AN ANALYSIS OF THE LEGAL FRAMEWORK ON PRIVATIZATION OF THE NIGERIAN POWER SECTOR

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Abstract

Nigeria has since suffered from epileptic power supply for decades. Over the years, attempts have been made to improve its performance through privatization. The study explains the rationale for the implementation of the privatization program in Nigeria power sector and discusses the legal framework for its implementation. It also presents a critical analysis of the various legal provisions that govern the regulatory institutions, evaluates them in relation to their regulatory mandates and recommends ways of improving on the effectiveness and efficiency of these institutions. In examining these laws, this work seeks to identify the lacunae, drawbacks and limitations existing in these regulations and advance recommendations towards the efficient administration and implementation of the Electric Power Sector Reform Act.

1. Introduction

A full appreciation of the legal framework for privatization of the electric sector in Nigeria entails not only an understanding of the laws governing the process, but of the process itself. Indeed, every stage of the privatization process has legal implications. The term privatization has been defined as the relinquishment of a 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[1]. The walls of our privatization structure will not stand unless the right legal, institutional and financial framework exists[2]. This has two broad positive effects. First, the right framework engenders a conducive environment for private sector participation and growth. Secondly, it enables the Privatization agency to carry on more confidently, being conscious of the definite parameters within which to operate. Since privatization, the Nigerian Electricity Supply Industry has been faced with crises including regulatory inconsistencies, political interference among others.

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[1]A Soyebo *et al,* A Review of Nigeria's Privatization Programme (2001) Research Report No 3, Ibadan, Nigeria: Development Policy Centre

[2] D Arowolo *et al,* (2015) "Privatization in Nigeria: a critical analysis of the virtues and vices *International Journal of Development and Sustainability* Vol.1 No.3 (2012): 785-796 792 www.isdsnet.com accessed on 10 May 2019.

It is evident from this research that the Nigerian government seems to be taking concerted actions to reform the Nigerian power sector through privatization.[3] This is to enable growth and expansion of the sector, bring radical changes to improve and strengthen the power sector, enhance accountability and minimize corruption, and create a more competitive electricity market where efficiency and effectiveness dominates.

If the objectives of Privatization in Nigeria had been achieved then there would hardly be cause for analyzing the privatization process. The truth however is that Privatization, where successfully carried out, is a dependable solution for the problems of public enterprise and holds great potential for invigorating the economy and helping to improve the quality of life of the people. Yet it should be carried out in a manner that is not subversive of the constitution and law.

Furthermore, this research work in examining the legislative framework for Privatization of the Power sector in Nigeria identified that some of the provisions of the enabling legislation fall short of the ideals enshrined in our constitution (which serves as the grundnorm for the validity of all other legislation). It can be safely concluded that despite the Privatization of the Electric Power Sector, the problem of declining electricity generation, transmission and distribution has not improved as expected[4]. One of the issues identified is the need for a decentralized energy system. The legal regime of the power sector is one area that clogs the wheel of actualizing the objectives of the power sector reform through privatization. There is therefore a need for a decentralized energy system. The intendment of the Constitution is for states to adequately provide electricity power in their various states to complement the efforts of the central government has been put in abeyance.

1.1 History of Electricity Governance in Nigeria

Electric power came to Nigeria in 1896 with the establishment of the first generating plant by the British colonial government[5].The Nigerian Electricity Supply Company (NESCO) was later established and commenced operations in 1929.[6]In 1946, the Nigerian government electricity undertaking was established to take over the responsibility of electricity supply in Lagos state, under the jurisdiction of the public

[3]O Arobiekei (2012). "Electrical power outage in Nigeria: History, cause and possible solutions." *Journal of Energy Technologies and Policy volume* 2, no. 6 , p 18-23.

[4] C Awosope (2015) "Nigeria electricity industry: Issues, Challenges And Solutions" public lecture series of Covenant University Ota, Nigeria. Volume 3.Number 2

[5] H A Sanyaolu. "Electricity power sector reform in Nigeria: Utilizing restructuring and regulatory reform as a means of achieving a more efficient and competitive sector." PhD dissertation,Thesis (CEPMLP, 2008).

