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From Malabo to Malibu: Addressing Corruption and Human Rights Abuse in an African Petrostate

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ABSTRACT

Equatorial Guinea has what is widely regarded as one of the worst governments in the world. Teodoro Obiang Nguema Mbasogo presides over a corrupt and repressive government, dominated by members of his own family who have benefited from the country's status as the third-largest oil producer in sub-Saharan Africa. While Obiang and his family invest hundreds of millions of dollars in the United States and other developed countries, Equatorial Guinea remains among the poorest countries in the world according to human development indicators. This article describes the problems facing this small petrostate and notes several legal tools available to promote reform.

I. INTRODUCTION

On 27 April 2006, one of the most coveted properties in Malibu, California was sold to Sweetwater Malibu LLC. The 14,995-square-foot home, located on approximately sixteen acres overlooking the Malibu Pier and Surfrider Beach, features a 5,000-square-foot master bedroom, a pool, tennis courts, a

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four-hole Tom Weiskopf golf course, and spectacular views of Santa Monica Bay, the Santa Monica Mountains, and, to the east, the city of Los Angeles. A real estate listing at the time of the sale aptly described the home as a “world class estate” and noted that “everything imaginable & desirable in [a] luxury Malibu estate is here.”¹ The property, which had been listed two years earlier at \$35 million, sold for \$30 million.²

The owner of Sweetwater Malibu LLC was not a movie star or a Hollywood mogul, but Teodoro Nguema Obiang, the oldest son of President Teodoro Obiang Nguema Mbasogo of Equatorial Guinea, one of the world’s worst dictators. The property is just one of many luxury homes scattered around the world that are owned by the younger Obiang; all have been purchased using funds siphoned from the state treasury or collected in bribes.³ Obiang’s family, which has controlled the government and the economic resources of Equatorial Guinea since the country’s independence in 1968, has appropriated public funds to private use from the beginning, but patterns of corruption that were scarcely noticed by the outside world when the Equatoguinean economy produced little for export other than cocoa and tropical hardwoods became noteworthy when large reserves of petroleum were discovered in the country’s territorial waters during the 1990s.⁴ Today Equatorial Guinea is sub-Saharan Africa’s third-largest oil producer.⁵

There is a strong case to be made that Equatorial Guinea has the worst government in the world. President Obiang, who has recently entered his fourth decade in power, rules what has been aptly described as a “self-parodying burlesque of a tin-pot kleptocracy.”⁶ Corruption, however, is just one of the regime’s many problems. Its grip on power has been secured through a heavy reliance on nepotism, the use of foreign soldiers and private military corporations to guard the elite and their assets, and the ruthless suppression of dissent. In spite of a per capita income commensurate with that of the

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1. MLS Alliance, *Agent Report of Jeffrey Hyland, CLAW, MLS Residential Single Family Property, MLS No. 02-047979* (24 Oct. 2006), available at <http://www.globalwitness.org/sites/default/files/pdfs/Obiang%20Malibu%20property%20records.pdf>.
 2. See *id.* For details of the transaction, see *Keeping Foreign Corruption Out of the United States: Four Case Histories: Hearing before the S. Comm. on Homeland Sec. & Gov’t Affairs, Permanent Subcomm. on Investigations*, 111th Cong. 75 – 83 (2010), available at <http://www.financialtaskforce.org/wp-content/uploads/2010/02/Levin-report-on-US-facilitators-of-Africa-corruption-FOREIGN-CORRUPTION-REPORT-FINAL-as-of-2-2-10.pdf> [hereinafter *KEEPING FOREIGN CORRUPTION OUT*].
 3. This was the conclusion of U.S. Department of Justice prosecutors in a 2007 memorandum quoted in the 2010 Senate investigation. See *KEEPING FOREIGN CORRUPTION OUT*, *supra* note 2, at 25.
 4. ROBERT KLITGAARD, *TROPICAL GANGSTERS* 19–21 (1990); PETER MAASS, *CRUDE WORLD: THE VIOLENT TWILIGHT OF OIL* 30 (2009).
 5. *Equatorial Guinea Country Profile*, BBC NEWS, 4 May 2011, available at http://news.bbc.co.uk/2/hi/africa/country_profiles/1023151.stm.
 6. JOHN GHAZYNIAN, *UNTAPPED: THE SCRAMBLE FOR AFRICA’S OIL* 170 (2008).

wealthiest states in Africa, most citizens of Equatorial Guinea live in conditions of poverty that are some of the worst found on the continent.⁷ In fact, the so-called “resource curse” may make Equatorial Guinea one of the most intractable cases in a continent full of economic development challenges.

Equatorial Guinea’s recent history—replete with coup attempts, heavy-handed threats against diplomats and journalists, high-level intrigue, and an heir-apparent with a taste for expensive cars and female rap stars⁸—reads like a political thriller that invokes a few too many clichés of the genre. Indeed, close parallels between the March 2004 coup attempt led by Simon Mann and Frederick Forsyth’s novel *The Dogs of War* have been noted.⁹ The country is, however, obscure for a reason. Its population, roughly the same as North Dakota’s, pales in comparison to the continent’s giants such as neighboring Nigeria.¹⁰ Its oil reserves, while sufficient to justify sizeable investments by major oil companies, are a fraction of those held by Nigeria and Angola.¹¹ President Obiang, thirty years after the coup that brought him to power, remains a pariah in most of the world’s democracies. There seems to be little to justify devoting much attention to Equatorial Guinea.

If one were to seek the ideal case study to illustrate a wide range of problems that afflict the world today, however, Equatorial Guinea would present itself as the perfect choice. It is a relatively young state that has thus far failed to transition effectively from a harsh colonial past. It has a repressive government that conducts elections for show only while ruling under a nominally democratic constitution.¹² It is underdeveloped, but not for lack of resources or foreign direct investment. Its population suffers from malaria and periodic outbreaks of cholera that measures requiring only modest investments could prevent.¹³ Equatorial Guinea also illustrates well many of the foreign policy issues surrounding the global scramble for oil.¹⁴

From the standpoint of policy, Equatorial Guinea represents an important test of the international community’s ability to promote reform in a

7. Bureau of African Affairs, U.S. Dep’t of State, *Background Note: Equatorial Guinea* (6 Apr. 2011), available at <http://www.state.gov/r/pa/ei/bgn/7221.htm> [hereinafter *Background Note: Equatorial Guinea*].

8. R.W. Johnson, *Playboy Waits for His African Throne*, SUNDAY TIMES LONDON, 3 Sept. 2006, available at <http://www.timesonline.co.uk/tol/news/world/article626511.ece>.

9. See ADAM ROBERTS, *THE WONGA COUP: GUNS, THUGS AND A RUTHLESS DETERMINATION TO CREATE MAYHEM IN AN OIL-RICH CORNER OF AFRICA* 35–36 (2006).

10. MAASS, *supra* note 4, at 30; US Census Bureau, *State and Country Quick Facts: North Dakota* (2010), available at <http://quickfacts.census.gov/qfd/states/38000.html>.

11. See MICHAEL T. KLARE, *RISEING POWERS, SHRINKING PLANET: THE NEW GEOPOLITICS OF ENERGY* 151 (2008).

12. CONST. OF THE REPUBLIC OF EQ. GUINEA, 17 Jan. 1996.

13. Bureau of Consular Affairs, US Dep’t of State, *International Travel Information: Country Specific Information: Equatorial Guinea* (15 Dec. 2010), available at http://travel.state.gov/travel/cis_pa_tw/cis/cis_1110.html.

14. See generally PETER MAASS, *CRUDE WORLD: THE VIOLENT TWILIGHT OF OIL* 26–52 (2009).

small state mired in what Oxford economist Paul Collier has labeled the bad governance trap.¹⁵ In addition to an array of international human rights norms, the international community has begun to develop norms pertaining to corruption, transparency, and stolen asset recovery. The United States, which accounts for a greater share of foreign investment in Equatorial Guinea than any other state,¹⁶ possesses the legal tools to assert extraterritorial jurisdiction in ways that may be able to promote reform. However, competition from the People's Republic of China for resources has the potential to undermine any efforts the United States might undertake to press Equatorial Guinea for reform. Before assessing the role that these reform instruments might play in addressing corruption and human rights abuse in Equatorial Guinea, it is worth surveying the problems of this little-known corner of Africa in greater detail.

II. THE OBIANG REGIME

Teodoro Obiang Nguema Mbasogo has ruled Equatorial Guinea, a former Spanish colony located on Africa's west coast, since 1979 when he ousted his uncle, Francisco Macías Nguema, from power. On assuming control of the state, Obiang staged one of modern history's more bizarre trials. His uncle, who had been shot and wounded fleeing into the jungle carrying suitcases full of cash, was tried in a movie theater filled with 1,500 spectators who were treated to the sight of their former ruler confined to a cage suspended from the ceiling. Following Macías's conviction and the pronouncement of his 101 death sentences, he was shot by a firing squad composed of soldiers from Obiang's newly-constituted Moroccan presidential guard.¹⁷

Following the trial, Obiang proclaimed an amnesty to encourage Equatoguinean refugees to come home.¹⁸ He also ordered the release of approximately 5,000 political prisoners.¹⁹ He did not, however, relinquish the dictatorial control over the state that his uncle had exercised.

