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THE LAW, PRIVATIZATION AND ECONOMIC DEVELOPMENT

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Privatization is a carefully planned and systematically implemented programme of government withdrawal from the control of business enterprises which can be more effectively run by private sectors. It is in fact an aspect of structural adjustment, and it involves a deep and irrevocable commitment of the State in repositioning its role from active participant in the individual social distribution of products infrastructure facilities to mere regulations of same.

Privatization of public enterprises has been a very important issue all over the world since the 1980s, and the success recorded by the advanced countries especially United Kingdom in privatizing some government owned public enterprises and the resultant benefits reaped by the country encouraged the developing countries to try the privatization option. Also in crease in globalization, international Trade and inter-relationship of industrial activities worldwide and inability of governments to properly participate in the "marketplace" of the international trade also makes privatization inevitable viable option.

In Nigeria, (like other African countries) the problems facing public owned enterprises is *much* and the inability of the government to effectually manage the enterprises, which in invariably led to serious mismanagement of the country's resources, lack of co-ordination in the various sub-sectors of the economy *Bankruptcy* and Corrupt practices, which has contributed to serious hindrance to Nigeria economic, social and infrastructural development.

This paper we shall examine the law on privatization of state owned enterprises as an instrument for economic development.

HISTORICAL ANTECEDENTS FOR GOVERNMENT PARTICIPATION IN BUSINESS

Prior to independence in most African Nations, Colonial masters established some key enterprises or corporations which are vital to the proper governance of a country, for example in areas like provision of pipe borne water, electricity and power generation and exploitation of material resources like coal, Bauxite, etc which are capital intensive, and at that time seen as sole preserve of

government. The economy was largely agrarian, and the level of education still remain low, with resultant effect that the government have no option than to establish these corporations.

However, after independence the new governments simply stepped into the 'shoes' of the colonial masters and continue where they stopped. In Nigeria the government not only established government corporations but also went further to invest in many enterprises which were not strictly related to the good governance philosophy as such, but actually went ahead to engage in business per se, by investing in arrears like Banking, Breweries, sugar, Hotels, Cement etc.

The avowed reason for government participation in business was to create employment opportunities and encourage political and social development. This shifted the government from its normal role in the development of natural resources to active participant in the market. Though these government parastatals are supposed to be trading concerns, and many are either set-up by statute or incorporated under the companies Act, and so are expected to be self sustaining and self-sufficient and are expected to contribute to the development of the economy without further government input. However, this ideal was not realized and the government was saddled with the burden of continuous yearly budgeting allocations to those companies/parastatals.

Another important reason for the large number of government owned companies and large government interest in some companies stems from the in surge of oil wealth and the desire of government to accelerate economic development by playing a strategic catalytic role in the economy and industrial development, and also the inability of the private sector to take part or invest in areas that seems to require quite large amount of capital outlay, and massive infrastructural input and foreign participation, the absence, of the required technical know how in the country, and doubtless inherent fear of any foreign investor to invest in any area of the economy without governmental guarantees and legally backed assurance of safety of investments and ease of repatriation of profit. The government justified its efforts in investing in areas like iron and steel development, petroleum refineries petrochemical, aluminum smelting etc. there is another important reason for governmental participation in business, this emanated from the wrong perspectives taken by certain public officers, that government should also invest in any area that seems to generate money and thus directly compete with private entrepreneurs; and if the private entrepreneurs could be making huge profits and declaring large dividends then there is nothing wrong in the government sharing from the market. However, this resulted in the government investing in areas such as Cement, Breweries, Hotel, Textiles, Fishing, News, papers etc. Unfortunately, the government discovered that their

own companies were not making as much returns as the more efficiently run and accountable privately owned companies. Instead of making profits, the companies only became sink holes for depleting public funds and avenues for enriching public officers pockets.

RATIONALE FOR PRIVATIZATION

In view of the above, the road is set for privatization, but we still have to discover why the government has failed woefully in business.

