CORPORATE GOVERNANCE DIVERGENCE AND SUB-SAHARAN AFRICA: LESSONS FROM OUT HERE IN THE FIELDS

Naomi Cahn*

I am delighted to bring my experiences in the Democratic Republic of the Congo to a discussion of comparative corporate governance. My first job after I graduated from law school was at the Securities and Exchange Commission (SEC). Although I soon left that job, I never lost interest in the relationship between corporations and the larger culture. After living in the Congo for two years, I have developed a richer appreciation of the relationships between corporate governance and development based on observations of the policies and practices of businesses in sub-Saharan central Africa.

In this Article, I seek to cross disciplines, to bring the richness of political-science critiques of multinational corporations to legal analyses of corporate responsibility, focusing on sub-Saharan Africa. Teemu Ruskola, another participant at this conference, pointed out in an earlier article that recent work in comparative law has begun to break its isolation from other disciplines.[1] This Article uses scholarship from both inside and outside the law to provide additional perspectives on comparative corporate governance.

As a preliminary point, unlike the situation in most developed countries, the main actors in developing countries are not just corporations and governments, or even nongovernmental organizations.[2] Instead, the aid community, which includes multi-

---

 Professor of Law, George Washington University; Africa Project Director, George Washington University International Institute of Corporate Governance and Accountability.

I thank Michael Brown, Tony Gambino, Marleen O'Connor, and Lawrence E. Mitchell for encouragement, and Terra Nevitt for research assistance. Thanks also to organizers of the Comparative Corporate Governance Symposium for which this Article was prepared, and to the editors and associates of the *Stetson Law Review*, particularly Jennifer Breeden.

1. Teemu Ruskola, *Legal Orientalism*, 101 Mich. L. Rev. 179, 181 (2002).

2. *Global Citizen Action* 1, 3–4 (Michael Edwards & John Gaventa eds., Lynne Rienner Publishers 2001); Julie Mertus, *From Legal Transplants to Transformative Justice:*

lateral institutions like the World Bank and the International Monetary Fund (IMF), and individual donor countries, can be, and often are, significant players in advocating for reform.[3] As a result, because the political-science critique of multilaterals is well-developed, the aid community is highly relevant to discussions of how to foster corporate responsibility in developing countries. When governments are not democracies and are not accountable to their citizens, nongovernmental organizations (NGOs), and international, multilateral organizations and institutions represent possible sources of change because they function outside of the recipient state's bureaucracy.[4] To the extent that

---

Human Rights and the Promise of Transnational Civil Society, 14 Am. U. Intl. L. Rev. 1335, 1336 (1999) (discussing how nonstate actors and transnational networks have begun to play a larger role in the protection of human rights and the resulting changes in governments); Steven C. Smith, *Governance of Nongovernmental Organizations: A Framework and Application to Poverty Programs in East Africa* (unpublished ms. Nov. 10, 2003) (copy on file with *Stetson Law Review*); Peter Spiro, *The Democratic Accountability of Non-Governmental Organizations: Accounting for NGOs*, 3 Chi. J. Intl. L. 161, 161 (2002) (discussing the rise of nongovernmental organizations); *Plenary Theme Panel: The Challenge of Non-State Actors*, 92 Am. Socy. Intl. L. Procs. 20 (1998) (relating remarks by panelists at a conference on the challenge of nonstate actors).

3. There are many articles that discuss the World Bank and the IMF as the catalysts of development, for example, Irene A. Belot, *The Role of the IMF and the World Bank in Rebuilding the CIS*, 9 Temp. Intl. & Comp. L.J. 83, 83–84 (1995). *See also* Sean D. Murphy, *Biotechnology and International Law* 42 Harv. Intl. L.J. 47, 49 (2001) (stating "traditional methods of developing international law affecting private behavior must give way to newer approaches that recognize the indispensability of cooperation among [nongovernmental] actors . . ."); Kim Reisman, Student Author, *The World Bank and the IMF: At the Forefront of World Transformation,* 60 Fordham L. Rev. 349 (1992); Jeremy J. Sanders, *The World Bank and the IMF: Fostering Growth in the Global Market,* 9 Currents Intl. Trade L.J. 37 (Winter 2000); Vicki Waye, *The Constituent Objectives of Development—Zimbabwe Case Study*, 28 Intl. Law. 385, 388 (1994) ("In sub-Saharan Africa . . . (the World Bank) has been the most significant player in setting the development agenda. . . . Twenty-four sub-Saharan African countries have recently or are currently embarking upon economic programs initiated by the World Bank and its sister institution, the International Monetary Fund (IMF)."). *See* Phillippe Le Billon, *Getting it Done: Instruments of Enforcement*, in *Natural Resources and Violent Conflict: Options and Actions* 215, 250–251 (Ian Bannon & Paul Collier eds., World Bank 2003); James C. Owens, Student Author, *Government Failure in Sub-Saharan Africa: The International Community's Options*, 43 Va. J. Intl. L. 1003, 1037–1038 (2003) (discussing how donors can place conditions on their aid). Donor countries can impose conditions on receipt of aid to influence governance structures. *Id*.

4. *See* Spiro, *supra* n. 2, at 162 (stating that "international law and international institutions, however, are still largely premised on a world in which states have the last word"). For a candid assessment of the delicate intergovernmental relationships between developing and developed countries see Daphne Eviatar, *Can Profits Promote Democracy in Africa?* 39 N.Y. Times A4 (Dec. 4, 2003) (quoting an American Embassy official explaining the United States citizens' attitudes towards influencing anticorruption initiatives in oil-producing Angola: "It's more a process of persuasion, trying to defend a commonality of

corruption exists in these countries, both the government and the private sector contribute to it.[5] Thus, although states may be unable, or unwilling, to force corporations to change, NGOs have been successful in pressuring corporations to adopt codes of conduct and various other standards of responsibility.[6]

In general, much of the scholarly commentary on comparative corporate governance has focused on issues of convergence, on whether corporate-governance systems in different countries are becoming more similar to one another.[7] The basic point of comparison is the Anglo-American system, and the basic thesis is often that this system provides a model to which other countries are slowly assimilating.[8] Because this scholarship focuses primarily on Europe and Asia,[9] it does not adequately capture the dilemmas of developing countries in sub-Saharan Africa and other parts of the world.

At the same time, there is a burgeoning literature on the interrelationship of NGOs, multilateral institutions, and the gov-

---

our relationship . . .").

5. Daniel Kaufmann, *Rethinking Governance: Empirical Lessons Challenge Orthodoxy*, http://www.worldbank.org/wbi/governance/pdf/rethink_gov_stanford.pdf (accessed May 2, 2004) (stating that "powerful elites and conglomerates (including some multinationals) play[ ] an important role in shaping the rules of the game for the business environment").

6. *See* Gary Gereffi et al., *The NGO-Industrial Complex*, 125 For. Policy 56, 56, 64 (July–Aug. 2001) (describing the results achieved by activists placing pressure on multinational firms).

7. *E.g.* Lucian Arye Bebchuk & Mark J. Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52 Stan. L. Rev. 127, 129 (1999); Bernard S. Black, *The Legal and Institutional Preconditions for Strong Securities Markets*, 48 UCLA L. Rev. 781, 845–846 (2001); Ronald J. Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, 49 Am. J. Comp. L. 329, 332 (2001).

8. Michael Bradley et al., *The Purposes and Accountability of the Corporation in Contemporary Society*, 62 L. & Contemp. Probs. 9, 14 (1999); *see also* Bebchuk & Roe, *supra* n. 7, at 133 (discussing the persistence of different corporate structures); Black, *supra* n. 7, at 783 (discussing market structures like the United States and the United Kingdom); Gilson, *supra* n. 7, at 356 (discussing alterations to the basic structure of existing governance institutions).

9. *See e.g.* Michael Bradley et al., *supra* n. 8, at 14 (1999) (observing that "the Anglo-American governance system, born of the contractarian paradigm, is the most flexible and effective system available"). Notwithstanding two sets of limitations: "A worldwide contractarian infrastructure that establishes exacting disclosure rules, a coherent body of contract law, and an independent judiciary is as essential as it is unlikely." *Id*. The authors concluded that although "this preference for the contractarian view over the more communitarian governance structures of Europe and Asia might seem provincial, the emerging evidence suggests that these alternative governance structures are evolving toward the practices observed in the United States." *Id*. at 78. Of course, some comparative-corporate scholarship focuses on Africa.

ernments of both developed and developing countries.[10] However, these two sets of scholars rarely discuss substantive issues of corporate governance. What happens in countries in which contracts are of questionable enforceability, the judiciary is not independent, and the corporate code is not viable? What holds corporations accountable? How are comparative corporate governance issues relevant in these countries?

This Article draws attention to the dilemmas corporations face in countries without the same standards of governance and norms that are often characterized as base conditions for any meaningful business climate.[11] Countries that lack appropriate governmental structures should be included in the comparative corporate governance literature to recognize the particular problems that they must overcome. Accordingly, this Article examines one issue that is becoming increasingly important in corporate law scholarship: the issue of corporate social responsibility with a focus on corruption. Examining corruption provides insight into the issues of developing a general corporate law. These social responsibility issues dramatize what is at stake in establishing a corporate governance scheme that responds to the dilemmas in developing countries. Issues of corporate social responsibility are particularly important in developing countries that typically lack the same labor, environmental, and other legal constraints that are assumed throughout the developed world. As these countries move forward economically and politically, corporate social responsibility should be a critical component of company operations and the countries' laws.

