



Handbook of **Administrative Reform** **Theory and Practice** in Nigeria

Edited by
Chika Njideka Oguonu and Okey Marcellus Ikeahyibe

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- Chika Njideka Oguonu
- Okey Marcellus Ikeanyibe

A Publication of the
Department of Public Administration and Local Government,
University of Nigeria Nsukka

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Thanks

C.N. Oguonu & M.O.Ikeanyibe

Editors

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Cover design: Parakletos Creatives, Enugu

ISBN: 978 978 956 793 5

Published in Nigeria by

PARAKLETOS IMMUNNIS DRIVE

3 Otuson Crescent, Independence Layout

Enugu, Nigeria

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Preface and Acknowledgements

The desire to write this book came from the deep concern to find out why frequent reforms witnessed in Nigeria in various fields of human endeavor had limited results. Politically, the country had moved from a federation of three regions in 1954 through various political and constitutional restructuring exercises in the colonial era, 1963/64, 1967, 1976, 1991 and 1996. This is aside many other constitutional reforms that did not particularly affect the structure of the federation. Yet the demand for restructuring the country politically and constitutionally is gaining support daily from various groups and individuals. Indeed, some would even suggest a return to the first republic arrangement of regionalism. Economically, reforms have moved from the mixed economy model with dominant public sector stressed by the nationalization and indigenization policies of the 1970s, through the Structural Adjustment Programmes of the 1980s, to neoliberal policies of the late 1990s and continuing in the new millennium. In this respect also, fiscal reforms have also moved from a dominant federating unit model of the 1960s to a centralized federal government model where every federating unit looks up to federal allocation to do the most basic duties of governance.

These elaborate political and economic reforms have had enormous impact on the country's public administration system. But there have equally been successive administrative reforms geared towards institutionalizing a world class public service in the country. Right from the colonial times, well-articulated administrative reform programmes have been designed to build an effective and efficient

public service. The reforms have been varied in scope – some addressing specific aspects of the public service like the civil service, police, university system, public enterprises and so on, and others covering the entire public service. Between 1999 and 2014 alone, a total of 48 separately initiated reform efforts were directed to various platforms of the federal service alone. These include: changing the structure of government reforms (Privatization, commercialization, deregulation et cetera), Integrated Payroll and Personnel Information System reforms, Pensions, Public procurement, Anti-Corruption, Transparency and Accountability, Tenure-ship policy for directors, biotechnology at various levels and so on.

The reality is that most of these reforms have not delivered the goods to the Nigerian citizens as most of the contributions in this collection reveal. The question is then what is the theory driving our reforms? Why would those who initiated a reform shy away from its implementation? On the other hand, are we actually adopting the right approach to reforms? Why is it that most Nigerians for instance would want Nigeria return to the regional basis of federation? Why was it that the public service reform initiated by the Babangida administration in 1988 was suspended by the Abacha government in 1997 and why are there such other reversals? Why was the tenure-ship policy for the directorate rank introduced by the administration of Goodluck Jonathan reversed by the present Buhari government? What interests really motivate our policy makers and reform initiators? Or is it a weakness of the brain or poor articulation of what would have been more effective in cases where reforms are reversed

within a short period of time? These are some of the questions that various contributors have tried to address in this book.

The book *Handbook of Administrative Reform Theory and Practice* is written as a general reading material for anybody interested in the past, present and future of the Nigerian government and its administration. It is a must-read for all social scientists especially those interested in understanding the international trends that drive our governmental policies and the local and national dispositions of leaders to genuinely adopt and own policies they imitate. The book is also very important for our policy makers who need to take stock of some more important issues of our administrative environment that require reform more than the usual emphasis on structure and processes with little attention to individuals and their way of life.

The authors are grateful to God for His enablement. We thank all the contributors for making this book possible even when hope for its materialization had almost extinguished. We appreciate the members of our families for their usual sacrifice of time, love and resources usually demanded by an engaging project like this.

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Chapter 13

Privatization of the National Electric Power Authority (NEPA) and the Reform of the Electricity Sector in Nigeria

Duruji, Moses Metumara and Okachikwu Dibia

Abstract

The idea to restructure the Nigerian economy, arising from the fall in crude oil prices, started in the early 1980s when the Shehu Shagari-led federal government introduced Austerity measures. However the introduction of SAP by Ibrahim Babangida administration was accompanied with conditionalities by the World Bank to bail the country out of the financial crises and privatization was a key component of the economic liberalization. So, from one government to the other the issue remained unresolved until General Babangida's administration promulgated the Technical Committee on Privatization and Commercialization (TCPC) in 1988 that actually brought the matter to the front burner. Ten years later, the government of General Abdusalami Abubakar promulgated the Public Enterprises (Privatization and Commercialization) Decree of 1999 which listed NEPA now changed to PHCN for privatization. The privatization of PHCN was consummated on 1st November, 2013 when President Goodluck Jonathan handed over the subsidiary companies that made up PHCN to the new core investors. The paper

examines the effects of this privatization of NEPA. It employed the theory of Liberalism to in the analysis and argued that the government carried out the process honestly, even though there were few instances where some principles of Liberalism were flouted. Based on this, the paper made some recommendations.

Key words: Privatization, Reform, NEPA/PHCN and Liberalism

Introduction

Before the privatization of public enterprises in Nigeria, the National Electric Power Authority (NEPA) was the monopoly utility company responsible for generating, transmitting and distributing electric power in the country. NEPA was not able to satisfy or meet the power needs of Nigerians and this led to constant darkness at homes and the prohibitive electric power cost of doing business in the country. Yet the utility continued to malfunction and incur huge debts at the expense of the government, exacerbating the situation of dwindling revenue occasioned by fall in crude oil sales in the early 1980s.