- (1) **PROBLEM OF CONTROL AND MANAGEMENT:-** The basic problem many of the government owned corporations face is the dichotomy between management and control of these corporations. The supervising ministries are responsible for overall control of these corporations, while the management are mainly in the hands of civil servants and favoured individuals irrespective of competence or know how. Decisions are difficult to make and has to be approved by the respective ministries, which in itself must go through every available bureaucratic road and survive various formidable civil service road blocks and obstacles. The effect is that good decisions are often not easy to come by, and when made at all, are too late to make any serious difference.
- (2) **EXTRANEOUS CONSIDERATION:-** Decisions are not always reached for the benefit of the corporations. But must be weighted on the balance of ethnicity, and political parameters. In effect, efficient and qualified personnel are never appointed to manage the corporations, tribal sentiments supercede qualification and experience, and so the issue of accountability was relegated to the background. Appointments to many parastatals therefore was largely based on political compensations, favour and expectation of financial returns to the person making the appointment and the interest of the corporation itself was relegated to the background.
- (3) **LACK OF CONTINUITY:-** Due to the appendage nature of these corporations, every new government change the Board of the corporations as often as possible and so these companies loose the value of continuity and loyalty. Long term decisions are jeopardized and each new Board tries its own methods and ideas, and likewise the Boards must also; reflect the policies of the government that appoints it, and all those may have nothing to do with the corporations standing as a commercial venture.

In the words of C. O. Ibie a former Federal Permanent Secretary "we now know from recent experience that government participation in business provides a

fertile ground for political mediocrity and wholesome corruption in management decisions, recruitment, promotion, retention of redundant staff, prostitution of disciplinary procedures by ethnocentric considerations, award and inflation of frivolous contracts, appointment of board members and employees lacking in relevant knowledge and experience. These are all factors which evade the efficiency, effectiveness and productivity of public business enterprises. Appointment to Boards are made to repay political debts, to provide sanctuaries for defeated politicians and disgruntled colleagues, take care of old cronies, build up intra-political support or achieve a host of non-business objectives all of which place severe strains on national budgets"³. No country could obviously continue this way without eventual collapse. The seemingly inexhaustible source of financing these waste-oil revenue, seems to have failed, the reality is obvious. The government, could have called itself to order earlier, but rather played into further problems by taking the loan option to finance the colossal wasteful expenditures and so entered into debt circle that has resulted into debt servicing and rescheduling of debts, debt Swapping etc.

In the words of the Vice President of Nigeria Atiku Abubakar ³, "... it is pertinent to point out that privatization is inheritable. It is clear that most of our state-run enterprises especially the utilities have become inefficient monopolies".

Equally important is the global trend to privatization. Virtually all countries of the world are privatizing or has privatized all their government owned parastatals and companies. In Britain, the government divested itself of its interests in companies like British Petroleum and British steel. Privatization is the main issue in Europe in countries like France, Germany, Spain, while Japanese government has virtually divested itself of holdings in all utilities like telephone, Airlines etc; countries in Africa are not left behind, in South Africa Morocco, Zambia, Ghana, Egypt, Gambia and Tunisia, all have evolved their privatization process, which in some countries like Zambia and Ghana is almost completed, Nigeria therefore cannot be an exception to the global economic trend that recognizes the best frame work for an effective and optimal performance of an economy is one that counts the involvement of the state".⁵

The debt burden also encouraged the government to embark on belt tightening

³ See generally, Dr. Bernard B.A. Verr, "Issues in Privatization of Public Enterprises" Bullion, Vol. 23 No 3, Page 18, B.S. Adebunsi, "Restructuring Economies Using privatization; A comparative Analysis" Bullion, Vol 23 No 3 page 22

⁴ Mr C.O. Ibie, "Restructuring the Nigerian Economy; the place of privatization" Bullion April/June 1986 Vol 10, No 2 page 5 out pages 7.

⁵ Chairman of the National Law Col on Privatization

⁶ Special Remarks of the Vice president of the Federal Republic of Nigeria Atiku Abubakar at the First Pan-African Privatization and Investment Summit in Nigeria 1922 November 2000
Vice President Atiku Abubakar O.P. Cit

measures and structural adjustment programmes mainly dictated by the creditor financial institutions e.g World Bank, I.M.F. etc. This also resulted in reducing government expenditures on the corporations and block all drain pipes in the public sector which the publicly owned corporations has metamorphosed into the way out is clear, either the government divest totally of all its interest in these corporations, or force them to become commercially viable.

