

Impact of Corruption on Economic Development in Nigeria and other African States

Richard U. Oyiwona, Favour O. Ebbah, J. E. Jessah

Abstract

Corruption in the society is endemic, it undermines development and deters progress. Most African states, for instance, Nigeria, are in the state of economic quagmire due to acute corruption in all aspects of the national life. This article examined what is corruption generally, and the negative impact of corruption around the globe particularly in Africa and by extension Nigeria. There are legal frameworks both international and regional/local put in place to tackle the ugly phase of corruption, however, despite the successes recorded as a result of enforcing the amalgam of legislation on the subject, the benefit is yet to be felt as corruption by government, public and private persons is on the increase daily thereby undermining economic growth and the wellbeing of the citizenry. The methodology adopted in the article is doctrinal, some legislations touching on the subject have been examined giving the background of the subject. The article analyses the negative impact of corruption on the national life of a country, particularly in Nigeria. It is recommended that the extant legislation on corruption around the globe particularly in Nigeria be variously amended to reflect stiffer penalties for offenders if the fight against corruption is anything to be taken seriously.

1.0. Keywords

Corruption, Economic Development, Judicial Corruption, Politics

1.1. Introduction:

The article aims to espouse the impact of corruption on the economy of African States generally and Nigeria in particular. The term corruption has been variously defined in several contexts, according to the perspective of the person defining the concept. In this article, corruption will simply be regarded as the perversion or subversion of processes or due processes in both the public and private sectors of the economy. This article shall examine the negative impact of corruption on African economies and in Nigeria. Currently, there are global efforts at curbing or taming corruption and its negative impact and tendencies against the backdrop of economic development in Africa through relevant legal frameworks, however, the emphasis in this article is on Nigeria and some African countries. On the flip side, little attention will be given to the benefits (if any) of corruption on the economy.

1.1 Conceptual Framework

1.1.1 Corruption:

Etymologically, the word “corruption” has its origin from the latin verb *corruptus* – meaning to

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break. The Oxford Advanced Learner's Dictionary defined it as "to change for the worse, especially morally". While the Black's Law Dictionary,¹ defined it to mean;

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

The Food and Agriculture Organization of the United Nations,² defines Corruption as 'the abuse of power or activity in connection with public money for the purpose of generating illicit personal profits or advantages for his benefits or for the benefits of third party whether directly or indirectly' Transparency International,³ defines Corruption as the abuse of the entrusted power for private gain. It is stated that Corruption erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division, and environmental crises.

In the case of *Lawan v FRN*,⁴ the Supreme Court states that the term 'Corruption' denotes depravity, perversion or taint; and impairment of integrity, virtue, or moral principle; especially the impairment of public official's duties by bribery. The word indicates impunity or debasement and when found in criminal law, it means depravity or gross impropriety. The term 'corruption' is invariably characterized by a fiduciary's or official's use of office to procure some benefits, either personally or for someone else, contrary to the rights of others; an act carried out with the intent of giving someone some advantage inconsistent with the official duty or the rights of others. The word 'corruption' may aptly be defined as an abuse of public trust'.

1.2.2. Economic Development

This is the development of an economic wealth of countries, regions, or communities for the well-being of their inhabitants,⁵

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The goal of economic development in its simplest form is to create wealth for a nation. Prior to the 1970s, economic performance was measured in Gross National Product (GNP),⁶ The indicator was thus, a measure of well-being and development exclusively based on material wealth. Improvements in welfare such as better healthcare, education, and more housing for large parts of the poor population have not been captured.

The experience within this period has shown that GNP growth would not necessarily result in a

¹Black's Law Dictionary Sixth Edition 345

²Law No 175 of 2020 on Combating Corruption in the Public Sector and Establishing the National Anti-Corruption Commission, www.fao.org accessed 13/9/2024

³Transparency International, the Global Coalition against Corruption www.transparecny.org accessed 13/9/2024.

⁴[2023] 12 NWLR (Pt 1953) 501 @ 517 ratio 9.

⁵<https://www2.gov.bc.ca> accessed 13/9/2024.

⁶<https://www2.gov.bc.ca> accessed 13/9/2024.

⁶GNP is gross domestic product (GDP) plus incomes received by residents from abroad minus incomes claimed by non-residents. GDP is calculated as the value of the total final output of all goods and services produced in a single year within a country's boundaries, <https://www.investopedia.com> accessed 13/9/2024.

better life for a nation's population. The narrow goal of development (economic growth) induced nations to focus their energies narrowly on the rapid growth of national income.

