

To Lend or Not To Lend: Oil, Human Rights, and the World Bank's Internal Contradictions

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The Chad-Cameroon project reflects an unprecedented collaborative effort between the Bank Group, the consortium of private companies and the two governments. While some may still have doubts, I believe that the hard work of specialists from the Bank Group, the private companies and the two countries, combined with the strong participation of civil society within Chad and Cameroon and around the world, have made this a better, stronger project. The real challenge is about to begin. We intend to pursue it, with our partners, with the same openness and thoroughness we have brought to the process so far.

—James D. Wolfensohn,
President of the World Bank Group¹

I. INTRODUCTION

Oil exploitation and human rights have traditionally had an uneasy relationship. Human rights organizations and journalists have denounced oil companies for complicity in human rights violations throughout Africa, and this negative publicity has prompted some companies to look for ways to improve their image and ensure that their investments comply with mini-

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1. *World Bank Group Approves Support for Chad-Cameroon Petroleum Development and Pipeline Project*, No. 2000/395/AFR (World Bank Press Release), June 6, 2000, at <http://wbln0018.worldbank.org/news/pressrelease.nsf> (last visited Feb. 23, 2001).

mum human rights standards.² In this context, the World Bank has agreed to participate as a lender and moral guarantor in the Chad/Cameroon project,³ an oil drilling and pipeline construction project undertaken by an international consortium of Exxon, Petronas, and Chevron.⁴

Why is the Chad/Cameroon project considered a turning point in the Bank's relationship to human rights and to private sector-led development? This project is not the first pipeline investment the Bank has helped to finance.⁵ In this case, however, private investors, under growing media, consumer, and NGO pressure, have declared themselves ready to abide by a certain set of standards. The involvement of an international financial institution reduces the companies' political risks and facilitates their access to credit.⁶ Exxon announced publicly that it would not move forward without World Bank participation.⁷ From the Bank's point of view, the pipeline achieves its goal of attracting private capital for large-scale energy projects.⁸

In the Chad/Cameroon context, the Bank will be a lender, development promoter, and risk mitigator. Although the Bank's financial participation in the investment only amounts to six percent of the project's total cost,⁹ the Bank's involvement may set a benchmark for future corporate behavior. Due to the commitment of World Bank funds, the investment must comply with the Bank's policies concerning compensation, resettlement, indigenous peoples, and the environment.¹⁰ If the policies are genuinely respected, the project could mark an important beginning for the establishment of human rights standards for multinational corporations.

The Bank regards its role as pivotal in ensuring that oil proceeds improve the well-being of all Chadians.¹¹ The Bank sees the pipeline project as "a

2. Shell, for example, has explicitly adopted a human rights policy and used it as a public relations device. See Royal Dutch/Shell Group of Companies, *Issues and Dilemmas, Human Rights*, at <http://www.shell.com/royal-en> (last visited Dec. 2, 2000).

3. See *World Bank Group Approves Support*, *supra* note 1. The World Bank will provide loans to Chad (\$39.5 million) and Cameroon (\$53.4 million) to finance their respective investments in the pipeline.

4. The consortium was initially formed by Exxon Mobil Corporation (the project operator, with a 40% stake), Shell (with a 20% stake), and Elf (with a 20% stake). In fall 1999, Shell and Elf pulled out of the project, allegedly for economic reasons. The consortium is now made up of Exxon with a 40% stake, Petronas (Petroleum Nasional Berhad) with a 35% stake, and Chevron Corporation with a 25% stake. See *Chad-Cameroon Pipeline on Track*, 3 HART'S AFRICA OIL & GAS 8 (Apr. 2000).

5. WORLD BANK, CHAD-CAMEROON: PETROLEUM DEVELOPMENT AND PIPELINE PROJECT, PROJECT APPRAISAL DOCUMENT (Apr. 20, 2000), at 20, 19343-AFR (on file with author) [hereinafter PROJECT APPRAISAL DOCUMENT].

6. *Id.* at 22-23.

7. *The Chad/Cameroon Pipeline Project Summary of Concerns* (Center for International Environmental Law, Washington, D.C., Environmental Defense Fund, Washington, D.C., and Association Tchadienne pour la Promotion et la Défense des Droits de l'Homme, N'djaména, Chad), 2000, at 1 (on file with author). See also PROJECT APPRAISAL DOCUMENT, *supra* note 5, at 22.

8. PROJECT APPRAISAL DOCUMENT, *supra* note 5, at 20.

9. *Id.* at 37.

10. WORLD BANK, THE WORLD BANK OPERATIONAL MANUAL, OPERATIONAL POLICIES, at 4.01 (Jan. 1999) (Environmental Assessment); 4.04 (Sept. 1995) (Natural Habitats); 4.11 (Aug. 1999) (Cultural Property); and 4.36 (Sept. 1993) (Forestry).

11. World Bank, *The Chad-Cameroon Petroleum Development and Pipeline Project: Question and Answers*,

unique opportunity for Chad to lift itself out of its extreme poverty.¹² With a per capita gross national product (GNP) of only \$250, Chad is one of the poorest countries in the world.¹³ According to the sponsors, the revenues from the pipeline will fund much-needed health, education, rural development, and infrastructure programs.

The safeguards prescribed by the Bank for the pipeline reflect the strides the Bank has taken in its commitment to responsible investment in the Chad/Cameroon context. The safeguards adopted to ensure state accountability are distinctive because they establish a high degree of transparency vis-à-vis the international community. Under pressure from the World Bank, the government of Chad has adopted revenue management measures, described by the Bank as the first of their kind.¹⁴

Yet, the Bank only took steps to address human rights concerns after a massive civil society campaign against the pipeline project. A diverse coalition of local and international environmental organizations, human rights NGOs, churches, universities, and public celebrities steadily denounced the appalling human rights conditions in Chad and forced the Bank to respond.¹⁵ Well-known figures such as Archbishop Desmond Tutu and Ethel Kennedy endorsed the campaign,¹⁶ and the controversy even reached the U.S. Congress and the European Parliament.¹⁷ Project opponents argued that taxpayers' money would be used to finance a new Ogoniland, the internationally known oil development disaster in Nigeria.¹⁸ Critics unsuccessful

Why is the Bank Group Involved?, at <http://www.worldbank.org/aftr/ccproj/faq.htm> (modified Nov. 21, 2000) (on file with author) [hereinafter World Bank, *Questions and Answers*].

12. *Id.*

13. *Id.*

14. Loi de Gestion des Revenus Pétroliers [Oil Revenue Management Law], No. 001/PR/99 (Chad), translated in PROJECT APPRAISAL DOCUMENT, *supra* note 5, at 101 (on file with author) [hereinafter Oil Revenue Management Law].

15. For example, the Bank has recognized its role in mediating the release of Ngarléjy Yorongar, an opposition parliamentarian in Chad. See Letter from Peter Rosenblum, Associate Director, Harvard Law School Human Rights Program, to Shengman Zhan, Managing Director, The World Bank, at <http://www.bicusa.org/aftr/Harvard%20comments.pdf> (last visited Dec. 2, 2000).

16. Letter from Lavinia Brown, Assistant to Archbishop Desmond Tutu, Truth and Reconciliation Commission, to Kenneth Walsh, Environmental Defense Fund (July 8, 1998) (on file with author).

17. *Resolution on Chad*, 1998 O.J. (C 210) 210-11. The resolution expressed its concern for the prosecution of the opposition parliamentarian, Ngarléjy Yorongar, and for the political instability and human rights violations in the region. The resolution called on the consortium to proceed with the project only if the World Bank assessment was positive and if environmental, social, human rights, and revenue management guarantees were implemented.

18. Korinna Horta, *Questions Concerning the World Bank and Chad/Cameroon Oil and Pipeline Project: Makings of a New Ogoniland? Corporate Welfare Disguised as Aid to the Poor?* (Environmental Defense Fund, Washington, D.C.), 1997 (on file with author). The term Ogoniland refers to the oil-producing community in the delta of Nigeria. Although the Ogonis are not the only ethnic group living in the delta, they have become a symbol of human rights violations and environmental depletion caused by oil exploitation by Western multinationals. For a study of the Ogoniland struggle in the delta of Nigeria, see Amos Adeoye Idowu, *Human Rights, Environmental Degradation and Oil Multinational Companies in Nigeria: The Ogoniland Episode*, 17 NETHERLANDS Q. HUM. RTS. 161 (1999).

fully advocated a moratorium to allow Chad to address environmental, good governance, and human rights concerns.¹⁹

The Chad/Cameroon project forced the Bank to consider human rights questions, despite previous refusal on the grounds that such issues were outside its mandate. As the second Part of this Article will explore, the Bank has permitted itself a liberal interpretation of its mandate to justify its intervention in political affairs when such action has advanced its pro-market agenda. In contrast, the Bank has taken a very restrictive approach to addressing human rights issues that it considers "political," i.e., civil and political rights. The Bank's biased interpretation of its mandate is untenable. It is critical that the Bank consider the full range of human rights in planning its investments to ensure that Bank projects do not worsen the situation of their purported beneficiaries.

If the Bank seeks to promote responsible investment, it needs to adopt a more coherent policy toward the political circumstances of borrowing countries before investing.²⁰ In the Chad/Cameroon oil context, the Bank must do more to ensure that private investment is fairly carried out, rather than simply presenting the existing safeguards as models of good management.²¹

The protection of human rights in Chad and Cameroon is essential for the success of this investment. Chad has suffered from ethnic and religious strife since independence, and although the country is nominally a democracy, it is

19. Open Letter to Mr. James D. Wolfensohn, President of the World Bank from 86 NGOs in 28 Countries Concerning the Chad/Cameroon Oil & Pipeline (July 9, 1998) (on file with author). The letter called for the suspension of World Bank support until full respect for human rights and compliance with World Bank policies could be fully guaranteed. See also ENVIRONMENTAL DEFENSE FUND, ASSOCIATION TCHADIENNE POUR LA PROMOTION ET LA DÉFENSE DES DROITS DE L'HOMME, CENTRE POUR L'ENVIRONNEMENT ET LE DEVELOPPEMENT, THE CHAD/CAMEROON OIL AND PIPELINE PROJECT: PUTTING PEOPLE AND THE ENVIRONMENT AT RISK III (1999) [hereinafter THE CHAD/CAMEROON OIL AND PIPELINE PROJECT: PUTTING PEOPLE AND THE ENVIRONMENT AT RISK].

20. For more information on human rights abuses and oil exploitation, see HUMAN RIGHTS WATCH, THE PRICE OF OIL (1999) (discussing Shell's support for the Nigerian government's human rights abuses during the oil exploitation process). See also Olivier Vallée, *Elf, Trente Ans d'Ingérence*, 51 MANIÈRE DE VOIR (LE MONDE DIPLOMATIQUE) 72, 72-73 (2000) (accusing Elf of intervening in African politics in order to further its business). Amnesty International has released a similar report on the oilfields built in southern Sudan. See AMNESTY INTERNATIONAL, SUDAN: THE HUMAN PRICE OF OIL AFR/54/01/00 (2000). In Sudan, a consortium made up of Talisman (a Canadian company), Petrochina (the Chinese state-owned company), and Petronas (the same Malaysian company involved in the Chad project) have developed oil fields without guarantees to the population, and the oil profits have fueled governmental repression in the South. See *Canada Opts Not to Sanction Talisman Operations in Sudan*, OIL & GAS J., Feb. 21, 2000, at 22. Public pressure has not managed to stop the investment, although a disinvestment campaign caused the plummeting of Talisman's shares. Jane Lampman, *Battle Against Oppression Abroad Turns to Wall Street Religious and Human-Rights Activists Target Stocks and Capital Markets to Stop a War of 'Genocide' in Sudan*, CHRISTIAN SCI. MONITOR, Mar. 3, 2000, at 1.

21. See World Bank, *Questions and Answers*, *supra* note 11. In an effort to move the project forward, the Bank has even insinuated that project opponents jeopardize Chadian development, using the desperate situation of the sub-Saharan children as an argument for speeding up the project. The Bank contends that each year, 60,000 children die before the age of five. Although the Bank acknowledges that "the project by itself will not eliminate early childhood deaths," the Bank asserts that revenues from the pipeline, coupled with basic health and education programs, will save a "large number of these young lives in the future." *Id.*

uncertain whether current governmental structures can ensure fair and transparent management of oil revenue. Years of Bank involvement in the country have failed to curb mismanagement.²²

This Article will use the Chad/Cameroon project to illustrate why the World Bank should adopt a realistic and pro-active approach to human rights problems. Part II will examine the evolving interpretation of the Bank's mandate and the historical inconsistencies in its policy toward human rights issues. This examination will show that there are no theoretical obstacles preventing the Bank from interpreting its mandate liberally to include human rights considerations. Part III will draw on the development of the Chad/Cameroon pipeline controversy in order to highlight the importance of human rights considerations for the project's success. Part IV will argue in favor of the adoption of a more open and consistent human rights policy as an essential condition to improving the credibility of the Bank's operations. This reformulation is essential if the Bank aims to serve as the guardian of fairness in private investment and to improve the economic well-being of countries like Chad.