The government of Babangida in 1987 commenced the privatization of Publicly Owned Companies (POE) and was given a legal backing by the government of General Abdusalami Abubakar when it promulgated Decree 25 of 1998 and later repealed and replaced by Decree No, 28 of 1999 known as Public Enterprises Privatization and Commercialization Decree No 28 of 1999, with commencement date from the 31st December, 1998. The Civilian government of President Olusegun Obasanjo has not deviated neither did it repeal provisions of Decree No. 28

The first phase of the administrations privatization programme was the sale of all shares listed on the Lagos Stock Exchange and owned by the Federal Government and its agencies in

- (1) Commercial and Merchant Banks
- (2) Cement Plants
- (3) Petroleum Marketing Companies

The first phase was completed in December 1999 and investors were encouraged to invest in any of the privatized enterprises at the end of which the country realized about N25 Billion and creating more than 800,000 shareholders. The second phase took off under the Public Enterprises/Privatization and commercialization Act 1999. The second phase includes privatized of Hotels, Motor and Vehicle Assembly plants, amongst others the third phase will involve work on the companies currently being prepared for privatization NEPA, NITEL, NAFCON, Nigeria Airways Refineries etc. The government stated objective and ultimate goal is to make the private sector the leading engine of growth of the Nigerian economy. The avowed intention of government is to use the privatization programme to regenerate Nigeria back into the global economy, as a platform to attract foreign direct investment in an open, fair, and transparent manner.

OBJECTIVES OF THE PRIVATIZATION PROGRAMME

The objectives of the privatization and commercialization programmes are:-

1. To send a clear message to the local and international community that a new transparent Nigeria is now open for business.

2. To restructure and rationalize the public sector in order to substantially reduce the dominance of unproductive government investment in the sector.
3. To change the orientation of all public enterprises engaged in economic activities towards a new horizon of performance improvement, viability and overall efficiency.
4. To raise funds for financing socially oriented programmes such areas as poverty eradication, health, education and infrastructure.
5. To ensure positive returns on public sector investments in commercialized enterprises, through more efficient private sector oriented management.
6. To check the present absolute dependence on the Treasury for funding by otherwise commercially oriented parastatals and so, encourage their approach to the Nigerian and International Capital Markets to meet their financial needs.
7. To initiate the process of gradual cession to the private sector of public enterprises which are better operated by the private sector.
8. To create jobs, acquire new knowledge, skills and technology, and expose Nigeria to international competitions.⁶

CONSTITUTIONAL FOUNDATION

The Public Enterprises (Privatization and Commercialization) Act 1999 was promulgated earlier as Decree No. 28 by the Military Administration of General Abubakar Abdulsalami before the promulgation of the 1999 Constitution for the Federal Republic of Nigeria, 1999, and precedes the Constitution. The provisions of the constitution is Supreme and any law inconsistent therewith is void to the extent of its inconsistency. S16 of the 1999 constitution made provisions concerning the economic objectives of the Nigerian State. S16 (1) (a) States:

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, dynamic and self-relevant economy.
- (b)
- (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

⁶ See the Privatisation Hand book (2001) 3rd Edition P.5

⁷ — S1 constitution of the Federal Republic of Nigeria 1999

operate the major sectors of the economy.

S16 (4)⁸ 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 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 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 a major sector of the economy. †

From the above, only the Federal Government of Nigeria has the right to operate or participate in the operation of major sectors of the economy, and this includes its management. The constitution has also defined the major sector of the economy as those areas of the economy 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 contrary resolution is passed then all economic activities being operated exclusively by the federal government before coming into force of the constitution. In effect, without a constitutional amendment of S16, or an enabling resolution of the National Assembly is passed, large part of the Public Enterprises (Privatization and Commercialization) Act 1999, and the privatization process itself is unconstitutional; at least, the proposed sale of Federal Government interest in NEPA, NITEL, Refineries, Fertilizer Companies, Steel and Aluminum Mining and Solid Minerals, Transport and Aviation. (This does not affect companies where the Federal Government does not have exclusive ownership.) There is therefore a need for constitutional amendment or a resolution of the National Assembly re-designating the major sectors of the economy.

FRAMEWORK FOR PRIVATIZATION

The public Enterprises (Privatization and Commercialization's) Act 1999 repeals its predecessor⁹ The 1999 Act creates two main organs for privatization and commercialization of public enterprises, these are the National Council on privatization¹⁰ (hereafter called the council) and the Bureau of Public Enterprises¹¹ (hereinafter called the Bureau).