To maximize income growth, environmental considerations were left to languish on the side-lines; the standard of living was often allowed to slide; large inequalities between classes, regions, and genders were ignored; and poverty was tolerated more than it should have been in the rush to generate maximum growth',⁷

During the 1970s, the concern of millions of people living subsistence lives in poverty turned the attention of development economics to people's lives rather than their incomes. Many developing countries have experienced high growth rate of per-capita income but little change in the living condition of a large part of the population. This led to a change in the setting of development objectives. The goal of development during the period was thus not limited to economic growth but to concentrate on the reduction of poverty, inequality and unemployment.⁸

From the above background, it is evident that a nation can only be said to have attained economic development in its gross national product (GNP) translates into the general well-being of its inhabitants by way of poverty reduction, sustainable environment, access to quality healthcare, social infrastructure, employment opportunities, freedom, social justice, security.

1.2.3 Judicial Corruption:

Judicial Corruption means 'all forms of inappropriate influence that may damage the impartiality of justice and may involve any actor within the justice system including but not limited to judges, lawyers, administrative court support staff, parties and the public'⁹

Ezechi,¹⁰ stated that judicial corruption in Nigeria is pervasive and complex phenomenon that has been identified as a major obstacle to the country's development and the rule of law. It is contended that the problem is rooted in a number of factors including low salaries for judges and court personnel, political interference and a culture of impunity.

The United Nations Office on Drugs and Crime (UNODC), states that corruption undermines the core of administration of justice, generating a substantial obstacle to the right to an impartial trial, and severely undermining the population's trust in the judiciary. It is further stated that corruption has a variety of faces, bribery being only one of them, another being political corruption, much more unattainable and imprecise.

The impact of corruption in the judiciary on the development of the economy is immense because it kills the confidence of investors in the economy; since they cannot trust the system to give them timely justice in the event of disputes, thus leading to stagnation because of the death of investments opportunities. According to Gbenga Lawal,¹² corruption in Nigeria has been the centre for underdevelopment and an impediment to true and real development in society, corruption has ravaged the entire African system, causing the continent to be the most corrupt in the world

⁷ Basu, K. (2000) On the goals of the development in G.M. Meier & J. E. Stiglitz (eds) *Frontiers of Development Economics: The Future in Perspective*, Washington D.C.: World Bank and Oxford University Press (61-86).

⁸Seers, D. (1969) *The Meaning of Development*, *International Development Review* 11(3-4).

⁹<https://www.lawinsider.com> accessed 13/9/2024.

¹⁰D.E. Ezechi, Phenomenological Interpretation of Judicial Corruption in Nigeria. <https://www.acjol.org> accessed 13/9/2024.

1.2.4 Politics

Politics is defined as the activities involve in getting and using power in public life, and being able to influence decisions that affect a country or a society,¹³

This occurs when officials involved in the judiciary process accepts bribes to grant bail, distort or unduly delay judgments. Corruption in this sense often leads to civil unrest and lawlessness thereby undermining the rule of law.

1.2.5 An Overview of Corruption

Corruption as a socio-political and economic ill can occur in both the public and private sectors.

1.2.6 Corruption in the Public Sector: Public sector corruption occurs in the government and its decentralized units- including the police, military, judiciary, public roads, and transit authorities, primary schools and other services sectors that use public funds and provide services-based on the motivation to improve citizens' lives rather than to make a profit. In other words, public sector corruption refers to illegal, or unauthorized acts on the part of public officials who abused their positions of authority to make personal gains,¹⁴

1.2.7 Corruption in the Private Sector: This occurs when there is misuse of position to inflict damage on a company organization. Bribery is not the only form of corruption which can affect private firms. Embezzlement by a company's own employees, corporate fraud and insider trading can be very damaging to enterprises too.

Apart from inflicting damage on the company, private sector corruption can have a detrimental effect on the society as a whole –Large corporations can capture regulations and policies of government thereby jeopardizing the nation's economic growth and stability. This is known as 'state capture'¹⁵ whereby public officials and politicians sell lucrative advantages and preferences to private firms. The benefits for the captor firm include competitive advantages in government contracts, access to limited governmental goods such as permits and licenses, lower taxes and regulating leniency,¹⁶

It is noted that much of the literature on corruption has been focused mostly on the demand of bribery. This is so surprising. Corruption can be viewed as naturally arising in the public sector due to the transfer of responsibility and imperfect monitoring. Private sector agents are normally portrayed in economic models as victims of greedy bureaucrats and politicians. Not much attention has been given to the supply side of bribery. There is the suggestion, therefore, that there is a need to study rigorously the role of the private sector in corrupt transactions and stop thinking that private companies are simply victims of a corrupt public sector,¹⁷

¹¹UNODC <https://www.unodc.org> accessed 13/9/2024/ ¹²Humanity and Social Science Journal 2(1) 1-07-2007

¹³Oxford Advanced Learner's Dictionary (10th edn) 1191

¹⁴Corruption and the private sector-Business Environment<>accessed 9/9/2024.

