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Privatisation in Nigeria: Free Market Economy by Legislation

By

NDUKA CHINENYEZE NJOKU
School of Law,
National Open University of Nigeria,
14/16 Ahmadu Bello Way,
Victoria Island,
Lagos.

Abstract

The ascendancy of capitalism after the end of the cold war has obvious economic implications for emerging and developing economies like Nigeria. Most developing economies began a process of economic reform with the aim of restructuring their economies with the necessary outcome of moving from a command or mixed economy to free market economy. Nigeria's reform was characterized by privatising its public corporations and engendering a private sector driven economy by the process of legislative measures. This paper examines this journey by scrutinizing the benefits, challenges, constitutionality of the privatisation programme and interrogates the effectiveness of privatisation in achieving the lofty aims which it set out to achieve. The article concludes that Nigeria's privatisation has failed to achieve its purpose and that Nigeria's economy is not advanced enough to undertaker the privatisation programme.

The collapse of the former Soviet Union had a multi-dimensional impact on the world. Within the rims of international relations and politics, it leads to the emergence of a unipolar world. At the economic and ideological sphere, it manifested in the ascendency of capitalism as the dominant and influential ideology. Within this period, the communist and socialist ideologies reached their nadir in the priority of ideology of choice. Of the various groups within the capitalist ideology, the most influential was, arguably, the Washington Consensus. This was also the period of the rise of far right and conservative governments in the Western World. Amongst the core policies of the

Washington Consensus are economic growth, international integration, trade liberalisation, deregulation and privatisation.

It is in this international environment that third world countries such as Nigeria began to experience grave decline in their foreign earnings and momentous economic crises. Nigeria's economic position became more precarious because of the oil glut in the international oil market and in particular, because Nigeria depends on oil earnings for about 95 % of its foreign exchange earnings. The problem became more complex as a result of the very fact that Nigeria is an outpost of the metropolitan powers in Europe and North America; the very countries that are the custodians of the capitalist system.

Inorder to meet its obligations to its citizens, Nigeria had to borrow from the Bretton Woods Institutions of the International Monetary Fund (IMF) and the World Bank. These facilities granted to Nigeria and other developing countries are usually predicated on certain conditionalities. These conditionalities are the same policies that the Washington Consensus insists that are necessary for economic growth. Nigeria, therefore, had no alternative than to implement the conditions prescribed for funds from the World Bank. The implementation of deregulation and privatisation as necessary parts of the structural adjustment programme became non negotiable for Nigeria. Accordingly, the inexorable transition from mixed economy, which Nigeria previously adopted, to free market economy became imperative and natural.

Concept and Nature of Privatisation

It is undoubtedly clear to all that are engaged in the privatisation debate that there is no unanimity of opinion as to the definition of privatisation. It is obvious that this lack of agreement in the definition of privatisation is essentially as a result of the fact that scholars define privatisation based on their experience, ideological position and prevailing economic climate. Scholars from advanced economies like US and Britain and their counterparts in emerging and/or developing economies define privatisation from different perspectives.

As a result, no single definition will suffice. Privatisation is regarded as the transfer of ownership of productive assets to the private sector. (Wood and Kodwani, 1997:2350). This is obviously a plain definition of privatisation. However, Paul Starr in his influential work held the view that privatisation means two things "(1) any shift of activities or functions from state to the private sector; and more specifically, (2), any shift of the production of goods and services from public to private". The first definition has a wider scope because it includes all reductions and removals of the state's regulatory and spending activity. The second definition which is narrower excludes activities such as deregulation and cuts in public expenditure of the state from the definition of privatisation. (Paul Starr, 1988:7). However, Kay, Mayer and

Thompson, (1986:86) and Jackson and Pruce,)1994) equally offered a wider and more inclusive definition of privatisation to include "denationalization – the sale of public sector assets; deregulation, which is the opening up of state activities to private sector competition, contracting out- the private provision of public services, Joint Capital Projects,- using public and private finance and reducing subsidies and increasing or introducing user charges". Savas, (1987:3) defined privatisation from the perspective of the roles played by either the public sector or the private sector. According to him, "privatization is 'the act of reducing the role of government or increasing the role of the private sector in an activity or in the ownership of assets'. Mayor, (1993:50) defined privatisation as the "full conversion of property rights from the state or collective owners to private owners"

