
OF THIEVES AND REPRESSORS:
THE INTERPLAY BETWEEN CORRUPTION AND
HUMAN RIGHTS VIOLATIONS

DAVID M. FUHR*

I. INTRODUCTION

“They did not seek a luxurious life or to sit atop the world, but asked their politicians, rulers who sat on the throne of opulence, wealth and power to give them bread and clear water to satisfy their hunger and quench their thirst and to be in a home that shelters their families and the sons of the nation far from the rotten slums.”¹

Corruption and human rights are topics about which much is written every day. The protection of human rights is an established priority in the conduct of international political relations and increasingly a material factor for those engaged in international commerce.² The quest to combat global corruption and bribery has similarly become a recurring theme in international political and business circles. Efforts

*J.D. Duke University School of Law (2005), B.A. Elon University (2000), Trial Attorney, Fraud Section, Criminal Division, U.S. Department of Justice. The views expressed in this article are the views of the author and do not necessarily represent the views of the U.S. Department of Justice or the United States.

¹ Hamza Hendawi, *Life sentence for Egypt's Mubarak, Sons Acquitted*, GUARDIAN, June 3, 2012, <http://www.guardian.co.uk/world/feedarticle/10270577> (excerpt from the verdict in the trial against former Egyptian President Hosni Mubarak, who was convicted of ordering the killing of protesters in 2011 and acquitted of corruption charges in June 2012).

² In the United States, the protection and expansion of human rights abroad has become an important consideration of national interest, and even of national security interest. The White House, *National Security Strategy* (May 2010) at 37 (“The United States supports the expansion of democracy and human rights abroad because governments that respect these values are more just, peaceful, and legitimate. We also do so because their success abroad fosters an environment that supports America’s national interests. Political systems that protect universal rights are ultimately more stable, successful, and secure.”).

to reduce corruption through multilateral conventions and coordinated initiatives transcend continents and political ideologies. The U.S. National Security Strategy of 2010, for example, identifies the fight against corruption as a central element of enhancing and protecting the United States' national security.³ Indeed, the report asserts a linkage between corruption and human rights by advancing the viewpoint that "pervasive corruption is a violation of basic human rights and a severe impediment to development and global security."⁴ Similarly, the United Nations Convention against Corruption declares that "corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, [and] leads to violations of human rights. . . ."⁵

Corruption and human rights intersect at two dimensions.⁶ On a micro-level, distinct acts of corruption perpetrated by a public official – petty or grand – incorporate the risk that human rights are violated as a result. On a macro-level, states with high levels of corruption tend to be places with high incidences of human rights violations. In other words: susceptibility to grand corruption appears to be strongly associated with violations of human rights.

After defining the operative terms this paper examines the relationship between corruption and human rights abuses. While not asserting a conclusive correlation between high levels of corruption and high levels of human rights abuses, a comparison of metrics on corruption and human rights illustrates the prevalence of massive corruption in many countries that are also deemed the most oppressive and the least free. In response to this empirical observation, the paper then describes mechanisms used to curb corruption in countries and regions suffering under repressive governance. Recognizing that political obstacles and limited law enforcement resources make prosecution of corrupt public officials who govern oppressive states unlikely, the paper concludes that the enforcement of anti-bribery laws in many of the world's most important economies and widespread international cooperation in the anti-corruption field currently constitutes the most

³ The White House, *National Security Strategy*, *supra* note 2, at 38.

⁴ *Id.*

⁵ U.N. Office on Drugs and Crime, *United Nations Convention Against Corruption*, Foreword at iii (2004).

⁶ See TRANSPARENCY INT'L: INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, CORRUPTION AND HUMAN RIGHTS: MAKING THE CONNECTION, 2009, for a further discussion on the relation between human rights and corruption.

effective – albeit limited – mechanism for reducing grand corruption in autocratic regimes.

II. DEFINITIONS

A. *Corruption*

The international community's attention to public corruption has produced a plethora of national legislation and multilateral conventions that outlaw corruption and bribery.⁷ Yet there has been little controversy about the generic meaning of corruption, and thus most major conventions do not bother defining the term.⁸ The Organization for Economic Cooperation and Development in 1997 adopted a convention prohibiting the bribery of foreign officials and, while defining the offense of bribery, remains silent on the meaning of corruption.⁹ Nor does the UN Convention against Corruption define corruption, but it circumscribes manifestations of corrupt behavior by setting forth the definitions of bribery, as well as embezzlement, misappropriation or diversion of property, trading in influence, abuse of functions, illicit enrichment, and laundering of proceeds of crime.¹⁰ The African Union Convention on Preventing and Combating Corruption offers an unhelpful definition of corruption¹¹ but then articulates

⁷ The etymological root of the word “corrupt” harks back to the Latin verb “*corumpere*,” which means “to break, to abuse, or to destroy.”

⁸ The real difficulty is not in defining what corruption means in the abstract, of course, but in determining which specific acts or payments should constitute violations of anti-corruption laws. One of many debates concerns, for example, whether so-called “facilitation payments” that entice public officials to carry out routine governmental functions should be permissible. While the Foreign Corrupt Practices Act, a U.S. federal law that generally proscribes foreign corrupt payments, permits such limited expenditures under narrow circumstances, the UK Bribery Act and many multilateral conventions prohibit them outright. For a brief discussion of the difficulty of defining the specifics of “corruption,” see Monty Raphael, *A Defining Problem for the 2010 Bribery Act*, GUARDIAN, Feb. 2, 2011, <http://www.guardian.co.uk/law/2011/feb/02/bribery-act-monty-raphael>.

⁹ See Org. for Econ. Coop. and Dev. [OECD], *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, at art. 1 (Nov. 21, 1997) (defining bribery as “intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.”).

¹⁰ See *United Nations Convention Against Corruption*, *supra* note 5, at Ch. III, art. 15-23.

¹¹ See Afr. Union, *African Union Convention on Preventing and Combating Corruption*, art. 1.1, July 11, 2003 (“Corruption means the acts and practices including related offences proscribed in this Convention.”).

nine elements that describe corruption and related offenses.¹² The Council of Europe's Criminal Law Convention on Corruption simply provides seven examples of corruption, including active and passive bribery of public officials and private persons, trading in influence, money laundering, and accounting offenses.¹³

This paper will apply the widely accepted, albeit broad, definitions of corruption that have been coined by the World Bank and Transparency International, a leading civil society organization devoted to the fight against corruption. The World Bank, which now treats anti-corruption considerations as a central feature of its mission to foster economic development and alleviate poverty, characterizes corruption as "the abuse of public office for private gain."¹⁴ Transparency International defines corruption as the "abuse of entrusted power for private gain," applicable to both public and private sectors.¹⁵

B. *Human Rights*

Compared to the succinct definition of corruption, what is encompassed by the concept of human rights has been a complex and controversial question. A comprehensive set of universal human rights guaranteeing a range of protections of the individual from abuse by state actors was first promulgated in 1948 with the Universal Declaration of Human Rights.¹⁶ Drafted under the still fresh impression of the human rights catastrophes of World War II and the Holocaust, the Universal Declaration of Human Rights derives its historical and philosophical underpinnings from such sources as the Magna Carta of 1215¹⁷ and the Rights of Englishmen, as well as the Bill of Rights that amended the U.S. Constitution of 1787¹⁸ and the Declaration on the Rights of Man and of the Citizen following the French Revolution of

¹² *Id.* at art. 4(1)(a).

¹³ Council of Europe, *Criminal Law Convention on Corruption*, art. 2-14 (Jan. 27, 1999).

¹⁴ The World Bank, *Helping Countries Combat Corruption: The Role of the World Bank*, 8 (Sept. 1997), <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm#note1>.

¹⁵ TRANSPARENCY INT'L, *Frequently Asked Questions about the Corruption Perceptions Index*, http://www.transparency.org/cpi2011/in_detail.

¹⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹⁷ The Magna Carta of Edward 1 (1297), 25 Edw. 1 (re-issued version).

¹⁸ See U.S. CONST. amend. I-X (cumulatively protecting individual liberty and property from interference by the federal government).

