# NIGERIA: FROM DOOMED INDIGENISATION TO TORTUOUSPRIVATIZATION PROGRAMME

By

Shittu A. Bello*

## Abstract

In view of the precarious socio-economic condition of Nigeria at independence in 1960, the Federal Government established between 1960 and 1970 several industries. Some of the industries were considered by government as 'strategic' and capable of stimulating social growth and development. Public corporations were established to run the industries. However, the dominance of state enterprises in the Nigerian economy constitutes a significant drag on the overall growth rate of the country over the years. Public sector investments have greatly contributed to the nation's burden. In general and contrary to public expectation, the performances of the state owned enterprises have been dismal in term of huge financial losses, poor customer services, and inability to meet demand requirements. Just as the indigenization programme failed (for reasons stated in this article) the privatisation programme also has its shortcomings, some of which are identified in this article. This article shall highlight the major challenges of both the doomed indigenisation scheme and the current tortuous privatization programme. The article finds that Nigeria is not ripe for the market economy called 'privatisation' of state owned enterprises, which has led to considerable loss of jobs in Nigeria. Alternatives to the present wholesale divestiture of state owned enterprises are recommended in this article.

## 1.1 Introduction

In 1972 Nigeria introduced Indegenisation Policy by which Nigerians assumed prominent position in the ownership, control and management of the economy[1] The Nigerian Enterprises Promotion Act 1972, commonly referred to as the Indigenisation Act was promulgated. The Act has as one of its main objectives the early attainment by Nigerians of the commanding height of the Nigerian economy. It provided in essence that certain scheduled enterprises were to be reserved exclusively for Nigerian citizens, companies and associations, while aliens could operate or participate in some others only if they met certain minimum requirements in respect of paid up share capital and turnover. Furthermore, the Act provided that aliens could participate in enterprises not listed in the schedules only if there was a minimum participation of 40% by Nigerian citizens.

The implementation of the indigenisation scheme was marred by a few problems, notably, the absence of local entrepreneurs who could muster sufficient capital to purchase some of these enterprises, thereby giving room to fronting. Similarly, the

---

* Associate Professor, Faculty of Law, Al-Hikmah University, Ilorin, Kwara State; E-mail: shittuabello@gmail.com Phone Number: 08033649166

[1] Akanle, *'Development in Commercial Business and Trade Laws' in Aguda (ed).* The Challenges of the Nigerian Nation: An Examination of its Legal Development 1960-1985 (Lagos 1985) 128 and 172-174

inability of finding individual purchasers for these enterprises culminated in the greater involvement of the Federal and State Governments eventually in their ownership and management.[2]

The year 1984 emerged with the nation being engulfed with serious economic problems unprecedented in her history. As at the beginning of 1984 the public sector became overextended, the exchange rate overvalued, and the structure of the domestic economy distorted. When the downturn in oil revenue occurred in 1984, the country faced large external and fiscal deficits. Productivity declined; unemployment increased and inflation accelerated.[3] In order to redress the economic disequilibrium, the Structural Adjustment Programme was introduced in 1986.

The need to salvage state enterprises from economic collapse and improve their efficiency and effectiveness in terms of services delivery led to the adoption of a privatization and commercialization programme by the then military government in 1988.[4] By 1992, 12 commercial and merchant banks including the four biggest banks in the country i.e. First Bank Plc, Union Bank Plc, United Bank for Africa Plc and Afribank Plc, had been fully privatized. The Military Government enacted a new and comprehensive statutory scheme for the privatization agenda-the Public Enterprises (Privatization and Commercialization) Act 1999.[5] The policy of privatization and commercialization of state – owned enterprises is vigorously pursued by successive civilian governments including the current civilian government in Nigeria.

Since 1995, Nigerian Government has maintained substantial deregulation and liberalization of the economy to attract foreign investments and businesses and at the same time encourage local investment. The promulgation of the Nigerian Investment Promotion Commission Act and the Foreign Exchange (Monitoring and Miscellaneous Provision) Act form the bedrock for the open economy targeted at attracting foreign investment and business into Nigeria.[6]

## 1.2 Analytical Discuss on Privatization

### I. The Collapse of the Indigenisation Programme

As stated earlier in this article, toward the end of the first decade of independence, the national campaign that Nigerian should assume prominent position in the ownership, control and management of the economy started to receive serious consideration by the government.

[2] Act No, 4 of 1972: The Nigerian Enterprises Promotion Act 1972 was amended in 1973 (as Act. No 28 and in 1974 as Act Nos. 7 and 13 of 1974).