This Article is divided into four parts. The first section presents a brief overview of the existing comparative corporate governance literature.[12] The second section provides a brief introduction to the scholarship on NGOs, including nonprofit and multi-

---

10. *E.g.* Margaret Keck & Kathryn Sikink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell U. Press 1998); Robert O'Brien et al., *Contesting Global Governance: Multilateral Economic Movements and Social Institutions* (Cambridge U. Press 2000). There is also a developing body of literature that is highly critical of the intervention of multilaterals. *E.g. Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Dana Clark et al. eds., Rowan & Littlefield Publg., Inc. 2003); *Global Citizen Action*, *supra* n. 2; *The Struggle for Accountability: The World Bank, NGOs, and Grassroots Movements* (Jonathan A. Fox & David Brown eds., MIT Press 1998).

11. *See* Michael Brown, *Expanding into Unfamiliar Markets*, 1 Footprints 132, 132 (2003) (copy on file with *Stetson Law Review*).

12. *Infra* nn. 16–36 and accompanying text (discussing current literature).

lateral institutions.[13] The third section focuses on two distinct aspects of economic development:[14] first, the basic barriers to developing commerce are explored through an examination of business traffic along the Congo River; and second, the Chad-Cameroon Oil and Pipeline Project is used as a means of showing the intersection of the two different strands of literature, and the problems with the interactions between NGOs, multilaterals, and government.[15] While the Chad-Cameroon Pipeline Project has received high levels of scrutiny from the public, NGOs, and other scholars, that scrutiny has focused on its human rights and environmental aspects. This Article uses a comparative-law perspective to examine the pipeline as it pertains to corporate governance. In the conclusion, this Article suggests future directions for integrating corporate social responsibility into the laws and practices of developing countries and for implementing strategies and providing advice for non-European countries.

I. THE CORPORATE CONVERGENCE LITERATURE

Within the contemporary literature on comparative corporate law, there has been a significant amount of scholarship on

---

13. *Infra* nn. 37–47 and accompanying text (discussing literature on NGOs).

14. *Infra* nn. 48–125 and accompanying text (discussing corruption in the Congo and the Chad-Cameroon Pipeline Project).

15. Korinna Horta, *Rhetoric and Reality: Human Rights and the World Bank,* 15 Harv. Human Rights J. 227, 233 (2002) (arguing that the World Bank's rhetoric concerning the fight against corruption, governance reforms, and the empowerment of citizens does not match up with its technocratic and depoliticized approach to development financing—the Chad-Cameroon project is used as an example of the problem); Mark Kantor et al., *The Increasing Role of Interest Groups in Investment Transactions Involving International Financial Institutions,* 7 ILSA J. Intl. & Comp. L. 291, 292 (2001) (stating that Chad-Cameroon is used as an example that has received considerable attention as NGOs and other groups have challenged the World Bank); Owens, *supra* n. 3, at 1005 ("suggest[s] that the World Bank's recent extraordinary measures in the Chad/Cameroon oil deal . . . might present a blueprint for the international community's best chance for assisting the region" and suggests "creating [an organization] to circumvent local government['s] failures by controlling and allocating external revenues for the benefit of the [people]"); Genoveva Hernandez Uriz, *The Application of the World Bank Standards to the Oil Industry: Can the World Bank Group Promote Corporate Responsibility?* 28 Brook. J. Intl. L. 77, 90 (2002) [hereinafter *Corporate Responsibility*] (section III focuses on the Chad-Cameroon projects as the most important example of how the World Bank's substantive and procedural benchmarks have been applied in practice); Genoveva Hernandez Uriz, *To Lend or Not to Lend: Oil, Human Rights, and the World Bank's Internal Contradictions*, 14 Harv. Human Rights 197, 211–227 (2001) [hereinafter *To Lend or Not to Lend*] (uses the Chad-Cameroon project to illustrate why the World Bank should adopt a realistic and proactive approach to human rights problems).

whether there is one system that is particularly beneficial for corporate governance because it provides a competitive edge to the corporations organized pursuant to that regime.[16] The primary comparisons are between the Anglo-American system of dispersed shareholder ownership, and the continental/Japanese system of blockholder ownership, with sustained discussion of the benefits of each.[17] Questions arise as to which is most efficient for the development of corporate law.[18] Scholars suggest that there is evidence of some convergence between the systems, especially because multinationals that do business under both systems must conform to the strictures of each.[19] Moreover, there has been some deliberate crossover as governments and corporations have discovered the benefits of the differing systems.[20]

In the process of studying governance, scholars have improved our understanding of fundamentals of capital markets, shareholder control, and other critical issues.[21] These analyses are useful so long as they are explicitly limited to the appropriate (developed) countries. Instead, the analyses of scholars like Professors Lawrence E. Mitchell and Douglas Branson seem more suitable to a discussion of corporate governance in developing countries. They hypothesize that globalization will not necessarily result in the dominance of an American corporate governance system.[22] Instead, the underlying culture in which businesses operate is critical. Exporting American capitalism may not be the best

16. *See* William W. Bratton & Joseph A. McCahery, *Comparative Corporate Governance and the Theory of the Firm: The Case against Global Cross Reference*, 38 Colum. J. Transnatl. 213, 216 (1999–2000) ("[C]orporate law's leading question is whether there is a national corporate governance system (or component thereof) that possesses relative competitive advantage.").

17. *Id*. at 258–271 (discussing the possibility of cross-reference between the two systems).

18. *E.g.* Bebchuk & Roe, *supra* n. 7; John C. Coffee, Jr., *The Future as History: The Prospects for Global Convergence in Corporate Governance and Its Implications*, 93 Nw. U. L. Rev. 641, 646–647 (1999).

19. Bratton & McCahery, *supra* n. 16, at 234 (stating examples of convergence "follow from cross-border investment and finance, including mergers and acquisitions"); Coffee, *supra* n. 18, at 650 (suggesting the possibility of "functional" rather than legislative convergence, which results from corporations acting under a variety of legal regimes).

20. Bratton & McCahery, *supra* n. 16, at 234.

21. *Supra* n. 3 (listing works by various scholars that discuss the World Bank and the IMF).

22. Lawrence E. Mitchell, *Corporate Irresponsibility: America's Newest Export* 275 (Yale U. Press 2001); Douglas Branson, *The Very Uncertain Prospect of "Global" Convergence in Corporate Governance*, 34 Cornell Intl. L.J. 321, 325 (2001).

model for all countries and cultures; and the strength of multinational corporations requires reexamining the significance of the convergence hypothesis.[23] Indeed, the increasing influence of multilateral organizations is a factor not typically discussed in the comparative corporate governance literature.[24] Moreover, recent World Bank studies suggest that the private sector can be highly influential in law reform.[25]

Focusing on corporate governance in developed countries like Japan, Germany, and the United States overlooks the problems in less developed, frequently nondemocratic countries. The general consensus is that, for either system to exist, there must be the rule of law, enforceable contracts, and an independent judiciary.[26]

The "rule of law" is perhaps the most important prerequisite for responsible corporate governance. For example, in an article listing the preconditions for a strong securities market, Professor Bernard S. Black lists two prerequisites: disclosure of the value of the company and protection against self-dealing.[27] Only after these basic structures are in place can debates about value maximization occur.[28] In his conclusion, Professor Black briefly discusses transition economies that have none of the basic institutions necessary to establish the prerequisites for a securities market.[29] He recommends the development of a reliable legal system, governmental honesty, capital markets and accounting rules, and business schools.[30] It is these issues that are central to this

---

23. *E.g.* Amy Chua, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (Doubleday 2003); Mitchell, *supra* n. 22; Branson, *supra* n. 22, at 326–327.

24. Branson, *supra* n. 22, at 362.

25. Kaufmann, *supra* n. 5, at http://www.worldbank.org/wbi/governance/pdf/rethink_gov_stanford.pdf.

26. Black, *supra* n. 7, at 849 (countries need an honest judiciary and basic rules on disclosure); *see* Bratton & McCahery, *supra* n. 16, at 296 (stating that, "[t]he comparative exercise teaches against the old lesson that markets are only as deep as their legal foundations"); *cf*. Amanda Perry, *The Relationships between Legal Systems and Economic Development: Integrating Economic and Cultural Approaches*, 20 J. L. & Socy. 282, 299 (2003) (cautioning that the legal culture in some countries may depend on noncontractual bases for business, such as trust networks); Ruskola, *supra* n. 1 (discussing how recent comparative law literature is not isolated).

27. Black, *supra* n. 7, at 785.

28. *Id*.

29. *Id*. at 847–849.

30. *Id*. at 848. The last sentence of the article concludes, "These countries need honest judges and regulators, good disclosure rules, and the beginnings of a culture of honesty before it makes sense to worry" about other corporate governance issues, such as the num-

Article. I am concerned with how corporations handle governance and accountability in countries without functioning business schools or courts. This Article focuses on the political, legal, and economic situation that is necessary to begin a discussion of corporate governance issues.

The ability to rely on the law is questionable in many developing countries. The law as written and the law as enforced in the courts can differ dramatically.[31] When international executives were asked to list the most important constraints on their firms' growth, corruption and ineffective government bureaucracies were second and third to a lack of finance.[32] In countries with good legislative oversight, high levels of transparency, and high levels of corporate ethics, the gross domestic product was higher.[33] Similarly, in countries with high rates of corruption, banks were less sound than in countries with lower corruption rates.[34]

The question is how to bring corporate responsibility to countries where there is corruption and ineffective government bureaucracies, without installing a more responsive, less corrupt government. If shareholders cannot rely on protection of their rights and corporations cannot rely on enforcement of contracts, it is irrelevant whether the system is based on the American or continental model.[35]

---

ber of independent directors. *Id*. at 849.

