CORRUPTION, INVESTMENT CLIMATE AND ECONOMIC DEVELOPMENT IN
NIGERIA

By

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ABSTRACT

This paper examines some causes of corruption and evaluates the impact
of corrupt practices on investment promotion in Nigeria. It does these
against the background of domestic and global trends in anti-corruption
initiatives, with a view to fashioning a social-legal system that
efficaciously seeks to ensure that corruption does not stifle investment.
The paper confirms that corruption is a disincentive to investment, and
that its widespread as well as dynamic nature make its elimination most
seemingly intractable. It submits that there are enough anti-corruption
statutes in Nigeria, but enforcement is slack and corrupt. It concludes
that streamlined and automated bureaucracy, ethical reorientation, and
committed law enforcement are effective weapons to fight corruption and
to sanitize the Nigerian investment climate for economic development.

1.0 INTRODUCTION

National economic development has been a major policy thrust of successive national
development plans of Nigeria. The Second Development Plan sought to promote local
entrepreneurship through indigenization policies. With globalization and economic
liberalization, Nigeria transited from the indigenization to the promotion of both local
and foreign investment. Trade and investment liberalization has made the damaging
impact of corruption topical with the attendant result that Nigeria has not only enacted
anti-corruption stotutes and set up related enforcement agencies, but it also is
cooperating with international organizations to fight corruption.

As a Fulbright Fellow, I was a guest of the State Department of the United
States at a lecture that the American Treasury Secretary delivered and a cocktail that
followed at the Press Centre, Washington DC in the summer of 1999. In the lecture, the
American Treasury Secretary spoke at length of the increasing rate of corruption to an
alarming and scandalous proportion around the world, especially in developing countries.
He cited for case-study Nigeria where corruption poses such a threat to investment and
security to the extent that routine matters such as passing through Customs and
Immigration subject visitors as well as Nigerians to extortion of money by some public
officers in charge, and investment-related permits equally attract payment of bribes. It
is saddening to remark at the onset that anyone who knows Nigeria would not need the
Treasury Secretary to tell him about corruption in the country. From my experience,
before he mentioned Nigeria, the picture of corruption he painted in his speech was so

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much in tandem with the truth that, from my experience, I knew Nigeria was one of the
countries he contemplated.

Corruption pervades all facets of life. Among other things, it constitutes a
disincentive to investment initiatives and an inhibition to economic development. Because
of the threat it poses, there are ongoing municipal and international efforts and
cooperation to minimize, if not rid the environment of, it. However, corruption is so
dynamic that it seems to spread wider and faster than the initiatives against it. The
Formal rules against it seem not to be able to curb it, and its victims are, more often than
not, not easily identifiable. Therefore, the fight against it becomes difficult and
seemingly intractable. It appears then that one must agree with the American Treasury
Secretary that "there are so much formal rules [against corruption], but the informal
rules must change."

This paper examines the impact of corruption on investment and economic
development and evaluates some landmark initiatives against it so as to assess their
efficacy. It submits that the formal rules against corruption are largely adequate but
seemingly lacking in efficacy. Therefore, it recommends a streamlined, disciplined and
pragmatically automated bureaucracy, ethical reorientation and committed as well as
impartial law enforcement as ways out of the malaise.

2.0. **CORRUPTION**

The word "corruption" is from the Latin verb *corruptus* that means, "to break". The
Centennial edition of *Black's Law Dictionary* corruption as

An act done with intent to give some advantage inconsistent with official
duty and rights of others. The act of an official or fiduciary person who
unlawfully and uses his station or character to procure some benefit for
himself or for another person, contrary to duty and the rights of others.

In the case of *Biobaku* v. Police [1951] NLR. 30, Bairamian J. defined corruption
as "the receiving of a benefit or reward or inducement to sway or deflect the receiver
from the honest and impartial discharge of his duties." Sociologists have added to these
legal voices. Professor Femi Odekunle (1991:14) posits that:

Corruption is simply a specie of more inclusive class, [that is] criminally or
socially, conduct or behaviour, coded or uncoded ... perpetrated primarily
for economic gain, and it involves the use or misuse of legitimate forms of
commerce, industry, trade governmental or corporate service and
administration as well as some form of organization in the sense of a set
or system of more or less formal relationships between persons
perpetrating the corrupt acts.

