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Towards a Typology of Corporate Responsibility in Different Governance Contexts

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Abstract

This paper develops a typology of different country governance contexts, in which we propose four broad categories of countries in Sub-Saharan Africa. Our analysis measures the most appropriate methods for helping to create a climate that is receptive to fostering corporate accountability. Our criteria are based on several different factors, none of which is determinative: the natural resources of the country; the country's dependence on one commodity; the corruption level; the stability and accountability of the government; the state of civil society; and the existence of ongoing conflict. Examining these factors together results in measuring not just the country's receptivity to change, but also the means for producing change.

At one end of the spectrum, what we label "Category 0" countries, are nations with economies and governments that are so poorly managed that there is little multinational investment – sometimes even in the context of lucrative investment opportunities. At the other end lie those countries with acceptable levels of good governance, more developed economies and markets, and with, consequently, a comparatively high level of both domestic and multinational corporate investment. We

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examine the appropriateness of strategies to apply external or internal pressure in different types of countries. Next, we discuss the affects of applying the proposed intervention strategies to the countries, addressing both short and long-term expected results. We find that in "Category 0" countries, with extremely low levels of international investment, strategies should focus on improving governance and overall human welfare, which often could lead to welcoming international corporate investment. Other categories of countries, with greater -- and often problematic -- international corporate involvement, require different types of approaches.

Introduction

The country governance context is critical in deciding on appropriate strategies to improve corporate responsibility. This paper develops a typology of different governance contexts, in which we propose four broad categories of countries in Sub-Saharan Africa. At one end of the spectrum are countries with economies and governments that are so poorly managed that there is little multinational investment – sometimes even in the context of lucrative investment opportunities. At the other end lie those countries with acceptable levels of good governance, more developed economies and markets, and with, consequently, a comparatively high level of both domestic and multinational corporate investment. We examine the appropriateness of strategies to apply external or internal pressure in different types of countries. Next, we discuss the affects of applying the proposed intervention strategies to the countries, addressing both short and long-term expected results. The first category of countries, which includes the Democratic

Republic of the Congo, Liberia, and Sierra Leone, is, in the context of this topic, the least well understood; therefore, the paper discusses in greater detail the case of one of these, the Democratic Republic of the Congo (hereafter "DRC").

Typology

Various entities have developed different means for measuring a country's growth and eligibility for investment. The World Bank uses criteria to assess a country's eligibility for IDA (International Development Assistance) that focus on per capita income and creditworthiness for borrowing from both commercial and multilateral institutions and appropriate performance standards, such as macroeconomic stability and good governance.[2] These criteria are weighed together; for example, a country with a lower per capita income than the IDA cut-off may nonetheless be ineligible if it is able to secure commercial and other multilateral loans.[3] Although the World Bank uses this classification for eligibility for loans, grants, and special programs of debt relief, other institutions also rely on these classifications.[4] In sub-Saharan Africa, there are 37 countries that qualify for IDA-status.[5]

The World Economic Forum uses a growth competitiveness index based on the quality of the macroeconomic environment, the state of the country's public institutions,

2 International Development Association, IDA Eligibility, Terms, and Graduation Policies 1-4 (2001) (avail. at http://siteresources.worldbank.org/IDA/Resources/Seminar%20PDFs/ida%20eligibility.pdf).

3 Id. at 4.

4 Todd Moss, et al., Double-Standards, Debt Treatment, and World Bank Country Classification: The Case of Nigeria 2 (2004) (avail. at http://www.cgdev.org/Publications/index.cfm?PubID=147).