⁸ — 1999 Constitution

⁹ S33 of the Public enterprises (Privatization and Commercialization Act 1999 repealed the Bureau of public enterprises Decree of 1993

¹⁰ - S9(1) of public enterprises (Privatization and commercialization) Act 1999 hereinafter called the Act'

¹¹ - S 12 (1) of the Act

The council is the highest authority on privatization in Nigeria and its chairman is the vice President of Nigeria while the vice chairman is the minister of Finance, other members include the Attorney – General of the Federation, Minister of Industries and other nine members mainly from the Federal Executive Council and includes the Director-General of the Bureau ¹² the major functions of the council includes approval of policies on privatization and commercialization, approve the list of enterprises to be privatized, the Legal and regulatory framework for public enterprise to be privatized, determine the time and when a public enterprise is to be privatized, approve the prices for shares or assets of the public enterprise to be offered for sale, etc. the main and most important function is to determine the political, economic and social objectives of privatization and commercialization of public enterprises¹³ and it will seem that the decision of the council shall be binding on the bureau and other operatives the members are to hold office for a term of four years and may be re-appointed for another term of four years and no more ¹⁴.

The Bureau is the 'engine room' of privatization in Nigeria it is a body corporate and is headed by a Director General who shall be appointed by the president of the Federation ¹⁵ and the Director General of the Bureau acts as the secretary to the Council the main functions of the bureau are the implementation of the councils policy on privatization, advise the council on all major issues relating to privatization and also carry out all activities required for the successful issues of shares and sale of shares and sale of assets of public enterprises to be privatized. ¹⁶

The mode of privatization is also specified in the Act, Sale of shares in the public enterprise may be by offer for sale of shares by public issue to Nigerians at the capital market or by private placement or by other means, ¹⁷ this other means is not specified, and is so ambiguous as to permit of any interpretation. In practice, the offer had been either through public offer through the Nigerian Stock Exchange or to core investor offering the most attractive offer and fulfilling all the pre-requisite conditions set by the Bureau. The Act also established an account in the Central Bank of Nigeria known as the Privatization Proceeds Account into which all the proceeds received from the privatization of Public Enterprises are paid ¹⁸. The constitutionality of this provision is doubtful.

¹² – S 9(2) of the Act

¹³ – S11

¹⁴ – S10 of the Act, note that the term here does not affect the tenure of ex-official member

¹⁵ – S17

¹⁶ – S13 and §14

¹⁷ – S 2(2) (3)

¹⁸ – S 19

The Act also established the public enterprises Arbitration panel, which is an ad-hoc panel consisting of 5 members who shall be persons of proven integrity one of whom shall be chairman. The members are appointed by the council and their main function is to effect prompt settlement of any dispute arising between an enterprise and the council or Bureau.¹⁹

The Act itself only established major frame work for regulating the privatization and commercialization of public enterprises, while the guidelines, rules, regulations and major strategy and important decisions are left manly to the Bureau.

ROLE OF THE LEGISLATURE IN PRIVATIZATION

The Constitutional duty of the National Assembly is the legislative powers to make laws for the peace, order and good government of the Federation of Nigeria. The National Assembly have the powers to make laws in respect of any matter within the Exclusive and Concurrent legislative lists. It should be noted that virtually all the areas that could be designated as major sector of the economy "are within the exclusive legislative lists e.g. Posts, Telegraphs and Telephone, Mines and Minerals, Currency, Coinage and Legal Tender etc.

The National Assembly is duty bound to look into the Privatization Act, repeal or amend the law to correct many deficiencies and inadequacies and bring it in line with the existing laws and the constitution. Highlighting the role of the legislature in the Privatization process, Nze Chidi Duru, the Chairman, House Committee on Privatization and Commercialization listed the following" roles of the National Assembly:

1. to review of existing body of legislation
2. the making of new ones where necessary
3. taking of active part in the fashioning of the regulations for the sectors and for the entire system.
4. discharging of its oversight functions with regard to the implementation and regulatory agencies.
5. helping to create the conducive, enabling environment for peace and the rule of law,
6. ensuring the proper management of the privatization proceeds through budget process,
7. helping to relate to Nigerians (through the constituencies) for effective