¹⁵ *Ibid*

¹⁶It might be necessary to refer to the revocation of the sale of Nigerian refineries by President Yar Adua in 2007 upon assumption of power. The refineries were sold under President Obasanjo. It is necessary to point out that corruption was not expressly established but it was stated as the reason for the revocation and that the assets were critical in the life of the nation. Also, the costs were too cheap and the processes leading to the sales were not transparent. Finally, that it was done hurriedly at the dying days of that administration. It was also suggested that the sale of Transcorp in similar circumstances was to be revoked before the president fell critically ill and died. See (Peregrino Brima article on July 30 2015 in the Nigerian Echo www.nigerianecho.com accessed 09/09/2024)

1.2.8 Types of Corruption

In Nigeria, there are notable five main corruption that are identified,¹⁸ these are political corruption by politicians, judicial corruption by judges, court officials and litigants, commercial corruption in businesses and entrepreneurs, central government corruption by senior and middle class officials, local government corruption by low-level government officials.

The nature of corruption by above mentioned categories of persons includes: bribery, receipt of illegal proceeds, theft and privatization of public resources and funds, illegal appropriation, abuse of state funds and waste, nepotism, and favouritism, promotion of personnel interest, collusion, manipulation of regulation, electoral violation (buying of votes, rigging election results), extortion,¹⁹

The above notwithstanding, *Aluko*,²⁰ has defined nine types of corruption namely; Political corruption (grand), Bureaucratic corruption (petty), Electoral corruption, Bribery, Fraud, Embezzlement, Favouritism and Nepotism. However, some of the types of corruption listed by *Aluko*, can also be described as the active ingredient of some other specific forms of corruption. For instance, bribery, fraud, embezzlement, electoral corruption are means by which Political, Economic, Bureaucratic and Judicial corruptions are perpetrated in most political economies. We will therefore consider the later as the major types of corruption in this work.

In any event, the negative impact of corruption cannot be over-emphasized. This was rightly captured by His Lordship, *per Saulawa Jsc @ Page 567 para G* in the case of *Lawan v FRN*,²¹ where he said 'Undoubtedly, corruption erodes public trust, weakens democracy, endangers economic development and further exacerbate social and economic inequality, poverty in the country.

1.2.10. Relationship between Corruption and Economic Development

Economy that are afflicted by a high level of corruption- which involves the misuse of power, whether in the forms of money or authority, in other to achieve certain goals in illegal dishonest, or unfair ways- are not capable of prospering as fully as those with a low level of corruption. Corrupted economies are just not able to function properly because corruption prevents the natural laws of the economy from functioning freely. As a result, corruption in a nation's political and economic operations causes it entire society to suffer.

According to the World Bank, the average income in countries with a high level of corruption is about a third of that of countries with a low level of corruption. Also the infant mortality rate in such countries is about three times higher and the literacy is about 25% lower,²²

From the earlier analysis, it is clear that a country can be wealthy in terms of its GNP but yet underdeveloped, if the wealth fails to translate into improving the general well-being of its citizens. Corruption has been identified as the major cause of each underdevelopment particularly, in

¹⁷J.S Hellman. G. Jones and D. Kanfirman *Seize the Day: State Capture, and Influence in Transition Economics. Journal of Comparative Economics* (2003) 31, 751-773

¹⁸<https://www.legit.ng> accessed 9/9/2024.

¹⁹*Ibid.*

²⁰Aluko, Y. A. 2009 "Corruption in Nigeria: Concepts and Dimensions" in Enweremadu David U. and Okafor, Emeka E. (eds) *Anti-Corruption Reforms in Nigeria since 1999: Issues Challenges and the way forward. IFRA Special Research Issue Volume 3*, 1-7

²¹(n4).

emerging economies. As the chairman of Transparency International correctly noted. Corruption doesn't just line the pockets of political and business elites; it leaves ordinary people without essential services such as life-saving medicines and deprives them of access to sanitation and housing; in short corruption costs lives,²³

In summary, therefore, the relationship between corruption and underdevelopment is such that most countries with emerging economies suffer from a high level of corruption that slows their overall development. The entire society is affected as a result of the inefficient allocation of resources, the presence of a shadow economy, and low-quality education and health care. Corruption thus makes the living societies worse off and lower the living standards of most of their populations.

1.2.11. How Corruption Impede the Development of National Economies of African States:

Corruption without any fear of contradiction can be said to be very endemic in African States in very diverse forms, and it is extremely difficult if not impossible to measure. Measuring corruption has been compared to trying to measure a black hole; it can't be measured because it can't be seen,²⁴ Transparency International,²⁵ therefore does not measure corruption but rather accesses its opposite., it examines the anti-corruption and good governance institutions, mechanisms and practices that are in place. The state economics of African States are mostly poor and are even dignified by being referred to as developing economies; but the fact that it is difficult to point out the positive development in the economies of these States, since the exit of the colonialists. The endemic and malignant nature of corruption in the African States has left the continent reeling in widespread poverty and underdevelopment. To show the impact practically, this paper highlights the impact of corruption in Nigeria taking into consideration some specific cases.