Since the coup, Obiang has been elected president five times in seriously flawed elections, most recently in December 2009. At that time, President Obiang was elected to a seven-year term of office with what a government source claimed was 95 percent of the vote. As in previous years, the election

15. PAUL COLLIER, *THE BOTTOM BILLION* 5, 64–75 (2007).

16. *Background Note: Equatorial Guinea*, *supra* note 7.

17. Steve Bloomfield, *Profiles, Teodoro Obiang Nguema: A Brutal, Bizarre Jailer*, INDEPENDENT (London), 13 May 2007, available at <http://www.independent.co.uk/news/people/profiles/teodoro-obiang-nguema-a-brutal-bizarre-jailer-448575.html>.

18. ALAN RAKE, *AFRICAN LEADERS: GUIDING THE NEW MILLENNIUM* 81 (2001).

19. *Id.*

was widely ridiculed for its implausible result and marred by allegations of fraud and voting irregularities.²⁰

In July 2003, the BBC reported that an Equatoguinean radio program called Bidze-Nduan (Bury the Fire) had lauded President Obiang as someone who was “like God in heaven” and “in permanent contact with the Almighty.”²¹ A presidential aide said, “He can decide to kill without anyone calling him to account and without going to hell because it is God himself, with whom he is in permanent contact, and who gives him this strength.”²²

III. HUMAN RIGHTS IN EQUATORIAL GUINEA

Freedom House, the non-profit organization founded in 1941 by Eleanor Roosevelt, Wendell Willkie, and others to promote democracy and human rights through research and advocacy, releases its annual survey, *Freedom in the World*, every January. In 2009, along with the full survey of 193 states and 16 non-sovereign territories, Freedom House issued a companion volume designed to highlight the organization’s findings related to those states and territories at the very bottom of the rankings of political freedom. *The Worst of the Worst: The World’s Most Repressive Societies 2009* examined seventeen countries and four territories considered especially noteworthy among the forty-two states rated “Not Free.”²³ Particularly highlighted in the report were eight states given the lowest possible score (seven on a one-to-seven scale) on both political rights and civil liberties. The eight states ranked as the worst of the worst were Burma, Equatorial Guinea, Libya, North Korea, Somalia, Sudan, Turkmenistan, and Uzbekistan.²⁴

Equatorial Guinea’s status as one of the “worst of the worst” has been confirmed by the annual *Country Reports on Human Rights Practices* of the US State Department and by surveys prepared by international NGOs such as Amnesty International and Human Rights Watch.²⁵ In July 2009, for example, Human Rights Watch released a hundred-page report detailing the connection between oil wealth, corruption, and human rights abuses

20. KEEPING FOREIGN CORRUPTION OUT, *supra* note 2, at 20.

21. *Equatorial Guinea’s “God,”* BBC NEWS, 26 July 2003, available at <http://news.bbc.co.uk/2/hi/africa/3098007.stm>.

22. *Id.*

23. FREEDOM HOUSE, WORST OF THE WORST: THE WORLD’S MOST REPRESSIVE SOCIETIES 2009, at 1 (2009), available at <http://www.freedomhouse.org/uploads/WoW09/WOW%202009.pdf>.

24. *Id.* at 4.

25. See U.S. DEP’T OF STATE, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2011); AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 2010: THE STATE OF THE WORLD’S HUMAN RIGHTS 135–37 (2010), available at <http://report2010.amnesty.org/en/>; HUMAN RIGHTS WATCH [HRW], WORLD REPORT 2011, at 111–15 (2011), available at <http://www.hrw.org/en/world-report-2011>.

in Equatorial Guinea.²⁶ In addition, information regarding the human rights situation in Equatorial Guinea has been published on occasion by the United Nations Commission on Human Rights, which in 1992 appointed a special rapporteur to monitor Equatorial Guinea. The reports submitted to the UNCHR from 1994 to 1999 provide an important glimpse into the society at the time when Western oil companies first began making major investments in Equatorial Guinea.²⁷

According to the 1999 report of the UNCHR special rapporteur, based on site visits and confidential interviews with inmates, the prisons in Malabo (Black Beach) and Bata were overcrowded.²⁸ Medical care for inmates was almost entirely absent and nutrition was described as “very inadequate.”²⁹ In fact, rations were two loaves of bread per day with “a meagre portion of sardines and rice once every three or four days,” although the report notes that not all inmates received the sardines and rice due to haphazard distribution.³⁰ Eleven prisoners whose death sentences were commuted to life in prison were reportedly kept twenty-four hours a day in windowless cells measuring 2 meters by 1.4 meters.³¹

In November 2008, Manfred Nowak, the UN special rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, visited Equatorial Guinea at the invitation of the government. On the basis of interviews with prisoners and medical examinations, he stated:

I have found that torture is systematically used by the police forces against persons who refuse to “cooperate”—persons suspected of political crimes as well as suspects of common crimes, in particular at the Central Police Stations in Bata

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26. HRW, *WELL OILED: OIL AND HUMAN RIGHTS IN EQUATORIAL GUINEA* (2009), available at http://www.hrw.org/sites/default/files/reports/bhr0709web_0.pdf.
 27. See, *inter alia*, *Report on the Human Rights Situation in the Republic of Equatorial Guinea Prepared by Mr. Alejandro Artucio, Special Rapporteur of the Commission, Pursuant to Commission Resolution 1993/69*, U.N. ESCOR, Comm’n on Hum. Rts., 50th Sess., Prov. Agenda Item 12, U.N. Doc. E/CN.4/1994/56 (1994); *Report on the Human Rights Situation in the Republic of Equatorial Guinea Submitted by Mr. Alejandro Artucio, Special Rapporteur of the Commission, Pursuant to Commission Resolution 1997/67*, U.N. ESCOR, Comm’n on Hum. Rts., 54th Sess., Prov. Agenda Item 10, U.N. Doc. E/CN.4/1998/73 (1998); *Report on the Human Rights Situation in the Republic of Equatorial Guinea Submitted by Mr. Alejandro Artucio, Special Rapporteur of the Commission, Pursuant to Commission Resolution 1998/71*, U.N. ESCOR, Comm’n on Hum. Rts., 55th Sess., Prov. Agenda Item 9, U.N. Doc. E/CN.4/1999/41 (1999).
 28. *Report on the Human Rights Situation in the Republic of Equatorial Guinea Submitted by Mr. Alejandro Artucio, Special Rapporteur of the Commission, Pursuant to Commission Resolution 1998/71*, U.N. ESCOR, Comm’n on Hum. Rts., 55th Sess., Prov. Agenda Item 9, ¶ 28, U.N. Doc. E/CN.4/1999/41 (1999).
 29. *Report on the Human Rights Situation in the Republic of Equatorial Guinea Submitted by Mr. Alejandro Artucio, Special Rapporteur of the Commission, Pursuant to Commission Resolution 1998/71*, U.N. ESCOR, Comm’n on Hum. Rts., 55th Sess., Agenda Item 9, ¶ 38, U.N. Doc. E/CN.4/1999/41 (1999).
 30. *Id.*
 31. *Id.* ¶ 39.

and Malabo. The gendarmerie appears to practice torture to a lesser extent. I was unable to verify allegations against the military because I was denied access to military detention facilities.³²

Nowak's investigation produced evidence of various forms of torture, including:

beatings on various parts of the body, but often on the soles of the feet and/or the buttocks with police batons, solid "rubberized" cables and wooden bars; electric shocks with starter cables attached to different parts of the body with alligator clips; various forms of suspension with hands and feet tied together, including the so-called "Ethiopian style" for prolonged periods. In these positions the victims are swung, beaten, or heavy devices such as car batteries are placed on top of their backs. Furthermore, they were sometimes blindfolded or forced to inhale candle smoke.³³

Torture, Nowak reported, was generally intended to produce confessions or to extract information, although it could also be used to punish or intimidate inmates or to extort money.³⁴

President Obiang has held power for three decades, in part, due to persistent harassment of all opposition parties and politicians. Although the Equatoguinean constitution provides for multiparty elections, there is little possibility for opposition parties to organize or campaign without government interference.³⁵ A report released in February 2009 by the UN Working Group on Arbitrary Detention provided information on 100 political prisoners in Equatorial Guinea.³⁶ The charge of "crimes against the state" provides a blunt legal instrument to be used against opposition politicians and those whom the regime suspects of involvement in one of the regularly reported coup attempts.³⁷

Jail sentences for opponents of the regime have been a common feature of Equatorial Guinea under Obiang. In July 2002, Fabian Nsue Guema, an opposition party leader, was sentenced to a year in prison for "complicity in insults and libel against the head of state."³⁸ The charge stemmed from a letter posted on the Internet, allegedly written by an exiled opposition party

32. Press Release, Office of the High Commissioner for Human Rights, UN Special Rapporteur on Torture Concludes Mission to Equatorial Guinea (2008), available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=8664&LangID=E>.

33. *Id.*

34. *Id.*

35. CONST. OF THE REPUBLIC OF EQ. GUINEA, 17 Jan. 1996, item 9.

36. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP'T OF STATE, 2008 HUMAN RIGHTS REPORT: EQUATORIAL GUINEA (2009), available at <http://www.state.gov/g/drl/rls/hrrpt/2008/af/118999.htm> [hereinafter 2008 HUMAN RIGHTS REPORT].