1789.¹⁹ The Universal Declaration of Human Rights encompasses both the concept of political and civil rights and the concept of social, economic and cultural rights.²⁰ Attaining the force of international law, the two sets of rights engrained in the Universal Declaration subsequently were divided in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR).²¹

The ICCPR was adopted by the UN General Assembly in 1966 and entered into force in 1976;²² it currently has 74 signatories and 167 parties.²³ The ICCPR principally restricts states from interfering with an individual's core political rights and liberties, such as the right to self-determination, the right to life, freedom from torture, right to liberty and security of person, freedom of religion, freedom of expression, freedom of association or the right to vote.²⁴ The ICESCR, considered part of the second generation of human rights, was adopted and entered into force at the same time as the ICCPR and has 70 signatories and 160 parties.²⁵ The rights enumerated in the ICESCR include, *inter alia*, the right to "safe and healthy working conditions,"²⁶ the right to remuneration which provides all workers a "[a] decent living for themselves and their families,"²⁷ the right to "an adequate standard of living . . . including adequate food, clothing and housing,"²⁸ "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,"²⁹ and "the right of everyone to education."³⁰ While the ICCPR's principles are framed as mandatory prohibitions on state action to protect individual and politi-

¹⁹ See *Déclaration des Droits de l'Homme et du Citoyen de 1789*, art. 1er (1789) ("Les hommes naissent et demeurent libres et égaux en droits") ("Men are born and remain free and equal in rights.").

²⁰ See *id.*

²¹ See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, 173 (hereinafter ICCPR); *accord* International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, 5 (hereinafter ICESCR).

²² ICCPR, *supra* note 21, at 171-72.

²³ ICCPR, Status of ratification, Reservations and declarations (Oct. 29, 2012).

²⁴ ICCPR, *supra* note 21.

²⁵ International Covenant on Economic, Social and Cultural Rights, Status of ratification, Reservations and declarations (Oct. 29, 2012).

²⁶ ICESCR, art. 7, *supra* note 21.

²⁷ *Id.* at art. 7(a)(ii).

²⁸ *Id.* at art. 11(1).

²⁹ *Id.* at art. 12(1).

³⁰ *Id.* at art. 13(1).

cal freedoms,³¹ the ICESCR gives the state more leeway in creating conditions that promote human rights “to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means. . .”³²

In sum, what constitutes human rights is a complicated question whose answer depends in part on political and philosophical viewpoints about the appropriate role of the state and its obligations towards its citizens. For purposes of this paper, I include both political and civil human rights as well as economic, social and cultural human rights as potentially threatened by corruption.

III. CONNECTIONS BETWEEN CORRUPTION AND HUMAN RIGHTS VIOLATIONS

A. *Pervasive Grand Corruption in Oppressive Regimes*

It is not a recent phenomenon that autocratic regimes simultaneously tend to amass questionable human rights records and display a taste for graft and corruption. Lord Acton’s 19th century observation that “power tends to corrupt, and absolute power corrupts absolutely”³³ still rings true if one analyses the legacies of many rulers who have wrongfully acquired great personal wealth at the expense of their subjects’ political, civil and economic freedoms. Even as the number of ruthless dictators exercising absolute power has dwindled, recent news stories and trials of kleptocratic human rights abusers illustrate the recurrent reinforcing relationship between grand corruption and human rights violations.

1. Turkmenistan

Few countries in the world present a more striking combination of lavish wealth amassed by autocratic presidents and appalling human rights conditions than Central Asia’s Turkmenistan. Former president Niyazov, whom the New York Times once portrayed as a “kleptocratic,

³¹ See generally ICCPR, *supra* note 21. Article 7 is representative of this prohibitive nature (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”).

³² ICESCR, *supra* note 21, art. 2(1).

³³ JOHN EMERICH EDWARD DALBERG, LORD ACTON, HISTORICAL ESSAYS AND STUDIES, app. para. 6 (John Neville Figgis & Reginald Vere Laurence eds., 1907).

megalomaniacal dictator,”³⁴ died in 2006 and left behind an impoverished nation whose vast natural gas deposits were controlled by his family and a small governing elite. Feigning a taste for simplicity, the late president is said to have protested that “‘[a]ll I wanted was a small, cozy house’ - not the \$100 million gold-domed, white marble presidential palace” in which he resided.³⁵ Niyazov’s son reportedly acquired control over natural gas exports and benefited from illicit payments to banks accounts in Cyprus.³⁶ Current President Berdymukhamedov may have adopted from his predecessor not only the cult of personality (as manifested, for example, by a monument to glorify his proclamation of the country’s “new revival era”³⁷), but similarly appears to view his public office as an opportunity to advance his personal agenda at the expense of the general public. While “people sleep in yurts and drink rainwater [and] [s]crawny children run about half-naked [. . .], [t]he gas money goes into offshore accounts or into the fountains and marble palaces of the capital.”³⁸

Juxtaposed against apparent manifestations of ill-gotten wealth by senior officials of a government considered to be among the utmost corrupt in the world³⁹ is the atrocious human rights situation in Turkmenistan. The advocacy group Human Rights Watch has characterized Turkmenistan as “one of the world’s most repressive countries” in which “media and religious freedoms are subject to draconian restrictions, and human rights defenders and other activists face the constant threat of government reprisal.”⁴⁰ According to the U.S. government, Turkmenistan’s human rights environment suffers from citizens’ inability to change their government; reports of torture and mistreatment of detainees; incommunicado and prolonged detention; arbitrary arrest and detention; denial of due process and fair trial; arbi-

³⁴ Ilan Greenberg, *When a Kleptocratic, Megalomaniacal Dictator Goes Bad*, N.Y. TIMES, Jan. 5, 2003, <http://www.nytimes.com/2003/01/05/magazine/05TURKMENISTAN.html?pagewanted=all>.

³⁵ See C.J. Chivers, *Saparmurat Niyazov, Turkmen Leader, Dies at 66*, N.Y. TIMES, Dec. 21, 2006, <http://www.nytimes.com/2006/12/21/world/asia/21cnd-turkmen.html?pagewanted=all>.

³⁶ See Cholpon Orozobekova, *The Deep Roots of Nepotism in Central Asia*, RADIO FREE EUROPE, Dec. 15, 2010.

³⁷ See Jim Nichol, *Turkmenistan: Recent Developments and U.S. Interests*, CONG. RESEARCH SERV. at 2 (2012).

³⁸ THE ECONOMIST, *Turkmenistan’s plight: Burning sands and pipe-dreams*, Dec. 10, 2009, <http://www.economist.com/node/15065905>.

³⁹ TRANSPARENCY INT’L, CORRUPTION PERCEPTION INDEX 2012 (ranking Turkmenistan 170th of 176 countries).

⁴⁰ HUMAN RIGHTS WATCH, WORLD REPORT 2013, TURKMENISTAN (2013) at 494.

trary interference with privacy, home, and correspondence; restrictions on freedom of speech, press, assembly, and association; restrictions on religious freedom, including continued harassment of religious minority group members; restrictions on freedom of movement for some citizens; violence against women; and restrictions on free association of workers.⁴¹

2. Haiti

In Haiti, a judge in January 2012 ruled that the country's former dictator, Jean Claude "Baby Doc" Duvalier, would have to answer charges in court that he benefited from pervasive corruption that occurred during his tenure.⁴² Duvalier stands accused of having embezzled between \$300 million and \$800 million of assets during his 15-year presidency that ended with his overthrow in 1986.⁴³ To the dismay of human rights groups, Duvalier will not however, for statute of limitations reasons, have to defend himself against charges that he committed and authorized human rights abuses against political opponents, such as torture, disappearances and murder.⁴⁴ During the 29-year long terror regime of Duvalier and his father, Francois "Papa Doc" Duvalier, approximately 30,000 political opponents were killed and many more tortured.⁴⁵

Although the Duvaliers left power more than 25 years ago, corruption remains rampant in Haiti and the state of human rights lamentable.⁴⁶ In addition to "severe corruption in all branches of government," current human rights problems in the Western hemisphere's poorest nation include violence against women, child abuse, human trafficking, and a range of shortcomings in the judiciary, such as a lack of efficiency and independence, prolonged pretrial detention and unacceptable prison conditions.⁴⁷

⁴¹ U.S. ST. DEP'T, 2010 HUMAN RIGHTS REPORT: TURKMENISTAN (Apr. 8, 2011).

⁴² See Joseph Guylor Delva, *Haiti's Duvalier Faces Trial for Corruption, Not Abuses*, REUTERS, Jan. 30, 2012, <http://www.reuters.com/article/2012/01/30/us-haiti-duvalier-idUSTRE80T13020120130>.

⁴³ *Id.*

⁴⁴ Ingrid Arnesen, *Murder, Torture Not on List of Charges Against Duvalier*, WALL ST. J., Jan. 31, 2012, <http://online.wsj.com/article/SB10001424052970204652904577193511148555978.html>. Several alleged victims indicated that they would lodge a protest against the court's decision, which is subject to review by Haiti's attorney general.

⁴⁵ *Id.*

⁴⁶ U.S. ST. DEP'T, 2010 HUMAN RIGHTS REPORT: HAITI (Apr. 8, 2011).