1.2.12. Nigeria

The issue of corruption in Nigeria is on the increase on daily basis. The laws enforcement agencies are trying hard to curb the incident of corruption with its attendant ugly incident in Nigeria. The issue of the International Telephone and Telegraph Corporation popularly referred to as ITT coordinated by Chief M.KO. Abiola in the 1970s is a case in point directly comes to mind. ITT made questionable payments of millions of dollars between 1975 and 1980 to Chief Abiola and high-ranking government officials of the military government through to the ruling National Party of Nigeria NPN,²⁶ This was to ensure the award to the company, of huge telecommunication sales contracts in Nigeria. This episode went without any prosecution or indeed any indictment in Nigeria. This episode of corruption is related to telephone and communication, and no doubt had negative effects on the execution of the projects or contracts. Effective communication is a vital ingredient that buoys the economy of any nation.

In *United States v Jeffrey Tessler & Ors*,²⁷ Jeffrey Tessler a United Kingdom- based lawyer was extradited from UK to the US and convicted after admitting and refunding his own share, for funneling bribes amounting to over 148 million United States Dollars from American Company Halliburton to Nigerian State officials in connection with the NLNG Bonny project. No Nigerian official has been indicted till date, the monies were meant to influence the award of contracts to a

²²E. Mirzayer *How Corruption Affects Emerging Economies* <www.investopedia.com accessed 9/9/2024.

²³*Ibid.*

²⁴Nathaniel Heller, *Managing director of global Integrity 2009* <<https://globalintegrity.org>> accessed 9/9/202

²⁵<https://www.transparency.org>, 2023 *corruption perception index: Corruption Diverting Resources from Public Service in sub-saharam Africa* accessed 16/9/2024.

²⁶<https://www.washingtonpost.com>, *ITT allegedly spent millions to obtain contracts in Nigeria*. The Washington Post August 16 1980, by John F. Berry accessed 16/9/2024.

consortium of International firms.

Also in *United States v Siemens AG*,²⁸ Siemens entered a plea bargain in the US in what has been termed a record-setting 800 million dollar settlement after she admitted to bribing government officials across the world including Nigeria for contracts, no official has been indicted in Nigeria in this case as well.

The fight against corruption in the Private Sector is not left out. The Economic and Financial Crimes Commission successfully prosecuted and secured the conviction of *Mr. Francis Atuche & Anor* in the case of *FRN v Francis & Anor*,²⁹ where the Lagos State High Court convicted *Mr. Francis Atuche*, the former Managing Director of Defunct Bank PHB for fraudulent activities while he holds way as the Managing Director of the Bank. The decision was subsequently affirmed by the Court of Appeal and the Supreme Court of Nigeria. The judgment of the Supreme Court was delivered on the 28th June 2024,³⁰

The above cases show how much Nigeria loses to corruption that would have been channelled to the development of the infrastructure and other aspects of the economy and this mirrors the position in most African nations. The wider implication of such incidences of corruption of government officials to secure contracts is that the government's position is weakened in the negotiations since it is the same corrupted officials that negotiate the contracts. This has resulted in bilateral investment treaties that have clauses that are heavily skewed against the interest of the African states and the granting of spurious waivers to foreign investors to the detriment of the development of African economies.

Recently in Nigeria, there is the clamour for the House of Representatives to amend the Nigerian LNG Act 2004,³¹ to remove some of the bogus tax waivers and concessions granted to NLNG, due to effluxion of time. It might be a point of conjecture if the effort will see the light of day or would be swept under the carpet by the already swelling pressure against such a move.

There is a remedy available as well as the government to repudiate contracts that are obtained by fraud without liability. In a newly published award, the International Centre for Settlement of Investment Disputes (ICSID) Tribunal unanimously rejected an investor's claim against the Republic of Uzbekistan. The rejection was because an illegally obtained investment contract based on corrupt payments by the investor to "consultants" linked to high-ranking officials was in breach of the requirement for legal investments, under the *Israel-Uzbekistan* bilateral investment treaty,³² In *Hamester GmbH v Republic of Ghana*,³³ the ICSID stated that an investment will not be protected if it has been created in violation of national or international principles of good faith; by way of corruption, fraud, or deceitful conduct, or if its creation itself constitutes a misuse of the system of International Investment protection under the ICSID convention.

²⁷No 09-098 (SD.Tex 2009)

²⁸Case No 08-Cr 367 RK (DDC)

²⁹ID/154C/2011

³⁰<https://www.thisdaylife.com> accessed 16/9/2024.

³¹NLNG Act Cap N87 LFN 2004

³²*Metal tech v Republic of Uzbekistan*, Fraud Intelligence, Jan 2014 Investor Corruption, bilateral Investment treaties and International arbitration. Bribery at Centre of failed investor claim by Ruth Cowley
<www.bilateral.org>accessed 18 Sept 2023

Recently too, *Justice Robin Knowles* of the Commercial Court of England and Wales ruled in favour of Nigeria and quashed the enforcement of the \$11 Billion arbitration award in favour of Process & Industrial Development (P & ID) Ltd,³⁴ apparently, the decision was set aside due to some shady deals discovered in the process leading to the award against Nigeria.

