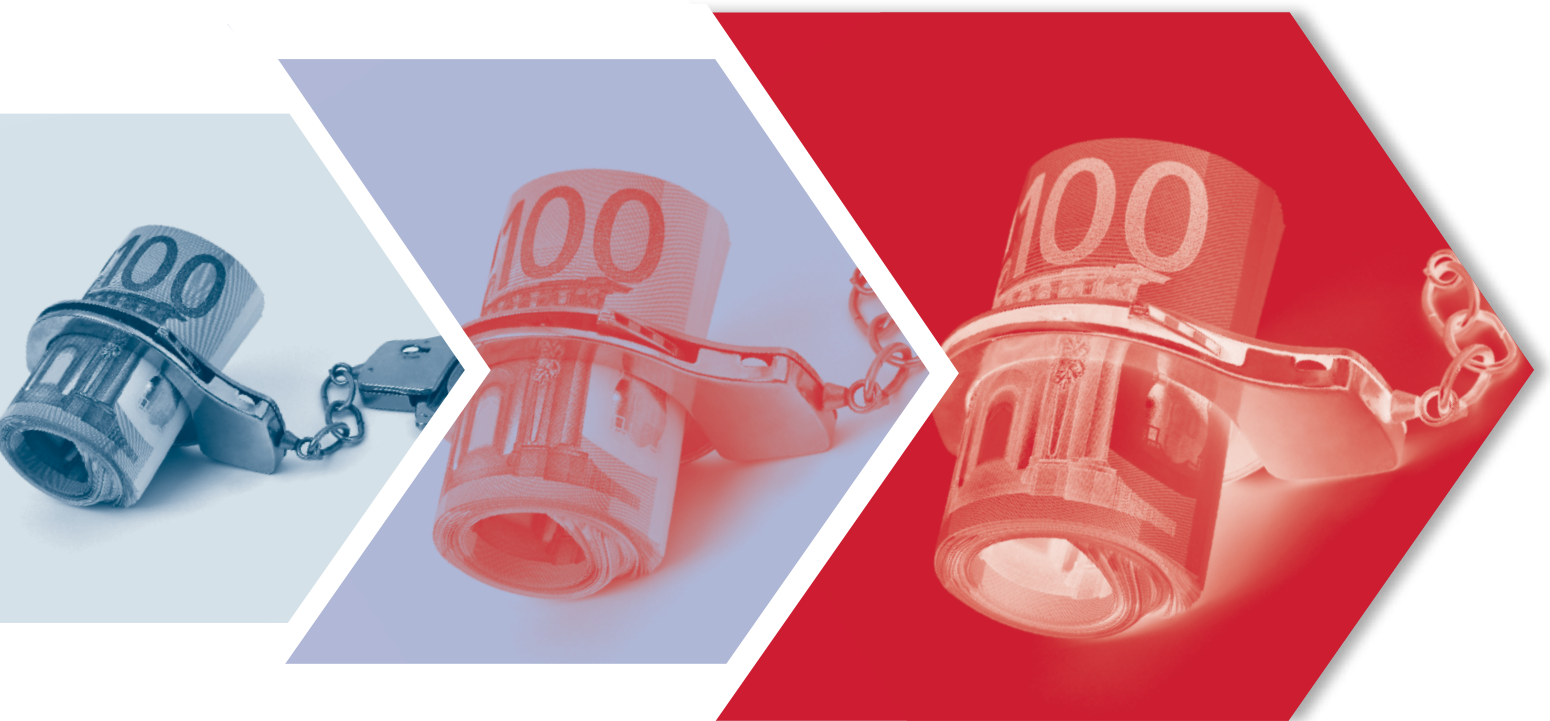


TO CATCH A KLEPTOCRAT >

Lessons Learned from
the Biens Mal Acquis
Trials in France

Tutu Alicante



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EXECUTIVE SUMMARY

Transnational kleptocracy is a form of networked state capture in which political elites redirect state resources for their own benefit, launder their ill-gotten gains through the international financial system, and spend it in settings protected by the rule of law. Today, kleptocracy represents one of the most complex challenges to democracy around the world. In order to protect their ability to loot their own countries, these elites neutralize efforts to hold them accountable, effectively sidelining independent civil society or media. This dirty money also has harmful effects in the places where it is laundered and parked, corroding democratic norms, rule of law, and regional and international organizations.

Since kleptocratic elites deliberately weaken independent accountability in the countries where the theft occurs, victims of kleptocracy have little recourse for achieving justice domestically. Instead, strategic litigation in outside courts offers greater promise for pursuing justice. At the same time, these complicated legal processes require a transnational coalition of actors in order to be effective.

Over the last decade, a groundbreaking case of strategic litigation made its way through the French courts. In the Biens Mal Acquis (“ill-gotten gains”) case, French prosecutors set their sights on the leaders of Congo-Brazzaville, Gabon, and Equatorial Guinea for assets acquired on French soil. These assets were allegedly purchased with ill-gotten gains and involved fraud or money laundering, based on the vast gap between elites’ official salaries and the amount of wealth held by them and their families in France. On October 27, 2017, Equatoguinean Vice President Teodoro Nguema Obiang became the first actively serving foreign senior official to be tried and convicted in French courts on charges of diverting corruptly acquired funds into investments on French territory. He was given a three-year suspended sentence.