It is for these varied definitions of privatization that Freeman, (2003:1285), stated that privatisation does not describe anything in particular to the extent that it suggests a horde of arrangements. These, he suggested are "(1) the complete or partial sell-off' (through asset or share sales) of major public enterprises; (2) the deregulation of a particular industry; (3) the commercialization of a government department; (4) the removal of subsidies to producers and (5), the assumption of private actors of what were formerly exclusively public services through, for example, contracting out" The assumption by the private sector of services formerly exclusively undertaken by the public sector of the economy is the most common form of privatization in the US. It is frequently regarded as contracting out. According to Domberger & Jensen,1997:67), Contracting out….means opening up to competition a set of economic activities which were previously immune from it…..the distinctive element of ex ante competition – competition from the market as opposed to competition in it"). (Freeman, 2003:1287) expresses the view that in the US, states and local governments are engaged in privatisation through the process of contracting out. The services most contracted out by the state and local governments are "solid waste collection; management and operation of select government facilities and programmes such as hospitals, mental health facilities and waste water treatment plants; security services such as police, corrections, fire and ambulance services; parks and recreation services; road and bridge construction, repair, maintenance and lighting; vehicle repair and maintenance and day care. Idornigie, (2012:2) defined privatisation as "…the process of transferring ownership and sometimes control of a business, an enterprise, an agency, a sector or public enterprise from the public sector to the private sector."

The statutory definition of privatisation in Nigeria is to be found in Section 14 of the Privatisation and Commercialization Act, Cap 369, Laws of the Federation of Nigeria, 1990, which defines privatisation as the relinquishment of part or all of the equity and other interests held by the Federal Government or its agency in enterprises

whether wholly or partly owned by the Federal Government. Unfortunately, that statute has been repealed by the Federal Government of Nigeria.

It is therefore clear from the above that privatisation is a process of legal, political, economic and commercial disempowerment of the state and the transfer of such powers and resources to the private sector. It is legal and political disempowerment because ownership and attendant control of privatised entities no longer lies with the state but with private persons who appoint managers that run the firms. It is economic and commercial disempowerment of the state because the flow of profit as a result of the lucrative endeavours engaged by the corporations is appropriated by and transferred to the private persons. The state is, therefore, under the circumstances left with the role of regulator of the economy with its attendant challenges. The question which necessarily arises is whether the state can effectively regulate what it cannot manage and produce. The last financial crises in the western world have evidently shown the dire limits of the state as a regulator of the economy. The crises were clearly a resultant failure of the state to regulate and control the managers in the financial system who were only motivated by the profit accruing to them as a result of their economic activities.

Raison D'etre for Privatisation

As with the definition of privatisation, disparate reasons are offered for privatisation of public sector enterprises. The reason(s) for privatisation differs from one country to another mainly due to level of economic development and ideological reasons. In the US, the main ideological reason for privatisation is to have smaller government and privatisation is therefore, a way of shrinking government. (Freeman, 2003:1285). Conservative policy makers, public intellectuals, academics and conservative think tanks in the US such as the Heritage Foundation and Rand Corporation have been in the forefront of a quest of restructuring society in accordance with the conservative agenda. Accordingly, privatisation is part of the larger conservative programme of deregulation, free trade, market integration, and globalization. (Freeman, 2003; 1292). Privatisation of this nature that is predicated on ideological considerations is aimed:

"(1) to lower people's expectations of what government can and should be held responsible for, (2) to reduce the public sector's oversight and enforcement infrastructure, (3) to transform the interest group landscape to make less supportive of governmental growth." (Feigenbaum and Henig, 1994:192)

In the U.K, apart from ideological reasons, another reason for privatisation is to reduce public sector spending and cut the cost of running public enterprises.