Odekunle's definition points the way in the direction of "elite deviance theory of
corruption", which theory argues that persons who promote corruption "have social status,
political end economic power and are well schooled in bureaucracy .... " (Owasanoye,
2001:593). I submit, with all due respect to the proponents of this theory, that
corruption is not limited to the well schooled, but a variety of even barely educated
persons who exercise bureaucratic powers also perpetrate it. Highly placed government

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officials, politicians and investors are involved in "grand" corruption while the not so
highly placed are involved in "petty" corruption (Adediran, 2002: 322).

The World Bank, Transparency International and the United Nation's Global
Programme against Corruption ("GPAC") understand corruption as the "abuse of power for
private gain" Though corruption varies in nature from country to country, it often
manifests as conflict of interest, embezzlement, fraud, bribery, political corruption,
nepotism, sectarianism, and extortion (United Nations, 2004: 2).

Information International in Lebanon holds that "[c]orruption is the behaviour of
private individuals or public officials who deviate from set responsibilities and use their
position of power in order to serve private ends and secure private gains" *(Lebanon Anti-
Corruption Initiative Report,* 1999). From this and the preceding definitions, corruption
conceptually is an aberration, a departure from law, ethics, moral, tradition and civility.
3.0. CAUSES AND THEORETICAL BASES OF CORRUPTION

The varieties of theoretical explanations for corruption are so vast that only a few that
could relevantly and meaningfully guide our discussion are purposively selected. They
include the "trado-cultural", "functionalist" "religious moral legal" and "structural
development" approaches (Gbefwi, 2001: 641-646).

The trado-cultural explanation is about traditional practices that encourage
corruption. It focuses gift-giving practice in traditional societies as promoting a *qui pro
quo* response. Voluntary and altruistic gift giving then progressively provides a platform
for compelling a reciprocal conferment of economic benefit (Gbefwi, 2001: 641).
Conversely, another school of thought argues that gift giving in traditional societies was
to encourage philanthropy and unity among the people, and that its tilt towards bribery or
adaptation to currying of undue favour is a perversion of an admirable practice (Mensah,
1986: 52). I submit that gift giving and receiving have assumed such a dimension that
increasing number of people eagerly anticipate a gift in return for the performance or
discharge of the official duties for which their employers remunerate them. To that
extent, the culture is either perverted or tacitly encourages corruption. There naturally
is the tendency of the recipient of a gift to prefer the giver to a· non-giver as the
beneficiary of the services he renders.

The trado-cultural basis also explains corruption in modern African societies as
projecting from ethnic or family affinity obliging an individual to favour the members of
his ethnic group and family at the expense of others. This promotes nepotism and
corruption in civil service appointment and disbursement of government funds (Rich and
Waterstein, 1972: 374)

Gbefwi (2001:643) sums up religious moral legal views about corruption as follows:

Views in this approach derive from divine precepts which have commonly
accepted as good conduct and accordingly encapsulated in Statutes; that
clearly define what appropriate or inappropriate behaviour is. Although
there are specified sanctions for violation, individuals still contravene
societal laws in the hope that they would not be apprehended, or because
of t{l~ laxity in enforcement of punishment.

[T]he thrust of socic] condemnation of corruption is more moral in outlook,
whereby the problem is projected as the manifestation of depraved
tendencies *inter alia \_\_* materialism, greed, avarice, indiscipline and SO on.

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The leadership in turn embarks on moral suasions, ethical sloganeering as a
way of checking the cankerworm since it cannot be eradicated ....

However, because of the bad and worsening image that corruption progressively gives
Nigeria, the Federal Government has been compelled not only to make more anti-
corruption statutes, but also to strive to be seen to be intensifying the legal fight against
corruption.

The functionalist theories of corruption are tendentiously economic. They argue
that paucity of resources prompt individuals into corruption in some form of effort to
overcome the paucity, and this occurs in every society in varying degrees. They add that
"bureaucratic 'red-tcpism' and rigidities" in the process of development promote
corruption. "In order to break such artificial barriers, bribe is employed to facilitate
official transactions *.:"* (Gbefwi, 2001:644). An opinion in the functionalist school argues
that poverty fosters corruption because some public officers with low purchasing power
demand and receive bribe as a means of "survival" (Gbefwi, 644). Because of the
inconclusiveness of this argument, I submit that greed or avarice is its complementary
pair, though they do not exhaustively explain the motive for corruption, they express
highly instructive opinions about it.

