

## **Corruption in Nigeria: the Public Enterprises Reform Experience, 1999-2007**

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### **Abstract**

The paper assesses the impact of corruption in Bureau of Public Enterprises (BPE) and the privatization of Nigeria Public Enterprises between 1999 and 2007. It observed that since the promulgation of the BPE Act which is officially known as Public Enterprises (Privatization and Commercialization) Act no. 28 of 1999 and the subsequent inauguration of the bureau and its parent body, National Council on Privatizations (NCP) as an agency of the federal government with a clear mandate to privatize and commercialized public enterprises as part of public enterprises reform programme in Nigeria; it has been dogged by a lot of controversies. The issue of corruption has been a major challenge confronting the agency from meeting its stated objectives and its subsequent abysmal performance between 1999 and 2007. The data was basically sourced using a combination of both primary and secondary methods. The data was analyzed using analytical method. Based on the data collected unanalyzed, the paper therefore, submits that despite obvious corruption and other manipulations in the bureau, an effective leadership that would ensure the adherence of due process, which is the catalyst for instating the culture of checks and balances, rule of law, probity, transparency, accountability and sanity among others would break the critical jinx of impunity in the bureau and the country at large.

**Keywords:** *Corruption, Public enterprises, Privatizations, Bureau of public enterprises and Nigeria*

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### **Background to the Study**

The Federal Republic of Nigeria government embarked on privatization which is the transfer of productive operation, assets and other economic rights from the public sector to the private sector as a result of non-performances of public enterprises earlier established to consolidate the political independence maintain control over national resources and foreign enterprises which tended to be monopolized. In fact, public enterprises in Nigeria were used to help, protect both bureaucratic and political leaders to expand, protect their position and implement their policies. For instance, before privatization, the total investment in the public enterprises sectors was well above US\$35 billion involving US\$12.5 billion in equity, US\$10.2 billion in government loans, and US\$11.5 billion in unspecified and unrecorded subventions in several enterprises. Collectively, the investments yielded a meager return of US\$1.5 billion in dividends and loan payments from 1980 to 1987 (Abdulkadir, 2011, p. 7).

The severity of the economic crisis in the mid-1980s led to the introduction of the Structural Adjustment Programme (SAP) that began in 1986. SAP components included devaluing the Naira, removing domestic fuel subsidies, liberalizing trade, prioritizing investments in the agricultural sector, privatizing and commercializing inefficient public enterprises and liberalizing rules governing foreign participation and private investment in industrial and manufacturing activities (Khan, 1994; Umedon, 1992). This meant that the substantial amount of money hitherto pumped into these corporations annually could no longer be sustained by the Federal Government.

All these worsened economic situation, and the government altered some of the basic structures of the economy, such as the introduction of Economic Stabilization Act meant to revamp the economy in April 1992; through the imposition of austerity measures and measures to control smuggling. However, the sign of weakness in the public sector continued to increase as protection from competition, bankruptcy and takeover allowed them to become inefficient. The Nigeria government took some measures that prune drastically public expenditures such as wage freeze and banning imports of certain goods and services, changing the colour and denomination of national currency (Naira) were also part of the measures taken in 1984 by Federal Government as to demonetize Naira notes, smuggled out of the country and used in black market (Orluwene, 2013).

The situation reached an alarming proportion with the deep internal crises that included the high rate of inflation, unemployment, external debt obligation and foreign exchange misalignment. Nigeria government was advised strongly by the world lending financial institution/agencies such as Bretton Woods Institution (the IMF and World Bank), London and Paris Clubs to divest from her public enterprises as one of the condition for economic assistance (Nwoye in Orulwene, 2013).

Consequently, the government of Nigeria therefore proceeded and embarked on privatization and liberalization of Nigeria Public Enterprises with the enactment of Privatization and Commercialization Decree no. 25 of 1988, followed by the BPE Act no. 78 of 1993 that repealed the 1988 decree. By 1999, the BPE as well as NCP were established through the promulgation of Public Enterprises (Privatization and Commercialization) Act no. 28.