II. HUMAN RIGHTS AND THE WORLD BANK'S MANDATE

A. *Human Rights Considerations in the Bank's Early History*

In the early years of the Cold War, the Bank focused on consolidating its credibility as a multilateral financial institution and, therefore, maintained a strict separation between economics and politics.²³ One rationale for prohibiting Bank involvement in political affairs was to facilitate Soviet acquiescence to the Bretton Woods institutions.²⁴ The Bank's concern was summed up by Lord Maynard Keynes, who stated, "if these institutions are to win the confidence of a suspicious world, it must not only be, but appear

22. ASSOCIATION POUR LA PROMOTION DES LIBERTÉS FONDAMENTALES AU TCHAD, RÉFLEXION SUR LE DOSSIER PÉTROLE TCHADIEN [REFLECTIONS ON THE CHADIAN OIL] 10 (Dec. 1998/Jan. 1999) (on file with author).

23. See David Gillies, *Human Rights, Democracy and Good Governance: Stretching the World Bank's Policy Frontiers*, in *THE WORLD BANK: LENDING ON A GLOBAL SCALE*, 3 RETHINKING BREITON WOODS 119 (Jo Marie Griesgraber & Bernhard G. Gunter eds., 1996).

24. Henry J. Bittermann, *Negotiation of the Articles of Agreement of the International Bank for Reconstruction and Development*, 5 INT'L. LAW. 59, 79 (1971). Other possible reasons have also been cited for the political prohibitions in the Articles of Agreement. One author argues that the political prohibition originated with John Maynard Keynes and the British delegation, in part, as a result of Britain's concern for postwar economic sovereignty. The United States, the dominant party in the negotiations, may have agreed to this provision in the Articles of Agreement for the International Bank for Reconstruction and Development (IBRD) in order to placate the British, since it had advocated against a similar prohibition in the founding provisions of the International Monetary Fund (IMF). See John D. Ciorciari, *The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretative Analysis of the IBRD and IDA Articles of Agreement*, 33 CORNELL INT'L L.J. 331, 365, 366 (2000).

that their approach to every problem is absolutely objective and ecumenical, without any prejudices or favor."²⁵

The World Bank was established as a specialized agency within the United Nations system²⁶ and was required to function independently.²⁷ The Bank and the United Nations agreed that they would not "present any formal recommendations to the other without reasonable prior consultation with regard thereto."²⁸ The United Nations further recognized that it would "refrain from making recommendations . . . with respect to particular loans or with respect to terms or conditions of financing by the Bank."²⁹

The Bank reasserted its independence from the U.N. General Assembly in the 1960s when it ignored several U.N. resolutions calling on international financial institutions to refrain from granting assistance to certain countries on human rights grounds.³⁰ The World Bank disregarded the General Assembly recommendations for a short period,³¹ but eventually stopped lending to rogue countries—although the Bank turned to economic, not political, reasons to explain its policy change.³²

25. Gillies, *supra* note 23, at 120 (referring to Lord Maynard Keynes's speech before the Inaugural Meeting of the Board of Governors of the International Monetary Fund and the World Bank in 1946).

26. EDWARD S. MASON & ROBERT E. ASHER, *THE WORLD BANK SINCE BRETTON WOODS* 57–59, 559 (1973).

27. Agreement Between the United Nations and the International Bank for Reconstruction and Development, Nov. 15, 1947, art. I(2), 16 U.N.T.S. 346. See also Agreement Between the United Nations and the International Development Association, Mar. 27, 1961, 394 U.N.T.S. 222 (relating to the International Development Association (IDA)); Agreement Between the United Nations and the International Bank for Reconstruction and Development (Acting for and on Behalf of the International Finance Corporation) on Relationship Between the United Nations and the International Finance Corporation, Feb. 20, 1957, 265 U.N.T.S. 314 (relating to the International Finance Corporation (IFC)). The Bank, however, is obliged to have "due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter." Agreement Between the United Nations and the International Bank for Reconstruction and Development, *supra*, art. VI(1), 16 U.N.T.S. at 350.

28. Agreement Between the United Nations and the International Bank for Reconstruction and Development, *supra* note 27, art. IV(2), 16 U.N.T.S. at 348.

29. *Id.* art. IV(3), at 348.

30. The international community condemned the South African government for its apartheid policies, and Portugal was censored during the 1960s for its refusal to implement the Declaration on the Granting of Independence to Colonial Countries and Peoples and its repressive policies in Angola and Mozambique. See 13 *Whiteman DIGEST* § 15, at 721–33. See also *The Policies of Apartheid of the Government of the Republic of South Africa*, U.N. GAOR, 20th Sess., Supp. No. 14, ¶ 10(a), at 16, U.N. DOC. A/6014 (1965); *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, *id.* ¶ 11, at 16; *Question of Territories Under Portuguese Administration*, *id.* ¶ 9, at 62. (The General Assembly renewed these requests in 1967 and specifically directed them at the World Bank.). See *Question of Territories Under Portuguese Administration*, U.N. GAOR, 22nd Sess., Supp. No. 16, ¶ 13, at 47, U.N. DOC. A/6716 (1967); *The Policies of Apartheid of the Government of the Republic of South Africa*, *id.* ¶ 7, at 19. For a comment on the South Africa and Portugal controversies, see Ibrahim F.I. Shihata, *The World Bank and Human Rights: An Analysis of the Legal Issues and the Record of Achievements*, 17 *DEN. J. INT'L & POL'Y* 39, 41–44 (1988) and THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, *THE WORLD BANK: GOVERNANCE AND HUMAN RIGHTS* 80–81 (1995).

31. *Memorandum of the Legal Department of the IBRD*, 22 U.N. GAOR Annex II at 9, U.N. Doc. A/6825 (1967), reprinted in 13 *Whiteman DIGEST* § 15, at 728. (The Legal Department argued that, according to the terms of the IBRD's Relationship Agreement with the U.N., it was under no legal obligation to implement General Assembly resolutions.).

32. See Shihata, *The World Bank and Human Rights*, *supra* note 30, at 44–45. See also Ibrahim F.I. Shi-

In order to underscore the Bank's "objective" role in the international lending process, the World Bank's Articles of Agreement include rules prohibiting the Bank's involvement in politics. The Articles prevent the Bank from making loans for reasons based on considerations other than economic criteria,³³ from interfering in the political character of borrowing states,³⁴ and from receiving instructions from any external authority.³⁵

The Bank developed policy arguments to supplement its legal provisions in order to justify its disregard for the political situation in borrowing countries. The Bank frequently invoked the argument that the withdrawal of loans to dictators would create more suffering for the people of the country. The Bank also contended that extending its mandate to include human rights would render its work ineffective.³⁶

The Bank sought to defend itself against criticism by emphasizing its contribution to economic and social rights. Although the Bank maintained that civil and political rights were outside of its mandate, the Bank asserted that economic and social rights were non-political development issues in which broad intervention, i.e., investment in projects furthering economic and social development, was justified.³⁷

As a result, the Bank placed significant emphasis on furthering rights enshrined in the International Covenant on Economic, Social and Cultural Rights.³⁸ The Bank began to introduce poverty alleviation programs in the early 1970s, when it became evident that economic growth was not improving the condition of the poor.³⁹ In addition, over the last twenty years, the Bank has stressed the importance of women's rights.⁴⁰ Since the early

hata, *The World Bank and Human Rights*, 1 THE WORLD BANK IN A CHANGING WORLD 97, 106 (1991).

33. Articles of Agreement of the International Bank for Reconstruction and Development, art. III, sec. 5(b) (as amended Feb. 16, 1989) [hereinafter Articles of Agreement].

34. *Id.* art. IV, sec. 10.

35. *Id.* art. V, sec. 5(c).

36. See Shihata, *The World Bank and Human Rights*, *supra* note 30, at 47. (Shihata argues that stretching institutions to pursue human rights goals would be to the detriment of the functions the institutions have been assigned. The author draws on Professor W. Michael Reisman's idea that there is a limit to "institutional elasticity.") See W. Michael Reisman, *Through or Despite Governments: Differentiated Responsibilities in Human Rights Programs*, 72 IOWA L. REV. 391, 395 (1987). See also Ibrahim F.I. Shihata, *Human Rights, Development and International Financial Institutions*, 8 AM. U. J. INT'L L. & POL'Y 27, 35 (1992).

37. See Shihata, *The World Bank and Human Rights*, *supra* note 30, at 109.

38. *Id.* at 116-17. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3.

39. Shihata, *The World Bank and Human Rights*, *supra* note 30, at 111-12.

40. The number of staff handling the role of women in development has expanded markedly since 1977, when only one advisor worked on this issue. In 1987, the Bank established the Women in Development division (WID), and in 1990, it created regional WID coordinator positions. In 1994, the Bank institutionalized a specific operational policy to identify the barriers to the full integration of women into the economy and to encourage legal and policy reforms to remove them. See THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, *supra* note 30, at 80-81. See also OPERATIONAL POLICIES, *supra* note 10, at 4.20 (amended Oct. 1999) (The Gender Dimension of Development). But see Anne Orford, *Contesting Globalization: A Feminist Perspective on the Future of Human Rights*, 8 TRANSNAT'L L. & CONTEMP. PROBS. 172 (1998) (for a feminist critique of international financial institutions arguing that women have suffered significantly due to the World Bank's economic development policies).

1980s, the Bank has also elaborated guidelines to ensure that displaced populations and indigenous peoples benefit from Bank projects and to mitigate the potentially adverse effects of development plans on these groups.⁴¹

B. Good Governance and the Blurring of the Political/Economic Distinction

In the 1990s, the separation between economics and politics began to dissolve as the Bank realized that the success of its projects was tied to stable government institutions in borrowing countries. This realization prompted the Bank to adopt the notion of "good governance" to support intervention in political affairs. In an attempt to overcome the legal constraints imposed by the Articles of Agreement, the Bank justified its intrusion into the political sphere as a means to create more market-friendly institutions.

The Bank drew attention to the importance of stable and pluralistic institutions for development in its 1989 publication *Sub-Saharan Africa: From Crisis to Sustainable Growth*. In this report, the Bank recognized that "[u]nderlying the litany of Africa's development problems is a crisis of governance."⁴² The report established a clear correlation between the absence of an effective opposition and bad governance.⁴³ According to the report, good leadership required "a systematic effort to build a pluralistic institutional structure, a determination to respect the rule of law, and a vigorous protection of the freedom of the press and human rights."⁴⁴ The report praised decentralization efforts⁴⁵ and stressed the need for a free press, an institution "all too rare in Africa."⁴⁶

As concerns were raised regarding this new, more expansive approach to development, the Bank redefined its conception of good governance-related activities. Following the publication of the 1989 *Sub-Saharan Africa* report, the Bank's Board of Executive Directors requested clarification of the notion of governance.⁴⁷ In response, Ibrahim Shihata, the Bank's former Vice President and Legal Counsel, issued a Legal Opinion in 1991, reaffirming that "the Bank should not allow political factors, no matter how appealing they seem to be, to influence its decisions unless . . . it is established that they

41. WORLD BANK, THE WORLD BANK OPERATIONAL MANUAL, OPERATIONAL DIRECTIVES, at 4.30 (June 1990) (Involuntary Resettlement) and 4.20 (Sept. 1991) (Indigenous Peoples). In the area of indigenous peoples, critics have attacked the Bank's failure to implement the standards, but the standards themselves have not been criticized. See THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, *supra* note 30, at 84, 92.

42. WORLD BANK, SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH: A LONG-TERM PERSPECTIVE STUDY 60 (1989) [hereinafter FROM CRISIS TO SUSTAINABLE GROWTH].

43. *Id.* at 61.

44. *Id.*

45. *Id.* at 59. The report praised the decentralization efforts undertaken by Francophone West African states, Nigeria and Tanzania, as a move in "the right direction."

46. *Id.* at 61. The report further acknowledged that Botswana and Mauritius, the two countries with the best economic performance in Africa, were those with parliamentary democracies and a free press.

47. MICHELLE MILLER-ADAMS, THE WORLD BANK: NEW AGENDAS IN A CHANGING WORLD 73, 112 (1999).

have direct and obvious economic effects relevant to the World Bank."⁴⁸ Shihata also noted, however, that activities relating to governmental stability and predictability and the rule of law were consistent with the Bank's mandate. Shihata's 1991 Legal Opinion appears to have been crucial in crafting the Bank's more restrictive approach to governance.

In a subsequent analysis in 1992, the Bank limited the definition of governance to "the manner in which power is exercised in the management of a country's economic and social resources for development."⁴⁹ The Bank thus again retreated from the 1989 definition, which had described good governance as "the exercise of political power to manage a nation's affairs."⁵⁰

The 1994 Bank report *Governance: The World Bank's Experience*⁵¹ further revealed the artificiality of the Bank's distinction between political and management practices. The report identified three aspects of governance: first, the "form of a political regime," which the Bank considered to be outside of its mandate;⁵² second, the "process by which authority is exercised in the management of a country's economic and social resources for development," which the Bank considered to be within its mandate; and third, "the capacity of governments to design, formulate, and implement policies and discharge functions," also considered within the Bank's mandate.⁵³

The 1994 publication also expressly referred to the need for a free press in order to ensure the accountability of public officials and to fight corruption.⁵⁴ The mere definition of accountability, "holding governments responsible for their actions,"⁵⁵ implied the need for a genuine monitoring process. Thus, the Bank's own formulation of governance supported the development of a system in which citizens' rights would ultimately be protected. The Bank has, however, applied these notions to benefit the rights of investors, rather than citizens.