37. *Id.*

38. *Jail for Equatorial Guinea Net Slur*, BBC NEWS, 31 July 2002, available at <http://news.bbc.co.uk/2/hi/africa/2164050.stm>.

member, which insulted President Obiang.³⁹ More recently, on 7 July 2009, five people were sentenced to six years imprisonment each for belonging to a banned political party, the PPGE.⁴⁰

In two recent surveys, Equatorial Guinea has been rated among the most repressive countries in the world in terms of press freedom. In its "Press Freedom Index 2009," Reporters Without Borders ranked Equatorial Guinea 158th among 175 countries surveyed.⁴¹ A 2006 ranking prepared by the Committee to Protect Journalists placed Equatorial Guinea behind only North Korea, Burma, and Turkmenistan among states with the heaviest censorship.⁴² With one exception, all broadcast media outlets in Equatorial Guinea are state-owned; RTV-Asonga, the exception, is owned by President Obiang's son, Teodoro Nguema Obiang Mangue.⁴³ While privately-owned newspapers exist, they publish sporadically and under constraints from the government.⁴⁴

The media in Equatorial Guinea exists only to praise President Obiang's rule and to obscure as much as possible the truth about conditions in the country. Radio Malabo, a state-owned media outlet, has broadcast songs that warn against criticism of the government.⁴⁵ In January 2009, Equatorial Guinea's deputy information minister dismissed four employees of RTVGE, the state-owned television and radio broadcaster, for "insubordination" and "lack of enthusiasm."⁴⁶ According to Reporters Without Borders, "the four journalists were punished for failing to praise the regime's 'merits.'"⁴⁷ When Rodrigo Angue Nguema, a reporter for Agence France-Presse (AFP) and Radio France Internationale (RFI) and the only foreign correspondent in Equatorial Guinea, filed a story in June 2009 with incorrect information about the head of the country's national airline, he was imprisoned in Malabo's notorious Black Beach prison for almost four months.⁴⁸

The US State Department reports that there are no newsstands in Equatorial Guinea. In the entire country, there are only three libraries (sponsored

39. *Id.*

40. 2008 HUMAN RIGHTS REPORT, *supra* note 36.

41. REPORTERS WITHOUT BORDERS FOR PRESS FREEDOM, WORLD PRESS FREEDOM INDEX 2009 (2009), available at http://en.rsf.org/IMG/pdf/classement_en.pdf.

42. See *Special Report: 10 Most Censored Countries*, COMMITTEE TO PROTECT JOURNALISTS (2 May 2006), available at <http://cpj.org/reports/2006/05/10-most-censored-countries.php>.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Despotic Regime's Absurd Methods Decried After Four Journalists Fired for "Lack of Enthusiasm,"* REPORTERS WITHOUT BORDERS FOR PRESS FREEDOM (23 Jan. 2009), available at <http://www.rsf.org/Despotic-regime-s-absurd-methods.html>.

47. *Id.*

48. *AFP and RFI Correspondent Released from Prison*, IFEX, 21 Oct. 2009, available at http://www.ifex.org/equatorial_guinea/2009/10/21/nguema_released/.

by the Catholic Church or foreign governments) and two bookstores (both of which are affiliated with religious institutions).⁴⁹

One of the many challenges facing efforts to improve conditions in Equatorial Guinea is the weakness of civil society in the country. The State Department reports that there are very few human rights NGOs in Equatorial Guinea and those that do exist focus on issues related to development while avoiding issues related to government corruption or the abuse of civil and political rights.⁵⁰ “The government’s relationship with NGOs,” according to the State Department’s *Country Reports on Human Rights Practices*, “was reported to be mistrustful due to concerns about state security, particularly in light of coup attempts in recent years.”⁵¹

IV. THE OIL FACTOR

Although oil and gas exploration in Equatorial Guinea’s territorial waters began during the colonial period under concessions from the Spanish government, there were no discoveries until 1985 when a joint Spanish-Equatoguinean venture called Guineo-Española de Petroleos S.A. (GEPSA) drilled a successful test well in the Alba field in the Gulf of Guinea between the island of Bioko and the Nigerian mainland.⁵² Production began in December 1991 when Walter International, an American firm that had purchased the lease after Equatorial Guinea’s Spanish partner withdrew, began producing gas liquids.⁵³ However, it was not until 1995 when Mobil brought the offshore Zafiro field into production that the Equatoguinean oil boom began in earnest. Within just a few years, the Zafiro field was producing 190,000 barrels per day.⁵⁴

Petroleum produced in Equatorial Guinea’s territorial waters possesses some of the advantages of the petroleum produced nearby in Nigeria and Angola—specifically, its proximity to the United States and Western Europe (relative to oil from the Middle East and Central Asia) and its quality as light, sweet crude—but Equatorial Guinea possesses unique advantages as well. First, the fact that all production is offshore offers freedom from the disruptions due to war, civil disturbances, and even peaceful protests that have plagued oil company operations onshore. Piracy and armed attacks on production platforms have occurred but not with the frequency or sever-

49. 2008 HUMAN RIGHTS REPORT, *supra* note 36.

50. *Id.*

51. *Id.*

52. Jędrzej George Frynas, *The Oil Boom in Equatorial Guinea*, 103 AFR. AFF. 527, 528–29 (2004).

53. *Id.*

54. *Id.* at 529.

ity of the disruptions that have occurred, for example, in the Niger Delta region of Nigeria.⁵⁵ Offshore production also means that it is not necessary to build—and defend—pipelines. While oil companies would prefer not to deal with a corrupt and brutal regime, the government of Equatorial Guinea itself offers certain additional advantages. First, Equatorial Guinea, unlike Nigeria, is not a member of OPEC. It has also offered production-sharing agreements (PSAs) on terms that are reportedly more generous than those offered by the oil giants of Africa.⁵⁶

Eager to secure what were proving to be unusually productive oil and natural gas deposits without the risks characteristic of operations on the continent, ExxonMobil, Marathon, Amerada Hess, and other American companies poured billions of dollars into Equatorial Guinea to purchase concessions and to build the infrastructure necessary to turn the country into a major oil producer. By 2005, Equatorial Guinea had become the third-leading petroleum exporter in sub-Saharan Africa with production in excess of 300,000 barrels of oil per day.⁵⁷ The country's petroleum reserves were estimated in 2006 at 1.8 billion barrels, a small fraction of the 117 billion barrels estimated for Africa as a whole but not an inconsequential figure.⁵⁸

Equatorial Guinea's current oil production is handled almost entirely by Americans who are flown back and forth across the Atlantic by US-based oil and oilfield supply companies. The volume of oil-related travel is evidenced by the fact that Malabo, a city of roughly 60,000 in a country where the vast majority of the population can scarcely even dream of ever seeing the inside of an airplane, was for a time served by non-stop flights from Houston.⁵⁹ Delta Airlines proposed weekly direct service from Atlanta to Malabo (via Cape Verde) beginning in June 2009, but plans were dropped after the US Department of Homeland Security denied permission for Delta to fly a companion route from Atlanta to Nairobi, Kenya.⁶⁰

Oilfield workers and other foreign nationals providing support services to Equatorial Guinea's only significant industry live either in the few luxury hotels that have been developed in Malabo or in large walled compounds built by the oil companies.⁶¹ During their stints in Equatorial Guinea, the roustabouts, welders, tool-pushers, and other unskilled and semi-skilled

55. GHAZVINIAN, *supra* note 6, at 17–31.

56. *Id.* at 87–88; *see also* KLARE, *supra* note 11, at 150.

57. KLARE, *supra* note 11, at 151.

58. *Id.*

59. Simon Romero, *Energy of Africa Draws the Eyes of Houston*, N.Y. TIMES, 23 Sept. 2003, available at <http://www.nytimes.com/2003/09/23/business/energy-of-africa-draws-the-eyes-of-houston.html>.

60. Trevor Williams, *Future Uncertain for Delta's Kenya Flight*, GLOBALATLANTA.COM (4 June 2009), available at <http://globalatlanta.com/article/17384/>.

61. MAASS, *supra* note 4, at 34–36.

workers needed to operate drilling rigs and production platforms are shuttled by helicopter back and forth between their enclaves and their offshore work sites.⁶² There are few incentives for Westerners to venture outside their hotels or beyond the walls of their compounds. The segregation of foreign nationals from Equatoguinean society serves the interest of the Obiang regime and corporations doing business with it, both of which find a “see no evil, hear no evil, speak no evil” response to the poverty and repression of Equatorial Guinea’s population to be convenient.