In the emerging economies of Eastern Europe, the major reason for privatisation is to transit from command economy of the communist hue to free market economy. In Latin America, the major reason is to reduce public sector spending and inefficiency in the running of the enterprises.

In Nigeria, there is a potpourri of reasons for privatisation – reduce public sector funding, reduce inefficiency and political interference and cut corruption in the public sector. Indeed, the slogan among public officials in Nigeria is that "government has no business in business".

Kay & Thompson, (1986:) argued that privatisation is to improve the economic performance of the industries concerned (2) to resolve the problems of management and control, (3) to raise finance for the state, (4) to reduce the power of public sector unions, and (5) to promote popular capitalism.

It is also argued that privatisation leads to efficiency and quality of remaining government activities. It leads to greater attention to customer satisfaction (Goodman and Loveman, 1991: 12). Privatisation is said to promote public confidence in the system of industrial capitalism, Moore, 1992:116, Meggason, Nash and Randenborgh, (1994:403) have however argued that the broadening of share ownership in the process of privatisation is to increase public support for free market policies and accordingly make it difficult for subsequent governments to reverse market policies by re-nationalisation.

Porrata – Dorra Jr., (1993: 124) argues that in Latin America, public enterprises are "generally viewed as poorly managed, unprofitable, overstaffed, inefficient, and non-competitive, in today's global economy…..enterprises represent an unacceptable drain on the public treasury. Many governments have therefore undertaken programs to privatize their extensive holdings of public holdings."

Parrata-Dorria's view clearly represents the experience of most developing countries of Africa, Latin America, Asia and emerging economies of Eastern Europe.

The debt burden among developing countries in the 1970s and 1980s played a major role in engendering privatisation. Most developing countries adopted several measures such as borrowing from multinational institutions like the International Monetary Fund(IMF) and the World Bank, adoption of austerity measures, debt-equity swap, tax increases and debt restrictions. These solutions did not entirely eliminate the debt burden crisis. Accordingly, developing nations found themselves with insufficient funds to pay salaries, maintain public infrastructure and operate state owned industries. In order to raise further funds, governments have to sell off its state owned industries.

(Poratta –Dorria, 1993:125). This is applicable to the privatisation statutes of Argentina, Brazil and Venezuela.

As pointed out earlier, ideological considerations also lie at the heart of what has become a global phenomenon of privatisation. World Bank structural adjustment loans are means for economic reform in the borrowing country. Such reforms are laden with ideological free market overload such as privatisation and deregulation. (Porrata-Doria, 1993:126)

It is therefore beyond argument that funding or loan facilities from multilateral financial institutions are not value or ideologically free. Such funds come with a heavy price. The price of capitalism which necessarily entails the privatisation of state owned enterprises. The question is this: who buys these privatised firms especially the lucrative ones? It is the persons with the financial capital, management and technical skills to purchase them. Usually, multinationals owned by the western powers and their local partners buy these public enterprises.

A core objective of Nigerian privatisation is the promotion of efficiency and development of the enterprise and budgetary and financial improvements. Privatisation is expected to lead to introduction of new technologies and innovative processes which will improve production and quality of goods and services. Nigeria is said to have spent $100 Billion dollars between 1975 and 1995 on public enterprises. (Idornigie, 2012:5). This huge sum of money was expended without commensurate return in terms of profit, improved productivity and quality of goods and services. This is regarded as an unacceptable drain on the public treasury and clearly unsustainable on the long run.

Execution of Privatisation Policy

The process of privatisation takes various dimensions and perspectives. Privatisation is an intricate and complex process. The operationalization of a privatisation policy sometimes involves restructuring of the enterprises; the method of privatisation; determining the relationship between the privatised industries and the state and the regulation of the industries by the government. Restructuring involves changes in the structure of the state owned enterprise. The state owned enterprises are broken up so that different and major operations of the enterprise are separated and allocated to different entities. This ensures efficiency in the management of the enterprises and makes the entities attractive to the private sector. In the United Kingdom, the electricity industry was restructured before it was privatised with generation, transmission and distribution allocated to different entities. The gas industry was privatised as a single entity while the water company was divided into ten regional companies. (Wood and Kodwani,1997: 2352).