There was also the need to liberalize the electricity sector so that private investors could invest its expertise and capital for the growth of the sector and on the long run provide affordable steady supply of electricity to Nigerians. Consequently, the “government was encouraged to institute studies and investigations to review public sector activities. One of the key recommendations was that government has no business in ...business” (Chigbue, 2007).

These informed government's resolution to privatize non-performing public enterprises including NEPA. Thus NEPA was listed for privatization in the Public Enterprises (Privatization and Commercialization) Act, 1999, the enabling law for the implementation of the privatization policy of the FGN.

This investigation will present the theory of privatization, its arguments and practices. It will in particular investigate the case of the privatization of NEPA and the reform of the electricity sector using the Liberalization theory. Thereafter some critical analyses would be made to test the theoretical compliance of the privatization exercise.

Explanation of Relevant Concepts

The applicable concepts to be explained are Privatization, PHCN, Electric Power Sector Reform and Liberalization

Privatization

According to the BPE (in a Briefing Memo to the Hon. Minister of Power, February 2009), privatization means "the transfer of both ownership and management of public enterprises to private hands". In Nigeria, the privatization policy of the FGN was managed by the NCP and the BPE as enabled by the Public Enterprises (Privatization and Commercialization) Act, 1999.

NEPA/PHCN

PHCN is the acronym for the Power Holding Company of Nigeria. It was the successor company for the former National Electric Power Authority of Nigeria (NEPA). To facilitate the privatization of the

utility, NEPA was unbundled into eighteen (18) successor companies in 2004. In 2005, both the companies and PHCN were incorporated into separate companies and a holding company respectively (BPE, 2009).

Electric Power Sector Reform

The Electric Power Sector Reform Act was passed into law in March 2005. The Act included the mandate on the NCP and BPE to not only privatize the PHCN, but also reform the electricity sector in Nigeria. The electricity sector reform desires to liberalize the sector by removing the PHCN monopoly and attract private capital and expertise in the generation and distribution of electricity service across the country (BPE, 2009).

Liberalization

This refers to the political ideology that sees individual freedom and equality as the basis for organising society. In the economic parlance, it refers to the freeing up of the economy such that the private sector drives the economy and government operates minimally (Baradat, 2012)

Philosophical Foundation of Privatization

Liberalism

Liberalisation which is the philosophy that underpins the privatisation exercise in Nigeria is associated with liberalism which is a political ideology is difficult to define. But we can describe it based on its tenets, which in turn can assist to arrive at a definition. For a start, liberalism is one of the dominant ideologies in the world.

It was the religious wars of the medieval times that actually gave fillip for its beginning. The feeling to be liberated from certain aspects of the ruling religious practices that characterised this era particularly the role of religion in the state gave impetus to the idea of liberalism(). As at the dawn of the 18th century, it was classified as Political Liberalism; however the Enlightenment Age and the accompanying Industrial Revolution was followed by the argument for free market. This idea which heralded the fall of mercantilist policies in Europe was influenced by the writings of Adam Smith and aptly classified as the age of Economic Liberalism (Heywood, 2007).

Liberalism is the composite of Individualism, Freedom, Reason, Equality, Toleration, Utilitarianism, Consent, Human Rights, Constitutionalism and Contractarianism.

- Individualism: This refers to the sanctity of the individual human being as the most important and dignified entity of existence. According to Heywood (2007), the human individual is of supreme importance, even though he or she has different identities. He contends that individualism proclaims the moral equality of the individual and must be allowed to exercise his or her abilities to “flourish, develop...pursuing the good to the best of his abilities”. Therefore liberals detest any form of government that will restrict the individual from achieving his or her individuality.
- Freedom: Liberals believe that individuals should be allowed to act as he or she pleases or chooses, provided it is within the

law of the society. That way, one man's freedom and actions do not imping on another's freedom and right to actions. In other words, freedom does not really enjoy limitless ambience (Haralambos, Holborn and Heald, 2008)

- Reason: This refers to the human ability to rationalize. This natural ability must be allowed to prevail because it is the main source of positive and sustainable human solutions. This means that solutions from reasoning, debates and arguments are better than solutions from “bloodshed and wars”. It is also reasoning that give rise to better judgement leading to progress in the society (Heywood, 2007).
- Equality: Liberalism strongly believes that all human beings are morally or naturally, legally and opportunistically equal. Moral equality means that at least “individuals were born equal”. Legal equality refers to the fact that before the laws of the society, all person must be treated equally; no one should be given any preferential treatment, after everybody comes to the law with clean hands and the law must treat them as if the law id blind. Opportunity equality says that everyone should be given equal access to succeed in whatever endeavour one is engaged in. Merit should be the distinguishing factor here (Hoffman and Graham, 2006)
- Toleration: This preaches that an individual should be allowed his or her belief even though it differs from another's belief. This way the individual's liberty is guaranteed

(Hoffman and Graham, 2006)

