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Full Length Research

An examination of privatization policy and foreign direct investments in Nigeria

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The Federal Government establishment of and subsequent growth of state-owned enterprises (SOEs) in compliance with the Keynesian theoretical paradigm, was for over two decades a fundamental component of development strategy in Nigeria. The SOEs were needed to provide social services and utilities and serve as engine of social and economic development. However, they served the purpose for which they were established for about a decade, and then their performance declined. The government of Nigeria then opted for privatization policy as a result of inefficiency and ineffectiveness of the SOEs. Privatization policy is a global principle and guideline that de invest public ownership of SOEs and given rise to private ownership. The aim of this paper therefore, is to investigate the socio-economic and legal implications of the Nigeria Privatisation Policy. The methodology employed in this paper is to review the existing literature on SOEs and privatization policy in Nigeria and beef it up with empirical investigation of 50 consumers of the product of the SOEs in energy sector. The result from the review of literature and empirical study revealed that privatization policy will enhance foreign direct investment in Nigeria subject to positive economic and technological milieu in the country. The findings also revealed that the grassroot (the poor) are likely to suffer as they will no longer enjoy subsidized products and services of the SOEs slated for privatization while conversely it will further enhance socio-economic condition/hegemony of the bourgeoisie. Finally, the legal review revealed that the privatized SOEs will undergo legal and structural transformations.

Key words: Privatisation, policy, implications, consumers, investment, development, publicisation.

INTRODUCTION

During colonial era, the British Colonial masters exploited the Nigerian natural resources to service their country's industrial revolution. They were able to achieve the aforementioned objective by setting up a minimal administration of law and order and consequently established multinational corporations and big companies like Leventis, United Africa Company (UAC) Peterson Zochonus (PZ) that were based in the United Kingdom. Faced with the challenges of nation building, the successive governments made a change by formulating indigenisation policy that stopped the alien (foreigners) from dominating the economy. The onus of economic development then fell on the indigenous companies and the new government. However, the indigenous entrepreneurs were not viable economically to finance these companies. Arising from the foregoing, the establishment of the state owned enterprises to serve as engine of socio economic development became necessary. The state owned enterprises, a hybrid of government entrepreneurship were thus established, managed, financed and controlled by the Government that established them. Among the indigenous and government established companies were Odutola tyres industries and cement factories at Ewekoro. Since then, the establishment of state owned enterprises became an accepted government policy aimed at accelerating the pace of Nigeria's

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industrial development.

NEED FOR GOVERNMENT INTERVENTION IN THE ECONOMY

The emergence of the state owned enterprises should be seen as performing two closely interrelated roles: As instruments of legitimization of government's direct action in economic and social spheres and as instrument for power building and wealth accumulation by and in favour of those who are at the helm of affairs.

Furthermore, the emergence of the state owned enterprises (SOEs) was supported by the Second National Development Plan, 1970-1974 when it stated that state owned enterprises are expected to stimulate and accelerate national economic development under con-dition of capital scarcity and structural defects in private business organization. The 1999 Federal Republic of Nigerian Constitution also lends credence to the government intervention in the economy. Specifically section 16 subsection 1a, b, c and d 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, a dynamic and self-reliant economy.
b. Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
c. Without prejudice to its rights to operate or participate in areas of the economy, other than the major sectors of the economy manage and operate the major sectors of the economy;
d. Without prejudice to the right of any person to participate in areas of economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy".

Consequent upon the aforementioned social and constitutional provision, a survey of the official records indicate that state-owned enterprises have increased in number in Nigeria to achieve the following purposes.

1. To ensure economic decolonisation and nationalism;
2. Promotion of indigenous capitalism;
3. Improvement of the balance of payment;
4. Resource mobilization by governments;
5. Promotion of development, and
6. Correction of the regional imbalances.

These (SOEs) state owned enterprises have developed in the following major fields.

1. Marketing of commodities;
2. Mobilization of funds;
3. Development of infrastructures;
4. Industrial development;
5. Development of commercial and service ventures;
6. Agricultural development, and
7. Development of mineral resources (Laleye, 1986).

This development can be observed both at Federal and State levels. One striking fact is that the first fertile ground of federal government intervention in the economy was the establishment of public utilities. The major public utilities that have emerged since early 1960s are the Nigerian Railways Corporation, the Nigerian Airways, Nigerian Broadcasting Corporation now Federal Radio Corporation of Nigeria, the Nigerian Television Authority, Nigeria External Telecommunication Limited, Nigerian Ports Authority and the National Electric Power Authority now (Power Holding Company of Nigeria Ltd) (Ajakaye, 1988).

The reason for the government intervention was due to the magnitude of the required initial investment to the relatively low profit expectation and the social dimension of their services, and private initiative was not forthcoming. Moreover, these areas concern the basic infrastructural facilities for any meaningful industrial development.