[6] See Electricity Ordinance Act of 1929.

works department (PWD)[7].Four years later, precisely in the year 1950, the Electricity Corporation of Nigeria (ECN) was created pursuant to the Electricity Corporation Ordinance 1950[8] while the Niger Dams Authority (NDA) was also established about the same time by an Act of Parliament.[9]

In April 1972[10], the operation of ECN and NDA were merged into a new organization known as the National Electric Power Authority (NEPA)[11]. The ECN and the Niger Dam Authority (NDA) were merged to become the National Electric Power Authority (NEPA) with effect from 1st of April, 1972[12]. .NEPA's responsibilities cut across the Nigeria territorial borders as it was also responsible for the supply of electricity in the neighbouring Countries of Chad and Benin Republic[13]. In 1988, the Commercialization and Privatization Decree No 25 came into force[14]. The Decree made provisions for the Commercialization of Nigerian Public Enterprises, NEPA, inclusive. The Decree provided for both full and partial commercialization. NEPA fell under the category of public enterprises to be partially commercialized.[15] This reform still did not get the desired effect of producing an efficient Electricity sector. This led to the present reform, which includes Restructuring (unbundling) and Privatizing the Electricity sector. The present Reform started in 2000 with the formation of the Electric Power Implementation Committee (EPIC)[16]. This Committee prepared the National Electric Power Policy (NEPP) in 2001[17] and Electric Power Sector Reform Act (EPSRA) 2005[18]. The ESPRA is the legal backing for the Reform. The Act also removes operational and regulatory responsibilities of the electricity sector from the

[7]O Kadirietal, Issues and challenges of ownership and privatization of power stations in *Nigeria Journal of scientific research and reports* volume 8 number 3 (2005). Article no: jsrr:18296
[8]See ElectricityCorporation Ordinance No. 15 of 1950.
[9] N Manafa, " Electricity Development in Nigeria", Rasheen Publisher, Lagos, 1995, pp. 37-51
[10]O Folunrunsho *et al* " The Nigerian power system till date: A review" *International journal of advance foundation and research in science and engineering*(IJAFRSE)Volume1.number4(2014)p.20-21.
[11]J.O. Ebewele."Electricity Sector Reform and the Challenges Public Lecture Series of Covenant University". Vol. 3, No. 2, October, 2014
[12]C M Nkeiruka: "unbundling and privatization of the Nigerian electricity sector: Reality or myth.?"(LL.M paper, CEPMLP, university of Dundee), 2010 at p.2
[13] J Ikemeetal. "Nigeria's electric power sector reform: what should form the key objectives?" Energy Policy volume 33 No.9 (2005):p 1213-1221.
[14] M ABabatund *et al*,"The demand for residential electricity in Nigeria." In A bound testing approach. A paper presented at the 2009 Conference of the African Econometric Society. 2009.
[15] D Adeyemoetal."A review of privatization and public enterprises reform in Nigeria."*Contemporary Management Research* volume 4, no. 4 (2008).
[16] H Sanyaolu, Electricity Power Sector Reform in Nigeria: Utilising Restructuring and Regulatory Reform as a means of Achieving A more Efficient and Competitive Sector. THESIS (CEPMLP, 2008).
[17] NEPP envisions a three (3) stage legal and regulatory reform of the power sector: the transition stage, medium term, and long run competition structure.
[18]The Electric Power Sector Reform (EPSR) Act 2005, Cap E7, (LFN), 2004.

federal government. This involves change in the industry structure, with the aim to stipulate competition, choice and promote financial accountability, unbundling into constituent factors (generation, distribution and transmission), establishing commercial trading arrangements and finally change in control and ownership of the electric utility[19]. The reform process kicked off in 2005 with the unbundling of NEPA into eleven distribution companies,16 generation companies, a single transmission company and the incorporation of an initial holding company(Power Holding Company of Nigeria) PHCN[20].

The model of electricity governance in Nigeria under the National Electric Power Authority (NEPA) is radically different from the regime of the EPSR Act.[21] A major difference is that the NEPA Act intended a wholly state-owned and government-controlled electricity sector in Nigeria.[22] NEPA merely served as a statutory body to effectuate state monopoly in the sector.[23] The EPSR Act expressly provides for a liberalized regime of electricity, and promotes competition and level playing field in the power sector. It embraces radical, private sector involvement by way of direct and indirect investments, including technical partnerships with the Nigerian government.[24] The new regime makes a sharp departure from the old paradigm of state monopoly in electricity governance in Nigeria.[25]

2. Electricity Governance in Present Day Nigeria

[19] I Chigbueetal"Privatizing the National Economy: The Journey so far." Nigeria's Reform Programme: Issues and Challenges Ibadan, Vantage Publishers (2007): 419-444.