31. This is certainly true in the Congo. *See* Stuart Cohn, *Teaching in a Developing Country: Mistakes Made and Lessons Learned in Uganda*, 48 J. Leg. Educ. 101, 104 (1998) (discussing the failure of laws and regulations to effectuate change in areas with significant political, social, and economic issues). In preparing to teach a course on securities markets in Uganda, Professor Cohn discovered that "[n]othing existed except the laws, a Capital Markets Authority that had no capital markets to regulate, and a stock exchange devoid of stock." *Id*. at 104. His advice to other teachers developing similar courses is not to assume that their students know the law. *Id*. at 108. In Uganda, for example, copies of relevant statutes were simply not available in the numbers necessary for teaching in the classroom. *Id*.

32. Michaela Wrong, *In the Footsteps of Mr. Kurtz* 18 (Harper Collins 2001). This data was drawn from the Executive Opinion Survey of the World Economic Forum. Kaufmann, *supra* n. 5, at 6–8. The African countries included were: Botswana, Mauritius, Namibia, Nigeria, South Africa, and Zimbabwe. *Id*. Many of the countries with high levels of corruption, such as the Congo, were not even included in the survey. *Id*.

33. *Id*. at 19.

34. *Id*. at 25–26; J. Hellmann et al., *Far from Home: Do Foreign Investors Import Higher Standards of Governance in Transition Economies?* http://www.worldbank.org/wbi/governance/pubs/farfromhome.html (accessed Jan. 2, 2004).

35. *See* Black, *supra* n. 7, at 848–849 (noting that important steps developing countries must take include the creation or improvement of law schools to train securities attorneys and the implementation of an honest judiciary).

This is where the multilateral institutions, NGOs, and other international actors can play a role.[36] There is, of course, a perceived, and often real, conflict of interest between the objectives of multinationals, their host and home governments, the multilaterals, the communities, and the NGOs. Each has its own goals, and in many sub-Saharan African governments individuals working in the public sector have their own selfish interests in receiving payments outside of the official system. If nongovernmental, nonprivate sector organizations can coordinate their efforts to improve accountability and responsibility, then they can pressure the other sectors (private and public).

II. MULTILATERAL INSTITUTIONS

The World Bank provides two different kinds of support concerning the commercial environments in member countries.[37] First, it exerts pressure on governments to promote an environment conducive to business.[38] Second, it provides direct support to companies seeking to do business in developing countries.[39]

The self-explained role of the World Bank and comparable multilaterals is poverty alleviation through business development.[40] As the largest financial institution in Africa, the World Bank has the capacity for enormous influence on both private corporations and the public sector.[41] Although the World Bank defined its role as focused on business rather than human rights, it has begun to develop procedures to foster responsible corporate

---

36. This is not to overlook the role that such institutions play in countries with effective governments and low rates of corruption; however, there is literature addressing these issues already. *Supra* n. 9 (listing various literary sources that focus on Europe and Asia).

37. The World Bank Group is comprised of five different organizations. The World Bank Group, *About Us*, http://www.worldbank.org, *select* About Us (accessed Jan. 2, 2004). Scott Pegg, *Poverty Reduction or Poverty Exacerbation? World Bank Group Support for Extractive Industries in Africa* 5, http://www.exfamerica.org/pdfs/ei_poverty_report.pdf (accessed May 2, 2004). The International Bank for Reconstruction and Development and the International Development Association provide loans and grants, as well as technical support, to member governments. The International Finance Corporation provides financial support for private-sector investments; and the Multilateral Investment Guarantee Agency gives political risk insurance to private investors. *Id*.

38. Pegg, *supra* n. 37.

39. *Id*.

40. *Id*.

41. *Id*.; *see* Ian Gary & Terry Lynn Karl, *Bottom of the Barrel: Africa's Oil Boom and the Poor*, http://www.catholicrelief.org/get_involved/advocacy/policy_and_strategic_issues/oil_report_full.pdf (June 2003).

activities with respect to affected communities and the environment.[42] Through its structural-adjustment programs, the World Bank encourages countries to develop investment codes that encourage foreign investment.[43] In addition, it gives direct support to projects through direct funding, including loans to companies and financial guarantees for specific projects.[44] World Bank involvement provides an imprimatur of respectability and can be a critical factor in securing private sector commitments. However, critics charge that, rather than promoting development, the Bank's primary goal is to create free-market environments for corporations and to transfer private business costs to the larger society.[45]

As the World Bank and other multilateral institutions here become more involved in private sector financing, NGOs have developed tactics to exert pressure on these institutions to make corporations more responsive.[46] And the World Bank and IMF have themselves become increasingly interested in broadening their mandates to include human rights.[47]

III. SPECIFIC PROJECTS: CORRUPTION IN THE CONGO AND THE CHAD-CAMEROON PIPELINE PROJECT

Managing a country's natural resources in an equitable manner has a number of beneficial effects, including a reduction of poverty and of the risk of civil conflict. In a recent study of what conditions are likely to lead to civil strife, researchers found that poverty, a collapsing economy, and high dependence on natural resources were the most significant factors in predicting instability.[48]

---

42. Gary & Karl, *supra* n. 41.

43. *Id*.

44. *Id*.

45. David Korten, *Predatory Corporations*, in *Moving Mountains: Communities Confront Mining and Globalization* 1, 16 (Geoff Evans et al. eds., Zed Books 2001).

46. Kantor, *supra* n. 15, at 291.

47. Demetri Sevastopulo, *World Bank Arm May Add Human Rights to its Criteria*, Fin. Times (Nov. 4, 2003) (available at http://www.globalpolicy.org/socecon/bwi-wto/wbank/2003/1104ifchuman rights.htm).

48. Paul Collier, *The Market for Civil War*, 136 For. Policy 38, 38–45 (May 1, 2003); *see generally* Paul Collier et al., *Breaking the Conflict Trap: Civil War and Development Policy* (World Bank & Oxford U. Press 2003) (discussing the implications of civil war in a developing country). For a trenchant critique of the Collier analysis, see Samantha Diamond, *International Trade and Accountability: Conflict Diamonds in Sierra Leone* 28–29 (unpub-

This Section explores two aspects of the development dilemma that contribute to inequity, corruption, and ineffective government practices by focusing on two different projects. Not surprisingly, corruption is inversely correlated with gross domestic product.[49] Though corruption and ineffective government are overlapping problems, they are not identical.[50] Corruption takes a series of different forms including bribes to obtain government services (corruption in administration), as well as corruption in the process of promulgating rules (corruption in law-making).[51] Although corruption in law-making is significant in preventing change in a country's governance structure and in maintaining the dominance of the existing elite, bribing government officials to obtain precious government access is the largest area of corruption in developing countries.[52] Because businesses need access to obtain export permits or business licenses, they may feel coerced into bribing the appropriate official.[53] Additionally, in many developing countries where civil service positions are poorly (if at all) compensated jobs, government employees may feel justified in accepting bribes for their services.[54] While the United States Foreign Corrupt Practices Act and the Organization for Economic Cooperation and Development (OECD) Convention, together with

---

lished thesis, Tufts U. May 2003) (on file with *Stetson Law Review*).

49. Daniel Kaufmann et al., *Governance Matters*, World Bank Pol. Paper No. 2196, 2, 7, 26, 28 (Oct. 1999) (available at http://www.worldbank.org/wbi/governance/pubs/govmatters.htm).

50. *Id*. at 32.

51. *See* Daniel Kaufmann & Aart Kraay, *Growth without Governance*, 3 Economia 169 (Fall 2002) (available at http://www.worldbank.org/wbi/governance/pubs/growthgov.htm) (finding that firms that engage in this form of illicit influence did in fact experience higher growth rates than firms that did not engage in this form of influence); Joel Hellman et al., *Measuring Governance, Corruption, and State Capture: How Firms and Bureaucrats Shape the Business Environment in Transition Economies*, http://www.worldbank.org/wbi/governance/pdf/measure.pdf (Apr. 2000) (identifying state capture as a significant issue to be confronted by transitional economies). A third form of corruption is "influence," which, like state capture, allows private individuals to help shape public laws. Amanda J. Pery, *The Relationship between Legal Systems and Economic Development: Integrating Economic and Cultural Approaches*, 29 J.L. & Socy. 282, 306 (2002). Influence depends on the size of the firm and interactions with state officials, rather than direct payments. *Id*.

52. Saladin Al-Jurf, *Good Governance and Transparency: Their Impact on Development*, 9 Transnatl. L. & Contemporary Problems 193, 198–199 (1999).

53. *Id*. at 199.

54. *Id*. Al-Jurf lists other circumstances that are conducive to bribery, including the amount of discretion that civil servants are able to exercise, a legal system that fails to punish bribery, and private companies that are willing to pay the costs of doing business. *Id*. at 199–200.

other programs, attempt to prevent corruption and bribery,[55] they are not effective in many countries.[56]

The first project examines the barriers to corporate social responsibility, which are created through corruption by analyzing how business must be conducted to transport goods along the Congo River in the Democratic Republic of the Congo. The second project involves the much-studied Chad-Cameroon Pipeline, where bad government practices have effected corporate social responsibility and diminished any potential benefits of poverty alleviation.

A. Corruption

The IMF estimated that less than two percent of all government spending in the Congo during the year 2000 was expended through normal government budgetary procedures.[57] Instead, the Central Bank spent money without the Treasury Department's knowledge or input.[58] Thus, corporations operate in a context where there is little public fiscal accountability, and an environment that is conducive to corruption. When paying the government, either directly or in the form of bribes, companies may believe that they are not responsible for ensuring that government revenues are fairly spent, or in ending the abuse of government power that results in bribes.[59]

---

55. Thomas W. Dunfee & David Hess, *Getting from Salbu to the "Tipping Point": The Role of Corporate Action within a Portfolio of Anti-Corruption Strategies*, 21 Nw. J. Intl. L. & Bus. 471, 472–473 (2001).