At the request of the Bank's executive directors, who were concerned with increasing NGO pressure to adopt an explicit human rights agenda, Shihata issued a memorandum in 1995, stating again that the Bank did not have a role in general political reform efforts.⁵⁶ Yet, because local participation had

48. Shihata, *Human Rights, Development and International Financial Institutions*, *supra* note 36, at 32–33 (referring to the Legal Memorandum of the Vice President and General Counsel of IBRD, Issues of "Governance" in Borrowing Members—The Extent of Their Relevance Under the Bank's Articles of Agreement). The Bank's Legal Counsel was extremely careful to affirm that by taking into account those cases of political instability and civil strife that affect a country's credit worthiness, it was scrupulously following its mandate.

49. WORLD BANK, *GOVERNANCE AND DEVELOPMENT* 1 (1992).

50. FROM CRISIS TO SUSTAINABLE GROWTH, *supra* note 42, at 60.

51. WORLD BANK, *GOVERNANCE: THE WORLD BANK'S EXPERIENCE* (1994).

52. *Id.* at xiv.

53. *Id.*

54. *Id.* at 30.

55. *Id.* at 12.

56. See Miller-Adams, *supra* note 47, at 129–30 (summarizing Ibrahim F.I. Shihata, Prohibition of Political Activities in the Bank's Work, Legal Opinion by the Senior Vice President and General Counsel, IBRD, July 12, 1995).

proved beneficial for the Bank's projects, the memorandum concluded that the Bank could promote freedom of expression and assembly and encourage citizen participation, provided that these efforts were limited to the advancement of a Bank project.⁵⁷

The 1995 memorandum left a number of essential questions unanswered. What degree of citizen participation lies within the Bank's mandate? May the Bank exert pressure for a general opening of civil and political rights in larger projects? How much general freedom is necessary to implement the legal reforms required by market-driven economic development projects?

In 1998, the 50th anniversary of the Universal Declaration on Human Rights (UDHR), the Bank again revealed its internal tension about how to address human rights issues. In its report that year, *Development and Human Rights: The Role of the World Bank*, the Bank affirmed that "while the Bank has always taken measures to ensure that human rights are fully respected in connection with the projects it supports, it has been less forthcoming about articulating its role in promoting human rights within the countries in which it operates."⁵⁸ The Bank also endorsed the official United Nations discourse, expressed in the 1993 Vienna Conference on Human Rights, regarding the interdependency and indivisibility of human rights⁵⁹ and the idea of an open society.⁶⁰

The Bank, however, diluted these pro-human rights assertions with defensive caveats. The Bank reiterated in the 1998 report that the "economics-only" requirement had allowed it to implement social projects without wasting scarce funds on politically motivated, short-term considerations.⁶¹ The Bank also advanced its traditional line of defense: "The Bank's economic and social approach to development advances a comprehensive, interconnected vision of human rights that is too often overlooked."⁶² The report stated that, even if the world accepted that sustainable development was impossible without protecting human rights, "[w]hat has been missing is the recognition that the advancement of an interconnected set of human rights is impossible *without development*."⁶³

In the Chad/Cameroon context, the Bank used precisely this argument to justify prompt investment in the project and to counter requests from envi-

57. *Id.*

58. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (IBRD), *DEVELOPMENT AND HUMAN RIGHTS: THE ROLE OF THE WORLD BANK 2* (1998), available at <http://www.worldbank.org/html/extdt/rights/hrtext.pdf> (last visited Feb. 23, 2001).

59. See *id.* at 3 (referring to sec. I, para. 5 of the Vienna Declaration, adopted at Second World Conference on Human Rights (Vienna, June 1993), reprinted in HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS AND MORALS* 549 (2000) [hereinafter *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS AND MORALS*]). According to sec. I, para. 5, "[a]ll human rights are universal, indivisible, interdependent and interrelated."

60. See, e.g., *Access to Voice and Knowledge*, in *DEVELOPMENT AND HUMAN RIGHTS: THE ROLE OF THE WORLD BANK*, *supra* note 58, at 16-17; *Participation and Partnership*, *id.* at 26-29.

61. *DEVELOPMENT AND HUMAN RIGHTS: THE ROLE OF THE WORLD BANK*, *supra* note 58, at 4.

62. *Id.* at 3.

63. *Id.* at 2 (emphasis added).

ronmental and human rights groups for additional human rights guarantees. Assuming that project implementation would necessarily improve the plight of the poor, the Bank contended that any delay in implementation would deny benefits to those who needed them most.⁶⁴ The Bank used this argument to portray critics demanding human rights guarantees as hostile to citizens' best interests.

Strong criticism of its policies in recent years has forced the Bank to search for approaches to development that directly address political realities in the developing world. As part of this effort, President Wolfensohn launched the Comprehensive Development Framework in 1999.⁶⁵ Wolfensohn's idea marked a "holistic approach" to development and sought to redress the mistakes that resulted from the Bank's excessive attention to numeric data and neglect of human considerations.⁶⁶

The World Development Report 1999/2000 revealed a growing awareness of the need for a more expansive conception of development.⁶⁷ Despite its avowedly apolitical approach to development, the Bank devoted an entire chapter of its *World Development Report 1999/2000* to the issue of government decentralization.⁶⁸ Decentralization assumes that government works better if the locus of power is closer to the citizen. Bank initiatives like decentralization⁶⁹ and reform of central government institutions⁷⁰ illustrate the difficulty of establishing the limits of political affairs.

The Bank has recognized that greater participation in public life is a precondition for sustainable development⁷¹ and acknowledged that "authoritarian regimes . . . except in rare cases have not succeeded in creating efficient, technocratic bureaucracies or in single-mindedly pursuing development."⁷² Still, the notion that the Bank should play a more active role in supporting human rights and in the fight against repression has remained taboo.

C. *The World Bank's Selective Interpretation of Its Mandate*

When it has served the Bank's interests, certain Bank initiatives have gone far beyond the realm of economics to affect directly the regulation of

64. See World Bank, *Why is the Bank Group Involved? The Chad-Cameroon Petroleum Development and Pipeline Project (Questions and Answers)*, *supra* note 11.

65. James Wolfensohn & Amartya Sen, *Development: A Coin of Two Sides*, INT'L HERALD TRIB., May 5, 1999.

66. See World Bank Group, *Comprehensive Development Framework Questions and Answers*, at <http://www.worldbank.org/cdf/cdf-faq.htm> (last visited Dec. 2, 2000).

67. WORLD BANK, ENTERING THE 21ST CENTURY: WORLD DEVELOPMENT REPORT 1999/2000 (2000).

68. *Id.* at 107-24.

69. GOVERNANCE: THE WORLD BANK'S EXPERIENCE, *supra* note 51, at 13.

70. *Id.* at 17.

71. WORLD BANK, ENTERING THE 21ST CENTURY: WORLD DEVELOPMENT REPORT 1999/2000, *supra* note 67, at 2.

72. *Id.*

civil and political rights and institutions. Although the Bank has read its mandate narrowly when addressing issues of governance and human rights, the Bank has ignored the limitations of its Articles of Agreement and its policy against nonintervention in political affairs when prescribing neo-liberal economic policies for developing countries.

The Bank has justified wide interventions in countries through the use of loan conditionalities,⁷³ which function as a law-making tool that permits the Bank to intervene in genuinely political affairs. Conditions vary according to the type of loan, the purpose for which the loan is granted, and the economic and political position of the country.⁷⁴ Project loans involve "dictating sectoral policy, reshaping government priorities and funding government programs which the Bank has determined are relevant to the stated development objective."⁷⁵ This reinterpretation of the Bank's mandate has resulted in the assumption of powers never contemplated at Bretton Woods.⁷⁶ Loan conditions imposed on sub-Saharan Africa "would be unthinkable in the case of countries with stronger economies but with some temporary difficulties and would most certainly not be tolerated by developed countries."⁷⁷

Structural adjustment loans, which were originally conceived as short-term responses to discrete shocks, require even greater intervention than project loans.⁷⁸ As far as structural adjustment policies are concerned, the Bank has stretched the definition of "economic considerations" in an ad hoc manner in order to expand its development mandate.⁷⁹ Structural adjustment loans have evolved into "a bunch of policies, applicable anywhere anytime without any reference to any shock."⁸⁰ In some cases, the International Monetary Fund (IMF) and the Bank even analyze government budgets "line-by-line, to implement the cut in the government expenditure."⁸¹ Two dec-

73. See Walden Bello, *Global Economic Counterrevolution: How Northern Economic Warfare Devastates the South*, in 50 YEARS IS ENOUGH: THE CASE AGAINST THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND 14, 16 (1994).

74. BIPLAB DASGUPTA, *STRUCTURAL ADJUSTMENT, GLOBAL TRADE AND THE NEW POLITICAL ECONOMY OF DEVELOPMENT* 87 (1998).

75. Jonathan Cahn, *Challenging the New Imperial Authority: The World Bank and the Democratization of Development*, 6 HARV. HUM. RTS. J. 159, 169 (1993) (analyzing how the conditions imposed on a project loan in the energy sector, the most frequent type of project at the Bank, may reshape the whole sectoral policy).

76. *Id.* at 184.

77. DASGUPTA, *supra* note 74, at 87 (referring to Tony Killick, *Issues in the Design of IMF Programmes* 109, ODI Working Paper No. 71, 1993).

78. See DASGUPTA, *supra* note 74, at 19-65 for an analysis of the theoretical basis for structural adjustment programs. These programs were first developed to reduce the high deficits incurred by developing countries during the 1970s oil crisis. The measures aimed to reduce government spending and thereby increase countries' capacity to repay foreign debt and to open national economies to foreign investment.

79. Daniel D. Bradlow & Claudio Grossman, *Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF*, 17 HUM. RTS. Q. 411, 431 (1995).

80. DASGUPTA, *supra* note 74, at 67.

81. *Id.* at 77. The most common requirements of structural adjustment loan packages include: the removal of export incentives, improved financial performance of public enterprises, revised agricultural pricing, budget and tax reform, and modified public investment priorities. John Toye, *Structural Adjust-*

ades of structural adjustment have proven that the World Bank is not afraid to use its leverage for a wide range of issues that have a deep, and often negative, impact on human rights.⁸²

Particularly during the Cold War, lending decisions paralleled anti-Communist political sympathies. The Bank cut off lending when Salvador Allende held power in Chile and reassumed lending to Chile under Augusto Pinochet. The Bank's attitude was also hostile to Kwame Nkrumah's Ghana and changed when his government was replaced by a new regime supported by the United States.⁸³

The Bank's approach to political affairs has been far from coherent. For example, in the last decade, eliminating corruption has become one of the main objectives of the good governance agenda.⁸⁴ Yet, in 1990, when Peter Eigen, the Bank's representative in Kenya, proposed that the Bank, together with governments and transnational corporations, work on an anti-corruption code of conduct, he received a negative response from Bank officials on the grounds that corruption was a political affair, outside the Bank's mandate.⁸⁵

In contrast, the Bank directly intervened in political affairs when, in May 1997, it distributed the *Handbook on Good Practices for Laws Relating to Non-Governmental Organizations*.⁸⁶ According to the Bank, the Handbook encouraged governments to facilitate NGO growth and development. Critics contended, however, that the Handbook recommended a regulatory regime that impinged upon the right of association enshrined in Article 22 of the International Covenant on Civil and Political Rights and that allowed governments to shut down disruptive NGOs.⁸⁷

The Bank's ad hoc policy toward intervention in governance issues has undermined the Bank's development agenda. In order to promote sustainable development, the Bank needs to acknowledge that its activities affect

ment: Context, Assumptions, Origin and Diversity, in STRUCTURAL ADJUSTMENT AND BEYOND IN SUB-SAHARAN AFRICA: RESEARCH AND POLICY ISSUES 18, 29 (Rolph van der Hoeven & Fred van der Kraaij eds., 1994).

82. The Bank's restricted and biased governance agenda is seen by left-wing critics as a device to blame borrowing states for the failure of structural adjustment programs. BRUNO SARRASIN, AJUSTEMENT STRUCTUREL ET LUTTE CONTRE LA PAUVRETÉ EN AFRIQUE: LA BANQUE MONDIALE FACE À LA CRITIQUE 52 (1999). See also MILLER-ADAMS, *supra* note 47, at 103.

83. DASGUPTA, *supra* note 74, at 78. For an analysis of the U.S. influence on the World Bank, see CATHERINE GWIN, U.S. RELATIONS WITH THE WORLD BANK: 1945-1992 (1994).

84. See Ibrahim E.I. Shihata, *Corruption—A General Review with an Emphasis on the Role of the World Bank*, 15 DICK. J. INT'L L. 451, 474-83 (1997) for a review of the initiatives taken by the Bank to curb corruption.

85. MILLER-ADAMS, *supra* note 47, at 104. The Bank's reaction prompted Eigen to leave the Bank and found Transparency International.