⁴⁷ See *id.*

3. Equatorial Guinea

Teodoro Obiang Mangué is the eldest son of the president of Equatorial Guinea and the country's minister of agriculture and forestry.⁴⁸ In October 2011 the U.S. Department of Justice (DOJ) filed two civil forfeiture complaints against more than \$70 million in real and personal property belonging to Nguema. According to U.S. prosecutors, Nguema extracted the assets in question from international companies through corruption, embezzlement, extortion and theft in return for awarding valuable forest concessions: “[w]hile his people struggled, he lived the high life – purchasing a Gulfstream jet, a Malibu mansion and nearly \$2 million in Michael Jackson memorabilia.”⁴⁹ The U.S. prosecutors further asserted that Nguema's official government salary is less than \$100,000 year, yet he accumulated assets in excess of \$100 million “during a period in which he and an inner circle of individuals who hold critical positions of political and economic power in Equatorial Guinea were the near-exclusive beneficiaries of extraction and sale of that country's natural resources.”⁵⁰

Equatorial Guinea is the fourth-largest oil producer in sub-Saharan Africa with a gross domestic product similar to that of Italy and Spain.⁵¹ Yet, notwithstanding the country's enormous natural resources, the majority of the population suffers below the poverty line.⁵² Not only has Equatorial Guinea's elite evidently deprived the country's ordinary citizens of sharing in resources and wealth, but the regime is also known to be among the most repressive in Africa, in particular as regards the exercise of political freedoms.⁵³

⁴⁸ Maïa de la Baume, *A French Shift on Africa Strips a Dictator's Son of His Treasures*, N.Y. TIMES, August 23, 2012, <http://www.nytimes.com/2012/08/24/world/europe/for-obiangs-son-high-life-in-paris-is-over.html>.

⁴⁹ Press Release, Dep't of Justice, Department of Justice Seeks to Recover More than \$70.8 Million in Proceeds of Corruption from Government Minister of Equatorial Guinea (Oct. 25, 2011) [hereinafter Equatorial Guinea Press Release].

⁵⁰ *Id.*

⁵¹ HUMAN RIGHTS WATCH, WELL OILED – OIL AND HUMAN RIGHTS IN EQUATORIAL GUINEA (July 9, 2009).

⁵² *Id.* (citing the UN Development Program's 2009 report that showed Equatorial Guinea having the third-largest gap of any country in the world between its per capita GDP and its Human Development Index score).

⁵³ See *id.*; see also U.S. ST. DEP'T 2010 HUMAN RIGHTS REPORT: EQUATORIAL GUINEA (2010) (describing human rights problems as including “limited ability of citizens to change their government; unlawful killings, including summary executions; abductions by security forces; torture of detainees and prisoners by security forces; life-threatening

4. Middle East

In December 2010, 26-year-old Tunisian fruit vendor Mohamed Bouazizi doused himself with gasoline and set himself ablaze in front of the governor's office after suffering repeated harassment from local administrators who solicited bribes from him because he lacked a supposedly required merchant permit.⁵⁴ Bouazizi died several weeks later of his injuries.⁵⁵ The tragic end to the young merchant's life precipitated the start of a revolutionary wave – known as the “Arab Spring” – that resulted in popular uprisings throughout the region and brought down some of its most corrupt and ruthless regimes.⁵⁶ Although it would be too simple to explain the impetus for the Arab Spring merely as the explosion of long-simmering frustrations over the debilitating degree of corruption in everyday life, decades of systematic theft of state resources by the region's autocratic leaders (and their families and affiliates) undoubtedly stoked the uprising, as is illustrated by the following three examples.

(a) Tunisia

A Tunisian court in June 2011 found the long-time former president Zine al-Abidine Ben Ali and his wife, who had fled to exile in Saudi-Arabia months earlier, guilty *in absentia* of embezzlement and misuse of public funds.⁵⁷ The court sentenced the couple to 35 years in prison and a fine of approximately \$66 million.⁵⁸ Prosecutors introduced as evidence against the former president \$27 million worth of

conditions in prisons and detention facilities; official impunity; arbitrary arrest, detention, and incommunicado detention; harassment and deportation of foreign residents with limited due process; constraints on judicial independence; official corruption at all levels of government; restrictions on the right to privacy; restrictions on freedoms of speech, press, assembly, association, and movement; official corruption and impunity; violence and discrimination against women; suspected trafficking in persons; discrimination against ethnic minorities; and restrictions on labor rights.”).

⁵⁴ Marc Fisher, *In Tunisia, act of one fruit vendor unleashes wave of revolution through Arab world*, WASH. POST, Mar. 26 2011, http://www.washingtonpost.com/world/in-tunisia-act-of-one-fruit-vendor-sparks-wave-of-revolution-through-arab-world/2011/03/16/AFjf-sueB_story.html.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ David D. Kirkpatrick, *Ex-Tunisian President Found Guilty, in Absentia*, N.Y. TIMES, June 20, 2011, <http://www.nytimes.com/2011/06/21/world/middleeast/21tunisia.html?ref=Zineelabidinebenali>.

⁵⁸ *Id.*

jewels and public money said to be retrieved at one of his many residences.⁵⁹

One month later, in July 2011, a second Tunisian court convicted the absent former president and several family members of corruption charges.⁶⁰ A son-in-law, in particular, personified the corrupt obscenities of the clan; he reportedly kept a caged tiger and outfitted his villa with “Roman columns, frescoes and a lion’s head fountain.”⁶¹ Throughout Ben Ali’s decades-long reign, the former president and his family members are said to have stolen billions of dollars in cash, equities and property from the Tunisian state coffers, and improperly obtained control over banks, car dealerships, telecommunications companies, supermarkets, media stations and real estate.⁶²

President Ben Ali’s regime was not only corrupt but also characterized by widespread human rights abuses. He is facing yet further charges in connection with the killing of civilians during the popular uprisings in January 2011.⁶³ But state-perpetrated violence did not occur just in response to the recent uprising. Prior human rights assessments of Tunisia described a regime that applied torture and physical abuse to political opponents and prison detainees with the approval of senior officials.⁶⁴ Insofar as the exercise of individual freedoms could

⁵⁹ *Id.*

⁶⁰ See BBC NEWS, *Tunisia’s Ben Ali Guilty of Corrupt Property Deals*, July 29, 2011, <http://www.bbc.co.uk/news/world-africa-14340863>.

⁶¹ Kirkpatrick, *supra* note 57.

⁶² See Borzou Daraghi, *In Tunisia, Spoils of Ben Ali Government Remain Elusive*, WASH. POST, January 13, 2012; see also Catherine Corrigan, *Small Group of Lawyers Launches Big Battle Against Corruption*, CNBC (Feb. 23, 2012), http://www.cnbc.com/id/46416550/Small_Group_of_Lawyers_Launches_Big_Battle_Against_Corruption (reporting that Ben Ali allegedly purchased a villa in Paris for \$54 million in late 2010).

⁶³ Kirkpatrick, *supra* note 57.

⁶⁴ U.S. ST. DEP’T 2010 HUMAN RIGHTS REPORT: TUNISIA (2010) (criticizing the human rights situation under President Ben Ali as follows: “Severe government-imposed restrictions on freedoms of speech, press, and association worsened in the period leading to and following the October 2009 elections. The government remained intolerant of public criticism, and there were widespread reports it used intimidation, criminal investigations, the judicial system, arbitrary arrests, residential restrictions, and travel controls to discourage criticism. Corruption among government officials was a problem.”); see also AMNESTY INT’L, *TUNISIA: CONTINUING ABUSES IN THE NAME OF SECURITY 4* (2009) (noting that “torture remains pervasive in detention centres, particularly in the State Security Department”), available at <http://www.amnesty.org/en/library/asset/MDE30/010/2009/en/5215d731-d6ec-4a2d-ad72-ab8244c7040e/mde300102009eng.pdf>.

be perceived as criticism of the government, those basic human rights were violently repressed.⁶⁵

(b) *Egypt*

Former Egyptian President Hosni Mubarak is estimated to have amassed as much as £70 billion during his long career as a senior military officer and president, a substantial portion of which he allegedly acquired through business partnerships with foreign companies that invested in Egypt.⁶⁶ Like his counterpart in Tunisia, following Mubarak's abdication from power in May 2011, the long-time Egyptian president faced legal proceedings for authorizing the killing of protesters, as well as two corruption charges.⁶⁷ In June 2012, an Egyptian court found Mubarak guilty and sentenced him to life in prison for his role in the killing of protesters.⁶⁸ But he was acquitted, along with two sons and a family friend, of the corruption allegation due to a lapse of the statute of limitations.⁶⁹ The corruption charges had pertained to the Mubaraks' purchase of five villas from their co-defendant friend at an undervalued price, allegedly in return for a government decree permitting his friend's company to export natural gas to Israel.⁷⁰

Meanwhile, Mubarak's almost three-decade long authoritarian rule over Egypt produced an atrocious human rights record. While Western governments tolerated Mubarak as a guarantor of stability in foreign relations in a highly volatile region, the regime ruthlessly applied force, violence and intimidation against those perceived to challenge it from within. In particular, journalists investigating and/or reporting about pervasive government corruption repeatedly faced arrest and detention by military and security forces.⁷¹ The human rights situation during the last year of Mubarak's reign, in particular, deteriorated and featured torture and abuse of prisoners and detainees, arbitrary arrests, and politically motivated unwarranted killings.⁷²

⁶⁵ See ST. DEP'T HUMAN RIGHTS REPORT: TUNISIA, *supra* note 64; see also AMNESTY INT'L, *supra* note 64.