56. *Id*. at 472 (noting that the same circumstances that apply to the FCPA apply to the OECD convention, namely the questionable effectiveness of a western legal theory in non-western countries).

57. OECD Directorate for Fin., Fiscal, & Enterprise Affairs, *Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses*, http://www.oecd.org/dataoecd/46/31/2757771.pdf 18 (May 2002) [hereinafter OECD]. There are several articles detailing the role of the World Bank and IMF in combating corruption. Al-Jurf, *supra* n. 52; David A. Gantz, *Globalizing Sanctions Against Foreign Bribery: The Emergence of a New International Legal Consensus*, 18 Nw. J. Intl. L. & Bus. 457, 458 (1998); Bruce Zagaris & Shaila Lakhani Ohri, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 L. & Policy Intl. Bus. 53 (1999).

58. Ian Smillie, The Diamonds and Human Security Project Occasional Paper No. 10, *Motherhood, Apple Pie and False Teeth: Corporate Social Responsibility in the Diamond Industry*, http://www.globalpolicy.org/security/natres/diamonds/2003/0603-pac.pdf (June 2003).

59. *Cf*. OECD, *supra* n. 57, at 20 (discussing business responsibility in countries with civil strife).

The Congo, which is about the size of the United States to the east of the Mississippi River, is a country rich in natural resources.[60] It exports diamonds, cobalt, copper, coffee, and oil and has vast deposits of coltan, a critical component of cell phones and other technological equipment.[61] But the country has a long history of corruption. When the Portuguese first found the Congo River in the late fifteenth century, they sent out teachers and masons—but many of these men abandoned their professions and entered the far more lucrative slave-trade.[62] In 1885, at the Berlin Conference where Europeans met to carve out territories in Africa for themselves, King Leopold of Belgium seized the Congo for his own self-gain and glory.[63] Although Leopold claimed that he had established a free trade zone in the country, which exported rubber and ivory, it instead functioned as a privately owned slave colony from which Leopold was underreporting profits and pocketing the rest.[64] When Belgium granted independence to the Congo in 1960, there were fewer than thirty Congolese who had graduated from college and, among the five thousand management-level positions in the government, only three were held by Congolese.[65] Shortly after independence, Joseph Desire Mobutu, who had received payments from the Central Intelligence Agency, mounted a coup to take control of the country.[66] It is an understatement to note that corruption continued during the thirty-two

60. U.S. Com. Serv., Congo-Dem. Rep. Country Com. Guide FY 2001, (Nov. 15, 2001) (available at http://www.buyusainfo.net/info.cfm?id=98015&keyx=7769BFCD7E784058BE9EEEB82A72AECE&bfd=ccg1&loadnav=no) [hereinafter U.S. Com. Serv.]. For a history of private sector irresponsibility in the Congo, see Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (Houghton Mifflin Co., 1999), and for a fictionalized account see Joseph Conrad, *Heart of Darkness & The Secret Sharer* 63 (Signet Classic 1983).

61. U.S. Com. Serv., *supra* n. 60, at ch. 2; U.N. Sec. Council, *Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo* (Oct. 23, 2003) (available at http://129.194.252.80/catfiles/2477.pdf); David Bergner, *The Most Unconventional Weapon*, 6 N.Y. Times Sun. Late Ed. 48 (Oct. 26, 2003).

62. Hochschild, *supra* n. 60, at 10.

63. *Id*. at 84–87.

64. *Id*. at 158, 179–180.

65. *Id*. at 301.

66. Paul Harris, *Background: The Democratic Republic of Congo (DRC)*, http://www.yellowtimes.org/article.php?sid=1232 (last updated July 14, 2003).

years that he was dictator.[67] When he was overthrown in 1997, his personal wealth was estimated to be four billion dollars.[68]

Today, the Congo may be emerging from a long civil war.[69] The death toll is over three million, including not only soldiers, but also civilians who died from starvation and disease.[70] The illegal exploitation of the Congo's natural resources, particularly gold and diamonds,[71] in addition to coltan, cobalt, and timber, funded the Civil War.[72] There were virtually no barriers to money-laundering.[73] Indeed, the abuses of natural resources were so egregious that the United Nations issued a special report recommending that twenty-nine companies be subjected to financial restrictions, including a freezing of assets and a suspension of banking abilities.[74]

The current Congolese president, Joseph Kabila, who took office in 2001 after his father was killed by a bodyguard, has agreed to hold elections within the next several years.[75] There are four vice-presidents representing the differing former combatant parties as well as the nascent political parties,[76] and thousands of peace-keepers from the United Nations throughout the country.[77] The European Union is conducting an evaluation of the entire judicial system to suggest reforms.[78]

---

67. Wrong, *supra* n. 32.

68. Hochschild, *supra* n. 60, at 303.

69. *See* Bergner, *supra* n. 61 (stating that United Nations "accords have lately brought a tenuous degree of peace"). Although labeled a civil war, some have labeled the Congolese conflict as the first World War in Africa because of the many neighboring countries which fought battles on Congolese territory. Marc Lacey, *Hope Glimmers as War Retreats from Congo*, N.Y. Times A1 (Oct. 21, 2003).

70. Bergner, *supra* n. 61 (discussing some of the atrocities committed); U.N. Sec. Council, *supra* n. 61, at http://129.194.252.80/catfiles/2477.pdf (detailing some of the atrocities committed in the war).

71. U.N. Sec. Council, *supra* n. 61, at 14–15, 44–46.

72. Jonathan M. Winer & Trifin J. Roule, *Follow the Money: The Finance of Illicit Resource Extraction*, in *Natural Resources and Violent Conflict: Options and Actions* 161, 164 (Ian Bannon & Paul Collier eds., World Book 2003).

73. *Id*. at 202.

74. U.N. Sec. Council, *supra* n. 61, at http://www.un.org/docs/journal/asp/ws/asp?m=s/2002/1146.

75. *See* Lacey, *supra* n. 69 (stating that elections will be held in two to three years).

76. *See id*. (reporting that rebel factions are now sharing power).

77. *Id*.

78. *See* Martin Walker, *Walker's World: French Being Helpful*, United Press Intl. 2 (Aug. 7, 2003) (stating "the European Union is now getting involved in the Congo") (copy on file with *Stetson Law Review*).

In the past, Chevron, Unilever, Mobil, Shell, DeBeers, and various other multinational companies have done business in the Congo, exporting palm oil, petroleum, and diamonds.[79] Some multinationals remain, including Heineken, which makes several local beers and bottles Coke, Fanta, and Sprite.[80] There are also a few large local businesses, which are often owned and/or managed by ex-patriates.[81] And DeBeers recently applied to return to the Congo.[82] Yet there are significant impediments to business in the country.[83] To export coffee, for example, there are more than fifty administrative taxes or permits.[84] As the State Department's official guide for United States companies seeking to do business in the Congo delicately explains:

> Most of the country's trade barriers result from complex regulations, a multiplicity of administrative agencies, and a frequent lack of professionalism and control by officials responsible for their enforcement. Congo has numerous agencies with legal authority in trade matters, required signatures are often difficult to obtain, and regulations are complex and not codi-

---

79. *See e.g.* William Wallis, *DeBeers Seeks to Restart Congo Diamond Operations*, Fin. Times 15 (Oct. 29, 2003) (available at LEXIS, News & Bus. database) (reporting that DeBeers ceased buying diamonds from the Congo four years ago); RTNC TV "Kinshasa" (BBC Dec. 11, 1998) (TV broadcast) (reporting Pres. Kabila's approval of an agreement between the Congo, Mobil, and Shell stemming from 1969); Unilever, *Foods*, http://www.unilever.com; *search* "Congo," *select* Operations (accessed Jan. 7, 2004) (acknowledging Unilever's ownership of palm oil plantations in the Congo); *see also* Chevron Texaco, *Ceremony Marks Completion of Chad-Cameroon Pipeline Project*, http://www.chevrontexaco.com/news/spotlight/24oct2003_cameroon.asp (Oct. 24, 2003) (mentioning Chevron and Mobil's involvement in the pipeline). Chevron Texaco is spending $75 million to drill new oil wells and expand oil production, and other companies are also engaged in exploratory drilling. *Id*.

80. *See* Heineken Intl., *Heineken N.V. Annual Report 2002*, http://www.heinekeninternational.com/investor/results/nv_annual_report_2002.jsp (accessed (May 2, 2004) (reporting on Heineken's Congo market); Henri E. Cauvin, *Braving War and Graft Coke Goes back to Angola*, 3 N.Y. Times Sun. Late Ed. 1 (Apr. 22, 2001) (reporting that Coca-Cola products are bottled by Heineken in conflict areas).

81. *See generally* Amy Chua, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (Doubleday 2003) (discussing elite minorities managing business).

82. Wallis, *supra* n. 79, at 15. The Congo is a member of the Kimberley Process, an international effort to stop trafficking in conflict diamonds. William Wallis, *Africa's Conflict Diamonds: Is the U.N.-Backed Certification Scheme Failing to Bring Transparency to the Trade*, Fin. Times 21 (London, England ed. 1) (Oct. 29, 2003) (available at LEXIS, News & Bus. database). However, many Congolese diamonds evade the requisite government-certification process. *Id*.

83. U.S. Com. Serv., *supra* n. 60, at ch. 6 (discussing trade regulations).

84. *Id*.