86. COLIN FENWICK, THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, THE WORLD BANK, NGOS AND FREEDOM OF ASSOCIATION: A CRITIQUE OF THE WORLD BANK'S DRAFT "HANDBOOK ON GOOD PRACTICES FOR LAWS RELATING TO NON-GOVERNMENTAL ORGANIZATIONS" (1997).

87. *Id.* International Covenant on Civil and Political Rights, *opened for signing* Dec. 16, 1966, G.A. Res. 2200A(XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 51, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

political affairs and adopt a coherent policy to facilitate socially beneficial interventions.

D. *The Influence of International Pressure on Bank Policies*

Although internal formulations of Bank policies have only cautiously taken into account borrowing countries' domestic political situations, donors and NGOs have pressured the Bank to change its lending policies with respect to major human rights violators. While the Bank's best clients have included some repressive regimes,⁸⁸ international outrage in the wake of massive human rights abuses has prompted the Bank to freeze its loans in certain cases.⁸⁹

Following the Tienanmen Square massacre in Beijing, China, the World Bank and the Asian Development Bank decided to freeze several loans and to suspend consideration of new loans to China.⁹⁰ The G-7 representatives announced at their Paris Summit that "in view of the current economic uncertainties, the examination of new loans [to China] by the World Bank [would] be postponed."⁹¹ The G-7 executive directors informed Barber Conable, then president of the Bank, that they would vote against new loans to China.⁹² The economic arguments the Bank used to justify the short-lived freeze on loans to China were unconvincing, as the Chinese economy continued to grow.⁹³ The Bank terminated the loan freeze as attitudes in the United States, the European Union, and Japan changed. As China regained international favor, Bank officials returned to the pre-Tienanmen lending situation.⁹⁴

External pressure has also influenced the World Bank's lending policies in Africa.⁹⁵ In Nigeria, for example, the Bank changed its lending policies in the wake of grave human rights abuses. Shortly after the execution of Ken Saro-Wiwa and eight other Ogoni activists in Nigeria in 1995, the International Financial Corporation, the private lending arm of the World Bank, which is also bound by the political prohibition, decided to cancel a \$3 billion liquefied natural gas project that Saro-Wiwa had opposed.⁹⁶

In September 1999, the Bank froze an annual \$1 billion program loan to Indonesia on the grounds of corruption. Although the freeze took effect at

88. Bruce Rich, *World Bank/IMF: 50 Years Is Enough*, in 50 YEARS IS ENOUGH, *supra* note 73, at 6, 10.

89. THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, *supra* note 30, at 37-40.

90. Gillies, *supra* note 23, at 126.

91. *Id.* at 127.

92. *Id.*

93. *Id.*

94. *Id.* As Gillies points out, the Bank's staff pressed for a return to normal lending. The executive directors approved a comprehensive study of the economic situation in China by Bank officials, a clear indicator of their intention to resume lending to China.

95. See Michael Bratton & Nicolas van de Walle, *Toward Governance in Africa: Popular Demands and State Responses*, in GOVERNANCE AND POLITICS IN AFRICA 27, 48 (Goran Hyden & Michel Bratton eds., 1992).

96. MILLER-ADAMS, *supra* note 47, at 105.

exactly the same time as the escalation of the political crisis in East Timor, the Bank insisted that its move was strictly in response to a high-profile corruption scandal.⁹⁷

International advocacy campaigns have also led the Bank to reexamine its project-related human rights policies. For example, the Sardar Sarovar Dam campaign targeted a 1985 Bank loan of \$450 million for a complex multi-dam project in India.⁹⁸ A coalition of local and Western associations challenged the goals and objectives of the project and lobbied legislators, finance ministers, and Bank executive directors.⁹⁹ The campaign succeeded in prompting an independent review of the project, which led to the withdrawal of Bank support and to the cancellation of the remaining part of the loan.¹⁰⁰ The controversy underlined the need for greater transparency and accountability in Bank projects and resulted in a general review of the Bank's environmental and resettlement policies.¹⁰¹ Ultimately, the campaign led the Bank to adopt a new public information policy and to create the World Bank Inspection Panel.¹⁰²

E. The Chad/Cameroon Project and the Bank's Inconsistent Approach to Human Rights

The Chad/Cameroon project reflects the continuing incoherence of the Bank's approach to human rights considerations. During the project's initial stages, the Bank completely ignored Chad's poor human rights record, despite human rights advocates' protests. The intensification of civil society pressure, however, led the Bank to issue public statements justifying its decision to lend to a government with such a poor human rights record.

The April 5, 2000 online version of the Chad/Cameroon project document displayed the Bank's defensive tone. The document acknowledged that "[m]ilitary incidents . . . and the imprisonment of a parliamentarian . . . have created concern about the human rights situation in the country," but then noted that the parliamentarian, Ngarléjy Yorongar, was released in

97. At the same time, the Bank's Indonesia Director declared that the Bank welcomed the Indonesian government's decision to allow peacekeepers into East Timor. *The World Bank Freezes All New Loans to Indonesia*, World Bank, Development News, at <http://wbln0018.worldbank.org/news/devnews.nsf> (last visited Apr. 4, 2000) (on file with author).

98. See MILLER-ADAMS, *supra* note 47.

99. David A. Wirth, *Partnership Advocacy in World Bank Environmental Reform*, in *THE STRUGGLE FOR ACCOUNTABILITY: THE WORLD BANK, NGOS, AND GRASSROOTS MOVEMENTS* 51, 60–61 (Jonathan A. Fox & L. David Brown eds., 1998). See also Lori Udall, *The World Bank and Public Accountability*, *id.* at 391, 395–96.

100. Wirth, *supra* note 99, at 63–64. For information about recent developments in the Narmada River campaign, see International Rivers Network, *South Asia Campaigns*, at <http://irn.org/programs/india> (last visited Dec. 2, 2000); see also Friends of the River Narmada Web site, at <http://www.narmada.org> (last visited Dec. 2, 2000).

101. MILLER-ADAMS, *supra* note 47, at 73. See also THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, *supra* note 30, at 85–86.

102. Wirth, *supra* note 99, at 65. See also Udall, *supra* note 99, at 404–26 and MILLER-ADAMS, *supra* note 47, at 77.

1999.¹⁰³ No mention was made of the absence of human rights standards at his trial.

On the Web site, the Bank explained why it continued to support the project despite Chad's poor human rights record. The Bank stressed that, notwithstanding Chad's history of economic and political instability, the country has made significant progress and the Bank has been concerned with the human rights situation in the country.¹⁰⁴ The updated project document expressed an interest in—though no direct commitment to—a specific United Nations program intended to improve human rights and governance in Chad.¹⁰⁵ In keeping with the Bank's reluctance to intervene pro-actively in human rights, the document fails to specify what measures will be taken to improve the human rights situation in the country. The Bank remains cautious when it comes to implementation; a mismatch exists between the Bank's human rights rhetoric and the measures the Bank actually takes.

III. THE CHAD/CAMEROON PROJECT

This Part will explore the Chad/Cameroon project in more detail and will place the project in the context of Chad's politics and history. In order to understand the difficulties the World Bank will face in its role as a moral guarantor, the complexity of Chad's sociopolitical environment has to be taken into account.

A. *Logistics of the Chad/Cameroon Project*

The project is led by Exxon in conjunction with Petronas and Chevron. The Bank's minority contribution (approximately six percent) to the project's funding is composed of two International Bank for Reconstruction and Development (IBRD) loans (\$39.5 million to the government of Chad and \$53.4 million to the government of Cameroon)¹⁰⁶ and International Financial Corporation (IFC) loans to the private-sector consortium (\$100 million with its own resources and it may mobilize up to \$300 million through syndication with commercial banks).¹⁰⁷

Exxon, Petronas, and Chevron will jointly hold about 80% of the shares in the pipeline companies. Chad will own minority interests in both pipeline companies, while Cameroon will only hold a minority stake in Cameroon Oil Transportation Company (COTCO), the Cameroon pipeline com-

103. *Status/Issues, The Chad-Cameroon Petroleum Development and Pipeline Project (Project Summary)*, World Bank, at <http://www.worldbank.org/aft/ccproj/overview.htm> (modified Apr. 5, 2000) (on file with author).

104. World Bank, *Questions and Answers*, *supra* note 11.

105. *See id.*

106. Initially, Chad and Cameroon applied for loans of \$45 million and \$70 million, respectively. AGIR ICI-SURVIE, PROJET PÉTROLIER TCHAD-CAMEROUN, DÉS PIPÉS SUR LE PIPELINE 17 (DOSSIERS NOIRS DE LA POLITIQUE AFRICAINE DE LA FRANCE N°13) (1999).

107. *See World Bank Group Approves Support*, *supra* note 1.

pany.¹⁰⁸ Under the current contractual agreements, the consortium will be in charge of financing, managing, and selling the crude oil. Chad will receive a percentage of the sale proceeds in royalties.¹⁰⁹ The compensation received by the Chadian government has been fixed at 12.5% of the price of crude oil.¹¹⁰ The consortium enjoys an almost full tax exemption that will not be withdrawn unless the barrel price goes beyond \$17.¹¹¹ Cameroon will receive transportation fees and taxes.¹¹²

The extraction and pipeline project will drill oil from three oilfields (Miandoum, Kome, and Bolobo) at the Doba basin (southern Chad) and transport it for export through a 1070-km pipeline to the Atlantic port of Kribi (Cameroon).¹¹³ The total cost of the project was estimated at \$3.5 billion (\$1.5 billion for the development of the oil fields in Chad and \$2 billion for the pipeline and export facilities).¹¹⁴ Exxon will carry out the drilling on behalf of the consortium.¹¹⁵ Two joint-venture pipeline companies (TOTCO, Chad Oil Transportation Company, for the Chadian and COTCO, Cameroon Oil Transportation Company, for the Cameroonian portion)¹¹⁶ will operate the export system.¹¹⁷ Construction is expected to last nearly four years and production about twenty-five to thirty years.¹¹⁸

B. *Why the Chad/Cameroon Project?*

Poverty alleviation is the Bank's main justification for its involvement in oil extraction in Chad. During the course of the NGO campaign against the project, the Bank has repeatedly stressed that oil extraction is Chad's only opportunity for economic development because the country lacks any other resources.¹¹⁹ The Bank emphasizes that Chad is one of the least developed countries in the world, ranking 162 out of 174 countries in the United Na-

108. *Id.*

109. Under the current agreements, Chad will receive the following direct revenues: (i) royalty payments; (ii) an upstream corporate income tax on the consortium; (iii) a pipeline corporate income tax on TOTCO (Chad Oil Transportation Company, the pipeline company for Chad); and (iv) dividends for its equity holdings in TOTCO and COTCO (Cameroon Oil Transportation Company). See PROJECT APPRAISAL DOCUMENT, *supra* note 5, at 67.

110. Thomas Sorinel, *Le Tchad Face aux Sirènes Pétrolières*, LE MONDE, Sept. 3, 1998, at 13.

111. *Id.*

112. Esso Exploration and Production Chad Inc., *Environmental Assessment Executive Summary & Update*, ch. 2, at <http://www.essochad.com/eaff/essochad/documentation/english/summary/index.html> (last visited Dec. 2, 2000).

113. *Id.* ch. 3.

114. World Bank, *The Chad-Cameroon Petroleum Development and Pipeline Project: Concept Paper*, The Petroleum Development and Pipeline (PDP) Project (Mar. 2000).

115. See Esso Exploration and Production Chad Inc., *supra* note 112, ch. 2.

116. *Id.* Esso Exploration and Production Chad Inc. is the consortium-designated operator for the oilfield. The pipeline transportation system will be owned by the two companies that have been formed for this purpose, TOTCO (Chad Oil Transportation Company) and COTCO (Cameroon Oil Transportation Company).

117. *Id.*

118. *Id.*

119. World Bank, *Questions and Answers*, *supra* note 11.

tions Development Programme Human Development Index.¹²⁰ Life expectancy is 47.2 years,¹²¹ adult literacy rate is 50.3%,¹²² and only 37.1% of women are literate.¹²³ Approximately three-quarters of the population does not have access to safe water, health services, and sanitation.¹²⁴

The majority of Chad's people live on subsistence agriculture, and livestock and cotton are the country's main exports.¹²⁵ Currently, Chad survives on development aid. Undoubtedly, revenue from oil would help: the country could receive up to \$1.8 billion over the twenty-five-year production period. In the long term, this money could be spent on much needed improvements in health, education, infrastructure, and rural development.¹²⁶

In the short term, however, the project may provoke severe social and economic disruptions. In a region largely dependent on subsistence agriculture, land that is currently allotted to agriculture and pasture will be converted to construction sites and the pipeline route.¹²⁷ In addition, the influx of money into the region is likely to create inflationary pressures and new social problems.¹²⁸

Many Chadians believe that such disruption might be worthwhile if the proceeds from oil revenue are distributed evenly.¹²⁹ In fact, no political group has campaigned for the abolition of the project.¹³⁰ Given the environment in which the oil will be exploited, an equitable, peaceful, and transparent distribution of the revenues is, however, unlikely. Both Cameroon and Chad are poor, unstable countries with weak government structures.¹³¹ In Chad, armed rebellions, fueled by religious and ethnic tensions,

120. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1999, at 137 [hereinafter HUMAN DEVELOPMENT REPORT 1999].

121. *Id.* at 137.