[3] See IMF Press Release No. 872 "Nigeria standby Arrangement" IMF Survey, Vol 16 No 3 of February 9, 1987 p. 46 and 47 (cited in Regulation of Trade and Investment in an Era of Structural Adjustment Programme, Ajomo and Akanle (eds) (1995) NIALS Conference series No. 2p. 49 See also Olusegun Yerokun (1989) *Legal Aspects of Structural Adjustment Programme in Nigeria* Olakulehin Press Ltd; Ibadan, pp. 45-64.

[4] See President Ibrahim Babagida's nationwide broadcast of 27th June, 1986,

[5] Public Enterprises (Privatization and Commercialization) Act, Cap. P 38 LFN 2004 as amended in 2010.

[6] The state owned Enterprises to be privatised or commercialised are stated in the Privatisation Handbook, published by the Bureau of Public Enterprises.

This campaign culminated in the promulgation of the Nigerian Enterprises Promotion Act in 1972 (now repealed). The said Nigerian Enterprises Promotion Act, (commonly referred to as the Indigenization Act) has, as one of its main objectives, the early attainment by Nigerians of the commanding height of the Nigerian economy. It provided in essence that certain scheduled enterprises were to be reserved exclusively for Nigerian citizens, companies and associations, while aliens could operate or participate in some others only if they met certain minimum requirements in respect of paid up share capital and turnover.

Furthermore, the Act provided that aliens could participate in enterprises not listed in the schedules only if there was a minimum participation of 40% by Nigerian citizens.

However, the net effect of the indigenization scheme was to stifle foreign investment even though the objective of the government was the encouragement of local entrepreneurship.

Through a combination of factors the indigenization scheme did not achieve the desired objectives.

The reasons for the failure of the indigenization programme, which same reasons have afflicted the current privatization programme, were that Nigerians who purchased the outfits during the indigenization programme were contented with the status quo and did little or nothing by way of establishing new industries. Similarly, those who purchased the import-substitution industries did nothing to increase the local value added to the products of these industries. The government was perhaps a greater culprit in this regard as most government owned enterprises or those in which government had a substantial stake came under this category.

## II. The Privatisation Programme in Nigeria

Thus, the need to salvage state enterprises from economic collapse and improve their efficiency and effectiveness in terms of services delivery led to the adoption of a privatization and commercialization programme by the then military government in 1988 and the policy is being pursued vigorously by the current civilian government.[7]

Among the stated objectives of the privatization programme in Nigeria are:[8]

---

[7] Other major reasons for the current economic reforms in Nigeria is the desperate desire by our government to attract foreign capital and foreign investment into the country. The main reason for jettisoning the indigenisation programme in 1984 was that the programme resulted in considerable reduction of foreign investment influx in the country, and massive capital flight.

[8] The literature on what the country hopes to achieve from privatization is immense: see for example, NCP, What You Should Know about privatization "(NCP, Abuja, 2000): EL-Rufa'I, 'Gains of Privatisation: Between Nationalism and Reform', Business Day, 27 January 2003, P. 18; Restructuring the Nigerian Economy, Business Day, 6 February 2003, P. 35." Statement by President Olusegun Obasanjo on the occasion of the inauguration of the National Council on Privatization at the presidential Villa, Abuja, on Tuesday, 20th July, 1999. See the Privatization Handbook, 3rd Edition, 2001, 3-7 published by the Bureau of Public Enterprises (BPE) Abuja for the full text of the statesmen. Article by Dr. Abba Kolo; Managing Post-

1) To re-define the role of government in order to allow it concentrate on the essential tasks of governance.
2) To restructure and rationalize the public sector in order to lessen the dominance of unproductive investments in the economy.
3) To re-orientate the enterprises slated for privatization and commercialization towards a new horizon of performance, improvement, viability and overall efficiency.
4) To promote efficiency by fostering well structured markets and competition.
5) To create more jobs, acquire new knowledge and technology, and expose the country to international competition.
6) To raise funds for financing socio economic development in such areas as health, education and infrastructure.
7) To ensure positive returns on public sector investments in commercialized enterprises through more efficient management.
8) To check the absolute dependence on the treasury funding by commercially oriented parastatals and so encourage their approach to the Nigerian capital market to meet their funding requirements.
9) To initiate the process of gradual cession to the private sector such public enterprises that are better operated by the private sector.
10) To reduce the fiscal burden of loss-making-public-enterprises which undermine fiscal control and macro-economic stability.
11) To mobilize domestic resources for developing and deepening financial markets.
12) To democratize and spread share ownership with the benefits of positive change in labour attitudes and enhanced productivity.
13) To lead to fairer pricing of goods and services.