¹⁹ - S 27 (1)

participation in the privatization process, and

8. helping to enlist the support of interest groups like labour.²⁰

The National Assembly must not accept to be sidelined by the Executive in the privatization process, and should live up to its constitutional duty to make laws for the good governance of the country, and to monitor the activities of the executive and its agencies with a bid to check its excesses and discourage waste, and protect the interest of the people and resources of the country. The National Assembly pursuant to S 62(1) of the 1999 Constitution may constitute committees for special or general purposes, and this include investigation of any person or government parastatals. S88(1) further confers power on the National Assembly to "direct or cause to be directed an investigation into the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged with the duty of or responsibility for:-

- i executing or administering laws enacted by National Assembly and
- ii disbursing or administering moneys appropriated or to be appropriated by the National Assembly. This power is exercisable, only for the purpose of enabling the national Assembly to (1) make laws with respect to any matter within its legislative competence and correct defects in existing laws and (2) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.²¹ Regarding this role, the House Committee on Privatization and Commercialization has been, though initially dormant, quite active in its investigation and monitoring role, and has invited for questioning the Director-General of Bureau of Public Enterprises (BPE) on the privatization process

PRIVATIZATION PROCEEDS ACCOUNT.

The legislature is also saddled with the responsibility of protecting the funds accruable from the privatization exercise, as huge amount of money is expected to be generated thereby. The Constitution clearly stipulated that all monies due to the Federal Government must be deposited in the Consolidated Revenue Fund of the Federation.²¹ and no money can be withdrawn from the Fund except pursuant to an Act to meet expenditure authorized by an appropriation Act, or Supplementary Appropriation Act. It is therefore unconstitutional to apply any part or whole of the proceeds of the privatization for any purpose

²⁰ Nze Chidi Duru' the paper delivery in "The privatization Process" in the 4th pan African Privatization summit held on 19 – 22 November 2000 at abuja. P.85 at 90

²¹ see also S89 of the Nigerian Constitution, 1999, which enables the National Assembly to summon and even compel the attendance of any person to give evidence before the National Assembly.

without the authority of the National Assembly. "This is a veritable tool in the exercise of its constitutional oversight function" It is also clear therefore that the privatization proceeds Account is unconstitutional.

ROLE OF THE JUDICIARY

The Judicial powers of the Federation is vested in the courts, and extends to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and preceding relating thereto, for the determination of question as to the legal rights and obligations of that persons²³ The Constitutional role of the Judiciary is mainly the interpretation of law and dispensation of justice and ensuring fair play. The role of the Judiciary cannot be over emphasized in the privatization programme.

S12(1) of the Privatization Act established the Bureau of Public Enterprises (BPE) and by virtue of subsection 2 thereof the BPE is a corporate body and having a perpetual succession, and can sue and be sued in its corporate name. In effect any aggrieved person may sue the BPE and enforce his right in a court of law in Nigeria. S36 of the 1999 Constitution also guarantees a fair hearing by a court, within a reasonable time, in the determination of the legal right and obligations including any question or determination by or against any government or authority. Access to the court on any issue whatever, is a foundation upon which rule of law vests, and this foundation cannot be shaken. The investing public should not allow the attitude of the executives of the BPE to deter them from access to courts; the privatization Act itself though very skeletal and in many places ambiguous, and have placed much powers in the hands of the implementers of the programme, the courts must not allow their role as the arbiter in this democracy to be marginalized. They must be alive to their responsibilities S27(1) of the Privatization Act established the Public Enterprises Arbitration Panel responsible for the settlement of any dispute arising between an enterprise and the council or the Bureau. The Panel has the power to arbitrate in disputes arising from provisions of performance or non performance by any enterprise of its undertaking under a performance agreement. One may note, that this provision only relate to commercialized enterprises and not to privatized enterprises. The Act further provides that the decision of the Panel shall not be subject to appeal in any court of law or tribunal. The ouster clause obviously is unconstitutional and void, and this provision should be amended immediately.

S27(4) stipulates that the Council shall appoint the members of the Panel, and on such terms and conditions of may deem fit. The federal Government shall also be responsible for the payment of remuneration and allowances. This

²³ S80 and S 162 of 1999 Constitution

²⁴ S60

provision is tantamount to a man adjudicating his own cause. As disputes in commercialization programme could only be between the enterprises and the BPE or Council. Where the Council appoints its own delegates to sit on arbitration panel and remunerations are paid to such members by the Federal Government. The fear of bias in favour of the council or BPE cannot be ruled out. The Arbitration Panel ought to have been formed pursuant to the respective performance agreements executed between the enterprise and the council.

