The Second Scramble for Africa's Oil and Mineral Resources: Blessing or Curse?

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This article, while critically examining the second wave of the scramble for oil and mineral resources of the African countries, advocates for the people themselves, not just the governments, to be involved. Historically, the scramble for Africa's economic resources by the European countries that began in colonial times never ceased as such, even with decolonization, owing to the continent's strategic resource richness. What appears to be new in the current situation is the emergence of new non-traditional "customers" in the struggle for the control of the resources by some non-European nations, in particular America and some Asian countries, led by China. If there is any difference at all from the past in the way America and China joined the scramble for Africa's oil and mineral resources, it is in the strategy they adopted, one showing itself as a "superior," while the other presents itself as a "partner." The most important reasons for the current wave of second scramble for oil and mineral resources of Africa are: strategic location, lack of obstacles for transportation of its oil, quality of oil, less complicated contractual conditions, and non-membership of OPEC by many of the oil-producing countries in the continent. The heart of the problem of this scramble lies in the fact that while the resource exploration and exploitation by all stakeholders could be beneficial to the people if properly done, the scourges of corruption, environmental degradation, and human rights abuses have taken the upper hand. This being so, this paper further advocates a solution ensuring democratic accountability, reform of the constitutions for more respect for private property rights over natural resources, and finally, reform of the judiciary to provide more access to individuals and groups seeking to enforce their fundamental human rights. The article also rebuts the sharp criticism in some quarters that the proposed remedies contained herein are still not achievable even with great political will demonstrated by the governments of African countries.

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I. Introduction: Nature of the Problem

Matters surrounding the second scramble for Africa's oil and mineral resources constitute very topical legal and economic questions of the 21st century.[1] In discussing this subject, it is useful to address a vital preliminary question: what are the distinguishing key characteristics between the first scramble for Africa and the contemporary economic activities recently taking place on the continent? Historically, Africa is well known for its strategic resource riches. For ages, European countries have competed for the control of Africa's resources. The modern oil craze has accentuated that rivalry and scramble for Africa's oil. What may be new in this regard is the entry of Asian and other new nations in the keen competition.

An important element of the first scramble for Africa was its European government-driven nature, resulting from the 1884-1885 Berlin Conference on Africa. There, the West-European powers laid down the rules for dividing up Africa by establishing the principle of "effective occupation" in order to claim territories in Africa. Subsequently, this principle was followed by the great inroad into the interior parts of the continent demonstrating the two forms of arrogance for which the West is now very well known—military and cultural. The European nations also demonstrated a total disregard for African governments and their people during this move.[2] Without question, the first scramble was more beneficial to the European countries than to Africa, its governments, and people.

The major characteristic of the second scramble for Africa is that it is more private sector-driven than foreign government-driven, although foreign governments frequently hide behind private companies owned by their nationals. According to a recent author, the contemporary method of scramble for Africa's resources is mainly two-fold: (1) the underground scramble for the continent's mineral wealth, and (2) the white collar scramble for Africa's state-owned economic and organizational outfits (e.g., corporations, factories, concerns, services, etc).[3] Just like the first scramble, the second scramble is clearly more beneficial to the main actors—that is, the private foreign corporations and their home governments—than to African governments and people.

As the industrial and emerging industrial powers race to extract Africa's natural resources to feed their own consumption, important questions regarding human rights abuses, environmental degradation and corruption arise and should be critically reexamined.[4] The issues raised by this contemporary conduct represent a complex and under-analyzed area of international law.

1. Within the last two and half decades, numerous scholarly publications have continued to appear on the subject, each taking a position based on several theories for and against the new trend as it affects the people of the continent of Africa both economically and socially.

2. Excuses were the colonial glory of conquest and the so-called white man's burden to rescue the world from them.

3. Rudolf Ogoo Okonkwo, *The Second Scramble for Africa*, http://www.edofolks.com/html/pub159.htm (last visited Aug. 1, 2007).

4. For a recent comprehensive and incisive discussion of this subject, see Ndiva Kofele-Kale, THE INTERNATIONAL LAW OF RESPONSIBILITY FOR ECONOMIC CRIMES: HOLDING STATE OFFICIALS INDIVIDUALLY LIABLE FOR ACTS OF FRAUDULENT ENRICHMENT (2006).