⁶⁶ Philip Inman, *Mubarak Family Fortune Could Reach £70bn, Says Expert*, GUARDIAN (Feb. 4, 2011), <http://www.guardian.co.uk/world/2011/feb/04/hosni-mubarak-family-fortune>.

⁶⁷ BBC NEWS, *Egypt: Mubarak and Sons Detained Amid Corruption Probe*, Apr. 13, 2011, <http://www.bbc.co.uk/news/world-africa-13058855>.

⁶⁸ Hendawi, *supra*, note 1.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ HUMAN RIGHTS WATCH, WORLD REPORT 2011: EGYPT (Jan. 2011).

⁷² U.S. ST. DEP'T 2010 HUMAN RIGHTS REPORT: EGYPT (2010).

(c) *Libya*

A third strongman to be toppled by the Arab Spring, former Libyan leader Moammar al Gaddafi, is likewise estimated to have accumulated billions of U.S. dollars, most of it stored in bank accounts across the world, as a result of corruption and theft during his tenure that lasted from 1969 until his death in 2011.⁷³ A diplomatic cable from 2009 depicted Libya as a “kleptocracy in which the regime – either the al-Qadhafi family itself or its close political allies – has a direct stake in anything worth buying, selling, or owning.”⁷⁴ Those who sought to raise attention to financial irregularities in government offices were ignored, or worse, punished.⁷⁵ According to the *Washington Post*, the former head of contracts at Libya’s National Oil Corporation’s marketing department wrote 50 letters alleging widespread corruption in connection with oil contracts; three letters were even addressed directly to Saif-al Islam Gaddafi, the then-ruler’s son.⁷⁶ Rather than being applauded for her efforts to identify fraud, the whistleblower “was demoted, suspended without pay, interrogated by intelligence agents at her home, and received three death threats.”⁷⁷ Her former boss, the then-oil minister Shokri Ghanem, was found dead in Vienna in April 2012, days after Interpol issued an international arrest warrant alleging that he had corruptly sold crude oil without contracts to the Chinese oil companies Sinopec and Petrochina.⁷⁸

Complementing evidence of widespread corruption by the ruling elite in Libya is a human rights record under the Gaddafi regime that rivaled that of Tunisia and Egypt in brutality. Gaddafi created a climate in which political and civil liberties were violently suppressed and

⁷³ Martin Coyle, *Banks Face Myriad Difficulties Trying to Return Corrupt Gaddafi Money*, REUTERS, Aug. 30, 2011, <http://blogs.reuters.com/financial-regulatory-forum/2011/08/30/pepwatch-banks-face-myrriad-difficulties-in-trying-to-return-corrupt-gaddafi-money/>.

⁷⁴ Eric Lichtblau, David Rohde & James Risen, *Shady Dealings Helped Qaddafi Build Fortune and Regime*, N.Y. TIMES, Mar. 24, 2011, <http://www.nytimes.com/2011/03/24/world/africa/24qaddafi.html?pagewanted=print>.

⁷⁵ Simon Denyer, *Libya Ponders When to Investigate Deep-rooted Corruption*, WASH. POST, Sept. 17, 2011, http://www.washingtonpost.com/world/middle-east/libya-ponders-when-to-investigate-deep-rooted-corruption/2011/09/13/gIQA8bidaK_story.html.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Samuel Rubinfeld, *Libya Probes Gadhafi-Era Oil Deals With Chinese Companies*, WALL ST. J. BLOGS: CORRUPTION CURRENTS (May 23, 2012, 3:20 PM), http://blogs.wsj.com/corruption-currents/2012/05/23/libya-probes-gadhafi-era-oil-deals-with-chinese-companies/?mod=Google_news_blog.

the regime's opponents and journalists consistently faced harassment, detention, and other significant restrictions to their activities.⁷⁹ Even the final bloody days of the civil war against rebel groups linked the regime's use of force with its history of corruption.⁸⁰ Wealth accumulated by the Gaddafi family – including funds from foreign corporations that paid millions in “signing bonuses” or “consultancy contracts” for lucrative resource deals – was reportedly used by the regime to compensate soldiers and mercenaries who fought rebel forces and killed civilian populations.⁸¹

B. *Types of Human Rights Violations Triggered by Corruption*

The above described cases of Turkmenistan, Haiti, Equatorial Guinea, Tunisia, Egypt and Libya exemplify kleptocrats who commit wholesale theft of state resources and authoritarians who unscrupulously apply force against real or perceived political opponents. Beyond these most blatant manifestations of grand corruption and systemic human rights abuses, however, everyday acts of corruption may bear an even greater proximate relationship to the violation of specific human rights. Several illustrative examples, primarily taken from a 2011 Human Rights Watch report, are described in the following section.

1. Right to vote.⁸² The right to vote and the right to be elected at genuine periodic elections, enshrined in the ICCPR and most national constitutions, has been infringed repeatedly for millions of people the world over as a result of fraud and corruption in the ballot box.

⁷⁹ U.S. ST. DEP'T 2010 HUMAN RIGHTS REPORT: LIBYA (2010) (Continuing human rights problems included torture, arbitrary arrest, official impunity, and poor prison conditions. A large but unknown number of persons remained in detention or prison for engaging in peaceful political activity or for belonging to an illegal political organization. The government significantly restricted media freedom and continued to restrict freedom of expression, and routinely monitored telephone calls and Internet usage, including e-mail communication with foreign countries. There also was physical surveillance of political activists and foreign organizations. The government owned and controlled virtually all print and broadcast media, and government-controlled media neither published nor broadcast opinions inconsistent with official policy. The Internal Security Organization routinely harassed journalists, and overly broad provisions of the penal code served as the basis for frequent charges of criminal defamation. The government severely restricted freedom of assembly and permitted public assembly only with advance approval. The government restricted the right of association and generally only allowed institutions affiliated with the government to operate; no NGOs functioned in the country.).

⁸⁰ *See id.*

⁸¹ *See* Lichtblau, et. al., *supra* note 74.

⁸² ICCPR, *supra* note 21, art. 25(b).

- In the run-up to the 2008 presidential elections in Zimbabwe, for example, officials of the ruling party ZANU-PF engaged in a campaign of intimidation and violence and subsequently committed significant ballot rigging that perverted actual voting results.⁸³ In Bahrain, local officials in 2010 ordered a candidate in the National Assembly election to remove billboards with the slogan “Enough to Corruption” because this action constituted a purported breach of an unspecified law.⁸⁴
2. Right to adequate standard of housing.⁸⁵ Government administrators in numerous countries, influenced by bribe payments, have issued occupancy permits for unsafe building structures, with resulting greater incidences of injury or death in the event of an earthquake, according to a recent study by Nicholas Ambraseys of the Imperial College of London and Roger Bilham of the University of Colorado at Boulder.⁸⁶ Their work showed that 83% of deaths caused by earthquakes over the last 30 years occurred in countries categorized as unusually corrupt.⁸⁷ Many of the victims of the earthquakes in Haiti (2010) and Szechwan, China (2008), for example, reportedly died due to unsafe building conditions brought about, at least in part, by corrupt practices.⁸⁸
 3. Equality before the law and right to a fair trial.⁸⁹ Widespread corruption in the judicial sector threatens the fundamental right to equal treatment under the law and undermines the validity of court judgments. Human Rights Watch identified this relationship in its 2011 analysis of Sierra Leone, noting that “serious deficiencies in the judicial system persist, including extortion and bribe-taking by officials.”⁹⁰
 4. Right to freedom of expression.⁹¹ Journalists seeking to expose corrupt government officials are particularly vulnerable to intimidation, including efforts to silence them through defamation lawsuits, arrest, detention and physical violence. In Burundi, a newspaper editor was detained by state authorities after he had denounced corruption at the state energy company, and the president of an anti-corruption

⁸³ HUMAN RIGHTS WATCH, ZIMBABWE: ZANU-PF SETS UP ‘TORTURE CAMPS’ - OPPOSITION VOTERS TELL OF BEATINGS, INTIMIDATION (Apr. 19, 2008).