In Nigeria however, as shown from the examples above, the country still has not done much to bring corrupt officials to book or to extricate the country from any such international contracts. In spite of the obvious appeals against the obnoxious terms of agreements with some multinationals and the way the citizens employed in multinational firms are treated. The case of the award against shell for *Bodo* community pollution by a court in England,³⁵ is a situation that would not have been possible in Nigeria, because of the attitude of the public officials.

In the Nigerian power sector, Nigeria Power Holding Company is rated as one of the corrupt public institutions. During the Olusegun Obasanjo presidency, the House of Representatives instituted a power probe as to why such money had been spent without any improvement in the power situation. There were preliminary reports that there was corruption in procurement processes and soon thereafter before the report was published the chairman of the committee was accused of corruption and was detained. When he was finally released the work of the committee eventually came to naught as the report was rejected and only four over 40 recommendations were adopted by the house,³⁶ until today, power is still a problem in Nigeria despite the billions of dollars that have gone into that sector. It is also alleged that importers of generators bribe policymakers and officials of Nigeria's power companies to frustrate the supply of power to enhance their trade.

The impact of corruption is easily felt in the police. A former Inspector General of Police *Mr. Tafa Balogun*,³⁷ pleaded guilty and was convicted of large-scale corruption. Payments and welfare of police officers are neglected which has in turn worsened the corruption of the police officers leading to increased insecurity. The security has debilitating effects on the economy of the country.

There is corruption in the electoral system, the Judiciary, the health sector, and immigration, No sector is spared. *Ogwuegbu JSC in Attorney General of Ondo State v Attorney General of the Federation*,³⁸ stated thus: "It is a notorious fact that one of the ills which have plagued and are still plaguing the Nigeria nation is corruption in all facets of our national life".

The 2015 Global Corruption Barometer by Transparency International revealed that the police in Nigeria and other African Countries are perceived as the most corrupt institutions in the continent,³⁹

The impact of corruption on the economy of Nigeria is there for even the blind to see and permeates all segments of the society. It affects the use and application of foreign aid, affects cross-border business and discourages investments, which are the factors that fuel development. *Mohammed JSC in A.G. Ondo v A.G Federation*,⁴⁰ said;

It is quite plain that the issue of corruption in Nigerian society has

³³*Ibid*

³⁴<https://www.vanguardngr.com>> accessed 29 sept 2023

³⁵<https://www.judiciary.uk/12/2/2024> accessed 17/9/2024.

³⁶<https://www.voanews.com/1/11/2009> accessed 17/9/2024.

³⁷<https://news.bbc.co.uk/22/11/2005> accessed 17/9/2024.

³⁸ [2002] 9 NWLR (PT 772) 222

³⁹ Transparency International, Global Corruption Index 2015 <www.transparency.org> accessed 19th July 2017

gone beyond our borders. It is no more a local affair... the disastrous consequences of the evil practice of corruption have taken this nation to the list of the most corrupt nations on earth.

1.2.13. Other African Countries

Just like Nigeria, corruption has eaten deep into the social fabric of all aspects of life in Ghana. In 2015 Ghana's Judicial Council suspended 22 magistrates and circuit judges who were suspected to be neck-deep in corruption,⁴¹

Corruption is worse in Countries where institutions, such as the legislature and the judiciary are weak, where rule of law and adherence to rules are not rigorously observed. It erodes governmental legitimacy because it hampers the effective delivery of public goods and services. It limits economic growth because it reduces the amount of public resources, discourages private investment and saving and impedes the efficient use of government revenue and development assistance funds,⁴²

African leaders are known to amass obscene wealth at the expense of the development of their countries and their economies. The loot of some African heads of state were published by French weekly in May 1997 as presented by *George Ayittey* as follows,⁴³

•	General Sani Abacha of Nigeria	-	\$20billion
•	President I. Boigny of Ivory Coast	-	\$6billion
•	General Ibrahim Babaginda of Nigeria	-	\$5billion
•	President Mobutu of Zaire	-	\$billion
•	President Mouza Traore of Mali	-	\$2billion
•	President Henri Bedie of Ivory Coast	-	\$300million
•	President Dennis N'gnesso of Congo	-	\$200million
•	President Omar Bongo of Gabon	-	\$80 million
•	President Paul Biya of Cameroon	-	\$70million
•	President Haile Mariam of Ethiopia	-	\$30million
•	President Hissene Habre of Chad	-	\$3million

It must be mentioned here that until date, Nigeria was still unable to determine the true value of the loot attributable to the late Sani Abacha and has not been able to recover a substantial part from foreign countries. These funds could have had more than a significant impact on the development of Africa if the leaders did not steal them. The issue of poverty and even conflicts in Africa is traceable to corruption and thus 'helping' to under develop African economies.