Makumbe (1994: 45-60) identifies the causes of bureaucratic corruption in
Zimbabwe as including

 (i) the neo-colonial status which drove the new leaders into measuring-up to
their foreign counterparts by hook or crook;

 (ii) the demise of the socialist ideology in the face of constitutional
guarantees for private property;

 (iii) the economic hardships experienced [through] 'the ever rising cost of
living, shortage of basic necessities, and deteriorating social amenities';

 (iv) the inappropriate accounting and reporting procedures vis-a-vis an
expanding and complex bureaucracy;

 (v) the lack of . adequate supervision of subordinates by superiors who may
themselves find it convenient to observe the philosophy of 'live and let
live';

 (vi) the lack of necessary training and skills by bureaucrats to operate
complex organizations.

While the decline of socialist ideology and deficiently trained bureaucracy might not be
causes of corruption in contemporary Nigeria, the remaining causes identified by
Makumbe apply to Nigeria as much as they do to Zimbabwe. One may also add to the list
concerted weakening of democratic institutions such as functional political parties, civil
society groups and free press, resulting into governance without responsibility and
representation· without accountability (Sparks, 1995: 182-186).

Structural development theory employs socio-economic formation as a tool for the
understanding of corruption. Mensah (1986: 56), a scholar of this persuasion, regards
socio-economic formation as "the nature of socio-economic differentiation (property
relations) and the structure of social justice (power relations). To him, the occurrence of
corruption depends on "the economic development of the productive forces, which

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conditions the nature of the social relations of production [and brings] about changes in
the structural and normative order including social values .... "

Anikpo (1986:60), in the same vein, opines, that "corruption obtains in all social
formations whose mechanisms for the distribution of available social wealth generates
inequalities among member of the population." Gbefwi (2001: 645) adds that the Nigerian
social formation has "corruption -generating structures which ensure the extraction of
resources form the country to foreign economies through the public and private sectors.
Various wings of the local ruling class latch on to these structures to accumulate wealth,
either as bureaucrats, power holders, commission agents/consultants, captains of
industry or contractors." The accumulations from this "state-based" corruption is
dissipated on "extravagant consumerism" or flown into foreign accounts instead of being
invested in the domestic economy. Against this background, Gbefwi strongly believes that
the dominant class interest influences societal social values concerning corruption, and
" ... may account for the apparent ineffectiveness of the law against corruption and the
incapacity or unwillingness of officials to enforce the law."

4.0. **IMPACT OF CORRUPTION ON INVESTMENT AND ECONOMIC**

**DEVELOPMENT**

The United Nations Office on Drugs and Crime ("UNODC"), commenting on its Global
Programme against Corruption ("GPAC"), observes that the damaging impact of corruption
are • ... reduced investment or even disinvestments, with many long-term effects, including
polarization, lack of respect for human rights, undemocratic practices and diversion of
funds intended for development and essential services
(http://www.unodu.org/unodc/en/corruption visited on July 27, 2004).

The United Nations General Assembly by resolution 58/4 of December 31, 2003
adopted the *United Nations Convention Against Corruption.* In his speech at the adoption,
the United Nations Secretary General Kofi Annan expressed an informed and well-
considered opinion that "[c]orruption hurts the poor disproportionately - by diverting
funds intended for development, undermining a government's ability to provide basic
services, feeding inequality and injustice, and discouraging foreign investment and aid."

Another well-informed statement by the UNODC (2004) informatively and

incisively holds thus:

Most fundamentally, corruption undermines the prospects for economic
investment. Few foreign firms wish to invest in societies where there is an
additional level of 'taxation'. National and international companies too by
offering bribes to secure business, undercut legitimate economic
competitions, distort economic growth and reinforce inequalities. In many
societies widespread public suspicion that judicial systems are corrupt and
that criminal acts are committed by elites in both the private and public
spheres undercuts government legitimacy and undermines the rule of law.

Along with the growing reluctance of international investors and donors to
allocate funds to countries lacking adequate rule of law, transparency and
accountability in government administration, corruption has the greatest
impact on the most vulnerable part of a country's population, the poor.