**The Imperative for Privatisation in Nigeria**

The dominance of Public Enterprises in the Nigerian economy, like in many other developing countries, has constituted a significant drag on the overall growth rate of those countries over the years. Much of the resource windfalls accruing from oil since the 1970s in Nigeria have been squandered on projects that have made little contributions towards Nigeria's economic development. Instead, public sector investments have greatly contributed to the nation's debt burden. In general, and contrary to public expectations, the performances of the public enterprises have been dismal in terms of huge financial losses, poor customer service, and inability to meet demand requirements.

---

ılitical and Regulatory Risks in Nigeria – The Law and Policy Perspective' in Journal of al Resources Law, Vol. 22 No. 4, 2004, 473-506.

The sustained poor performance of the public enterprises created a crisis of "confidence" which worsened with Nigeria's economic crisis of the 1980s. The crisis resulted in dwindling domestic and foreign exchange revenues which put government in a precarious fiscal position in which it could no longer accommodate the lapses of the public enterprises. The macroeconomic environment became less accommodating to the inefficiencies of the public enterprises. The above and other factors compelled Nigeria to adopt the privatisation and commercialisation policy within the framework of the World Bank/IMF endorsed structural adjustment program.[9]

Thus, the socio-economic rationale for the privatization of public enterprises in Nigeria derived from two main considerations, which in turn derived from the precarious socio-economic conditions in the country.

The first, which is macroeconomic in nature, centers on the need for restoration of fiscal balance in the light of the inflationary impact on the country's excessive budget deficits, of which public enterprises constitute a major cause. Structural Adjustment Program (SAP) placed a rein on government expenditure so as to limit budget deficit to 3 – 4 percent of the Gross Domestic Product (GDP). Policy makers and economic analyst assumed that the privatization policy will provide a concrete base to comply with Structural Adjustment Programme requirement rationalised resource allocation to the affected public enterprises.

The second, which is microeconomic in nature, focuses on the importance of improved efficiency in order to bring about output expansion which may subsequently meet the ever rising demand for public goods. In addition, the structural adjustment program was introduced to correct the imbalances in Nigeria caused by government intervention in key economic activities.

In order to redress the economic disequilibrium, the Structural Adjustment Programme was therefore introduced on the 27th June, 1986 in a nationwide broadcast by President Ibrahim Babangida. In the said broadcast, President Ibrahim Badamasi Babangida said 'government will divest its holding in agricultural production, hotels, food beverage, breweries, distribution, electrical appliances and all non strategic industries. It will also reduce its holdings in banks, insurance company and other financial enterprises without losing control'.[10]

---

[9]Obadan M.I. and Ayodele S.A. (1998) Commercialisation and Privatization Policy in Nigeria, NCEMA Publications, Ibadan.

[10] It must be noted however, that the debate about privatization of public enterprises did not start with the Babangida's administration, as it sometimes erroneously assumed. It was the Presidential Commission on Parastatals headed by Mr. Gamaliel Onosode in 1981, which was set up by the Shagari Administration that first mooted the idea. The Commission recommended as follows: An increased role by private sector should be considered especially in those Parastatals where security and other sensitive aspects of public policy are not as paramount as the satisfactory delivery of service to the people. This recommendation was accepted by Government in 1982. However, no guidelines on what should constitute an 'increased role' for the private sector in parastatals were issued before the Administration was toppled in December 1983. The succeeding administration of General Muhammadu Buhari set up a Study Group on statutory corporations and state-owned companies to' undertake an in-depth study of the desirability or otherwise of privatization of patastatals and state-owned companies – identify those which can be privatized and recommend the methodology of achieving such a prorgamme in the Public interest. 'On the issue of privatization, the Study

In line with this declaration, the Federal Military Government promulgated the 'Privatisation and Commercialization Act'. The economic recovery measures covered general austerity measures to control government expenditure, control state government, national and external finances, import restrictions, fiscal measures and a wide range of measure to combat smuggling. Under this Act the government proposed to partially privatise its equity holding in some banks.

By 1992, 12 commercial and merchant banks including the four biggest banks in the country i.e. First Bank Plc, Union Bank Plc, United Bank for Africa Plc and Afribank Plc had been fully privatized.

The government also established an implementation agency-the Technical Committee on Privatization and Commercialisation (TCPC). By 1993 the TCPC had concluded its assignment and privatized 88 of the 111 enterprises listed for privatization under the Act, and Commercialised 34 others. The Federal Military Government later promulgated the Bureau of Pubic Enterprises Act which repealed the Privatization and Commercialisation Act.