For civil society groups pursuing strategic litigation against kleptocrats in their countries, the case against Vice President Obiang provides several important lessons to consider:

- **Mobilizing local and diasporic civil society is vital.** While civil society groups in “source countries” (where the theft occurs) often face brutal repression that inhibits their ability to expose and combat kleptocracy, it is critically important that they are brought into strategic litigation processes. These local groups, as well as groups in the diaspora, may have access to important information and resources that elude international NGOs. Furthermore, as the most direct victims of kleptocracy, these groups are empowered by their role in legal proceedings, and the cooperation with international actors provides a capacity-building function that strengthens their ability to combat kleptocracy.

- **Consider crafting a transnational media campaign.** The media have a critical role to play in the exposure of transnational kleptocracy, but due to tight media restrictions in source countries, transnational collaboration and cooperation is needed to mobilize public opinion abroad where it can have more impact. By targeting audiences in the “host countries” where kleptocrats’ ill-gotten gains are housed, attention is trained on the extent to which these countries facilitate kleptocracy, as well as on the impact of transnational kleptocracy on these societies. Moreover, kleptocrats rely on their international images to bolster their legitimacy at home. Exposing their venality in international media can exert a stigmatizing effect that can reduce kleptocrats’ ability to use international press in their favor.
- **Advocating for lasting reforms in host countries can have disproportionate impact.** Because democratic advocacy is often extremely difficult within kleptocratic source country settings, civil society groups should consider informing policymakers in the countries where illicit money is housed, where it is likely to have more impact. Since the impact of kleptocracy is not always immediately apparent in these settings, policymakers are often not focused on these issues. Exposing transnational kleptocracy’s corrosive impact in strong rule-of-law settings is civil society’s best bet for meaningful reforms to curb kleptocracy. Activists must be well versed in the laws and regulations that directly influence their case, and they must anticipate the need for new laws as the result of a successful case of strategic litigation.
- **Manage expectations from the outset.** Strategic litigation cases are often long and resource intensive. The Biens Mal Acquis case against Vice President Obiang took over a decade to come to fruition and further appeals are likely. Civil society groups pursuing strategic litigation must be prepared for this reality. Furthermore, the outcome of these cases might not take the exact form of “justice” victims of kleptocracy seek. Despite the guilty verdict, Vice President Obiang will face incarceration only if he reoffends on French soil. Assets seized as a result of the verdict are unlikely to return to Equatoguinean citizens in a meaningful way. It is important, therefore, that those involved in strategic litigation cases understand the importance of “symbolic wins” of these processes: a kleptocrat was publicly exposed and convicted, and his ability to stash stolen money outside his country was curtailed.

Combatting networked kleptocracy requires networked, transnational action. For transnational coalitions to form, strengthen, and have impact, actors across geographical and topical divides must be given the time, space, and resources to form alliances and strategize networked action.

Transnational kleptocracy, a form of predatory, state-driven corruption that extends far beyond the borders of the countries where it originates, is closely linked to a good deal of the world's most harmful human rights abuses, armed conflicts, and organized crime networks.

INTRODUCTION

To the casual observer, it may not be immediately obvious how Michael Jackson memorabilia poses a threat to democracy. However, the activists and journalists working around the world to expose and combat transnational kleptocracy know all too well the role that expensive art and even pop-culture collectables can play in facilitating this global scourge.

Transnational kleptocracy, a form of predatory, state-driven corruption that extends far beyond the borders of the countries where it originates, is closely linked to a good deal of the world's most harmful human rights abuses, armed conflicts, and organized crime networks. Aided by a number of factors, including open financial markets and the exploitation of natural resources, the kleptocrats raid state coffers with impunity and send the money abroad to settings—often democracies—where it is protected by strong rule-of-law norms. The ill-gotten funds are then converted into pricey real estate, high-value art, and other forms of wealth that hide their unsavory sources.

Because those committing the theft aim to launder their reputations as well as their money, they tend to insinuate themselves into democratic societies by donating generously to universities and respected organizations,¹ sitting on the boards of charities, and purchasing sports franchises. The kleptocrats' investments in democratic countries come at the price of inflated real estate markets that displace ordinary citizens in many jurisdictions. Crucially, the influx of corrupt wealth is also associated with the erosion of democratic norms and institutions.

In the countries where the theft occurs, the price is especially high. Resources that might be invested in public goods such as education, health care, and basic infrastructure are diverted into the government officials' pockets. In these environments, there is little recourse for citizens who wish to change the status quo. Kleptocratic leaders are quick to crack down on and eliminate domestic accountability mechanisms that might impede their criminal activities, leaving little room for civil society, independent media outlets, impartial courts, and other critical oversight institutions.