122. *Id.*

123. *Id.* at 179.

124. *Id.*

125. See U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1999: CHAD 85-86 (2000).

126. See World Bank, *The Chad-Cameroon Petroleum Development and Pipeline Project: Project Status, Project Description and Financing*, at <http://www.worldbank.org/aftr/ccproj/status.htm> (modified Mar. 22, 2000) (on file with author).

127. REFLECTIONS ON THE CHADIAN OIL, *supra* note 22, at 8.

128. Dorrit van Dalen & Egbert G.Ch. Wesselink, *The Chad Oil Project: Public Participation and Corporate Responsibilities*, Pax Christi Netherlands, at 18-20, 24-26 (Aug. 1999) (on file with author) [hereinafter Pax Christi Report]. Local NGOs' greatest concern is the social disruption caused by the sudden influx of money without advance preparation. Also, an increase of AIDS is feared as a result of the arrival of migratory labor to the region.

129. Interview with Ngatoguiam Ngarbaye, Secretary General, *Ligue Tchadienne des Droits de l'Homme* [Chadian League of Human Rights], in N'djaména, Chad (July 1, 1999) and with Koussetogue Koudé, Board Member, *Association pour la Jeunesse Anti-Clivage* [Youth for Ethnic Harmony Association] in N'djaména (Chad) (July 12, 1999).

130. Pax Christi Report, *supra* note 128, at 31.

131. *Advisory Review of the Environmental Assessments of the Chad Export Project in Chad and Cameroon*, Commission for Environmental Impact Assessment in the Netherlands, at 4, Doc. 033-91 (July 2, 1998) (on file with author) [hereinafter Dutch Advisory Review].

are ongoing in the North and in the South.¹³² A fair distribution of oil revenues would be difficult in light of these conflicts.

C. *A Country with a Troubled History*

A central problem is that while the oil reserves are situated in the South, the current government is led by a northern Muslim, Idriss Déby.¹³³ The North/South conflict has been a constant factor in the history of Chad, and North and South are political, as well as geographical, concepts. Although the classification has been challenged, the word, "North," is traditionally associated with Islamic nomadic populations, whereas the term, "South," represents Christian or animist ethnic groups who depend on agriculture for subsistence.¹³⁴ French colonization exacerbated the historical North/South conflict because the French found much more receptive territory in the South.¹³⁵ Currently, Southerners accuse Northerners of using national resources, the army, and the security forces for their own gains. Northerners, on the other hand, reproach Southerners for monopolizing the civil service and for advancing their goals through the press and human rights NGOs.¹³⁶

Since winning independence from France in 1960, the country has had a history of civil war and ethnic strife.¹³⁷ Although it is not the only cause of political instability, the tension between North and South, Christian and Muslim, is one of the most salient and divisive features of Chadian society.¹³⁸

132. Assemblée Nationale, *France, Rapport d'Information Déposé par la Commission des Affaires Étrangères sur la Réforme de la Coopération Appliquée au Tchad et à la Centrafrique* 7 (1999), at <http://www.assemblee-nationale.fr/2/rap-info/i1701.htm> (last visited Feb. 23, 2001) [hereinafter Report of the French National Assembly].

133. Idriss Déby, the current Head of State, came into power in December 1989, after defeating the former dictator Hissène Habré, who fled the country. Déby belongs to the Zaghawa, an ethnic group of Chado-Sudanese origin. Since August 11, 1960, when Chad obtained its independence, six presidents have ruled the country: François N'garta Tombalbaye (1960–1975), Felix Malloum (1975–1979), Lol Mahamat Choua (Apr.–Aug. 1979), Goukouni Weddeye (1979–1982), Hissène Habré (1982–1990), and Idriss Déby, currently in power. For a study of Chad's recent history, see DERLEMARI NEBARDOUM, *LE LABYRINTHE DE L'INSTABILITÉ POLITIQUE AU CHAD* (1998).

134. One of the aspects of the North/South conflict is "Le Conflit entre les Éleveurs et Les Agriculteurs," i.e., the dispute between northern shepherds and southern farmers over the use of the land.

135. UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, HUMAN RIGHTS COMMISSION, QUESTION DE LA VIOLATION DES DROITS DE L'HOMME ET DES LIBERTÉS FONDAMENTALES OU QU'ELLE SE PRODUISSE ET NOTAMMENT: PROCÉDURE ÉTABLIE CONFORMÉMENT À LA RESOLUTION 1503 (XLVIII) DU CONSEIL ÉCONOMIQUE ET SOCIAL, RAPPORT SUR LA SITUATION DES DROITS DE L'HOMME AU TCHAD, U.N. Doc. E/CN.4/1999/R.3, at 10 (1998) [hereinafter *RAPPORT SUR LA SITUATION DES DROITS DE L'HOMME AU TCHAD—PROCÉDURE 1503*]. Between the fourteenth and nineteenth centuries, there were three kingdoms in the territory corresponding to the North of Chad: Kanem, Baguirmi, and Ouaddai. French colonization started in the late nineteenth century and mainly affected the South. The society in the South was less structured than that of the North and, as a result, was more open to the installation of French colonial structures and to the French language and culture.

136. *Id.* at 11.

137. See NEBARDOUM, *supra* note 133.

138. See Gilbert Maoundonodji, *Laïcité au Tchad, Entre le Marteau de l'Islam et l'Enclume du Christianisme*, 172 *TCHAD ET CULTURE* 11–20 (1998).

The post-independence administration, led by François Tombalbaye, was dominated by southern Christians.¹³⁹ The first oil explorations took place under Tombalbaye, who was convinced that oil reserves existed in his isolated and landlocked country. Tombalbaye looked to oil as a way to alleviate Chad's geographic misfortune. Chad first tried to obtain funding from France to initiate oil exploration. When France refused to fund this research, the government granted Conoco, Continental Oil Company, a five-year exploration permit in 1969.¹⁴⁰

Certain Muslim Northerners felt that Tombalbaye had excluded them from participation in the government. A popular revolt in eastern Chad against what the local population considered to be abusive taxation in 1965 prompted the creation of the armed group *Front de Libération Nationale du Tchad* (Frolinat), whose objective was allegedly to overthrow Tombalbaye and to install social justice in the country. Frolinat consists primarily of Muslim citizens from the North and center of the country.¹⁴¹

Continued fighting between the Frolinat and the government resulted in a state of "permanent war,"¹⁴² complicated further by internal fighting within both factions.¹⁴³ Tombalbaye died during a military coup organized by his own army.¹⁴⁴ When an attempt at national reconciliation failed, it was followed by a bloody three-year period (1979–1982) that brought Hissène Habré, a northern Muslim, to power in 1982.¹⁴⁵

Hissène Habré's rule, which received U.S. support,¹⁴⁶ was extremely repressive, resulting in 40,000 deaths and 200,000 persons tortured.¹⁴⁷ When Habré felt threatened by an opponent, he attacked the opponent's extended family and ethnic group. As a result, the President carried out massive massacres of Muslim and Christian groups.¹⁴⁸

139. Robert Buijtenhuijs, *Les Interventions Militaires Françaises: le Cas du Tchad*, in *ÉTATS ET SOCIÉTÉS EN AFRIQUE FRANCOPHONE* (Daniel C. Bach & Anthony A. Kirk-Greene eds., 1993).

140. See REFLECTIONS ON THE CHADIAN OIL, *supra* note 22. Continental Oil Company (Conoco) is an oil multinational based in Houston, Texas. Founded in 1875, it is currently active in forty countries and occupies the seventy-fourth position in the Fortune 500 company ranking. Information on its operations can be found on Conoco's Web site, <http://www.conoco.com>.

141. See NEBARDOUM, *supra* note 133, at 21.

142. *Id.*

143. *Id.* at 24.

144. *Id.*

145. *Id.* at 27.

146. See Norimitsu Onishi, *An African Dictator Faces Trial in His Place of Refuge*, N.Y. TIMES, Mar. 1, 2000, at A3.

147. MINISTÈRE TCHADIEN DE LA JUSTICE, RAPPORT DE LA COMMISSION D'ENQUÊTE NATIONALE, LES CRIMES ET DETOURNEMENTS DE L'EX-PRESIDENT HABRÉ ET DE SES COMPLICES 97 [CHADIAN MINISTRY OF JUSTICE, REPORT OF THE NATIONAL COMMISSION OF INQUIRY, THE CRIMES AND EMBEZZLEMENTS OF EX-PRESIDENT HABRÉ AND HIS ACCOMPLICES] (1992) [hereinafter REPORT OF THE NATIONAL COMMISSION OF INQUIRY].

148. *Id.* at 82–84. On January 25, 2000, a coalition of human rights organizations and a group of Habré's victims filed a lawsuit against Hissène Habré based on the principle of universal jurisdiction. Habré was placed under house arrest. On July 4, 2000, the Senegalese Chambre d'Accusation (Indicting Chamber) ruled that Senegal had no jurisdiction to pursue torture charges against Habré because the crimes were not committed in Senegal. Victims immediately announced that they would appeal the

In December 1990, Colonel Idriss Déby seized power and Habré fled the country.¹⁴⁹ At the time, there was a general trend towards democratization throughout Africa.¹⁵⁰ Déby expressed his commitment to pluralism and fundamental freedoms.¹⁵¹ Independent newspapers, human rights and development organizations, and trade unions and cooperatives flourished partly due to increased external aid to civil society.¹⁵² In the early 1990s, there was enormous hope that the new transition would bring respect for human rights to the country.¹⁵³

This expectation was quickly quashed.¹⁵⁴ As a result of the country's troubled history, ethnic fragmentation, and widespread poverty, Chad's government is a democracy only in name. The transition process was flawed from the outset. As in other African transitions,¹⁵⁵ a National Sovereign Conference (Conférence Nationale Souveraine, CNS) was created to discuss the future institutional framework for the country and to organize the transition to democracy.¹⁵⁶ A constitution was approved in 1996, and presidential and legislative elections were held. However, elections violated the time frame and guidelines established at the National Sovereign Conference.¹⁵⁷ Opposition politicians and local NGOs denounced irregularities during the electoral campaign and the manipulation of the results.¹⁵⁸ The President's

decision to the Cour de Cassation (Senegal's court of last appeal). Activists have contended that the decision ran contrary to Senegal's obligations under the 1984 U.N. Convention against Torture, which Senegal ratified in 1986. See Onishi, *supra* note 146; Human Rights Watch, *Senegal Actions on Ex-Chad Dictator Deplored* (July 5, 2000), at <http://www.hrw.org/press/2000/07/habre0705.htm> (last visited Feb. 23, 2001). Given that both Northerners and Southerners fell victim to Habré's regime, collaboration among the different groups has made possible the recent presentation of charges, this time in N'djaména, the capital of Chad, against torturers in the security forces during the past regime. See Human Rights Watch, *Chad: Hissène Habré's Victims Demand Justice: The Habré Case Signals the End of Impunity* (Oct. 26, 2000), at <http://www.hrw.org/press/2000/10/habre1026.htm> (last visited Feb. 23, 2001). Nevertheless, the mistrust that some campaign protagonists have shown among themselves reveals once again the difficulties in overcoming the seemingly eternal North/South division.

149. Buijtenhuijs, *supra* note 139, at 251.

150. See Bratton & van de Walle, *supra* note 95, at 27–29. In 1990, massive popular protests took place in fourteen African countries: Benin, Cameroon, Comoros, Cote d'Ivoire, Gabon, Togo, Zaire, Zambia, Mali, Congo, Central African Republic, Kenya, Niger, and Sierra Leone. *Id.* at 31–32.

151. Amnesty International, *Chad: Under the Arbitrary Rule of the Security Forces with the Tacit Consent of Other Countries*, at <http://www.amnesty.org/ailib/intcam/chad/chad1.htm> (last visited Dec. 2, 2000).

152. For a study of the relations between foreign aid and NGOs, see STEPHEN N. NDEGWA, *THE TWO FACES OF CIVIL SOCIETY: NGOS AND POLITICS IN AFRICA* 17–21 (1996).

153. AMNESTY INTERNATIONAL, *TCHAD DE VAINES PROMESSE-LES VIOLATIONS DES DROITS DE L'HOMME SE POURSUIVENT EN TOUTE IMPUNITÉ 1*, AFR/2003/95/F (1995).

154. *Id.*

155. See BRENDALYN P. AMBROSE, *DEMOCRATIZATION AND THE PROTECTION OF HUMAN RIGHTS IN AFRICA, PROBLEMS AND PROSPECTS* 137–44 (1995).

156. ANTOINE BANGUI-ROMBAYE, *TCHAD: ELECTIONS SOUS CONTRÔLE: 1996–1997*, at 70 (1999).

157. *Id.* at 75. According to the Transition Charter agreed upon in the National Sovereign Conference, elections should have taken place in the following order: constitutional referendum, legislative, presidential, municipal, and senatorial. Transition was scheduled to last for one year, renewable only once, but instead, it took more than three years.