5 Id. at 3. Nigeria and Zimbabwe, which are not included in that number, are also IDA eligible, but they occupy a special "blend" status.

and the level of its technological readiness.[6] Finally, the United States recently established the Millennium Challenge Account to provide development assistance to countries with good governance practices. Among the 16 criteria for eligibility are civil liberties, control of corruption, immunization rate, inflation rate, fiscal policy, and trade policy.[7] Among the 16 countries deemed eligible in 2004 were the following sub-Saharan Africa nations: Ghana, Lesotho, Madagascar, Mali, and Mozambique.[8] There are additional measures that are more focused on governance, such as the World Bank Institute's Aggregate Governance Indicators Dataset, and on political and economic risk, such as the International Country Risk Guide.[9]

While these measures are useful for background information, in our analysis, we are measuring a country's suitability not just for the stability of economic investment nor eligibility for development assistance. Instead, we are examining the most appropriate methods for helping to create a climate that is receptive to fostering corporate accountability, a complex analysis that includes legal, social, economic, and political variables. Our criteria are based on several different factors, none of which is determinative: the natural resources of the country; the country's dependence on one commodity; the corruption level; the stability and accountability of the government; the state of civil society; and the existence of ongoing conflict. Examining these factors together results in measuring not just the country's receptivity to change, but also the means for producing change.

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[6] World Economic Forum, Ernesto Hernandez-Cata, Exec. Summary, in Africa Competitiveness Report 1, 3 (2004), avail. at www.weforum.org/pdf/Glob.pdf.

[7] Millennium Challenge Corporation: Reducing Poverty Through Growth, avail. At www.mca.gov/countries/selection/data/shtml.

[8] Eligible Countries, avail. at http://www.mca.gov/countries/eligible/index.shtml.

[9] Moss, supra note __, at 12.

We have divided countries in sub-Saharan Africa into four different categories.[10] We call the first category of countries "Category 0," to denote the near-absence of both effective governance and significant levels of foreign investment. These countries, such as Burundi, the DRC, Liberia, and Sierra Leone, have long had weak, highly corrupt governments, typically have suffered recently from war, and are left today with very low levels of international investment. Category 0 countries possess extremely ineffective basic institutions in the areas necessary to establish the prerequisites for corporate controls of any kind; they lack a reliable legal system, governmental transparency, and functioning capital markets.[11] The law as written and the law as enforced in the courts differ dramatically.[12] Ironically, many of these countries are resource-rich, but they do not perform as well as some resource-poor countries when it comes to economic, social, and governance issues.[13] A recent Global Witness report notes: "Instability, coupled with widespread corruption throughout the DRC, is currently a major deterrent to foreign investment . . . Understandably, many mining companies are unwilling to take the risks involved in starting operations in the DRC."[14] As a result, notwithstanding the many opportunities for business investment, there is little external capital, and indigenous businesses remain relatively small.

10 Although our analysis focuses on sub-Saharan Africa, the categories can be used more globally as well.

11. *Id*. at 848. The last sentence of the article concludes "[t]hese 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 number of independent directors. *Id*. at 849.

12. This is certainly true in the Congo. Stuart Cohn, *Teaching in a Developing Country: Mistakes Made and Lessons Learned in Uganda*, 48 J. Leg. Educ. 101, 104 (1998). 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. In Uganda, for example, copies of relevant statutes were simply not available in the numbers necessary for teaching in the classroom. *Id*. at 108.

13. *Id*. at 1.

14 Global Witness at 8.

The second category, "Category One," denotes countries highly dependent on a single source of export revenue, often oil. Single-source resource dependence provides increased opportunities for corruption, and oil and mineral exports can have an anti-democratic impact.[15] These countries have substantial investments, but in very focused areas. Category 1 countries, such as Angola, Botswana, Nigeria, and the Republic of Congo (hereafter "Congo-Brazzaville"), depend overwhelmingly on one major commodity for their export revenue. Large multinational corporations have risked substantial amounts of capital in these countries. The commodity may be oil as is true of Nigeria, Angola, and Congo-Brazzaville[16], or, as in the case of Botswana, diamonds. Aside from Botswana, these countries trend strongly in the direction of corrupt and highly inefficient governments, but are marginally more stable than Category 0 countries.

Countries that are rich in natural resources provide potentially lucrative opportunities for private investors and can contribute to a country's fiscal strength.[17] 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."[18] Countries that are highly dependent on natural resource wealth tend to have slower growth rates than other countries.[19] Resource dependence provides increased opportunities for corruption, and oil and mineral exports (although not others) have an anti-democratic impact.[20]

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15. *Id.* at 8.