II. The Second Scramble

Evidence of increasing interest in Africa, especially in the areas of trade and investment, is mounting. This increase of interest, which was ironically long-dominated by the West, is slowly but successfully being edged out by emerging economies.[5] For some time, the West upheld the policy of supporting and maintaining kleptocrats like Zaire's Mobutu Sesse Seko,[6] the Philippines' Ferdinand Marcos, Romania's Nicolae Ceausescu, Haiti's Jean-Claude (Baby Doc) Duvalier, Shah of Iran, Stroessner of Paraguay, Teodoro Obiang Nguema of Equatorial Guinea, and Sani Abacha of Nigeria, all of whom emptied the national treasuries of their respective people yet were granted safe havens in Europe and America to live out their remaining years in luxury. Suddenly, the same Western countries succeeded in convincing the African governments and intelligentsia that African emerging democracies could not run their own economic affairs. Through the World Bank and International Monetary Fund (IMF), in which Western countries have absolute control, liberalization of the economies of developing countries was introduced, which basically meant the devolution of economic control from the government to the private sector. The West introduced stringent conditionalities in economic cooperation among nations in order to realize their objective.[7] The question of Western imposition of certain conditionality on developing countries between the promotion of human rights and environmental protection on the one hand and cooperation in trade and development on the other has remained a controversial issue in contemporary international economic relations.[8] For example, the first defensive statement ever made collectively by Association of Southeast Asian Nations (ASEAN) with regard to the protection of basic human rights was contained in their communiqué of July 21-22, 1992.[9] The ASEAN Ministerial position on this stated:

> The Foreign Ministers maintained that environmental and human rights concerns should not be made *conditionalities* in economic and development cooperation. They noted that basic human rights, while universal in character, are governed by distinct culture and history of the socio-economic conditions in each country and that their expression and application *in the national context* are within the competence and responsibility of each country.[10]

Furthermore, ASEAN consistently considered the right to development as an inherent human right and the right to the environment as a collective human right. According to

5. *See* Allan Ngugi, *Second Scramble for Africa*, http://allafrica.com/stories/printable/200707090967 (last visited Aug. 1,2007). New comers like China, South Korea, Russia, Brazil, Malaysia, India, Turkey, and Thailand have taken the continent by storm.

6. *See* Okonkwo, *supra* note 4.

7. Conditionalities in economic cooperation from an African standpoint are only one of such in-depth studies relevant to the present topic.

8. Paragraph 18 of the Joint Communiqué of the Twenty-Fifth ASEAN Ministerial Meeting held in Manila on July 21-22, 1992, is evidence of the strong position of an important Asian regional organization of States on the question of conditionality. Association of Southeast Asian Nations, Joint Communique 25th ASEAN Ministerial Meeting, Manila, Phillipines, Jul. 21-22, 1992, http://www.aseansec.org/1167.htm (last visited Jan. 6, 2008).

9. *Id.*

10. *Id.* (emphasis added).

Sompong Sucharitkul, "together the two concepts could be combined in the expression: 'the right to sustainable development as a human right.'"[11]

As the African nations sought aid packages and debt forgiveness,[12] the IMF and World Bank applied pressure on these African governments to privatize government companies with Western strategic partners placed in charge of affairs.[13] The World Bank and the IMF exercise dominant power over economic management in Africa. This is possible because of the vast resources they control, their monopoly of information, and their superior scientific authority. Above all, they constitute the gateway to northern support. As a late Nigerian scholar correctly stated: "By all indications, the Bretton Woods institutions have unfortunately come to symbolize power without responsibility."[14]

It is important to discuss, even if briefly, a few selected leading participants in the current scramble for Africa's oil and mineral resources. In doing so, any observed differences of techniques or methods used by the scrambling countries that make them more acceptable than others shall be examined and highlighted.

III. The Leading National Actors in the Scramble

A. The United States of America

The question has been raised whether Africa measures up to the hype?[15] Perhaps, the following factual data and recent actions by the United States will shed clear light on the importance it attaches to this issue. Since 1990, the petroleum industry has invested more than $20 billion in exploration and production activity in Africa.[16] It is projected that $50 billion will be spent between now and the end of the decade. This is the largest investment in the continent's history, and around one-third of it will come from the United States.[17] Three of the world's largest oil companies—the British-Dutch consortium Shell, France's Total, and America's Chevron—are spending 15 percent, 30 percent and 35 percent, respectively, of their global exploration and production budgets in Africa.[18]

The American authorities have shown remarkable and consistent interest in Africa's growing significance as an oil-producing region since the headline discoveries of the late 1990s. The conclusions of several other American reports on this matter pointed to the

11. *See* Sompong Sucharitkul, *Conditionalities in Economic Cooperation: An Asean Perspective* (forming part of studies of ASEAN undertaken by the Center for Advanced International Legal Studies of Golden Gate University School of Law since 1990) (on file with author).