158. *Id.* at 155, 201–12. Some examples of fraud included: the creation of satellite parties allied with the ruling party to divide the opposition, the delivery of payments for casting multiple votes, and the manipulation of voting results.

party, the *Mouvement Patriotique du Salut* (MPS), obtained a majority in the National Parliament.¹⁵⁹

D. Chad's Current Political Context: A Divided Society

According to a Western diplomat based in N'djaména, the current government is "a demobilizing regime for everybody,"¹⁶⁰ which certainly would not facilitate the sound management of oil revenues. Institutions in Chad are dysfunctional and the country lacks a strong parliamentary opposition.¹⁶¹ When political parties were allowed, forty of them registered,¹⁶² but the main political leaders have been co-opted by the ruling MPS.¹⁶³ The judiciary has not consolidated its independence from the executive. The government institutions act with impunity and without accountability.¹⁶⁴

Economic inefficiency contributes to the lack of political legitimacy. Bureaucratic excess, state interventionism, and the monopolies granted to certain public companies facilitate fraud and corruption.¹⁶⁵ In addition, the country is highly dependent on foreign aid.¹⁶⁶ Déby has been accused repeatedly of managing the country's affairs to promote the interests of his clan rather than those of the nation.¹⁶⁷

Despite government failings, Chad possesses a vibrant civil society. The government-civil society dynamic reflects the North/South divide. In other words, while Northerners run the government, most NGO supporters are Southerners. This tension plays out in accusations by certain Northerners that human rights groups only become involved when the victims are from the South. NGO supporters in turn criticize Northerners for not denouncing human rights violations because the Muslim constituency agrees on a fundamental idea: keeping the North in power.¹⁶⁸

159. Report of the French National Assembly, *supra* note 132, at 7.

160. Interview with anonymous foreign service official, held in N'djaména, Chad on August 10, 1999.

161. RAPPORT SUR LA SITUATION DES DROITS DE L'HOMME AU TCHAD—PROCÉDURE 1503, *supra* note 135.

162. See BANGUI-ROMBAYE, *supra* note 156, at 155. Some of them were satellite political parties, affiliated with the party in power.

163. Saleh Kebzabo, founder of the main opposition newspaper was offered a position in the government and the second round opponent to Déby in the Presidential elections, General Waddal Abdelkader Kamougue, is now president of the Parliamentary Assembly. Interview with Bendjo Oulatar, Chief Editor, N'djaména Hebdo, N'djaména, Chad (Aug. 2, 2000).

164. See COUNTRY REPORTS 1999, *supra* note 125. For a detailed analysis, see AMNESTY INTERNATIONAL, TCHAD: UN PAYS SOUMIS À L'ARBITRAIRE DES FORCES DE SÉCURITÉ AVEC LA COMPLAISANCE DE PAYS ÉTRANGERS (1996) [hereinafter A.I., TCHAD: UN PAYS SOUMIS À L'ARBITRAIRE].

165. MARCEL BOURDETTE DONON, TCHAD 40 (1998).

166. Report of the French National Assembly, *supra* note 132, at 13. According to the World Bank, foreign aid represents approximately 60% of government development expenditures. World Bank Group, *Countries: Chad*, at <http://www.worldbank.org/afr/td2.htm> (last visited Feb. 23, 2001).

167. AGIR ICI-SURVIE, PROJET PÉTROLIER, *supra* note 106, at 39–40. (The debate in the newspapers reflects the violent character of the accusations.). See, e.g., Déby et Yorongar: Deux Fortes Gucules, N'DJAMÉNA HEBDO No. 236, June 6, 1996, at 7.

168. These organizations grew "like mushrooms" in the early 1990s, partly due to an injection of for-

Given Chad's institutional and political deficiencies, NGOs play a substitute role to that of a political opposition and are often the only counterweight to the government.¹⁶⁹ The government, in turn, accuses the NGOs of lacking the political neutrality that "real" human rights organizations should have.¹⁷⁰ Government anger has sometimes manifested itself in the form of violence.¹⁷¹ On other occasions, the reaction is subtler, such as the co-optation of outspoken members of the NGO community in order to neutralize their activism.

E. A Major Human Rights Violator

Although Chad has ratified the principal human rights treaties,¹⁷² the human rights situation in Chad is far from satisfactory. Local and international NGOs continue to denounce serious human rights violations. The main abuses involve the arbitrary conduct of the military, the general impunity of perpetrators, and the judiciary's lack of independence and impartiality.¹⁷³ Chad has been monitored under the United Nations 1503 confidential procedure,¹⁷⁴ in which a country's human rights violations are discussed confidentially by a working group of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities.¹⁷⁵

Fundamental freedoms are not routinely respected in Chad; the law recognizes them but the institutions do not guarantee their enforcement. The security forces have often attacked journalists and opposition politicians.¹⁷⁶

eign aid to the country. Interview with Bendjo Oulatar, *supra* note 163.

169. NGOs have taken a pivotal role in African transitions in the 1990s. For an analysis of the role of NGOs in African transitions, see ZEHRA F. ARAT, *DEMOCRACY AND HUMAN RIGHTS IN DEVELOPING COUNTRIES* 99 (1991). See also NDEGWA, *supra* note 152, at 109.

170. Interview with Ismael Hachem Abdallah, President, Chadian Association of Victims of Political Repression and Crime (AVCRP), N'djaména, Chad (July 31, 2000). Ismael Hachem Abdallah is also a member of the President's ethnic group, the Zaghawas.

171. AMNESTY INTERNATIONAL, *TCHAD DE VAINES PROMESSE-LES VIOLATIONS DES DROITS DE L'HOMME SE POURSUIVENT EN TOUTE IMPUNITÉ*, *supra* note 153, at 24.

172. United Nations High Commissioner for Human Rights, *Treaty Bodies Database: Status of Ratification*, at <http://www.unhcr.ch/tbs/doc> (last visited Oct. 24, 2000).

173. See COUNTRY REPORTS 1999, *supra* note 125.

174. *RAPPORT SUR LA SITUATION DES DROITS DE L'HOMME AU TCHAD—PROCÉDURE 1503*, *supra* note 135.

175. The 1503 Procedure takes its name from Economic and Social Council (ECOSOC) Resolution Number 1503, approved in 1970. The objective of the procedure is to establish a dialogue with governments in cases where there appears to be a consistent pattern of gross human rights violations. After discussion by a working group, the Sub-Commission may decide whether to refer the issue to the U.N. Commission on Human Rights. The 1503 Procedure has typically been used as a preliminary step for the opening of the 1235 Procedure (named after Resolution Number 1235 of the ECOSOC). When the 1235 Procedure is entered into, a public debate takes place in the annual meeting of the U.N. Commission on Human Rights, and governments and NGOs are granted the opportunity to identify the issues they consider relevant. See INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS AND MORALS, *supra* note 59, at 611–23. See also A.H. ROBERTSON & J.G. MERRILLS, *HUMAN RIGHTS IN THE WORLD* 78–83 (4th ed. 1996). In April 1998, the Commission on Human Rights decided not to transfer the assessment of the human rights situation in Chad to the public procedure. 1999 AMNESTY INTERNATIONAL REPORT 123 (1999).

176. BANGUI-ROMBAYE, *supra* note 156, at 58.

Criminal defamation lawsuits have been used to silence dissenting voices. The nine-month prison sentence given to the aforementioned opposition parliamentarian, Ngarléjy Yorongar, an outspoken opponent of the pipeline project, calls into question the commitment of the Chadian government to the democratic process.¹⁷⁷

The oil-producing region has been the scene of civil unrest and large-scale massacres,¹⁷⁸ and perpetrators have not been prosecuted. There is also concern that if the high expectations raised by the Chad/Cameroon project are left unfulfilled, there may be a new wave of instability in the region.¹⁷⁹

F. Social, Environmental, and Sound Management Measures

The Bank imposed three sets of conditions on the oil consortium and borrowing governments before approving their participation.¹⁸⁰ First, in terms of social impact measures, the Bank's Operations Manual required public consultation. The consortium claims to have started "one of the most extensive consultation efforts ever undertaken in Africa" as early as 1993.¹⁸¹ Indeed, project sponsors claim to have held nearly 900 village-level public meetings in Chad and Cameroon.¹⁸² According to the consortium, consultation has taken place in several languages.¹⁸³ The project sponsors have put a nineteen-volume information packet in reading rooms open to the public throughout Chad and Cameroon.¹⁸⁴

177. Interview with Ngarléjy Yorongar, Opposition Member, Chadian Parliament, N'djaména, Chad (July 21, 1999). (On July 20, 1998, Yorongar was sentenced to three years of imprisonment and a fine of FCFA (Central African Francs) 500,000 for defamation of the President of the Republic, Idriss Déby, and of the President of the National Assembly, Waddal Abdelkader Kamougué. Yorongar had accused Déby of managing state affairs in his family's interest and Kamougué of receiving money from Elf to finance his election campaign to become president of the National Assembly. The trial did not meet basic due process standards. Defense lawyers were denied access to the files and were not allowed to speak in the hearing, from which they left in protest. The sentence was longer than the maximum stated by the law and longer than the prosecution had requested.). See 1999 AMNESTY INTERNATIONAL REPORT, *supra* note 175, at 123. See also Ngarléjy Yorongar, *Comité des Droits de l'Homme des Parlementaires, Rapport de la Délégation du Comité sur sa Mission au Tchad, Union Interparlementaire*, Cas No. Chd/01 (Nov. 21-27, 1998).

178. Human rights organizations reported approximately 200 extra-judicial killings in two repressive campaigns undertaken in November 1997, and in March 1998, one hundred unarmed people were killed. See U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1998: CHAD 70 (1999) and U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1997: CHAD (1998).

179. Pax Christi Report, *supra* note 128, at 27.

180. See Esso Exploration and Production Chad Inc., *supra* note 112, ch. 4. (As both the IBRD and the IFC will provide financial support, the project has to comply with the IBRD and IFC Operational Directives (OD), Operational Policies (OP), Policy Notes (PN) and Bank Procedures (BP). Concretely, the regulations that the consortium has submitted to are as follows: OD 4.15 on Poverty Reduction, OD 4.01 on Environmental Assessment, OP 4.04 and BP 4.04 on Natural Habitats, OD 4.20 on Indigenous Peoples, OD 4.30 on Resettlement, OP 4.36 on Forestry and OP 11.03 on Cultural Property and OP 750 on International Waterways.)

181. *Id.* ch. 9.

182. *Id.*

183. *Id.*

184. *Id.*

Civil society organizations, however, have expressed their concern about the authenticity of the consultation process. Local NGOs claim that visits to the villages were unannounced in many cases and that armed police officers escorted the consortium employees.¹⁸⁵ In addition, an important tool of the consultation process consisted of a twenty-minute video shown in the villages. But the video's explanation takes place at a very fast pace with relatively loud background music and stresses only the positive aspects of the oil project. Government officials appear in the video, confidently assuring that oil extraction will actually take place. This certainty expressed by officials in a country always subjected to authoritarian rule turns the video into propaganda, rather than information or consultation. Furthermore, although the nineteen-volume information package is very comprehensive, it cannot be very effective in a country with a 49.7% illiteracy rate and where many people cannot even reach the reading rooms.¹⁸⁶

Other complaints have arisen concerning the expropriation and compensation of the people who lived in the way of the pipeline.¹⁸⁷ Project sponsors estimated that 150 families would have to be forcibly resettled.¹⁸⁸ According to the contractual agreements between Chad and the consortium, once the government of Chad issues the expropriation decree, the consortium is in charge of paying affected landowners.¹⁸⁹ The compensation that the consortium has offered landowners, however, is unrealistic. Procedural irregularities, some even acknowledged by government officials, have also been denounced.¹⁹⁰ For example, under pressure from civil society representatives, the compensation offered for a mango tree was multiplied by a factor of 150, raising at least some question about the suitability of values for other crops, which have not been adjusted.¹⁹¹

185. THE CHAD/CAMEROON OIL AND PIPELINE PROJECT: PUTTING PEOPLE AND THE ENVIRONMENT AT RISK, *supra* note 19, at 5.

186. HUMAN DEVELOPMENT REPORT 1999, *supra* note 120, at 137.

187. AGIR ICI-SURVIE, PROJET PÉTROLIER, *supra* note 106, at 58–60 (referring to the conclusions adopted at the seminars held in Donia, Chad (Jan. 20–25, 1998) and Bebedjia, Chad (Apr. 7–11, 1999). These seminars brought together representatives of the government, the oil consortium, and civil society. Civil society representatives launched an appeal for a fair and transparent compensation process.)

188. See Esso Exploration and Production Chad Inc., *supra* note 112, ch. 9. According to the Bank Information Center, a Washington, D.C. watchdog specializing in Bank-related issues, research by African NGOs showed that the original resettlement figures may have been underestimated. See Bank Information Center, *Problem Project Alert #2: Chad Cameroon Pipeline Project* (Oct. 2000), at http://www.bicusa.org/africa/ppa_chad1.htm (last visited Feb. 23, 2001).

189. Pax Christi Report, *supra* note 128, at 19.

190. *Déclaration de Bebedjia*, Point No. 1, Conclusions of the Bebedjia Meetings (Apr. 7–11, 1999) (on file with author). NGOs have denounced the fact that payments were made before the compensation decree was actually enacted. Government officials have acknowledged this criticism. They claim that it was a necessary measure to protect the interests of Chadian people. Interview with Mahamat Nasser Hassane, Deputy Secretary for Oil, Ministry of Mining, Energy and Oil, N'djaména, Chad (July 28, 1999).