16 In 2001, the latest year for which data are available, the two largest oil exporters in sub-Saharan Africa were Nigeria, which exported 107,176,000 metric tons, and Angola, which exported 35,089,000 metric tons; Congo-Brazzaville was the fourth largest exporter, at 12,550 tons. World Bank, African Development Indicators 2004 90 (2004).

17. *Id.*

18. *Id.* at 1.

19. Pegg, *supra* n. 32, at 8, 12, 13.

20. *Id.* at 8.

This "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.[21]

Encouraging private sector development and implementing extensive aid programs do not necessarily result in better governmental accountability, although good governance is critical for business development and increasing per capita income.[22] The relationship, however, is not rigid; 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, holds elections every five years and has the highest level of transparency of payments of any country in Africa.[23]

Our third category encompasses the "Category 2" countries. Examples are Kenya, Mozambique, Tanzania, and Uganda. These countries are not as poor as the countries in Category 0, and have a broader range of export commodities than the countries in Category 1. These countries are characterized by substantial levels of external investment (when compared to Category 0), and, broadly speaking, governments that are more interested in decreasing corruption and improving the business environment.

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21. 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. 70, at 200–202 (discussing how various outside armies in the Congo financed themselves through plundered resources); U.N. Sec. Council, *supra* n. 59.

22. *See* Kaufmann, *supra* n. 44, at 19 (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.

23. Save the Children, *Lifting the Resource Curse: Extractive Industry, Children, and Governance* 13, http://www.reliefweb.int/library/documents/2003/scf-drc-17jun.pdf (accessed Dec. 20, 2003).

Category 3, the final category, includes the best-run countries of Sub-Saharan Africa, such as South Africa, Ghana, Mali, and Senegal. In these countries, country governance is much improved and orders of magnitude better than in Category 0 countries, economies are diversified, and levels of foreign investment are already reasonably high. South Africa, for example, had the highest amount of manufacturing exports in sub-Saharan Africa, with an annual growth rate of 7-8%.[24]

Corporate Accountability and Good Governance

The central implications of the typology are that countries in different categories require different strategies relating to corporate responsibility. A deeper implication is that the entire strategic approach to corporate responsibility requires unpacking. For example, it is hard to enhance corporate responsibility in countries with no multinational corporations! Should those countries in Category 0, then, be put in a category labeled "hopeless"? How can you have corporate accountability and responsibility in a situation where there are few corporations and very weak governance? Is the relationship between corporations and good governance really as insidious as some still assume?

We believe it is a bias to assume that increased international investment by corporations is in and of itself a bad thing for the country or that corporations prefer poor governance. In the context of Category 0 countries, these statements are patently untrue. The existence of a substantial multinational presence could provide the impetus for change. On the other hand, outside of a few countries where extractive industries provide such great rewards that they justify the risks (as seen in many category 1 countries), widespread corruption and inefficient government serve as a disincentive to foreign

24 Africa Development Indicators, supra note __, at 104-105.

investment.[25] When corporations cannot rely on enforcement of contracts, cannot rely on public bureaucracies, cannot hire literate workers, then they are much less likely to invest in a country.

There has been a great deal of publicity and activism around issues of “economic globalization,” a phenomenon which Jagdish Bhagwati thoughtfully describes as “integration of national economies into the international economy through trade, direct foreign investment . . . short-term capital flows, international flows of worker and humanity generally, and flows of technology.”[26] Economic globalization is accused of benefiting multinational corporations over local workers, and increasing the wealth of foreign investors at the expense of country-internal workers and businesses.[27] In a thoughtful paper, Todd Moss and his colleagues discuss the historical antipathy towards foreign investment in Africa, and debunk many of the myths.[28] While we too recognize the dangers of globalization, we also believe that foreign investment can improve a country’s economic, political, and social outlook.