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Without dismissing the above oprruon, local and foreign investors seem
progressively to be engaged in what may be termed, in a phrase of Professor William L.
Cary (1974: 705), a "race for the bottom". By this they exhibit hedonistic tendencies by
weighing the cost as well as pain of bribery and extortion against the pleasure of its
economic gains in making legitimate and illegitimate investment decisions. And because
economic gain in a lax regulatory environment outweighs the pain, they bribe their ways
through the co *r* rupt and bloated bureaucracy.

Crooked and honest investors alike will always find willing corrupt allies or
extortionists in their (inordinate) economic pursuits. Critics say that large corporations
lack "legitimacy". They represent "independent concentrations of economic ... social and
political power as well.... [T]heir managers function as a sort of economic oligarchy making
decisions that significantly affect not only shareholders ... and communities, without being
accountable to them" (Solomon, *et al,* 1998: 88).

Data from the United States Justice Department on the background to the
American Foreign Corrupt Practices Act of 1977 revealed that in the period immediately
before Congress passed the Act, over 400 United States companies made questionable or
illegal payments of more than $300 million to foreign government officials, politicians, and
political parties. "The abuses ran the gamut from bribery of high foreign officials in
order to secure some type of favorable action by a foreign government to so-called
facilitating payments that allegedly were made to ensure that government functionaries
discharged certain ministerial or clerical duties" (United States Department of Justice,
1992: 0953). The recent indictment of two officers of Sagem of France over such
questionable and illegal payments to Nigerian public officers and politicians in connection
with the national identity card project (The Guardian, May 27, 2005: 1) confirms the
prevalence of corruption in businesses involving foreign companies

**4.1 DIVERSE AND DYNAMIC NATURE OF INVESTMENT RELATED
CORRUPTION .**

Corruption pervades all area of business and investment from routine matters of
documentation, to registration and application for permits, to the management of the
venture and its winding up. It confirms the opinion of the GPAC that "[i]n many countries,
applicants for drivers' licences, building permits and other routine documents have
learned to expect a "surcharge" from civil servants. At a higher level, larger sums are
paid for public contracts, marketing rights or to sidestep inspections and red tape"
(GPAC: 2004).

 4.1.1 **CORRUPTION IN**

**DOCUMENTATION**

**BUSINESS**

**REGISTRA TION**

**AND**

**ROUTINE**

In the twenty-one years that I have been a corporation law practitioner, experience has
shown that business promoters encounter bloated a bureaucracy mischievously misapply
laws and pretentiously enforce of unwritten and whimsical regulation so ~s to make simple

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matters of documentation so difficult so as to extort money from promoters and
investors. For example, the Companies and Allied Matters Act, 1990 empowers the
Corporate Affairs Commission ("CAC") to " ... administer the Act including the regulation
and supervision of the formation, incorporation, registration, management, and winding up
of companies pursuant to this Act." However, the modus operandi of the CAC is a
veritable pedestal for perpetration of corruption. The bureaucracy is bloated, with
scattered zonal offices located to ostensibly bring service delivery close to investors and
the professionals acting for them. However, the exercise of its powers is concentrated at
the head office in Abuja. The staffs of the offices implement some policies and
directives that are known only to them, whimsically and without diligent corrective
supervision. Therefore it is common that the CAC would permit the registration of a
business, lead the promoters to expend money on filings and then change the rules when
the application is pending. The applicant, for fear of losing the money already expended
on the filing is then left to choose between suing the CAC and bribing her way through
the bureaucracy. In this kind of complicated and obtrusive bureaucracy, even lowly placed
and middle level public officers make their own rules without much readiness and will of
the superintendent officers to call them to order, the supervisors' hands having been
soiled by insider dealings.

The servi.ce-delivery of the CAC is representative of many government agencies
that investors encounter. The inefficiency and unscientific systems that they operate,
their usual over-centralization of and complication of authority, their difficult to
ascertain guidelines and their slow pace of employing Information and Communication
Technology so as to impersonalise their procedures have created a mind bogging
bureaucratic complication for the registration and mandatory reporting obligations of
corporate bodies. Many developed countries reduce personal contact with officers in
routine documentation, eliminate delay in application processing, insider dealing and other
corrupt practices relating to investment through online filings. Public offices must set
time limit to the processing of documentations, do the processiqq with transparency and
create an administrative forum to discipline delayed processing prompted by corrupt
expectations (Oladele, 2004: 65). The CAC very recently initiated its online filing system,
and one could only hope that the deep-seated corrupt bureaucracy within will not make it
an exception to efficiency .