Equatorial Guinea’s oil wealth, far from being a blessing to the population, has been a curse. It is central to a culture of corruption that has enriched only the ruling elite and the corporations that share in the resource wealth. Transparency International, a transnational NGO that works to expose and eliminate corruption, conducts an annual survey designed to measure perceptions of corruption in particular countries and in particular business sectors. According to the survey released in December 2008, the oil and gas industry ranks third (behind public works contracts and construction and real estate and property development) in the perceived likelihood that officials in the industry will attempt to bribe public officials.⁶³

Hearings conducted by the Senate Permanent Subcommittee on Investigations in 2004 revealed that a number of American corporations were complicit in efforts by President Obiang and members of his family to cash in on Equatorial Guinea’s oil wealth. One of the first American oil companies in Equatorial Guinea, Walter International, paid for Teodoro, President Obiang’s oldest son, to take summer English-language classes at Pepperdine University in Malibu, California. Teodoro rented a house in Malibu, used a limousine and driver to get to class, and spent at least \$50,000 of Walter International money over the course of a single year according to employees of the Houston-based company.⁶⁴

The Senate investigation, which focused on the failure of Washington-based Riggs Bank to adhere to regulations designed to prevent money laundering, also revealed that Walter International’s arrangement with the Obiang family in the early 1990s had been replicated and expanded by other petroleum companies, including ExxonMobil, Amerada Hess, and Marathon, as the search for oil in Equatorial Guinea’s territorial waters intensified in the mid-1990s. Collectively, the companies were found to have paid over \$4 million to support over 100 Equatoguinean students studying abroad. Although support for educational opportunities in a developing country could

62. *Id.*

63. TRANSPARENCY INTERNATIONAL, BRIBE PAYERS INDEX 2008 11 (2008), available at <http://www.transparency.org/content/download/39275/622457>.

64. Justin Blum, *U.S. Oil Firms Entwined in Equatorial Guinea Deals: Riggs Probe Led to SEC Inquiry on Corruption, Profiteering*, WASH. POST, 7 Sept. 2004, available at <http://www.washingtonpost.com/wp-dyn/articles/A1101-2004Sep6.html>.

be presented as part of the companies' efforts to be good corporate citizens, most of the students supported by the oil companies were in fact related to government officials, suggesting the beneficence was actually bribery.⁶⁵

Payments made by oil companies operating in Equatorial Guinea were, according to the Senate investigation, sent to various accounts, some designated as government accounts and others designated as individual accounts. For example, between 1996 and 2001 ExxonMobil's Equatoguinean subsidiary leased property directly from President Obiang's wife.⁶⁶ Later, the lessor was designated as Abayak S.A., a company controlled directly by President Obiang.⁶⁷ One of the more remarkable cases of business dealings involving members of President Obiang's family was a lease entered into by Triton in 2001 which required payments of \$445,800 to a fourteen-year-old relative of the president and to the boy's mother.⁶⁸

While considerable evidence indicates that American oil companies operating in Equatorial Guinea have attempted to improve their business practices and no evidence suggests that any are presently under investigation for violations of the Foreign Corrupt Practices Act (FCPA), it is worth noting that in 2006 ExxonMobil and Marathon entered into confidentiality agreements with the Equatoguinean government, which thwarted efforts to improve the transparency of oil company contracts in the country.⁶⁹

The Riggs Bank investigation raised serious questions about American oil companies' compliance with the FCPA and resulted in the largest fine in the history of the US banking industry being levied against Riggs.⁷⁰ Some of the most interesting findings of investigators, however, were those related to the financial activities of President Obiang, his family, and close associates. The total value of Riggs Bank account balances and outstanding loans held by the Obiang family, the families of other senior government officials, and the government of Equatorial Guinea was almost \$700 million.⁷¹ Bank managers reported that, on occasion, Equatoguinean embassy staff and others

65. *Id.*

66. *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act: Case Study Involving Riggs: Hearing before the S. Comm. on Gov't Affairs, Permanent Subcomm. on Investigations*, 108th Cong. 100 (2004), available at http://hsgac.senate.gov/public/_files/ACF5F8.pdf [hereinafter MONEY LAUNDERING AND FOREIGN CORRUPTION].

67. *Id.*

68. *Id.* at 101.

69. *U.S. Foreign Policy Saps Human Rights Improvements in Ethiopia and Equatorial Guinea, Subcomm. on Int'l Orgs., Human Rights, and Oversight, and Subcomm. on Africa and Global Health, Comm. on Foreign Affairs*, (10 May 2007) (testimony of Lynn Fredrikson, Advocacy Director for Africa, Amnesty International USA), available at <http://www.internationalrelations.house.gov/110/fre051007.htm>.

70. Timothy L. O'Brien, *At Riggs Bank, A Tangled Path Led to Scandal*, N.Y. TIMES, 19 July 2004, available at <http://www.nytimes.com/2004/07/19/us/at-riggs-bank-a-tangled-path-led-to-scandal.html>.

71. MONEY LAUNDERING AND FOREIGN CORRUPTION, *supra* note 66, at 38.

brought suitcases full of cash into a bank branch to be deposited.⁷² Simply put, President Obiang and those closest to him were taking in millions of dollars from the sale of Equatorial Guinea's oil and felt no qualms about keeping the money in a US bank.

V. CORRUPTION IN EQUATORIAL GUINEA

Corruption is endemic in Equatorial Guinea and has been for decades. During the 1980s, a measles epidemic ravaged the country in spite of the availability, through external donations, of vaccines. Drugs entering the country were reportedly stolen by government officials to be sold outside Equatorial Guinea. The minister of health was removed from his post as a consequence of the measles epidemic but was subsequently appointed to serve as Equatorial Guinea's ambassador to Cameroon.⁷³

Robert Klitgaard, who worked in Equatorial Guinea during the early 1980s as a development consultant, reports a conversation with President Obiang prior to the discovery of oil in the Gulf of Guinea that, in light of his own theft of public funds, is the height of disingenuousness. Speaking of corruption, President Obiang said, "This is our biggest problem. People are diverting funds. In taxes, for permits. We are asked to raise pay, but we simply can't afford it."⁷⁴

In a different socio-political environment, foreign investments on a large scale might have been expected to improve the abysmally low standard of living in Equatorial Guinea. Given the nature of the existing regime, it merely enriched President Obiang and the members of his family. An unusually candid admission by Teodoro Nguema Obiang helps to explain the situation. In a sworn statement presented to a South African court hearing a case involving two of his homes in Cape Town, the son of Equatorial Guinea's president attributed a portion of his personal wealth to the fact that, as a government minister, he was permitted to enter into joint ventures with foreign interests vying for contracts from the government of Equatorial Guinea. As a result of such joint ventures, he and other officials could receive "a percentage of the total cost of the contract."⁷⁵

In spite of an official salary of \$5,000 per month from his position as minister of forestry and agriculture, Teodoro Obiang owns the estate in Malibu, two large homes in Cape Town, South Africa, and a number of expensive cars, including seven Ferraris, two Lamborghinis, two Maybachs,

72. *Id.* at 51.

73. KLITGAARD, *supra* note 4, at 35.

74. *Id.* at 268–69.

75. *Officials May Have Slice of State Deals*, CAPE TIMES, 9 NOV. 2006.

five Bentleys, two Porsches, and four Rolls Royces.⁷⁶ With other family members possessing similar portfolios and equally small salaries, it is easy to see why Equatorial Guinea annually ranks among the most corrupt countries in the world according to rankings by Transparency International. Journalist Ken Silverstein, who has reported on Equatorial Guinea for years, has said that “Obiang treats Equatorial Guinea’s national treasury like his personal checking account.”⁷⁷

In response to accusations of corruption, the government of Equatorial Guinea has consistently responded with denials and threats intended to impede the flow of damaging information. This was especially apparent in the aftermath of the Senate’s investigation into Equatoguinean accounts in the Riggs Bank. According to the BBC, a Spanish television network’s report on the investigation “sparked amazement in the streets of the capital Malabo.” The country’s information minister, Alfonso Nsue Mokuy, claimed that all funds deposited in the Riggs National Bank were part of the national treasury rather than private accounts. He also told suppliers of foreign television programming to avoid broadcasting reports that could destabilize the country’s government.⁷⁸ Nsue was particularly critical of the Spanish media, which, he said, “always went out of their way to broadcast information that confused opinion at home and abroad with the single aim of destabilising the democratic political regime of Equatorial Guinea for hidden and undeclared interests.”⁷⁹ On 22 July 2004, Nsue Mokuy threatened to bring “‘criminal and civil suits’ against ‘the foreign press in general, and the Spanish press and television service in particular, for tendentious comments and the manipulation of the truth’” in their reports on the Riggs Bank investigation.⁸⁰

The use of both denials and threats in response to criticism of the regime is common in Equatorial Guinea. Members of an Australian television crew reporting on Equatorial Guinea’s oil wealth were forced to leave the country under threat of imprisonment on 12 May 2004. In October 2004, author Peter Maass was forced out of the country for “talking to people of concern to the government and actions not coherent with his stated purpose.”⁸¹ And

76. Nashira Davids, *Oil-Rich Nation’s SA Assets Attached*, SUNDAY TIMES (South Africa), 1 Apr. 2007, available at <http://www.timeslive.co.za/sundaytimes/article86189.ece>. For the complete list of automobiles, worth \$9.5 million collectively, see KEEPING FOREIGN CORRUPTION OUT, *supra* note 2, at 70–71.

77. Ken Silverstein, *Our Friend Teodoro*, HARPER’S MAG., 18 Apr. 2006, available at <http://www.harpers.org/archive/2006/04/sb-obiang-eg>.

78. Stephane Mayoux, *E Guinea Warning After Bank Probe*, BBC NEWS, 21 Jul. 2004, available at <http://news.bbc.co.uk/2/hi/africa/3911855.stm>.

79. Tito Drago, *Equatorial Guinea: the Dictator’s Achilles’ Heel*, INTER PRESS SERVICE, 21 Jul. 2004, available at <http://ipsnews.net/print.asp?idnews=24731>.