The government also created another implementation agency-the Bureau of Public Enterprises (BBE). The Privatisation and Commercialization Act No 25 1988 was based or focused attention on partial privatization while the Bureau for Public. Enterprises Act No 28 of 1993 focused on full privatization. The President Abdulsalami Abubakar regime that came in 1998 continued with the privatization scheme. It enacted a

---

Group made the following recommendations:'(1) Government should adopt the principle of selective privatization as a policy to perform better and save public funds; (2) Privatization should only be pursued where conditions are favourable and where vital national interest will not be jeopardized;(3) Privatization should only be seen as a gradual process and each case should be considered on its own merit and be carefully worked out before implementation; (4) In the event that the value of the shares which need to be sold to achieve the desired level of private sector participation is very substantial, Government should consider giving special terms to promote the sale. For example, government could allow for one-third of the shares applied for by a person to be paid at the time of application, one third, six months after allotment and the remaining one-third six months thereafter; (5) Since the principal aim of privatization is to improve efficiency in the delivery of service and enhance financial and operational performance, private sector equity participation must be large enough and properly structured to provide for the autonomy of the enterprises. In this connection, private sector majority shareholding of the order of shareholding should provide for at least 35-45% to be sold to large shareholders who are capable of buying up to a minimum of $3^1/_2 - 5\%$ of the shares while the rest is sold to small shareholders. In it White Paper on the Report, Government accepted 'the principle of commercialization and selective privatization as a policy measure' and that 'privatization should only be seen as a gradual process and each case should be considered on its merits and carefully worked out before implementation'. However, government also reiterated that it 'reserves the right to take reasonable action to ensure the achievement of the objectives of the parastatals and the protection of the public interest'. Regarding the eight public utilities which were studied by the Study Group, Government indicated clearly its preference for commercialization and rejected virtually all the privatization schemes drawn up by the Study Group. And in the New Nigeria Newspaper of Thisday, 25th July, 1985 the then Head of State, General Buhari declared that: 'the government would rather go into commercialization because as a result of the Study Group on the Commercial Companies we found out that there is a large public investment, which it would be unfair for this administration to sell to a few people so that people who bought those shares will just realize too much profit..' The administration of General Mohammadu Buhari was however toppled in August, 1985.

new and comprehensive statutory scheme for the privatization agenda the Public Enterprises (Privatisation and Commercialisation) Act 1999.[11]

On assumption of office, President Olusegun Obasanjo adopted the Public Enterprises (Privatisation and Commercialization) Act 1999, which currently regulates privatization in Nigeria. The Act retained the BPE and also created another implementation agency, namely, the National Council on Privatization (NCP).

The beginning of the problem which spurred Nigeria to adopt Privatisation policy are as stated above. The reasons were further catalogued in the statement of President Olusegun Obasanjo, titled 'The Imperative of Privatization'.[12] A renowned academician summarized the reasons for privatization in Nigeria in an article.[13]

The imperatives for privatization in Nigeria become more apparent if one considers the inadequacy of basic infrastructure for economic activities such as lack of a constant supply of electricity, petroleum products, water telecommunications, rail transport, etc. which are vital for any meaningful socio-economic development to take place.

It is widely acknowledged by commentators that lack of these essential services acts as a disincentive to foreign investors as it makes the cost of doing business too high relative to other countries where these services are available at reasonable prices.

However, the most important stimulus for the introduction of privatization and commercialization policy in Nigeria were the conditionalities introduced by the International Monetary Funds (IMF) for the granting of loans to Nigeria in 1983.

Another major reason for the current economic reforms in Nigeria is the desperate desire by our government to attract foreign capital and foreign investment into the country. This account for the jettisoning the indigenization programme in 1984 as the programme resulted in considerable reduction of foreign investment influx into the country, and massive capital flight. The Nigerian investment Promotion Commission Act[14] and Foreign Exchange (Monitoring and Miscellaneous Provisions) Act[15] as well as Investment and Securities Act[16] were promulgated purposely to encourage foreigners to

[11] For comprehensive discussion of this topic, see B.O. Oshionebo's article Public Enterprises Performances and Management in Nigeria: An overview – NCEMA Seminar on Public Enterprises Reforms, Ibadan, June 5-16, 2000, Aje Z.O. "Indigenization of Enterprises in Nigeria" Ph.D Thesis (1978) University of Lagos, Emmanuel F.Y. (1980) An unpublished keynote address at the closing ceremony of some management courses at the Administrative Staff College of Nigeria, 12th December, 1980. See B.O. Oshionebo in "Management of Public Enterprises-Concepts and Issues, being his paper delivered at the Seminar on Public Enterprises Reforms, June 5-16 2000 at National Centre for Economic Management Administration (NCEMA) Ibadan".

