPE has achieved some successes in its marketing goals of selling the concept of privatization to the public, it has encountered some problems in enlightening the general public on the process adopted and ensuring wide spread participation in the programme by all eligible Nigerians who otherwise would have been eager to participate.

Whereas the Federal Government ought to be making profit from those companies and parastatals, what we see is that government spends and wastes scarce resources in maintaining them. The effect of this is that these resources that would otherwise have been used in providing infrastructure for the entire citizenry are used to keep these companies afloat.

We in the Presidency believe that if ownership and management of enterprises is separated from government, it will allow government to concentrate on good governance and the provision of enabling environment for both foreign and local investors since Nigeria is part of the global village.

In the course of our interaction with stakeholders, we observed that many Nigerians are not aware of the process and the benefits they stand to gain in participating in this laudable government programme. The attitude of Nigerians in many quarters has made many to develop great apathy towards this programme. Some have seen it as being elitist while others have seen it as a process of transferring the wealth of the people to a few powerful individuals, hence, the need to build capacity for the programme.

Key Note Address

It may be surprising that many Nigerians have not known what Privatization Share Purchase Loan Scheme (PSPLS) is all about. The Federal Government designed this scheme to assist indigent Nigerians with funds to participate in the equity ownership of public quoted companies. Under the scheme, Nigerians, 18 years and above would be entitled to the sum of ten thousand Naira on application to the scheme to enable them purchase shares under the Privatization Programme.

If we must be relevant in the global economy and leave a legacy for the generation after us, we must change from the old ways of our lives as a nation. We must treat public entities as representing the future of our children. We must be willing to accept those painful, but inevitable changes necessary for the emancipation of our nation from economic collapse. We can no longer live as a people, as if changes are not possible. A responsible government is that which is not afraid to make the best use of every opportunity for the common good of its citizenry. If we wait till tomorrow, in order to avoid criticisms, tomorrow will blame us for not making those painful decisions that will be relevant.

We have, as a nation, over the years been consuming the future of our children unborn. We have not left enduring plans in place to take care of their future. The only way out is to allow competitive and less government involvement in the public sector and allow professionals to manage those sectors. The government should just engage herself in the act of governance and put in place those factors that make for efficiency and transparency in the socio - economic sector. We have no alternative to privatization.

Let me end by re- affirming the commitment of the present administration to ensuring that the government companies and parastatals are handed over to efficient and competent private sector operators through a competitive and liberalized Privatization Programme.

Thank you and God bless.

Rev. Dr Sunday N. Onuoha
Special Assistant to the President
on BPE.

APPENDIX III
**THE ENABLING
LEGISLATION**

PUBLIC ENTERPRISES (PRIVATISATION AND COMMERCIALISATION) ACT 1999

ARRANGEMENT OF SECTIONS

Section

PART 1 PRIVATISATION AND COMMERCIALISATION OF PUBLIC ENTERPRISES

1. Enterprises to be privatised.
2. Mode of Privatisation.
3. Further divestment of Federal Government's shares.
4. Management of privatised enterprises.
5. Allotment of shares of privatised enterprises
6. Partial and full commercialisation
7. Annual report on privatisation and commercialisation.
8. Special provisions relating to commercialised enterprises.

PART II

NATIONAL COUNCIL ON PRIVATISATION

9. Establishment and membership of the National Council on Privatisation.
10. Tenure of office of members of the Council.
11. Functions and powers of the Council.

PART III

BUREAU OF PUBLIC ENTERPRISES

12. Establishment of the Bureau of Public Enterprises.
13. Functions: privatisation
14. Functions: commercialisation
15. Other functions of the Bureau
16. Powers of the Bureau.
17. Appointment of the Director – General and other staff,
18. Pension Act.
19. Establishment of Privatisation Proceeds Account
20. Fund of the Bureau
21. Estimates of expenditure and income
22. Accounts and audit.

PART IV

LEGAL PROCEEDINGS

23. Limitation of suits against the Bureau, etc.
24. Service of documents
25. Restriction on execution against property of the Bureau

Enabling Law

26. Indemnity of officers.

PART V

PUBLIC ENTERPRISES ARBITRATION PANEL, ETC.

27. Establishment and membership of the Public Enterprises Arbitration Panel.
28. Powers of the Panel.
29. Proceedings of the Panel
30. Other arbitration laws not applicable.

PART VI

MISCELLANEOUS

31. Regulations
32. Repeal of 1993 No. 78
33. Savings, etc.
34. Interpretation.
35. Citation and commencement.

SCHEDULES

Act No. 28

[31st December 1999] Commencement.