⁸⁴ HUMAN RIGHTS WATCH, WORLD REPORT 2011: BAHRAIN, 512-13 (2011).

⁸⁵ ICESCR, *supra* note 21, art. 11.1.

⁸⁶ Nicholas Ambraseys & Roger Bilham, *Corruption Kills*, 469 NATURE 153, 153-55 (Jan. 2011).

⁸⁷ *Id.*

⁸⁸ *Id.* at 154.

⁸⁹ ICCPR, *supra* note 21, art. 14.1 (“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”).

⁹⁰ HUMAN RIGHTS WATCH, WORLD REPORT 2011: SIERRA LEONE, 161 (2011); *see also* HUMAN RIGHTS WATCH, WORLD REPORT 2011: COTE D’IVOIRE, 98 (2011); HUMAN RIGHTS WATCH, WORLD REPORT 2011: LIBERIA, 143 (2011).

⁹¹ ICCPR, *supra* note 21, art. 19.2 (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”).

organization was subjected to a defamation complaint and questioning by a magistrate.⁹² In South Africa, a Sunday Times journalist who had exposed official corruption “was arrested without a warrant by 20 policemen in six vans. He was then taken to a secret location [. . .] and interrogated at 2 a.m. without a lawyer. The police also searched his home and took notebooks without a search warrant. [He] was eventually released on R5,000 (US\$725) bail after his newspaper went to the High Court.”⁹³ In Cambodia, journalists who exposed government corruption were criminally charged under a new penal code provision for defamation.⁹⁴ Similar measures were taken in Tajikistan, where Supreme Court judges brought libel suits against three newspapers that ran stories about alleged corruption within the country’s judiciary.⁹⁵ And in Russia, multiple journalists suffered from unwarranted detention and physical attacks punishing them for their advocacy against corruption.⁹⁶ According to the 2011 Human Rights Watch annual report, “[i]n February 2010 Vadim Karastelev, a human rights advocate in the port city of Novorossiisk, served seven days of administrative detention for organizing an unsanctioned demonstration in support of Aleksei Dymovsky, a former police officer whose YouTube video exposé of police corruption received nationwide attention. The day after Karastelev’s release, unknown assailants brutally beat him, causing serious injuries.”⁹⁷

5. Inherent right to life.⁹⁸ A recent dispatch from China reported the tragic story of a four-year-old boy who died in an ambulance during his transfer to a better-equipped hospital because the driver stopped to solicit 1,200 yuan (US \$188) from the parents on the way.⁹⁹ The hospital reportedly compensated the parents approximately \$4,000, while local police, according to the parents, threatened their arrest if they further pursued the matter.¹⁰⁰

Government forces have retaliated against journalists and civil society activists who exposed corruption by forcing their disappearance or even killing them. In 2010 in Nigeria, targeted attacks against anti-corruption officials included three incidents in which gunmen killed senior anti-corruption personnel.¹⁰¹ In Ukraine, an editor-in-chief of a government-critical newspaper disappeared in August 2010 after he had investigated numerous high-profile corruption cases, notwithstanding threats and offers of bribes not to release certain materials.¹⁰² His disappearance appears to be connected to his efforts

⁹² HUMAN RIGHTS WATCH, WORLD REPORT 2011: BURUNDI, 88 (2011).

⁹³ HUMAN RIGHTS WATCH, WORLD REPORT 2011: SOUTH AFRICA, 171 (2011).

⁹⁴ HUMAN RIGHTS WATCH, WORLD REPORT 2011: CAMBODIA, 295 (2011).

⁹⁵ HUMAN RIGHTS WATCH, WORLD REPORT 2011: TAJIKISTAN, 476 (2011).

⁹⁶ HUMAN RIGHTS WATCH, WORLD REPORT 2011: RUSSIA, 457 (2011).

⁹⁷ *Id.*

⁹⁸ ICCPR, *supra* note 21, art. 6.1 (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”).

⁹⁹ China Compliance Digest, *Toddler Dies After Ambulance Driver Demands Bribe*, THE FCPA BLOG (June 24, 2012, 6:35 PM), <http://www.fcpcbog.com/blog/2012/6/24/toddler-dies-after-ambulance-driver-demands-bribe.html>.

¹⁰⁰ *Id.*

¹⁰¹ HUMAN RIGHTS WATCH, WORLD REPORT 2011: NIGERIA, 150 (2011).

¹⁰² HUMAN RIGHTS WATCH, WORLD REPORT 2011: UKRAINE, 494 (2011).

- seeking to expose government corruption.¹⁰³ Like in neighboring Russia, violence against journalists is not unprecedented in Ukraine; back in 2000, a journalist who reported on political corruption was found decapitated; authorities have now concluded that the former interior minister masterminded the journalist's killing.¹⁰⁴
6. Right to adequate food.¹⁰⁵ The U.S. State Department pointed out in its 2010 Human Rights Report that the right to food in North Korea has been jeopardized because of endemic corruption within the military: "Reports of diversion of food to the military and government officials and bribery were indicative of corruption in the government and security forces."¹⁰⁶

IV. RELEVANT RANKINGS AND REPORTS DEMONSTRATE THE CORRELATION BETWEEN CORRUPT GOVERNMENTS AND HUMAN RIGHTS ABUSES

Internal and external checks on government power are critical factors to prevent or expose acts of grand corruption. In many repressive regimes marred by widespread corruption, such controls are absent. Legislatures tend to rubberstamp decisions of the executive. Judiciaries are not independent from the other branches of government and exist merely to approve and sanction official misconduct. Prosecutors and police are not empowered to pursue official wrongdoing (except with the approval of senior officials). Instead, they embark on campaigns to suppress perceived or real dissent and opposition. Civil society institutions and independent media outlets that serve as vanguards against secrecy, collusion and nepotism experience great difficulty thriving and even surviving in environments where the government tightly controls all aspects of public and private life.

An analysis of Transparency International's 2012 Corruption Perception Index (CPI) reveals that the countries at the bottom of the index, i.e. those states with the highest perceived levels of public corruption, feature either very powerful centralized state institutions or, alternatively, a complete lack of state authority.¹⁰⁷ States as diverse in geography and governing structures as Afghanistan, North Korea, Somalia, Sudan or Uzbekistan share an absence of the rule of law and

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ ICSECR, *supra* note 21, art. 11.1 ("The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food. . . .").

¹⁰⁶ U.S. ST. DEP'T, 2010 HUMAN RIGHTS REPORT: DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (Apr. 8, 2011).

¹⁰⁷ See TRANSPARENCY INT'L, *supra* note 39.

are governed instead by force – either perpetrated by a strong central government or by a collection of regional and local state and private actors. Placement of the Transparency International CPI alongside a ranking measuring the degree to which political rights and civil liberties are protected, as per Freedom House’s annual survey,¹⁰⁸ reveals their antipodal relationship: those countries with the highest perceived levels of public corruption tend to offer the least protections of political and civil freedoms.¹⁰⁹ The eight most corrupt countries in the Transparency International CPI share a “not free” rating from Freedom House.¹¹⁰ In fact, five of the nine countries featured in Freedom House’s *Worst of the Worst 2012: The World’s Most Repressive Societies* report rank among the seven most corrupt in the 2012 Transparency International CPI.¹¹¹ Vice versa, the countries categorized as most free in the Freedom House 2012 rankings are the least corrupt in Transparency International’s survey, with very few exceptions.¹¹²

Specifically, of the 21 countries identified as being most corrupt by the 2012 Transparency International CPI, 18 are characterized as “not free” and three as “partly free” by Freedom House.¹¹³

¹⁰⁸ See FREEDOM HOUSE, *FREEDOM IN THE WORLD 2012: THE ARAB UPRISINGS AND THEIR GLOBAL REPERCUSSIONS, SELECTED DATA FROM FREEDOM HOUSE’S ANNUAL SURVEY OF POLITICAL RIGHTS AND CIVIL LIBERTIES* (2012).

¹⁰⁹ While the Freedom House index constitutes a useful mechanism to evaluate the protection of political and civil human rights, it does not address the dimension of social, economic and cultural human rights.

¹¹⁰ See TRANSPARENCY INT’L, *supra* note 39.