- Pluralism: Resulting from toleration is the fact that it engenders the co-habitation of diverse ideas, cultures, beliefs that enrich the social strata of the society especially for policy making purposes. This ideas led to the allowance of diverse views from critics, civil organisations. The merit of pluralism can be seen in representative democracy and dynamism of change arising from positive thoughts and leading to positive laws (Roskin, Cord, Medeiros and Jones, 2010)
- Consent: This refers to “willing agreement” according to Heywood (2007). When there is consent, it gives rise to legitimacy of authority or contracts (Heywood, 2007)
- Contractarianism: In the relationship between the state and its citizens, liberals believe that there is exchange of responsibilities and rights. While it is the responsibility of the state to guarantee peace and order in society, it is the duty of the citizens to ensure that the state performs these duties which now is the right of the citizens to have; the latter having performed its own duty of giving up its right to protect itself with its resources. Government therefore must ensure that these resources are used for the optimisation of the well-being of society. When the state fails, the citizens have a duty to remove the state (government). This is called the Social Contract Theory, and it gives rise to the Utilitarian and Constitutional beliefs of liberalism (Hoffman and Graham,

2006)

- Utilitarianism: According to Baradat, L. P. (2012), Jeremy Bentham was one of the popular advocates of the principle of utilitarianism. Bentham insists that one sure way of evaluating the conduct of government is to find out whether its conducts lead to the well-being, happiness and pleasure of the society. Thus, “the value or utility of any policy...can be measured by the amount of pleasure or pain it brings to an individual or to society as a whole”. Bentham therefore advocated that the well-being of society would be maximized by any policy that brought the “greatest happiness to the greatest number”. Therefore, at all times “government should take positive steps to maximise the happiness of the society”.
- Constitutionalism: Because reality or human being is not perfect, society must guide against failure that could result from over action or inaction. Hence the need for a documented rules and regulation (the law) for guidance in governmental conducts. Secondly such law will discourage government from trespassing to usurp the space of the individual through tyrannical acts. Therefore liberals recommend limited government that will concentrate on pure social services that may not be attractive to the private business individual (Heywood, 2007).

Thus, the thrust of the liberal argument is that there should be no

inhibition whatsoever on the supremacy of the individual who must be allowed his rights to reasoning and actions provided he acts within the law and is able to maximize his potentialities in solving his problems and accessing the accruable pleasures and happiness. To do this, the state should be an enabler and not an inhibitor of the individual in his march to change and progress.

Liberalism can be classified into classical and modern strands To the classical, government should:

- Not interfere in the life of the individual
- Be “limited, constrained and small”.
- Operate under economic liberalism with faith in free market because the economy works best when left alone by the government (*laissez-faire*)
- Guarantee prosperity
- Uphold individual liberty
- Ensure social justice which entails that the individual should “rise and fall according to merit” (Heywood, 2007; Haralambos et al,2008 and Baradat, 2012)

Whereas the modern liberalism holds the view that government or the state should:

- Intervene in the affairs of the society
- Intervene to minimize the injustices and sufferings generated by capitalism under the free market laws
- Ensure that instead of people been allowed to starve to death under market rules, “ freedom should expand to personal

development and flourishing”

- Ensure that “people will not starve or die in freedom. Hence the idea of social welfare to save the individual from the social evils of “want, ignorance, illness, squalor and disease”
- Ensure that capitalism is managed or regulated, with “key responsibilities placed in government's hands
- Ensure that state intervention must be in favour of the weak and vulnerable and those who cannot help themselves (Heywood, 2007; Haralambos et al, 2008 and Baradat, 2012).

Therefore liberalism can be defined as a political ideology that seeks to organize society from the standpoint of the freedom of the individual and restricted freedom of governance. Hence liberalism appears on the left-hand-side of the ideological spectrum, immediately after radicalism and going towards the right-hand-side.

The Concept of Privatization

In literature, privatization has been variously defined. At the Nigerian Bureau of Public Enterprises (BPE), Nigerian government's privatization implementation agency, it defined privatization as “the transfer of both ownership and management of public enterprises into private hands”(BPE, 2000). This simplistic definition did not indicate who controls the enterprise after privatization. It also did not indicate the objective and conditions for privatization. It is too simplistic to be our working definition.

However, Ramamurti (1999) which sees privatization as “the transfer of ownership and management control of a public enterprise to

private shareholders”, offers us better working parameter. From the definition above, it is imperative to note that in most privatized enterprises, the new investors have control over the ownership and management of the company, otherwise, the benefits and ability of the company to operate in a competitive environment and make profit may be compromised. The control also shows that the sector is deregulated, that is the sector is liberated from government interferences.

On another hand, McLean and McMillan (2003) defined privatization as “the transfer of public assets to the private sector, by sale, or contracting out”. This definition added the means of transfer of public assets from the public to the private.

For Gilroy and Moore. (2010) privatisation means of “shifting some or all aspects of service delivery from government to private-sector providers. It is a strategy to lower the costs of government and achieve higher performance and better outcomes for tax dollars spent”. This definition is good to the extent that it added the purposes or reasons for carrying out a privatization work and the expected benefits to the private investor and the tax payers.

But for Alabi,, Onimisi and Christian (2010) privatization is seen as the “adoption of the principles and techniques of private sector enterprise management in ownership and operational structure of public sector organizations”. This would have been taken as our working definition but for its missing of the social perspective of privatization. It seems that aspect is lacking in most definition of

privatization.

Therefore taking into cognisance the social responsibility of business, one could define privatization as an idea and a process through which a public enterprise is transferred to private ownership and management control for the purpose of enhancing its competitiveness, efficiency and results in delivering its social, political and economic mandate within a deregulated environment.