80. HUMAN RIGHTS WATCH, *WELL OILED*, *supra* note 26, at 37.

81. BUREAU OF DEMOCRACY, HUMAN RIGHTS, & LABOR, U.S. DEP’T OF STATE, 2004 HUMAN RIGHTS REPORT: EQUATORIAL GUINEA (2005), available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41601.htm>.

in February 2005, John Ghazvinian, while in Equatorial Guinea researching a book on Africa's oil industry, was threatened by a government official and forced to leave.⁸²

VI. THE UNITED STATES AND EQUATORIAL GUINEA

In 1995, just as Equatorial Guinea was beginning to emerge as a significant oil exporter, the United States closed its embassy in Malabo.⁸³ The closure came amid deteriorating relations between the two governments prompted by American criticism of Equatorial Guinea's human rights record. The last straw was almost certainly a death threat communicated to US ambassador John Bennett from an aide to President Obiang.⁸⁴ During President Clinton's second term, relations between the U.S. and Equatorial Guinea remained strained even as American oil companies were investing more and more money in the Equatoguinean economy.⁸⁵

George W. Bush's determination to help oil companies wherever possible combined with his post-9/11 desire to reduce the share of American oil imports coming from the Middle East led to an improvement in relations between the US and Equatorial Guinea. The latter's emergence as the third-largest oil exporter in sub-Saharan Africa ensured that concern with corruption and human rights abuse would give way to economic considerations.⁸⁶ In 2002, Bush and Obiang met for breakfast, although the White House refused to release photographs of the meeting.⁸⁷ In 2003, the U.S. embassy in Malabo was reopened.⁸⁸ Three years later, on 12 April 2006, Secretary of State Condoleezza Rice received President Obiang in Washington and said, "You are a good friend and we welcome you."⁸⁹ As Frank Ruddy, who served as US ambassador to Equatorial Guinea under President Reagan, noted in 2005, the Bush administration had become "big cheerleaders for the government—and it's an awful government."⁹⁰

After Riggs Bank was hit with the \$25 million fine for having "turned a blind eye to evidence suggesting the bank was handling the proceeds of

82. GHAZVINIAN, *supra* note 6, at 199–203.

83. MAASS, *supra* note 4, at 32.

84. *Id.*

85. GHAZVINIAN, *supra* note 6, at 174.

86. MAASS, *supra* note 4, at 47–48; see also GHAZVINIAN, *supra* note 6, at 180–81.

87. Alexander Smolczyk, *Rich in Oil, Poor in Human Rights: Torture and Poverty in Equatorial Guinea*, DER SPIEGEL, 28 Aug. 2006, available at <http://www.spiegel.de/international/spiegel/0,1518,434691,00.html>.

88. Peter Maass, *A Touch of Crude*, MOTHER JONES, Jan./Feb. 2005, available at <http://motherjones.com/politics/2005/01/obiang-equatorial-guinea-oil-riggs>.

89. ADAM ROBERTS, *THE WONGA COUP: GUNS, THUGS AND A RUTHLESS DETERMINATION TO CREATE MAYHEM IN AN OIL-RICH CORNER OF AFRICA* 262 (2006).

90. Maass, *supra* note 88

foreign corruption," American banks avoided all dealings with President Obiang, members of his family, and the Equatoguinean government.⁹¹ During the first half of 2006, officials of the US State Department approached Independence Federal Savings Bank to ask for help on behalf of Equatorial Guinea.⁹² Both the bank and the Equatoguinean embassy in Washington claimed that the account which was subsequently opened was simply to handle the embassy's operational expenses, but a State Department source told journalist Ken Silverstein that the bank was free to maintain a "total investment portfolio."⁹³ Silverstein concluded that "it would be no surprise if Equatorial Guinea's political leaders abused their new banking arrangements, because Obiang and his cronies run their government as a criminal enterprise and make no distinction between the state treasury and their personal checking accounts."⁹⁴

VII. CORRUPTION, REGIME SURVIVAL, AND DEVELOPMENT TRAPS

The behavior of an entrenched dictator and kleptocrat like Teodoro Obiang Nguema may owe a great deal to venality, but a more basic interest in survival plays a role as well. It has often been noted that tyrants are like those who ride on the backs of tigers; they must keep riding or be eaten. President Obiang is the product of an era in sub-Saharan African politics in which political leadership was an extraordinarily hazardous vocation.⁹⁵ According to a survey by John Wiseman of the fates of 485 political leaders (including heads of state, prime ministers, military leaders, and opposition leaders, along with some influential clerics, writers, and labor leaders) from 1960 to 1992, the chances of an African political leader being executed, imprisoned, or exiled during the period were three in five.⁹⁶ To be more specific, 17.7 percent were executed, assassinated, or died in prison and 41.6 percent were imprisoned, exiled, or both.⁹⁷

Even if much has changed in Africa since the period encompassed by Wiseman's survey, not all of the leaders who came to power through vio-

91. Ken Silverstein, *Obiang's Banking Again: State Department and Washington Insiders Help a Dictator Get What He Wants*, HARPER'S MAG., 9 Aug. 2006, available at <http://www.harpers.org/archive/2006/08/sb-obiangs-banking-again-1155053056>.

92. *Id.*

93. *Id.*

94. *Id.*

95. Of course, because he gained power in 1979 by overthrowing and executing his uncle, Obiang is among those who are both products of and contributors to the problem of violence in African politics.

96. John Wiseman, *Leadership and Personal Danger in African Politics*, 31 J. MOD. AFRICAN STUD. 657, 657-60 (1993).

97. *Id.*

lence have passed from the scene, nor has the use of violence as a means of gaining power been eliminated. Much of West Africa continues to suffer under dictatorships that are products of this impulse in sub-Saharan African politics. This legacy of political violence and personal insecurity holds profound significance for the prospects for change in a place like Equatorial Guinea. Noting that "in Africa competing political élites have a record of treating each other very badly," Wiseman expressed well an important implication of the problem:

The authoritarianism that characterised most African political systems was for many years institutionalised in single-party or military-ruled states, and these offer few opportunities for leaders to be changed by peaceful and non-coercive means. Given the lack of alternatives, it is not surprising that political competition has taken on the configuration of a zero-sum game, notably in relation to *coups d'état* where the stakes are extremely high: success leads directly to positions of power (and, often, wealth), while failure is quite likely to have fatal consequences. Once established, such all-or-nothing situations become difficult to change because they are structurally self-perpetuating. If those currently exercising great influence are fearful of the personal consequences of being removed they are more than likely to use highly oppressive measures against real or imagined opponents in order to try and avoid such an eventuality. In doing so they increase the probability that they will be either imprisoned, exiled, or killed if/when they lose power themselves.⁹⁸

For a dictator riding the tiger, the lessons are clear. First and foremost, no rivals and no alternative centers of power can be allowed to develop. This means not only harassing opposition leaders and either banning or severely restricting opposition political parties, it means keeping power centers within government weak or under tight control. The police and the military present a particularly difficult problem for dictators because either (or both) may be essential to the exercise of dictatorial control, but this very function may put them in a position to threaten that control.

Government ministries unconnected with security functions may also generate threats to the survival of the regime if allowed to grow too powerful. An education ministry or a health ministry that functions well in a country characterized by dysfunctional government ministries may raise questions about the competence of those at the head of the government and produce popular support for the minister who is doing his or her job well. Both circumstances would likely be considered threatening by a dictator.

Thus, in spite of almost two decades of impressive economic growth led by the oil and gas sector, the people of Equatorial Guinea are among the poorest in Africa.⁹⁹ It is the peculiar tragedy of Equatorial Guinea, in fact,

98. *Id.* at 659–60.

99. MAASS, *supra* note 4, at 34–36; see also GHAZVINIAN, *supra* note 6, at 175.

that it is home to the world's largest gap between a Human Development Index ranking and a ranking of GDP per capita.¹⁰⁰ Another, more direct, way to describe the problem is to say that Equatorial Guinea has the world's worst distribution of income, a condition generated by what may be the world's worst government.

The fundamental problem Equatorial Guinea faces is, of course, the corruption of the regime. Rather than investing oil revenues in education, health care, water treatment facilities, roads, and other public goods, much of those revenues have gone into the private accounts of President Obiang, members of his family, and other members of his inner circle. To the extent that public investment has occurred, it has principally benefited extractive industries dominated by large foreign corporations and smaller Equatoguinean firms owned by the same government officials who steal money more directly from the country's treasury. Substantial, although unknown, amounts of money have also been poured into Equatorial Guinea's national security apparatus, which includes Moroccan guards for President Obiang and a contract with the American private military corporation MPRI to train elements of the Equatoguinean police and military.¹⁰¹ Thus, even where the core state function of security is concerned, the chief beneficiaries of public investments have been members of the regime and the oil companies that enrich them.