12. For a detailed discussion of the question of debt burden examined from an African perspective, see Chris N. Okeke, *The Debt Burden from an African Perspective*, 35 INT'L LAW. 1489 (2001).

13. *Id.* Okonkwo argues, and rightly so, that the strategy of using partners to provide locally lacking technical, managerial, and financial resources required to turn around the failed government agencies are obtained, at what he described, as "bargain basement prices." Okonkwo, *supra* note 4.

14. *See* CLAUDE AKE, DEMOCRACY AND DEVELOPMENT IN AFRICA 122 (199).

15. JOHN GHAZUINIAN, UNTAPPED: THE SCRAMBLE FOR AFRICA'S OIL 9 (2007).

16. *Id.*

17. *Id.*

18. *Id.* The main drilling activity has taken place in the so-called "deep water" and "ultra deep" of the Gulf of Guinea, whose littoral zone passes through the territorial waters of a dozen countries from Ivory Coast in the northwest down to Angola in the south; a good deal of its geology shares the characteristics that have made Nigeria a prolific producer for years. *Id.*

growing importance of Africa in oil production.[19] Two notable technocrats in President Bill Clinton's administration eloquently spelled out the general U.S. economic interests in Africa. In 1996, Ron Brown, then Commerce Secretary, told business groups in Accra, Ghana that "from now on, the U.S. is not going to give way on African markets to the old colonial powers."[20] The U.S. Commerce Department described Africa as the "last frontier for American businesses."[21] Moreover, former Secretary of State Madeleine Albright described U.S. policy toward Africa as that of "promoting self-help through capitalism."[22]

It is very clear that since 1990, many prominent lawmakers in Washington have become convinced about the possibility of shifting some of America's dependence from the Middle East to Africa.[23] Many U.S. officials now strongly believe that it is a great risk for the western world to rely on two or three hot spots for its energy security because of supply disruptions and price volatility.[24] Since September 11, 2001, the distribution of America's energy-security portfolio has become even more urgent and pressing. It was not surprising, therefore, when President Bush stated in the January 2006 State of the Union address that he wanted to reduce America's dependence on Middle East crude by 75 percent.

And even more reecently, the U.S. House of Representatives passed a bill titled "No Oil Production and Exporting Cartels Act 2007 (NOPEC)." The bill, as the full title and acronym gratingly blare, takes on the Organization of Petroleum Exporting Countries (OPEC), whose activities it seeks to outlaw. The bill has now moved to the U.S. Senate for consideration and adoption. All the above goes to show the seriousness and aggressiveness of the U.S. government toward the critical issue of energy security.

B. The People's Republic of China

The next important actor after the United States in the present struggle for the exploitation of Africa's oil and other mineral resources is the People's Republic of China. The Chinese government and politicians, just like their American counterparts, never hid their interest in identifying the African continent as an important strategic region for its energy security.[25] Indeed, China declared energy security as one of the most important goals of its foreign policy.[26] This official foreign policy stance is understandable because

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19. A fairly secretive May 2001 energy task force report put together by U.S. Vice President Dick Cheney declared that "West Africa is expected to be one of the fastest-growing sources of oil and gas for the American market." GHAZUINIAN, *supra* note 16, at 8. A group of congressmen, lobbyists, and defense strategists under the umbrella of the African Oil Policy Initiative Group preached the message that the Gulf of Guinea was the new Persian Gulf and that it should become a strategic priority of the United States, even to the point of requiring an expanded military presence. This was soon followed by the 2005 reports of the influential Center for Strategic and International Studies stating that "an exceptional mix of U.S. interests is at play in West Africa's Gulf of Guinea." *Id.* at 8-9.

20. *See* Jonathan Holslag, *New Scramble for Africa: Exit Europe?* VUB ASIA NOTE (2007), *available at* http://www.vub.ac.be/biccs/documents/Asia_note__200702__The_new_scramble_on_Africa_Exit_Europ%5B1%5D.pdf.

21. *Id.*

22. *Id.*

23. *See* GHAZUINIAN, *supra* note 15, at 9.

24. *Id.*

25. though Africa is comprised by several states of immense diversity, it appears as one country composed of different units in dealing with China, whose population exceeds that of the entire African continent by about 400 million people. *See* GHAZUINIAN, *supra* note 16.