[12] Statement by President Olusegun Obasanjo on the occasion of the inauguration of the National Council on Privatization at the President villa, Abuja, on Tuesday, 20th July, 1999. See the Privatization Handbook, 3rd Edition 2001, 3-7 published by the Bureau of Public Enterprises (BPE) Abuja for the full text of the statement.

[13] Article by Dr. Abba Kolo 'Managing Post-Privatisation Political and Regulatory Risks in Nigeria – The Law and Policy Perspective' in Journal of Energy & Natural Resources Law, Vol. 22 No. 4, 2004, 473-506

[14] CAPF 34 Laws of Federation of Nigeria, 2004.

[15] CAP I. 24 Laws of Federation of Nigeria, 2004.

[16] CAP I. 24 Laws of Federation of Nigeria, 2004.

come and invest in Nigeria, even with mouth-watering inducements incentives and protection of foreign investments. The N.I.P.C. Act allow aliens to participate in any business (except businesses in the negative list) in Nigeria and with foreign currencies, without any restrictions or conditionalities whatsoever.

### 1.3.1 Incentives to Foreign Investment and Business

Apart from the government policy of providing incentives such as Tax relief for pioneer industries under the Industrial Development (Income Tax Relief)[17] the Nigerian Investment Promotion Commission Act and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act contain several other mouth-watering incentives for foreigners all aimed at boosting foreign investments and business in Nigeria. They include: non-expropriation of investments; procedure for dispute settlement and several other incentives.

The Nigeria Investment Promotion Commission (NIPC) Act guarantees for an unconditional transferability of funds and dividends or profit (net of taxes attributable to the investment) in freely convertible currency; framework for the settlement of dispute between an investor and any government in the country; the other incentives available for investors include special Incentives for agriculture; export incentives; provision for export processing zone; and export development funds. The Nigeria Export Processing Zone (NEPAZ) Act provides incentives for investors, and enterprises operating in the zones with a view to encouraging foreign investments in Nigeria, approved enterprises operating within NEPZ shall be exempted from all federal, state and local government taxes, levies and rates. The Minerals and Mining Act makes provisions for investment incentives and other assistance to attract foreign investment in minerals.

### 1.3.2 Other Protections for Foreign Investors

The Convention for the establishment of the International Centre for settlement of Investment Disputes provides a framework for the settlement of investment disputes between a host and a foreign investor. Nigeria has acceded to this Convention and has incorporated its provision into her national laws through the enactment of the International Centre for Settlement of Investment Disputes (Enforcement of Award) Act.[18] Nigeria has also acceded the convention on the Multilateral Investment Guarantee Agency (MIGA). The broad mandate of the agency is to stimulate capital flows to its member countries, and in the particular circumstances of developing countries, MIGA is designed to overcome the problems of non-commercial or political risks which have often constituted obstacles to increase in investment flows.

Since 1995, Nigerian Government has maintained substantial deregulation and liberalization of the economy with several incentives to attract foreign investments and business and at the same time, encourage local investors. The promulgation of the Nigeria Investment Promotion Act and the Foreign Exchange (Monitoring and

---

[17] CAP. 17. LFN. 2004
[18] CAP N. 107 LFN 2004

Miscellaneous Provision) Act form the bedrock for the shift from guided deregulation and partial liberalization to an open economy targeted at attracting foreign investments and business into Nigeria.

The potential for foreign involvement in the Nigerian economy is bound to increase as a result of privatization. This is because the potential for the private investors to make profits is high and the Nigerian Government is willing and eager at least for now, to allow foreign participation in the privatization exercise.

## 1.4 Challenges of Privatisation in Nigeria[19]

The privatization programme in Nigeria is facing several challenges. The first challenge is the on-going controversy over the constitutionality of having core or strategic private investors in the privatization process in Nigeria. Other challenges include the consequences of the absence of a competition law, week capital market, weak regulatory mechanism, outdated labour law, and the ill-conceived foreign investment legislations that benefit foreigners more than Nigerians. Other problems facing the programme are lack of safety net to cushion the harsh effects of privatization, the in equitable distribution of wealth created by the privatization programme, and lack of transparency in the privatization process. Some of these challenges are discussed below:

### I. Constitutional Law Issue in Nigeria Privatisation Programme

It is being argued that the privatization programme is contrary to the constitutional provisions for the control of the national economy in Nigeria. The constitution prescribes the economic objectives and ideals which must be observed by all organs of Government, authorities and persons,[20] thus:

The state shall, within the context of the ideals and objectives for which provisions are made in this constitution:

(a) 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.