In Central Africa, this pattern has had a devastating impact. Cameroonian president Paul Biya has spent a third of his 35 years in office out of the country, often residing in the five-star Intercontinental Hotel in Geneva, Switzerland, which he somehow affords on his official monthly salary of less than \$200. Meanwhile, a quarter of Cameroon's population survives on less than \$2 a day. The average life expectancy in the country is under 60 years.² In Equatorial Guinea, citizens suffer from abject poverty; lack of access to water, health care, and education; and life expectancy and infant mortality rates that are worse than average for sub-Saharan Africa,³ despite the fact that the country has one of the highest gross domestic product per capita (GDPpc) rates on the continent.⁴

TEODORIN NGUEMA OBIANG ASSET SEIZURES AROUND THE WORLD

United States

- In **2014**, the U.S. Department of Justice seized over **\$30 MILLION** worth of assets, including Michael Jackson memorabilia, a mansion in Malibu, and a Ferrari.⁵



France

- In **2017**, French court confiscated **\$120 MILLION** mansion in Paris, along with confiscation of **\$5.6 MILLION** worth of luxury cars.⁸



Switzerland

- In **2016**, Swiss prosecutors seized **11** luxury cars worth an estimated **\$8 MILLION**⁶ and the **\$120 MILLION** super yacht “Ebony Shine.”⁷



Brazil

- In **2018**, Brazilian police seized **\$16.5 MILLION** worth of cash and luxury watches.⁹

Lawyers, civil society groups, and African activists investigating the French-based assets of Equatorial Guinea’s vice president—the president’s son, Teodoro Nguema Obiang—discovered a €120 million mansion on Paris’s exclusive Avenue Foch; 11 luxury cars, including a Maserati, an Aston Martin, a Rolls Royce, a Porsche, two Bugattis, two Ferraris, and two Bentleys; and a luxury yacht worth €120 million in his name.¹⁰ In the United States, a Senate subcommittee report documented Obiang’s US-based assets, including two mansions—one of them the most expensive property in Malibu at the time, a 1,400-square-meter sprawl off the Pacific Coast Highway with its own golf course, tennis court, and two swimming pools—with a combined value of over \$40 million. The US investigators also found a private jet worth \$30 million, several luxury vehicles, seven life-size statues of Michael Jackson, and millions of dollars in other Jackson memorabilia, such as the diamond-studded gloves from his *Bad* tour (1987–89) and the red jacket worn in the artist’s “Thriller” video.¹¹

This story largely repeats itself in countries like Congo-Brazzaville, Angola, Gabon, and Chad. Central African leaders have systematically repressed domestic institutions that might hold them accountable, and kleptocratic theft therefore has largely gone unchallenged. Its victims rarely, if ever, have meaningful legal recourse at home.

Given the massive advantages enjoyed by the kleptocrats, France’s so-called Biens Mal Acquis (“ill-gotten gains”) trials represent a unique type of case in which action taken against kleptocrats by foreign courts, based in a setting where the rule of law prevails, can achieve a measure of justice. In this case, a collection of activists and advocates used strategic litigation, a targeted media strategy, and the contributions of civil society in multiple countries to challenge kleptocratic forces and recover misdirected assets,



Despite the country having one of the highest GDP per capita in Africa, most Equatoguinean citizens suffer from abject poverty.

while exposing to the world the depths of the kleptocrats' depredation. Beyond the litigation itself, the trials did two things: First, they showed that the "untouchable" officials in question, invincible in their own countries, can nonetheless be subjected to law. Second, they demonstrated that the corrupt leaders' abuses can be exposed around the world in ways that general audiences can immediately grasp.

Integral to the success of this approach was the formation of a transnational coalition of key figures and organizations that worked together to hold kleptocrats to account. Using the trial of Teodoro Nguema Obiang in French courts as a case study, the present essay offers lessons to civil society on how to advance the struggle against transnational kleptocracy through the use of strategic litigation.

Strategic litigation is the process of pursuing legal claims as part of a larger or multi-faceted strategy, which may include media campaigns, advocacy with lawmakers, and capacity building with local activists and organizations. It is critical in the battle against transnational kleptocracy, which operates on the basis of complex multicountry networks. The component parts of an effective strategic litigation approach can challenge and disrupt these networks in ways that would not be possible by focusing only on a single front. The Biens Mal Acquis case featured a well-designed media campaign to inform and mobilize support in the broader victim community, as well as an advocacy campaign aimed at convincing policymakers to adopt new procedures and laws that would enable the return of stolen wealth to victim populations. Such reforms can be as critical as the litigation itself. In addition, actively involving the local and diasporic victim communities in the litigation process is crucial for any successful use of strategic litigation.

Aerial view of the exclusive Avenue Foch in Paris, where sports cars and other luxury goods were sized from Equatoguinean Vice President Obiang's €120 million mansion.

THE BIENS MAL ACQUIS TRIALS: A STRATEGIC POINT OF LEVERAGE FOR CIVIL SOCIETY

Because kleptocratic settings are typically authoritarian and repressive, there are few viable domestic means of holding leaders accountable for their theft and providing justice to their victims. The Biens Mal Acquis case in France provides an avenue for civil society activists looking to pursue litigation outside the kleptocrats' home countries, in the jurisdictions where they launder and spend their money.