26. *Id.* at 275.

it is hard to imagine a real separation of the government from the corporate business entities under the Chinese political and economic systems.

One remarkable difference that must be noted when comparing the way the Chinese came into Africa with the way America and the other western European countries did is that China did not view itself as superior but rather as a partner. Accordingly, China has successfully launched corporate partnerships with African governments. It has also promoted significant direct foreign investments.[27]

Chinese trade, economic and technological activities in Africa are vast. For example, China is constructing a new railway in Nigeria, building a new port in Gabon, and has paved roads in Rwanda. China's bilateral trade with Angola jumped 113 percent in 2004 to $4.9 billion.[28] The overall Chinese trade with Africa between 2000 and 2005 is estimated at $50 billion, and is expected to hit $100 billion by 2010.[29] Also, China has forgiven virtually billions of dollars of bilateral debt from African countries and has set up scholarships allowing some 10,000 African students to be educated in China. By doing these, China has adopted a long-term approach. Unlike Shell BP or Exxon Mobil, China National Petroleum Corporation (CNPC) is strongly supported by the state.

The Chinese played an important role during the formation of the Non-Aligned Movement in the late 1950s following the successful 1955 Bandung Conference that established that organization. The goal was to unite the developing countries in such a way that they adopted a neutral position in the Cold War between the then two super powers of the United States and the Union of Soviet Socialist Republics.[30] Recently, China decided to use the networks it built on the African continent during the Cold War years to a great advantage. On April 23, 2005, the fiftieth anniversary of Bandung, China launched its New Asian-African Strategic Partnership (NAASP).[31]

Perhaps the most important demonstration of China's renewed commitment to Africa was the recent Beijing China-Africa Summit organized by China-Africa Cooperation Forum (CACF) held on November 4, 2006. This produced a high level dialogue and was the second conference of Chinese and African entrepreneurs at the Great Hall of the Chinese People. According to the state-controlled China Central Television International (CCTV), forty-one African Heads of State and forty-eight Heads of Government were present in Beijing for the summit, along with hundreds of trade negotiators and business people.[32] According to the hosts of the summit, the event was described as the largest and

27. According to Ghazvinian, the strategy of the Chinese by and large "has been to offer sizable inducements in the form of cash loans or development projects, which in stark contrast to Western forms of debt relief-come with no strings attached, no endless sermonizing about fiscal responsibility, and no micromanaging of government spending." *Id.* at 276.

28. *Id.*

29. *Id.*

30. Though the Non-Aligned Movement is not very active or relevant today, the Chinese keep reaping from their human investments in Africa between the 1950s and 1970s, when they sent thousands of Chinese doctors to Africa and offered scholarships to thousands of African students

31. This is a bigger body than the China-African Corporation Forum (CACF) set up in 2000 to promote trade and investment with forty-four African countries.

32. *See* Chippla Vandu, *On China Africa Summit*, NEW BLACK MAGAZINE (Aug. 1, 2007), *available at* http://www.thenewblackmagazine.com/view.aspx?index=482; *see also* Mandy Turner, *Scramble for Africa*, GUARDIAN (May 2, 2007), http://royaldutchshellplc.com/2007/05/02/the-guardian-society-environment-scramble-for-africa/.

most high-level gathering of world's leaders in Beijing since the founding of the People's Republic in 1949.[33] The Beijing meeting surpassed past meetings of Britain, France, and the United States on both scale and ambition. One million Chinese citizens were mobilized to provide security, transportation, and entertainment. In terms of propaganda effect, there is no doubt that the summit catapulted China to greater fame in world affairs.

China's involvement in Africa has received negative criticism from various sectors of the international community. The strongest of those criticisms is in regard to Chinese business and trade relations with a country like Sudan whose actions in the southern part of Darfur left a bad taste in the mouth of many people in the world. Human rights concerns top the chart in light of the massive numbers of people that have either died or lost their homes following the civil war in the country.

IV. Other Important National Actors

Apart from the United States and the People's Republic of China, other countries joining the struggle for Africa's economic resources have included France, Britain, India, Russia, South Korea, Turkey, Brazil, Malaysia and Australia. The misfortune surrounding the surge of companies from these countries into the oil-producing nations of Africa is the decline of the standard of living of Africans even though their neighbors with fewer resources appear to be prospering. This may be due to the fact that the volume of foreign investment by these countries in the petroleum sector Africa has significantly increased. What is doubtful is how much of the investment benefits the ordinary citizens in terms of job opportunities and social benefits. Most of the capital investment in oil industry goes to the operation and servicing of modern oil equipment because of the capital- intensive nature of oil business. Clearly, oil exploitation is less labor-intensive.[34] Accordingly, little of the proceeds from the oil wealth eventually get to the majority of the people who need help most.