> fied. Application of regulations varies widely across the country and with changes in the local environment. Corruption is endemic in Congo and it is common to have protracted negotiations with the numerous officials involved with commercial matters. . . .
>
> [United States] traders and investors also face generalized impediments that affect all economic activity in Congo: lack of infrastructure, public services, judicial system, etc.[85]

Moreover, there is no established procedure for promulgating new regulations applicable to commercial enterprises.[86]

Both importing and exporting activities are extremely problematic, given that most of the roads are virtually impassable.[87] Even the Congo River, which flows across most of the country, is difficult to navigate.[88] In an analysis of the barriers to development along the Congo River, the NGO Innovative Resources Management (IRM) listed eight different kinds of "tracasseries" (exactions or annoyances) that hinder development:

> (1) administrative, which includes a failure of delivering official documents as well as double taxes;
>
> (2) police (harassment and requests for bribes);
>
> (3) custom-based, which includes false beliefs;
>
> (4) technical difficulties, such as an absence of electricity;
>
> (5) religious impediments, such as pastors who require gifts or presents in order to cause miracles;
>
> (6) economic problems, such as an absence of financial institutions and poor development of natural resources by the State;
>
> (7) professional difficulties, such as sexual harassment and promotion based on bribery; and
>
> (8) judicial corruption, when judges require money to decide a case.[89]

---

85. *Id*.

86. *Id*. Individual agencies often change regulations themselves. *Id*.

87. *Id*. at ch. 2.

88. *See* Jeffrey Tayler, *Facing the Congo* (Ruminator Books 2000) (describing Tayler's difficult journey down the Congo River toward Kinshasa).

89. Innovative Resources Management (IRM), Exposé, *Cas-Type de l'Exploitation D'une Balieniére en terme des Frais Payes aux Différents Postes de Controle Installés sur*

Outside of the religious and custom-based impediments, the other tracasseries are integrally related to a need for efficient government and the corruption that stems from a lack of good government practices.[90]

IRM further analyzed the number of people within each governmental organization who received money during one trip. There were seven different taxes payable to the interior minister: three to the national defense, three to transportation and communication, three to the treasury, two to public health, two private taxes, and one each to the president, the environmental and tourism ministry, and the agricultural ministry.[91] From the revenues collected from the 163 inspection points encountered along this stretch of the river, only four percent were actually remitted to the public treasury; the remaining ninety-six percent went directly to the government officials, or other employees, who actually collected the money.[92] Other businesses in Kinshasa are less open to inspection, but anecdotal reports indicate that it is not unusual for this number of taxes and levies to be paid to individual government employees.[93] Corporations that refuse to do business in this way are penalized and unable to challenge their treatment within the judicial system.[94]

Prior to living in the Congo and discussing the economic and commercial environment with business people, I did not understand the situations within which companies must operate. My own experiences—even living within the protected confines of the diplomatic community—have helped me to appreciate the magnitude of the problems.

B. The Pipeline

As discussed earlier, in an exhaustive review of the literature, the World Bank concluded that good governance was critical to fostering sustainable development.[95] Countries that are rich in

---

l'axe Mai—Ndombe: Ligne Kiri-Kinshasa-Kiri (Democratic Republic of the Congo, July 14–16, 2003) (copy on file with *Stetson Law Review*).

90. *Id*.

91. *Id*.

92. Michael Brown, *Bringing the Democratic Republic of the Congo Back to Economic Life*, 1 Footprints 132, 134 (2003) (on file with *Stetson Law Review*).

93. *Id*.

94. *Id*.

95. World Bank Group, *Extractive Industries and Sustainable Development: An*

natural resources provide potentially lucrative opportunities for private investors and can contribute to a country's fiscal strength.[96] Ironically, many of the most resource-rich countries actually do not perform as well as resource-poor countries when it comes to economic, social, and governance issues; this is the so-called "paradox of plenty."[97] Countries that are highly dependent on natural resource wealth tend to have slower growth rates than other countries.[98] Resource dependence provides increased opportunities for corruption, and oil and mineral exports (although not others) have an antidemocratic impact.[99]

In developing the Chad-Cameroon Pipeline Project, the World Bank attempted to create a structure that would result in better government practices, more responsive corporations, and benefits provided to the affected communities.[100] The $3.7 billion Pipeline is the largest privately-financed project in Africa,[101] and has been controversial from the time of its initiation.[102] The Pipeline is being built with the World Bank's help,[103] but it also includes the governments of Chad and Cameroon, as well as a consortium of transnational corporations, with the bulk of shares held by Exxon, Chevron, and Petronas (the Malaysian state oil company).[104] The World Bank approved a loan for the project in June

---

Evaluation of World Bank Group Experience vol. 2, 51, http://www.worldbank .org/ocd/extractive-industries; *select* Volume 2: World Bank Experience (July 29, 2003) (stating that the World Bank should focus on strengthening governance prior to expansion).

96. *Id*.

97. *Id*. at 2.

98. Pegg, *supra* n. 37, at 8, 12, 13.

99. *Id*. at 8.

100. *See* Uriz, *Corporate Responsibility*, *supra* n. 15, at 87–89 (outlining the World Bank's standards requiring borrowers to benefit the communities they affect and its oversight of legal reform within the country). The World Bank fosters corporate responsibility through contracts with companies that include project guidelines. *Id*.

101. Pegg, *supra* n. 37.

102. *See Liability for Environmental Damage and the World Bank's Chad-Cameroon Oil and Pipeline Project* (Serge A. Bronkhurst ed., Netherlands Committee for the World Conservation Union (NC-IUCN) 2000) (containing selected papers from the NC-IUCN 2000 symposium that comment on the Pipeline); Uriz, *Corporate Responsibility*, *supra* n. 15, at 90–92 (addressing the campaign to stop the project and the issues involved).

103. Uriz, *Corporate Responsibility*, *supra* n. 15, at 90.

104. *Id*. at 91. The project is structured as follows: The project's private sponsors (led by ExxonMobil, the operator Petronas, and Chevron) are financing about United States $3 billion, or eighty-one percent, of the costs. Uriz, *To Lend or Not to Lend*, *supra* n. 15, at 212. The World Bank is providing United States $92.9 million in International Bank for Reconstruction and Development loans (United States $39.5 million to Chad and United

2000, and construction of the Pipeline began in October 2000, with the presidents of both Chad and Cameroon on hand.[105] The project involves three hundred oil wells and a pipeline that stretches 1,070 kilometers.[106] The first oil began flowing from the Pipeline in July 2003.[107]

Controversy over the project has resulted from a number of factors. First, the governments of Chad and Cameroon have various human rights and corruption troubles.[108] For example, members of the Chadian Parliament who opposed the Pipeline were jailed.[109] Second, the project has had a significant environmental impact on forests and other natural habitats.[110] Indeed, the route of the Pipeline was changed to protect some indigenous communities and environmentally sensitive areas although problems remain.[111] Third, the project affects people living in the construction and mining areas, and involves resettlement as well as fear of what is known in the development literature as "Dutch Disease."[112] Indeed, although the project has created few local jobs,

---

States $53.4 million to Cameroon, amounting to about three percent of project costs) for financing the two Governments' minority holdings in the joint-venture pipeline companies. *Id*. The International Financial Corporation is providing an A-loan of United States $100 million to the government holding companies about 2.7% of the total debt, and has mobilized another United States $100 million for the companies in commercial lending under a B-loan umbrella. *Id.*; *see also* Gary & Karl, *supra* n. 41, at http://www.catholicrelief.org/get_involved/advocacy/policy_and_strategic_issues/oil_report_full.pdf (providing a chart of project financing).

105. Uriz, *Corporate Responsibility*, *supra* n. 15, at 90 (stating that the World Bank executives approved the project on June 6, 2002); World Bank Group, *Chad-Cameroon Petroleum Development and Pipeline Project: Project Overview*, http://www.worldbank.org/afr/ccproj/project/pro_overview.htm (last updated Apr. 10, 2003).

106. Peter Bosshard et al., *Gambling with People's Lives: What the World Bank's New "High-Risk/High-Reward" Strategy Means for the Poor and the Environment* 11 (Envtl. Def. Fund Sept. 2003).

107. World Bank Group, *Chad-Cameroon Pipeline Represents New Approach: An Interview with Country Director Ali Khadr on the Start of Oil Production in Chad*, http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20131848%~menupk:34457~pagepk:34370~pipk:34424~thesitepk:4607,00.html (accessed May 2, 2004).

108. *See e.g.* Korinna Horta & Delphine K. Djiraibe, *Visit Report to Chad & Cameroon*, (Feb. 20, 2001) (available at http://www.edf.org/documents/2396_VisitReport.pdf) (stating that the government commits serious abuses). In 2001, the World Bank stated that Cameroon had a "track record of endemic corruption." Gary & Karl, *supra* n. 41, at 63.

109. Pegg, *supra* n. 37, at 23; Uriz, *Corporate Responsibility*, *supra* n. 11, at 97.

110. Bosshard et al., *supra* n. 106.

111. Gary & Karl, *supra* n. 41, at 65.

112. *See e.g.* Pegg, *supra* n. 37, at 9 (describing "Dutch Disease" as the inflation and abandonment of other projects resulting from a revenue increase). Oil production typically involves only a small part of the country and a limited number of jobs. Gary & Karl, *supra* n. 41, at 22–23. Ironically, it does not compensate for the abandonment of agricultural and

outside workers have caused an increase in local prostitution, HIV/AIDS, and substance abuse.[113]

Finally, there is concern that the governments will not manage the revenue in an equitable manner.[114] The World Bank responded to earlier concerns by establishing an Internal Advisory Group, and an External Compliance Monitoring Group, and trying to work with Chad's government to develop the capacity to manage the project.[115] Because of World Bank pressure, Chad enacted a Petroleum Revenue Management Law that directed how Pipeline revenues would be allocated.[116] Ninety percent of the direct revenues (of dividends and royalties) are supposed to be placed in a special escrow account, and eighty percent of this money is supposed to be allocated toward priority sectors such as health and education, with an additional five percent to the authorities in the oil-producing region.[117] Nonetheless, the government continues to exercise control over the mechanisms for allocating money.[118] The first $4.5 million received by the government as a signing bonus was used for military weapons.[119] Moreover, the Revenue Management Law does not cover taxes and custom duties, which may constitute forty-five percent of the total income generated by the project.[120] Only three existing oil fields are covered; newly discovered oil is not subject to the law.[121] The five percent allocation to the local oil region was developed through an internal political process in Chad, and was thus subject to the

manufacturing projects. *Id*.