### II. Structural Adjustment in Nigeria without Social Safety Net[21]

In Nigeria, the most serious of the challenges or criticism against privatization is the failure to formulate social security measures that will mitigate the hardships that privatization had brought to bear on the working poor and the unemployed.

---

[19] See generally "Bello, S.A. (2013) Contentious Legal Issues in Nigeria's Privatization Programme, College Press, Lead City University, Ibadan pp. 27-70 "

[20] As in Section 13 and 16 of the 1999 constitution of Nigeria which are part of the Fundamental Objectives and Directives and Principles of State Policy in Chapter 11 of the constitution. Thus, Sections 13, 14 and 16 of the 1999 constitution reserves the operation of the major sector of the economy exclusively to the Government constitution

[21] Mike I, Obadan "Whither Structural Adjustment in Nigeria" NCEMA, Ibadan monograph series No. 3 (1993) P. 76; Gafar Ijaiya, Ph.D "Poverty Alleviation in Nigeria" paper presented at conference on Economic Reform in Nigeria organized by the Faculty of Business Admin, University of Ilorin, in 2006.

The process has also been conducted largely in disregard of labour union's demand for protection and severance packages.

**III. Allegations of Irregular Sale of Public Properties**

It is obvious to all Nigerians that we do not get appropriate prices for the privatized enterprises. Most of the public enterprises were privatized at throw away prices, whereas the enterprises were established with loans from domestic and foreign lenders; these loans had added to Nigeria's debt stock. Yet, they are given away at prices well below even the amount of the debt; this can best be described as economic rip-off on Nigerians.

There are numerous allegations of irregular sale of government owned enterprises in the ongoing privatization in Nigeria. The most recent of such irregular sales were reported in the daily newspapers, including the sale of the oil refineries in Kaduna and Port-Harcourt. Of course, privatization programmes have been tarnished by allegations of fraud in many countries all over the world including Nigeria, but only in Nigeria has prosecution for alleged fraud on privatization has not taken place; nobody has been prosecuted for any offence relating to privatization process in Nigeria. This is in spite of several allegations of impropriety in the conduct of privatization transactions.[22]

A firm attitude on the government and judicial authorities towards this type of fraud, or even the appearance of fraudulent situations is crucial to avoid doubt being cast on the entire reform process.

---

[22] For such allegations, see: Business Times of 20 December 2000, pp 1 and 2, which reported the House of Representative's concern over the ongoing privatization exercise, with a call for review of some of the sales. On sale of Kaduna refinery see "The Guardian Newspaper of Tuesday, June 5 2007 at pages 57 and 59, and "Sunday Punch" of 3/6/2007 at p. 10. The Punch Newspaper of 4/6/2007, at back page, reported that a Federal High Court in Kaduna stopped the sale of the shares of AP Plc for irregularity. Yet "Daily Independent" reported on 15/6/2007 at page A6 the impropriety in the sale of Urban Development Bank of Nigeria. Mallam El-Rufai, the former Director- General of the Bureau of Public Enterprises was critical of the sale of Durbar Hotel in Kaduna. In his opinion, the hotel was undervalued at the time of the sale and that his agency was considering re-visiting the sale; see Business Times of 17 September 2001, 4. More recently, there was a row involving the Presidency and the House of Representatives over the proposed sale of the National Fertilizer Company of Nigeria (NAFCON) to a South African Company for $75 million. The House Committee on Agriculture alleged that it has uncovered undervaluation to the tune of $25 million in the propsed sale of the company. It then described the sales as 'unfair to Nigeria. See:' (NAFCON) undervaluation by N3.2 billion, Daily Trust Newspaper, 3 November 2003, I and 3, see also, NAFCON against Firm's Privatization; The Guardian, 20 February 2004, 15 and 17, which reported that the Managing Director and Chief Executive Officer of the Company also alleged that the company was undervalued.
President Umaru Yar'Adua sworn in on 29/05/2007 reversed the sale of the refineries at Port Harcourt and Kaduna which were sold by his predecessor. See GUARDIAN NEWSPAPER of 8/07/2007. Examples of prosecution for fraud or corruption in privatization transaction (cited in the book by Guislain P. "The Privatization Challenge" A strategic, Legal and Institutional Analysis of International Experience (World Bank, International Bank for Reconstruction and Development, Washington D.C. 1997) pp. 71-72 of various countries where fraud in privatization transactions had been effectively sanctioned include; Germany, Hungary Italy, Pakistan, Russia, Poland, and Maldova