V. Why the Craze for Africa's Oil?

Why do so many influential people in Washington, London, Paris and Beijing get so carried away when they talk about African oil? Does it depend on the number of barrels either harvested or that may or may not be buried under the rock or sea? Where lies Africa's significance as an oil player?[35] If the answers to these questions have nothing to do with geology, then what other factors best illustrate the true story of this new opportunity in the Euro-American and Asian rush for Africa's resource wealth in the 21st century? The answer to some of the above-stated questions can be found in the following seven factors: 1) Africa's strategic geographical location, 2) the ease of transportation, 3) the quality of Africa's oil, 4) an enabling legal environment, 5) non-membership in OPEC, 6) off-shore exploration, and 7) the huge and unexplored resource deposit.

33. The Heads of State, alone, represented a quarter of the votes at the United Nations. The people that attended represented nearly a third of the planet's population.

34. According to Ghazvinian, "only about 5% of the billions and billions invested in African petroleum projects every year is spent in Africa." GHAZUINIAN, *supra* note 16, at 14. Africa's oil boom "has produced more jobs in the United States and Europe than it ever will in Africa." *Id.*

35. *Id.*

The first factor is the strategic geographic location of Africa. The continent is almost entirely surrounded by water. Consequently, the transportation costs and other related risks are significantly reduced. African oil does not face the problems of Central Asian oil producers. For example, the Baku-Tbilisi-Cayman pipeline is engulfed by numerous intractable, logistical, and operational problems. The pipeline stretches from Azerbaijan through Georgia and Turkey. In order to deliver Caspian crude into the Mediterranean Sea, producers must navigate the complex Middle East politics, anti-globalization protests, and red tape before it can be opened.[36]

The second attribute is that African oil faces no transportation obstacles. It is easily loaded onto a tanker at the point of production and begins its smooth journey on the high seas, arriving quickly at the respective ports of destination in Europe, Asia, or America.[37]

The third and most important element of attraction for Africa's oil has been identified as the quality of its oil. The variety of crude found in places like Nigeria and the Gulf of Guinea is said to be "light" and "sweet."[38] It is low in sulfur and therefore easier and cheaper to refine than the Middle Eastern crude, which tends to be lacking in lower hydrocarbons and is very "sticky."[39] American and European refineries prefer this. Otherwise, they have to contend with strict environmental regulations that make it difficult to refine heavier and sourer varieties of crude without high costs that make the venture useless.

A fourth advantage is that Africa offers a more favorable, less complicated contractual condition, at least from the point of view of the foreign oil companies.[40]

Another strategic advantage to the American politician is that many oil-producing countries of sub-Saharan Africa, except Nigeria, do not belong OPEC.[41] The advantage of non-memberhsip is that those countries are not subject to strict limits on output that OPEC imposes on its members in an attempt to keep the price of oil high.

Next, for Western governments and oil companies, the most attractive of all the attributes of Africa's oil boom is that most of the discoveries of recent years have been made offshore in deepwater reserves that are often many miles from populated land. This ensures continued production of oil even if there is an onshore outbreak of civil war or violent insurrection.[42]

Last but not least, is the speed of growth in African oil production and the fact that Africa is one of the world's last under-explored regions.[43] All of the above factors yield

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 9.

40. Most sub-Saharan African countries operate on the basis of so-called production-sharing agreements (PSAs). Under this kind of agreement, a foreign oil company is awarded a license to look for petroleum on the condition that it assumes the up-front costs of exploration and production.

41. Angola became the first new member of OPEC in over thirty years in January 2007 while Gabon withdrew from the organization in 1995. Sudan is expected to join the organization in late 2007.

42. Considering the hundreds of thousands of barrels of Nigerian crude that are lost yearly as result of fighting, community protests, and other forms of interruption, oil companies are excited about this.

43. According to Ghazvinian, "one third of the world's new oil discoveries since the year 2000 have taken place in Africa. Of the 8 billion barrels of new oil reserves discovered in 2001, 7 billion were found there. In the years between 2005 and 2010, 20 percent of the world's new production capacity is expected to come from Africa." GHAZUINIAN, *supra* note 16, at 14.

the conclusion that African oil is cheaper, safer, and more accessible than its competitors. This provides an explanation for the recent scramble for oil on the continent.