Indeed, it is only within the past decade that international economists have begun to study the relationship between good governance and a good business environment.[29] New research shows that good governance results in improved development, but that increasing incomes does not, by itself, result in good governance.[30]

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25 See, e.g., infra; Kimberly Ann Elliott, Corruption as an Internal Policy Problem: Overview and Recommendations 175, 194, in Corruption and the Global Economy (Kimberly Ann Elliott ed. 1997),

26 Jagdish Bhagwati, In Defense of Globalization 3 (2004).

27 See, e.g., The International Forum on Globalization, avail. at http://www.ifg.org/about.htm.

28 Todd J. Moss, Vijaya Ramachandran, and Manju Kedia Shah, Is Africa’s Skepticism of Foreign Capital Justified? Evidence from East African Firm Survey Data (2004)(avail. at www.cgdev.org/Publications/?PubID=120.

29. Kaufmann & Kraay, *supra* n. 46, at 73–75.

30. Kaufmann, *supra* n. 44, at 17.

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 control.[31] The Bank 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 country governance.[32] On the other hand, good governance is critical to fostering sustainable development.[33] When executives were asked to list the most important constraints on their firms' growth, corruption and ineffective government bureaucracies were second and third on the list, with only a lack of finance rated as a larger constraint.[34]

Strategies

Broadly, there are two sets of interrelated strategies that can be used to change the investment climates to improve governance and improve the climate for international investment. First, multilateral institutions, bilateral aid agencies, and international nongovernmental organizations can exert pressure on the national government and other institutions within a country where they have programs. Second, indigenous non-governmental organizations, individuals, and responsible governmental officials can pressure institutions from within the country (often with external support).

31. *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).

32. Kaufmann, *supra* n. 44, at 17.

33. World Bank Group, *Extractive Industries and Sustainable Development: A Evaluation of World Bank Group Experience* vol. 2, 51, http://www.wds.worldbank.org/servlet/ wds_Ibank_Servlet?pcont=details&eid=000160016_20030828164541; *select* PDF (July 29, 2003) (stating that the bank should focus on strengthening governance prior to expansion).

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

There have been four types of efforts to foster corporate responsibility via the actions of external actors.[35] First, there has been legislation specifically directed at promoting responsibility, including disclosure requirements. For example, the Foreign Corrupt Practices Act in the United States was enacted to deter US companies from bribing foreign officials. Second, corporations have adopted voluntary codes of responsibility.[36] These codes may have been developed internally by multilateral corporations, by industry-based organizations, or by multi-governmental entities, such as the OECD. Third, as local and international nongovernmental organizations have exerted more pressure, companies have directly engaged with consumers and NGOs through meetings, publicity campaigns, or other types of actions.[37] Finally, government aid agencies and multilateral institutions, like the World Bank, have pressured companies and countries to develop improved accountability.

The most visible efforts have come through this third type of activism. For example, a group of nongovernmental organizations have launched an initiative, which has received increasing amounts of attention, to use transparency through the reporting of resource revenues to hold both the corporation as an entity and the government accountable for money paid and received.[38] The "Publish What You Pay" campaign, which was officially launched in June of 2002, pushes corporations to disclose all payments made to governments.[39] Publish What You Pay would lead to the release of information about how much governments are receiving from companies, thereby

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35. *Id.*

36 These codes are discussed by others at the conference. See the papers by McInerney and Murphy.

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

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

39. For further description of the campaign see Global Witness, http://www.publishwhatyoupay.org (accessed Feb. 13, 2004); Global Witness, http://www.globalwitness.org (accessed Feb. 13, 2004).

permitting citizens, corporations, and NGOs to monitor how that money is being spent.[40] The campaign is directed at companies, their home governments, and the exporting countries; the types of payments requiring disclosure would include taxes, fees, royalties, signing bonuses, and any other money transferred to the federal, state, or local governments.[41] The theory behind this strategy is that, to trace what happens to money paid to government officials, it is useful to have some idea of how much money they are actually receiving.[42] 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.[43]

These non-governmental organization efforts have dovetailed with the first two sets of reforms (developed country legislation and voluntary codes) because 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.[44] The means for enforcing these obligations have, so far, been voluntary.[45] These efforts are important in all categories except Category 0.