[20]Ibid.

[21]See the National Electric Power Authority (NEPA) Act, Cap N 33, Laws of the Federation (LFN) 2004.

[22] See Y Oke, "Beyond Power Sector Reforms: The Need for Decentralized Energy Options (DEOPs)" (2012) Nigerian Journal of Contemporary Law, University of Lagos,volume 18 No.1 p. 67 at 68-71. See also Y Oke, "National Grid or National Greed", The Punch Newspaper (7 December 2011) and (8 December 2011).

[23]See the National Electric Power Authority (NEPA) Act, Cap N 33, Laws of the Federation (LFN) 2004.

[24] See Y Oke, "Manitoba Hydro and Electricity Undertakings in Developing Countries: The Case of Nigeria" Manitoba Law Journal,(2012) volum36 No 1 at 37-65.

[25] See sections25, 26, 28, 29, and 82 of the Electric Power Sector Reform (EPSR) Act 2005, Cap E7, Laws of the Federation of Nigeria (LFN), 2004 (. For example, sections 80 and 81 of the EPSR Act provide for consumer protection, and require high performance standards by the operators to engender maximum utility and safety to consumers of electricity. Regrettably, section 27 of the repealed NEPA Act declares that NEPA is not responsible for safety either of the consumers or for the efficiency or safety of their cables andappliances of consumers. Section 35 of the NEPA Act forbade any other person or state government agency from obtaining licenses to operate power plants or generate electricity, in contradistinction with the level-playing, competitive structure under the EPSR Act of 2005.

2.1 The Electric Power Sector Reform Act, 2005

The unfortunate state of the Nigerian Electricity sector gave rise to the current enactment of the Electric Power Sector Reform Act 2005.[26] The enactment which was passed by the National Assembly was to set the machinery in motion for the introduction of private participation in the Nigerian Electricity Supply Industry (NESI) [27]with a view to increasing market competition and service efficiency. The national council on privatization was charged with handling the privatization programme.[28] The long title of the Act states that it is:

> An Act to provide for the formation of companies, to take over the function, assets, liabilities and staff of the National Electric Power Authority, to develop competitive markets, to establish the Nigerian Electricity Regulatory Commission, to provide for the licensing and regulation of the generation, transmission, distribution and supply of electricity; to enforce such matters as performance standards, consumer rights and obligations, to provide for the determination of tariffs, and to provide for related matters.

It apparent that the Act was designed to launch the Nigerian electricity supply industry into a new regime so as to enhance productivity and promote efficiency.

2. 2 Establishment and Nature of the Nigerian Electricity Regulatory Commission (NERC)

The Nigerian Electricity Regulatory Commission (NERC) is a creation of the Electric Power Sector Reform (EPSR) Act, 2005. The nature of NERC as corporate personality avails it with the opportunity of having a perpetual succession, right to own property, right to borrow, right to sue and be sued among others[29]. As a statutory corporation, NERC assumes an independent life distinct from those of its Commissioners and other officials as it were. This particular characteristic ensures the continued existence of NERC with or without its Commissioners or controllers of the past, present or future. It also has a right to acquire property just like every other natural person[30].

NERC as a commission is vested with enormous rights and duties which affect the lives and welfare of Nigeria and the Nigerian economy at large. These rights and duties are made operational in law partly through the right to sue and be sued. Every

[26] Y Oke "Energy Resources Governance for National Development: Options for Socially Sustainable Electricity Generation, Transmission and Distribution in Nigeria." Unilag journal of humanities volume 3, no. 1 (2015).
[27] ibid
[28]Section 24(1) of the Electric Power Sector Reform (EPSR) Act 2005, Cap E7, (LFN), 2004.
[29]Section 31(1) of the Electric Power Sector Reform (EPSR) Act 2005, Cap E7, (LFN), 2004.
[30]Y Oke Nigerian electricity law and regulation(Lawlords publications 2013)p.38

corporate personality is vested with the right to sue and be sued. This right was provided for in law to create room for the enforcement of mutual obligations between the commission and other individuals, natural or artificial[31]. Since the commission as a juristic person is vested with the functions enumerated in the enabling law[32] and which functions can affects the rights and obligations of other persons positively or negatively, it can be subjected to the supervisory jurisdiction of the courts so as to redress any wrong it may have committed[33].