## 1.5 Deregulation And Liberalization Did Not Yield The Desired Result In Nigeria

Deregulation and liberalization of the economy should result in the inflow of capital, money, plant, machinery as well as the establishment of industries on a scale which will (a) be a precursor to industrialization; (b) lead to the training and development of a skilled work force; and (c) where the business expands, lead to the reinvestment of profits in the country. Deregulation and liberalization did not yield these gains in Nigeria. What this leads to is the fundamental truth that while the host country may hope for certain goals in the promotion of foreign investment, it is not reasonable to expect that they will necessarily follow. It is clear that no foreign investor would know the problems that could be encountered in Nigeria and invest therein if it would not yield more profit here than the same investment would back home or in some other country. The national and individual interests of the foreign investor are foremost to him. In the light of this observation, it is difficult to share the enthusiasm of the proponents of the idea that foreign investment would lead to transfer of technology. No foreign investor would really wish to equip a host country with the "know how" that eventually removes the investor from his vantage position vis-à-vis the host country. Our most revered sage, the late Chief Obafemi Awolowo,[23] stated the truth when he said that it should be the responsibility of Nigeria as the host country to try and get the maximum benefit out of any policy of encouraging foreign investment. One method can be by way of serious interventions by government aimed at directing the way foreign investment should go.

In this connection, Nigeria may need, for example, to re-evaluate her current policy on foreign investment. As it is today, under the National Investment Promotion Commission Act, foreign investors can bring in their work force. This does not solve the problem of unemployment in this country. The foreign investor can repatriate his profits to virtually any extent – so, what really does Nigeria gain? Our education system must be directed at clear goals of acquiring the skills that can attract the kind of foreign investment that we seem to be interested in.

The other issue is identifying key areas in which such investments should be encouraged and in which the host country would participate. Due emphasis must also be placed on investment in joint research projects between Nigeria and foreign investors. All of these would build the necessary linkages and provide both lasting impetus for development as well as returns on investments.

[23]the then Leader of Opposition in the House of Representatives in April, 1960, during the debate on the Appropriation Bill, 1960-61 House of Representative Debates Report, 22/4/1960, 606-609, eds. 1611-1618

## 1.6 Privatisation and Socio-Economic Rights Of Nigerians[24]

Another important challenge of privatization in Nigeria is: whether market economy as reflected in privatization in Nigeria did alleviate or exacerbate poverty amongst the vulnerable group in the country.

The government is obliged to pursue an economic agenda that encourage inclusion, and freedom from want and misery for every Nigerian. Nigeria's obligations under international human rights instruments, especially the African Charter on Human and People's Rights, mandates it to pursue the privatization programme in a way that guarantees every Nigerian, especially the poor and marginalized, basic needs before focusing on improving outcomes for the rich and business class.

The Covenant on Economic, Social and Cultural Rights (which Nigeria is party to)
states thus:

> Each State Party to the present Covenant undertakes to take step, Individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieve progressively the realization of the right recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measure.[25]

Although the provision in Chapter II of the 1999 constitution are not justiciable, yet Nigeria is bound under international law, to continuously improve the welfare of its citizens irrespective of the economic model it adopts. The 1999 constitution of Nigeria clearly declares the security and welfare of the people as the primary purpose of government.

In the African Charter on Human and Peoples' Rights, a plethora of Economic and Social rights are also guaranteed. In Nigeria where over 70% of Nigerians live below the poverty line of less than one dollar a day, how can the state meet the minimum core obligations on ESC rights which are (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 to prevent spread of major diseases etc.) or even attempt to meet the Millennium Development Goals, if it hands over essential ESC rights issue to the private sector, considering that the private sector is driven by profit motive.

---

[24] See generally: Eze O. "Reading in Privatisation (Socio-Economic Rights Initiatives (SERI) Mbeyi & Associates (Nigeia) Ltd, Lagos, 2003; Igbuzor" "Privatisation in Nigeria: Critical Issues of concern to Civil Society (SERI) Lagos, 2000); Kalu Onuoha – Legal Regulation of Privatisation in Nigeria: A Critique in Readings on Privatisation (SERI) Lagos, 2003. Nwabueze B.O. (1989) Social Security in Nigeria a paper presented at 10th Anniversary Lecture of Nigeria Institute of Advanced Legal Studies on 7th September, 1982".

[25] Article 2

Flowing from the above, the market economy that guarantees profit for a few and misery for the majority cannot be adopted as the economic basis of governance. It cannot guarantee the welfare and happiness for all Nigerians. Will the market guarantee services for the rural poor: water, adequate housing etc. since the scale of operation 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 privatization result in general decline in living condition for the majority, and in the absence of accompanying compensatory measures, then it would be clearly incompatible with the desirable end of enhancing human dignity through enhanced standards of living. Also, increase in the cost to attaining basic social services without a corresponding increase in income of the individual and family will clearly decrease living standards.