There are several methods of privatisation. Public enterprises can be privatised through stock market floatation as exemplified by the privatisation in the U.K, Germany, Asia and Latin America as well as the mass privatisation method adopted by ex-communist states in Poland, Lithuania and Russia. (Wood & Kodwani, 1997:2352). Other methods are privatisation by placement by which the government negotiates private transaction and sells the stocks of a public corporation. Brazil adopted the auction method by which the government requests bids for the public enterprise. This was adopted by Argentina in its privatisation programme. Another method is auction and secondary offering. By this process, after auction, there will be offering to raise more funds for the upgrade of the enterprise. This method was used in the privatisaton of Telefones de Mexico. (Porrata-Doria, 1993:127).

Legal Framework for Privatisation in Nigeria

The legal framework for the implementation of the privatisation policy in Nigeria was through the Privatisation and Commercialization Decree No. 25 of 1988. This enabling law set up the Technical Committee on Privatisation and Commercialisation with the mandate to monitor and supervise the operationalization of the policy in Nigeria.

The Privatisation and Commercialisation Decree No.25 1988 was subsequently repealed and replaced by the Bureau for Public Enterprises Act 1993. Also, a law known as the Public-Enterprises (Privatisation and Commercialization) Decree, N0. 28 1999 was enacted. Part 1 (A) of the Public Enterprises (Privatisation and Commercialization) Decree, N0. 28 1999 provides for privatisation. Section 1 (1) provides that "The enterprises listed in Part I of the First Schedule to this Decree shall be partially privatised in accordance with the provisions of this Decree" while section 1 (2) states that "The enterprises listed in Part II of the First Schedule to this Decree shall be fully privatised in accordance with the provisions of this Decree". Equally Sections 2, 3 and 4 of the Decree made provisions with respect to the method of privatisation of the public enterprises to be privatised. The methods are through public offer for sale of the shares of the public enterprises through the capital market, private placement, willing seller and willing buyer basis or through any other means which the National Council on Privatisation may determine.

Part 11of the Public Enterprises (Privatisation and Commercialization) Decree, N0. 28 1999 provided for the establishment, membership, functions and powers of the National Council on Privatisation(NCP) which is the policy making organ with respect to privatisation in Nigeria. Section 9 (1) of the Decree established the NCP while section 9 (2) provides for the membership of the body. The Vice President is Chairman of the NCP.

PART 11 B of the Decree provides for the functions and powers of the NCP. By Section 11 the functions and powers of the NCP are enumerated and clearly shows that the NCP is the highest policy making body for privatisation in Nigeria.

Part 111 of the Public Enterprises (Privatisation and Commercialization) Decree, N0. 28 1999 established the Bureau of Public Enterprises, provided for the functions and powers of the body. Section 13(1) clearly show that the BPE is the body responsible for policy implementation privatisation in Nigeria.

The Nigerian government has also conducted the privatisation of the power sector through the Electric Power Sector Reform Act, 2005. The Act was primarily set up to, among other things, establish companies that will take over the assets, liabilities and staff of the National Electric Power Authority (NEPA). NEPA was the former state owned monopoly responsible for electric power generation, transmission, distribution and sale in Nigeria. By Section 1 of the Act, the government was empowered to establish a holding company and by Section 2 the shares in the holding company are to be held by Nigeria's Federal Ministry of Finance Incorporated and the Bureau of Public Enterprises in the name and on behalf of the Federal Government of Nigeria. Section 6 (1) and (2) of the Act vests in the National Council on Privatisation the powers to give directions transferring all the assets and liabilities of NEPA to the holding company and direction for the cessation of all or any of the functions of NEPA. The Act also by Section 8 empowers the NCP to establish successor companies that will take over the functions and duties of the initial holding company to which the assets and liabilities of NEPA was transferred to. The successor companies to which the assets and liabilities of the initial holding company are to be transferred to are companies with functions that are related to generation, transmission, trading, distribution, bulk supply and resale of electric power. These functions were substantially undertaken by NEPA. The government has since sold the successor companies to private companies.