Factors that make for successful Privatization

Our definition above brings out the following salient factors necessary for the success of privatization:

- **Transfer:** the idea of privatization presupposes that an enterprise already exists. The essence of this factor is that the government is convinced that the enterprise is better managed by the private investor according to the rules of business. Therefore this transfer could affect a non-performing enterprise or a performing one. If it was a non-performing enterprise that was transferred, it raises an alert to the new investors to look out for what led to the non-performance. For a performing enterprise, the new investors will be looking at new ways of sustaining and improving the situation on ground.
- **Competitiveness:** an enterprise must be competitive to survive a liberalized economy. Therefore its interest must focus on quality goods or service delivery through reduced or elimination of waste, reduction of operating costs,

consistent enhancement of work skills and sound corporate governance as well as innovation of operational functions.

- Goal of service or service delivery: is to meet the business' goals of profitability. This can be accomplished through quality delivery, competitiveness, corporate social responsibility to its host community and operating environment and meeting up its tax obligations. These constitute its existential mandate.
- Deregulated environment: the business environment or economy where a privatized enterprise can operate and succeed must be an environment where the government do not have undue controls and inhibitions and even interferences in the operations of the enterprise. Business abhors restrictions, rather it welcomes regulatory provisions to guide corporate conducts within best practices.
- Finally, the presence of well-informed consumers challenges businesses to be innovative. This condition can be achieved through the presence of consumer protection agencies and groups, unions or associations.

Why Privatization of Public Enterprises?

According to Chigbue (2007), study groups in Nigeria on the performances of public enterprises (PEs): Adebo (1969), Udoji (1973), Onosode (1981), and Al-Hakim (1984) revealed consistent findings that PEs were infested with problems such as:

- Abuse of monopoly of powers

- Defective capital structures, resulting in heavy dependency on the treasury for funding
- Bureaucratic bottlenecks
- Mismanagement
- Corruption and
- Nepotism

Besides, in explaining these factors, Chigbue (2007) went further to argue that governments go into privatization to relieve themselves of business burdens and focus on pure governance. That is to support the saying that “government has no business in business”. When government divests its interests from businesses that can be effectively managed by the private hands, it gives government the opportunity to pay deeper attention to the social needs of society. Such needs may have no much economic value, but they carry heavy social and political immensities. They include education and health services, defence, diplomatic services, infrastructure policy and monitoring, emergency needs, etc. They are areas with low profit yields but high social values.

Chigbue (2007) also stated that in a changing market-driven world, the private sector is best suited for the requisite skills to manage businesses. Finally the author argued that non-performing enterprises fail to deliver the goods or services for which they were established. This has led to huge dissatisfaction on the part of the citizens and corporate bodies that consume their services. Such situation is not sustainable.

But Gilroy, L. and Moore, A (2010) see the “why privatization” question from purely market or business perspective. They summarised the reasons privatization takes place as follows:

- Cost savings
- Access to expertise
- Better quality
- Improved risk management
- Innovation
- Meeting demands and
- Timeliness (time is money).

From these points, it would not be a surprise to see governments all over the world invite the private sector to take over some of its enterprises that were engaged in business-oriented operations to enable it have a “small and effective” government that can deliver satisfactory social and political goods, while the privatized enterprises deliver goods and services of economic nature for the pleasure and happiness of citizens.

Cannons of Privatization

In privatization theory, there is what is commonly referred to as the “10 Principles of Privatization”. Gilroy, L. and Moore, A. (2010) listed and explained them as follows:

Identify Privatization Opportunities: This principle states that a government that intends to divest its interests from owning and/or

managing business organizations, must first of all determine what needs to be privatized. In other words, where or which areas of the enterprise the government feels private management would do better. This will help in deciding the degree of divestment and the method to adopt. So at the end, government must draw up a list of enterprises to be transferred to the private sector. An example of such list can be found in the Public Enterprises (Privatization and Commercialization) Act, 1999.

Prepare a Business Case Evaluation: This principle requires the government to do a viability or cost-profit analysis of the chosen enterprises for privatization. It helps government to know that some services may not be profitable if managed by the private investors, yet such services may have high social and political relevance to the lives of its citizens. For such enterprises, a business-case analysis may show poor results and therefore should not be privatized. Examples are defense services (military and police works), health and education services especially in developing countries.

Create a Council on Efficient Government: The creation a council or governing body to manage privatization at the policy level is critical so that the process will not derail from its intentions. The body is usually comprised of top government officials across the ministries, departments and agencies (MDAs). Its duties include policy formulation and supervision of an implementation agency. In Niger an example is the National Council on Privatization (NCP) and the BPE as the policy implementation agency.

Choose Contractors on Best Value, Not Lowest Price: This principle recommends that in choosing an investor, the privatization implementing agency should pay priority attention to quality proposals that reflect technical, managerial and financial competences, instead of using low price bidding as the main yardstick for awarding bids to bidders. The problem with this sensitive principle is the paradox of value in bids. For example, at times a best value proposal may bid a very low price and another proposal with low technical and managerial competences but has high level connection in government would bid high. This paradox can be intriguing.

Use Performance-Based Contracting: Simply, the principle suggests that some privatization should be based on delivery. A contractor or the entrepreneur is retained if it delivers the quality and quantity of the goods or services as contracted. This requires effective monitoring and evaluation of work done. In practice, this may be difficult for some enterprises which requires that the award must be made in the first place, but subsequently, government through effective monitoring, evaluation and auditing of work done and compared with quality, time and quantity, should be able to know if the contractor had done well. This is why at the BPE, there is a Post Privatization Monitoring (PPM) Directorate that takes care of this key requirement.