The second striking observation is that it was the then regional governments that first made an aggressive use of state owned enterprises for the marketing of agricultural products. The marketing boards turned out to be the effective devices for mobilizing financial resources which were later used to establish Finance and Development Corporations with a view to promoting industrial, commercial and social development. The federal government also became aware of the necessity to provide the machinery for monetary and fiscal policies but also organized investment promotion and insurance. They contributed in no small measure to the promotion of industrial investment, either singly or in partnership with private entrepreneurs. These investments developed considerably in practically all the sectors of the economy: Agriculture, mining, commerce, manufacturing and tourism. Most of the ventures in which governments were involved, assumed the form of parastatals and were aimed at increasing public revenues and accelerating the pace of development. However, the SOEs worked for almost a decade before their performances started declining. Hence there was a poor return to investment which now calls for privatization policy. The principal objective of this paper therefore is, to examine the socio-legal implications of the Nigeria Privatisation Policy implementation.

REVIEW OF LITERATURE

In Nigeria, privatization came as an integral part of adjustment credits and the policy was aimed at enhancing the efficiency of resource allocation of government. In the words of Mahamoud (2005), the core objectives of the privatization policy are to reduce fiscal deficits, building a broader tax base, attracting more investment and growing of the private sector. He went further that public enterprises sector had played an increasingly dominant role in the Nigerian economy accounting for over 50% of the GDP and over 60% of modern sector employment. He asserted further that, as at 1986, the estimated number of state owned enterprises (SOEs) in Nigeria was 1,500 out of which 600 were owned by the Federal government and the rest were managed by the states and local governments. According to the author, Nigeria adopted the policy of privatization in 1986 and Technical Committee on Privatisation and Commercialization was established in 1988. The committee, he said was able to privatize about 34 firms cutting across several sectors through public floatation. The enterprises that have been wholly privatized were mainly in manufacturing and insurance sub-sectors. The privatization of utilities such as power and telecommunication seems to have made little progress in Nigeria.

The second phase of the privatization programme started on the 20th July, 1998 when the National Council on Privatisation was established with Bureau of Public Enterprises as its secretariat in Abuja. It was on record that the first phase of the privatization policy implementation made the following achievement between 1988 and 1993.

1. The creation of 800,000 new shareholders;
2. Over N3.3 billion of privatization proceeds realized;
3. 1,486,772,063 billion shares were sold;
4. 280 board seats ceded by the Federal government;
5. Treasury funded SOEs reduced, and
6. The Nigerian capital market broadened and deepened (Mahmoud 2003).

Discussing the background of SOEs and circumstances that called for privatization of the SOEs, Mahmoud (2005) remarked that the Federal Government of Nigeria had invested more than US$100billion in SOEs between 1975 and 1995. He exposed further that:

1. These enterprises drain a lot of resources from the Federal Government leading to a recent huge transfer of US$3 billion, 0.8 billion, 1.4 billion and 44 billion in 1998, 1999, 2000 and 2001, respectively;
2. About 5,500 board appointments exist in these non-performing firms;
3. Over 50% of all non-performing public sector debts in Nigeria were generated by these SOEs. For example, NICON Hilton - US$300 and Sheraton Hotel - US$250 million;
4. SOEs in Nigeria returned only about 0.5% in profit. Without NICON Hilton and Central Bank of Nigeria (CBN), they would have provided negative returns, and
5. They control over N1 trillion more than an average federal government budget.

The foregoing lends credence to Omoleke (2007) when he asserted that N265.00 billion were spent on public enterprises in Nigeria without adequate return to investment while Obadan (2000) said:

> "Public enterprises in many developing countries, as in Nigeria, have been attacked for being economically inefficient and wasteful of resources. They make significant demands on government resources, as well as on domestic and foreign credit. Yet these demands have been associated with low profitability and inefficiency."

Finally, Nassar and Akinola (1999) also affirmed that poor performance of Nigerian public enterprises in the 1980s called for policy of privatization and commercialization by the promulgation of Decree No. 25 of 1988 establishing the privatization policy while the Technical Committee on Privatisation and Commercialisation was organizing and monitoring the deinvestive programme. As at March 1993 a total of 55 public enterprises had been privatized by the T.C.P.C. The two scholars went further that, with the sale of government equities, investment in seven banks and private company, all involving 866.5 million ordinary shares with a market capitalization of N1,064.4 million, the proceeds, from the 55 enterprises offered for sale as at the end of 1992 were N3.3 billion. This, when compared with the original investment of N652.0 million in these enterprises since the inception of the programme showed roughly 500% capital gains. However, this is inconclusive as the depreciated value of the domestic currency arising from the adoption of floating exchange rate system has not been taken into consideration. Ostensibly, a major gain/development from the privatization exercise is the drastic reduction of reliance of public enterprises on the government for finance, thereby government realizing funds for development of other sectors of the economy. However, the question is: How has this gain from privatization policy been evenly utilized for the benefits of the grassroots remains a different issue entirely in Nigeria?