THE FEDERAL MILITARY GOVERNMENT HEREBY DECREES AS FOLLOWS:

PART 1

PRIVATISATION AND COMMERCIALISATION OF PUBLIC ENTERPRISES

A – Privatisation

Enterprises to be Privatised. First Schedule.

- 1.-(1) The enterprises listed in Part I of the First Schedule to this Act shall be partially privatised in accordance with the provisions of this Act.
- (2) The enterprises listed in Part II of the First Schedule to this Act shall be fully privatised in accordance with the provisions of this Act.
- (3) The National Council on Privatisation (in this Act referred to as “the Council”) established under section 8 of this Act may, from time to time, by order published in the Gazette alter, add, delete, or amend the provisions of the First Schedule to this Act.
- 2.-(1) Subject to the provisions of section 11(f) of this Act, an offer for the sale of the shares of a public enterprise shall be by public issue or private placement, as the case may be.
- (2) An offer for the sale of shares by public issue to Nigerians may be made at the capital market.
- (3) Where the shares of an enterprise are not to be offered for sale by public issue of share or private placement, the Council may, approve that the shares be offered for sale through a

Enabling Law

willing seller and willing buyer basis or through any other means.

Further Divestment of Federal Government's Shares.

3. Without prejudice to the provisions of this Act, the Government of the Federation may further divest of its shareholding in the privatised enterprises in accordance with the policy guidelines and decisions issued, from time to time; by the Council, so however that the Council may dispose of the shares or a part thereof to interested investors through any local or international capital market.

Management of Privatised Enterprises

4. A privatised enterprise, which requires participation by strategic investors, may be managed by the strategic investors as from the effective date of the privatisation on such terms and conditions as may be agreed upon.

Allotment of Shares of Privatised Enterprises

- 5.-(1) Subject to any direction of the council and without prejudice to the provisions of section 2 of this Act, the shares of the enterprises to be allotted to Nigerians under this Act by public offer shall be in accordance with the provisions of subsections (2), (3) and (4) of this section.
- (2) The shares on offer to Nigerians shall be sold on the basis of equality of States of the Federation and of the residents of the Federal Capital Territory, Abuja.
- (3) Not less than 1 per cent of the shares to be offered for sale to Nigerians shall be reserved for the staff of the public enterprises to be privatised and the shares shall be held in trust by the public enterprises for its employees.
- (4) Where there is an over-subscription for the purchase of the shares of privatised public enterprise no individual subscriber shall be entitled to hold more than 0.1 per cent equity shares in the privatised public enterprise.

B – Commercialisation

Partial and Full Commercialisation

- 6.-(1) The enterprises listed in Part I of the Second Schedule to this Act shall be partially commercialised in accordance with the provisions of this Act.
- (2) The enterprises specified in Part II of the Second Schedule to this Act shall be fully commercialised in accordance with the provisions of this Act.
- (3) The Council may, from time to time, by order published in the Gazette amend the Second Schedule to this Act so as to alter the category to which any enterprise listed in that Schedule shall be classified.

Annual Report on Privatisation and Commercialisation of Public Enterprises

7. The Council shall prepare and submit to the Head of State, Commander in-Chief of the Armed Forces not later than 30th June in each year, a report in such form as the Head of State, Commander-in-Chief of the Armed Forces may direct on the privatisation and commercialisation of public enterprises during the immediately preceding year.

Special Provisions Relating to Commercialised Enterprises

8. Notwithstanding the provisions of any other enactment and without prejudice to the generality of section 6 of this Act, a commercialised enterprise shall operate as a purely commercial enterprise and may, subject to the general regulatory power of the Government of the Federation-
- (a) Fix the rates, prices and charges for goods and services it provides;
 - (b) Capitalise its assets;
 - (c) Borrow money and issue debenture stocks; and
 - (d) Sue and be sued in its corporate name.

PART II

NATIONAL COUNCIL ON PRIVATISATION

A – Establishment and Composition, etc.

9.-(1) There is hereby established the National Council on Privatisation in this Act referred to as “the Council”).

Establishment and Membership of the National Council on Privatisation.

- (2) The Council shall consist of -
- (a) The Vice – President, as Chairman;
 - (b) The Minister of Finance, as Vice Chairman;
 - (c) The Attorney-General of the Federation and Minister of Justice;
 - (d) The Minister of Industries;
 - (e) The Minister of National Planning;
 - (f) The Secretary to the Government of the Federation;
 - (g) The Governor of the Central Bank of Nigeria;
 - (h) The Special Adviser to the Head of State, Commander-in-Chief of the Armed Forces on Economic Affairs;
 - (i) Four other members to be appointed by the Head of State, Commander-in-Chief of the Armed Forces; and
 - (j) The Director – General of the Bureau of Public Enterprises.
- (3) Notwithstanding the provisions of subsection (2) of this section, the Council may co-opt the supervising Minister of an affected public enterprise to attend relevant meetings of the Council.
- (4) The supplementary provisions contained in the Third Schedule to this Act shall have effect with respect to the proceedings of the Council and the other matters contained in the Schedule.