Effective Monitoring and Oversight: In line with the above principle, this one emphasizes the need for a full scale pre-and post-

privatization monitoring department. At the pre-privatization stage, the monitoring is called due diligence, to determine the state of the enterprise before privatization. This will assist to know the value of the enterprise so that government can fix the bid price for the enterprise. Such price must consider the assets and liabilities of the organization and match them with the expected business potentials that exist as well as the future value to be delivered to the economy.

At the post-privatization stage, government wants to determine if the enterprise is meeting up with the signed agreement clauses in the performance agreements (PAs) within the specified monitoring period. Normally, the PA should specify how many years the enterprise will be monitored after privatization. It is during such number of years that government would be able to determine if the enterprise is doing well or not, if it is not, the transaction or privatization may be cancelled or reversed.

Bundle Services for Better Value: In some government enterprises, diverse services are provided by many units. At times these units contract or outsource such services to private hands. This leads to so many private hands in one organization with its complicating managerial requirements. So this principle is recommending that when such an organization is to be privatized, all such numerous services should be bundled together and privatized. On the other hand, where an enterprise has so many departments and or branches doing the same work, if the enterprise is to be privatized, there will be need to unbundle the enterprise and privatize the components as

independent businesses. This was what happened at NEPA/PHCN.

Prepare a Real Property Inventory: This principle suggests that for the government to effectively determine the value of an enterprise, a list of all its assets should be made in a register and evaluated. This helps to avoid undervaluation or overvaluation of an enterprise. Such properties include undeveloped lands, buildings and other fixed assets of the enterprise. Where necessary, external valuers should be hired to value the assets to determine the "as is value". Timing is a critical factor here because some assets may depreciate in value as time goes on.

Divest Non-Core Government Assets: As a principle, non-core operational assets are fixed assets that are not directly related to the core business of the enterprise. For an oil company, all assets relating to exploration and exploitation of oil are core assets, while lands, vehicles and buildings are non-core assets. The principle is suggesting that if government wants to privatize an oil company, it should sell off non-core assets separate from the core assets in order to maximize the privatization cash benefits. But this has remained one of the thorny issues in privatization due to vested interests arising from staff, communities and lower level governments in federal governments owned enterprises located in their states. These interests are reluctant to release such assets to the implementation agency.

But if the company is an estate development enterprise, lands and buildings are not non-core assets and therefore should be fully

privatized.

Make the Case to the Public: Having taken the above principles into consideration in preparing for privatization, the last thing to be done is to put the intentions of government to the public. This will elicit opinions from the public who is the ultimate beneficiaries of the privatization policy. The appropriate stakeholders within and outside government should be spoken to through the news media, conferences, seminars and make provision for feedback to concerns raised by the stakeholders and respond to them sufficiently. Be transparent, timely and patient with the public and adjust where necessary. This must be the case especially in democratic regimes.

One major advantage of this is that it will avail government with varied ideas which may be very important and useful in the implementation of the policy. It also adds trust, confidence and credibility to the entire process, such that when it fails, not so much public damage would have been done. This gives the government a breathing space to rethink the failed aspects and come up with better solutions. In fact privatization should not be a secret.

Strategies of Privatization

BPE (2015), Gilroy, et al (2010), Ramamurti (1999), are in agreement that some of the common methods of privatization are:

- Commercialization
- Concession
- Core Investor Sale (divestment of majority equity stake)

- Debt-equity swap
- Private Placement
- Share floatation/Public offers

Commercialization is the method where government partially withdraws some of its activities in the management of its enterprise, though it owns the enterprise 100%. For example government may stop funding the company's capital and operating costs. It also involves government allowing the company to employ business or market and management principles in running the company. The company can therefore make profit. An example was the Nigerian National Petroleum Corporation (NNPC) which was commercialised in 1988.

Concession is a method whereby though government still owns the enterprise, but it hires a private sector operator to manage the enterprise for profit. This means contracting the core managerial functions of the enterprise to a private company. The private company earns an agreed fee for its services. An example was Pentascope which ran the affairs of Nigerian Telecommunications (NITEL) in early 2000s. At present, many private companies manage all Nigerian ports under concession strategy of privatization.

Core investor sale is a type of privatisation whereby the government divests its controlling share in the enterprise and becomes part of the minority shareholders of the enterprise. In the minority category,

government may hold an associate portion of shares between 25-30%. A controlling share means holding shares 51% and above. For example, in all the distribution companies of PHCN recently privatized, the core investors have 60% of the shares, while the Federal Government of Nigeria (FGN) holds 40% of the shares, and the FGN is represented in the boards of all the companies by the BPE.

Debt-equity swap is a method whereby a creditor to the company (most times, a major creditor) is allowed and it agrees to convert the total amount of the debts into equity shareholding in the company. This automatically makes the creditor a part-owner or equity shareholder in the company and with full rights. It can therefore be represented in the board of the company and can make contributions that are based on business or market principles in the management of the company. Where the converted debt is substantial or heavy such that its repayment could lead to the bankruptcy of the company, the creditor on agreeing to the swap may become the core investor with controlling shares. Either way, debt-equity swap introduces market principles of managing the company for profit.

Private placement is another strategy of privatization whereby government sells its shares directly to clearly identified and highly successful businessmen or organizations.

Public offers or share floatation requires the shares of the to-be-privatized enterprise to be sold to the public through the stock

exchange.