Apart from reducing the scope of political patronage in form of Board and Commissions appointment, the policy has, in addition, helped in stimulating the growth and expansion of the Nigerian capital market from N8 million in 1988 to over N30 billion in September 1992 (United Bank for Africa Monthly Business and Economic Digest February to August, 1993). Conversely, in spite of the seemingly positive developments aforementioned, the policy is still facing a lot of problems. First, while the profit level of the privatized companies has increased the same thing cannot be said of the quality of their services. The services produced by most of these companies fall far below expectation. This obviously portends falling standard of living as customers now pay higher prices for inferior or low quality services. In the same manner, this tends to cast doubt on the expectation that privatization will, in the long run, lead to reduction in government deficit. This is because, it is only when an enterprise is run efficiently and profitably in the private or even public sector that the budget benefit from privatisatioin policy will be on a permanent basis.

The low-income earners have not been involved in the privatization policy as they are not financially empowered to either buy share or enjoy the quality of product from the privatized companies as prices of their products are beyond the reach of the poor. Furthermore, the harsh economic conditions coupled with the low per capita income of a greater percentage of Nigerians have eroded the economic power of the grassroots. This condition, if not checked may accentuate the existing inequality gap in the Nigerian Society.

The implementation of the privatization policy has led to retrenchment in some privatized organizations. Some of the retrenchment cases are due to economic exigencies. With privatization, the functional and operational restructuring within the enterprises has to be made in order to realize the economic goal of the policy. This restructuring rendered some positions redundant adding to the unemployment problem in Nigeria. Hitherto most of these public enterprises were overstaffed due to heavy politicization before the privatization exercise, due to influence of the Nigerian political elite.

Thus, if the facts are considered in relation to needs for these enterprises to be efficient, then the issue of retrenchment arising form the implementation of privatization policy might not be very important but it becomes important when social welfare consideration comes in. This, therefore, raises the issue of trade off between economy and social/welfare consideration in the implementation of privatization policy. Perhaps the two necessities must be properly balanced to achieve maximum benefits from the policy and to avoid offensive relationship of the privatization policy and constitutional provisions of 1999 Constitution (Section 16 – Subsection 1 (a – d)) as earlier stated.

The privatization policy also faced the problem of workers' resistance through their union on the presumption that the implementation of the policy will lead to retrenchment of workers and pauperization of the working class and enhancement of the 'political and economic hegemony of the political and economic elite who have the economic power to buy all the companies. In addition, several other interest groups such as labour and student unions and some intellectuals are also apprehensive of the policy. Their apprehension is founded on the arguments that the programme/policy will lead to high inequalities of resources as the shares will be hijacked by the few rich ones, reduction in the living standard through inflation and misappropriation of the proceeds from the privatization policy implementation. To some extent, some of the apprehensions have been justified in the Nigerian case. Most of the enterprises were bought by the economic elite e.g. Benue Cement factory was bought by Dangote Company.

What should be done to allay the fears of these people is for the Federal and State governments to encourage institutional owners (public investors) in which local communities, villages, cities, foundations are allowed to establish and run companies. The case of community bank is relevant here. To get around these problems and others relating to privatization policy implementation, there is need for public enlightenment and governments should ensure high transparency and accountability in the sale of public enterprises.

Finally, government may try to contract out part of the production and distribution operations of public enterprises like Power Holding Company of Nigeria Plc (PHCN). A few advantages are realizable from this approach. For example, more people are likely to be found to take over the provision of the components services required by the enterprises rather than outright sale of the enterprises to few rich hands. In like manner, government can go into unit ventures with the private entrepreneurs and employers. Yet, government will still have decisive influence on the ventures.

THE THEORETICAL AND EMPIRICAL EXPOSITION

Having reviewed a few authorities on the privatization policy in Nigeria, it is pertinent to discuss some relevant theories that could offer explanation on privatization policy in general. Some of these theories would be briefly discussed for the purpose of this paper and they are: Public choice theories, agency theory, property right theory, and dependency and modernisation theory. We begin with public choice theory. This theory is concerned with the positive analysis of public goods determination. Employing the definition of Broadway and Wildasin (1984), when they treated the political mechanism, especially voting behaviour as the means by which the preferences of individuals of public goods are rationally transmitted to policy makers. Buchanan and Tulloch (1962, 2009) are said to be fore runners of modern public choice theory.

The major assumption of public choice theory is that voters, politicians, bureaucrats, interest groups and rent seekers are motivated primarily by self- interest (Orchard and Stretton (1997). In the neoclassical price-auction model, individuals and firms are also motivated by self interest in the sense that individuals maximize utility and firms maximize profits. This model results in an efficient allocation of resources in the provision of private goods. Given their characteristics, most public goods cannot be efficiently provided by the market mechanism and government becomes a substitute for the market. Perhaps, this is where SOEs are relevant and also explains one of the reasons for establishing SOEs, that is, market failure.

However, government has also become a utility maximiser. Because of SOEs failures, some economists have argued that some public goods may be allocated efficiently by the market mechanism, thereby reducing the political influence of rent seekers and pressure groups associated with politicization of SOEs appointment of board members. It is a trite fact that, de-regulation and privatization in Nigeria are consequences of failures of the SOEs.