Examined from the standpoint of development economics, Equatorial Guinea's problems, while extreme, are not unique. The country suffers from two of the four development traps (the natural resource trap and the bad governance trap) identified by Paul Collier in *The Bottom Billion*.¹⁰² But there are other, related, problems. To begin with, like many countries stuck in one or more development traps, Equatorial Guinea has difficulty keeping private capital at home.¹⁰³ Not only have many individuals who once owned prosperous enterprises fled the country due to the repression and corruption that have characterized Equatorial Guinea under the rule of both Macías and Obiang, but even those who have become wealthy as a consequence of their raids on the state's treasury prefer to spend and invest abroad.¹⁰⁴ Luxury homes have been more attractive to the ruling elite when located in Malibu, California, Potomac, Maryland, or Cape Town, South Africa rather

100. According to the *2010 Human Development Report*, Equatorial Guinea's Gross National Income per capita rank minus its Human Development Index rank is -78. Angola (-47) and Kuwait (-42) are a distant second and third, respectively, in this dubious ranking. See UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2010, at 143-46 (2010).

101. GHAZVINIAN, *supra* note 6, at 240; see also MAASS, *supra* note 4, at 26.

102. See COLLIER, *supra* note 15.

103. See *id.* at 91-95.

104. Riggs National Bank accounts serving Equatorial Guinea's political elites and their businesses are detailed in MONEY LAUNDERING AND FOREIGN CORRUPTION, *supra* note 66, at 40-50.

than in Malabo or Bata.¹⁰⁵ And Bentleys, Lamborghinis, and Maybachs are neither manufactured nor available for purchase in Equatorial Guinea. (Nor are there adequate stretches of maintained roadways that would make driving luxury cars there attractive.) In addition to the problem of private capital flight, Equatorial Guinea has experienced the flight of human capital, which means that many of those who might have been in a position to reform the country have decided to invest their efforts and talents elsewhere.¹⁰⁶

Governments like the one in Equatorial Guinea cling tenaciously to power and resist even modest reforms. Paul Collier asks, “Why is bad governance so persistent in some environments?” His answer is worth quoting at length:

One evident reason is that not everybody loses from it. The leaders of many of the poorest countries in the world are themselves among the global superrich. They like things the way they are, and so it pays to keep their citizens uneducated and ill-informed. Unfortunately, many of the politicians and senior officials in the countries of the bottom billion are villains. But persistence is not just due to self-interest. Among the politicians and officials many are people of integrity and sometimes against the odds they gain the upper hand. These are the moments of reform. But economic reform is not just a matter of political will. It is also a technical matter, and in the bottom billion there is a chronic shortage of people with the requisite knowledge. Few citizens get the training needed, and those who do get it leave. All too often, brave reformers get overwhelmed by the forces pitted against them before they can see a strategy through to completion. And finally, there is not much popular enthusiasm for economic reform because it has got a bad name. In the 1980s the international financial institutions tried to coerce governments into reform through “conditionality”—a government could get extra aid only if it agreed to change some of its economic policies. Nobody likes being coerced, least of all newly powerful local elites that are hypersensitive about sovereignty and see their gravy trains threatened.¹⁰⁷

The persistence of bad governance in the case of Equatorial Guinea—the country has known nothing other than corrupt dictatorship under the Nguema clan in over forty years of independence—raises the essential question in all such cases: What is to be done?

Setting aside the option of inaction, which is, to be sure, often the most attractive option for those on the outside, the possibilities may be divided into two categories: revolution and reform. Doing away with the existing government, although attractive on its face, appears unrealistic and, in any event, offers no guarantees of improvement. The levers available to outsiders to promote better governance are limited but not entirely without promise.

105. GHAZVINIAN, *supra* note 6, at 175; see also *Officials May Have Slice of State Deals*, *supra* note 75.

106. See COLLIER, *supra* note 15, at 91–95.

107. *Id.* at 66–67.

VIII. CONSTRAINING CORRUPTION: US AND INTERNATIONAL LAW OPTIONS

The Obiang regime, which came to power in a *coup d'etat* and has stayed in power for over thirty years through corruption, violence, and the repression of opposition groups, can make no claim to legitimacy. However, as with all absolute rulers since the dawn of the Westphalian system, Obiang has attempted to shield himself and his government from external pressures behind the norms associated with sovereignty, particularly the non-intervention, self-determination, and sovereign immunity norms. Obiang and other dictators whose regimes persist in a democratic age construe sovereignty not as the right of a political community to organize itself in the way that it sees fit but as the means whereby a regime that denies the very possibility of community turns away all challenges to its authority. However, this view of sovereignty is inconsistent with international regimes that have evolved to constrain dictators. Nor is such an understanding consistent with laws within certain states (including the US) that provide for extra-territorial jurisdiction in cases involving corruption and human rights.

A. The Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI), one of the newest regulatory regimes in the international system, is designed to reduce the theft of revenues from the production of oil, gas, and other natural resources by establishing uniform accounting standards and a mechanism for monitoring production company payments and government receipts. Under the EITI, companies publicly disclose their payments to a government, the government publicly discloses the corresponding receipts from companies, and an independent monitor overseen by a multi-stakeholder group verifies the accounts submitted by companies and the government. The entire process is overseen by the EITI International Board, which comprises representatives of participating governments, supporting governments, industries, NGOs, and investors.¹⁰⁸ The Board is led by the Rt. Hon. Clare Short, who served from 1997 to 2003 as the Secretary of State for International Development in Tony Blair's government.¹⁰⁹ Every two years, and most recently in March 2011 in Paris, the EITI Global Conference convenes. The Members' Meeting at the biennial conference serves as the governing body of the EITI.¹¹⁰

108. EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE [EITI], EITI FACT SHEET, at 3 (2011), available at http://eiti.org/files/2011-05-03_English_FactSheet.pdf.

109. Anders Tunold Kråkenes, EITI, *The Rt. Hon. Clare Short* (10 Mar. 2011), available at <http://eiti.org/cshort>.

110. EITI, *supra* note 108, at 3.

On 22 February 2008, the EITI Board granted Equatorial Guinea candidate status with a March 2010 deadline to be validated as a compliant state.¹¹¹ A national commission comprising representatives of the government, oil producers, and civil society was established to oversee implementation of EITI standards. At a meeting in Berlin on 15–16 April 2010, the EITI Board voted to deny Equatorial Guinea's request for an extension of the time permitted to be validated as a compliant state. Equatorial Guinea was the only one of seventeen states requesting an extension to be denied.¹¹²

Increased transparency strengthens the investment climate in states that have had a reputation for corruption. It appears, however, that this particular incentive exerts little influence over the government of Equatorial Guinea, which has not suffered for a lack of investors in its oil industry. When Equatorial Guinea first indicated its interest in adopting EITI standards for transparency, the Obiang regime seemed to be responding to external pressures to demonstrate a greater degree of compliance with international norms concerning corruption. Now, however, its participation in the EITI appears to have been nothing more than a temporizing measure.

B. Stolen Asset Recovery

When the Obiang regime's control over Equatorial Guinea finally comes to an end, by whatever means, an important task for any successor government will be to recover as much of the country's stolen wealth as possible. Fortunately, the next government may be able to take advantage of several recent international initiatives designed to facilitate the repatriation of money looted from national treasuries. And because asset recovery has been attempted by a number of post-revolutionary regimes in recent decades, it will have the benefit of precedent and a measure of legitimation provided by emerging norms in international law.

For example, following the popular revolt that led to the ouster of Ferdinand Marcos in the Philippines, the government of Corazon Aquino sought to recover a portion of the enormous wealth stolen by Marcos and his cronies. After legal battles lasting a total of eighteen years, the Philippine treasury received \$624 million that had been held by the Marcos family in Swiss accounts.¹¹³ In another effort to recover stolen assets, a class action

111. EITI, MINUTES OF THE 4TH EITI BOARD MEETING, HOTEL LA PALM, ACCRA, GHANA, 22 FEBRUARY 2008 (2008), available at <http://eiti.org/files/page/Minutes%20of%20the%204th%20EITI%20Board%20Meeting.pdf>.

112. Press Release, Extractive Industries Transparency Initiative (EITI), EITI Board Agrees Status of 20 Countries, 16 Apr. 2010, available at <http://eiti.org/news-events/eiti-board-agrees-status-20-countries>.

113. UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC) & WORLD BANK, STOLEN ASSET RECOVERY (STAR) INITIATIVE: CHALLENGES, OPPORTUNITIES, AND ACTION PLAN 5, 24 (2007), available at <http://siteresources.worldbank.org/NEWS/Resources/Star-rep-full.pdf>.

lawsuit brought under the Alien Tort Statute resulted in a jury award to plaintiffs of \$1.2 billion in exemplary damages. The Ninth Circuit, noting that illegal acts of a dictator cannot be considered “official acts,” upheld the judgment against a claim by attorneys for the estate that the Foreign Sovereign Immunities Act (28 U.S.C. §1330) barred such suits against a former head of state.¹¹⁴

The United Nations Convention Against Corruption,¹¹⁵ which entered into force in 2005, makes asset recovery a “fundamental principle” of the Convention and provides that “States Parties shall afford one another the widest measure of mutual legal assistance.”¹¹⁶ The Convention’s asset-recovery objectives are being promoted by a joint effort of the United Nations Office on Drugs and Crime (UNODC) and the World Bank Group. The joint effort, called the Stolen Asset Recovery (StAR) Initiative, is intended to promote wider ratification of the UN Convention Against Corruption,¹¹⁷ to facilitate cooperation between developing and developed countries, to improve the capacity of developing countries to make effective legal presentations for stolen asset recovery, and, at the request of developing countries, to assist in monitoring the use for public purposes of recovered assets.¹¹⁸

The recovery of stolen assets, and particularly the repatriation of money deposited in foreign banks, has the potential to radically alter the pace of development in Equatorial Guinea. As noted earlier, the 2004 Senate investigation into Riggs Bank found private accounts belonging to members of President Obiang’s family totaling close to \$700 million.¹¹⁹ Much of that money is believed to have been moved to the Central African Bank, but there is evidence that some later found its way back into American banks.¹²⁰ The possibilities for stolen asset recovery for Equatorial Guinea and other African states are enormous. A 2005 report by the European Commission concluded that “stolen African assets equivalent to more than half of the continent’s external debt are held in foreign bank accounts.”¹²¹

114. In *Re Estate of Ferdinand Marcos, Human Rights Litigation*, 25 F.3d 1467, 1471 (9th Cir. 1994).

115. Convention Against Corruption, *adopted* 31 Oct. 2003, G.A. Res. 58/4, U.N. GAOR, 58th Sess., 51st mtg., art. 51, U.N. Doc. A/RES/58/4 (2003), 2349 U.N.T.S. 41 (*entered into force* 14 Dec. 2005).

