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REQUIEM FOR A PIPE DREAM: OIL, THE WORLD BANK, AND THE NEED FOR HUMAN RIGHTS ASSESSMENTS

*Dustin N. Sharp**

INTRODUCTION

The revenues associated with oil and other extractive industries projects in sub-Saharan Africa—particularly as they are contrasted with the living conditions of those for whom these revenues could provide the greatest benefit—raise the hope of using natural resources to achieve significant poverty alleviation. From the impoverished villages of the Niger Delta to south Sudan, however, oil wealth has rarely led to widespread poverty alleviation.¹ More often than not, the revenues that should in theory be a great boon to development are in practice associated with disastrous human rights fallout as living standards actually decrease and governance indicators worsen, a phenomenon known as the “resource curse.”²

Because the resource curse transcends differences between otherwise dissimilar oil exporting states, its effects and patterns are eminently predictable when new oil is discovered in a poor country.³ However, whether those foreseeable effects can actually be prevented or at least mitigated through policy interventions is another question. In the late 1990s, the World Bank Group (“World Banks” or “Bank”) served as the architect for a series of legal and policy interventions intended to beat the resource curse by ensuring that the newfound oil wealth of the central African state of Chad be channeled into poverty alleviation efforts.⁴ The Chadian experiment in general, and its policy intervention innovations in particular, were held up as models for other extractive industries projects around the world.⁵

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¹ See generally Jeffrey Sachs & Andrew Warner, *Natural Resource Abundance and Economic Growth* (Harvard Inst. for Int’l Dev., Development Discussion Paper No. 517a, 1995) (discussing how the economies of countries with abundant natural resources tend to have low growth rates).

² See Emeka Duruigbo, *The World Bank, Multinational Oil Corporations, and the Resource Curse in Africa*, 26 U. PA. J. INT’L ECON. L. 1, 2 (2005).

³ See *id.* (indicating that the discovery of vast amounts of petroleum will have a negative effect on the country).

⁴ See *id.* at 39–40.

⁵ See INT’L CRISIS GRP., CHAD: ESCAPING FROM THE OIL TRAP, AFRICA BRIEFING NO. 55 1 (2009).

Ten years after entering the project in 2000, the World Bank has pulled out of the Chad-Cameroon pipeline project, and its efforts to ensure that oil wealth be translated into poverty reduction are considered to be a failure.⁶ The resource curse, it would seem, has struck yet again. Notwithstanding the predictable collapse of the project, the World Bank has suggested it will continue its involvement in extractive industries initiatives in the future, taking the “lessons” of the Chad experience with it.⁷ However, it is far from clear how exactly it intends to operationalize the key lessons of the Chadian experience in the future. Whether projects can be engineered to overcome the resource curse is, it appears, still an open question.

This Article analyzes the various “lessons learned” that have been articulated in the wake of the Chad-Cameroon pipeline project’s collapse, and argues that many of them miss the mark. Unless the World Bank develops a more cohesive human rights policy with respect to lending decisions and project implementation, the collapse of the Chad-Cameroon pipeline project is an experience that could well repeat itself in the future. A step toward better human rights policy at the World Bank would involve conducting human rights assessments for any potential project, much as the World Bank currently undertakes social and environmental impact assessments.⁸ While human rights assessments cannot prevent the resource curse, they would better steer the World Bank and other development institutions towards those extractive projects where the chances of mitigating the resource curse are the highest.

This Article proceeds in three parts. In Part I, this Article examines the phenomenon of the “resource curse” as it has been developed in the literature in terms of potential causes and effects. It pays particular attention to the resource curse as it has played out in the context of oil extraction in sub-Saharan Africa. Older oil exporters appear to confirm patterns associated with the resource curse, while newer ones raise serious and troubling questions. This Article argues that the region is of increasingly vital importance to world oil supplies, making the question of preventing or mitigating the resource curse more pertinent than ever.

⁶ *Id.* at 16, 18.