1.2.14 Any Benefits to the Economy Attributable to Corruption?

Although the article in the preceding paragraphs shows clearly how much of a deleterious effect corruption can have on an economy and indeed on the economies of African states, it would not be right if the views of those who have argued that corruption also has some advantages are ignored. Some of the chief propagators of that argument are *Huttington* (1968) *Nathan H. Leff* an American behavioral scientist, who argues that 'in terms of economic growth, the only thing worse than a society with a rigid, over-centralized, dishonest bureaucracy is one with a rigid, over-centralized,

⁴⁰ n38.

⁴¹ <https://www.bbc.com/6/10/2015> accessed 17/9/2024.

⁴² Policy forum- Document on "Corruption and Development in Africa"

⁴³ Ayittey George "Biting their own Tails: African leaders and the Internationalist intricacies- of the Rape of a continent" A key note address to SORAC Nov 7-9 2002, New Jersey

honest bureaucracy',⁴⁴

Leff,⁴⁵ sees corruption as an extra-legal institution used by interest groups to gain influence over the actions of the bureaucracy to an extent that would not otherwise be possible. This he suggests can be beneficial to the development of business groups that would otherwise be at a disadvantage in articulating their interests to the government if they get the opportunity to do so. If these groups are more likely to promote growth than the government, an enhanced position in policymaking could be beneficial to development. There are various aspects of the ill-functioning of the bureaucracy that can be compensated by corruption. The first one concerns slowness. Using a formal economic model, *Lui* (1985), another writer with a similar view, showed that corruption could efficiently lessen the time spent on queues.

The reason is that bribes could give bureaucrats an incentive to speed up the process, in an otherwise sluggish administration.

Another consequence of an ill-functioning bureaucracy concerns the quality of civil servants. It is argued that corruption can amend a bureaucracy by improving the quality of its civil servants. If the wages in government are insufficient, the existence of perks may constitute a complement that may attract able civil servants who would have otherwise opted for another line of business. *Leff*,⁴⁶ also states that grants may simply be a hedge against bad public policies. This is particularly true if institutions are biased against entrepreneurship, due for instance to an ideological bias.

By simply impeding inefficient regulations, corruption may then limit their adverse effects. It may also result in the alteration of the policy in a way that is friendlier to growth,⁴⁷ Corruption according to him, in the same book, may constitute a hedge against other risks originating from the political system, such as expropriation or violence. If corruption helps mitigate those risks, investments will turn out less risky and may accordingly increase,⁴⁸

1.2.15. Legal Framework against Corruption

The issue of corruption is a global phenomenon and efforts are being made to tackle the menace at various levels. This article will generally look at the legal framework that has been put in place to reduce corruption and mitigate its effects on the economies of countries. The efforts of global and regional bodies will be examined because they have a direct bearing on the economies of African economies as African states invariably transact businesses with other countries outside the continent.

1.2.16. International Legal Framework against Corruption Background

The quest for an acceptable international legal framework against corruption started in 1977 and was essentially driven by the United States (US), which in its pioneering role passed the Foreign Corrupt Practices Act (FCPA),⁴⁹ The FCPA thus became the first law prohibiting transnational bribery. The scope of the FCPA is limited to corrupt practices relating to business transactions. It does not cover corrupt practices outside of the commercial sphere and applies only to US-owned corporations.

⁴⁴M Pierre- Guillaume and Khalid S, *Does Corruption Grease or Sand the Wheels of Growth?*

⁴⁵Leff NH, *Economic Development Through Bureaucratic Corruption*(1964)

⁴⁶*Leff* (n45).

⁴⁷*Ibid.*

⁴⁸*Ibid.*

Consequently, US corporations felt threatened by the stringent FCPA provisions and feared losing business, whereupon the US government started lobbying for an international playing field,⁵⁰ The ensuring negotiations within the auspices of the United Nations (UN) laid the foundation of the modern-day international legal framework against corruption.

1.2.17. Organization for Economic Co-Operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

OECD Convention 1977,⁵¹ is the pioneer international forum for anti-corruption instruments and has issued several recommendations, guidelines, and anti-corruption tools. The draft document of the convention in its preamble recognized that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international business transactions.

Art. 1 and 2 of the Convention,⁵² went on to criminalize the practice of bribery of public officials while Art. 3 prescribes sanctions for breach ranging from imprisonment, monetary sanctions, seizure and confiscation of property etc, depending on whether the offender is a natural person or not. However, like the US FCPA, the OECD Convention 1997 only covers corruption to the extent it is related to business transactions with particular emphasis on offering or giving a bribe,⁵³

1.2.17. The United Nation's Convention against Corruption

The UN Convention against Corruption,⁵⁴ is presently the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to the global problem. The vast majority of UN member states are parties to the Convention,⁵⁵ The Convention,⁵⁶ covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery and technical assistance and information exchange. The Convention also covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector.