Finally, the World Bank has imposed conditions on its funding of various business projects in order to encourage transparency, and has attempted to provide

40. Simon Taylor, *Corporate Secrecy Oils the Wheels of Poverty*, Intl. Herald Trib. (June 20, 2002).

41. Gary & Karl, *supra* n. 36, at 79; Global Witness, http://publishwhatyoupay.org/ appeal (accessed Feb. 13, 2004).

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

43. *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 (Feb. 2003), http://www.dfid.gov.uk/News/News/files/eiti_workshop_report_feb03.pdf (accessed Feb. 13, 2004).

44. 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).

45. Le Billon, *supra* n. 3, at 257–258; Swanson, *supra* n. 149, 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).

follow-up monitoring throughout the duration of its projects.[46] These outside control efforts are important, and work should be done to make sure that the laws as they stand are enforced, and that greater openness is supported.

To sustain the corporate responsibility agenda, however, local communities must feel vested in the process. As the World Bank points out, only when "public sector actors and stakeholders based in developing countries are accorded a central role" can "an agenda that remains largely 'foreign'" become domestic.[47] The most critical reforms are those that increase political participation and accountability and promote competitive economic develop, but such democratization and economic development do not occur quickly.[48]

Category 0

Multinational corporations do not want to work in Category 0 countries. In a recent study of 107 multinational companies with total revenues of $1.66 trillion, respondents were asked about the impact of corporate social responsibility on their investment decisions.[49] A majority of the respondents noted that the influence of corporate social responsibility considerations had increased over the past five years, and that such concerns had at least as much impact as more traditional considerations – such as cost – on the decision to undertake new business opportunities. [50] Moreover, a majority of the extractive industry (mining and oil and gas companies) respondents reported that they had decided not to begin operations in a new country based on such

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46. U.N. Sec. Council, *supra* n. 66, at 18.

[47] Halina Ward, Public Sector Roles in Strengthening Corporate Social Responsibility: Taking Stock 25 (2004)(World Bank).

[48] See Elliott, supra note __, at 209, 225.

[49] Jonathan E. Berman and Tobias Webb, Race to the Top: Attracting and Enabling Global Sustainable Business: Business Survey Report (2003)(World Bank website).

[50] Id. At 3.

concerns.[51] Rather than looking for opportunities in countries where laws on corporate social responsibility were weak, 61% of the companies reported that strong laws made it easier for them to conduct business, and 75% indicated that well-enforced laws also helped their business.[52] Another author notes: "In countries with weak development, it is costly [for firms] to improve investor protection because the institutional infrastructure is lacking and good governance has political costs. Further, in such countries, the benefit from improving governance is weaker because capital markets lack depth." [53]

We believe that even in Category 0 countries there are realistic strategies with positive short-term results leading to improved governance and an improved climate for international investment. The key issue, clarified by the typology, is that indigenous actors in Category 0 countries are in desperate need of outside assistance to overcome the manifold obstacles in their way. Marshalling sophisticated strategies to link outside and inside actors to improve governance is a critically needed intervention, particularly in Category 0 countries.

The Case of the Congo: Today, the DRC, a clear example of a Category 0 country, is emerging from a long war.[54] The illegal exploitation of the Congo's natural resources, including gold, diamonds,[55] coltan, cobalt, and timber, helped fuel the war.[56] There were virtually no barriers to money-laundering.[57] Indeed, the abuses of natural resources were so egregious that the United Nations issued a special report

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51 Id. At 3, 8.

52 Id. At 19.

53 Craig Doidge, et al., Why Do Countries Matter so Much for Corporate Governance? (Sept. 2004)(avail. at www.edgi.org/wp).

54. *See* Bergner, *supra* n. 57 (stating that U.N. "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 Laceu, *Hope Glimmers as War Retreats from Congo*, N.Y. Times A1 (Oct. 21, 2003).