Furthermore, the recognition of the importance of the political processes for revealing public preferences has contributed to the growth of public choice theories which cover a wide range from voting solution and conflict resolutions to property rights. Collectively, they may be described as the analysis of non-market decision making or the application of economics to political science. According to Premchand (1983), the basic assumption of public choice theory is that governments are collectivities of utility maximisers, that is officials in government, elected representatives, government agencies and interest groups.

Agency theory on the other hand, explains how to best organize relationships in which one party (the principal) determines the work which another party (the agent) undertakes. The theory argues that under condition of incomplete information and uncertainty which characterize most business settings, two agency problems arise (1) adverse selection and (2) moral hazard. Adverse selection is the condition under which the principal cannot ascertain if the agent accurately represents his ability to do the work for which he is being paid while moral hazard is the condition under which the principal cannot be sure if the agent has put forth maximal effort (Eisenhardt, 1989). Property rights on the other hand, are the social institutions that define or delimit the range of privileges granted to individuals of specific resources, such as parcels of land or water. Private ownership of these resources may involve a variety of property rights, including the right to exclude non owners from access, the right to appropriate the stream of economic rents from use of and investments in the resource, and the rights to sell or otherwise transfer property institutions ranging from formal arrangements, including constitutional provisions, statutes and judicial rulings, to informal conventions and customs regarding the allocations and uses of property. Such institutions critically affect decision making regarding resource use and, hence, affect economic behaviour and economic performance (Libecap, 1989).

Lebecap (1989) argues that because certain property rights arrangements can reduce transactions cost in exchange and production and encourage (Sunk costs) investment to promote overall economic growth, such property right have public goods aspects. He deposed further that property rights institutions are determined through the political process, involving either negotiations among immediate group members or the lobbying activities that take place at higher levels of government.

Finally, modernization theory is the theory used to summarize modern transformations of social life. The theory looks at the internal factors of the country. It is an evolutionary theory that assumes that with help, “traditional” countries can develop in the same ways “modern” countries did. Throughout certain periods of time, modernization theories attempt to identify social variables which contribute to the social progress and development of certain societies and seek to explain the details of social evolution. Modernization theory does not only stress the process of change but also respond to that change. The theory also looks at internal dynamics referring to social and cultural structure and the adaptation of new technologies.

In sum, public choice theory concerns the positive analysis of public goods determination which intimately relates to privatization policy which refers to deinvestment of production of goods and service from public sector management to the private sector. It also explains market failure and poor return to investment which is one of the reasons why Nigerian Government embarked on privatization policy. Agency theory on the other hand is the branch of financial economics that looks at conflicts of interest between people with different interest in the same assets. By implication, the theory explains the conflicts between shareholders and managers of companies and shareholders and bond holders and all these are related to investment performance within the framework of privatization policy implementation and foreign direct investment (FDI). The theory further explains among other things, why:

1. Companies so often make acquisitions that are bad for shareholders.
2. Convert0ble bonds are used and bonds are sometimes sold with warrants and
3. Capital structure matters.

The theory is used by financial economists to model very important aspects of how capital market function and investors gain a better understanding of markets by being aware of the insights of agency theory. The above scenario is capable of explaining the privatization components and foreign direct investments.

Also, the property right theory explains the range of privileges granted individuals to invest in the privatization programme and modernisation theory is also relevant in explaining the transformation of social life, which is cognate to the objectives of privatization policy and foreign direct investment. The constellation of the theories of public choice, agency, modernisation and dependency, and property right is capable of offering explanation on the components of privatization policy implementation and foreign direct investment in Nigeria.

The legal framework also assists in preparing enabling milieu for implementation of privatization policy in Nigeria.

FOREIGN DIRECT INVESTMENT: THEORETICAL ISSUES

Scholars have carried several studies which have established theoretically and empirically the ways in which foreign direct investment can contribute to the growth and development of the host countries economy. Those scholars include Akinlo (2003), Buckley et al. (2002) and de Mello (1997, 1999), respectively. Akinlo for instance asserts that, theoretically, some channels had been established which include increased capital accumulation in the recipient economy, improved efficiency of locally owned host country firms via contract and demonstration effects, and their exposure to fierce competition, technological change, and human capital augmentation and increased exports.

However, Buckley et al. (2002) argued that the extent to which FDI contributes to growth depends on the economic and social condition or in short, the quality of environment of the recipient country. The quality of environment may relate to the rate of savings in the host country, the degree of openness and the level of technological development. Unarguably, host countries with high rate of savings, open trade regime and high technological products would likely benefit from FDI to their economy. Conversely, FDI may have negative effect on the growth and development prospect of the recipient economy if they give rise to a substantial reverse flows in the form of remittances of profits and dividends and/or if the transnational corporations (TNCs) obtain substantial or other concession from the host country (Ramirez, 2000).

EMPIRICAL EVIDENCE

Again, some empirical studies have also established a nexus between FDI and growth. In the words of Akinola (2004), several studies have provided evidence of technological spillover and improved plant productivity. At the macro level, he goes further that FDI in flows in developing countries tend to “crowd in” other investments and are associated with an overall increase in total investment UNCTAD (World Investment Report, 1992). It had also been established by scholars that FDI inflows led to higher per capital GDP, increase economic growth rate and higher productivity growth.