The UNCAC requires States Parties to choose concrete implementation measures in a wide range of areas. They must set up anti-corruption bodies; establish appropriate procurement systems; strengthen the integrity of the Judiciary; take measures to prevent private sector corruption; promote the active participation of civil society and institute a comprehensive regulatory regime for banks and other financial institutions to prevent money laundering,⁵⁷

⁴⁹ Foreign Corruption Practices Act of 1977, 15 USC, 78dd-1 (1977).

⁵⁰ Margot Cleveland et al, 'Trends in the International Fight against Bribery and Corruption (2009) 90 *Journal of Business Ethics* 199, 205

⁵¹ The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Opened for signature 17 December 1997. Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions was adopted by the Council on 26 November 2009.

⁵² OECD Convention 1997

⁵³ *Ibid* art 1.1.

⁵⁴ Adopted by the UN General Assembly on 31 October 2003, by resolution 58/413

⁵⁵ 182 state parties have ratified the UNCAC as at 11 July 2017.

⁵⁶ (n54).

1.2.17. Anti-Corruption Guidelines of International Financial Institutions

Apart from the international efforts of combating global corruption by state entities, international financial institutions (IFIs) such as the World Bank (WB), International Monetary Fund (IMF), and regional development banks have through their anti-corruption guidelines contributed to the international legal framework against corruption.

Corruption was integrated into a larger good governance program launched at the WB and imposed on borrowing countries, through the Bank's now famous conditionality. The Bank's Guidelines require borrowing countries to: "take all appropriate measures to prevent corrupt ... practices in connection with the use of loan proceeds" and to "... take timely and appropriate action to address such corrupt practices when they occur",⁵⁸

In 2006, the World Bank in conjunction with other IFIs,⁵⁹ formed the Joint FI taskforce on anti-corruption. The aim was to standardize their definition of corruption, improve the consistency of their investigative rules and procedures, strengthen information sharing, and to ensure compliance that enforcement actions, taken by one institution are supported by all others,⁶⁰

In the *Kenya Rift Valley Railway Case*,⁶¹ the World Bank blacklisted the company after a review of its operations unearthed a well-orchestrated corruption scheme, where executives bribed government officials, cooked books of accounts, evaded taxes and created briefcase companies as corporate veils to squander a \$22million (Sh 2.2 billion) loan from the International Finance Corporation (IFC)-the WB's private sector arm.

1.2.18. Regional Anti-Corruption Framework

At the regional level also, efforts have been made to create legal framework aimed at fighting corrupt practices within regional geo-political boundaries. These regional instrument includes:-

- (1) The African Union Convention on Preventing and Combatting Corruption (AU Convention) 2006,⁶²
- (2) Inter-American Convention against Corruption 1996,⁶³
- (3) The Protocol to the Convention on the Protocol of the European Communities' Financial Interests (Financial Interests Protocol) 1996,⁶⁴

They laid down standardized anti-corruption tools, such as regular peer review, code of conduct for public officials in member states, enactment of relevant anti-corruption laws, and effective enforcement measures designed to combat corruption within their respective regions.

In addition to the regional legal framework, there also exist sub-regional legal instruments against corruption in most regions. For instance, in Africa, we have the Southern African Development Community Protocol against Corruption ('SADC Protocol')⁶⁵ and the Economic Community of West African States Protocol on the Fight against Corruption ('ECOWAS Protocol'),⁶⁶

⁵⁷ Arts. 6-14 UNCAC

⁵⁸ Guidelines in Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credit and Grants dated October 15, 2006.

⁵⁹ This includes the African Development Bank, Asian Development Bank, Inter-American Development Bank, European Investment Bank and the International Monetary Fund (IMF)

⁶⁰ The IFI Task Force Joint Framework was announced in September 17, 2006, at the World Bank Annual Meetings in Singapore.

⁶¹ Daily Nation, 18 April 2017, allafrica.com.

⁶² Adopted in Maputo, Mozambique on 11 July 2003 and entered into force 5 August 2006.

⁶³ Adopted by the OAS on 29 March 1996 and entered into force a year later.

1.2.18. Nigeria Anti-Corruption Legal Framework

As part of the global community, Nigeria is a signatory to various international treaties on corruption both at the international, regional, and sub-regional levels,⁶⁷ the country is therefore, under obligation to create the relevant legal framework to fight the menace of corruption at the domestic sphere. Indeed, several laws have been enacted between 1985 and 2004 to fight different forms of corruption in the country. These include:

- i. Relevant Sections of the Criminal Code and Penal Code.
- ii. Miscellaneous Offences Act LFN 2004.
- iii. The National Drug Law Enforcement Agency Act.
- iv. Code of Conduct Bureau and Tribunal Act, 1990.
- v. Banks and other Financial Institutions Act of 1991 (amended in 2002).
- vi. Money Laundering Act of 1995 (amended in 2002 & 2004).
- vii. Foreign Exchange Act of 1995.
- viii. Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act of 1994 (amended in 1999).
- ix. Advance Fee Fraud and Related Offences in Banks Act, 2004.
- x. Independent Corrupt Practices (and other related offences) Commission (ICPC) Act 2003.
- xi. Economic and Financial Crimes Commission (EFCC) Establishment Act 2002