In 2007, the French nongovernmental organization (NGO) Catholic Committee against Hunger and for Development (CCFD) published Biens Mal Acquis, À Qui Profite Le Crime? (Ill-Gotten Gains: Who Benefits from the Crime?), an extensive report on the proceeds of official corruption in Africa. The 200-page report relied almost entirely on investigative data compiled by members of the Fédération des Congolais de la Diaspora and other French-based African activists. These activists used French public records to document over \$200 billion worth of assets accumulated in France by 23 dictators and their family members. Among the African presidential families included in this assessment were those of Congo-Brazzaville, Gabon, and Equatorial Guinea.¹²

The report served as the basis for a criminal complaint filed by Sherpa, a French NGO that uses law to seek redress for victims of economic crimes, along with Survie, a French-based NGO that focuses on fighting corruption and hunger in Africa, and Fédération des Congolais de la Diaspora, against the presidents of Congo-Brazzaville, Gabon, and Equatorial Guinea and their families and close associates. The complaint argued that the assets acquired on French soil were likely purchased with ill-gotten gains and involved fraud or money laundering, citing the vast gap between the amount of wealth held by the kleptocrats and their families in France and the modest salaries of the senior officials in question. The French police claimed to have investigated the allegations, but no charges were filed.

A year later, in 2008, Sherpa petitioned the court to have Transparency International's French division (TI France) serve as a civil party to the case, in the hopes of spawning further investigations. Before it could decide whether to begin judicial investigations, however, the French court first had to rule on whether TI France had "sufficient legal interest to justify its participation in the case, thereby allowing it to file a complaint." After extensive and creative legal skirmishing, in December 2010 the French court of appeals rendered a historic verdict, granting TI France the legal standing required to bring suit against these leaders. Nearly a decade after the CCFD report was published, the vice president of Equatorial Guinea, Teodoro Nguema Obiang, became the first actively serving foreign senior official to be tried and convicted in French courts on charges of diverting corruptly acquired funds into investments on French territory.¹³

MOBILIZING LOCAL AND DIASPORIC CIVIL SOCIETY

It is important to involve local and diasporic civil society groups in the vast amount of research required to identify illegally obtained assets. As victims of kleptocracy, they have an inherent incentive to participate in the collection of evidence. They also often have an acute understanding of the realities on the ground in their countries. For those among the diaspora who have family members still living in the kleptocratic state, recovering and repatriating assets is a crucial component of restoring justice in their nations, and playing a role in this process can be enormously empowering.

The inclusion of local actors provides international nongovernmental organizations (NGOs) with an opportunity to build the capacity of partner organizations and activists from the affected countries and allow them to develop a sense of ownership of the process. Moreover, having local and diasporic voices at the forefront of campaigns to mobilize the public in the fight against kleptocracy helps to ensure that kleptocratic leaders cannot dismiss calls for reform as foreign or inauthentic, and guarantees that local languages will be used effectively.

In the evidence-collecting phase of Vice President Obiang's case, Paris-based African activists uncovered a wealth of assets in France, including the mansion, luxury cars, and yacht mentioned earlier. In the early stages of litigation, lawyers from Sherpa worked closely with African activists in the diaspora—primarily through two French-based organizations focused on reducing corruption and poverty in Africa, *Survie* and the *Fédération des Congolais de la Diaspora*—who filed the original criminal complaint with prosecutors in March 2007.¹⁴ The suit was later dismissed due to “insufficient evidence.” Meanwhile, a local activist working on the case, Grégory Ngbwa Mintsas of Gabon, suffered escalating harassment and death threats, and another, journalist Bruno J. Ossebi, was assassinated in Congo-Brazzaville in 2009. These grave setbacks compelled the lawyers at Sherpa to drastically change course by enlisting Transparency International France (TI France) as the plaintiff and concentrating on activists, journalists, and potential witnesses in the diaspora, who would presumably face fewer risks than those working in-country.¹⁵

Several important lessons regarding work with local actors can be learned from the *Bien Mal Acquis* trials in France. Challenging kleptocrats is inherently dangerous work for civil society groups operating in authoritarian settings. NGOs based outside the country in question must weigh the physical and information-security risks associated with including local actors as opposed to members of the diaspora community, and plan accordingly. At a minimum, local actors require training on personal and digital communication security protocols to ensure that the information they uncover is safely preserved and transmitted out of the country. Measures must be developed to provide for the security and potential relocation of whistleblowers and other important sources of evidence. A good example is the Platform to Protect Whistleblowers in Africa, a South Africa-based NGO that offers legal assistance, although additional resources are needed. Finally, collecting and assimilating information on complex financial transactions requires specialized training in data management, accounting procedures, and other financial skills. International civil society groups must support local partners with expert advice and relevant instruction.

KEY EVENTS LEADING UP TO BIENS MAL ACQUIS TRIALS¹⁶

2007

French NGO Catholic Committee against Hunger and for Development (CCFD) report assessing the value of the accumulated assets in Western countries of 23 dictators and former dictators and their families published.

March: Sherpa, Survie, and Fédération des Congolais de la Diaspora file criminal complaint against the presidents of Congo-Brazzaville, Gabon, and Equatorial Guinea, as well as members of their families and close associates. The complainants claim, based on CCFD's research work, that these individuals held considerable real estate assets on French soil that could not have reasonably been acquired through their salaries alone.

June: Preliminary police investigation is undertaken. The investigation corroborates most of Sherpa's allegations and reveals the existence of a number of other assets held by the dictators.

November 12: Charges dropped by the French Public Prosecutor due to insufficient evidence.

2008

July 9: Transparency International France (TI-France) files a complaint with the Paris Public Prosecutor. The complaint is again dismissed.

December 2: TI France, represented by Paris attorney William Bourdon, chairman of Sherpa, files a criminal complaint petitioning to join the case as a civil party, in hopes of obtaining a judicial investigation.