Arguments For and Against Privatization

Several arguments have been advanced for and against privatization by nearly every author on the subject. But our observation is that authors present country-specific arguments as presented by their country's case. Hence, an advantage in country A may not be an advantage in country B or C etc. Secondly, we had to separate the arguments into parts of the polity most directly affected by the arguments. To us, when privatization is done, it affects the government, the privatized enterprise and the economy in general.

Table 1: Merits of Privatization

Government	Enterprise	Economy
It raises large pool of funds with which debts of the enterprise are repaid. This reduces the financial pressure on the government to settle the debts.	It widens the sources of financing available to the enterprise and increases its ownership base, access to enhanced capital structure	Due to competition, the enterprises will produce quality goods and services in the economy
It weakens the prominence and power of trade unions, which are more in the public sector to protect the interests	It enhances the financial and operational autonomy of the enterprise	On the long run, there will be increase in employment due to the expansion of the enterprises

Privatization reduces the burden on the government to make decisions on behalf of the enterprises as well as funding the capital and operating costs needs. Cost savings is huge here.	With large pool of expertise from its shareholding base, the enterprise acquires more efficiency, business discipline and enhanced performance	Competition will drive down prices on the long run
Privatization enables the government to focus on core social problems of society that may not be profitable for the private investor. For example, welfare services, defense and diplomacy services. It also will enable government to concentrate of policy making, regulation and monitoring instead of being involved in policy implementation.	The quality of delivery of its mandate will be positively affected by (2) above.	Privatization supports a liberalized economy where more people are encouraged to tap into their potentials for greater wealth production
It reduces the undue interferences of government on nearly all aspect of business.	The enterprise will aspire to become more and better competitive	
	The enterprise will become more accountable, disciplined and effective in	

	resources usage thereby become less-corruption infested as used to be the case with many government run businesses across the world especially in the less developed countries in Africa, Latin America and Asia	
	The enterprise will enjoy reduced government Interference and influence. Such influences can be in the areas of employment to reduce unemployment, location of branches even to unviable areas, forced to buy low quality factor inputs to support locally made supplies or local content policy and forcing the enterprise to reduce its prices in order to satisfy the electorate and reduce inflation	
	The enterprise will now enjoy good corporate governance	

Sources: BPE (2015), Gilroy, et al (2010), Ramamurti (1999), Alabi, et al (2010)

Table 2: Demerits of Privatization

Government	Enterprises	Economy
Loss of massive direct power in the affairs of enterprise thereby reducing what BPE calls "government commanding heights" in the economy	A natural monopoly, if privatized, is deepened. A good case will be the NNPC if it is privatized in the future.	On the short and medium runs, the economy may experience higher prices
Government's duty to safeguard public assets is reduced and this could lead to assets stripping as it happened in NITEL under Pentascope It is usually very difficult for government to achieve political goals through privatized enterprises		There could be discriminatory price practices against the masses and in favour of the rich for quality goods and services
		Privatization may concentrate more wealth in the hands of a few wealthy business people In the short run, there may be loss of jobs
		In the short run and to maximize profit, companies may resort to producing less quality goods and services as is the case with excessive charges by telecommunication companies and banks in Nigeria.

Sources: BPE (2015), Gilroy, et al (2010), Ramamurti (1999), Alabi, et al (2010)

Obviously from these arguments and considering the present global village the world had turned into, it may be difficult for any country to stay aloof from privatization. However, those core government services with high social and security import should be left with the government. Government should also drive policy, regulate and monitor policies as implemented by business organizations whose support for social services should be encouraged.

Privatization of PHCN

According to the BPE,

The current phase of the privatisation programme commenced when the administration of General Abdulsalami Alhaji Abubakar promulgated the Public Enterprises (Privatisation and Commercialisation) Decree of 1998 into law. The Decree later became Public Enterprises (Privatisation and Commercialisation) Decree Act of 1999 following the inauguration of the democratic government in 1999... The Act sets out the objectives and scopes of the privatisation, the functions and powers of the National Council on Privatisation (NCP) and also established the Bureau of Public Enterprises (BPE) and Public Enterprises Arbitration Panel (PEAP)... Part 1 of the First Schedule to the Act lists the Public Enterprises (PEs) for partial privatisation.

We note that NEPA was among the enterprises listed in Part 1 of the First Schedule mentioned above.

Institutional Arrangement

As also indicated above, the law established the NCP, BPE and the Public Enterprises Arbitration Panel (PEAP) to manage the process. While the NCP will be responsible for the policy making for the programme, the BPE will be responsible for the implementation of the programme and act as the Secretariat of the NCP. The PEAP "... shall be responsible for effecting prompt settlement of any dispute arising between an enterprise and the Council or the Bureau".

According to the Act, the NCP is comprised of twenty-two members and headed by the Vice President of the Federal Republic of Nigeria with the Finance Minister as the Vice Chairman and the Director General of the BPE as the Secretary of the Council. NCP has five (5) standing committees: the Technical Committee (TC), Policy and Monitoring Committee, Legal Committee, Finance Committee and Publicity Committee. Only the TC has sub-committees.