VI. The Heart of the Problem

The focus of this study has been not just on the discussion of the nature and extent of the second scramble for Africa's oil and mineral resources, but also on how the contemporary, massive economic activities affect the lives of the African people. Is the second scramble deadly or beneficial to the government and people of Africa? Undoubtedly, the scramble has had the unfortunate effect of triggering corruption, environmental degradation[44] and human rights abuses. It is a fact that corruption on a vast scale can adversely weaken any nation's economy, resulting in its eventual collapse. The domestic consequences of the situation on the State and its people are very palpable.

In the face of these outrageous acts by foreign multinational oil companies, what should the international legal system do? What obligations do these companies owe to the victim State and its citizens? Are there adequate, identifiable universal standards and laws necessary to regulate the conduct of such companies, particularly to stop grave abuses of fundamental human rights of the people? Most importantly, what measures and responses should the African States and their leaders adopt to fully manage the negative effects of the activities of multinational oil companies?

The big dilemma is who to believe in the whole saga of competition for the control of the continent's oil and mineral resources. Is it those who advocate that African oil can be useful for the economic development of the continent and at the same time serve as a source of Western energy?[45] Or, is it those who warn against selfish, runaway oil bonanzas that remind us only of the selfish interests of foreign extractive industries capable of standing in the way of development?[46]

VII. Conclsusion: Proposals for Dealing with the Present and Future Effects of the Scramble for Africa's Oil and Other Resources

A. The African People, Not Just Their Governments, Must Be Involved in the Exploration and Exploitation of Their Natural Resources

The General Assembly of the United Nations adopted the Charter of Economic Rights and Duties of States (the "Charter").[47] The Charter was drafted by a Working Group

44. The present conflicts in the Niger Delta region of Nigeria and southern Sudan represent clear living consequences of environmental and social impact of companies that engage in the extraction of oil and other mineral resources in parts of Africa.

45. *See* Ghazuinian, *supra* note 16, at 15.

46. *Id.*

47. G.A. Res. 3281 (XXIX), U.N. Doc. A/Res/3281 (Dec. 12,1975). The Charter was adopted by a vote of 120 in favor, six against, and ten abstentions.

established by the United Nations Conference on Trade and Development (UNCTAD).[48] It was designed to "establish or improve norms of universal application for the development of international economic relations on a just and equitable basis."[49] Article 2 of the Charter expressly addresses the concept of permanent sovereignty over natural resources and the regulation of transnational corporations.[50] The principle of permanent sovereignty is contained in a number of international human rights documents focusing on two related rights: the right of states to exercise control over their natural wealth and resources and the right of all peoples to freely use, exploit, and dispose of their natural wealth and resources.[51]

The people's right to exercise permanent sovereignty over their wealth and natural resources has risen to the level of international customary law. Many renowned international law scholars have assigned the right the status of *jus cogens*.[52] Professor Ian Brownlie noted that the principle of permanent sovereignty is one of the rules that may have the special status of *jus cogens*.[53] Article 1, paragraph 2 of the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights provides that "[a]ll peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law."[54]

Along the same lines, Article 21(5) of the African Charter on Human and People's Rights requires states "to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies."[55] This article clearly separates treatment of foreign multinationals from among all the possible exploiters, including state governments.

Notwithstanding these provisions, some African and other developing countries continue to collude with foreign multinational companies to deprive the people of benefits from natural resources. To make matters worse, heads of states and other high-ranking state officials openly and fraudulently divert national wealth and resources into their private accounts.

B. Ensure Democratic Accountability

With little or no exception, the bane of Africa's economic underdevelopment lies in its lack of democratic accountability. One cannot succeed in holding foreign managers of the economy responsible when their own indigenous heads of states and high-ranking officials find themselves in power through rigged elections and without the true mandate of the

48. UNCTAD Res. 45 (III), I Proceedings of UNCTAD Third Session, Reports and Annexes, Annex I.A., U.N. Pub. Sales No. E. 73.11. D.4 (1972). G.A. Resolution 3082 (XXVIII) (reaffirming the decision for the Working Group to prepare a final draft of the Charter for consideration of the Assembly).