¹¹¹ *Id.*; FREEDOM HOUSE, *WORST OF THE WORST 2012: THE WORLD’S MOST REPRESSIVE SOCIETIES*, (June 14, 2012) (listing among the “worst of the worst” the following countries: Equatorial Guinea (172nd in TI Index), North Korea (182nd in TI Index), Somalia (182nd in TI Index), Sudan (177th in TI Index), Turkmenistan (177th in TI Index) and Uzbekistan (177th in TI Index)).

¹¹² TRANSPARENCY INT’L, *supra* note 39; FREEDOM HOUSE, *supra* note 108.

¹¹³ TRANSPARENCY INT’L, *supra* note 39; FREEDOM HOUSE, *supra* note 108.

Country	2012 TI CPI (out of 176 countries)	2012 Freedom House (scale of 1-7)
Yemen	156	Not free (6, 6)
Angola	157	Not free (6, 5)
Cambodia	157	Not free (6, 5)
Tajikistan	157	Not free (5, 6)
D. R. Congo	160	Not free (6, 6)
Laos	160	Not free (7, 6)
Libya	160	Not free (7, 6)
Equatorial Guinea	163	Not free (7, 7)
Zimbabwe	163	Not free (6, 6)
Burundi	165	Partly free (5, 5)
Chad	165	Not free (7, 6)
Haiti	165	Partly free (4, 5)
Venezuela	165	Partly free (5, 5)
Iraq	169	Not free (5, 6)
Turkmenistan	170	Not free (7, 7)
Uzbekistan	170	Not free (7, 7)
Myanmar	172	Not free (7, 6)
Sudan	173	Not free (7, 7)
Afghanistan	174	Not free (6, 6)
North Korea	174	Not free (7, 7)
Somalia	174	Not free (7, 7)

Conversely, of the 21 least corrupt countries in Transparency International's CPI, 19 are considered free and two are considered partly free (Singapore and Hong Kong) by Freedom House.

Country	2012 TI CPI	2012 Freedom House (scale of 1-7)
Denmark	1	Free (1, 1)
Finland	1	Free (1, 1)
New Zealand	1	Free (1, 1)
Sweden	4	Free (1, 1)
Singapore	5	Partly free (4, 4)
Switzerland	6	Free (1, 1)
Australia	7	Free (1, 1)
Norway	7	Free (1, 1)
Canada	9	Free (1, 1)
Netherlands	9	Free (1, 1)
Iceland	11	Free (1, 1)
Luxembourg	12	Free (1, 1)
Germany	13	Free (1, 1)
Hong Kong	14	Partly Free (5, 2)
Barbados	15	Free (1, 1)
Belgium	16	Free (1, 1)
Japan	17	Free (1, 2)
United Kingdom	17	Free (1, 1)
United States	19	Free (1, 1)
Chile	20	Free (1, 1)
Uruguay	20	Free (1, 1)

V. HOW TO ADDRESS PUBLIC CORRUPTION IN REPRESSIVE REGIMES?

The previous discussion and tables point to a substantial correlation between widespread corruption and poor human rights records. Although the relationship is undoubtedly neither linear nor strictly causal, with many components affecting the level of corruption and respect for human rights in a specific country, the existence of even a loose inverse relation between corruption and human rights raises a challenging question. The dilemma – from the perspectives of both law and policy – is how best to combat corruption in countries where human rights are grossly violated by repressive governments. This paper foregoes a discussion on policy prescriptions and focuses on legal approaches that may help curb grand corruption in authoritarian states.

A. Applying Human Rights Law

As the previous sections have shown, corrupt practices by government officials can threaten the realization of human rights. A school administrator's demand to a parent for payment in exchange for enrolling her daughter into primary school directly violates the child's right to free education.¹¹⁴ A prosecutor's abstention from pressing charges against a polluter because a bribe by the offender enticed him not to enforce the law causes a violation of the right to a clean environment.¹¹⁵

Victims of human rights violations, provided they can point to a cause of action under domestic law, may seek remedies through national or regional courts.¹¹⁶ Insofar as such human rights suits scrutinize corrupt practices, they may simultaneously help to curb abuses of human rights and corruption. In November 2011, journalist and human rights activist Rafael Marques de Morais lodged a criminal complaint in Angola¹¹⁷ against security companies and their directors, several of whom are also current or former senior officials in the country's military.¹¹⁸ The complaint alleges crimes against humanity and other violations of human rights codified under Angolan law that were committed by the security companies guarding Angola's diamond mines, including repeated cases of torture and mass execution of members of the local population.¹¹⁹ The complaint does not directly

¹¹⁴ See ICESCR, *supra* note 21, art. 13.2(a).

¹¹⁵ See ICESCR, *supra* note 21, art. 12.2(b).

¹¹⁶ In the United States, for example, persons whose constitutional rights are violated by anyone acting under the color of the state may file a civil action for money damages pursuant to 42 U.S.C. § 1983 (2011). An increasing number of jurisdictions, in particular in Latin America, South Africa, Eastern Europe and certain parts of Asia, permit personal causes of action to remedy a variety of social or economic human rights. Regional bodies available to victims of human rights violations include the European Court of Human Rights, the African Court on Human Rights and the Inter-American Court on Human Rights.

¹¹⁷ Angola is ranked 157th out of 176 states in Transparency International's Corruption Perception Index of 2012. See TRANSPARENCY INT'L, *supra* note 39. Freedom House's 2012 index of political rights and civil liberties ranks Angola as "not free". The country has been governed since 1979 by President Jose Eduardo dos Santos in an authoritarian fashion. For an account of recent human rights abuses taking place in Angola, see U.S. DEP'T OF STATE, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: ANGOLA (2010).

¹¹⁸ For an English translation of the criminal complaint, see *Angola: Criminal Complaint Lodged Charging Generals With Crimes Against Humanity*, ALLAFRICA, (Nov. 14, 2011), available at <http://allafrica.com/stories/201111142158.html>.

¹¹⁹ *Id.*

accuse the former and current military officials of corruption, but the subtext that their highly profitable ownership in the security companies was improperly acquired is evident: “[o]n a regular basis since 2004, the Plaintiff has been investigating and monitoring the systematic violation of human rights and related acts of corruption in the diamond-bearing region of the Lundas.”¹²⁰

While the prospects of the lawsuit are uncertain and the allegations not proven, it illustrates that human rights law can be used to address not only violations of human rights but also to attack the legitimacy of senior officials implicated in corruption. Mr. Marques de Morais has shown uncommon courage in filing the complaint that implicates influential members of Angola’s security and military apparatus.¹²¹ Similar efforts that seek to remedy human rights violations while also addressing grand corruption are rare. For understandable reasons. How are putative victims going to obtain remedies for violations of human rights in states whose institutions are highly corrupt? Asking a politically subservient court to issue a verdict that a corrupt public official violated the claimant’s human right not only has a low probability of success, but may even risk recriminations that threaten the litigant’s personal safety and well-being.

B. *Applying Domestic and Foreign Anti-Corruption Laws*

Consistent enforcement of anti-bribery laws may thus be the most effective way to prosecute graft – and in the process mitigate human rights abuses perpetrated by corrupt officials. Laws exist everywhere that prohibit public officials from soliciting and/or accepting bribes.¹²² In the United States, public officials are regularly prosecuted and convicted for abusing the authority of their office for private gain.¹²³ Brazil has in recent years made gains in addressing serious problems of do-

¹²⁰ *Id.* at par. 1-2 (as the complaint notes, many of the allegations derive from research Mr. Marques de Morais summarized in his 2011 publication *Diamantes de Sangue: Tortura e Corrupção em Angola* (Blood Diamonds: Torture and Corruption in Angola)).

¹²¹ See Rafael Marques de Morais, *My Stand Against Angola’s Blood-Diamond Generals*, GUARDIAN (Nov. 24, 2011), <http://www.guardian.co.uk/commentisfree/libertycentral/2011/nov/24/angola-blood-diamond-generals#start-of-comments>.

¹²² See *United Nations Convention Against Corruption*, *supra* note 5.

¹²³ According to a report to Congress by the U.S. Department of Justice’s Public Integrity Section, between 1992 and 2011 almost 17,000 public officials in the United States (federal, state, and local) have been charged for alleged corrupt activities. See U.S. Department of Justice, Criminal Division, *Report to Congress on the Activities and Operations of the Public Integrity Section for 2011*, <http://www.justice.gov/criminal/pin/docs/arpt-2011-revised.pdf>.

mestic bribery.¹²⁴ Notwithstanding continued pervasive problems of political corruption and a lack of judicial independence, China has announced several anti-corruption initiatives, updated its bribery laws and prosecuted (and in at least one case executed) high-ranking public officials for corruption.¹²⁵ And while prosecution of domestic officials suspected of corruption can send the message that the powerful are not above the law, enforcement remains uneven at best and is often used to remove political opponents.¹²⁶ In autocratic and simultaneously corrupt regimes, in particular, the realities of recalcitrant, understaffed, and politically influenced law enforcement and judiciaries remain obstacles to the serious pursuit of corrupt officials.