Markusen and Venables (1999) have also identified other channels through which FDI bolstered growth and these are higher export in host country and increased backward and forward linkages with affliates to multinationals. All said, the FDI productivity is a function of economic milieu of the host countries. This condition includes

1. High level technology;
2. Absorptive capacity in the host country;
3. High level of human resources in a recipient country;
4. Some degree of complementarity between domestic investment and FDI;
5. High saving rate, and
6. Open trade regimes.

In a resumé, the above review has suggested that the role of Foreign Direct Investment in a given country is a function of socio economic and technological milieu of such country. We will now examine to what extent has economic environmental conditions enhanced FDI in the implementation of the Privatisation policy in Nigeria, despite the motivating legal framework put in place.

FAILURE OF SOEs

As it has been pointed out earlier, the establishment of the SOEs was at a time considered as a sound economic policy for socio economic development, hence governments of Nigeria invested in statutory corporations and state owned companies. It was also argued that state-owned companies were better options for stimulating and accelerating national economic development than the private capital. The result was a proliferation of SOEs covering a broad spectrum of economic activities from steel plants, petrol-chemical, health boards, commissions, banks and hotels to mass transit and abattoirs.

However, the performance of these enterprises was impressive in the early 70s and 80s until the beginning of 90s when their performance started to decline and failed to meet the aspirations of socio-economic development targeted (Musa, 2005; Omoleke and Adesepo, 2005). Consequently, some of them collapsed in Nigeria. Examples of such enterprises are National Bank, Allied bank, Castel Breweries, (NNSC) Nigerian National Supply and African Continental Bank just to maintain a few (Omoleke, 2008).

This assertion of declining performance and failure to meet their set objectives for which they were established lends credence to former President of Nigeria’s remarks on the occasion of the inauguration of the National Council on privatization on Tuesday July, 20 1999. President Obasanjo said:

> It is estimated that successful Nigerian Government have invested up to 800 billion Naira on public owned enterprises. Annual returns on this huge investment have been well below ten percent. These inefficiencies and in many cases, huge losses are charged against the public treasury. With declining

revenues and exclaiming demands for effective and affordable social services, the general public has stepped up its yearnings for the SOEs to be more efficient.

The president went further to assert that SOEs suffer from fundamental problems of defective capital structure, excessive bureaucratic control or/and intervention, inappropriate technology, gross incompetence, mismanagement, blatant corruption and crippling complacency which monopoly engender. Invariably, these shortcomings, take a heavy toll on the national economy, he concluded.

Ostensibly, there are over-whelming facts and figures in support of the absolute necessity to realign Nigeria with the global trends. There are over 1000 SOEs in Nigeria. Many of these enterprises gulped billions of Naira as asserted by President Obasanjo without yielding more positive results in terms of customer's satisfaction. This situation, perhaps led to clarion calls to privatize them in order to guarantee a better performance.

PRIVATISATION POLICY AND FDI

The privatization policy seems to have liberalized the participation of alien or foreign company to carry on business in Nigeria. This looks like a policy reversal of indigenization policy of the 1970s, where foreign companies were sent packing while indigenous companies were being encouraged. The Nigerian legal frame work now allows an alien or a foreign company to join Nigerians in forming a company in Nigeria subject to the provisions of any law regulating the right and capacity of alien to engage in trade or enterprise in Nigeria. This is a pointer to FDI meaning that an alien can come directly to invest in Nigeria under the law. This is a by product of the privatization policy.

The above assertion has a legal support in section 20 of the Nigerian Companies and Allied Matters Act, 2004. It states that every foreign company intending to carry on business in Nigeria must be incorporated by the Corporate Affairs Commission, Abuja, otherwise, the FDI may not have a place of Business in Nigeria. Furthermore, to ease the implementation of privatization policy especially on FDI, subject to the provisions of any enactment regulating the right and capacity of alien to undertake or participate in trade or business, an alien or a foreign company may join in forming a company.

However, the law exempts the following categories of company from the requirement to register locally:

1. Foreign companies invited to Nigeria or with the approval of the federal government to execute any specified loan project;
2. Foreign companies which are in Nigeria for the execution of specified individual loan project on behalf of a donor country or international organizations;
3. Foreign government-owned companies engaged solely in expert promotion activities, and
4. Engineering consultants and technical experts engaged in any individual specialist project under contract with any of the Government of the Federation or any of their agencies or with any other body where such contract has been approved by the Federal Government of Nigeria {Section 56, Companies and Allied Matters, Act 2004 (CAMA)].