Objectives of the Privatization programme

According to the Privatization Handbook (2001: 40):

"The primary goal of the privatization and commercialization programme is to make the private sector the leading engine of growth of the Nigerian economy. The government intends to use the privatization programme to reintegrate Nigeria back into the global

economy, as a platform to attract foreign direct investment in an open, fair and transparent manner. The objectives of the Privatization and Commercialization Programmes are:

- to send a clear message to the local and international community that a new transparent Nigeria is now open for business;
- to restructure and rationalize the public sector in order to substantially reduce the dominance of unproductive government investment in the sector;
- to change the orientation of all public enterprises engaged in economic activities towards a new horizon of performance improvement, viability and overall efficiency;
- to raise funds for financing socially-oriented programmes such areas as poverty eradication, health, education and infrastructure;
- to ensure positive returns on public sector investments in commercialized enterprises, through more efficient private sector-oriented management;
- 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 funding needs;
- to initiate the process of gradual cession to the private sector

wherein the prospective core investor is expected to put down his/her technical, financial and managerial capacities that best qualify him/her to acquire the enterprise. Having done their due diligence and now in possession of the Info Memo and RFP, they can now fill the RFP, that is, make their bid proposal within the given time. At the expiration of the deadline, the bids are harvested in the open, where representatives of all stakeholders would be present (TC, BPE, bidders, security operatives, the media etc.). The bid prices, terms and their respective investors are announced. Thereafter, a closed door negotiation of the terms and prices is done in camera and the bidders are asked to resubmit another bid based on the negotiations.

Upon the receipt of the renegotiated bids, the BPE forwards them to the TC who reviews them to decide on the best. The best (made up of preferred bidder and reserved bidder) is recommended to the NCP for final approval. Upon NCP's approval, BPE announces the winner, communicates the winner and request for payment. After payment has been received by the BPE, the enterprise is handed over to the investor.

This process was approved by the NCP and the donor agencies (World Bank, DFID, USAID, AfDB etc.).

Result of the Privatization

According to the BPE, as at today, the results of the privatization of NEPAPHCN are:

- Eleven (11) electricity distribution companies, which were

enterprise. The proposal contains the workplan, timing of the milestones, resources needed and the deliverables for each milestone. Upon approval, the BPE engages the privatization advisers who are expected to carry out their own due diligence and value the enterprise to determine its worth and this will assist in enriching the Information Memorandum (popularly called the Info Memo) and the Request for Proposal (RFP) documents. Upon the receipt of the report of the advisers, BPE will carry out publicity of the intended privatization so that investors will be aware what is coming up and that is supposed to keep them alert waiting for the advertisement for the expression of interest to invest in the enterprise.

So the actual process starts with the advertisement in the media, nationally and internationally, invitation for the expression of interests (EOI) to invest in the privatization of the enterprise with a deadline date, and on that date, receipt of EOIs ends 5.00pm. Any EOI received after this time is rejected. If delivered physically, they will not be collected, but if posted, time of receipt will be captured and the EOI is returned unopened to the sender.

Thereafter, the EOIs are harvested and qualified bidders are asked to pay for bid documents. A deadline is also provided and those who failed to meet up are disqualified. Info Memo are issued to those who paid and are qualified and they are requested to take carry out their own due diligence on the enterprise and thereafter send in their request for proposal (RFP). The RFP is the real bid document

unbundled out of NEPA and incorporated an companies, have been successfully privatized and handed over to their respective core investors

- The FGN still owns and holds part of the shares of these companies
- The FGN still is responsible for the management of the sensitive transmission company of Nigeria (TCN), which has been contracted out to Manitoba Hydro International of Canada
- Five (5) out of the six (6) incorporated electricity generation companies have also been privatised and handed over to their respective core investors
- Labour issues have been over 98% successfully implemented and resolved

Challenges of the Process

Some of the challenges confronting the privatization of NEPA/PHCN, according to the BPE, are:

- Funding of capital expenditure (CAPEX) by the core investors
- Lack of gas supply from the Nigeria Gas Company (NGC)
- Non establishment of the Privatization Tribunal to resolve faster, cases between the major managers and operators of the sector

Electric Power Sector Reform

According to the BPE (Briefing Memo pages 3-4), the philosophy that drove the reforms in Nigeria was that it was not healthy for government to make sector policy, regulate it and operate it. This led to monopolies in several sectors. Therefore to open up the sectors and liberalize them such that government will only make policy, an independent body will regulate the policy and private companies will operate the policy, the sector reforms objectives were to:

- I. Abrogation of monopoly laws that restrict private sector participation and creates public sector monopolies
- II. Liberalise the sector as a matter of policy and law, and allows private sector participation in the sector
- III. Create a policy, legal and regulatory framework that guides participation in the sector
- IV. Set up independent regulatory agencies that will regulate the operators

To facilitate the reform of the Electric Power Sector, the government enacted the Electric Power Sector Reform (EPSR) Act, 2005. The Act specified that the reform will be managed by the NCP and the BPE with structural, advisory and financial supports from the World Bank, DFID, USAID and the AfDB.

Reform Process

According to the BPE, reform process involves:

- The formulation of the Policy

- Establishment of the Legal and Regulatory Framework
- Making of appropriate Structural and Institutional changes
- Privatization

Reform Results

- The electricity sector has been dully reformed with the following particulars:
- Government now in-charge of policy making through the Federal Ministry of Power
- Establishment of the Nigeria Electricity Regulatory Commission (NERC)
- Existence of private operators since November, 2013 when all the privatized electricity generation and distribution companies were handed over to their respective core investors.

Reform Challenges

- Funding

- The establishment of the Privatization Tribunal, and
- Lack of gas for powering electricity generation
- Stabilization of the tariff order, which includes the installation of electric meters and billing process.