The Independent Corrupt Practices (and other related offences) Commission (ICPC) Act 2003,⁶⁸ and the Economic and Financial Crimes Commission (Establishment) Act 2004,⁶⁹ are at present, the most prominent legal framework against corruption in Nigeria. The Commission established by the ICPC Act,⁷⁰ is vested with the powers to educate, prevent, detect, investigate and prosecute all offences under the Act. Section 8-26 of the ICPC Act,⁷¹ clearly spell out offences and penalties covered by the Act if committed after 13th June 2000, the effective day of the law. These offences also prescribed severe penalties ranging from 1 to 7 years, imprisonment with hard labour, imprisonment and fine depending on the gravity of the offence.

Offences under the ICPC Act includes; giving or accepting gratification by an official in person or through his agent, fraudulent acquisition of property, deliberate frustration or hindrance or obstruction of investigation activities, transferring money from one vote to another, false statement or fraudulent disclosures, electoral fraud such as bribery of electoral officials.

In similar vein, the EFCC Act 2004,⁷² established a Commission empowered as the coordinating agency for the enforcement of all economic and financial crimes laws in Nigeria. Apart from the administration of the EFCC Act,⁷³ the commission is vested with powers of enforcement of all laws related to economic and financial crimes in Nigeria. The investigative and prosecutor powers of the Commission covers such offences as advance fee fraud money laundering, counterfeiting, illegal funds transfers, fixtures and market fraud, fraudulent encasements of negotiable instrument, fraudulent diversion of funds, computer credit fraud, contract scam, forgery of financial

⁶⁴ Council Act of 27 September 1996- the Protocol entered into force on 17 October 2002.

⁶⁵ Signed on 14 August 2001 and entered into force on 6 August 2003.

⁶⁶ Signed on 21 December 2001

⁶⁷ Nigeria ratified the OCED and UNCAC instruments on 14 December 2004, while the AU Convention on Preventing and Combating Corruption was ratified on 26 September 2006.

⁶⁸ ICPC Act 2003.

⁶⁹ EFCC Act 2004,

⁷⁰ ICPC Act 2003.

⁷¹ *Ibid.*

⁷² (n69)

instrument, issuance of dud cheque, etc.

1.2.19. Combating Corruption

The provision of the legal framework to combat corruption is only the first step towards reducing the effects of corruption on African economies and is not the end by any means.

This is because no matter how well conceived and couched, legislations alone will not solve the problem; there has to be the political will to tackle corruption on the part of our leaders.

There has to be a forceful effort hinged on the rule of law, to combat corruption in all its ramifications. African countries must therefore constantly develop new strategies to meet the constantly mutating challenges which corruption presents. They have to forge greater cooperation because corruption is now more trans-national than ever before. The political leadership will be required to both set an example and to demonstrate that no one is above the law by setting high profile focus on specific actions, which can be extremely useful in sending a strong signal that corruption will not be tolerated. African governments have to pursue long-term governance improvements and institution-building goals as well as focus on specific actions, which can have an impact in the short term.

2.0. Findings

Corruption is endemic and its effects in the underdeveloped African economies particularly in Nigeria are very obvious. It undermines the development of a nation and stagnate progress. The reduction of corruption or eradication will see an immediate corresponding increase in the quality of African economies and in the lives of Africans. African countries will attract greater investments because there would be increase confidence in the economic policies. Therefore, Corruption has to be killed completely before it wipe out the African states.

2.1. Recommendations

- i. Ending- Impunity – Virtually all forms of corruption thrives on the platform of impunity and circumscribing of due processes. Strengthening of institutions and effective law enforcement is therefore essential to ensure that the corrupt are punished and the circle of impunity is broken.
- ii. Reform Public Administration and Finance Management. Reforms targeted at improving financial management and strengthening the role of auditing agencies.
- iii. De-politicisation of the fight against corruption- the problem is the same everywhere in Africa as perceived political enemies are mostly hounded down under the pretext of corruption.
- iv. Strengthen the fight against corruption through the use of technology.
- v. Stiffer penalties as punishment for those found guilty of corruption and corrupt practices are desirable.

2.2. Conclusion

It is concluded that when the recommendation highlighted in this article is properly implemented, it would go a long way in curbing the ugly trend of corruption in the society. It is part of the finding that if corruption is not killed now, its ugly tendencies may continue to undermine economic progress, hinder development, and deter the development of African states including Nigeria. Therefore, the way to make progress is to eliminate corruption and its ugly trend to the barest minimum in all facets of national life.

⁷³*Ibid.*