Legal Issues in foreign direct investment

In Adamu's (2004) opinion, direct investment implies provision of capitals from a foreign nation in shares or any other equity, securities or corporate entities, which could be in form of foreign direct investment of the host nation. The Nigerian legal system had also made local enactments to guide the FDI. In section 17 of the Nigeria Investment Promotion Commission Act of 1995, CAP N17, laws of the Federation of Nigeria (2004) has authorized a non-Nigerian to freely invest and participate in operation of any SOEs in Nigeria unless such enterprises are on the negative "list" meaning production of arms and ammunition, service uniforms, production and dealing in drugs etc. The law allows aliens to operate alone or engage in joint venture with Nigerians by means of a Company which must first of all be formed and registered by Cooperate Affairs Commission (subsection 20 and 27 of CAP 117).

Furthermore, section 21 of CAP 117 allows an alien, not wishing to establish a business, to buy shares in a Nigerian company in any convertible currency imported freely into Nigeria through an authorized dealer and convertible into Naira at the official foreign exchange market (Foreign Exchange Monitoring and Miscellaneous Provisions Act, F 34 LFN 2004, SS. 12, 13 and 15). In an attempt to encourage FDI in the implementation of privatization policy, section 15 sub-section 4 (S15) ($_4$) of CAP F,34 of 1995 and section 24 of CAP N 117 allows imported capital, unconditional transferability and repatriation of funds in respect of earning and capital. We will now discuss the incentives put in place by the federal Government of Nigeria to attract foreign investors (FDI).

Incentives to attract FDI

Ostensibly, the Federal Government of Nigeria has put in place varieties of incentives and relief in order to boost industrial and agricultural production for exports and revitalize the moribund state owned enterprises (SOEs). These incentives are:

1. Tax reliefs
2. Pioneer status and
3. Duty draw back/suspension scheme.

The pioneer status refers to tax exemption granted for a period of three years in the first instance and may be extended for further two years. This policy has legal backing in Industrial Development (Incoming Tax Relief's) Act CAP 17 LFN 2004.

However, the applicant, to qualify for the concession must be:

1. Public company;
2. The investment must be in respect of industry or products designated as pioneer, that is, agro allied export goods and solid minerals; and
3. The estimated capital expenditure before production should not be less than ₦50, 000.00 for an indigenous controlled company and ₦150, 000.00 for non indigenous company.

The tax reliefs under Company Income Tax Act CAP. C. 21 LFN 2004 include profit exempted from taxation. In the same vain, the profits of any Nigerian company in respect of goods exported are exempted from the taxation. Also available is a relief from tax for the first ₦ 6,000 of the total profit. (Finance Miscellaneous Taxation Provisions) No 3 Decree No 32 of 1996. There are other tax reliefs in respect of the Commonwealth Income Tax. (Section 33 of the Decree) and the relief in respect of foreign loan (Companies Income Tax Act Section 9 Subsection 1 (s 9_1). Furthermore, bank loans to a company engaged in agricultural business, the fabrication of local plants and deposit accounts or domiciliary accounts of a foreign non resident company are equally exempted from tax and bank loans for manufacture of goods for exports attracts relief (section 9 of the company Income Tax Act).

Finally, the Nigerian government puts in place Duty Draw Back/Suspension scheme which provides for the refund of import duties on the following:

1. Raw materials including packaging materials used in manufacturing goods that are exported;
2. Paper used for manufacturing of goods supplied for educational purposes to educational establishments recognized by the Federal Adviser on Education (100% of import duty is allowed)
3. Goods exported in the same state as that in which they were imported (Customs and Exercise Management Act CAF. C 45, LFN 2004);
4. Exports incentives under (The Exports Incentives and Miscellaneous Provision Act CAP E 19, LFN 2004);
5. Incentives to a company engaged in the utilization of associated gas under the Petroleum Profits Tax Act, CAP P. 13 LFN 2004 as amended by Finance (Miscellaneous Provision) Decree No 18, 1998;
5. Investment in the Export Processing Zone, (section 28) of the Companies Income Tax Act (As Amended by Finance Miscellaneous Taxation Provision) No 3, Decree No 32, 1996.

Also, the profit or gain of 100% export oriented undertaking established within and outside an export free zone shall be exempted from tax for the first three years of its operation,

6. Investment in economically disadvantaged area attracts 100% tax relief for seven years,
7. Any investment that utilize local materials;
8. Investment in solid minerals. Any company going into mining of solid minerals shall be exempted from tax for the first three years of its operation which may be further extended for one period of two years (Minerals and Mining Act Cap. M12, LFN 2004)
9. Research and development (R &D)

a. Companies engaged in research and development is allowed 20% investment tax credit on their qualifying expenditure [Companies Income Tax Act, section 22 (as amended by Finance Miscellaneous Taxation Provision) No.3, decree No.32, 1966)]
b. Expenses incurred on research and development including the amount paid to the national science and technology fund are allowed as deductable expenses [Companies Income Tax Act, section 20 (as amended by finance miscellaneous taxation amendment) decree No 3 1993].

10. Rural investment allowance: In order to encourage rural investment whether local or foreign, S.28(B) the Company's Income Tax Act (as amended by Finance Miscellaneous Taxation (Amendments). Decree No3, 1993 provides graduated allowance for capital expenditure on such facilities as electricity, water, tarred road, and the telephone located at 20 km away from government's facilities.