Enabling Law

Tenure of Office of Members of the Council

10. Subject to the provisions of this Act, a member of the Council, other than an ex-officio member-

- (a) Shall hold office for a term of four years in the first instance and may be re-appointed for a further term of four years and no more; and
- (b) On such terms and conditions as may be specified in his letter of appointment.

B – Functions and Powers of the Council

11. The Functions and powers of the Council are to -

- (a) Determine the political, economic and social objectives of privatisation and commercialisation of public enterprises;
- (b) Approve policies on privatisation and commercialisation;
- (c) Approve guidelines and criteria for valuation of public enterprise for privatisation and choice of strategic investors;
- (d) Approve public enterprises to be privatised or commercialised;
- (e) Approve the legal and regulatory framework for the public enterprises to be privatised;
- (f) Determine whether the shares of a listed public enterprise should be by public or private issue or otherwise and advise the Government of the Federation, accordingly;
- (g) Determine the time and when a public enterprise is to be privatised;
- (h) Approve the prices for shares or assets of the public enterprises to be offered for sale;
- (i) Review, from time to time, the socio-economic effect of the programme of privatisation and commercialisation and decide on appropriate remedies;
- (j) Approve the appointment of privatisation advisers and consultants and their remuneration;
- (k) Appoint as and when necessary committees comprising persons from private and public sectors with requisite technical competence to advise on the privatisation or commercialisation of specific public enterprises;
- (l) Approve the budget of the Council;
- (m) Approve the budget of the Bureau;
- (n) Supervise the activities of the Bureau and issue directions on the implementation of the privatisation and commercialisation programme;
- (o) Receive and consider, for approval, the audited accounts of the Bureau;
- (p) Submit to the Head of State, Commander-in-Chief of the Armed Forces in each year a report on the activities of the Council and the Bureau;

Enabling Law

- (q) Receive regular and periodic reports from the Bureau on programme implementation and give appropriate directions; and
- (r) Perform such other functions as may from time to time be necessary to achieve its objectives.

PART III

BUREAU OF PUBLIC ENTERPRISES

A – Establishment, etc.

Establishment of the Bureau of Public Enterprises

- 12.-(1) There is hereby established a body to be known as the Bureau of Public Enterprises (in this Act referred to as “the Bureau”).
- (2) The Bureau shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

B – Functions of the Bureau

- 13.- (1) The functions of the Bureau with respect to privatisation are to –

Functions: Privatisation

- (a) Implement the Council's policy on privatisation;
- (b) Prepare public enterprises approved by the Council for privatisation;
- (c) Advise the Council on future public enterprises that may be privatised;
- (d) Advise council on the capital restructuring needs of the public enterprises to be privatised;
- (e) Carry out all activities required for the successful issue of shares and sale of assets of the public enterprises to be privatised;
- (f) Make recommendations to the Council on the appointment of consultants, advisers, investment bankers, issuing houses, stockbrokers, solicitors, trustees, accountants and other professionals required for the purposes of privatisation;
- (g) Advise the Council on the allotment pattern for the sale of the shares of the public enterprises set out for privatisation;
- (h) Oversee the actual sale of shares of the public enterprises to be privatised, by the issuing houses, in accordance with the guidelines approved, from time to time, by the Council;
- (i) Ensure the success of the privatisation exercise taking into account the need for balance and meaningful participation by Nigerians and foreigners in accordance with the relevant laws of Nigeria; and

Enabling Law

- (j) Perform such functions with respect to privatisation as the Council may, from time to time, assign to it.

Functions: Commercialisation

14. The functions of the Bureau in respect of commercialisation are to -

- (a) Implement the Council's policy on commercialisation;
- (b) Prepare public enterprises approved by the Council for commercialisation;
- (c) Advise the Council on further public enterprises that may be commercialised;
- (d) Ensure the updating of the accounts of all commercialised enterprises to ensure financial discipline;
- (e) Ensure the success of the commercialisation exercise and monitor on a continuous basis for such period as may be considered necessary, the operations of the public enterprises after commercialisation;
- (f) Review the objectives for which public enterprises were established in order to ensure that they adapt to the changing needs of the economy;
- (g) Ensure that public enterprises are managed in accordance with sound commercial principles and prudent financial practises;
- (h) Interface with the public enterprises, together with the supervising Ministries, in order to ensure effective monitoring and safeguarding of the public enterprises managerial autonomy;
- (i) Ensure that the Board and Management of each commercialised enterprise and the Government of the Federation, keep to the terms and conditions of the Performance Agreements, if any, between the public enterprise concerned and the Government of the Federation;
- (j) Maintain and review on a continuous basis, any Performance Agreement between a public enterprise and the Government of the Federation; and
- (k) Evaluate and recommend to the Council whether or not a public enterprise is eligible for funding through grants, loans, subventions or equity; and
- (l) Perform such functions with respect to commercialisation as the Council may, from time to time, assign to it.