Constitutionality of Privatization in Nigeria

The question as to the constitutionality of privatization in Nigeria is a considerable one and goes to the core of the legality or otherwise of the programme and whether the provisions of the Act are not inconsistent with the Constitution?. Section 16 of the Constitution of the Federal Republic of Nigeria, 1999, as amended deals with economic objectives.

In analyzing this section Professor Sam Aluko has argued that privatisation is a violation of the Constitution.

However, Idornigie, (2012:21) has argued that the privatisation programme embarked upon by the Federal Government of Nigeria is constitutional and therefore

legal. He contended that that if Section16 of the Constitution of the Federal Republic of Nigeria 1999 as amended is read together with the privatisation statutes "it becomes clear that the ultimate goal of privatization includes the actualization of the economic objectives in the Constitution." He further offered the opinion that the privatisation programme is legitimated by Section 16 (3) of the Nigerian constitution which confers legality to the statutes on privatisation.

I do not believe that the constitution can be interpreted piecemeal. The entire Section 16 of the 1999 Constitution as amended dealing with the economic objectives of the Federal Republic of Nigeria ought to be read together to arrive at the clear purport of that section and clearly interpret the spirit and letters of the constitution regarding economic objectives and in this case the constitutionality of the privatisation programme.

Section 16(1) (A) of the Constitution grants to the Federal Government the power to harness Nigeria's resources inorder to achieve a dynamic and self-reliant economy. By Section 16(1) (C) the Federal Government was granted the power to "manage and operate the major sectors of the economy".

Section 16(4) (B) defines economic activities to include "activities directly concerned with the production, distribution and exchange of wealth or of goods and services." The framers of the constitution could not have granted powers to the Federal Government to privatise the major means of production, distribution and exchange of wealth, goods and services in Nigeria by transferring same to private hands. The Constitution, by virtue of Section 16(2) (A), could not have imposed an imperative duty on the Federal Government to ensure that "the material resources of the nation are harnessed and distributed as best as possible to serve the common good" and again, by virtue of Section 16(2) (B), the Constitution could not have compelled the Federal Government to ensure 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 group" if it intended to authorize the Federal Government to transfer the said wealth or means of production and exchange to private individuals or groups by method or privatization or any other means at that. It is clear that once title or ownership in the wealth or means of production and exchange of the state is transferred to private individuals, the state losses ownership and effective control of such wealth.

The state can neither "harness and distribute" what it does not have nor can it prevent the concentration of wealth or means of production in a few hands when it has lost both ownership and control of the wealth. It is also clear that regulation of economic activities cannot amount to ownership of the economic resources. It cannot

transmute a regulator to an owner because a regulator cannot exercise the rights of ownership.

The power granted to the Federal Government by Section 16(3) (A) to "review, from time to time, the ownership and control of business enterprises in Nigeria" and to take measures to "administer any law for the regulation of the ownership and control of such enterprises" is not a power to transfer national wealth and means of production and exchange to private persons by privatisation or any other means but it is a power granted to the Federal Government to ensure that the economy is not operated in such a manner as to permit the concentration of wealth or means of production and exchange in the hands of few persons or of a group. At the heart of that subsection is the intention to ensure social justice, equality and equity. Accordingly, that subsection does not validate the privatisation programme of the Federal Government of Nigeria. Section 16 of the constitution can only be interpreted to permit a socialist economy or a mixed economy but definitely not the untrammeled capitalist economy which Nigeria is implementing.

To ensure the constitutionality of privatisation in Nigeria, the constitution needs to be amended to permit the Federal Government to undertake the privatisation programme.

The present privatisation programme needs to be subjected to judicial interpretation to determine its constitutionality. Although, Section 16 falls within Chapter 11 of the constitution which by Section 6 (6) (c) is non-justiciable, however, the Federal Government effort to purportedly legislate on the economic objectives of the constitution has removed section 16 within the non justiciable framework and made it justiciable in our courts.