Unarguably, all the aforementioned incentives are designed legal policies to attract both local and foreign direct investments with a view to reviving the moribund SOEs and simultaneously to facilitate the implementation of privatization policy.

We will now turn to examine the legal and socio economic implications of privatization policy implementtation using Power Holding Company of Nigeria PLC) a hitherto SOEs known as NEPA (National Electric Power Authority) and Nigerian National Petroleum Corporations, (NNPC).

Legal and socio-economic implications of privatization policy in Nigeria

Perhaps, it is pertinent to start with the words of Adam (1776) who said that privatization of public corporation is beneficial. He asserted:

> "In every great monarchy in Europe, the sale of Crown's lands would deliver much revenue than any which this land ever afforded the crown-when the crown's lands had become private property; they would in the course of a few years become well improved and well cultivated".

The eventual privatization of NEPA and NNPC (National Electric Power Authority and Nigeria National Petroleum Corporation) may encourage local and foreign investors to invest in the energy industries if supply of energy is guaranteed through privatization. The local consumers who rely on electricity and petroleum product to run their businesses will be relieved of uncertainty of electricity supply. This development will have the structural implications of breaking up NEPA's distribution and marketing units. The core investors must have technical competence and the owner of SOEs that is, the Federal Government must allow new entrants into power generation to stimulate competition, encourage privatization of the existing facilities and allow independent power plants to sell power for distribution and marketing companies

There must be veritable regulatory mechanism for the industry that will be in charge of issues of pricing, coordination and competition among other operators, as well as protecting the interests of the customers. This is unlike monopolistic behaviour of NEPA arbitrarily charging electric bill using estimation without officially reading the consumers' meters. The government huge expenditure on the maintenance, servicing and expansion of NEPA and NNPC operations may be diverted to other basic facilities that may be beneficial to the citizenry. Perhaps the proceeds from privatization, if well managed may be used to establish new industrial estate in the country.

Privatising the energy firms (SOEs) may lead to blockade of wastages and prevention of fraudulent practices by the government officials who use the SOEs as conduit pipe to siphon funds out of the country for their selfish interest (Omoleke and Bisiriyu, 2005). Administrative bottleneck hitherto associated with the SOEs will be reduced if not completely removed and the new entrants into the industry will stimulate competition. The fall out of this may be a good condition for workers and any company that is not efficient or charges exorbitant tariff is not likely to enjoy good patronage.

Privatizing NEPA and NNPC may protect them from manipulation. Such political interference, especially from overseeing ministry may be counter productive and this situation partly accounts for why the SOEs seem to be inefficient in Nigeria, Obasanjo (1999) and Obadan (2000). NEPA for instance, has been alleged for allocating material (transformers) on the basis of ethnic influence and political consideration instead of rational allocation according to community needs

From legal perspective, privatizing SOEs will instill financial discipline because any financial mismanagement or fraudulent practice under private sectors as against the public may lead to take –over or liquidation of the company within the meaning of section 401 to 415 of the Companies and Allied Matters Act (CAMA) Cap. C:20 2004. Furthermore, the legal, political and economic control hitherto exercised by the Federal Republic of Nigeria Government will now cease and shift to the private shareholders in the (AGM) Annual General Meeting of the Company. Hence AGM will be competent to appoint Board of Directors, and chairman etc.

Privatization requires reorganization involving restructuring for greater efficiency and redefinition of functions of managers; it then follows that the legal framework of the organization needs to be re visited. This may call for re-enactment of the law that hitherto established the corporation, before its metamorphosis into private management. It is likely that the policy, if faithfully implemented will bring about accountability and the financial misappropriation and impropriety hitherto associated with SOEs are likely to abate since the managers of the privatized companies will be under strict legal control such that it becomes mandatory for the privatized SOEs to keep up to date records of their transactions. Thus, their accounts books and balance sheets will now be audited in accordance with the Companies and Allied Matters Act, Laws of Federation of Nigeria (2004). Specifically sections 331 and 332 state thus.

Section 331

1. Every company shall cause accounting records to be kept in accordance with this section.
2. The accounting records shall be sufficient to show and explain the transactions of the company and shall be such as to disclose with reasonable accuracy, at any time, the financial position of the company; and enable the Directors to ensure that any financial statements prepared under this part comply with the requirements of this Act as to the form and content of the company's statements.
3. The accounting records shall, in particular, contain: Entries from day-to-day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure took place and
(4). A record of assets and liabilities of the company.

Section 332 states that:

> "The accounting records of a company shall be kept at its registered office or such other place in Nigeria as the Directors think fit, and shall at all times be open to inspection by the officers of the company".

Whereas, the account of some SOEs may not be audited for good five years until the need arose e.g. fraud or embezzlement.

Arising from the foregoing, the newly privatized public enterprises must operate within the confines of law and must be strictly accountable to shareholders. This new legal order is quite different from what it used to be under publicisation. The SOEs so privatized will now be fully incorporated with legal personality, an artificial person which can sue and be sued (Section 18 of CAMA). Its artificiality necessitates that it can only act through its human agents and officers and its civil and criminal liabilities chart the same route. This legal disposition known as the organic theory or the doctrine of alter-ego of the company will now apply to NEPA (PHCN) and NNPC, whose customers could not sue the organization when they were public enterprises.