Other Functions of the Bureau

15. The Bureau shall -

- (a) Provide secretarial support to the Council; and
- (b) Carry out such other duties and responsibilities as may be assigned to it from time to time by the Council.

Enabling Law

Powers of the Bureau.

16. The Bureau shall, subject to the over all supervision of the Council, have power to -
- (a) Acquire, hold and manage movable and immovable property;
 - (b) Enter into contracts or partnerships with any company, firm or person which in its opinion will facilitate the discharge of its functions;
 - (c) Request for and obtain from any public enterprise statistical and other information including reports, memoranda and audited accounts and other information relevant to its functions under this Act; and
 - (d) Liaise with relevant bodies or institutions locally or overseas for effective performance of its functions under this Decree.

D – Staff of the Bureau

- 17.-(1) There shall be appointed for the Bureau, a Director – General who shall –
- (a) Be appointed by the Head of State, Commander –in – Chief of the Armed Forces on the recommendation of the Chairman of the Council; and
 - (b) Not be below the rank of a Permanent Secretary in the civil service of the Federation.
- (2) The Director – General shall be the Chief Executive of the Bureau and the Secretary to the Council and shall hold office -
- (a) For a period of 4 years in the first instance and may be re – appointed for a further period of 4 years; and
 - (b) On such terms and conditions as may be specified in his letter of appointment.
- (3) There shall be for the Bureau a management committee comprising the Director – General and departmental heads who shall be responsible for the implementation of the policies of the Council and the day to day administration of the Bureau.
- (4) The Bureau may appoint such number of other persons to be employees of the Bureau in the performance of its functions under this Act.
- (5) Notwithstanding the provisions of subsection (4) of this section, employees of the Bureau may be appointed by way of transfer or secondment from any of the public services of the Federation.
- 18.-(1) It is hereby declared that service in the Bureau shall be an approved service for purposes of the Pensions Act and accordingly employees of the Bureau shall, in respect of their services be entitled to pensions, gratuities and other retirement benefits as are enjoyed by persons holding equivalent grades in the civil service of the Federation.

Enabling Law

Pensions Act Cap. 346 LFN

- (2) Notwithstanding the provisions of subsection (1) of this section nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension and gratuity in respect of that office.
- (3) For the purposes of the application of the provisions of the Pensions Act, any power exercisable there under by the Minister or other authority of the Government of the Federation, other than the power to make regulations under section 23 thereof, is hereby vested in and shall be exercisable by the Council and not by any other authority.

E – Financial Provisions

Establishment of Privatisation Proceeds Account

- 19.-(1) There is hereby established in the Central Bank of Nigeria an account to be known as the Privatisation Proceeds Account into which shall be paid all proceeds received from the privatisation of public enterprises before and after the commencement of this Act.
- (2) The funds in the account established under subsection (1) of this section shall be utilised for such purposes as may be determined by the Government of the Federation from time to time.

Fund of the Bureau

- 20.-(1) The Bureau shall establish and maintain a fund, to be approved by the Council from which shall be defrayed all expenditures incurred by it.
- (2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section -
 - (a) The annual subvention received from the Government of the Federation;
 - (b) Such money as may, from time to time, be lent, deposited with or granted to the Bureau by the Government of the Federation, of a State, or a Local Government;
 - (c) All subventions, fees, and charges for services rendered or publications made by the Bureau; and
 - (d) All other assets, which may, from time to time, accrue to the Bureau.
- (3) The fund shall be managed in accordance with rules made by the Council and without prejudice to the generality of the power to make rules under this subsection; the rules shall in particular contain provisions-
 - (a) Specify the manner in which assets or the fund of the Bureau are to be held and regulating the making of payment into and out of the fund; and
 - (b) Requiring the keeping of proper accounts and records for the purposes of the fund in such form as may be specified in the rules.
- (4) The Bureau may, from time to time, apply the proceeds of the fund established in pursuance of subsection (2) of this section for the following purposes -
 - (a) The cost of administration of the Bureau;

Enabling Law

- (b) The reimbursement of members of the Council or any Committee set up the Council for such expenses as may be authorised by the Council, and where they exist, in accordance with the rates approved by the Government of the Federation;
- (c) The payments of salaries, fees and other remuneration, allowances, pensions and gratuities payable to members of the Council, employees of the Bureau or professionals appointed by the Bureau;
- (d) The maintenance of any property acquired or vested in the Bureau; and
- (e) Any matter connected with all or any of the functions of the Bureau under this Act.