49. G.A. Res. 3082, para. 3, UN GAOR 28th Sess., Supp. No. 30, UN Doc. A/9030 (1974).

50. G.A. Res. 3281, *supra* note 48.

51. *See* Somendu K. Banerjee, *The Concept of Permanent Sovereignty over Natural Resources—An Analysis*, Indian J. Int'l L. 515 (1968); *see also* G.A. Res 523 (VI), U.N. Doc. A/2119 (Jan. 12, 1952).

52. *See* Ian Brownlie, Principles of Public International Law 513, (3rd ed. 1979).

53. *Id.*

54. *See International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200, at 49, U.N. GAOR, 21st Sess., Supp, No. 16, U.N. Doc A/6316 (Dec. 16, 1966).

55. Organization of African Unity, *African Charter on Human and People's Rights*, art. 21(5) (June 1981).

people they claim and pretend to be serving. Unfortunately, the existing legal order and cult still remain entrapped under the concepts of act of state and sovereign immunity, the two instruments through which these corrupt officials seek to justify the plunder of national wealth and resources.[56]

C. Reform the Constitution to Make it More Respectful of Private Property Rights Over Natural Resources.

The Constitution, Petroleum Act, and Land Use Act are united in the view that individuals do not have ownership rights over mineral resources found on their land. Allowing land owners to retain a portion of ownership of natural resources is an idea that deserves serious consideration. The current compensation system simply precludes people from reaping the benefits of resources with which they have been endowed.

D. Reform the Judiciary to Be More Accessible to Individuals and Groups Seeking to Enforce Fundamental Rights

It may also be worthwhile, after taking into account some of the objections to specialized courts in Nigeria, to consider the proposal made over the years (and most recently by the Governor of the Central Bank) for the creation of commercial courts. This will decongest the regular courts and ensure that cases against oil companies are speedily disposed of by judges with special training in this area.

E. Ensure the Tools for a Vibrant Media Sector

Public scrutiny can have remarkable regulatory effects. To ensure such scrutiny, Africa should pass and sign the Freedom of Information Bill.[57] As former Justice of the U.S. Supreme Court Louis Brandeis memorably remarked, "Publicity is justly commended as a remedy for social and industrial diseases. Sunshine is said to be the best of disinfectants; electric light the most efficient policeman."[58] Shining the light on activities of public officials will discourage them from engaging in certain nefarious conduct and expose them to public demands for accountability when access is had to government records. Clean government is possible only if the government operates openly.

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56. *See* Kofele-Kale, *supra* note 5 at 261.

57. *See generally* Senate Passes Freedom of Information Bill, Media Rights Agenda, http://mediarightsagenda.org/index.html.

58. Louis Brandeis, Other People's Money 62 (1933).

TABLE ONE Status of the World's Oil

COUNTRY	REMAINING OIL RESERVES[59] (billions of barrels)	AMOUNT OF OIL DRAINED TO DATE[60] (billions of barrels)	PEAK YEAR OF OIL PRODUCTION[61]
Saudi Arabia	262	97	2008
Iraq	112	28	2017
Abu Dhabi	98	19	2011
Kuwait	96	32	2015
Iran	90	56	1974
Venezuela	78	47	1970
Russia	60	127	1987
United States	30	172	1971
Libya	29	23	1970
Nigeria	24	23	2006
China	18	30	2003
Qatar	15	7	2000
Mexico	13	31	2003
Norway	10	17	2001
Kazakhstan	9	6	2033
Algeria	9	13	1978
Brazil	8	5	1986
Canada	7	19	1973
Oman	5	7	2001
Angola	5	5	1998
Indonesia	5	20	1977
United Kingdom	5	20	1999
Ecuador	5	3	2004
India	5	6	1997
Yemen	4	2	1999
Egypt	4	9	1995
Australia	3	6	2000
Malaysia	3	6	2003

59. British Petroleum, *BP Statistical Review of World Energy 2003* 9 (2005), *available at* http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/lobal_assets/downloads/B/BP_statistical_review_of_world_energy_2003)print_version.pdf.
60. Association for Study of Peak Oil, World Summary, regular Oil Production, May 15, 2004, http://www.peakoil.net/uhdsg/WORLD_SUMMARY_html.
61. *Id.*

Argentina	3	9	1998
Syria	2	4	1995
Gabon	2	3	1996
Colombia	2	6	1999
Congo	1	2	2001
Brunei	1	3	1978