The above principle is summed up in the following illuminating dictum of Lord Dening L.J. in Bolton (Engineering) Co. Ltd. V. Graham and Sons which states inter alia:

> "A company may in many ways be likened to a human body. It has a brain and nerve center which control what it does. It also has hands which hold the tools and act in accordance with directions from the centre, some of the people in the company are merely servants, agents who are nothing more than hands to do the work and cannot be said to represent the minds and the will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of minds of these managers is the state of minds of the company and is treated by and as such:,

Again, this is the legal position in privitisation as against what obtains in publicisation where the SOEs were experiencing remote control from the Government and the supervising ministries. This cannot be so again under privatization condition.

Privatising SOEs is likely to encourage redistribution of investment if the policy is executed in good faith in Nigeria, otherwise, it may lead to private capitalism whereby very exclusively and 'stinkingly' rich individuals will buy up the SOEs especially the strategic public corporations, thus converting the public utilities to private monopolies to the detriment of the grassroots. Although privatization policy is global and a political process of economic revolution, legally it looks like a deprivation of the rights and privileges of Nigerian citizens to have access to subsidized social services within the meaning of chapter II of the Federal Republic of Nigeria 1999 Constitution entitled "Fundamental Objectives and Directive Principle of state Policy:

Thus Section $16_{(1)}$ states:

> "The state shall control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity".

Going by the above constitutional provision, privatizing SOEs in Nigeria seems to breach the constitutional provision as previously quoted. Furthermore, it would appear that the process of implementing the policy in Nigeria is coloured with shady dealings because most of the enterprises listed for privatization are not accurately valued. It also seems that the policy is an avenue to further alienate the downtrodden masses from the nation's common wealth and a means of widening the gap between the 'haves' and the 'have nots' through their unjustifiable acquisition of majority shares in the strategic enterprises.

Finally, the truth of the matter is that the majority of Nigerians who are still struggling to feed themselves cannot be reasonably expected to benefit from the sale of the enterprises. And yet government has social responsibility to protect the underprivileged in the Nigerian polity – Section $16_{(2)}$ of the 1999 Nigerian constitution.

We will now consider the empirical analysis of the purposive sampled opinions of the Nigerian citizens in South Western Nigeria on the implications of the Nigerian Privatisation policy (Consumers of SOEs Products and Services -Electricity and Petroleum Products). A purposive sampling of 50 consumers of electricity and petroleum products was conducted using questionnaire administration. The sample consisted of market women and households who are consumers of SOEs products and services. The purposive sampling was taken because the majority of the respondents fall within a group that is less economically empowered. The questionnaire, retrieved were analysed through inferential statistics and the following findings emerged (Tables 1 and 2).

Table 1 shows the respondents' opinion on whether they preferred privatization as against publicisation of the Nigerian SOEs. Fifty percent of the consumers supported the policy while Forty percent uphold the statusquo that is publicisation. Ten percent of the sample was silent.

Table 2 on the other hand, shows percentage distribution of the consumer's opinion as to what would be their gains or loss if SOEs are privatized. Arising from the Table, 38 of the consumers (76%) believed that there would be increase in tariff and this is a loss on their part while only 2% said they would gain. This is a very low percentage while 11 (22%) did not respond.

SUMMARY AND CONCLUSION

What this paper has attempted to do is to look at the privatization and foreign direct investment in Nigeria. In doing so, the authors reviewed literature on state owned enterprises in Nigeria, the rationale for establishing them, their declining performance which led to their being privatized. Furthermore, the paper addressed privatization policy of the Federal Republic of Nigeria which liberalized Foreign Director Investment. We also examined the socio-legal implications of the privatization policy using empirical analysis. Few theories were also examined to explain the components of the policy. The paper concluded that if Nigeria must privatize its economy (SOEs),

Table 1. Percentage distribution of respondents by what they prefer -privatisation or publicisation of SOEs.

Variables	Frequency	%
Yes	25	50.0
No	20	40.0
Non response	05	10.0
Total	50	100.0

Source: Field survey January 2009.

Table 2. Percentage distribution by what the consumers think would be their gain or loss if SOEs are privatized

Gain/loss	Frequency	Percentage
Loss (increase in tariff)	38	76
Gain (decrease in tariff)	01	2
Non response	11	22
Total	50	100.0

Source: Field Survey January 2009.

then she turns from her economic philosophy of a mixed economy to a full scale capitalist system. So, Nigeria draws close to a state described by
Lenin (1949) when he remarked:

> "Private property is robbery and a state based on private property is a state of robbers who fight to share the spoils".

It should be noted that the most effective form of privatization is that which involves natural resources to which the entire public has equal right of enjoyment (Nigeria 1999 Constitution). So Nigerians, especially the grassroots must be compensated for the loss suffered from the implementation of the privatization policy by the Nigeria Government.

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