Apparently rolling back the state in accordance with privatization and adjustment will involve cutting expenditure on education, housing, health, wealth etc. all these expenditure go a long way to facilitate the enjoyment of the right to an adequate standard of living.

Added to this is the problem of insecurity in life and property in the country arising from the inability of the law enforcement agencies to control crime and politically motivated attacks on foreign investment projects by local communities, corruption and instability in the macro-economic policy of the Nigerian Government.[26]

## 1.7 Conclusion

1. Nigeria is not ripe for privatization or the market economy. The prerequisite for a successful privatization programme, as enjoined by the World Bank, are not present in the present privatization scheme in Nigeria. The World Bank, the chief Architect of privatization gave the following conditions as essential for a successful privatization programme:
   (a) The Bank identified that most privatization success stories come from high and middle income countries.
   (b) Privatisation is easier to launch and more likely to produce positive result-when the company operates in a competitive market and when the country has a market friendly policy environment and a good capacity to regulate.
   (c) The poorer the country, the longer the odds against positive achievements.

   The above stated conditions listed by the World Bank as imperative for the success of any privatization programme are not present in the privatization programme in Nigeria.[27]

[26] On the insecurity situation in the country as one of the important factors that scares away foreign investor, see Algha Ibiam, 'Security imperative and Drive for Foreign Investment'. This Day, 30 March 2004, 24

[27] See world Development indicators, 2002

2. The Deregulation and Liberalisation programme in Nigeria has not yielded any of the desired results contemplated by the programme as stated in foot note No. 8 of this article. Privatization in Nigeria has not resulted in inflow of foreign capital, money, plant, machinery, or establishment of industries as anticipated by the privatization programme.

In view of the above paper therefore recommend the following: [28]

Nigeria should consider wider use of non-divestiture privatization methods such as deregulation, leasing, management contracting and franchising of monopoly rights, at least in the short run rather than heavy reliance on full divestiture as the primary mode of privatization in Nigeria.

Contracting out private managements which includes: management contracts, leases and concession arrangements, are particularly useful in a country like Nigeria where capital markets and domestic private sectors are weak; where capacity to regulate is poor and it is very difficult to introduce competition.

Other options open to Nigeria are: restructuring the ailing enterprises, liberalization to allow for competition since monopoly is the cause of their inefficiencies; and commercialization.

Also, employee management buyout, which involves sale of all or part of a state enterprise to its workers, managers, or a combination of both; marketization or demonopolisation, which involves that SOEs compete with private sector to provide goods and services and become responsible for their profits and losses.

The above listed alternatives to divestiture, if tried, could effectively revive the moribund public enterprises without necessarily leading to labour loss, revenue or capital depletion which divestiture of state-owned enterprises creates.

It is also recommended that government should consider alternatives such as arrangement, restructuring, amalgamation and merger or takeovers. These procedures are provided for by the Companies and Allied Matters Act, 2004 (as amended). They are less cumbersome and have been tried in the developed countries successfully.

Importantly, our privatization legislation should solve the labour Issues in a balance; and the legislation should protect the pension and other employee benefits of the workers in the privatization process. In other words, the legislation should provide the appropriate measures to minimize the (possible bad) effect of privatization on employees, otherwise the costs of privatization and restructuring could be considered as having been passed on ultimately to workers and society.

Informed opinion prescribes that in Nigeria, like in other African less developed countries, an internal restructuring of public service organisation and management, and public sector reform is likely to make a more significant contribution to improving public enterprise performance. A country can benefit from privatizing management WITHOUT

[28] See generally: Afeikhena Jerome: Privatization in Africa: A comparative Analysis being his contribution to the seminar on Public Enterprises held at the National Centre for Economic Management and Administration (NCEMA) Ibadan on June 5-16, 2000; Mike I. Obadan: "Privatization of Public Enterprises in Nigeria: Issues and Conditions for Success in the second round (NCEMA series No. 1, 2000) P.viii "

privatizing ownership of asset. This is contrary to the wholesale privatization of owned enterprises being practiced in the Nigeria privatization programme.

Also, Institutional framework in Zambia where agency is composed of m private sector experienced business and professional people, and the agenc autonomous of government control is recommended by the world bank as the be Africa, unlike in Nigeria where government appointed and control members of Technical Committee on Privatization and Commercialization (TCPC) and Burea Public Enterprises (BPE).