55. U.N. Sec. Council, *supra* n. 66, at 14–15, 44–46.

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

57. *Id*. at 202.

recommending that twenty-nine companies be subjected to financial restrictions, including a freezing of assets and a suspension of banking activities.[58]

Amnesty International published an analysis of mining in southern Congo in its Fall 2004 magazine. The article paints an accurate, devastating picture of the artisanal activity that characterizes most mining in the DRC today: "(T)housands of desperate locals … are digging the radioactive ground for minerals, including cobalt and gold. With picks and shovels in short supply, some of the Shinkolobwe miners have improvised, tearing down the metal signs warning of radioactive danger and shaping them into shovels. … The going rate for the miners is about 1,000 Congolese francs (about $3) for a 35-pound sack of raw ore." These miners make a pittance, yet, as Amnesty reports, a 20-ton truckload "of raw ore fetches about $25,000 on world markets." Profits only go up from there. Perhaps the cell phone you are carrying contains both coltan and cobalt, mined in this fashion in the Congo, and contributing to very nice profits for various international companies.

Yet Amnesty offers the following analysis in an accompanying box entitled "AI (Amnesty International) Fights Resource Exploitation": "International efforts to investigate and end this bloody commerce have been slow and mostly unsuccessful to date, due to opposition by the governments and corporations implicated in abuses." And then makes the following recommendation for advocacy: "AI continues to call on governments in Africa and Europe, as well as the United States, to act on U.N. reports listing corporations engaged in the illegal exploitation of resources and activities that may contribute to human rights abuses."

58. U.N. Sec. Council; *supra* n. 66, at http://www.un.org/docs/journal/asp/ws/asp?m=s/ 2002/1146.

This approach is misleading for the general reader. Amnesty's recommendations relate to other mining activities in regions of the Congo hundreds of miles away from the mine they discuss in their article. Advocating such actions against the mining activities actually described in the Amnesty article would be misguided. There are no major multinational mining companies presently engaged in mining in the southern Congo province of Katanga. The entry of major multinational mining companies in all likelihood would lead to substantial improvements in living conditions, in transparency, and in economic development. International advocacy should urge governments in Category 0 to improve their transparency and other practices to hasten the investment of multinationals, not the reverse.

In another recent report on the mineral trade in copper and cobalt in the DRC, Global Witness documents the conditions under which these minerals are collected in the southernmost region of the Congo amid widespread corruption and mismanagement.[59] For example, under the new Mining Code, companies are required to pay a 1% tax; one company reported that it was asked to pay this so often that it became a 40% tax.[60] Accordingly, Global Witness has developed a series of recommendations issued to the World Bank and IMF as well as the DRC transitional government that focus on improving record-keeping and "commit[ting] to making anti-corruption, transparency and accountability priority areas by publishing the results of systems and finance audits."[61]

Such transparency is, of course, critical. Nonetheless, without continuing internal pressure and oversight, these recommendations are insufficient. Focusing on

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[59] Global Witness: Rush and Ruin: The Devastating Mineral Trade in Southern Katanga, DRC (2004)(avail. At globalwitness.org).
[60] Id. At 16.
[61] Id. At 2.

what international institutions and national governments can do overlooks the need for local monitoring and involvement.

There are other examples of looking for “quick fix” recommendations. This temptation often leads people examining the problems of Category 0 (and other) countries to suggest that broad internal reforms, such as elections, strengthening the judiciary, or standing up an anti-corruption commission, by themselves will lead to marked improvements in governance. For example, President Bush in his fall 2004 address to the United Nations General Assembly said the following: "Because I believe the advance of liberty is the path to both a safer and better world, today I propose establishing a Democracy Fund within the United Nations. This is a great calling for this great organization. The fund would help countries lay the foundations of democracy by instituting the rule of law and independent courts, a free press, political parties and trade unions. Money from the fund would also help set up voter precincts and polling places, and support the work of election monitors. To show our commitment to the new Democracy Fund, the United States will make an initial contribution.”[62]

The record suggests that “advancing liberty,” and other worthy goals, is a much more difficult undertaking. The proposed interventions are not bad, they are insufficient. Certain actions, such as reforming the judiciary, in countries like the DRC are long-term and extremely difficult. Furthermore, implementing these long-term reforms depends on a well-paid civil service, and these essential longer-term strategies will fail if civil servants are not paid enough. Category 0 countries need additional investment.

[62] For Bush, ‘the Advance of Liberty is the Path,’ N.Y. Times, Sept. 22, 2004, at A4.