Estimates of Expenditure and Income

- 21.-(1) The Bureau shall not later than 31st of October in each year, submit to the Council an estimate of its expenditure and income during the next succeeding year.
- (2) The Bureau shall cause the net surplus of receipts and payments made to it in every year to be paid to the Government of the Federation.

Accounts and Audit

- 22.-(1) The Bureau shall keep proper accounts and records of its receipts, payment, assets and liabilities and shall in respect of each year prepare a statement of account in such form as the Council may direct.
- (2) The Bureau shall within 6 months after the end of the financial year to which the accounts relate, cause the accounts to be audited by auditors appointed from the list and in accordance with guidelines supplied by the Auditor – General of the Federation.

PART IV

LEGAL PROCEEDINGS

Limitation of Suits Against Bureau Cap: 379 LFN

- 23.-(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of the Bureau.
- (2) Notwithstanding anything contained in any other law or enactment, no suit shall lie against any member of the Council, the Director – General or any other officer or employee of the Bureau for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or Authority or in respect of any alleged neglect or default in the execution of this Act or such law or enactment, duty or authority, shall lie or be instituted in any court unless -
- (a) It is commenced within three months next after the act, neglect or default complained of; or
 - (b) In the case of a continuation of damage or injury, within six months next after the ceasing thereof.
- (3) No suit shall be commenced against a member of the Council, the Director – General, officer or employee of the Bureau before the expiration of a period of one month after

Enabling Law

written notice of intention to commence the suit shall have been served upon the Bureau by the intending plaintiff or his agent.

- (4) The notice referred to in subsection (3) of this section shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief, which he claims.

Service of Documents

24. A notice, summons or other document required or authorised to be served upon the Bureau under the provisions of this Act or any other law or enactment may be served by delivering it to the Director – General or by sending it by registered post and addressed to the Director – General at the principal office of the Bureau.
- 25.-(1) In any action or suit against the Bureau, no execution or attachment of process in the nature thereof shall be issued against the Bureau.

Restriction on Execution Against Property of the Bureau.

- (2) Any sum of money, which may by the judgement of any court be awarded against the Bureau shall, subject to any direction given by court where notice of appeal of the said judgment has been given, be paid from the general reserve fund of the Bureau.

Indemnity of Officers

26. A member of the Council, the Director – General, any officer or employee of the Bureau shall be indemnified out of the assets of the Bureau against any proceeding, whether civil or criminal, in which judgement is given in his favour, or in which he is acquitted, if any such proceeding is brought against him in his capacity as a member of the Council, the Director – General, officer or employee of the Bureau.

PART V

PUBLIC ENTERPRISES ARBITRATION PANEL, ETC. Establishment and Membership of the Public Enterprises Arbitration Panel.

- 27.-(1) There is hereby established under this Act an ad – hoc body to be known as the Public Enterprises Arbitration Panel (in this Act referred to as “the Panel”) which shall be responsible for effecting prompt settlement of any dispute arising between an enterprise and the Council or the Bureau.
- (2) The Panel shall consist of five persons who shall be persons of proven integrity one of whom shall be the Chairman.
- (3) The members of the Panel shall be paid such remuneration and allowances as may be determined by the Government of the Federation.
- (4) The Council shall appoint the Members of the Panel on such terms and conditions as it may deem fit.

Powers of the Panel

- 28.- (1) The Panel shall have power to arbitrate –

Enabling Law

- (a) In any dispute raising questions as to the interpretation of any of the provisions of a Performance Agreement; or
 - (b) In any dispute on the performance or non-performance by any enterprise of its undertakings under a Performance Agreement.
- (2) A dispute on the performance or non – performance by any of the parties to the Performance Agreement shall, in the case of a commercialised enterprise, lie to that Panel providing that such reference may be made after all reasonable efforts to resolve the dispute have been made and have not been proved.
 - (3) The ruling of the Panel shall be binding on the parties and no appeal shall lie from a decision of the Panel to any court of law or tribunal.

Proceedings of the Panel Cap. 192 LFN.