Liberalism and the Privatization and Reform of Nigeria's Electricity Sector

Having presented the literature with which to investigate the privatization of the power sector and the process it took to both privatize and reform the sector, it is trite at this point to apply the literature on the subject matter of this investigation. The principal areas of investigation are: the utilitarian principle, free market argument, informed consumer condition, contractarianism, the opportunity equality principle, the freedom of choice and less interference.

1. Utilitarianism: This principle of liberalism measures government actions through value that gives pleasure, happiness and satisfaction to the society. So how is privatization of PHCN going to give value that can lead to "minimal pain and maximum pleasure"? As stated above, one of the reasons for privatization of PHCN was because of the inability of PHCN to provide regular and affordable electricity to Nigerians. The presence of electricity should let

people have their cloths washed and ironed, have their television sets, radios, computers, kitchen facilities, air conditioners, refrigerators and telephones work. These will maximize the comfort of homes and provide pleasure and happiness to the people. The absence of electricity on the other hand will provide discomfort and pain to the people. So the privatization of PHCN complied with this principle of liberalism.

2. Free market argument: The free market principle argue that government should allow the private sector to be responsible for the provision of goods and services of economic value. They argue that when government handles this, it constitutes a monopoly, thereby removing competition, no innovation and the quality of the goods and services goes down and the price of the goods and services may not reflect the real value of the commodities in offer to the people. This give the people goods and services with inferior values which will not guarantee maximum enjoyment. So government should leave business and concentrate on the provision of social services and ensure order, peace and security that will enable business to flourish. The privatization of PHCN adopted this idea. However, it was not clear if government considered the welfarist argument that government must guarantee that such actions do not hurt the weak and vulnerable in the society. Otherwise how would one explain the rise in less than two

years of electricity tariff in the country without improvement in the services of electricity supply? Till today, Nigerians are still paying "estimated" bills from the distribution companies. Electricity supply is still irregular as against government's promise of regular supply after privatization.

What of the assumption by the classical liberals that the competitive and efficient private hands in business will lead to lower price? Electricity bills are still high. To make the matter worse, the inefficient and corrupt behaviours associated with the electricity workers before privatization still subsists. The point here is that the business is still being managed by the same old PHCN staff who ran the utility aground through corrupt practices.

Therefore it appears the classical argument for a laissez-faire and liberated electricity sector has already been defeated. Some people argue that three years is too small to reach such a conclusion. This may be true given the teething challenges facing the industry as indicated above.

3. The informed consumer condition for a successful privatization is defeated in the Nigerian case because Nigerian consumers do not possess that characteristics. This is why the poor quality of electricity in terms of irregular supplies, high tariff, estimated tariff bills and the unnecessary disconnection of light have continued. This has led to more pains than pleasure in the consumption of electricity in

Nigeria.

4. Contractarianism suggests that government must ensure that its part of the social contract is met whenever it has a duty to perform for the people. The inefficiencies still existing in the power sector shows that government has failed on its part of the contract. A sophisticated and well informed citizenry should be able to use this fact to vote out government in power that contracted the privatization. It may be argued that this may have been one of the reasons that led to the failure of the last government in the elections of 2015. This is most unlikely given the less informed nature of Nigerian consumers. Even the political party that won the election did not raise this as a critical point for the election.
5. Opportunity equality simply suggests that individuals should be given equal access in government processes that involves participation for work. Where all capable Nigerian firms given the chance to participate in the bidding for the PHCN core investor sales? The probable answer is no on two reasons: they may not have the managerial and financial muscle to participate, and even if the government had insisted on this, it is still the business and political elites that will hijack the purchases, thereby defeating the essence of the sales. This proves that fact that at times certain factors can make merit and its niceties not appropriate in some government actions.

6. Finally, on the freedom, the privatization of PHCN has actually not raised a new set of investors who will at the onset not rely of employees and systems already existing and which operated as monopoly. So the services rendered now are still of the same nature, thus making the consumers consuming old wine in a new bottle. This defeats the freedom of choice between goods or services which have distinct way of existence. For example, in Nigeria's telecommunication sector, all the service providers did not make use of existing staff and systems and that is why they offer different and distinct competitive services to the consumers. This gap was probably meant to be filled by the independent power producers (IPPs).
7. Less government interference: Despite the reforms and privatization, government still has a lot of presence in the electricity business in Nigeria. For example, it has 40% shareholding in all privatized electricity companies and 100% in the Transmission Company of Nigeria (TCN). All these negate the "leave the economy" principle of liberalism. By and large, the process of the privatization of the PHCN was substantially congruent with the liberalization principles. It is hoped that in due time, the sector should begin to be efficiently run so that more people will have access to more pleasure and happiness than pain according to Jeremy Bentham.

Conclusion

In this investigative paper, we ascertained why privatization took place in Nigeria, its results and key challenges. We also explored the reform of the electricity sector in Nigeria. On applying some of the principles of liberalism, we discovered that the privatization failed in some and succeeded in others. Recommendations are:

1. Government should quickly set up the Privatization Arbitration Tribunal to fast-track issues between the operators and the government/regulators or any other major stakeholder in the sector. This is to avoid taking such issues to the regular courts where too much time may be wasted
2. Government needs to deal with the re-occurring lack of gas problem plaguing the sector and frustrating the companies from performing at appreciable capacity level
3. The NERC and the operators must deal fast the issue of poor billing arising from the current lack of meters leading to estimated bills.

Conclusively, the privatization and reform of the electricity sector were successfully carried out by the government. With time, the process and work will mature and some of the challenges would be resolved so that Nigerians will enjoy regular and affordable electricity.

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