Large-scale corruption frequently transcends borders and implicates foreign actors. That international dimension provides an opportunity, in some cases, to complement the often problematic domestic efforts of addressing this pervasive problem. Some entities engaged in international commerce make bribe payments, usually on the demand of the public official, to increase the likelihood that they obtain business or win a tender. Nary a company would elect happily to make improper payments to known human rights abusers. But in many resource-rich countries in which foreign corporations conduct business,

¹²⁴ See, e.g., ECONOMIST, *Brazil's Congress: Cleaning Up, A Campaign Against Corruption*, July 8, 2010, <http://www.economist.com/node/16542611> (discussing criminal charges filed against numerous members of parliament and efforts for legislative changes in punishing domestic corruption).

¹²⁵ See, e.g., Ben W. Heineman, *In China, Corruption and Unrest Threaten Autocratic Rule*, ATLANTIC, June 29, 2011, <http://www.theatlantic.com/international/archive/2011/06/in-china-corruption-and-unrest-threaten-autocratic-rule/241128/> (noting that in recent years “the vice mayor of Beijing and supervisor for Olympic Construction was fired for taking bribes; the former party boss of Shanghai was sentenced to 18 years for improperly loaning hundreds of millions of dollars from a social security fund to real estate speculators; the head of the China equivalent of the FDA was executed for taking bribes and kickbacks; and the head of China’s show-case high speed rail system was fired due to a corruption investigation.”).

¹²⁶ The trial and additional six-year sentence for imprisoned Mikhail Khordokovsky, the former Russian oil tycoon and persistent critic of the Kremlin, for money laundering and embezzlement in December 2010, for example, evoked serious criticism from several Western governments, including the United States, which called the trial an “abusive use of the legal system for improper ends.” The *New York Times* observed that “[n]early two decades after the collapse of Communism, corruption is endemic, government power is often abused and senior politicians are rarely, if ever, held accountable for misdeeds. A series of murders of well-known human rights advocates and journalists have gone unsolved, even as critics of the government are prosecuted.” Clifford J. Levy, *Russian Judge Extends Term for Tycoon by 6 Years*, N.Y. TIMES (Dec. 30, 2010), <http://www.nytimes.com/2010/12/31/world/europe/31russia.html?pagewanted=all>.

positions of power are held by officials whose records on human rights are unsavory.¹²⁷ Thus, laws prohibiting the bribery of foreign officials may represent another tool for curbing some instances of grand corruption and, in the process, eliminate the flow of illicit funds to unscrupulous persons who bear responsibility for human rights violations.

A number of the world's most economically powerful states have in recent years begun to enforce seriously anti-corruption laws and to increase prosecutorial resources.¹²⁸ Indeed, the fight against foreign corruption is now a centerpiece of global efforts to combat transnational economic crime. Becoming the first country specifically to criminalize foreign bribery, the United States in 1977 passed the Foreign Corrupt Practices Act ("FCPA").¹²⁹ This law prohibits the payment of bribes to foreign officials and requires corporations registered as issuers under federal securities laws to maintain appropriate books and records and internal controls.¹³⁰ Although the law was sparingly enforced during the first two decades of its existence, since the early 2000s the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) have prosecuted hundreds of companies and dozens of individuals for paying bribes to foreign officials.¹³¹

A watershed moment that advanced anti-corruption enforcement on an international scale occurred in 1997 with the adoption of the OECD Convention on Combating Bribery of Foreign Officials in Inter-

¹²⁷ See, e.g., the above-cited examples of Angola, Egypt, Libya, Equatorial Guinea, Turkmenistan and many others. U.S. DEP'T OF STATE, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: ANGOLA (2010); see also Greenberg, *supra* note 34; BBC NEWS, *supra* note 60.

¹²⁸ For example, the U.S. Justice Department has a specialized FCPA Unit within the Criminal Division's Fraud Section that is exclusively devoted to prosecuting foreign bribery cases. The U.S. Securities and Exchange Commission established in 2009 an FCPA Unit within its Enforcement Division. See U.S. DEP'T OF JUSTICE AND U.S. SEC. AND EXCHANGE COMM., A RESOURCE GUIDE TO THE FOREIGN CORRUPT PRACTICES ACT (Nov. 2012), <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>. In the United Kingdom, the Serious Fraud Office has increased the number of prosecutors devoted to pursuing foreign bribery. In Germany, the office of the public prosecutor in Munich has undertaken a variety of large corruption and bribery cases against companies and individuals within the last five years.

¹²⁹ See 15 U.S.C.A. §§ 78dd-1 *et seq.* (FCPA's anti-bribery provisions); 15 U.S.C.A. § 78m(b)(2)(A-B) (FCPA's accounting and internal controls provisions).

¹³⁰ *Id.*

¹³¹ See MARK P. GOODMAN, DANIEL J. FETTERMAN & BRUCE E. YANNETT, DEFENDING CORPORATIONS AND INDIVIDUALS IN GOVERNMENT INVESTIGATIONS ch. 9 § 1 (Daniel J. Fetterman & Mark P. Goodman eds., 2011).

national Business Transactions. That Convention, whose 34 OECD member states and six non-member states consist of most of the world's top exporters and investors (although China and India are not signatories), requires states to criminalize and prosecute the bribery of foreign officials.¹³² While questions remain about many of its members' active enforcement of anti-corruption laws,¹³³ the OECD Convention has been a major boon for the development and ultimately the enforcement of foreign bribery laws by national jurisdictions in its growing number of member states.¹³⁴ Most significantly, the United Kingdom in 2010 adopted the UK Bribery Act, a landmark law that prohibits domestic and foreign bribery of public officials as well as commercial bribery by any company or individual that "carries on a business, or part of a business" in the UK.¹³⁵ Germany, which until the late 1990s did not criminalize foreign bribe payments and even allowed their tax deductibility, has in recent years aggressively prosecuted violations of public and commercial bribery.¹³⁶

Other multilateral conventions and regional agreements have emerged since the adoption of the OECD Convention in 1997. The UN Convention against Corruption came into force in December 2005 and calls on states to establish effective preventative practices against the corruption of public and private entities.¹³⁷ Like the OECD Convention, the UN Convention against Corruption obliges member states to establish in their domestic legal systems corruption as a basic offense.¹³⁸ The UN Convention against Corruption recognizes the detri-

¹³² ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, WORKING GROUP ON BRIBERY: ANNUAL REPORT 2009 (Jun. 15, 2010), available at http://www.oecd.org/document/46/0,3343,en_2649_34859_44271086_1_1_1_1,00.html.

¹³³ See Fritz Heiman, Gillian Dell & Kelly McCarthy, *Progress Report on Enforcement of the OECD Anti-Bribery Convention*, TRANSPARENCY INT'L, 3 (2011) (concluding that only seven members of the Convention actively enforce foreign anti-bribery laws and 21 are doing little or nothing to enforce the Convention).

¹³⁴ *Id.*

¹³⁵ Bribery Act 2010, c.23 § 7 (Eng.).

¹³⁶ ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS, GERMANY PHASE 3: REPORT ON THE APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 2009 REVISED RECOMMENDATION ON COMBATING BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS (March 17, 2011) (describing Germany's serious efforts in prosecuting foreign bribery). In recent years, German prosecutors have brought enforcement actions for bribery-related violations against Siemens AG, MAN SE and Ferrostaal AG.

¹³⁷ *United Nations Convention Against Corruption*, *supra* note 5, art. 2.

¹³⁸ *Id.* at art. 3-4.

mental impact of corruption on human rights and emphasizes that all persons have a right to information, thus requiring states to guarantee transparency in public procurement.¹³⁹ The 160-member strong UN Convention against Corruption introduced a monitoring mechanism in 2009 that is intended to scrutinize its member states enforcement activities through self-evaluation and a peer-review process.¹⁴⁰ Other relevant regional anti-corruption conventions, albeit without the effectiveness of the OECD Convention or the widespread membership of the UN Convention, include the Inter-American Convention Against Corruption, the African Union's Convention on Preventing Combating Corruption, and the Council of Europe's Criminal Law Convention on Corruption.

How might these laws and international conventions outlawing the bribery of foreign officials help to limit corruption in repressive regimes? Although large-scale corruption is not limited to dictatorial regimes in the developing world, many significant enforcement actions under the FCPA have alleged improper payments to public officials in non-democratic and often repressive regimes, including, among others, Turkmenistan, North Korea, Indonesia, Uzbekistan, Libya, Egypt and Angola.¹⁴¹ Multiple companies have also pleaded guilty to

¹³⁹ *Id.* at art. 13, 9.