2.2.1 Goals and Objectives of the Nigerian Electricity Regulatory Commission (NERC)

The commission is an innovation of EPSR Act with the principal objective of ensuring a successful privatization of the Nigerian electricity power sector in a bid to improve output and promote quality service delivery to the Nigerian public[34]. To this end the Commission has set up some goals as its milestones as it strives to attain the objectives for which it was established. These goals are as follows:[35]

Goals 1: Uninterrupted Electricity

Constant and reliable power supply is critical to the growth of the Nigerian economy. The supply of power is expected to cover a wide national footprint so as to maximize access to electricity in Nigeria. Through appropriate regulations, the commission seeks to ensure that the nation gets safe, adequate, reliable and affordable services in the generation, transmission, distribution and trading of electricity.

Goal 2: Private Sector Participation

The commission is entrusted with encouraging the participation of the private sector in the electricity market. The commission is also to ensure that regulations which encourage profitable pricing and effective competition among market players are developed and implemented, and that appropriate codes of conduct and rules of engagement are also enforced to ensure an efficient and an investor-friendly market. The commission is to monitor industry operators and prevent abuse of market power.

Goal 3: Consumer Protection

[31] ibid
[32]The Electric Power Sector Reform (EPSR) Act 2005, Cap E7, (LFN), 2004.
[33]section 61 of the Electric Power Sector Reform (EPSR) Act 2005, Cap E7, (LFN), 2004.
[34] Nigerian Electricity Regulatory Commission, Goals and Objectives online at: http:// www.nercng,org/index.php/aboust-us/goals-and-objectives. Accessed May 1st 2019
[35] F Sioshansi, (2006).Electricity ,Market reform: What have we learned? What have we gained? The Electricity journal volume19, No 9(2006):p.70-83

The Commission is charged with ensuring consumers fulfill their obligations by paying for power used and that their interests are protected. In discharging this responsibility, the Commission will:

a) Develop in consultation with licenses, customer service standards;
b) Develop fair pricing rules;
c) Facilitate constant communication with consumers to ensure they understand their right and obligations and;
d) Ensure materials on consumer rights (safety, service, etc.) are up to date, available and readily accessible.

The Commission is also to establish and ensure an effective dispute resolution mechanism to guarantee consumer protection while also encouraging private sector participation.

Goal 4: Fair Regulation

The Commission has to ensure that it is even-handed in its regulation of the industry and that there is vigilant over sighting of the industry. It has to be both firm and fair in enforcement of rules and regulations. These are the four major goals of the commission that if achieved and sustained will geometrically affect the growth of the electricity sector in Nigeria[36].

3. Some Legal and Constitutional Issues in the Electric Power Sector Reform Act 2005

3.1 Need for a decentralized System:

In a number of ways, the provisions of the Electric Power Sector Reform Act 2005 (the Act) would appear to contradict the Constitution of the Federal Republic of Nigeria (as amended). The constitution provides for electricity regulation under items 13 and 14 of the Second Schedule, Part II, Concurrent Legislative List to the effect that:

> The National Assembly may make laws for the Federation or any part thereof with respect to-(a) electricity and the establishment of electric power stations; (b) the generation and transmission of electricity in or to any part of the Federation and from one State to another State.

A potential challenge in the sector is that, by virtue of paragraph 14, State Governments in Nigeria are at liberty to engage in licensing and regulation of electricity subject as provided by the Constitution. Item 14 states that a House of Assembly may make laws for the State with respect to –

[36] See the Explanatory Memorandum to the Electric Power Sector Reform Act, 2005

(a) electricity and the establishment in that State of electric power stations;
(b) the generation, transmission and distribution of electricity to areas not covered by a national grid system within that State; and (c) the establishment within that State of any authority for the promotion and management of electric power stations established by the State.

What is apparent from the above section is that the Nigerian Constitution provides for decentralized electricity governance. It is therefore curious why State Governments in Nigeria are yet to direct their attention to this gap.[37] While the Constitution provides for decentralized regulatory framework, the EPSR Act provides for a centralized regime, which is outside the contemplation of the Constitution, thus making it null and void to the extent of its inconsistency.[38] The Act also established an agency, to be known as the Rural Electrification Agency (REA).[39] The REA administers the Rural Electrification Fund (REF), a designated fund to provide, promote and support rural electrification programmes which ordinarily comes within the ambit of off-grid electricity structure for State regulation.