2009

May 5: The Presiding Magistrate of the Examining Judges of the Paris Court accepts TI-France's application to join the case as a civil party.

October 29: The Examining Chamber of the Paris Court of Appeals reverses the decision of the presiding magistrate of the examining judges and rules that TI-France cannot join the case as a civil party.

2010

November 9: TI-France files an appeal before the Supreme Court, and the Criminal Chamber of the Court of Cassation reverses the decision handed down by the Appeals judges, accepting the complaint filed by TI-France on December 2, 2008. It is the first time an anti-corruption group is granted the status of an injured party before the courts, thus enabling them to institute criminal proceedings relating to crimes of corruption.

2011

September 28 and October 3: French police seize 18 vehicles belonging to Teodorin Obiang.

October 13: The Equatoguinean government nominates Teodorin Obiang to serve as Equatorial Guinea's Adjunct Permanent Delegate to United Nations Educational, Scientific, and Cultural Organization (UNESCO)— a strategic decision given that confers immunity from criminal prosecution. Sherpa, TI-France, and EG Justice send a series of letters protesting the development to UNESCO, as well as to the French government, deploring this delaying tactic and requesting that they oppose the nomination by all available means. Ultimately, Teodorin Obiang does not take up a position at UNESCO, but is instead appointed Second Vice President of Equatorial Guinea on May 21, 2012.

2012

February 14 to 23: Agents of the Central Office for the Suppression of Major Financial Crimes carry out an extensive search at Vice President Obiang's home, proving that he is the beneficial owner of the property. Appeals to oppose the seizures are unsuccessful.

July 13: An arrest warrant is issued against Vice President Obiang following his refusal to respond to a summons issued by the examining magistrates for purposes of examining him. His attorneys unsuccessfully challenge it.

2014

March 18: The examining magistrates issue an indictment against Vice President Obiang, which is opposed by his attorneys, who claim that he enjoys immunity from criminal prosecution.

2015

April 16: The Examination Chamber of the Paris Court of Appeals rejects the application for nullification filed by Vice President Obiang's attorneys, ruling on this occasion that his nomination to the position of vice president was "a nomination of circumstance." Vice President Obiang's attorneys file an appeal to the Court of Cassation.

December 15: The Court of Cassation rejects the immunity claim, stating that Vice President Obiang could not claim the benefits of any personal immunity because his duties "were not those of Chief of State, Head of Government or Minister of Foreign Affairs;" nor could he benefit from functional immunity (to which all public officials are entitled) because "all the offenses of which he was accused (...) were committed for personal purposes," and bear no relation to his official functions.

2016

June 13: Equatorial Guinea files legal action against France with the International Court of Justice (ICJ) in hopes of gaining legal recognition of Vice President Obiang's alleged immunity from criminal prosecution, along with the diplomatic status of the building of his former residence.

September 5: The examining magistrates order Vice President Obiang to be referred to the Criminal Court of Paris to respond to accusations of money laundering with respect to misappropriation of corporate assets, misappropriation of public funds, misappropriation of entrusted assets, and acts of corruption committed on French soil between 1997 and 2011. According to the French magistrates, Vice President Obiang allegedly illegally enriched himself by demanding improper payments from private companies seeking to do business in Equatorial Guinea; by diverting public funds from the Equatorial Guinea Public Treasury to his personal accounts; and by spending for personal purposes funds from several Equatoguinean companies; he then allegedly diverted the proceeds of these various offenses to France (through transactions involving real estate and moveable assets).

September 29: In light of the imminent commencement of Vice President Obiang's trial, the government of Equatorial Guinea calls upon the ICJ to issue a provisional order instructing France to suspend all criminal proceedings underway against the Vice President of the Republic of Equatorial Guinea and to ensure the inviolability of the "diplomatic premises" located at his former residence.

December 7: The ICJ rules on the provisional claims filed by Equatorial Guinea. Concerning the dispute relating to his former residence, the Court orders France to ensure that the premises being presented as hosting the diplomatic mission of Equatorial Guinea should enjoy treatment equivalent to that required by the Vienna Convention. It further orders that France suspend the execution of any confiscation measure prior to final resolution of the case by the ICJ—a measure that would not deprive the French judges of the possibility of issuing an order of confiscation. With regard to the request from Equatorial Guinea concerning Vice President Obiang's immunity, the Court declares itself incompetent to hear it. Therefore, there are no more obstacles to prevent Vice President Obiang from being brought before the Paris Criminal Court.

2017

June 19: Trial proceedings open in Paris.

CRAFTING A TRANSNATIONAL MEDIA CAMPAIGN

The media have a critical role to play in the exposure of transnational kleptocracy, but due to tight restrictions on the information space in authoritarian settings, transnational collaboration and cooperation is needed to mobilize public opinion abroad, where the kleptocrats' media restrictions generally do not apply. Targeting audiences in the host countries where ill-gotten assets are hidden also serves to train attention on the extent to which these countries facilitate kleptocracy and encourage public officials to address the problem with reforms.