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4.1.2 **UTILITIES INADEQUACY AND CORRUPTION**

The grossly inefficient supply of electricity, water and other utilities inadequacy
encourage corruption. Because companies and businesses do not have adequate supply of
electricity and water, they generate the much electricity they could and build their own
water supply system. The outrageous cost of privately generated power force companies
and businesses back to bribing corrupt National Electric Power Authority ("NEPAli) staffs
for better power supply. I have been a guest in a number of supposedly four to five star
hotels that did not get enough power supply because certain corrupt public officers
demanded gratification that was becoming too expensive for profitability. Judging from
the way the privatization of the telecom sector liberated Nigerian from the grip
strangulating grip of corrupt NITEL officials, the formation of the Power Holding

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Company to replace NEPA and the ultimate privatization of the electricity sector should
"re-orientate [it] towards a new horizon of performance improvement, viability and overall
efficiency" (National Council on Privatization, 2000: 46-47).

4.1.3. **GOVERNANCE AND INVESTMENT RELATED CORRUPTION.**

Nigeria has experienced a number of military takeovers of governance in gross violation
of successive '::onstitutions of the Federal Republic. The arbitrariness of, and disregard
for the rule of law by, military regimes emboldened the culture of lawlessness. In their
struggle for legitimacy, industry and investment became casualties. In the years that
Nigeria did not pay attention to industrialization, smuggling continued and still continues
to thrive. The preference of Nigerians, including persons in political authority for foreign
goods gave impetus to regressive attrition of domestic industries and production.
Advanced democracies of the world became skeptical and wary of doing business with
Nigeria, and in the face of smuggling, the prices of locally manufactured goods lost the
ability to compete with those of imported goods. Gradually, many local industries ceased
operation. Some, as we know are being resuscitated, but in a climate of endemic
corruption.

Closely related to smuggling is the issue of pilfering of Nigeria's natural
resources. Illegal oil bunkering is facilitated by gross abuse of power by the military and
their corrupt civilian successors. Nigerians would remember the disappearance of the oil
vessel that some law enforcement agents impounded in 2004 for illegal bunkering and the
subsequent trading and counter-trading of allegations by persons in the military and
government. The indictment of some highly placed officers of the Nigerian Navy confirms
the involvement of the governing class in corruption.

One of the reasons given by The Federal Government and the Petroleum Pricing
and Marketing Company (PPMC) for the upward review of the prices of petroleum
products is that refined petroleum products are cheaper in Nigeria than the neighboring
countries. Because of that, crime-minded persons smuggle the products out to those
countries. To discourage smuggling, the prices of the products were increased. The
increase in turn increase the cost of production of and distribution of goods However, as
a Nigerian from one of the border areas of Nigeria, I have many times encountered
persons in military uniforms escorting petroleum products in trucks towards the border.
If law enforcement officers set that negative pace, the battle against smuggling was lost
before it started.

In democratic governance, the branches of government send a wrong signal to the
citizens if their conduct is not lawful, ethical and transparent. Lack of integrity,
continuance in office of discredited political office holders, half-hearted investigation of
corrupt practices and selective law enforcement take credibility out of the anti-
corruption policy of the government. Leadership by precept rather than example breeds
skepticism in the people. The current initiative of the Federal Government in the fight
against corruption must be impartially sustained.

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5.0. **LEGAL RESPONSE TO CORRUPTION**

Enactment of anti-corruption statutes is not the problem in Nigeria, but law enforcement
agencies seem progressively to have lost the standing and will of enforcement. The
Criminal Code (and Penal Code), section 98 makes corrupt receiving or obtaining of
property or benefit a "felony of official corruption" that is punishable with imprisonment
for seven years if it is on account of:

 (i) anything already done or omitted, or any favour or disfavour
already shown to any person, by himself in the discharge of his
official duties or in relation to any matter connected with the
functions, affairs or business of a Government department, public
body or other organization or institution in which he is serving as a
public official, or

 (ii) anything to be afterwards done or omitted, or any favour or
disfavour to be afterwards shown to any person, by himself in the
discharge of his official duties or in relation to any such matter as
aforesaid ....

Under the same section, it also is a felony punishable with imprisonment for seven years
to corruptly give any property or benefit to any public official for an act, omission, favour
or disfavour done or expected to be done.