3.2 Rural electricity

Rural electricity is off-grid, and comes squarely within the ambit of regulatory purview of the State Governments in Nigeria 40 bearing in mind that the Constitution vests Local Government administration in the state Governments.[41] The objective and purpose of the REF is a noble one, at least on paper, and are similar to that of the regulatory agency, the REA.[42] However, noble as its objectives might seem, the REF has generated more ripples than intended in its short history due largely to corruption and mismanagement of the REF.[43] This indeed, vesting Rural Electrification Agency (REA), Rural Electrification Fund (REF), and Rural Electrification Project (REP) in the hands of the Federal Government runs counter to the intendment of the Nigerian

[37] See items 13 and 14 on Electric Power, in the Second Schedule, Part II, Concurrent Legislative List, Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).
[38] Ibid, section 1 (1) and (3) of the CFRN, 1999 (as amended).
[39] S. 88 (1) of the EPSR Act,See also section 31 of the Electric Power Sector Reform (EPSR) Act 2005,Cap E7, Laws of the Federation of Nigeria (LFN), 2004.
[40]See items 13 and 14 on Electric Power (F), in the Second Schedule, Part II, Concurrent Legislative List, Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended).
[41]Section 6 (7)Constitution of the Federal Republic of Nigeria CFRN 1999 (as amended).
[42] See section 88 (13) (a-d) of the EPSR Act, see also section 31 of the Electric Power Sector Reform (EPSR) Act 2005, Cap E7, Laws of the Federation of Nigeria (LFN), 2004.
[43] The arrest of some principal officers of the National Assembly over the Rural Electricity Project by the Economic and Financial Crimes Commission (EFCC) has further reinforced the argument on the current structure of the electricity governance in Nigeria. seeOke, Yemi. "Energy Resources Governance for National Development: Options for Socially Sustainable Electricity Generation, Transmission and Distribution in Nigeria." Unilag journal of humanities volume 3, no. 1 (2015).

Constitution. An attempt to bring 'off-grid' subject within "National-Grid" is tantamount to what can aptly be called "National Greed".[44]

3.3 Captive power generation

Power to regulate captive electricity generation should ordinarily vest in the State Governments. Therefore, the NERC Regulations for the Granting of Permits for Captive Power Generation, 2008[45] is, ipso facto, unconstitutional. Under this regulation, the NERC grants captive electricity permits to an individual, a company, partnership or any association of individuals whether incorporated or not.[46] The word "Captive Power Generation" means generation of electricity in excess of one (1) MW for the purpose of consumption by the generator, and which is consumed by the generator itself, and not sold to a third-party".[47] The underlining objective of the regulation is to streamline the procedure for power generation by interested person(s), groups or corporate organization in excess of 1 MW, but without the intention of trading or engaging in the sale of electricity to a third-party.

There is no direct or specific provision under the Act authorizing the NERC to regulate captive generation of electricity. Section 62 of the EPSR Act expressly excludes captive generation. It only provides that no person shall construct, own or operate an undertaking for the purpose of electricity generation, transmission, distribution, systems operation or electricity trading in excess of 1 megawatt without a licence by the Commission.[4849] Like the REA, REF and REP; captive generation of

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[44] See Y Oke, "Beyond Power Sector Reforms: The Need for Decentralized Energy Options (DEOPs)" (2012) volume 18: No. 1 Nigerian Journal of Contemporary Law, University of Lagos, 67 at 68-71. See also Y Oke, "National Grid or National Greed", The Punch Newspaper (7 December 2011) and (8 December 2011). See also Y Oke. "The Pathway to Energy Liberation In Nigeria: Lessons For Namibia." Perspectives on Energy Security and Renewable Energies in Sub-Saharan Africa: 57.

[45] The Nigerian Electricity Regulatory Commission (NERC) Regulations for the Granting of Permits for Captive Power Generation, 2008 is made pursuant to Section 96 (1) of the Electric Power sector Reform Act, 2005 which gives the Commission power to make regulations for the granting of permits for captive power generation.

[46] See section 2 of the Regulations. The section defines 'person' to include an individual, a company, partnership or any association of individuals whether incorporated or not.