Equatorial Guinea is a case in point. The presidential family has maintained its dominance in no small part due to its absolute control over the national airwaves and the virtual nonexistence of any print media. The leadership prevents the emergence of independent voices and uses the state communications apparatus to amplify regime-friendly narratives. Vice President Obiang owns the only private television and radio stations allowed to operate in the country, while President Teodoro Obiang Nguema Mbasogo and his associates own the telecommunication companies in charge of providing phone and internet service. Consequently, the government is able to carefully control what messages reach the masses via television, radio, and the internet. When deemed convenient, particularly during election periods or following violent government attacks against opposition parties, the regime has completely shut down the internet, disabling the social media platforms—Facebook, Twitter, WhatsApp, and the like—that are used by the youth and civil society advocates to communicate.¹⁷ More routinely, it blocks the blogs and websites of news sources, political parties, and NGOs that it considers critical of the regime's actions.¹⁸ It has even temporarily suspended television channels for airing unfavorable news segments.¹⁹

Kleptocratic leaders are also intent on protecting their images internationally. African anticorruption activists have confirmed that President Obiang and his counterpart in Congo-Brazzaville have invested millions of dollars to acquire stakes in existing regional media enterprises, such as *Afrique 24* and *Jeune Afrique*, and to establish new media companies, such as *Afrique Media*.²⁰ Similarly, these governments, as substantiated by the US Justice Department's Foreign Agent Registration Act filings, have spent tens of millions of dollars over the years on US-based lobbyists and law firms that help launder their reputations and arrange prestige-building meetings with US lawmakers and members of the executive branch.²¹

It is vital for investigative journalists and civil society groups to respond by developing a robust media strategy that will raise domestic and international public awareness about kleptocracy and explain its causes, consequences, and potential remedies to different audiences.

In the *Biens Mal Acquis* case against Vice President Obiang, the legal team and interested parties failed to craft a well-developed media strategy at the outset, due in part to extremely limited financial and human resources. However, following the seizure of 15 luxury cars, rare works of art, antique furniture, and other goods from the Avenue Foch mansion in 2011 and 2012, Sherpa and TI—including its headquarters in Berlin—began to devote time and financial resources to highlighting the problem of grand corruption in Equatorial Guinea as part of a broader “Unmask the Corrupt” media campaign. The effort encompassed several leading figures in this story, including Vice President Obiang, and polled readers as to which



Vice President Obiang's luxury sports cars are seized and towed.

kleptocrat TI should direct attention toward. After Equatorial Guinea failed to make the cut, TI France picked up the campaign, creating videos and other multimedia content to explain Equatorial Guinea's kleptocracy to a French audience.

US-based civil society groups have also mounted media campaigns on the topic. In 2011, the US Justice Department filed civil forfeiture complaints against Vice President Obiang for corruption and money laundering. The forfeiture case centered on \$70 million in luxury goods, including a Gulfstream jet, a Malibu mansion, and nearly \$2 million in Michael Jackson memorabilia,²² such as the well-known glove from the singer's *Bad* tour.²³ In 2014, the case was settled when Vice President Obiang agreed to relinquish \$30 million in property and assets.²⁴ In this context, organizations such as EG Justice, the Open Society Justice Initiative, and Human Rights Watch were able to inform US media and the public by placing opinion articles in major newspapers and posting resources on their websites.

Another campaign was organized in response to the Obiangs' efforts to burnish their images through the UN Educational, Scientific and Cultural Organization (UNESCO). In 2008, UNESCO created the UNESCO–Obiang Nguema Mbasogo International Prize for Research in the Life Sciences with a donated endowment of \$3 million from President Obiang. In 2012, even as an international arrest warrant was pending against his son, the president attempted to appoint the younger Obiang as Equatorial Guinea's ambassador to UNESCO, a position that would arguably have given him diplomatic immunity.²⁵ Between 2009 and 2013, EG Justice, the Open Society Justice Initiative, and Human Rights Watch led a coordinated, global campaign that called on UNESCO and the international community to shut down the prize in view of Equatorial Guinea's unbridled kleptocracy and repression. The prize survived, though it was eventually rebranded as the UNESCO–Equatorial Guinea International Prize for Research in the Life Sciences, removing Obiang's name.

To disseminate information about the various cases against Vice President Obiang, EG Justice moved beyond letter-writing campaigns, op-eds, media interviews, and press statements and began to use social media, particularly Facebook, the most popular medium among Equatoguineans in the diaspora. The organization collaborated with Equatoguinean cartoonist Ramon Esono Ebale—through his blog *Locos TV* and in a creative video—to highlight the cases and the problem of corruption in Equatorial Guinea.²⁶

Notably, however, the campaigns by European and US-based NGOs were largely unsuccessful in penetrating the domestic Equatoguinean audience in a significant way. It was considered unsafe for activists to bring hard copies of campaign materials into the country or hire local print shops to reproduce materials there. As a result, the majority of Equatoguineans at home were wholly unaware, for example, of the specific details of the Biens Mal Aquis case against their vice president.

Civil society groups intending to use strategic litigation against kleptocrats should learn from the Biens Mal Acquis experience and plan for the long haul, devoting enough resources for media campaigns that last several years. In the case examined here, nearly a decade passed between the time French courts first ruled that TI France had standing to sue Vice President Obiang and his 2017 conviction, and the case is expected to be hung up in appeals for several more years. The legal process can be excruciatingly slow in the democratic settings where such strategic litigation is possible, and activists hoping to keep their cases in the spotlight must take this into account from the outset when developing a media strategy.