- 29.-(1) Subject to this section and section 27 of the Interpretation Act, the Panel, may make standing orders regulating its proceedings.
- (2) The Chairman of the Panel shall preside at every session of the Panel.
- (3) The quorum at any session of the Panel shall be the Chairman and two other members.

Other Arbitration Laws not Applicable. 1988 No. 11

- 30. The provisions of the Arbitration and Conciliation Act 1988 or any other enactment or law relating to arbitration shall be applicable to any matter which is the subject of arbitration under this Act.

PART VI - MISCELLANEOUS

Regulations

- 31. The Council may make regulations generally for the purpose of giving effect to the provisions of the Act.

Repeal of 1993 No. 78

- 32. The Bureau of Public Enterprises Act 1993 is hereby repealed.

Savings, etc.

- 33. The statutory functions, rights, interests, obligations and liabilities of the Bureau, existing before the commencement of this Act under any contract or instrument, or in law or in equity shall, by virtue of this Act, be deemed to have been assigned to and vested in the Bureau established by this Act.
- (2) Any such contract or instrument as is mentioned in subsection (1) of this section, shall be of the same force and effect against or in favour of the Bureau established by this Act and shall be enforceable as fully and effectively as if instead of the Bureau existing before the commencement of this Act, the Bureau established by this Act has been named therein or had been a party thereto.

Enabling Law

(3) The Bureau established by this Act shall be subject to all the obligations and liabilities to which the Bureau existing before the commencement of this Act was subject immediately before the commencement of this Act and all other persons shall have the same rights, powers and remedies against the Bureau established by this Act as they had against the Bureau existing before the commencement of this Act.

(4) Any proceeding or cause of action pending or existing immediately before the commencement of this Act, by or against the Bureau existing before the commencement of this Act in respect of any right, interest, obligation or liability of the Bureau existing before the commencement of this Act may be continued or as the case may be commenced and any determination of a court of law, tribunal or other authority or person may be enforced by or against the Bureau established by this Act to the same extent that such proceeding or cause of action or determination might have been continued, commenced or enforced by or against the Bureau existing before the commencement of this Act.

(5) All assets, funds, resources and other movable or immovable property which immediately before the commencement of this Act, were vested in the Bureau existing before the commencement of this Act shall by virtue of this Act and without further assurance, be vested in the Bureau established by this Act.

(6) Any person who immediately before the coming into force of this Act is the holder of any office in the Bureau existing before the commencement of this Act shall, on the commencement of this Act, continue in office and be deemed to have been appointed to his office by the Bureau established by this Act unless the authority by which the person was appointed terminates the appointment.

Interpretations

34. In this Act, unless the context otherwise provides-

“Bureau “means the Bureau of Public Enterprises established by section 11 of this Act.

“Council” means the National Council on Privatisation established under section 8 of this Act;

“Nigerians” for the purpose of this Act means citizens of Nigeria and companies incorporated in Nigeria whose shares are wholly owned by citizens of Nigeria;

“Panel” means the Public Enterprises Arbitration Panel established by section 26 of this Act;

“Public enterprise” means any corporation, board, company or parastatal established by or under any enactment in which the Government of the Federation, a Ministry, or Extra-Ministerial Department, or agency has ownership, or equity interest and includes a partnership, joint venture or any other form of business arrangement or organisation;

“strategic investor” means a reputable core investor or group of investors having the requisite technical expertise, the managerial experience and the financial capacity to effectively contribute to the management of the enterprises to be privatised.

Citation and Commencement

35. This Act may be cited as the Public Enterprises (Privatisation and Commercialisation) Act 1999 and shall be deemed to have come into force on 31st December, 1998.

Enabling Law

SCHEDULES

FIRST SCHEDULE

SECTION 1 (1)

PART 1

ENTERPRISES IN WHICH EQUITY HELD SHALL BE
PARTIALLY PRIVATIZED

ENTERPRISES	Maximum Strategic Investor Participation as a Percentage after Privatisation	Maximum Federal Government Parastatal as Percentage after Privatisation	Nigeria Individuals Participation as Percentage after Privatisation
TELECOMMUNICATION SECTOR			
1. Nigeria Telecommunication Plc	40%	40%	20%
2. Nigeria Mobile Telecommunication Ltd	40%	40%	20%
ELECTRICITY SECTOR			
National Electrical Power Authority	40%	40%	20%
PETROLEUM OIL SECTOR			
1. Port-Harcourt Refinery (i)	40%	40%	20%
Port-Harcourt Refinery (ii)	40%	40%	20%
2. Kaduna Refinery and Petro-Chemicals			
3. Warri Refinery and Petrochemicals Company Ltd.	40%	40%	20%
4. Eleme Petrochemicals Company Ltd.	40%	40%	20%
5. Pipelines Product and Marketing Company Ltd.	40%	40%	20%
6. Nigerian Petroleum Development Company Limited	40%	40%	20%
FERTILIZER COMPANIES			
1. Federal Super phosphate Fertilizer Company Limited	40%	40%	20%
2. National Fertilizer Company Nigeria Limited	40%	40%	20%
MACHINE TOOLS			
1. Nigeria Machine Tools Company Limited	40%	40%	20%
GAS			
Nigeria Gas Company Limited	40%	40%	20%