113. Bosshard et al., *supra* n. 106, at 11–12.

114. Pegg, *supra* n. 37, at 12–13.

115. Samuel Nguiffo, *Traversing People's Lives: How the World Bank Finances Community Disruption in Cameroon* 3 (Sept. 2002) (available at http://www.eireview.org; *path* Infocenter/search "civil society," *select* Traversing People's Lives: How the World Bank Finances Community. Disruption in Cameroon).

116. Owens, *supra* n. 3, at 1042.

117. *Id*. at 1042.

118. *See id*. at 1046 (stating that "the [World] Bank's new direction suffers from numerous critical flaws, for the host regime continues to retain power over the actual allocation of revenues through its effective control of the supervisory body and its ability to alter the deal's terms after a relatively short time"); Horta & Djiraibe, *supra* n. 108, at sec. 2 (describing government control over the College de Control, the body responsible for monitoring the revenues regulated by the Revenue Management Law).

119. Gary & Karl, *supra* n. 41, at 67–69.

120. *Id*. at 69. Catholic Relief Services believes that the oil companies are taking too large a share of the oil revenues because the World Bank did not provide adequate support to Chad during the negotiation process. *Id*. at 73.

121. *Id*. at 69.

same political realities of flawed elections as elsewhere in the country.[122]

Furthermore, the amount can be changed after five years (shortly after the oil is supposed to begin flowing) by presidential decree.[123] There is widespread concern that international pressure to comply with the World Bank constraints and the environment and fiscal promises will not continue throughout the duration of the Pipeline.[124] Although the Pipeline provides a promising model of conditioning loans and other guarantees on compliance, with capacity-building and requiring an explicit link between good business practices, good governance, and World Bank help, the model remains problematic.[125] The capacity building cannot assume secondary priority to private sector development in light of the poverty alleviation goal.

IV. WHAT CAN BE DONE?

It is only within the past decade that international economists have become considerably engaged in the study of the relationship between good governance and a good business environment.[126] As to the question of which comes first, good governance or a good business environment, the relationship is quite complex.[127] New research shows that good governance results in improved public and private development, and that increasing incomes or development does not, by itself, result in good governance.[128]

In an exhaustive survey of the relationship between governance and corruption, World Bank economists used six concepts to measure good governance, including governmental accountability, political stability, and the quality of government service delivery, consisting of policy-making, the rule of law, and corruption con-

122. *Id*.

123. *Id*. at 70.

124. *Id*. at 73 (stating that the leverage of institutions such as the World Bank will diminish throughout the course of the project, and that its attention will shift away from the Chadian government); Uriz, *supra* n. 15, at 97 (questioning the “unsolved problem” of what will occur if international public pressure eases).

125. Gary & Karl, *supra* n. 41, at 73–75.

126. Kaufmann & Kraay, *supra* n. 51, at 73–75.

127. *Id*.

128. Kaufmann, *supra* n. 49, at 17.

trol.[129] The economists found a correlation between good governance and per capita income, but they also discovered that a higher per capita income does not necessarily result in better government.[130] Consequently, the development process, which causes an increase in incomes, does not necessarily lead to improved governance.[131]

Moreover, the "resource curse," in which governments are highly dependent on natural resources, can have a significantly negative impact on governments by: (1) fostering corruption, as governments receive large amounts of resource revenues; (2) weakening governments, such as through loss of control over resource-rich territories; and (3) diminishing accountability, such as governmental use of resource revenues to cultivate patronage and large security forces.[132]

As these studies show, encouraging private-sector development and implementing extensive aid programs does not result in better governmental accountability, although good governance is critical for business development and increasing per capita income.[133] For example, Botswana, which is the largest diamond exporter in the world and has experienced the highest rate of growth in the world for twenty of the past thirty-five years,[134]

---

129. *Id*. at 5; Daniel Kaufmann et al., *Governance Matters III: Governance Indicators for 1996–2002*, 3–4, http://www.worldbank.org/wbi/governance/pdf/govmatters3.pdf (Dec. 20, 2003).

130. Kaufmann, *supra* n. 49, at 17.

131. Craig Burnside & David Dollar, *Aid, Policies and Growth*, 90 Am. Econ. Rev. 847, 847, 848, 864 (2000) (testing the hypothesis that foreign aid affects growth, but that the impact of foreign aid depends on similar policies that affect growth); Kaufmann & Kraay, *supra* n. 51, at 30.

132. Michael Ross, *The Natural Resource Curse: How Wealth Can Make You Poor*, in *Natural Resources and Violent Conflict: Options and Actions* 17, 24–25 (Ian Bannon & Paul Collier eds., World Bank 2003). And they can also finance rebel movements. *See* Winer & Roule, *supra* n. 72, at 200–202 (discussing how various outside armies in the Congo financed themselves through plundered resources); U.N. Sec. Council, *supra* n. 61 (discussing the natural resources of the Congo).

133. *See* Daniel Kaufman, *supra* n. 5, at http://www.worldbank.org/wbi/governance/pdf/rethink_gov_stanford.pdf (stating that in countries with "high levels of transparency, effective parliamentary oversight, and high standards of corporate ethics, there was a higher rate of GDP growth over the previous three years than in countries with lower standards of transparency, of parliamentary oversight, and corporate ethics"). Other developmental outcomes, such as the literacy rate and infant mortality, are also positively affected. *Id*. at 17.

134. Save the Children, *Lifting the Resource Curse: Extractive Industry, Children, and Governance* 9, http://www.reliefweb.int/library/documents/2003/scf-drc-17jun.pdf (accessed Dec. 20, 2003).

holds democratic elections every five years and has the highest level of transparency of payments of any country in Africa.[135]

So what is a corporation, either home-grown or multinational, to do? Given that fostering the base conditions for corporate responsibility requires changing the cultures of corruption and mistrust of government, who is responsible for creating a safer, more hospitable and responsible business environment? It is only when these questions have been answered that debates about the best structure for corporate governance can begin.

An even more fundamental question is whether multinationals should continue to do business in countries with high levels of corruption.[136] One response would be simply to leave and stop doing business in corrupt countries. This does not, however, resolve the issue and instead lets other, perhaps less responsible, companies exploit the situation and receive revenues from the natural resources. Nevertheless, as long as companies continue to do business in environments without any governmental check on corporate behavior, they will need strong incentives to act responsibly.

Assuming that a company continues its work, it is important to identify who, or what entity, should be acting responsibly. In their analysis of corporate accountability, Professors Lawrence E. Mitchell and Theresa A. Gabaldon suggest three different views on how a corporation can act "morally," questioning the relationship between the corporation and the individuals who work within and for it.[137] According to the first view, the corporation is simply a collection of individuals; the second suggests that the corporation, as an artificial human being, acts as an entity; and the third argues that individuals are constrained by their roles within the corporation.[138] Each of these differing perspectives is

---

135. *Id*.

136. *See* Jeremy Pope, *TI Sourcebook* ch. 16, 146, http://www.transparency.org/sourcebook (last updated Jan. 15, 2004).

137. William W. Bratton, Jr., *The New Economic Theory of the Firm: Critical Perspectives from History*, 41 Stan. L. Rev. 1471 (1989); Lawrence E. Mitchell & Theresa A. Gabaldon, *What are the Ways of Achieving Corporate Social Responsibility?: If I Only Had Heart: Or, How Can We Identify a Corporate Morality*, 76 Tul. L. Rev. 1645, 1646–1647 (2002); William H. Simon & William H. Simon, *Whom (Or What) Does the Organization's Lawyer Represent?: An Anatomy of Intraclient Conflict*, 91 Cal. L. Rev. 57 (2003); Robert W. Tuttle, *The Fiduciary's Fiduciary: Legal Ethics in Fiduciary Representation*, 1994 U. Ill. L. Rev. 889 (1994).

138. Mitchell & Gabaldon, *supra* n. 137, at 1647.

useful in seeking to hold corporations accountable for their actions, and it will always be necessary to impose external constraints and monitoring.[139] For example, requiring disclosure of how decisions are made within the corporation could result in enhanced individual responsibility for specific acts of corporate conduct.[140]

In the NGO literature, there are increasing calls for involving "stakeholders" as well as stockholders in corporate decision making based on the theory that corporations are not just owned by those who have made a financial investment.[141] Corporations should also understand that eighty percent of the world's consumers live in developing countries,[142] even if most of them do not yet have the capacity to consume, given their poverty. And socially responsible investors have been pressuring corporations to do what is "right."[143] Indeed, over the past several decades, NGOs, governments, and corporations themselves (responding both to risky business environments and shareholder and NGO activism) have developed various checks and balances to encourage responsible corporate behavior.[144]

There have been three types of efforts to foster corporate responsibility.[145] First, governments have enacted legislation specifically directed at promoting responsibility, including disclosure requirements; second, corporations have adopted voluntary codes, which may have been developed internally by multilateral or industry based organizations; and third, companies have directly engaged with consumers and NGOs through meetings, publicity campaigns, or other types of pressure.[146]

---

139. *Id*. at 1670.

140. *Id*. at 1656.

141. *See* Douglas M. Branson, *Corporate Governance "Reform" and the New Social Responsibility*, 62 U. Pitt. L. Rev. 605, 636 (2001) (suggesting the emergence of a new corporate social responsibility movement that brings together the reality of good governance with the social aspirations of responsibility).