To maximize the reach of their messages, civil society actors must produce materials that are designed for and accessible to specific audiences in the source country, the host country, and the international community.

To maximize the reach of their messages, civil society actors must produce materials that are designed for and accessible to specific audiences in the source country, the host country, and the international community. Many of the campaigns meant to bring attention to the cases against Vice President Obiang were produced in French or English, while most Equatoguineans speak Spanish or local languages. Campaigns must also be produced using a variety of formats, including traditional long-form and shorter written pieces, videos, graphics, and other multimedia materials, to reach a range of audiences.

Equatorial Guinea is perhaps an extreme example, but kleptocratic countries are, by definition, poor and repressive, and getting information into these settings is challenging. Activists attempting to target local audiences must adopt innovative methods to be successful. In countries where weak infrastructure or deliberate restrictions make ordinary internet use difficult or risky, secure mobile communication applications such as WhatsApp and Signal can be employed to reach local audiences. It is up to the activists conducting these campaigns to determine which communication method is most safe and widely used in the countries where they are working.

Finally, activists creating media campaigns should anticipate the potential responses by kleptocratic rulers, and have persuasive counterarguments ready. In the African context, for example, attempts by outside forces to encourage transparency and accountability are often met with claims of racism and neocolonialism by kleptocratic regimes. Anticorruption campaigns, they argue, are a Western construct designed to keep African leaders down. In response to the litigation in France, the government of Equatorial Guinea has organized mass protests in front of the French embassy in Malabo, where civil servants who were compelled to attend the demonstrations carried signs calling France “neocolonialist” and claiming that it intended to keep black Africans enslaved. In 2012, moreover, the government of Equatorial Guinea filed a defamation lawsuit in Paris against a number of NGOs, including EG Justice, that were engaged in highlighting the corruption and human rights violations taking place in the country. That case was eventually dismissed, but it caused the NGOs involved to spend valuable resources on developing their legal defense. A strong media strategy must prepare a response to these tactics that can persuade local audiences, who often do not have access to much outside information, of the importance of combating kleptocracy through reform and litigation.

ADVOCATING FOR LASTING REFORMS

Kleptocrats ply their trade by moving money from relatively lawless settings to countries where ill-gotten gains can be safely stowed and transformed into usable resources. For these reasons, strategic litigation will often unfold outside the country where the theft occurred, in jurisdictions where citizens are less directly affected by kleptocracy and where enacting crucial reforms to curb kleptocracy is not a top priority for lawmakers. Such reforms are, however, even less likely to happen in kleptocratic settings. Advocacy campaigns targeting lawmakers in the country where the case is being tried can be the best bet for meaningful reform.

Due to limited resources and a failure to prioritize advocacy, engagement with French lawmakers in connection with the Biens Mal Acquis case against Vice President Obiang was only earnestly considered and undertaken after the trial and conviction. Since then, TI France, in collaboration with the TI secretariat in Berlin, has organized workshops and advocacy meetings with French members of parliament to explore possibilities for adopting asset-forfeiture laws and procedures to allow the return of stolen assets to victim populations. EG Justice has collaborated with TI France on two crowdfunding campaigns; part of the proceeds is intended to support TI France in encouraging French lawmakers to advance such legislation.²⁷

While Vice President Obiang was convicted in late 2017, there are indications that he will not go down without a fight, and that a period of lengthy appeals awaits TI France.²⁸ In light of this prospect, there have been some missed opportunities for serious advocacy that might enlist regional bodies in the struggle. On January 22, 2018, at its Assembly of Heads of State, the African Union (AU) designated 2018 as the Year of Anti-Corruption in Africa. In a press release issued on the occasion of the launch, AU leaders recognized the corrosive impact of corruption on “promoting democratic governance, socio-economic transformation, peace and security, and the enjoyment of human rights in the AU Member States.” Yet very little in the way of concrete or verifiable results can be identified as having emanated from the AU effort. African civil society was an afterthought in the whole process, with no meaningful space to offer suggestions and drive change.



Vice President Obiang often flashes his wealth on his open Instagram feed.



Vice President Obiang was tried and convicted in the Palais de Justice.

The focus of the AU has shifted in 2019—even as corruption remains a severe problem across the continent—but nothing should prevent a broad coalition of African and international civil society organizations from continuing to push AU leaders to take the fight against kleptocracy seriously and advocate for reform, including effective legal remedies.

Meanwhile, advocacy for reform in the countries where strategic litigation is pursued must be tailored to persuade local audiences. While appealing to lawmakers' moral conscience by explaining kleptocracy's devastating effect on the source country's political, social, and economic well-being is useful and important, activists must also demonstrate its real and potential harms—corrosion of the rule of law and inflation of property prices, for instance—in the host country. Since the host countries tend to be democracies where elected officials are accountable to voters, a strong advocacy campaign coupled with a strong media campaign that raises public awareness of the negative impact of dirty money is well worth the required time, energy, and resources. A mobilized public will add to the pressure on lawmakers.