The Murtala Muhammed military regime promulgated the Corrupt Practices
Decree No. 38 of 1975 (now repealed) after it toppled the Gowon regime. The
explanatory note to the Decree expressed it to be for the minimization of corrupt
practices in the public and private sectors. It is not on record that anybody was tried
under the Decree (Adediran, 2002: 328).

The repealed 1979 Constitution of the Federal Republic of Nigeria contains in the
Fifth Schedule, Part 1 a Code of Conduct for public officers. The Constitution Drafting
Committee (CDC: 1978: 14) commented on the code thus:

The purpose of the code is that a leader should not put himself in a position
where his personal interest conflicts with his responsibility as a leader, or
which enables him to exploit others. With certain exceptions the code
therefore forbids a leader or his spouse to draw more than one salary, to
employ workers in connection with any trade, business, profession or vocation,
including the running of a hotel, boarding house or like establishment for gain
or profit, to own a house let on rent to others, to be shareholder or director
in privately owned enterprise.

The Shagari administration did not set up a Code of Conduct Tribunal to try violation of
the Code. Instead, it established the Code of Conduct Bureau "that could not function due
to deliberate inability of the National Assembly to pass the Code of Conduct (Procedure)
Bill. The failure of this Code accounted for the massive corruption that politicians, public
officers and other persons perpetrated during the Second Republic which was punished
after the military take over of December 1983 (Adediran, 2002:329). The Code of
Conduct Bureau and Tribunal Act of 1990, section 1 reestablished the Bureau to check

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moral overreaching and lack of accountability by public officers. The 1999 Constitution of
the Federal Republic of Nigeria empowers the Bureau to receive asset declaration by
public officers. Section 20 thereof established a Code of Conduct Tribunal with powers
to punish public officers who have contravened the provisions of the Act.

Nigeria transited from investment indigenization to investment liberalization in
1995 by enacting the Nigerian Investment Promotion Commission Act. The Act permits
direct foreign investment in most sectors of the economy without inhibiting the informal
sector of the economy that provides means of livelihood for most Nigerians, "and the
launch pad for domestic industrial growth and development" (Oladele, 1999: 130).
Consequently, it became compelling to ensure the integrity of the Nigerian socio-
economic, legal and systems. The Federal Government responded by enacting more anti-
corruption as well as economic and financial crimes statutes.

5.1. **THE CORRUPT PRACTICES AND OTHER RELATED OFFENCES *ACT***

In 2000 the National Assembly enacted The Corrupt Practices and Other Related
Offences Act ("anti-corruption Act"). Section 3 of the anti corruption Act establishes
the Independent Corrupt Practices and Other Related Offences Commission ("the ICPC").
Under section 6, the duties of the ICPC include the investigation of acts suspected to
have violated any law prohibiting corruption, review of the procedures of public bodies
that aid or facilitate fraud and corruption, educating the public against bribery,
corruption and related offences, as well as soliciting public support to combat corruption.
The roles of the ICPC could thus be summed up as prevention and criminalization of
corruption. Though the anti-corruption Act has many provisions, our scope could only
accommodate a few.

Sections 8-26 of the Act create corrupt practices and other related offences as
well as prescribe the penalties that they attract. Under section 8, a person is guilty of an
offence of corruption if she "corruptly asks for, receives or obtains any property or
benefit" or agrees to do so for herself or any other person for any favour or disfavour
she has shown or she is to show to any person in the discharge of her official duties in a
government department, corporate body or other organization. The guilty person is liable
to imprisonment for seven years. If a Police Officer or other law enforcement agent fails
to arrest, detain or prosecute any person suspected to have committed an offence or
fails to investigate an offence, she shall be equally liable.

Section 9 of the anti-corruption Act makes it an offence punishable by seven
years impr-isonmentfo give to or promise to give, confer on or procure any property or
benefit of any kind for a public officer to obtain an official favour or secure disfavour
from her or any other person. By virtue section 12, a public officer who abuses his office
for " ... a private interest in any contract, agreement or investment emanating from or
connected with the department or office in which he is employed or which is made on
account of the public service, is guilty of an offence, and shall on conviction be liable to
imprisonment for seven (7) years." Deliberate frustration of an investigation that the
Commission is conducting constitutes an offence punishable on conviction with seven years
imprisonment. The offering and receiving of gratification to hinder or prevent an official

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act, the using of public office to confer any corrupt or unfair advantage upon oneself, any
relatives or associates, and giving and receiving of bribes to procure a contract are all
offences under sections 19, 21 and 22 respectively, all of which punishable by varying
terms of imprisonment and substantial fines for the section 22 offences.