[47] See Section 2 (1) of the Captive Power Generation Regulations.The Nigerian Electricity Regulatory Commission (NERC) Regulations for the Granting of Permits for Captive Power Generation, 2008 is made pursuant to Section 96 (1) of the Electric Power sector Reform Act, 2005 which gives the Commission power to make regulations for the granting of permits for captive power generation.

[48] See generally Section 62 (1) (a-e), (2) and (3) of the Electric Power Sector Reform Act.See also section 31 of the Electric Power Sector Reform (EPSR) Act 2005, Cap E7, Laws of the Federation of Nigeria (LFN), 2004.

[49] A careful reading of the provisions of section 32 (1)(a), 32(1)(e), and 32 (2)(d) of the Act shows that the NERC is vested with no specific but general powers to create, promote, and preserve

electricity is also off-grid, and comes within the ambit of legislative competence and regulatory purview of the State Governments in Nigeria, in line with the intendment of the Constitution. As the sector develops, it is anticipated that State Electricity Regulatory Commissions would be established by interested State Governments in Nigeria to license private companies to engage in off-grid electricity generation, transmission and distribution including renewable electricity, captive electricity generation, rural electrification and others. The ultimate objective is to ensure regular supply of power for economic development. Therefore, Federal and State Governments must act as collaborators, not as competitors, in terms of electricity governance in Nigeria.[50]

3.4 Revocation of land for electricity purpose

Revocation of land for electricity purpose is another potentially sensitive issue capable of undermining private sector-led electricity sector in Nigeria.[51] Land ownership is a sensitive subject under the Nigerian law. The EPSR Act provides that for the purpose of electricity, a generation licensee, transmission or distribution licenses, or a proposed licensee for generation, transmission and distribution services may apply to the NERC in a manner as may be prescribed, for a declaration that the land is required for purposes of generation, transmission or distribution of electricity.[52]

The Commission may, subject to further conditions as it may specify, declare that the land identified by the licensee is so required, with such modifications to the boundaries as it may specify.[53] The exception granted for the purpose of a declaration requiring land for electricity purpose may include a condition that the physical environment be protected, and that there is no greater damage to the streets or interference with traffic that is reasonably necessary. The Governor, as custodian of land, shall be bound by a declaration that a piece of land is required for public (electricity) purposes. The Act provides, in clear and definite terms, that when the President issues a notice requiring the land for public purpose pursuant to section

efficient electricity industry including ensuring the safety, security, reliability and quality of service in the production and delivery of electricity to consumers as well as license and regulate persons engaged in the generation of electricity, transmission, system operation, distribution and trading of electricity.

[50] Y Oke, "Rural Electrification and Captive Power Generation" (2013) 3 Nigerian Lawyers' Journal, Law Digest (UK), summer 2013, at 51-52.

[51] See Y Oke, Nigerian Electricity Law and Regulation, (Lawlords, publication 2013) Chapter 5, at pages 83-95.

[52] See section 77(1) of the EPSR Act.See also section 31 of the Electric Power Sector Reform (EPSR) Act 2005, Cap E7, Laws of the Federation of Nigeria (LFN), 2004.

[53] Ibid, sub-section (3).

28(4) of the Land Use Act,[54] the Governor of a State shall revoke the existing right of occupancy in respect of the land and grant a certificate of occupancy in favour of the licensee.[55]

Revocation of land for 'overriding public interest' may not ordinarily justify revocation of existing rights of occupancy or allocation of same to a business enterprise simply because such entities trade in electricity or related activities. Companies holding either generation, transmission or distribution licenses are business enterprises trading with the ultimate objective of profit maximisation in electricity. Therefore, for the purpose of electricity undertakings, a declaration that the land is required for purposes of generation, transmission or distribution of electricity should be based on payment of compensation equal the current commercial or market value of the land in question as it exists in respect of compulsory purchase of land. Payment of commercially realistic amount in compensation would mitigate apparent social injustice of the declaration that a person's right of occupancy would be revoked for going concerns and mercantilists' entities engaging in electricity trading on ground of 'public need'.