142. Mark Malloch Brown, *Business and the Developing World Need Each Other*, Intl. Herald Trib. (Nov. 12, 2002) (available at http://www.publishwhatyoupay.org/pressclips/ht111.202a.shtml (accessed Dec. 20, 2003)).

143. *See e.g.* Carola Hoyos, *Good Governance Will Benefit the Business Community*, Fin. Times 2 (Sept. 29, 2003) (available at LEXIS, News & Bus. database) (discussing extractive industries); Diamond, *supra* n. 48 (discussing investors concerned about conflict diamonds).

144. Le Billon, *supra* n. 3, at 264.

145. *Id*.

146. *Id*.

Corporations may not feel that they have sufficient leverage to influence policy change and may not want to use what bargaining power they do wield. They may espouse a position of neutrality, with a focus on profits.[147] On the other hand, some policy changes will benefit companies, such as open competition practices, honest revenue reporting, and transparency in "tax assessments."[148] These enhance the business environment and reduce the risks of doing business.[149] Corporations within a particular industry can be induced to sign an "integrity pact," which is an agreement not to accept bribes and for which there are serious penalties.[150] To the extent that companies are concerned about their reputations, they may face bad publicity for dealing with corrupt, inefficient national governments.[151] If they fail to exert any positive influence, then they may contribute to maintenance of the inadequate government systems by legitimating ongoing corruption of government representatives and providing money to finance ongoing conflict.[152]

One initiative that has received increasing amounts of attention uses transparency through the reporting of resource revenues to hold both the corporation as an entity and the government accountable for money paid and received.[153] The theory behind this strategy is that, to trace what happens to money paid to government officers, it is useful to have some idea of how much money is actually being received.[154] Transparency of payments provides evidence of government revenue and is intended to help in pressuring governments to use that money for development, rather

147. *Id*. at 256.

148. *Id*.

149. *See* John Bray, *Attracting Reputable Companies*, in *Natural Resources and Violent Conflict: Options and Actions* 287, 297, 314 (Ian Bannon & Paul Collier eds., World Bank 2003) (quoting an executive vice-president of ExxonMobil stating "Business enterprises are at base neither philanthropic nor peacekeeping organizations.").

150. *See* eAfrica, *Fighting Graft Bribe by Bribe*, 2 eAfrica 12, 15 (March 2004), http://www.wits.ac.za/saiia/eAfrica/AfricaMarch.htm.

151. *Id*. at 316. The South African divestment campaign of the 1970s and 1980s provides an example of the risks of bad publicity. *Id*. at 294.

152. Le Billon, *supra* n. 3, at 256.

153. Global Witness, *Publish What You Pay: An Appeal for Social Responsibility through Financial Transparency Headed by George Loros and a Coalition of NGOs*, http://www.globalwitness.org/campaigns/oil/publish_what_pay.php (accessed Feb. 13, 2004).

154. *See id*. (explaining the theory behind mandatory disclosure).

than personal gain.[155] While the companies are not directly responsible for what governments do with the money that they pay, the private sector can help to change the climate of corruption by disclosing the amount of payments.[156] Improved transparency should help the business environment improve as companies recognize that government benefits are no longer arbitrarily granted, and the risks and costs of doing business decrease.[157] There are a variety of initiatives that already exist to promote host-country and company reporting, ranging from an IMF voluntary Code of Good Practices on Fiscal Transparency to OECD Guidelines for Multinational Enterprises.[158] The means for enforcing these obligations have, so far, been voluntary.[159] Perhaps the most highly publicized transparency initiative is the "Publish What You Pay" campaign, which was officially launched in June 2002, to encourage corporations to disclose all payments made to governments.[160] "Publish What You Pay" works by revealing information about how much governments are receiving, thereby encouraging citizens, corporations, and NGOs to monitor how that money is being spent.[161] The campaign is directed at companies, their home governments, and the exporting countries. The types of payments

---

155. *Id*.

156. *See id*. (discussing the theory behind mandatory disclosure).

157. *Id*.; *e.g.* Dept. for Intl. Dev., *Extractive Industries Transparency Initiative*, http://www.dfid.gov.uk/News/News/files/eiti_guide_a.htm (accessed Feb. 13, 2004); Dept. for Intl. Dev., *Report of the Extractive Industries Transparency Initiative (EITI) Workshop* 11–12, http://www.dfid.gov.uk/News/News/files/eiti_workshop_report_feb03.pdf (accessed Feb. 13, 2004).

158. Philip Swanson et al., *Who Gets the Money? Reporting Resource Revenues* in *Natural Resources and Violent Conflict: Options and Actions* 43, 58–75 (Ian Bannon & Paul Collier eds., World Bank 2003).

159. Le Billon, *supra* n. 3, at 257–258; Swanson, et al., *supra* n. 158, at 62, 79. In its preliminary review of the Angolan diamond certification process, the NGO Global Witness suggests the necessity of independent monitoring performed by an unaffiliated entity to protect the integrity of any control system. Global Witness, *Can Controls Work? A Review of the Angolan Diamond Control System?* http://www.globalwitness.org; *select* diamonds, *select* briefing documents, *select* English version "can controls work" (Dec. 26, 2001); *see also* Gereffi et al., *supra* n. 6, at 60 (pointing out that control systems vary in strength depending on whether they are sponsored by industry, NGOs, or multilaterals).

160. For further description of the campaign, see Global Witness, *Publish What You Pay*, http://www.publishwhatyoupay.org (accessed Feb. 13, 2004), and Global Witness, *Publish What You Pay: An Appeal for Global Responsibility through Financial Transparency Headed by George Soros and a Coalition of NGOs*, http://www.globalwitness.org/campaigns/oil/publish_what_pay.php (accessed Feb. 13, 2004).

161. Simon Taylor, *Corporate Secrecy Oils the Wheels of Poverty*, Intl. Herald Trib. (June 20, 2002) (available at 2002 WL 2887055).

requiring disclosure include taxes, fees, royalties, signing bonuses, and any other money transferred to the federal, state, or local governments.[162] "Publish What You Pay" urges home governments to ensure that multinationals adopt full transparency programs,[163] including:

- Calling on legislation and enforcement regimes to require publicly-traded resource extraction companies to disclose payments to, and relevant contractual arrangements with, governments and companies of all countries where they operate;
- Providing technical assistance to governments of exporting countries in development of socially-responsible resource revenue management regimes, consultative mechanisms with civil society, and transparency of government resource revenues. . . .[164]

Unlike other efforts that are based on voluntary adoption of codes, "Publish What You Pay" wants home countries to require that companies report their payments.[165] In England, for example, the campaign seeks to change stock exchange listing laws to require disclosure.[166] Several large oil companies have already disclosed their payments to various governments.[167]

But the disclosure problems in countries like the Congo, Chad, and Cameroon will not be solved by transparency of payments between corporations and the government.[168] In addition to transparency of payments, corporations could also be encouraged (or required)[169] to disclose their activities that contribute to better

---

162. Gary & Karl, *supra* n. 41, at 79; Global Witness, *Frequently Asked Questions about the "Publish What You Pay" Campaign*, http://www.publishwhatyoupay.org/faq.shtml (accessed May 2, 2004).

163. Swanson et al., *supra* n. 158, at 76, 77.

164. Global Witness, *supra* n. 162, at http://www.publishwhatyoupay.org/faq.shtml.

165. Swanson, *supra* n. 158, at 76.

166. Global Witness, *supra* n. 164.

167. Taylor, *supra* n. 161. When British Petroleum decided to publish what it pays to the Angolan government, the government threatened to terminate its contracts. *Id*.

168. *See* Brown, *supra* n. 11, at 136 (stating that the issues go beyond traditional corporate social responsibility and do not capitalize on the positive role companies can have in reducing corruption, abuse of law, and predatory governments).

169. There is healthy debate within the non-governmental organization community as to whether voluntary undertakings are effective, or whether mandatory requirements are better. Susan Ariel Aaronson, *"Oh Behave!" Voluntary Codes Can Make Corporations*

governance or that involve lobbying to improve the business environment.[170] While businesses already have a public relations incentive to publicize their actions that benefit the community, they also need incentives to publicize how they are—or are not—addressing corruption issues. And, of course, the resource-rich countries themselves need to increase domestic transparency.[171]

Transparency, or full disclosure of all aspects of a business, is both facilitated and compelled by increasing access to electronic information.[172] As people become better informed about business practices, they want additional material to evaluate companies and pressure them for better practices.[173] Companies, in turn, will respond to the increasing climate of openness by providing additional information.[174]

There have been many efforts to justify corporate social responsibility as economically, socially, or legally required.[175] Re-

---

Model Citizens, Intl. Econ. 40 (March/April 2001); Joseph A. Franco, *Why Antifraud Prohibitions are not Enough: The Significance of Opportunism, Candor, and Signaling in the Economic Case for Mandating Securities Disclosure*, 2002 Colum. Bus. L. Rev. 223, 320 (2002). Ian Gary and Terry Lynn Karl observe that mandating disclosure would insulate companies from retribution for disclosure. Gary & Karl, *supra* n. 41, at 53; *see* Le Billon, *supra* n. 3, at 266 (when companies have signed nondisclosure agreements with host countries, legislation in their home countries can provide the basis for voiding such agreements).

170. Brown, *supra* n. 11, at 136.

171. *See* Ross, *supra* n. 132, at 27 (pointing out that all of the multilateral institutions could work together to impose this requirement).

172. *See* Don Tapscott & David Ticoll, *The Naked Corporation: How the Age of Transparency Will Revolutionize Business* 9 (Free Press 2003) (describing how stockbrokers, employees, business partners, shareholders, consumers, interest groups, and communities increasingly obtain information about companies via the Internet).