¹⁴⁰ U.N. Office on Drugs and Crime, *Mechanism for the Review of Implementation of the United Nations Convention Against Corruption – Basic Documents* (2011). Notwithstanding the implementation of a monitoring mechanism, its rigidity and effectiveness appear to be inferior to that of the OECD Convention, with only a desktop review and limited public disclosure of the findings. See, e.g., Jan Wouters, Cedric Ryngaert & Ann Sofie Cloots, Leuven University Centre for Global Governance Studies, *The Fight Against Corruption in International Law*, Working Paper No. 94 (July 2012) at 18, http://ghum.kuleuven.be/ggs/publications/working_papers/new_series/wp91-100/wp94-jwouters-cryngaert-acloots.pdf.

¹⁴¹ See, e.g. *United States v. Daimler AG*, Information, Case No. 1:10-cr-00063-RJL (D.D.C., March 22, 2010) (DOJ alleging improper payments by Daimler in 22 countries, including China, Egypt, Indonesia, North Korea, Libya, Iraq, Ivory Coast, Nigeria, Russia, Serbia and Montenegro, Thailand, Turkmenistan, Uzbekistan, Vietnam, and others) at 3; see also DOJ Press Rel. 10-1251, *Oil Services Companies and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than \$156 in Criminal Penalties* (Nov. 4, 2010) (Panalpina admitting to corrupt payments to foreign officials in Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia and Turkmenistan), available at <http://www.justice.gov/opa/pr/2010/November/10-crm-1251.html>; see also *United States v. Baker Hughes Inc.*, Deferred Prosecution Agreement, Case No. H-07-130 (S.D. Tex, Apr. 11, 2007) (oil field services company entering into deferred prosecution agreement on FCPA charges concerning allegedly improper payments in Kazakhstan, Angola, Nigeria, Indonesia, Russia, Uzbekistan, Turkmenistan and Azerbaijan) at 7.

making secret kickback payments to the regime of then Iraqi president Saddam Hussein in connection with the UN's Oil-for-Food program.¹⁴²

The enforcement of foreign anti-bribery laws, if they accomplish their purpose, will deter potential bribe payers from making illicit payments and thus reduce the amount of payments to officials in unsavory regimes. Even though Uzbekistan, Chad or Angola may not enforce their laws to punish corruption, the possibility that foreign bribe payors are prosecuted by their home countries (or other jurisdictions under whose reach their activities fall) represents a real disincentive to foreign corrupt payments and thus would appear to reduce their frequency and amount. And the requirements of anti-bribery laws might also be employed as a justification by companies or individuals to reject demands for bribes. Indeed, the refusal to pay bribes by key players in sophisticated industries on whose services countries vitally depend, such as energy supply or engineering, may help to tame the expectations on the demand side.¹⁴³ Such collective commitment from market participants to refuse bribe payments and to notify each other of an official's bribe demand has been advocated by the World Bank and the UN and may prove effective in concentrated sectors dominated by few players.¹⁴⁴

C. Other Mechanisms to Pursue Corrupt Officials and their Assets

Still, even if foreign anti-bribery laws and international conventions indeed discourage the payments of bribes, these laws generally proscribe only the actions of the bribe payor, while failing to address the public official who solicited the payment. In recognition of this reality, some efforts have been made to prosecute foreign officials who received bribes under U.S. anti-money laundering laws. A former offi-

¹⁴² See, e.g., *United States v. Innospec*, Information, Case No. 1:10-cr-00061-ESH (D.D.C. March 17, 2010) (alleging bribe and kickback payments to Iraqi regime during Oil-for-Food program); *SEC v. ABB Ltd.*, Case No. 1:10-cv-01648 (D.D.C. Sept. 29, 2010) (alleging kickback payments to Iraqi regime during Oil-for Food program).

¹⁴³ For a discussion on the adverse economic effects of bribe-paying on companies, see ECONOMIST, *The corruption eruption: Saying "no" to corruption makes commercial as well as ethical sense*, May 1, 2010, at 73 (citing Kaufmann's and Wei's World Bank study disputing the 'efficient grease' hypothesis).

¹⁴⁴ See, e.g., United Nations Global Compact, *Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers* (June 2010) at 14 (discussing collective action efforts by industry players to disclose requests for bribery); see Djordjija Petkoski, Michael Jarvis & Kathrin Frauscher, *Fighting Corruption Through Collective Action in Today's Competitive Marketplace*, ETHISPHERE, Q1, 2009 (presenting collective action and integrity compacts as assisting in reducing grand corruption).

cial of a Haitian state-owned telecommunications company was recently sentenced to nine years in prison for laundering funds he received as bribes in return for influencing project awards;¹⁴⁵ a director of international affairs at the same state-owned entity was sentenced to four years in prison after admitting to receiving more than \$1 million in bribe payments.¹⁴⁶ In addition, U.S. prosecutors have begun to seek to recover ill-gotten proceeds of bribery through civil forfeiture actions, such as the earlier discussed recent action against the assets of the minister of Equatorial Guinea.¹⁴⁷ Moreover, banks routinely freeze assets of corrupt dictators, although the repatriation of funds to the states from which the dictators had stolen the money in the first place presents at times a more complicated story.¹⁴⁸

VI. CONCLUSION

Public corruption is generally viewed as a primary impediment to economic and social development. Resources are allocated not on the basis of merit and quality of the underlying goods or services. Instead, nepotism and patronage reward those with political, economic and social standing and influence over those without.

In addition to such market-distorting unfairness, public corruption can also have deleterious effects on human rights. Corruption thrives particularly well in states governed by repressive regimes whose resort to unscrupulous tactics help to maintain their grip on power and allow their personal illicit enrichment. Although the world's most

¹⁴⁵ Press Release, Department of Justice, No. 12-656, *Former Haitian Government Official Sentenced to Nine Years in Prison for Role in Scheme to Launder Bribes* (May 21, 2012), available at <http://www.justice.gov/opa/pr/2012/May/12-crm-656.html>.

¹⁴⁶ Press Release, Department of Justice, No. 10-260, *Former Haitian Government Official Pleads Guilty to Conspiracy to Commit Money Laundering in Foreign Bribery Scheme* (March 12, 2010), available at <http://www.justice.gov/opa/pr/2010/March/10-crm-260.html>.

¹⁴⁷ Equatorial Guinea Press Release, *supra* note 49.

¹⁴⁸ See, e.g., GUARDIAN, *Switzerland Identifies \$1bn Worth of Dictators' Assets*, May 3, 2011 (describing steps taken by Swiss banks to freeze assets of former dictators Gaddafi (Libya), Ben Ali (Tunisia), Mubarak (Egypt) and Duvalier (Haiti)), <http://www.guardian.co.uk/world/2011/may/03/switzerland-identifies-1bn-dictators-assets>; see also Peter Capella, *Lawyers Seek Freeze on Abacha Bank Accounts*, GUARDIAN (June 7, 2000) (reporting on efforts by attorneys to freeze bank accounts with more than \$450 million held in Britain by the former Nigerian dictator Sani Abacha, in addition to \$1.2 billion that has already been frozen on Luxembourg and Swiss accounts), <http://www.guardian.co.uk/business/2000/jun/08/8>; see also Robert F. Worth, *Obstacles Mar Quest for Arab Dictators' Assets* N.Y. TIMES, June 7, 2012 (describing legal and factual difficulties in repatriating frozen assets), <http://www.nytimes.com/2012/06/08/world/middleeast/libya-egypt-and-tunisia-try-to-recover-assets.html?pagewanted=all>.

corrupt countries vary in governance structures, most are resource-rich states dominated by strongmen who have ruled for decades and show a disdain for human rights. In fact, acts of corruption frequently lead to direct or indirect violations of fundamental human rights. Lawsuits brought in-country alleging public corruption or human rights violations, as well as journalistic work that identifies wrongful government action, are admirable but too few and far between to combat alone the corrupt and repressive practices of kleptocratic governments.

Personal greed may be engrained in the human condition and thus corruption will continue to plague societies for a long time to come. But the attention accorded to its negative effects on international commerce and economic development has recently produced substantially stronger enforcement of anti-corruption laws by several of the world's dominant export and investment nations. Although an imperfect solution – because it fails to address domestic corruption and generally does not reach the conduct of public officials in faraway countries – the growing international network of foreign anti-bribery laws and their increased application may represent the most effective legal mechanism to limit grand corruption and may, over time, effect a change in behavior on the demand side.