Another issue which is of serious concern to Public Law scholars is how to ensure that constitutional imperatives of equality, social justice, transparency and other democratic norms are secured after privatisation of public enterprises. These constitutional ideals and democratic norms were protected in the processes of public enterprises. This is because there are laws and rules regulating the operations of public enterprises. For example, Section 16 of the constitution enjoins the Federal Government to operate the Nigerian economy in such a manner as to ensure common good, social justice and equality. Also, the activities of public institutions are subject to judicial review. If it is argued that privatisation is constitutional, how will the Federal Government ensure that these constitutional ideals and democratic norms which the constitution demanded are respected by the private owners and their managers? (Freeman, 2003:) argues that it is possible to extend democratic norms to the privatised companies by the process of "Publicization". . Publicization is the method by which

private actors implement democratic goals as a condition for having access to profitable businesses to deliver goods and services that were previously delivered by the public enterprises. These democratic norms are accountability, due processes, rationality and equality. (Freemen, 2003:1285)

Juridical Nature of Privatised Public Enterprises in Nigeria

The essential nature of public enterprises is that they are established through the instrumentality of a statute. They are owned, controlled and managed by the state. The enabling law donates the necessary authority and mandate and grant of power to the entities. Pubic enterprise relies on public funds as source of their capital. (Jones & Mowbray, 2005:) (Bradley and Ewing, 2007: 300).

A privatised public enterprise is no longer owned by the government nor is still controlled and financed by the state. The legal nature of a privatised company does not alter despite the use of golden shares in the UK to protect public interest in privatised strategic industries. The golden shares practice is used by the UK government to ensure that such strategic industries are not taken over by foreign countries. (Wade and Forsyth, 123- 124).

Upon privatisation, the administration of the public enterprise does no longer depend on the enabling statute as its governing instrument but is subject to the companies law and its articles of association. Such enterprise must be guided and operated within the legal framework provided by the Companies and Allied Matters Act, Laws of the Federation of Nigeria, 2004. The fundamental change in the legal nature of public enterprise equally alters the employment status of its workers. While the former employees of public enterprises are public servants and subject to the Civil Service Rules, the employees of a privatised company are subject only to their employment contract and the law relating to the master and servant relationship.

A prospective litigant against a public enterprise must comply with the pre-action notice usually provided in the enabling statute. Such pre-action notice is meant to give notice to the public enterprises of the case against it, protect the public enterprise from unnecessary litigation and enables them to settle the matter before litigation. For example, Section 92(1) of the Nigerian Ports Authority Act provides that no litigation can be commenced against the body except with one month notice.

A privatised public enterprise is not protected by the pre-action notice provision as it applies to the public enterprises. Such a privatised company comes under the rubrics of the general adjectival law relating to civil litigation.

Equally important is the fact that employees of public enterprises are public officers within the meaning of the Public Officers Protection Act, CAP 41, of the Laws of Federation of Nigeria, 2004 and therefore are shielded by Section 2(a) of the Act in respect of acts done in the course of their employment.

However, officers or employees of privatized public entities are not public officers within the meaning of the Public Officers Protections Act, CAP 41, Laws of the Federation of Nigeria, 2004 and therefore are not protected by the Act. The acts or conducts of employees are only subject to the general law relating to limitation of statutes.

The Success or otherwise of Privatization in Nigeria

Except for the sale of government shares in the financial institutions which was successfully completed, much of Nigeria's privatisation programmed has been dogged by controversies, political interference and gross abuse of power. There are several examples of how political interference and abuse of power have marred the privatisation programme. The failure of Nigeria's privatization programme must be located in Nigeria's political economy. A political economy characterized by pervasive corruption, primitive accumulation of wealth, violence, bribery, nepotism and patronage system cannot be expected to execute a transparent political or economic programme. During the privatisation of Daily Times, the initial plan was to sale the company to a core investor but as a result of political interference the company was privatised by initial public offer(IPO). But because the IPO was the least capitalized IPO in the history of the Nigerian capital market the Federal Government was compelled by that circumstance to reverse the sale to the core investor. The Daily Times was subsequently sold to a private investor and operations in the company has since seized when the core investor was accused of asset stripping.(Onuorah and Anuforu, 2013:1).