Enabling Law

STEEL AND ALUMINIUM SECTOR

1. Jos Steel Rolling Mill Limited	40%	40%	20%
2. Katsina Steel Rolling Mill Company Limited	40%	40%	20%
3. Oshogbo Steel Rolling	40%	40%	20%
4. Ajaokuta Steel Company	40%	40%	20%
5. Delta Steel Company Limited	40%	40%	20%
6. Aluminium Smelter Company	40%	40%	20%

MINING AND SOLID MINERALS SECTOR

1. Nigerian Coal Corporation and subsidiaries.	40%	40%	20%
2. Nigerian Mining Corporation and Subsidiaries	40%	40%	20%
3. Nigerian Iron-ore Mining Limited	40%	40%	20%
4. Nigerian Iron-ore Mining Company Limited	40%	40%	20%

MEDIA COMPANIES

1. Daily Times of Nigeria Plc and Subsidiaries	40%	40%	20%
2. New Nigerian Newspapers Limited.	40%	40%	20%

INSURANCE COMPANIES

1. NICON Insurance Company Plc	40%	40%	20%
2. Nigerian Reinsurance Plc	40%	40%	20%

TRANSPORT AND AVIATION COMPANIES

1. Federal Airports Authority of Nigeria	40%	40%	20%
2. Nigerdock Limited	40%	40%	20%
3. Nigeria Airways Limited	40%	40%	20%

PAPER COMPANIES

1. Nigerian National Paper Manufacturing Company Limited, Iwopin	40%	40%	20%
2. Nigerian Newsprint Manufacturing Company Limited, Oku Ibokun	40%	40%	20%
3. Nigeria Paper Mills	40%	40%	20%

SUGAR COMPANIES

1. Sunti Sugar Company Limited	40%	40%	20%
2. Lafiaji Sugar Company	40%	40%	20%
3. Nigeria Sugar Company Bacita	40%	40%	20%

**Enabling Law
FIRST SCHEDULE**

SECTION 1 (1)

PART II

ENTERPRISES IN WHICH EQUITY HELD SHALL BE FULLY PRIVATIZED

INFRASTRUCTURE UTILITY COMPANIES	Federal Government Ownership	Post Privatisation Federal Government Ownership
1. Unipetrol Plc	40%	Nil
2. National Oil and Chemical Company Limited	40%	Nil
3. African Petroleum Plc	40%	Nil
CEMENT COMPANIES		
1. Ashaka Cement Company Plc	30%	Nil
2. Benue Cement Company Plc	30%	Nil
3. Northern Nigeria Cement Company Plc	30%	Nil
4. Nigeria Cement Company Limited Nkalagu	10%	Nil
5. Calabar Cement Company Limited	40%	Nil
6. West African Portland Cement Plc	27%	Nil
COMMERCIAL AND MERCHANT BANKS		
1. Afribank Nigeria Plc		Nil
2. Assurance Bank Plc		Nil
3. FSB International Bank Plc (Shares owned by Parastatals)		Nil
INFRASTRUCTURE UTILITY COMPANIES	Federal Government Ownership	Post Privatisation Federal Government Ownership
4. International Merchant bank Plc		Nil
5. NAL Merchant Bank Plc		Nil
AGRO-ALLIED		
1. Ayip-Eku Oil Palm Company Plc	25%	Nil
2. Opobo Boat Yard	25%	Nil
3. Nigerian Romania Wood Industries Limited	25%	Nil

Enabling Law

MOTOR VEHICLE AND TRUCK ASSEMBLY COMPANIES

1.	Anambra Motor Manufacturing Company Limited	35%	Nil
2.	Leyland Nigeria Limited	35%	Nil
3.	Nigeria Truck Manufacturing Company	35%	Nil
4.	Peugeot Automobile of Nigeria Limited	35%	Nil
5.	Volkswagen of Nigeria Limited	35%	Nil
6.	Steyr Nigeria Limited	35%	Nil

HOTELS

1.	Nigeria Hotels Limited	47%	Nil
2.	Festac 77Plc	100%	Nil

SECOND SCHEDULE

Section 6 (1)