Only the judiciary can give credibility to the whole programme and ensure fairness and justice in the implementation of the Privation programme.

ECONOMIC DEVELOPMENT AND PRIVATIZATION

The most important reason for privatization of public enterprises is to stimulate economic development and growth of the economy. We shall therefore examine the impact of privatization on economic development in this chapter.

(1) PUBLIC AWARENESS

Privatisation is an intensely political activity with profound socioeconomic and political consequences. It is transfer from public ownership to private ownership. It involves divestment by the state of its interests in public enterprises and the transfer of such interest to private ownership.

The place of publicity therefore cannot be over emphasized. The people, who are the real owners of these enterprises must be carried along, they must be enlightened, educated and informed, not only on the intention of the Government but also why the government is taking such a decision to sell off what belongs to all to very few people. The people should be fully informed of the benefits not only to the government but also to the country, and because it involves an irreversible cause of action, how the people themselves can benefit.

Some state governments in the North of Nigeria set aside certain amount of money to purchase shares in privatized companies for the low income earners in the state, but what of the ordinary people on the street or in remote villages who may be interested in buying into the privatized companies but could not afford to do so? S.5(2) enjoins the BPE to sell the shares in privatized companies on the basis of equality of states of the Federation and of the residents of the Federal Capital Territory, Abuja; This provision will be unattainable unless all the states of the Federation and Local Government are properly educated on the value of the purchases, so that the generality of the people could participate in the programme.

In view of the low per capital income of Africans generally and Nigerians in particular it is obvious that transfer of ownership from the state to the private sector will only achieve a transfer to very few selected private people and foreigners. Many have argued that most African countries privatization programme will only result in transferring the ownership of public owned enterprises to foreigners. This could be prevented with serious enlightenment campaigns.

LABOUR

Labour amongst other social issues have further heightened concerns about transfer of ownership. It is a known fact that public owned enterprises employ staff surplus to optimum efficiency. Employment of Federal Government staff has never been on qualification of the staff per se, but on political balancing and favouritism. The result is over staffing and the business therefore, to become really productive and reduce wastage must trim down on staff numbers; and block all drains of payment of salary to redundant staff. Another point, is that the new owners will certainly wish to bring in their own experts and team, especially companies taken over by core investors or multinationals. Many of them will certainly retrench staff, close down many branches or departments not producing, change machineries to more modern ones which may in most cases require less number of staff. Many of the labour force in the country will be retrenched in the next few years. Though the government wish that the companies retain their old staff but unless this wish is backed up by requisite legislation the result on the economy may be devastating. The unemployment rate may reach on unmanageable level and this will lead to serious social and political consequences. In many African countries that are now privatizing e.g. Ghana Zambia, Zimbabwe, Cote d' Ivore, Kenya, the governments have been slow to gauge the magnitude of the problem and to search for imaginative solutions for financing contingent employee liabilities and to put in place safety net arrangements. As a result, such liabilities have continued to accrue and aggravate the problem and more people have been forced to fend for themselves on the street or revert to subsistence farming, though the Nigerian Government is currently pursuing a poverty alleviation programme, which we believe is yet unfocused, the programme is yet to make any tangible arrangement for all the people who may loose their job as a result of the privatization programme. The economy will further deteriorate and the poverty level will rise if urgent steps are not taken to plan for the impact of privatization on labour.

Another point is that, virtually, all the hitherto social services offered free of charge or at very cheap subsidized rates by government must now attract high economic rates, and so the common man will be further strangled and pushed further towards penury, and the effect on their children, and the aged is better imagined. The government must immediately put in place some

cushioning plan, and alternative arrangements must be put in place to alleviate the problems on both the labour and the economy.

INCREASED INFLOW OF FOREIGN CAPITAL AND TECHNOLOGY

S4 of the Privatization act allows strategic/core investors to invest in some enterprises and to manage them, from the Nigerian experience so far, virtually all the strategic/core investors are foreigners. The shares are paid for in foreign currency and mainly deposited off shore. The BPE appointed professionals to investigate these foreign strategic investors to ascertain their financial technical and managerial capability, before their choice. This will increase the inflow of foreign investment and participation in the economy. Nigeria has recorded Billions of Dollars from the sales of public enterprises and such funds are available for developmental purposes.