The privatisations of Aluminum Smelter Company of Nigeria (ALSCON), Ajaokuta Steel Complex and Delta Steel Company, Aladja were equally characterized by abuse of power by the Federal Government. With respect to ALSCON, the Russian Company, RUSAL was disqualified after it offered a conditional bid which left American Company, BFIG, to win the bid. The RUSAL officials were at the airport on their way home when they were recalled and offered the ALSCON on a willing buyer and willing seller option despite the fact that it lost the bid. It did not stop at that, RUSAL was granted concessionary conditions for gas which made the firm unprofitable for Nigerian Gas Company. ALSCON has stopped operations. (Onuorah and Anuforu, 2013:4).

With respect to the steel companies, Global Infrastructure Limited failed to pay the bid price as at when due but it was not sanctioned and the Federal Government did not

invite the reserved bidder to pay. Contrary to the procedure and regulations stipulated by the BPE, Global Infrastructure Ltd paid the bid price by installments. As a result of manifold irregularities surrounding the sale and the fact that the company was accused of down-sizing and asset stripping the multi-billion dollar steel plants, the Federal Government revoked the concession and has been locked down in arbitration with the Global Infrastructure Limited at the International Chamber of Commerce, London. The arbitration was instituted by Global Infrastructure Ltd inorder to compel the Federal Government to return Ajaokuta Steel Complex to Global Infrastructure. It took the intervention of President Jonathan to persuade the Indian firm to forfeit $1 Billion dollars which it claimed as damages which it suffered while operating the company. Legal wrangling started in 2008 and 6 years after the companies are shut down. (Onuorah and Anuforu, 2013:4).

The latest in the tragic story of abuse of power that has become the dominant feature of privatisation in Nigeria is the privatisation of the successor companies of the Power Holding Company of Nigeria(PHCN). Interstate Consortium bided for the Enugu Distribution Company but failed at the technical evaluation stage which ordinarily, means that it is not qualified for commercial evaluation stage of the processes. However, Interstate Consortium was suddenly announced as the preferred bidder for the Enugu Distribution Company. The Interstate Consortium was given till 21st August, 2013 to pay the bid price. Again, the company could not pay and the NCP chaired by the Vice President and the BPE gave the company an extension. The BPE refused to facilitate the meeting of the Technical Committee of the NCP inorder to deliberate and invite Eastern Electric, the reserved bidder to pay for the bid price. (Daily Sun: 2013.1) In view of the prevailing circumstances, the privatisation of the Enugu Distribution Company is likely going to be frustrated by unending litigation.

On the 1st of November, 2013, fourteen years after the reform in the power sector began, the Federal Government of Nigeria handed over four generation and ten distribution companies to the private investors and managers.(Mbamalu and Anuforo, 2013:1, Thisday, 2013:1). The handing over of the power companies did not come without grave concerns regarding the integrity of the privatisation process in Nigeria. Firstly, there were serious doubts as to whether the private investors that bought the state owned enterprises have sufficient ability to muster the huge technical and financial resources needed to manage and upgrade the companies. (Oloja and Anuforo, 2013:1). The privatization of the electricity sector has been described as a sham and a charade. “The plants were sold at a give a way prices to the same old foxes who are now searching for real investors to buy from them” (Oloja and Anuforo, 2013:2). The allegations are that the new buyers are merely fronting for some politicians who will either later sell the plants and collect huge amounts in return or, the politicians may give monthly revenue targets to the fronts and remain behind the scene and thereby,

make extra ordinary wealth at the expense of the country. This already happened to a number of privatised firms such as Daily Times Nigeria Limited, Oku-Iboku Newsprint Company and Aluminum Smelter Company that were bought and wrecked by the private investors and managers and nothing has happened to them. The private investors did not adhere to performance agreements despite the sanctions provisions in the BPE purchase agreement clauses. (Oloja and Anuforo, 2013:2).