Since 1999 that BPE took over the exercise, there has been a lot of disagreements. Issues of corruption, accountability, transparency and probity among others have arisen and its subsequent abysmal performance gave rise to this undertaken.

### **Theoretical Framework**

The neoliberal movement that made government abstain in management of business but only to provide the enabling environment. As the classical analysis of eliminating budgetary deficit hence liberalizing the economy as to attract foreign direct investment (FDI) in that the neo-classical analysis of corruption did not take recognition of the fact that the opportunities for corruption put in place by state intervention are not meant for economic development. Rather the red-tapism and other bureaucratic measures/restrictions created opportunities for public offices to extract bribes from private citizen seeking to circumvent certain restrictions or rules thereby aiding in damaging the economy (Abdulkadir, 2011).

Corrupt acts are also associated with laws that enable interventions that have no potential to assist economic development. These include protection for industries that have no catch-up potentials, or excessive regulation and requirements of permissions that have no function except to enable bureaucrats to extract bribes from businessmen. These dysfunctional interventions cause direct economic damage (Khan, 2006). Corruption is equally associated with the implementation of interventions that are necessary for the economy or even the polity, but which are allowed and regulated by law. These include, managing taxes and tariffs to promote catching-up by domestic industries, regulating financial markets, allocating land and licensing of land use, and allocating credit or prioritizing infrastructure construction. Corruption in these areas has more effect on the economy, in terms of growth and distribution. Also, corruption is associated with the implementation of necessary interventions that are not, or cannot be, regulated by law, such as political stabilization through off-budget transfers, and interventions to accelerate and promote emerging capitalism through the process of 'primitive accumulation' – illegal and legal non-market processes. The worst type of corruption arises where a social order has broken down completely and corruption is associated with illegal interventions that have no economic or political rationale for any group except the predatory officials that are involved (Khan, 2006). This is based primarily on the coercive power of small groups to extort from the majority.

Corruption, economic growth and the quality of political institutions tends to be related through a complex web of simple linear relationships. Indeed, the differences in the quality of political institutions particularly their capacity to hold political leaders accountable for their actions while in office is a source of nonlinearity in the mapping between corruption and growth (Aidt, Dutta and Sena, in Abdulkadir, 2011, p. 3). Economic growth implies that the resources on which leaders extract rents expand over time, thereby making them more eager to hold on to political power and create a benign feedback loop between economic growth and corruption. Corruption, very often, creates a collective problem where several individuals or firms have an incentive to pay bribes in an effort to obtain preferential treatment. The official can either allocate the rent according

to formal policy rules, or offer the clients preferential treatment in exchange for bribes. Variables like social capital, cultural values or ethnic heterogeneity are often correlated with measures of corruption and bureaucratic inefficiency (Knack and Keefer; Mauro; Kingston, in Abdulkadir, 2011, p. 4). Corruption could be deduced from the perspective of a principal-agent problem between the state and government officials, focusing primarily on the state's optimal choice of monitoring intensity, incentives and sanctions to constrain official's behavior.

### **Objective of the Study**

This study only take cognizance of economic corruption, including bribery (kick-backs, pay-off, collusion to defraud the public, economic privileges given and disbursement of public property to special interest groups), fraud (trickery, swindle, deceit, forgery), and embezzlement (appropriation, large-scale embezzlement and misappropriation through public tender and disposal of public property, theft of public funds).

### **Conceptual Clarification**

In trying to understand the dynamics of corruption in the privatization of public enterprises, there is need to examine the concept of corruption and privatization that is very critical. Corruption is a global phenomenon but specifically it is very rampant in Nigeria where it has expropriated the nation's wealth where nothing is left for the poor citizens. It is the breach or perversion of legal rules, established procedure, code of conduct or social norms, in the service of unethical or illegitimate ends has attracted invariably comments from scholars and other social scientists in Nigeria among others. Despite its prevalence, there is still no common agreement among them as to the conceptual and operational definition of corruption. However, the New Standard Encyclopedia Dictionary in Orluwene (2013, p. 337), describes corruption as acts viciously immoral, or depraved, capable of being bribed, or improperly influenced, dishonest, altered or debased by errors and changes. While the Independent Corrupt Practices Commission (ICPC), an agency that fights corruption in Nigeria in Jacob (2009, p. 195) see corruption as immorality, deprivation, bribery, dishonesty, false practices, debased changes, gratifications and rottenness. But Otite in Nwoye (2000), corruption means the perversion of the integrity or state of affairs through bribery; famous or moral depravity and generally the debasement of integrity (p. 6).