For Category 0, attacks on multinationals tend to miss the point. As we have already noted, these companies, in the main, are not even present in countries like the DRC. We will return to this issue at the conclusion of this paper.

Category 1

For Category 1 countries, effective tools have been developed by multilateral institutions, corporations themselves, other governments with important relations with Category 1 countries, and international nongovernmental organizations to pressure both the governments and the corporations themselves to act more responsibly.[63] This is where the multilateral institutions, NGOs, and other international actors can play a role.[64] 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.

Unlike Category 0 countries, where we believe combined local and international strategies must be intertwined to gain improvements in basic country governance, in Category 1 and beyond a variety of more loosely linked strategies, including work to improve corporate governance, can be effectively employed. As the ongoing oil bribery investigations in Nigeria illustrate, external legislation, such as the Foreign Corrupt Practices Act, may at least punish irresponsible corporate actions, even if it does not

63. Le Billon, *supra* n. 3.
64. 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.

entirely deter such actions.[65] We do not, however, believe that external actors and actions should ever be delinked from the realities of the targeted country and society. People within the country must always be part of any process that looks to enhance governance and corporate responsibility.

Categories 2 and 3

Category 2 and 3 countries should benefit from approaches similar to those in Category 1. But given the diversity of corporate involvement and overall level of development, particularly of some countries in Category 3, broader approaches may be more effective. Both external and internal pressure on corporations doing business in these countries is likely to result in the adoption of voluntary codes of conduct. Category 3 countries have themselves undertaken to enact legislation to deter corruption, and have provided enforcement mechanisms.[66] New mechanisms, such as the MCA, may encourage improved governance and increased transparency.

In these countries, internal institutional reforms can continue their positive trajectory to promote competition and deter corruption. Such strategies include reforming the judiciary to ensure independence; increasing incentives for honesty and transparency in the civil service; use of competitive bidding schemes in government procurement; and strengthening already existing civil society institutions, such as the media and non-governmental organizations.[67]

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[65] E.g., Ken Silverstein, Investigation Widens in Nigeria Oil Case Involving Halliburton, L.A> Times, Oct. 13, 2004, A6 (scheme to bribe Nigerian officials for contract to construct natural gas complex); Justin Blum, U.S. Oil Firms Entwined In Equatorial Guinea Deals; Riggs Probe Led to SEC Inquiry onCorruption, Profiteering, Wash. Post, Sept. 7, 2004, E1.
Riggs Probe Led to SEC Inquiry on Corruption, Profiteering

[66] South Africa has, for example, enacted its own anti-corruption act modeled on the US Foreign Corrupt Practices Act. South Africa: Tough Legislation Puts Firms in the Dock, Africa News, July 16, 2004.

[67] See Elliott, supra note __, at 225.

Long-term Strategies

There are certain things that can be done relatively quickly, such as what Michael Brown and his colleagues from Innovative Resources Management describe in their paper discussing the DRC,[68] in a Category 0 country. These actions involve focusing on local stakeholders so that they can take ownership and control of the agenda.

Longer-term actions are also required, particularly in Category 0 and 1 countries, which are the predicate conditions for beginning a conversation about corporate accountability. Perhaps the most essential actions are those to improve education, increase literacy rates, and develop an adequately-paid and trained, appropriately-sized civil service sector. A literate population will not only provide pressure for increased democratization, by enhancing people's skills, it better equips them to choose among a much greater range of employment possibilities. Concomitantly, as a workforce becomes more skilled and literacy levels rise, international business sees greater opportunities for investment.[69] Furthermore, a population that is able to read can take steps required to insist on improved governance practices. If people are literate, then they will have access to other resources and can look outside of their traditional worldviews – if they read a newspaper, they may be able to see what can be done differently. When taking steps to increase literacy, it is critical to ensure gender equity. Studies have repeatedly shown that educated women have fewer children and allocate more money to benefit their children

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[68] Michael Brown, et al., Combating Low-level Corruption on Waterways in the Democratic Republic of Congo: Approaches from Bandundu and Equateur Provinces**, avail. at** http://papers.ssrn.com/sol3/papers.cfm?abstract_id=627684.