173. Of course, even with sufficient information, the public and shareholders may not take steps to protect themselves and may overvalue a company, as recent United States events concerning Enron and Worldcom show. *See e.g.* William W. Bratton, *Enron and the Dark Side of Shareholder Value*, 76 Tul. L. Rev. 1275, 1338 (2002) (discussing the events leading to Enron's collapse); Claire Moore Dickerson, *Ozymandias as Community Project: Managerial/Corporate Social Responsibility and the Failure of Transparency*, 35 Conn. L. Rev. 1035, 1072 (2003) (arguing that transparency may not sufficiently protect investors).

174. And everyone will be happier? There is, of course, a limit to the amount of transparency that will promote better business practices, such as prohibitions on sharing trade secrets. *See e.g.* Economist Staff, *Get Naked*, The Economist U.S. Ed. (Oct. 18, 2003) (available at 2003 WL 58584485) (noting that complete transparency can damage a firm due to exposure of trade secrets, or private employee or customer information).

175. *See* Simon Deakin, *Squaring the Circle? Shareholder Value and Corporate Social Responsibility in the U.K.*, 70 Geo. Wash. L. Rev. 976, 976–977 (2002) (examining European legal requirements for corporate social responsibility); Diane F. Orentlicher & Timothy A. Gelatt, *Public Law, Private Actors: The Impact of Human Rights on Business Investors in China*, 14 Nw. J. Intl. L. & Bus. 66, 97 (1993) (stating that "it is scarcely possible to draw a bright line between corporations' goal of maximizing profits and social expectations

gardless of whether corporate social responsibility improves profitability in the short term, it has other, less tangible effects, such as increasing investor and consumer confidence in the company.[176] While it may be difficult to derive theories of corporate responsibility from existing doctrines, international law can provide a basis for developing mandates,[177] a particularly useful exercise given that they may not exist under domestic law.

Transparency has become increasingly important under United States securities laws and to the American public,[178] yet the idea continues to face problems in the developing world.[179] The pressure for transparency generally comes from NGOs, and it often gains force from skilled use of the Internet.[180] Although the Internet is beginning to make inroads in the Congo, and there are a few cybercafes in the capital city, the literacy rate (not the computer literacy rate) is under seventy percent.[181] Pressure for

---

that they behave responsibly"); Beth Stephens, *The Amorality of Profit: Transnational Corporations and Human Rights*, 20 Berkeley J. Intl. L. 45, 62–63 (2002) (comparing several legal systems to conclude that international law provides standards for holding corporations accountable for human rights violations).

176. *E.g.* Thomas W. Dunfee & Timothy L. Fort, *Corporate Hypergoals, Sustainable Peace, and the Adapted Form*, 36 Vand. J. Transnatl. L. 563, 568 (2003). Disclosure provides information on the country, and thus encourages investment and stability, which are important for market analysis. *Id*.

177. Steven Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 Yale L.J. 443 (2001); Stephens, *supra* n. 175, at 79–82 (discussing "voluntary" codes of corporate conduct and international enforcement mechanisms). Even though international law has traditionally concerned nation-states rather than private actors, the relative size of corporations has made them increasingly important to regulate. *See* Stephen G. Wood & Brett Scharffs, *Applicability of Human Rights Standards to Private Corporations: An American Perspective*, 50 Am. J. Comp. L. 531, 538 (2002) (discussing how "fundamental changes" occurred after World War I that transformed private actors, including corporations, into subjects of international law).

178. *E.g.* Patricia Romano, *Sustainable Development: A Strategy That Reflects the Effects of Globalization on the International Power Structure*, 23 Hous. J. Intl. L. 91, 109–110 (2000); Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency*, 112 Harv. L. Rev. 1197, 1273–1274 (1999) (arguing that the SEC mandate increased disclosure of nonfinancial information such as the company's products and its compliance with labor and environmental laws domestically and internationally pursuant to the securities laws).

179. Tapscott & Ticoll, *supra* n. 172; Marcia Stepanek, *The Transparent Corporation*, C10 Insight 32 (Oct. 1, 2003) (available at http://www.cioinsight.com/2/0,1397,1458890,00.asp (accessed May 2, 2004)) (noting that increased public access to information via the Internet increases the necessity for corporations to become transparent). Thanks to the Internet, people and institutions are gaining unprecedented access to all sorts of information about corporate behavior, operations, and performance. *Id*.

180. Stepanek, *supra* n. 179.

181. Thirty-two percent of people over the age of fifteen do not know how to read or write. UNICEF, *MICS Report from Dem. Rep. of Congo*, http://www.childinfo.org; *path*

transparency must still develop from outside the country, through changes in international norms or from within the corporations themselves, because the local populations do not have the requisite tools or laws.[182] NGOs and international donors can help to build the capacity within the Congo, Chad, and Cameroon to monitor government receipts and expenditures by providing funding, training, and other forms of education to local civil society groups.[183] The involvement of local communities is critical; members of these communities are the best sources for determining what is actually happening, and they have the most direct stake in changing conduct.

International stock exchanges can require the disclosure of certain information as a condition for listing a company,[184] and the World Bank can continue to impose conditions on its funding to encourage transparency and provide follow-up monitoring throughout the duration of its projects.[185] Home governments could also, as part of their domestic securities laws, require companies to list each payment made to a foreign government, broken down by country and type of payment.[186] Corporate governance issues, in this context, are not matters of national law, but concern other actors from outside of a country's legal system.

Improving transparency may result in better corporate behavior, but it certainly cannot be the sole strategy. Improving the business environment, decreasing corruption, and encouraging social responsibility within developing countries involves strengthening the legal system (including the criminal laws to deter bribery) increasing the literacy rates to facilitate and encourage access to information, changing government budgetary,

---

National Reports/Dem. Rep. of Congo, *select* MICS Report from Dem. Rep. of Congo (accessed May 2, 2004); *see also* CIA, *The World Factbook: Congo, Democratic Republic of the Congo*, http://www.cia.gov/cia/publications/factbook/ geos/cg.html#People (accessed Mar. 9, 2004) (discussing the literacy rate in the Congo). Less than fifty percent of the population (forty-seven percent of men and 25.4% of women) have finished secondary school. *Id*.

182. *E.g.* Dickerson, *supra* n. 173, at 1070–1071.

183. *E.g.* U.N. Sec. Council, *supra* n. 61, at 18.

184. *Id*. *Publish What You Pay* advocates that international stock exchanges impose mandatory reporting of payments made to national governments. Global Witness, *supra* n. 153. This approach will not capture all payments made or received, because it does not include nonlisted companies, such as smaller companies and companies owned by host governments. Swanson, *supra* n. 158, at 77.

185. U.N. Sec. Council, *supra* n. 61, at 18.

186. Swanson, *supra* n. 158, at 80.

accounting, and procurement practices, and eliminating the tolerance for corruption within the government and the private sector.[187] While governments need to disclose all payments received and the methods by which they negotiate contracts to encourage reciprocal corporate responsibility, the corporate climate cannot be separated from a country's other serious problems that contribute to the corruption climate.

Many countries are economically mismanaged, and their political leadership does not want to change the status quo and risk losing its revenue stream. Just as with corporations, there are various enforcement mechanisms to try to make countries change their laws and practices.[188] For example, ExxonMobil conditioned its investment in Chad on the government signing an agreement with the World Bank and IMF concerning allocation of oil revenues,[189] an example of a corporation successfully inducing a government to change. Civil-Society groups can pressure both national and local governments as well as corporations to reduce corruption.

Corporations can and should take responsibility. They can influence governmental policies and structures[190] and encourage routine standards for international business practices.[191] Corporations alone cannot reform an environment in which corruption and bribery flourish, but they have an enduring responsibility to their shareholders and the communities in which they work to coordinate efforts to change that environment.

V. CONCLUSION

I recently attended a meeting with some of the business leaders of Kinshasa to discuss how to interest corporations in raising money to help children in the Congo. We all agreed that corporations would probably not get involved unless they received good

---

187. *See* Dunfee & Hess, *supra* n. 55, at 473, 490 (discussing changes aside from transparency that will aid in decreasing corruption).

188. Swanson, *supra* n. 158, at 88.

189. *Id*. However, even with this agreement and all of the various monitoring provisions, the government is still trying to elude its responsibilities. *Id*. And not all governments are susceptible to such bargaining because they may already be receiving such large revenue flows from resource extraction that they are unwilling to accept conditional aid. *Id*. at 44.

190. Kaufmann, *supra* n. 5, at 34.

191. Brown, *supra* n. 11, at 133.

press for their efforts or some other tangible benefit. They are certainly not required to support our efforts. We were also concerned that the government might try to claim some of the money that we raise, rather than letting us transmit it directly to the intended beneficiaries.[192]

As I write this conclusion, the power is flickering off and on. We are fortunate enough to have a generator to provide back-up power, but there are many companies without this luxury, and most people do not have electricity at all.[193]

In developing countries, the critical issues are corruption and inefficient, dishonest governments. Only when these issues have been resolved can companies, multilaterals, and governments turn their attention to how best to structure capital markets. The moral to be drawn from the story of corruption along the Congo River is that base conditions concerning the rule of law and government accountability are necessary for enterprise to thrive. The lesson from the Chad-Cameroon Pipeline Project is that, without constant pressure, even multilaterals find it difficult, if not impossible, to change the prevailing culture. As we discuss other issues of corporate governance and examine differing models for corporate laws, the experiences of corporations and multilaterals in Africa, and other parts of the developing world, provide sobering lessons on our assumptions concerning base level conditions for coherent discussions and application of existing models.

192. Indeed, at the same time that we were meeting, there was another meeting of nongovernmental organizations concerning corruption that interfered with their delivery of services.

193. It turns out that the electric company is trying to extort more money from us: although the bill was paid on time, the company claims it needs more money.