However, negotiations with strategic/core investors must agree on the following area:-

- (a) The price to be paid for the equity to be acquired.
- (b) The terms of payment
- (c) The role of the strategic/core investor in the future management of the public enterprise being privatized.
- (d) The level of participation by Nigerian Managers and technology transfer
- (e) The future development of the public enterprise as perceived by the strategic/core investor.
- (f) The funding arrangements for rehabilitation expansion or diversification of the enterprise after privatization
- (g) Staff welfare retraining and development

FOREIGN PARTICIPATION

The inflow of foreign investment and technology will naturally lead to foreign participation in the economy of the Country. This may be a welcome development as it will stimulate growth and development in the economy, expose the economy to improved technology and progress. New and improved products and services obtainable anywhere in the world will be made available locally. The attendant private sector development and improvement will impact favourably on the economy as well. However, laws on repatriation of profits and dividends must be relaxed and generally encourage foreign participation in the economy. Our immigration law must also be relaxed, and expatriate quota and working permits must also be easily available.

GOVERNMENT INVESTMENT IN INFRASTRUCTURES LEADING TO OVERALL DEVELOPMENT

With the government burden reduced allocation of funds to public enterprises, the government now has more available resources to divert into its primary concern, that is provision of infrastructural facilities like roads, security etc. the proceeds of the privatized enterprises must also be utilized for developmental purposes, and it has been suggested! That all the projects embarked upon with the funds realized from privatization must be marked "from privatization fund". The government must not see the funds as free money to be shared amongst the officials and embezzled. They should realize that the government cannot recover these enterprises again.

Where the funds are properly utilized the result on the economy will be a giant step towards becoming industrialized and developed country. It will spark up development in all areas of the economy from child development to education, and natural resources development.

EXPANSION OF THE CAPITAL MARKET

The only transparent and credible manner of investment is through the capital market. This has been the trend all over the world. The Investment and Securities Act 1999, prohibits the issue, transfer, offer for subscription or sale of securities to the public without the prior approval of the commission. This will include registration of the issue with the commission, disclosure of all material facts about the securities on offer to the public. The listing requirement of the Stock Exchange (Abuja or Lagos) must be met. All the professionals involved must be registered with the commission.

The use of the Capital Market in the privatization programme will help to further give the programme credibility and will show that the government intends to be transparent. This will encourage the populace and all enquiries could be handled officially and through a better-organized channel, it will also encourage the foreign participation in the programme as an added advantage. After privatization, the shareholders are free to scrutinize the activities of the Board, and keep the management on its toes. The privatized companies may also have access to the capital market for additional funds for further expansion and developmental needs. It also, provides a better validation of the assets of the enterprises, the value of the shares are not over estimated or undervalued and makes for easy disposal of shares by shareholders post-privatization. The capital market in most African countries that privatized have been enlarged seriously. In Nigeria after the first phase of the privatization programme, the privatized companies registered a market capitalization of N93.9 billion 39% of total equity market capitalization many of the privatized companies are back after the initial public

offering for subsequent issues, and has further enhanced the market in terms of capitalization of outstanding shares and liquidity.

The impact of privatization on the capital market and indirectly on the economy has been tremendous, both nationally and internationally; it has thereby repositioned the economy for improved efficiency and enhanced growth.

STREAMLINING GOVERNMENT ROLE

Privatization of public owned companies will generally help to streamline the role of the government. The government will now be devoted to the duty of providing infrastructures and security. The private sector is better recognized for efficiency and profit oriented policy unlike the government that specialize in wastage of resources and inefficient application of secure funds. The resources of the country will be better harnessed, and channeled for development of the economy and emancipation of its people, waste will be seriously discouraged if not eliminated entirely. Political favoritism and nepotism will be reduced in government establishments to its barest minimum, whole fraud and corruption will be eliminated.

CONCLUSION

From the study, we can conclude that privatization is a potent instrument for economic development. The government however, must ensure transparency and fraud/corruption free handover, proper laws on foreign investment and repatriation of funds and dividends must be promulgated, while the resultant side effect of unemployment, poverty and political problems as a fall out of the privation programme must be effectively looked into. The legislature must not rest on its oars as the constitutional police of the programme.