191. *Id.* At the Bebedjia Meetings, the price of the mango tree was raised from 3500 to 550,000 Central African Francs, due to the pressure exerted by NGOs. The price for other basic local trees of the zone (lemon tree, guava) has remained the same. The amounts offered do not reflect the production, growing, and maintenance costs for a family that depends on them for a living. The value of this compensation will

Second, in terms of environmental implications, the consortium has presented extensive information about environmental assessment and mitigation measures to demonstrate its commitment to conducting a thorough analysis.¹⁹² In November 1998, the Bank asked the consortium to address some deficiencies in their environmental assessment to bring it into accordance with the World Bank Operations Manual.¹⁹³

Although project supporters claim to have chosen the route with the least environmental impact, some environmental NGOs claim that the environmental guarantees are inadequate,¹⁹⁴ and the environmental assessments have not been objective.¹⁹⁵ As the pipeline route crossed protected spaces, the companies have been forced to find an alternate route.¹⁹⁶

Third, the Bank also required that Chad adopt a sound management plan for oil revenues.¹⁹⁷ When the Chadian government presented the first plan in Washington in November 1998, the Bank found that the government had not clearly established measures to ensure fair and transparent revenue management.¹⁹⁸ Following the Bank's recommendations, the government of Chad adopted the Revenue Management Law, which specifies how the oil revenues are to be spent and provides for expenditure monitoring and approval proceedings.¹⁹⁹ Project supporters present this piece of legislation as an unprecedented benchmark, demonstrating Chad's commitment to a fair and transparent distribution of the oil profits.²⁰⁰

The history of the Revenue Management Law's adoption is, however, more revealing than its content. Thus far, the Bank has not even acknowledged the irregularities in the law's adoption procedure. The law was passed by 108 votes, without opposition. Yorongar, the only parliamentarian who was ready to vote against it, was in prison.²⁰¹ It is hard to believe that the Parliament was able to pass a measure so crucial to Chad's future in only a

decrease when the region becomes subject to inflationary pressures due to the influx of money and immigrants.

192. The mitigation measures are as follows: leak prevention measures in the wells, a marine terminal and pipeline, oil spill response, insurance coverage in the event of oil spills, the creation of a foundation, the construction of two natural parks in Cameroon, and the adoption of an Indigenous Peoples' Plan.

193. AGIR ICI-SURVIE, PROJET PÉTROLIER, *supra* note 106, at 44–46.

194. THE CHAD/CAMEROON OIL AND PIPELINE PROJECT: PUTTING PEOPLE AND THE ENVIRONMENT AT RISK, *supra* note 19, at 10–16.

195. Dutch Advisory Review, *supra* note 131, at 6–7.

196. AGIR ICI-SURVIE, PROJET PÉTROLIER, *supra* note 106, at 45–46. (The pipeline route affected several wildlife reserves and biodiversity-rich areas in Cameroon, such as the Mber valley, the Deng Deng forest, and the Bakola park between Yaounde and Kribi.)

197. PROJECT APPRAISAL DOCUMENT, *supra* note 5, at 39.

198. N'Dadjimini Joseph, *La Fête du Pétrole N'aura Pas Lieu*, N'DJAMÉNA HEBDO No. 353, Nov. 19, 1998, at 2.

199. See Oil Revenue Management Law, *supra* note 14.

200. See World Bank Group Approves Support, *supra* note 1.

201. See *supra* note 177 and accompanying text.

three-hour session.²⁰² The approval procedure casts doubt on whether this law is more than merely a public relations exercise.²⁰³

The text of the Revenue Management Law also presents several anomalies. The law establishes two categories of revenues: direct (dividend and royalties) and indirect (taxes, charges, and customs duties).²⁰⁴ Direct revenues will be deposited in an escrow account. Ten percent of these revenues will be saved for the benefit of future generations,²⁰⁵ and the remaining ninety percent will be allocated as follows: eighty percent will be devoted to expenditure in priority sectors like public health and social affairs, education, infrastructure, rural development, environment, and water resources.²⁰⁶ Fifteen percent will be used to meet current governmental operating and investment expenses.²⁰⁷ Communities in the oil-producing region will receive the remaining five percent.²⁰⁸

The text dealing with the priority sectors merely refers to the different categories, such as health or education, without establishing the distribution among them. Given the ethnic divisions and power struggles in the country, it does not require much effort to imagine the allocation of a disproportionate amount of funds to a health project in the President's region, which would be legal under the Revenue Management Law.

As for the funds devoted to the oil region, the Revenue Management Law does not define where the "oil region" is. It is unclear whether it will include all the zones covered by the exploration permit, the *Prefecture* (regional divisions in Chad), or only the Doba basin. Depending on the size of the region, the impact of that five percent could be insignificant. Furthermore, every five years, the amount allocated to the oil-producing region may be modified by decree.²⁰⁹ According to sources interviewed by the author in Chad on the condition of anonymity, the text originally approved by Parliament stated that the amount allocated to the oil-producing region could only be modified by law. Sometime between parliamentary approval and publication, however, the wording of the Revenue Management Law was changed to allow for modification by decree.

The Revenue Management Law provides for the creation of an oversight committee, the Oil Revenues Control and Monitoring Board. The Board is responsible for authorizing and monitoring disbursements from the special

202. AGIR ICI-SURVIE, PROJET PÉTROLIER, *supra* note 106, at 40.

203. See John Mukum Mbaku, *Corruption and the Crisis of Institutional Reforms in Africa*, in CORRUPTION AND THE CRISIS OF INSTITUTIONAL REFORMS IN AFRICA 240, 247 (John Mukum Mbaku ed., 1998) (asserting that when a government approves a law only as a public relations exercise vis-à-vis external pressure, the legislation will likely generate high levels of opportunism).

204. Oil Revenue Management Law, *supra* note 14, art. 2.

205. *Id.* art. 3.

206. *Id.* arts. 7, 8(a).

207. *Id.* art. 8(b).

208. *Id.* art. 8(c).

209. *Id.*

accounts and for the appropriation of funds.²¹⁰ In principle, this Board, which includes members of the judiciary, civil society, and trade unions, should guarantee transparency and fairness. Yet, a closer look at its composition and the Chadian political context reveals its fundamental weaknesses. The Board consists of a Supreme Court magistrate, two Members of Parliament, four high-ranking officials, and two civil society representatives.²¹¹ Given the judiciary's lack of independence and the nonexistence of parliamentary opposition, seven of the nine votes will probably endorse government positions.

In response to criticism of the law's inadequacies,²¹² the Bank has both defended the law and minimized its importance. The Bank has even characterized the fact that the percentage allocated to the oil-producing region could be modified by decree²¹³ as "sound practice to ensure flexibility."²¹⁴ The Bank stressed "contractual and extra-contractual mechanisms" as the main tools available to the Bank and donors to push Chad to sound management.²¹⁵

One of the conditions of the loan, designed to ensure sound revenue management, was the creation of an independent International Advisory Group (IAG) to provide additional assurance of quality project monitoring. The IAG's role will be to advise the Bank on the adequacy of implementation in light of the Bank's broader developmental objectives.²¹⁶ The structure and functions of the IAG, as defined by the draft terms of reference released by the Bank, seek to ensure the monitoring body's independence.²¹⁷

Upon releasing the draft IAG terms of reference, the Bank called for input from civil society. Activists quickly pointed out the lack of any express reference to human rights issues.²¹⁸ NGOs also pointed out the need to broaden the powers of the IAG so that it could provide solutions to problems rather than merely identifying them.²¹⁹

210. *Id.* art. 15.

211. *Id.* art. 16.

212. In October 1999, a group of students working in a clinical seminar at Harvard Law School addressed a memorandum to the World Bank pointing out the inadequacies of the law. *Managing Oil Revenues in Chad: Legal Deficiencies and Institutional Weaknesses* (Human Rights Clinical Program, Harvard Law School), Oct. 13, 1999 (on file with author).

213. *Id.* at 4 (noting that this change to allow modification by decree had probably taken place after approval).

214. The Bank did not take issue with the fact that this change may have taken place after approval. Paatii Ofosu-Amaah, Chief Counsel, Africa Division, The World Bank, Response to Comments from the Human Rights Clinical Program of Harvard Law School, Jan. 12, 2000, at 2.

215. *Id.* at 1 (on file with author).

216. Bank Information Center, *Africa: Projects*, at <http://www.bicusa.org/africa.htm> (last visited Dec. 2, 2000).

217. World Bank, *The Chad-Cameroon Development and Pipeline Project, Draft Terms of Reference- International Advisory Group on the Chad-Cameroon Pipeline and Related Projects*, ref. nos. 6 and 8.

218. See Letter from Peter Rosenblum, *supra* note 15.

219. See The Bank Information Center, *Comments on the World Bank's Terms of Reference for the International Advisory Group on the Chad Cameroon Oil Pipeline Project* (Sept. 25, 2000), at http://www.bicusa.org/africa/BIC_comments.htm (last visited Feb. 23, 2001).

On February 21, 2001, the Bank released the definitive Terms of Reference and the names of the members of the IAG. According to this final version, the IAG will be composed of six experts of international prestige who will report to James Wolfensohn and to the governments of Chad and Cameroon and who will travel to Chad at least twice a year.²²⁰

Yet, before these measures were implemented, the risk of project failure became glaringly apparent in November 2000, when it was revealed that the Chadian government had spent half of the \$25 million dollar “welcome bonus” paid by the consortium without any regard to the Revenue Management Law procedures. Approximately \$4.5 million, for example, was spent on the acquisition of arms. This news caused an outcry at the Bank, and the Bank threatened to freeze the country’s debt relief program.²²¹

The Bank should fulfill its role as the moral guarantor of this project. The Bank must be aware that, in this project, its main task is not to lend but to ensure that oil revenues are distributed fairly and transparently. The Bank’s defensiveness and its disregard of the procedural irregularities that have occurred cast serious doubt on its ability to monitor the project effectively. The Bank must reformulate its human rights and good governance policies in order to play a substantive role in promoting responsible investment.

IV. TOWARD A REINTERPRETATION OF THE BANK’S MANDATE IN THE CHAD/CAMEROON CONTEXT

It is essential that the Bank acknowledge human rights problems in the Chad/Cameroon context in an open and honest way. If the Bank hopes to succeed in guaranteeing that oil revenues benefit all Chadians, it cannot be blind to the dealings of its business partners. The Bank must integrate human rights concerns into its policies and reevaluate its current lending system. This Part will examine how and why the Bank should reinterpret its mandate in the Chad/Cameroon context and will discuss the policy changes the Bank will need to make in order to address human rights issues in an effective manner.

A. *The Articles of Agreement Do Not Prevent Human Rights Considerations*

The Bank can and should interpret its mandate broadly to include human rights considerations. First, the historical justification for the political prohibitions in Article IV, Section 10 of the IBRD’s Articles of Agreement is no longer relevant. The Cold War is over and the Bretton Woods architects

220. For the definitive Terms of Reference and the names of the members of the IAG, see *World Bank Appoints International Advisory Group on the Chad-Cameroon Petroleum Development and Pipeline Project*, Feb. 21, 2001, No. 2001/235/S (World Bank Press Release), at <http://wbln0018.worldbank.org/news/pressrelease.nsf> (last visited Feb. 23, 2001).

221. Babette Stern, *Le Tchad A Acheté des Armes avec l’Argent du Pétrole*, LE MONDE, Nov. 22, 2000, at 5.

could not have anticipated the mainstreaming of human rights discourse.²²² Compelling arguments have repeatedly been made stating that human rights are not merely an internal political affair. As early as 1950, Hersch Lauterpacht wrote “[an issue] is not essentially a matter of domestic jurisdiction if it has become the subject of international obligations in the legal sense of the term.”²²³

Second, the U.N. Legal Counsel in the 1960s noted that human rights did not constitute a political affair but rather were a source of legal obligations under the U.N. Charter.²²⁴

Third, the Bank is already seeking to redefine its conception of human and social development, and this re-definition should extend to include human rights issues. The Bank frequently refers to the Declaration on the Right to Development. The Declaration specifically states that full respect for human rights is a condition of development.²²⁵ At least in its official discourse—although not in its practice, the Bank rejects trade-off theories that advocate the sacrifice of certain rights in exchange for more efficient development.²²⁶ In order to address the issue of development in a holistic manner, the Bank must take into account human rights.

Finally, the Bank has consistently stretched the interpretation of its mandate with respect to implied economic powers; the concept of political affairs should be similarly reinterpreted. Ideally, the Articles of Agreement should be modified to incorporate explicitly the principles of the Charter of the United Nations. This process may, however, prove extremely cumbersome.²²⁷ Therefore, the idea of political affairs should at least be reinterpreted to reflect the current understanding of the concept. One wonders why

222. It is important to recognize that the mainstreaming of the human rights discourse presents a number of new challenges and dangers. For a critique of the dominant idea of human rights, see Tony Evans, *Introduction: Power, Hegemony and the Universalization of Human Rights*, in *HUMAN RIGHTS FIFTY YEARS ON: A REAPPRAISAL* 1–20 (Tony Evans ed., 1998).

223. HERSCH LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 176 (1950). See also OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 342–45 (1991).