Activists must also be well versed in the laws and regulations that directly influence their case, and they must anticipate the possibility of a need for new laws as a result of the case. In the Biens Mal Acquis trial against Vice President Obiang, significant assets were seized in accordance with French law on organized crime and corruption.²⁹ Once a person is convicted, any asset used to commit the offense, or any asset that constitutes the object or the proceeds of crime, either directly or indirectly, may be confiscated by the court. But many countries struggle to determine what should happen to seized assets, as they are reluctant to return them to the states where the funds were originally stolen, for fear that they might again disappear. Although France is a signatory to the UN Convention against Corruption, which includes provisions on asset recovery and repatriation, current French law stipulates that confiscated assets from criminal convictions are absorbed by the French treasury.³⁰ Civil society activists must be prepared to push if necessary for legislation that could ensure a fair outcome for their case, as TI France did, in this example, through its efforts to secure a French law that would allow stolen wealth to be returned and benefit victim populations.

CONCLUSION: TO FIGHT TRANSNATIONAL KLEPTOCRACY, BUILD TRANSNATIONAL NETWORKS

Civil society groups that wish to fight kleptocracy ... must consider building creative and flexible networks with member organizations representing different regions and disciplines.

Transnational kleptocracy is one of the world's most entrenched problems. Its networks comprise the government elites who raid their country's resources with impunity, together with the lawyers, bankers, and accountants who facilitate the theft, and in many cases the international business actors who pay bribes to obtain sweetheart deals for commodities or other national wealth. These people often possess extraordinary power and influence. Civil society groups that wish to fight kleptocracy, through either strategic litigation or another approach, must consider building creative and flexible networks with organizations representing different regions and disciplines. NGOs working at the grassroots level with communities affected by poverty or other chronic ills are likely to have ready-made messages and vehicles to raise awareness about the role transnational corruption plays in fostering such problems, and how it affects members of a particular constituency. Domestic human rights and anticorruption NGOs are likely to have useful contacts with local researchers and investigative journalists, and might have already developed the research methodologies and legal analysis necessary to contextualize and understand the facts behind the embezzlement, extortion, bribery, fraud, money laundering, and other offenses that will have to be proven in foreign jurisdictions.

The multifaceted features of the successful Biens Mal Acquis case highlight the need for greater collaboration among a range of people and organizations. African activists based in Paris collaborated with the French NGOs Survie and CCFD–Terre Solidaire, both development organizations, to produce the report used by Sherpa—the legal group—to request further investigations by the office of the prosecutor. TI France and the TI secretariat in Berlin added important credibility and legal standing that helped propel the case forward. As mentioned earlier, the death of Congolese journalist Bruno Ossebi and the unrelenting harassment and death threats against Gabonese journalist and activist Grégory Ngbwa Mintsa dissuaded the lawyers and TI France from reaching out to involve activists or NGOs based in Equatorial Guinea. Nevertheless, once the trial date was announced, EG Justice worked with TI France to involve Equatoguinean lawyers and experts, compile additional supporting affidavits, and enlist the witnesses who testified against Vice President Obiang (who for his part failed to appear in court). The Open Society Justice Initiative and the Global Anticorruption Blog played the indispensable role of keeping the world informed about the case. In short, collaboration among domestic and international civil society actors and organizations is crucial to ensuring a consequential campaign against better-funded and unscrupulous kleptocrats.

When building such a network, civil society must set realistic expectations. These cases can take many years to reach the courtroom, and considerable resources are needed to cover legal expenses and to design and execute sustained media and advocacy campaigns. Funding must be provided to engage local investigative journalists who can uncover important evidence, retain competent and committed lawyers in the country where the assets were stolen and in the jurisdictions where the cases are pursued, and hire the services of expert witnesses for deposition or trial.

It took ten years before the Biens Mal Acquis case against Vice President Obiang—following a number of dismissals, refiling by the plaintiffs, procedural setbacks, and legal delays orchestrated by the defendant—went to trial. Defense lawyers have filed an appeal on behalf of their client since his conviction, and the case is expected to go on for several more years as it makes its way to the appellate courts and perhaps even the Supreme Court in Paris. One lead attorney and at least three additional attorneys have worked on the case at different times over the last ten years with a limited budget, despite being subjected to defamatory attacks and serious threats to their safety.

When properly conceived, strategic litigation can deliver important wins in the fight against government officials who decide to steal from national coffers and spend the proceeds abroad. The Biens Mal Acquis case demonstrates that collaboration among local and international civil society organizations in all aspects of the effort—media and awareness raising, investigation, advocacy, and the litigation itself—is critical to winning the struggle against kleptocracy.

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ABOUT THE AUTHOR

Tutu Alicante is the founder and executive director of EG Justice, an anti-corruption and human rights NGO focused on Equatorial Guinea. Alicante writes commentary and gives interviews in international publications; and through his work at EG Justice, he monitors and combats corruption and human rights abuses on behalf of concerned individuals and organizations who demand transparency and meaningful reform in Equatorial Guinea. During the Biens Mal Acquis trials, Alicante was called as a legal expert witness for the plaintiff. Additionally, he collaborated with Transparency International-France to raise awareness and resources in support of the case and facilitated the testimony of other Equatoguinean witnesses. Prior to founding EG Justice, Alicante worked as a legal consultant with international NGOs, promoting legal accountability and transparency in the extractive industry. He has also worked as an employment attorney with Southern Migrant Legal Services, where he represented migrant farm workers in the American South. Alicante holds a Masters in Law degree from Columbia Law School and a law degree from the University of Tennessee.

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