116. *Id.* art. 46(1).

117. At present, there are 151 parties to the Convention. See United Nations Office on Drugs and Crime (UNODC), United Nations Convention Against Corruption (2011), available at <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.

118. StAR INITIATIVE, *supra* note 113, at 6–7.

119. MONEY LAUNDERING AND FOREIGN CORRUPTION, *supra* note 66, at 38.

120. Silverstein, *Obiang’s Banking Again*, *supra* note 91.

121. *Quoted in* Daniel Scher, *Asset Recovery: Repatriating Africa’s Looted Billions*, 14 AFR. SEC. REV. 17, 17 (2005).

C. The Foreign Corrupt Practices Act

In 1977, amid congressional efforts to restore America's reputation abroad in the aftermath of Watergate and the Vietnam War, the United States became the first country in the world to criminalize the payment of bribes to foreign officials by individuals and corporations under its jurisdiction. Following the suicide of the chairman of one major American corporation and dramatic revelations about large payments to government officials in Japan, Italy, and the Netherlands by other large firms, Congress passed the Foreign Corrupt Practices Act (FCPA) without a dissenting vote in either the House or the Senate.¹²²

The legislation was a direct consequence of an investigation launched in 1973 by the Securities and Exchange Commission (SEC). Following up on revelations related to the Watergate scandal, the SEC undertook an investigation of political contributions by American firms. Some companies were found to have made illegal payments to Nixon's reelection campaign using secret slush funds. The SEC found that, in some instances, the same slush funds were used to make payments to officials of foreign governments.¹²³ Ultimately, approximately 500 American companies admitted having made payments to foreign officials.¹²⁴ The total amount of the payments was calculated to be in excess of \$300 million.¹²⁵ Although the SEC had the power to punish public corporations failing to disclose such payments in their public filings and the Justice Department had the authority to prosecute for fraud or antitrust violations resulting from bribery, no legislation existed that specifically outlawed the payment of bribes to foreign officials prior to the passage of the FCPA.¹²⁶

Because the United States was, at that time, alone in criminalizing bribery by businesses under its jurisdiction, there were concerns that American companies would be at a disadvantage when competing for contracts with firms unencumbered by the FCPA. Of particular concern was the fact that certain countries actually permitted firms under their jurisdiction to take tax deductions for bribes paid overseas. In an effort to correct this problem, Congress in 1988 directed the executive branch to begin negotiations within the Organization for Economic Cooperation and Development (OECD) toward an

122. JOHN T. NOONAN, JR., BRIBES 656, 677 (1984).

123. NEIL H. JACOBY, PIETER NEHEMKIS, & RICHARD EELLS, BRIBERY AND EXTORTION IN WORLD BUSINESS: A STUDY OF CORPORATE POLITICAL PAYMENTS ABROAD 46–47 (1977).

124. NOONAN, *supra* note 122, at 674.

125. Clayton Jones, *Corruption and Its American Response Are Both on the Spot*, CHRISTIAN SCI. MONITOR, 28 Apr. 1981, available at <http://www.csmonitor.com/1981/0428/042860.html>.

126. MICHAEL V. SEITZINGER, CRS REPORT TO CONGRESS: FOREIGN CORRUPT PRACTICES ACT (1999), available at <http://www.fas.org/irp/crs/Crsfcpa.htm>.

agreement that would obligate each of the OECD's member states to adopt domestic legislation similar to the FCPA. After almost a decade, the members of the OECD (along with five non-members) signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.¹²⁷ Now ratified by thirty-eight states, the OECD Convention obligates parties to adopt and implement domestic legislation criminalizing the payment of bribes abroad.¹²⁸

In 2004, in the wake of the examination of Riggs Bank's dealings with Equatoguinean officials by the Senate Permanent Subcommittee on Investigations, the Securities and Exchange Commission began an investigation of ExxonMobil, Amerada Hess, Marathon, and Chevron Texaco for possible violations of the Foreign Corrupt Practices Act.¹²⁹ The Hess Corporation reported to Human Rights Watch in May 2009 that it had not corresponded with the SEC concerning the inquiry launched by the SEC in 2004 in over two years. Marathon Oil, in a letter dated 28 April 2009, indicated that the SEC investigation had been "recently terminated" with no enforcement action recommended by the SEC. Chevron and ExxonMobil offered less information to Human Rights Watch concerning the SEC investigation.¹³⁰

In spite of the fact that there have been no fines levied by the SEC against American oil companies operating in Equatorial Guinea to this point, it is clear that those companies were put on notice that payments to President Obiang and members of his family like the ones noted in the 2004 Senate investigation may violate the FCPA. Further, the conviction on bribery charges of former congressman William J. Jefferson on 5 August 2009 was based in part on violations of the FCPA in his dealings with Equatorial Guinea.¹³¹

D. The Alien Tort Statute

Millions of dollars stolen by members of the Obiang family from Equatorial Guinea have been invested in the United States. Between 2004 and 2008,

127. Bill Shaw, *The Foreign Corrupt Practices Act and Progeny: Morally Unassailable*, 33 CORNELL INT'L L. J. 689, 696–98 (2000); see Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Nov. 21, 1997, S. Treaty Doc. No. 105–43 (1998).

128. States parties to the OECD Convention include the thirty-four member states of the OECD and four additional states. See OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: Ratification Status as of March 2009 (2009), available at <http://www.oecd.org/dataoecd/59/13/40272933.pdf>; see Convention on Combating Bribery, *supra* note 127, art. 7.

129. Timothy L. O'Brien, *U.S. Investigates Payments to Equatorial Guinea*, N.Y. TIMES, 6 Aug. 2004, available at <http://www.nytimes.com/2004/08/06/business/us-investigates-payments-to-equatorial-guinea.html>.

130. HUMAN RIGHTS WATCH, WELL OILED, *supra* note 26, at appendix.

131. David Stout, *Ex-Rep. Jefferson Convicted in Bribery Scheme*, N.Y. TIMES, 5 Aug. 2009, available at <http://www.nytimes.com/2009/08/06/us/06jefferson.html>.

Teodoro Nguema Obiang, President Obiang's oldest son, is believed to have brought over \$100 million in suspect funds into the United States using a number of attorneys, realtors, and insurance brokers.¹³² Because federal law in the United States provides for civil suits alleging violation of the law of nations without regard to the nationality of the plaintiffs, the defendants, or the location of the tort, it is possible for victims of human rights abuse in Equatorial Guinea to bring claims that could result in the seizure of the Obiang family's assets in the United States. Such a result would have the beneficial effect of transferring at least a small portion of Equatorial Guinea's oil wealth from the rulers who stole it to some of the people who have been victimized by the regime.

The basis for such suits is the Alien Tort Statute (ATS), a provision of the 1789 Judiciary Act that states, in its entirety, "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."¹³³ Until 1980, the ATS was largely ignored. In fact, it provided the basis for only two successful tort actions in federal courts between 1789 and 1980.¹³⁴ However, a landmark decision by the Court of Appeals for the Second Circuit in the 1980 case of *Filártiga v. Peña-Irala*, in which a Paraguayan national was permitted to use the federal courts of the United States to bring suit against a Paraguayan police officer for the torture and murder of her brother in Paraguay, opened the door to the use of American courts to seek justice in cases involving a variety of human rights abuses worldwide.¹³⁵

As the number of ATS cases increased steadily for over two decades, conflicting opinions in the circuit courts created some confusion regarding the proper scope of cases involving the "law of nations."¹³⁶ In fact, the Court of Appeals for the District of Columbia had rejected an ATS suit by survivors of a 1984 terrorist attack in Israel against the government of Libya and the Palestine Liberation Organization on the grounds that, in the absence of legislation by Congress, the ATS had created no cause of action. The 1789 act was in this view jurisdictional only, giving federal courts the authority to hear cases arising under the law of nations only when Congress might act to define the specific provisions of that law.¹³⁷

132. KEEPING FOREIGN CORRUPTION OUT, *supra* note 2, at 16.

133. 28 U.S.C. §1350 (2000). The provision is also called the Alien Tort Claims Act.

134. *Bolchos v. Darrell*, 3 F. Cas. 810 (D.S.C. 1795) (No. 1607); *Adra v. Clift*, 195 F. Supp. 857 (D. Md. 1961).