In the U.K, the privatisation programme was successful. British telecom raised about $4.8billion for the British government. By 1998, Western Europe accounted for 52% of world wide privatisation revenue while Middle East and Africa encountered for 3%. (Megginson, 2000:16), while telecommunications has the highest revenue of 30%. The privatisation of Japanese Nippon Telegraph and Telephone (NTT) raised almost $80billion for the Japanese government. (Meggison, 2000:15). In Latin America, the success of privatisation has been uneven. While Mexico and Argentina successfully carried out their privatisation programmes, others such as Brazil, Panama and Venezuela were not able to successfully undertake their privatisation programmes.
Although, abuse of power by government officials is by far the most damaging factor affecting privatisation in Nigeria, there are other reasons. There are frequent policy changes which affect the stability and integrity of the privatisation programme. Again, the Nigeria economy is not a productive economy and depends on foreign imports of goods and services. It is a mono-economy and its growth or otherwise depends on the international oil market which the country cannot control both in terms of output and in terms of price. Nigeria, more than 50 years after oil production started in the country lacks the technology to produce crude oil. It is for this reason that the alleged divestment by international oil corporations is causing considerable anxiety in Nigeria. The management of oil industry can still not be left in the hands of Nigerians. (Okere, 2013. 7).

Nigeria lacks the managerial, scientific and technical know how to manage huge infrastructure facilities and strategic industries that will ensure the growth of the economy and the assured development of the Nigerian state. As a result of the dysfunctional nature of the Nigerian federation, it is only the Federal Government that has the economic wherewithal to muster the financial, technical and managerial resources to manage huge industrial infrastructure and other basic utilities upon which the modern economy runs. If at the time of privatisation, it is only the Federal Government that has the necessary resources and competencies in Nigeria, it simply means that the privatised enterprises will be bought by foreign concerns and their local agents in Nigeria. Nigerian economy is an outpost of the economies of the advanced countries and the local representatives are only serving the interest of the multinational corporations. Definitely, the local agents are not serving the interest of the people of Nigeria. The Nigerian economy is not advanced enough to engage in the privatisation

programme which the country is presently operating. It is only the advanced economies that are best suited for privatisation. Even at that, the advanced economies began to nationalize their strategic industries and enterprises at the height of the economic crises that started in 2008. As at date the American Federal Reserve still inject the sum of 85Billion Dollars every month into the U.S economy as stimulus package.

Conclusion and Recommendations

The various levels of governments in Nigeria should invest in human resources training particularly at the legal, managerial, technical and engineering levels. This will ensure that the requisite human resources needed to manage the economy are present. The various levels of government especially the Federal and state governments should fast track the provision of infrastructure necessary for industrial development in the country.

The Federal and state governments should increase public sector funding inorder to creat employment, ensure accelerated development of the industrial and service sectors of the economy.

The Federal Government of Nigeria may subject the issue of privatisation and other related economic issues to referendum to determine the wishes of Nigerians on the matters.

If and when privatisation becomes inevitable, the governments should ensure that the interest of the country is protected. This can be done by insisting that a foreign company buying an asset in Nigeria must do so in collaboration with local companies. This will ensure the transfer of technical knowhow to Nigerians.

Again, if privatisation has become a *fait accompli* the government should ensure that constitutional safeguards and democratic norms of transparence, accountability, fairness, equality and rationality are secured.

It is clear that privatisation in Nigeria is, in the main, induced from outside the country. This is inevitable because of the inexorable link between the Nigerian economy and the economies of the developed countries of America and Europe. This has become acute as a result of the influence which the Washington Consensus Institutions have over international economic order and the rise of conservative governments in the Western World. The massive transfer of state assets to private actors, which is what privatisation represents, is only part and parcel of the conservative agenda. The reasons for privatisation can be achieved by other means, for example, by strengthening the institutions of the state to achieve efficiency. The disadvantages of privatisation far outweighs whatever advantages attributed to it. Even when privatising, the government has an onerous task of securing the interests of the people of Nigeria.

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