TABLE TWO Right's Owners to World's Oil

	OIL RESERVES[62] (billions of barrels)
Saudi Arabia	259
Iraq	115
Kuwait	96
Iran	90
Abu Dhabi	87
Venezuela	77
Libya	36
Nigeria	24
Lukoil	19
Mexico	17
Qatar	15
Yukos	14
Exxon Mobil	12
China	11
Royal Dutch Shell	10
Chevron Texaco	9
BP	8
TotalFinaElf	7
Malaysia	3

62. *See* Hoover's Company Capsule Database, hoovers.com (last visited Mar. 28, 2008); Exxon Mobil, *Financial Summary*, http://www.exxonmobil.com/corporate/files/corporate/ARfinancial2003.pdf; Chevron Texaco, *2003 Annual Report: Financial Highlights* http://www.chevron.com/Investors/FinancialInformation/AnnualReports/2003/financials/; BP, http:///www.bp.com/investor_centre/info/intro.asp (last visited Mar. 28, 2008); Total, http://www.totalfinaelf.com/ho/en/profile/keyfigur/index.htm (last visited Mar. 28, 2008).

TABLE THREE Who Earns the Most Money from Selling the World's Oil?

	2004 INCOME[63] (billions of dollars)
BP	285
Royal Dutch Shell	265
Exxon Mobil	263
Chevron	143
Total	166
Saudi Arabia	116
Mexico	70
China	41
Qatar	N / A
Libya	N / A
Nigeria	N / A

63. From Hoover's Company Records In-depth Records, Jan. 3, 2006.

TABLE FOUR Major Consumers of The World's Oil

	2004 OIL CONSUMPTION PER CAPITA[64] (gallons/day)		2004 OIL CONSUMPTION PER CAPITA (gallons/day)
Belgium & Luxembourg	3.04	France	1.38
Canada	2.92	Italy	1.37
United States	2.90	Portugal	1.35
Iceland	2.70	Germany	1.34
Netherlands	2.60	United Kingdom	1.24
South Korea	2.00	Iran	0.93
Norway	1.91	Venezuela	0.92
Republic of Ireland	1.90	Malaysia	0.85
Hong Kong SAR China	1.86	Turkmenistan	0.84
Australia	1.81	Czech Republic	0.83
Finland	1.81	Russian Federation	0.76
Japan	1.74	Mexico	0.76
Spain	1.63	Lithuania	0.64
New Zealand	1.62	Belarus	0.64
Taiwan	1.62	Chile	0.61
Greece	1.57	Thailand	0.60
Sweden	1.50	Hungary	0.58
Switzerland	1.50	Slovakia	0.58
Austria	1.47	Bulgaria	0.53
Denmark	1.47	Poland	0.50
South Africa	0.49	Peru	0.23
Ecuador	0.44	Indonesia	0.22
Brazil	0.43	China	0.21
Argentina	0.42	Colombia	0.21
Romania	0.40	Uzbekistan	0.19
Turkey	0.40	Philippines	0.17
Egypt	0.32	India	0.10
Algeria	0.31	Pakistan	0.08
Ukraine	0.30	Bangladesh	0.02

64. British Petroleum, *Statistical Review of World Energy 2005*, 9 (2005); United Nations Population Fund, *State of World Population 2004*, *available at* http://www.unfpa.org/swp/2004/pdf/en_swp04.pdf.

TABLE FIVE Top Oil Consumers, 2004

	TOP OIL CONSUMERS, 2004[65] (thousands of barrels/day)
United States	20,517
China	6,684
Japan	5,288
Germany	2,625
India	2,555
South Korea	2,280
Canada	2,206
France	1,975
Mexico	1,896
Italy	1,871
Brazil	1,830
United Kingdom	1,756
Spain	1,593
Netherlands	1,003
Thailand	909
Taiwan	877
Australia	858
Belgium & Luxembourg	779
Singapore	748
Turkey	688

65. British Petroleum, *BP Statistical Review of World Energy 2004*, 9 (2004).

TABLE SIX Top Oil Consumers, 2025 projected

	TOP OIL CONSUMERS, 2025 PROJECTED[66] (thousands of barrels/day)
United States	28,300
China	12,800
former Soviet Union	6,400
Japan	5,800
India	5,300
Brazil	3,800
Mexico	3,500
Germany	3,300
South Korea	2,900
Canada	2,800
France	2,200
Italy	2,200
United Kingdom	2,200
Eastern Europe	2,100
Australia/New Zealand	1,700
Turkey	1,100
Netherlands	1,000

66. Energy Info. Admin., *International Energy Outlook 2004*, Table A4 (2004).