A careful reading of the provisions of the Criminal Code (Penal Code) on
corruption would reveal that the anti-corruption Act of 2000 tries to accomplish the
same thing that the Criminal Code has been out to achieve without success. The problem
then clearly is not with the validity of existing laws on the subject matter, but with the
integrity and commitment of the legislature, executive branch of government, including
the police, and the judiciary. This seems to be the crux of the matter as it goes to the
very root of the efficacy. A Yoruba adage gives a highly instructive summation when it
says "the capability of a person to clothe another person depends on his own clothing." A
person who is in rags would have an impossible task convincing anybody that he could give
out a new dress. So it is with law making and enforcement.

5.2 **THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (ESTABLISHMENT)**ACT.

In June 2004, the National Assembly enacted the Economic and Financial Crimes
Commission (Establishment) Act. This Act repealed the Financial Crimes Commission
(Establishment) Act of 2002. Section 1 thereof establishes the Economic and Financial
Crimes Commission ("EFCC") with diverse functions and powers under sections 6 and 7.
Among other things, the EFCC shall investigate " ... all financial crimes including advance
fee fraud, money laundering, counterfeiting, illegal charge transfers, future market
fraud, fraudulent encashment of negotiable instruments, computer credit fraud, contract
scam etc." It also is responsible for "the co-ordination and enforcement of all economic
and financial crimes laws and enforcement functions conferred on any other person or
authority." It shall adopt measures suited to the eradication of economic and financial
crimes" and initiate "coordinated preventive, regulatory and investigative measures in
that direction."

The EFCC may, under section 7, investigate natural persons, corporate bodies or
organizations so as to determine whether or not they have committed economic and
financial crimes in which case it shall prosecute them. It also may, *inter alia,* "cause
investigations to be conducted into the properties of any person if it appears to the
Commission that the person's life style and extent of the properties are not justified by
his source of income." The section also makes the EFCC the co-coordinating agency for
the enforcement of all laws or regulations that relate to economic and financial crimes,
including the Criminal Code and Penal Code.

There are many Nigerians, including leaders in public offices, who incomes do not
support their life style. There also would be corporate organizations with many assets
without any ostensible business. There are fronts for money laundering and businesses
that facilitate criminal activities all of whom the EFCC may proceed against. The EFCC
should intensity effort to probe them, and do so with the cooperation of tax authorities.

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 5.3 **GLOBAL ACTION AGAINST CORRUPTION AND UNITED NATIONS
CONVENTION AGAINST CORRUPTION**

Nigeria became a party to the United Nations Convention against Corruption on December
9,2003. The Convention addresses three anti-corruption measures. They are introduction
of national anti-corruption policies and mechanisms, promotion of integrity in the public
and private sectors, and denying corrupt persons as well as organizations the proceeds of
corruption as well as facilitating the recovery of illicit assets (UNODC, 2004: 3). The
model preventive policies of the Convention include "the establishment of anti-corruption
bodies and enhanced transparency in the financing of election campaigns and political
parties." The state parties must subject their public officers to codes of conduct and
appropriate disciplinary measures for corruption. "Transparency and accountability must
regulate public finance and corruption preventive measures must be established in critical
sectors such as the judiciary and public procurement." They equally must involve
community based and non-governmental organizations as well as other civil society groups
in the fight against corruption. The parties to the Convention are to cooperate with one
another in corruption prevention and investigation as well as prosecution and extradition
of offenders (UNODC, 2004: 1-2).

A "Fundamental principle of the Convention ... " that is of utmost importance to
developing countries "where high level corruption has plundered the national
wealth ... needed for reconstruction and rehabilitation of societies ... " is corruption asset
recovery for which article 51 provides. To facilitate this, state parties are to extend "the
widest possible ~ooperation to each other."

Before the General Assembly of the United Nations adopted the Convention, The
United Nations Centre for International Crime Prevention (now merged into the UNODC)
had since 1999 launched the GPAC. Following the signing of the Convention the GPAC
pursues corruption preventing measures including provision of technical assistance to the
signatories. The measures are "to strengthen national anti-corruption policies and control
mechanisms, [enhance] rule of law by strengthening judicial integrity and capacity,
[promote] integrity in the public and private sectors; and asset recovery." The GPAC is
developing corruption prevention and assets recovery pilot-projects for Nigeria and Kenya
as a part of its assistance to them (UNO DC, 2004: 3).