In the light of the above, corruption can be defined as the sidestepping of legally prescribed procedures, which regulate social action (Mathieu Defiem in Asobie, 2012, p. 6). Therefore, an anti-social behavior conferring improper benefits contrary to legal and moral norms, and which undermine the authorities to improve the living conditions of the people, hence a perversion or a change from good to bad (Jacob, 2009, p.195).

Privatization on its part is captured by the Privatization and Commercialization Act of 1988 and the Bureau of Public Enterprises Act of 1993 as the relinquishment of part or all of the equity and other interests held by the Federal Government or any of its agencies in enterprises whether wholly or partly owned by the Federal Government. Although privatization is not defined in the Public Enterprises (Privatization and

Commercialization) Act no. 28 of 1999, we can assume that it is deemed to have the same meaning. That is why to Ihome (2003) see privatization as variety of measures adopted by government by government to expose a public enterprise to competition or to bring in private ownership or control or management into a public enterprise and accordingly to reduce the usual weight of public ownership or control or management (p. 1). However, in a strict sense, he stressed further that privatization means the transfer of the ownership (and all the incidence of ownership, including management) of a public enterprise to private investors. The later meaning has the advantage of helping one to draw a line between privatization and other varieties of public enterprise reforms. It is also the sense in which the term has been statutorily defined in Nigeria.

However, privatization is of different forms or strategies such as transfer of state owned assets to private ownership, sale of shares, control of management of state owned assets, encouraging private sector involvement in public activities and shifting decision making to agents operating in accordance with the market conditions. Techniques and methods of privatization can be through the sale of shares, sale of assets, management or employees buy out, equity delusion, joint ventures, liquidation, management contract, lease or transfer. It is important to state that for privatization to take place, there must be in existence public enterprises, which is an organization operating or supposed to be operating on commercial principles, wholly or partly owned and effectively controlled by a public authority; it may have as its main function the provision of some infrastructural services, the direct manufacture of commodity or the extension of certain forms of assistance to the enterprises in the public sector. This is why it should be privatized and that privatizing the public enterprises is premise on the fact that the problem of public ownership will be turned around under private ownership for more efficiency and effectiveness that will lead to goods and services (Ozor in Orluwene, 2013, p.33).

### **Corruption and Bureau of Public Enterprises**

In the course of the study, it was discovered that one of the major corruption act in BPE is lack of transparency and accountability in the management of privatization proceeds. This encumbered the functioning of the BPE. Contrary to Section 19 (2) of the BPE Act and Section 80 (3) of the 1999 Constitution, which stipulate that:

The funds in the account established under sub section (1) of this section shall be utilised for such purposes as may be determined by the Government of the Federation from time to time, which is consistent also with provision of Section 80 (3) of the Constitution of the Federal Republic of Nigeria 1999 as amended which states “No moneys shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been authorised by an Act of the National Assembly”.



Table 1 below shows the BPE Accounts in Commercial Banks and CBN.

**Table 1: The BPE Accounts in Commercial Bank and CBN**

S/N	Banks	No. of Accounts
1	CitiBank	2
2	UBA	1
3	Standard Chartered	3
4	Bank PHB (Keystone Bank)	1
5	CBN	3
6	Zenith Bank	1

**Source:** Field Study (2011)

The table shows that rather than operate two accounts (one in CBN where all privatisation proceeds are to be lodged and one account in a commercial bank where BPE annual subventions are paid into), the BPE had over ten accounts in five commercial banks and CBN.

More so, the accounts were operated in an opaque manner as there were instances (cases) of unauthorised withdrawals by successive DGs of BPE. This is clearly show in table 1.2 and records below.