135. *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980).

136. Judge Edwards of the Court of Appeals for the District of Columbia noted, "there are sharp differences of viewpoint among the judges who have grappled with these cases over the meaning of [the ATS]." *Tel-Oren v. Libyan Arab Republic*, 726 F. 2d 774, 775 (D.C. Cir. 1984).

137. See, e.g., *Tel-Oren v. Libyan Arab Republic*, 726 F. 2d 774 (D.C. Cir. 1984) (*aff'd* district court decision dismissing ATS case on jurisdictional grounds). For further discussion of

With the Fourth, Fifth, and Federal Circuits showing reluctance to allow ATS suits while the Second and Ninth Circuits remained open to a variety of causes of action under it,¹³⁸ the Supreme Court finally addressed the ATS in the 2004 case of *Sosa v. Alvarez-Machain*.¹³⁹ Arising out of the 1990 abduction of Dr. Humberto Alvarez-Machain from his home in Mexico and subsequent rendition to the custody of the US Drug Enforcement Agency, which had sought without success to have him extradited to the United States, the case presented the odd spectacle of an accused torturer as plaintiff rather than defendant. Alvarez-Machain had been charged in the US with the torture and murder in Mexico of a DEA agent named Enrique Camareña. Due to the circumstances of his rendition, charges against Alvarez-Machain were dismissed in US federal court and Alvarez-Machain was allowed to return to Mexico. He subsequently filed suit under the ATS against the DEA agents responsible for his abduction. He was awarded a judgment of \$25,000 by the federal district court for the Central District of California, a judgment that was upheld by the Ninth Circuit. Defendants appealed the ruling to the Supreme Court.¹⁴⁰

Following the lead of the D.C. Circuit Court in *Tel-Oren*, the Supreme Court ruled in *Sosa* that the ATS is strictly jurisdictional. However, the Court left the door open for ATS suits involving “the modest number of international law violations” that have been incorporated in federal common law.¹⁴¹ Such suits must be based on norms that are “specific, universal and obligatory,” but the Court declined to specify particular norms that would satisfy the requirement.¹⁴²

Federal courts, left by the Supreme Court’s ruling in *Sosa* to determine on a case-by-case basis which violations of the modern law of nations are actionable, have gone beyond torture and extrajudicial killing, the acts that were taken up in *Filártiga*. Violations of human rights including rape, forced labor, and forced exile, among others, have been deemed actionable under the ATS.¹⁴³

The use of the ATS to punish human rights violations committed in Equatorial Guinea while attempting to recover a portion of the country’s wealth from the corrupt officials who have plundered it requires identifying a plaintiff, a defendant, and a cause of action that meets the Supreme

the opinion, see JEFFREY DAVIS, *JUSTICE ACROSS BORDERS: THE STRUGGLE FOR HUMAN RIGHTS IN U.S. COURTS* 23–24 (2008).

138. For the circuit split, see DAVIS, *supra* note 137, at 24.

139. *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004).

140. See DAVIS, *supra* note 137, at 24–5.

141. *Sosa*, 542 U.S. at 724.

142. *Id.* at 732.

143. See BETH STEPHENS ET AL., *INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS* 139–205 (2d ed. 2008).

Court's conception of an international law violation found in federal common law. Plaintiffs may be found among Equatoguinean exiles, some of whom live in the United States. (Because of Equatorial Guinea's long history as a Spanish colony and the dominance of the Spanish language, many more Equatoguinean exiles live in Spain.)

The logical defendants in an ATS suit would be those members of the ruling elite (and Obiang family) who own property that might be attached by the US federal court where a suit is filed. President Obiang's two million-dollar homes in the suburban Washington, DC area and Teodorin Obiang's \$30 million estate in Malibu make both attractive defendants.¹⁴⁴ In either case, the defendant must be connected with the tort alleged. It is also important for plaintiffs to be able to overcome the often substantial legal barriers to lawsuits against high officials of foreign governments, especially heads of state.¹⁴⁵ Fortunately, federal courts have not generally been willing to recognize sovereign immunity in cases involving serious violations of international human rights law.¹⁴⁶

Unfortunately, a successful ATS suit against President Obiang or other members of the regime would likely have the immediate effect of prompting the withdrawal of unattached assets from the United States. Nevertheless, a judgment (combined with the seizure of assets to pay the judgment) could provide much needed funding to opposition groups in exile. Furthermore, the seizure of assets in the United States might breathe new life into the legal examinations of Equatorial Guinea's finances that have been initiated in Spain, France, and South Africa.

IX. CONCLUSION

Dictators in resource-rich states such as Equatorial Guinea have both the means and the motive to resist external pressures to reform or to relinquish power. Where elements of civil society within the dictatorship are weak and refugee communities are small and widely dispersed, internal and expatriate pressures for reform are unlikely to amount to much. There is, however, a small but expanding range of legal options available which carry some promise of altering the behavior of President Obiang and other kleptocrats. Now that NGOs such as Transparency International and Human Rights Watch have drawn attention to the corruption and human rights abuses of Equatorial Guinea's ruling family, it is time for Equatorial Guinea's largest trade partner, the United States, and others in the international community to use the legal tools available to them to exert pressure for reform.

144. GHAZVINIAN, *supra* note 6, at 175.

145. See DAVIS, *supra* note 137, at 187–93.

146. *Id.*

Pressure has been brought to bear on Equatorial Guinea in some respects. In April 2010, the EITI rejected empty promises from the Obiang regime regarding greater transparency in its dealings with oil companies and deprived Equatorial Guinea of the cover provided by EITI candidate status.¹⁴⁷ In November 2010, the French Court of Cassation ruled that a criminal investigation of governmental corruption in three West African states, including Equatorial Guinea, could go forward in the French legal system.¹⁴⁸ The most visible sign of international pressure on the Obiang regime, however, came in October 2010 when the executive board of UNESCO, bowing to pressure from human rights groups, voted not to award the UNESCO-Obiang Prize in the life sciences. Attempting to burnish his image by donating \$3 million to UNESCO for an annual award, President Obiang instead generated a wave of international criticism of his regime's human rights record.¹⁴⁹

On other fronts, however, Obiang's efforts to substitute reform of his image for reform of his regime seem to be working. His Washington lobbyists have included former White House special counsel Lanny Davis.¹⁵⁰ Although it was not part of an official state visit, Obiang attended the National Prayer Breakfast in Washington on 3 February 2011. Afterwards, he met with Rep. Robert Aderholt (R-Ala.) and Sen. James Inhofe (R-Okla.).¹⁵¹ Within Africa, President Obiang's stock appears to be rising. Along with neighboring Gabon, Equatorial Guinea has been selected to host the African Cup of Nations, the continent's premier soccer tournament, in 2012.¹⁵² Finally, in January 2011, within days of Hosni Mubarak's forced removal from power in Egypt, President Obiang was elected to serve as the ceremonial head of the African Union, a move that left many governments and human rights groups lament-

147. See discussion in section 8, *supra*.

148. Daniel Howden, *France Declares War on African Kleptocrats and Their Hidden Fortunes: Calls for G20 to Back Groundbreaking Money-Laundering Inquiry*, INDEPENDENT (LONDON), 11 Nov. 2010, available at <http://www.independent.co.uk/news/world/africa/fight-against-african-kleptocrats-to-go-global-after-milestone-ruling-in-france-2130794.html>.

149. Steven Erlanger, *U.S. Calls for Withdrawal of United Nations Prize Financed by a West African Dictator*, N.Y. TIMES, 8 Oct. 2010, available at <http://www.nytimes.com/2010/10/09/world/europe/09unesco.html>; Steven Erlanger, *UNESCO Backs Off Philosophy Day in Iran*, N.Y. TIMES, 9 Nov. 2010, available at <http://www.nytimes.com/2010/11/10/world/10unesco.html>.

150. Ginger Thompson & Eric Lipton, *Key Lobbyist's Client List Puts Him on the Defensive*, N.Y. TIMES, 31 Dec. 2010, available at <http://www.nytimes.com/2010/10/09/world/europe/09unesco.html>.

151. *President Obiang Discusses African Issues, Meets with Members of Congress*, PR NEWSWIRE, 4 Feb. 2011, available at <http://www.prnewswire.com/news-releases/president-obiang-discusses-african-issues-meets-with-members-of-congress-115311009.html>.

152. *Angola to Host 2010 Nations Cup*, BBC SPORT, 4 Sept. 2006, available at <http://news.bbc.co.uk/sport2/hi/football/africa/5314036.stm>.

ing the fact that the AU would make such an unfortunate and inopportune statement regarding its commitment to democratization.¹⁵³

The prospect that President Obiang might face the kind of popular revolt that has recently ousted regimes in North Africa seems remote. However, an obvious desire to improve his image coupled with what must be an enhanced awareness of democratic contagion may provide an opening for modest reforms. French criminal law, American tort law, and a range of new international tools designed to combat corruption are available to help the international community promote reform in what may be the world's worst dictatorship.

153. Elissa Jobson, *Shared Values and Mixed Messages at the African Union Summit*, *GUARDIAN* (London), 7 Feb. 2011, available at <http://www.guardian.co.uk/global-development/2011/feb/07/african-union-summit-shared-values-despots?INTCMP=SRCH>.