**6.0 CONCLUSION**

This paper has evaluated the impact of corruption on investment arid economic
development .. It has established that corruption is a disincentive to investment and
economic development. From the theoretical bases for corruption and its endemic nature,
the paper is of the opinion that corruption progressively assaults the society and weakens
its sensitivity. There is no doubt that Nigeria has laws that are largely adequate and
policies that, if pursued with transparency, would minimize corruption. The big problem
with the Nigerian state is the efficacy of the relevant laws and policies and their
enforcement mechanism.

This author is convinced that the relationship between investment and economic
development is symbiotic. Their conception and implementation should address socio-

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economic problems including unemployment, inadequate public revenue and infrastructure
decay that corruption engenders. This paper recommends exemplary governance,
streamlining and automation of bureaucracy, ethical reorientation and committed as well
as impartial law enforcement for the sanitization of the Nigerian investment environment
so as to achieve sustainable economic development.

**REFERENCES**

Adediran, Olu. M. (2002) "Leqcl and Institutional Mechanisms against Corruption in
Nigeria" *in* Ayua, I. A. and Owasanoye, B. eds. *Problems of Corruption in
Nigeria,* Nigerian Institute of Advanced legal Studies, Lagos.

Anikpo, (1986) "Reflections on the nature of corruption" *in* Odekunle, Fed. *Nigeria.*

*Corruption in Development,* Ibadan University Press Ltd.

Cary, William. L (1974) "Federalism and Corporate Law: Reflections upon Delaware" 83
*Yale L.J.* 663, *705.*

Federal Government of Nigeria, *Constitution of the Federal Republic of Nigeria, 1979.*

Federal Government of Nigeria, *Constitution of the Federal Republic of Nigeria, 1999.*

Federal Government of Nigeria, *Corrupt Practices Decree No.* 38 *of 1975.*

Federal Government of Nigeria, *Criminal Code,* Cap. 77 Laws of the Federation of
Nigeria, 1990.

Gbefwi, Morgan Y. (2001) "Perspectives on corruption and its control: The Nigerian
Experience" *in* Ayua, I. A and Guobadia, A. eds. *Political Reforms and Economic
Recovery in Nigeria,* Nigerian Institute of Advanced Legal Studies, Lagos.

Information International, (1999) *Lebanon Anti-Corruption Initiative Report.*

Mensah, E. (191:\6) -Methodological problems in the study of corruption" *in* Odekunle, F.
ed. *Nigeria: Corruption in Development,* Ibadan University Press Ltd.

National Council on Privatization, (2000) *Privatization Handbook,* 2nd ed., The
Presidency Bureau of Public Enterprises, Federal Capital Territory, Abuja

Odekunle, Femi (1991) -Controlling indiscipline and corruption in Nigeria: Fundamental
and short-term measures" *in* Kalu and Osinbajo eds. *Perspectives in Corruption
and Other Economic Crimes,* Federal Ministry of Justice, Lagos.

Oladele, *0.0.* (1999) "The Role of Law in Financing the Nigerian informal Sector"
*Lesotho Law Journal.* Vol.12, No.2.

49

Oladele, *0.0.* (2004) "Policy initiatives towards efficient functioning of the Corporate
Affairs Commission" *Ibadan Bar Journal Vol.* 3 No.1.

Owasanoye, Bolaji (2001) "Corruption: The enemy within" *in* Ayua, I.A. and Guobadia eds.

 *Political Reforms and Economic Recovery in Nigeria,* Nigerian Institute of Advanced

Legal Studies, Lagos.

*Report of the Constitution Drafting Committee* (1978) *Vol.* 11, pAl

Rich, E.J. and Waterstein, I. (1972) *Africa, Tradition and Change,* Random House, New
York.

I

Solomon, D. L., *et al* (1998) *Corporations Law and Policy Materials and Problems,*West Group, St. Paul, Minn ..

Sparks, A. (1995) "Mass media and the campaign against corruption" *in African
Leadership Forum.*

United Nations Office on Drugs and Crime, *Corruption.* Retrieved July 27, 2004 from

<http://www.unodc.org/unodc/ en/ corruption.h

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