**Table 2: Privatisation Proceeds**

Description	Amount (₦)
Purchase Consideration	249,387,421,158.00
Other sources	52,330,005,132.19
<b>Total</b>	<b>301,717,426,290.19</b>
Privatisation cost/expenses	127,831,749,000.00
Other expenses on privatisation	23,233,626,000.00
<b>Total</b>	<b>151,065,375,000.00</b>
Transfer to Privatisation Proceeds Accounts with CBN	142,426,076,737.42
Balance with BPE	<b>8,225,974,552.77</b>

**Source:** Field Study (2011)

As established by the Senate Ad-hoc Committee on BPE, the following unauthorized withdrawals from BPE proceeds are made:

- (a) All successive DGs of BPE used privatization proceeds to pay transaction expenses, consultancy fees and terminal benefits without appropriation by the National Assembly.
- (b) Former DG of the BPE, Mrs Irene Chigbue used privatization proceeds to execute capital projects (Office Extension) in violation of Section 19 (2) of the Act.
- (c) That N900m from the privatization proceeds was used as loan for the recapitalization of NICON Insurance Plc in violation of Section 19(2) of the Act.
- (d) That N1 billion from privatization proceeds was used as loan to Nigeria Re-insurance Plc for recapitalization in violation of Section 19(2) of the Act.
- (e) That a total sum of N301,717,426,290.19 was realized as proceeds since 1999. And the sum of N204,572,301.44 was trapped in distressed banks:

**Table 3: Distressed Bank Accounts of the BPE**

S/N	Banks	Amount (₦)
1	Icon Ltd Merchant Bankers	27,117,000.00
2	Merchant Bank of Africa	14,750,000.00
3	Continental Merchant Bank Ltd.	29,161,000.00
4	Century Merchant Bank	Not provided
5	Rims Merchant Bank	Not provided
6	City Express Bank	230,634,433

**Source:** Field Study (2011)

In spite of the above, large scale financial mismanagement also manifested in the BPE, a former DG of the BPE, Julius Bala, revealed to the Senate Ad-hoc committee probing the BPE that the management of the Bureau under El-Rufai was indicted by World Bank mid-term report. According to the report, there were no proper internal audit arrangements. Manual financial system was used. There were major lapses in the retirement of advances; inadequate transparency income transaction, fiduciary oversight and accountability of Privatization Proceeds Accounts (PPA) were inadequate (Ehikioya, 2011, p. 4).

A legal officer in the office of the DG, as well as other respondents, expressed the view that these numerous stages of privatization as (1) advertisement of expression of interest (EOI), (2) submission of expression of interest, (3) evaluation of EOIs, (4) bidding documents, (5) due diligence exercise, (6) submission of bids, (7) evaluation of technical bids, (8) financial bidding round, (9) signing of final documents, (10) financial close, and (11) transfer of management control (BPE, 2007, p. 23) are susceptible to corrupting influences. In his remarks, 'these prolonged stages give room for corrupting influences in that the staff of the Bureau may be tempted to circumvent due process and set aside the rule of law for personal gains or interest'.

In the same vein, the Senate Ad-hoc Committee investigating the BPE discovered the following under-listed corrupt practices and established thus:

- (a) That Aluminium Smelter Company of Nigeria (ALSCON) – BFIG Corporation of U.S.A. was declared preferred bidder and winner with a bid of \$410m USD after going through the bidding process, but was denied its legal right to negotiate terms, sign Share Purchase Agreement and pay 10% initial payment within first 10 working days of execution of the SPA as agreed by the parties in writing at the Pre-bid conference.  
However, BPE memo to NCP dated 11 October, 2005 conveyed approval for a Willing Seller Buyer to Rusal/Dayson for \$250m USD and cancelled BFIG Corporation \$410m USD offer.
- (b) That from BPE submission at the public hearing (i) Glencore AG of Switzerland; (ii) ALCOA Inc of America; (iii) RUSAL (Bratsk) Aluminium of Russia; (iv) Ferrostaal AG of Germany and (v) ALCAN of Canada, participated. But there was no mention of any of these bidders offers in the Willing Buyer Seller approval memo.