224. *Statement of U.N. Legal Counsel to U.N. Fourth Committee*, U.N. GAOR 4th Comm., 21st Sess., 1653rd mtg., U.N. Doc. A/C.4/SR. (1966), reprinted in 6 *I.L.M.* 171, 171–72 (1967).

225. *Preamble to the Declaration on the Right to Development*, G.A. Res. 41/128, U.N. GAOR, 41st Sess. Supp. No. 53, at 186, U.N. Doc. A/41/53 (1987). It is, however, quite ironic that the World Bank itself invokes a Declaration that was adopted to advance an international economic order absolutely opposed to the one advocated by the Bretton Woods institutions. See Antonie Anghie, *Time Present and Time Past: Globalization, International Financial Institutions and the Third World*, 32 *N.Y.U. J. INT'L L. & POL.* 243, 253 (2000). See also Lisa Jordan, *The Bretton Woods Challengers*, in *DEVELOPMENT: NEW PARADIGMS AND PRINCIPLES FOR THE TWENTY-FIRST CENTURY*, 2 *RETHINKING BRETTON WOODS* 75, 83 (Jo Marie Griesgraber & Bernhard G. Gunter eds., 1996).

226. See generally Cahn, *supra* note 75, at 170. (The Bank's ideology emphasizes technocratic advice as the best way to remove obstacles to economic growth.) See also JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 163–202 (1989) (explaining that, in the 1960s, the reigning orthodoxy was the need to sacrifice human rights—civil, political, economic, and social—in order to achieve rapid development; whereas in the 1970s and 1980s, repression was still commonly defended as useful to development).

227. According to Art. VIII of the Articles of Agreement, an amendment to the articles would require a majority of three-fifths of the members, having 85% of the voting rights.

the Bank, which has gone so far in the extension of its “implied powers” to further investors rights, has been so scrupulous with its mandate when considering legal obligations undertaken by countries under human rights treaties.²²⁸

B. A Loan Approval Culture Is Incompatible with a Serious Human Rights Policy

The Bank’s loan approval culture jeopardizes the adoption of an honest and coherent human rights policy²²⁹ and undermines its role as moral guarantor in the Chad/Cameroon context. Although an extensive internal review of the Bank’s loan portfolio in 1992 denounced the Bank’s loan approval culture, the developments in the Chad/Cameroon project seem to indicate that the Bank still has not changed its policies.²³⁰

The desperate marketing operation undertaken in the Chad/Cameroon project emphasizes this incompatibility between loan approval and human rights priorities. The *Project Appraisal Document*, distributed to the executive directors, disregards the episodes of extrajudicial killings, torture, beating, rape, and abuse reported by human rights organizations. The document fails to mention the fact that Petronas, one of the members of the consortium, has invested in a project fueling an ongoing genocide in Sudan.²³¹ Instead, it affirms that “Chad has successfully put in place democratic political institutions.”²³²

In order to facilitate loan approval, the Bank has used manipulative tactics. In a leaked memo, the Vice President for Sustainable Development suggested that the Vice President for Africa adopt “a three-pronged approach to securing support for the project over the next month in the lead-up to the Annual Meetings.”²³³ Part of the strategy consisted of engaging “our NGO critics in a separate exercise that would allow us to avert the public spotlight from the differences between the NGOs and ourselves which have come to characterize the debate [*sic*].” A key element of this anti-NGO exercise would be a “high-level listening mission” staffed by officials not too closely associated with the project in the critics’ minds. This attempt at appearing impartial would make it easier “to convince the NGOs that we really are prepared to listen, learn and eventually make some pro-

228. See Cahn, *supra* note 75, at 184–85.

229. See *id.* at 181–82 (discussing the 1992 Wapenhans Report, an internal Bank study of project performance chaired by former Bank Vice President Willi Wapenhans).

230. The pressure to approve loans is not a recent development in Bank policy. Since the 1960s, pressure to lend started to increase as some of the borrowers began to pay back annually more than they received in new loans. Rich, *supra* note 88, at 10–11.

231. *Id.* at 1.

232. Korinna Hortal EDF, *Chad/Cameroon Oil and Pipeline Project: World Bank Board Approval Set for 23 May 2000—Yet Many Questions Remain Unanswered*, at 2 (on file with author) (referring to the PROJECT APPRAISAL DOCUMENT, *supra* note 5, at 122).

233. E-mail from Ian Johnson, World Bank, to Jean-Louis Sarbib and Praful C. Patel, World Bank (Aug. 24, 1999) (on file with author).

posals that might mollify them."²³⁴ The Vice President for Africa's reply, sent a few days later, reported having discussed with Exxon "the image issue and public opinion."²³⁵

C. A Coherent Human Rights Policy Is Fundamental to the Bank's New Role

The World Bank has engaged in considerable preparation for the Chad/Cameroon project. Nevertheless, the Bank's disregard for the underlying circumstances in the country has hindered and damaged the technical work undertaken by the Bank to safeguard the venture. The requirements imposed by the Bank have tried to address many of the problems that the pipeline is likely to cause. But the mitigation measures may prove inadequate and ineffective due to the country's institutional and political weaknesses. The Bank must, therefore, adopt a full human rights agenda in order to ensure the project's success.

First, a human rights agenda should include new policies to encourage greater transparency. The Bank should consider institutionalizing Human Rights Impact Assessments relating to its projects and policies.²³⁶ These analyses could offer an accurate and realistic assessment of the situation on the ground. Comprehensive information about human rights in the country and the project's impact should be made available to the stakeholders. In this respect, the Bank should look to its past success with regard to environmental reviews.²³⁷

Second, the Bank should expand its good governance programs beyond the formal aspects of governance, and reforms promoting the rule of law should focus on the work of bodies protecting citizens' rights, such as Human Rights Commissions or ombudsmen. For example, as a part of the Chad/Cameroon project, the World Bank purports to be training Chadian parliamentarians in public finance.²³⁸ Blind technical training in accounting will not help when opposition parliamentarians risk going to prison for de-

234. *Id.*

235. E-mail from Jean-Louis Sarbib, World Bank, to Ian Johnson, World Bank (Aug. 30, 1999) (on file with author).

236. Katarina Tomasevski, *Human Rights Impact Assessment: Proposals for the Next 50 Years of Bretton Woods*, in *PROMOTING DEVELOPMENT: EFFECTIVE GLOBAL INSTITUTIONS FOR THE TWENTY-FIRST CENTURY*, 1 *RETHINKING BRETTON WOODS* 82, 94 (Jo Marie Griesgraber & Bernhard G. Gunter eds., 1995).

237. Luc Lamprière, *Under the Human Rights Banner: Media, Campaigns and Protests in the Name of Human Rights* (May 19, 2000) (unpublished manuscript, on file with author). Lamprière notes that extracting lessons from environmental policies becomes more important when taking into account the growing number of links between environmental and human rights groups and the incursions of environmental groups in the field of human rights. These links are visible in the Chad/Cameroon campaign, where the AITPDH (Chadian Association for the Promotion and Defense of Human Rights) has worked closely with Environmental Defense Fund (EDF) and CIEL (Center for International Environmental Law).

238. Chad Oil Development Project—Roundtable Meeting, Columbia University, New York, N.Y. (Mar. 31, 2000).

nouncing irregularities.²³⁹ An open acknowledgement of this type of difficulty would have made the project more honest, credible, and coherent.

The Bank has taken a first step by initiating a study of how it can support a project, sponsored by the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights (UNHCHR), to strengthen human rights and governance in Chad. But there is still a long way to go; the Bank's support for these programs should be of a systematic character and must be integrated with other reforms.

Third, the "holistic approach" to development drawn up in the Comprehensive Development Framework must include human rights. To a great extent, the launching of the Comprehensive Development Framework implies the acknowledgement of other international institutions' and donor countries' developmental approaches.²⁴⁰ Even the OECD Development Assistance Committee, an organization more concerned with the expansion of economic liberalism than that of genuine democracy, links the World Bank's definition of good governance with participatory development, human rights, and democratization.²⁴¹

Fourth, some authors and NGOs have proposed the elaboration of guidelines for freezing loans in the event of human rights violations.²⁴² If loan freezing guidelines are to be drawn-up, however, they should be the product of deep reflection. A mechanism that systematically tries to impose respect for human rights by denying financial aid could easily create counterproductive results. Given the Bank's history, fears that human rights conditionalities would become yet another instrument of neocolonialism are more than justified. A frequent criticism is that international financial institutions cannot preach democracy and good governance while they remain undemocratic institutions in their governance structures and operations.²⁴³ Addressing the North/South disparity in the Bank's decision-making process is a necessary condition for the implementation of a genuine human rights policy. As a result, the eventual application of loan freezing measures would have to be monitored externally and independently.

The use of leverage extends the debate to broader world governance problems that are beyond the scope of this Article. Challengers of the Bret-

239. See 1999 AMNESTY INTERNATIONAL REPORT, *supra* note 175 and accompanying text. A similar problem may weaken the measures taken to increase the oversight and control capacities of the judiciary, such as the creation of an Auditor General's Office in the Supreme Court. See PROJECT APPRAISAL DOCUMENT, *supra* note 5, at 174. An Auditor General's Office will improve the control capacity of the Chadian judiciary only if it overcomes its endemic dependence on the executive, as denounced by several main human rights organizations and the U.S. State Department.

240. See World Bank Group, *Comprehensive Development Framework*, *supra* note 66.

241. GOVERNANCE: THE WORLD BANK'S EXPERIENCE, *supra* note 51, at xiv.

242. That is the position defended by Gillies, *supra* note 23, and by Human Rights Watch. See Letter from Human Rights Watch to the World Bank President (Dec. 14, 1999), reprinted in INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS AND MORALS, *supra* note 59, at 1335-36.

243. See Anghie, *supra* note 225, at 270.

ton Woods institutions agree that development as practiced by the World Bank has failed; the debt crisis has been resolved to benefit a number of powerful Western banks and the global economy has been adjusted at the expense of the poor.²⁴⁴ The solutions proposed by economists and activists differ, however, as to what role should be granted to the international financial institutions. Structuralists and reformist economists advocate broadening their regulatory role following a model closely patterned on Keynes's theories.²⁴⁵ Alternative economists and activists see the Bretton Woods system itself as the tool of domination, and some advocate that the system be abandoned completely.²⁴⁶

The reassessment of the Bank's role in the human rights arena also needs to take note of the debt relief debate. When Western countries called for democratization in Africa, they overlooked the sheer quantity of resources that the construction of a democratic order would require.²⁴⁷ It would be cruelly ironic if the Bank implemented a system of stringent human rights conditionalities while debt servicing caused massive deprivation of economic and social rights.

V. CONCLUSION

The World Bank defends its participation in the oil extraction project in Chad and Cameroon based on the unparalleled opportunity to alleviate poverty in Chad. Yet, in the opinion of the NGOs opposing the project, there is a high probability of failure on every front: the environmental risks are too high, oil revenues are susceptible to embezzlement, and the oil flow may exacerbate social and political instability in an already fragile environment. The Bank contends, however, that it is equipped to tackle any eventual problems. The Bank argues that its participation is "highly catalytic, in particular given the perceived risks presented by this complex cross-border operation."²⁴⁸

Chad's human rights situation will determine the success of the project. The World Bank is, however, ill-equipped to tackle the country's problems, particularly with respect to corruption and revenue mismanagement, due to its lack of a coherent human rights policy. New policies relating to human rights have been adopted as a result of criticism or past project failures rather than as a result of a well thought-out plan. Human rights difficulties in the Chad/Cameroon project were only addressed publicly by the World Bank when NGOs campaigned against the current project. The Bank's Web site has been periodically updated to defend itself from the human rights

244. Jordan, *supra* note 225, at 76.

245. *Id.* at 78-79. See HUMAN DEVELOPMENT REPORT 1999, *supra* note 120, at 98, 113.

246. Jordan, *supra* note 225, at 76, 80-83. (citing Max-Neef, George Aditjondro, activists like Vandana Shiva, and the U.S.-based campaign "50 Years is Enough" as representative of this position).

247. AMBROSE, *supra* note 155, at 24.

248. PROJECT APPRAISAL DOCUMENT, *supra* note 5, at 37.

criticisms raised during the campaign. Moreover, the project documentation presents an incomplete human rights picture in order to justify the loan rather than accurately assessing its effects.

If the Bank wants to improve the plight of the poor through private investment, it should openly acknowledge the human rights deficiencies in the borrowing country rather than painting an idealized picture in order to foster the approval of its executive directors. The Bank should always evaluate human rights conditions prior to project approval and implementation.

In the past, the Bank has intervened in political affairs and institutions by using economic arguments to justify its actions.²⁴⁹ In the case at hand, economic arguments can easily be made to advocate for a fuller consideration of democratic governance. If human rights considerations are not integrated into the Chad/Cameroon pipeline project, the economic gains expected by the Bank will never benefit the neediest of Chad's people.

249. Staff members trying to push certain rights considerations in the loans (for example, the role of women in development) have been much more successful when they have framed the problem in terms of economic benefits rather than relying on welfare or equity arguments. MILLER-ADAMS, *supra* note 47, at 74. The Bank's discourse also addresses corruption as an efficiency issue rather than as a moral one. *Id.* at 114-15.