[69] Topic Brief (avail. at http://www1.worldbank.org/education/topicbrief.asp)

than do similarly educated men. Moreover, educating more women increases economic growth and generates more skilled workers.[70]

As an example of how increasing literacy can reduce corruption, consider the status of education in Uganda. In a survey examining the use of public funds in education in Uganda, researchers found that between 1991 and 1995 only 13 percent of the federal government's allocation for non-wage expenditures actually reached the schools. Instead, most of the money was being diverted to local government officials (and other politicians). After the survey information was disseminated publicly, the government instituted a series of reforms, including publishing the monthly grants to each primary school in newspapers for all to see and posting school grants awards on the school wall. Because of the increased information, parents were better able to monitor how local officials used public funds.[71] As a result, the amount of leakage diminished substantially: by 1999, over 80 percent of allocated fund reached the schools.[72] The study concluded that information dissemination is important in reducing corruption.[73] This, of course, is the concept of transparency. It works best when there is a literate population.

Transparency works as a sealant against the corrosiveness of corruption. Corruption takes a series of different forms, including bribes to obtain government services (corruption in administration), as well as corruption in the process of

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70 Dina Abu-Ghaida and Stephen Klausen, The Economic and Human Development Costs of Missing the Millennium Development Goal on Gender Equity 10 (2004)(avail. at http://www1.worldbank.org/education/pdf/MDG_Gender_Equity.pdf).

71 Ritva Reinikka and Jakob Svensson, The Power of Information: Evidence from a Newspaper Campaign to Reduce Capture (2004)(avail. at http://econ.worldbank.org/view.php?type=5&id=34028

72 Ritva Reinikka and Jakob Svensson, Explaining Leakage of Public Funds (2001)(avail. at http://econ.worldbank.org/view.php?type=5&id=2595).

73 Explaining Leakage, supra note __, at 29.

promulgating rules (corruption in law-making).[74] 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.[75] Because businesses need access to obtain export permits or business licenses, they may feel coerced into bribing the appropriate official.[76] 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.[77] While the U.S. Foreign Corrupt Practices Act and the Organization for Economic Cooperation and Development (OECD) Convention, together with other programs, attempt to prevent corruption and bribery,[78] they are not effective in many countries.[79]

Civil servants also must receive adequate salaries on time. Particularly in Category 0, 1, and 2 countries, poorly-trained, ill-paid, unmotivated civil servants stuck in an inefficient, overstuffed public sector impede efforts towards improved governance. Efforts around the margins in countries where this overriding problem is not addressed are destined to be ineffective. Building a civil service system based on impartiality and transparency, where public employees depend on the state rather than the illegal

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74. *See* Daniel Kaufmann & Aart Kraay, *Growth Without Governance*, 3 Economia 169 (Fall 2002), http://www.worldbank.org/wbi/governance/pubs/growthgov.htm (accessed Jan. 2, 2004); 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). Kaufmann and Kraay found 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.. *Id*.; 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*.

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

76. *Id*. at 199.

77. *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.

78. 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).

79. *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).

payments of private companies for their salaries, creates a better business environment and provides reassurance to civil society actors.

Conclusion

Actions to improve good governance can be taken in all categories of countries. But actions to improve corporate responsibility are poorly targeted when focused on Category 0 countries. Our proposed typology leads us to suggest that Category 0 countries require a radically different approach than those in Category 1. People interested in more justice and improvements in human well-being through improved corporate governance, should focus on the approaches discussed above in Category 0 countries. When successful, these approaches will lead to greater involvement of international business, which should be a positive development, under the scenario outlined in this paper.

More traditional approaches, such as external pressure through a variety of means on multinational businesses, can have a positive effect in Category 1-3 countries. Category 1 countries seem the most ripe for targeted efforts by international actors to obtain improvements in local conditions through enhanced multinational corporate responsibility. While Categories 2 and 3 will also improve through such efforts, and the pressure must be sustained, they are already, in general, far more receptive to both domestic and international efforts to promote corporate accountability, and such efforts have already begun to yield encouraging results.