- (c) That Dayson Holdings did not pay the \$50m USD within 5 working days of signing the Share Purchase Agreement on 3<sup>rd</sup> February, 2006 as specified to complete the transaction process. Rather, Dayson Holdings paid \$130m on 27<sup>th</sup> of February, 2007 as final payment after an addendum to the SPA was signed in November, 2006.
- (d) That Aluminium Smelter Company of Nigeria was grossly undervalued, having being built for \$3.2 billion USD and was privatized by the BPE for \$130m USD excluding \$120m USD Imo River Channel Dredging cost from the purchase consideration.

Also, that on the gas subsidy granted to Rusal/Dayson Holdings BV (on the Gas Supply Agreement) as at August 2011, N800m in arrears was to be paid by the Federal Government of Nigeria on behalf of the core investor. That import duty waiver was granted to Rusal/Dayson Holdings BV in the transaction (Senate Ad-hoc Committee Report on BPE, 2011:133-134).

Furthermore, various Chief Executives of the BPE at various times were subjected to intense pressure by powerful persons in and outside government to “depart from the process” in the privatization exercise. Former DG of the BPE, Mallam El-Rufai alluded to this when he said that former President Olusegun Obasanjo stifled the sale of Nigeria Airways. Again, altercations between the former President and the former Vice President adversely affected the operation of the BPE. The BPE was made to operate in an environment where it received conflicting directives from the President and the Vice President. The latter was the chairman of NCP, which is the political and policy arm of the privatization exercise whose approval must be sought by the BPE before the sale of any public enterprises can be carried out. The BPE was, therefore, dogged by disagreement between the two highest political office holders, who ordinarily should provide policy direction for the agency. Irene Chigbue, a former DG of BPE, told the Senate Ad-hoc Committee probing the BPE that the feud between the former President and the former Vice President got to a point where the office of the supervising NCP under former Vice President Atiku Abubakar was treated as irrelevant. According to her, former President Obasanjo directed the BPE to avoid the NCP and transmit all matters relating to privatization to the President through the office of the Minister of Finance (Senate Ad-hoc Committee Report on BPE, in Orluwene, 2013, pp. 135-6).

It was such that there was a violation of due process and the Act establishing the BPE where all documents were passed to the former President who gave all approvals without inputs from the chairman of the NCP. The former DG added that the former Minister of State (Finance) under Obasanjo, who is now a serving senator, usurped the power and functions of the Vice President as the Chairman of NCP. From the Senate Ad-hoc Committee revelation, the former President, Olusegun Obasanjo, abused due process by executively approving the privatization of 42 companies out of 122 successfully privatized companies. The implication of this is that the former president single handedly privatized thirty four percent (34%) of the nation's successfully privatized enterprises (Orluwene, 2013).



These breaches of due process impact negatively on organizational goals, the case of BPE clearly showed that several financial malfeasance and abuses were directly linked to the near absence of lack of due process. Some of the abuses found are undervaluation of companies slated for privatization, violation of bidding processes, opening and operation of illegal bank accounts contrary to both BPE Act and constitutional provisions, systemic corruption, weak post-privatization monitoring, faulty recruitment process and overbearing political interference. There is no doubt that adherence to due process would ensure that most of these problems noted above are mitigated as well as create the enabling environment for BPE to perform its statutory functions (Orluwene, 2013, pp. 143-4).

### **Conclusion**

The paper examined the critical issues of corruption, privatization and the reasons why public enterprises was established and the essence of the privatization as to avoid the colossal loss of revenue from these enterprises. Why corruption was an instrument that impeded and impacted negatively in the public enterprises reform was also established in that the use of privatization fund was not transparent because often government prerogative of final approval is confined to a small group of government officials, hence recklessly used and unaccounted for.

### **Recommendation**

The study recommends that due process and rule of law should be followed in the use of privatization funds. The proceeds generated and its utilization should be published. The performance of privatized companies should be published. This transparency and disclosure would help fight corruption and avoid hiding the status of most activities and making it accessible to the public. There is need for legal safeguard because absence allows for fraud and other corrupt acts.

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