Revocation of right of occupancy to land for purposes of electricity undertakings is a negation of total deregulation and commercialisation of electricity in Nigeria.[56] The principle of compulsory purchase, compared to revocation of right of occupancy, enables the acquiring authority assume the obligation of paying for the full value of the land to be purchased or taken.[57] The profit motive of the reformed electricity sector of Nigeria would appear to make 'compulsory purchase' a suitable mechanism compared to 'compulsory acquisition' of land for electricity purpose.[58] Compulsory purchase of land is particularly suitable where private-commercial motives intermingle with public interest as it makes for the payment of actual market value for the land purchased or acquired. Compared to revocation of right of occupancy where land is required for the purpose of electricity undertakings either for generation, transmission or distribution; a fair and just end is attained that makes for a win-win

[54] See Land Use Act, Cap L5, Laws of the Federation of Nigeria 2004.
[55] See section 77(9) of the EPSR Act.
[56] See Public Enterprises (Privatization and Commercialization) Act, The commercialization and privatization regime had listed NEPA as one of the state enterprises to be commercialized. See the Commercialization and Privatization Decree No. 25, 1988.
[57] See section 63 of the Lands Clauses (Consolidated) Act 1845. The provisions of the Act formed the basis of the decision of the Privy Council in Director of Buildings and Lands v Shun Flung Ironworks [1995] 2 AC, 111; [1995] 1 All ER 846; [1995] 19 EG 147. See Barry Denyer-Green, Compulsory Acquisition and Compensation (8thed.) (EG Books, London: 2005), at 168.
[58]See Y Oke, "Advocating Compulsory Purchase as an Alternative to Revocation of Title to Land for Electricity Purpose in Nigeria" at pages 6-19.Nigeria",(2013), at pages 36-59

situation unlike acrimonious relationship between land owners or resource-bearing communities and oil companies in Nigeria.[59]

3.5 Dispute Resolution Mechanisms

The Dispute Resolution Mechanisms[60] of the reformed power sector of Nigeria also appears potentially counter-productive[61] as they contradict the traditional principle of adjudication. For example, the provision for re-hearing[62] raises certain legal questions. Re-hearing a matter before the same panel that sat over the earlier proceedings, for whatever reason or motive, is immoral, unjust and illegal; it offends the principle of natural justice. The later decision arising from such rehearing would ordinarily be tainted with elements of bias. Re-hearing sometimes comes up before the same panel on certain conditions. However, it is advocated that rehearing in this circumstance should come up before a new panel.

4. Conclusion and Recommendations

Having looked extensively at the power sector reform in Nigeria through the process of privatization, the following recommendations would be necessary for the effective implementation of the privatization process**.**

1. The intention of the power sector Privatization is to encourage free competition within a regulated framework to improve quality services at reduced prices. There is a high tendency for successor companies to operate as private monopoly except it is controlled by specific competition or anti-trust laws. Establishment of a Competition Regulatory Commission would therefore go a long way in the success of the electric power sector reform.

2. National policies and laws such as the National Independent Power Project are initiated without the knowledge or participation of Nigerian legal professionals. There should therefore be a complete ju+dicial and juristic review to the reform process to enhance its juristic evolution and growth.

3. Corruption has remained the omnipresent obstacle that has eroded the very essence of the power sector privatization exercise, which is to provide efficient public service to the Nigerian public through the private sector at subsidized and competitive rates. The corruption makes the Electric Power

[59] Y Oke "Energy Resources Governance for National Development: Options for Socially Sustainable Electricity Generation, Transmission and Distribution in Nigeria." Unilag journal of humanities volume 3, no. 1 (2015).p.6-9
[60] See Rule 11 of the Business Rules of the Nigerian Electricity Regulatory Commission, 2006.
[61] Rule 17 (1) of the Business Rules of the Nigerian Electricity Regulatory Commission, 2006.
[62]Rule 22 (1) of the Business Rules of the Nigerian Electricity Regulatory Commission, 2006.

Sector Reform Act to be partially relegated or entirely discarded for expediency or self-interest in the conduct of the exercise. Certainly, enforcement of stricter corporate regulations and ethics will enhance the quality of the electricity been produced.

4. Despite the Privatization of the power sector, it is expected that Electricity generation should be decentralization rather what we have today is a sector that is still vertically integrated. What obtains in practice is a negation of the constitutional provisions to the extent that electricity regulation in Nigeria clearly depicts the opposite of a decentralized regime envisaged by the Constitution.

This research work in concluding vehemently states that privatization of Nigerian power sector, if properly implemented within a legal and regulated framework will lead to enhanced performance and better services. It will also bring about best global practices into the Nigerian power sector.