PART 1

PARTIAL COMMERCIALISATION

1. Nigeria Railway Corporation
2. Cross River Basin Development Authority
3. Hadejia-Jama' are River Basin Development Authority
4. Lower Benue River Development Authority
5. Nigeria River Basin Development Authority
6. Ogun –Osun River Basin Development Authority
7. Upper Benue River Basin Development Authority
8. Sokoto-Rima River Development Authority
9. Anambra – Imo River Basin Development Authority
10. Benin Owena River Basin Development Authority
11. Chad River Basin Development Authority
12. Kainji Lake National park
13. Federal Radio Corporation of Nigeria
14. Nigeria Television Authority
15. News Agency of Nigeria
16. Nigerian Film Corporation
17. Nigeria Postal service (NIPOST)
18. Old Oyo National Park
19. Gashaka Gumti National Park
20. Chad Basin National Park
21. Yankari National Park
22. Cross River National Park
23. Niger Delta Basin Authority
24. Niger Delta Development Authority

Enabling Law

**PART II
Section 6 (2)**

FULL COMMERCIALISATION

1. Nigeria National Petroleum Corporation
2. Tafawa Balewa Square Management Committee
3. Nigeria Ports Authority
4. Federal Mortgage Bank of Nigeria
5. Nigerian Industrial Development Bank Limited
6. Nigeria Bank for Commerce and Industry Limited
7. Federal Mortgage Finance Co.Limited
8. Federal Housing Authority
9. Nigeria Social Insurance Trust Fund

THIRD SCHEDULE

Section 9 (4)

**SUPPLEMENTARY PROVISIONS RELATING
TO THE COUNCIL**

Proceedings of the Council

Cap 192 LFN

1-(1) Subject to this Act and Section 27 of the Interpretation Act, the Council may make standing orders regulating its proceeding or those of any of its committees.

(2) The quorum of the Council shall be five members and the quorum of any committee of the Council shall be determined by the Council.

2-(1) The Council shall meet not less than four times in each year and subject thereto the Council shall meet whenever it is summoned by the Chairman; and if the Chairman is required to do so by notice given to him by not less than three other members, he shall summon a meeting of the Council to be held within fourteen days from the date on which the notice is given.

(2) At any meeting of the Council, the Chairman shall preside but if he is absent, the Vice-Chairman shall preside at that meeting.

(3) If the Vice – Chairman is absent, the members present at the meeting shall appoint one of their number to preside at that meeting.

(4) Where the Council desires to obtain the advice of any person on a particular matter, the Council may co-opt him to the Council for such period as it thinks fit, but a person who is in attendance by virtue of this sub- paragraph shall not be entitled to vote at any meeting of the council and shall not count towards a quorum.

Enabling Law

Committees

- 3-(1) The Council may appoint one or more committees to carry out, on behalf of the Council, such of its functions as the Council may determine.
- (2) A committee appointed under this paragraph shall consist of such number of persons (not necessarily members of the Council) as may be determined by the Council and a person other than a member of the Council shall hold office on the committee in accordance with the terms of his appointment.
- (3) A decision of a committee of the Council shall be of no effect until it is confirmed by the Council.

Miscellaneous

4-(1) The fixing of the seal of the Bureau shall be authenticated by the signature of the Chairman, the Director – General or of any other person authorized generally or specially to act for that purpose by the Council.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Bureau by the Chairman, Director-General or any person generally or specially authorized to act for that purpose by the Council.

(3) Any document purporting to be a document duly executed under the seal of the Bureau shall be received in evidence and shall, unless and until the contrary is proved, be presumed to be so executed.

5. The validity of any proceeding of the Council or of a committee thereof shall not be adversely affected by any vacancy in the membership of the Council or committee, or by reason that a person not entitled to do so took part in the proceeding of the Council or committee.

Made at Abuja this 10th day of May 1999.

**GENERAL ABDULSALAMI ALHAJI ABUBAKAR,
Head of State, Commander –in-Chief
of the Armed Forces of the Federal Republic
of Nigeria.**

EXPLANATORY NOTE

(This note does not form part of the above Act but is intended to explain its purpose)

The Act provides among other things for.

- (a) The establishment of the National Council on Privatisation with responsibilities for the determination of the political, economic and social objectives of privatization and commercialization of public enterprises.

Enabling Law

- (b) Further privatisation and commercialization of Federal Government's wholly and partially owned enterprises to facilitate the liberalisation of the economy, and to enable the private sector compete with the public sector in all aspect of the economy and
- (c) The repeal of the Bureau of Public Enterprises Decree 1993, and the establishment of a restructured Bureau of Public Enterprises.