⁷ *Management Statement on the Lesson from Evaluation of the Chad-Cameroon Oil Development and Pipeline Program*, THE WORLD BANK (Nov. 23, 2009), <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CHADEXTN/0,,contentMDK:22398488~menuPK:50003484~pagePK:2865066~piPK:2865079~theSitePK:349862,00.html>.

⁸ Alex Wilks, *At Issue: World Bank Social and Environmental Policies: Abandoning Responsibility?*, BRETTON WOODS PROJECT (Sept. 2003), <http://www.brettonwoodsproject.org/doc/env/safeguards.PDF>.

In Part II, this Article examines the case of one of sub-Saharan Africa's newer oil exporters, Chad, with a particular focus on the World Bank's attempts to beat the resource curse and ensure that newfound oil revenues be used to fuel poverty alleviation. With the recent collapse of the World Bank's efforts in Chad, this Article places emphasis on dissecting the various lessons learned that have been articulated, and analyzing the proposed modifications to the policy interventions that have been implemented in the course of the Chad-Cameroon Pipeline project. Whatever lessons-learned narrative ultimately carries forward will have great relevance to future extractive industries initiatives across sub-Saharan Africa.

In Part III, this Article lays out the heart of its thesis, arguing that the Bank's continued ambivalence toward greater integration of human rights principles into its assessment and programming is at least partially responsible for the failure of the Chad-Cameroon Pipeline project. Going forward, conducting human rights assessments would be one tool to force the Bank to better grapple with factors that have ultimately doomed the Chad-Cameroon pipeline project to failure, and for predicting where extractive industries projects stand the best chance of being channeled into poverty alleviation.

I. OIL AND THE RESOURCE CURSE IN SUB-SAHARAN AFRICA

It has long been observed that countries heavily dependent on the export of natural resources perform poorly when it comes to a wide range of social, political, and economic indicators, and that this performance often lags behind their less dependent counterparts.⁹ The negative relationship between endowment with natural resources on the one hand and social and economic development on the other is often referred to as the "resource curse" or "paradox of plenty."¹⁰

The resource curse is not a modern phenomenon, nor are its effects limited to a particular region.¹¹ Indeed, one of the most striking features of the resource curse phenomenon is that countries that have little else in common from an ethnic, geographic, cultural, or political standpoint seem to face a common and counterintuitive dilemma: the natural resource wealth that should

⁹ See generally Sachs & Warner, *supra* note 1 (providing a groundbreaking study reviewing the history of the phenomenon).

¹⁰ See Duruigbo, *supra* note 2, at 5–6. See also Michael Ross, *The Political Economy of the Resource Curse*, 51 *WORLD POL.* 297, 300–05 (1999) (providing a review of the literature on the resource curse).

¹¹ See Duruigbo, *supra* note 2, at 6 (noting examples throughout history of the resource curse).

be a blessing does not bring with it social and economic development.¹² While the existence of the resource curse has been disputed,¹³ the empirical evidence supporting the phenomenon appears to be strong.¹⁴

Though not limited to oil-exporting countries, petro-states provide a particularly vivid illustration of the paradox of plenty. In theory, oil revenues flowing into a desperately poor country should be able to provide a sorely needed boost, bringing in investors and much needed capital.¹⁵ In practice, it is often the case that oil not only fails to alleviate poverty, but actually tends to worsen it.¹⁶ Between 1965 and 1998, for example, oil-exporting countries grew more slowly than their non-oil-rich counterparts, experiencing an average *decrease* in their per capita GNP of 1.3% per year, while their non-oil counterparts grew by an average of 2.2% per year.¹⁷ Oil-exporting countries tend to have higher levels of poverty, decreased spending on social sectors such as health and education,¹⁸ and increased military spending.¹⁹

The resource curse is a global phenomenon, but there are reasons to be especially concerned about its effects in sub-Saharan Africa. Of the thirty lowest countries on the Human Development Index, only two are located outside of sub-Saharan Africa.²⁰ Over half of all sub-Saharan Africans continue to live on less than one dollar per day.²¹ Given the endemic poverty,

¹² *Id.* at 8.

¹³ See Graham Davis, *Learning to Love the Dutch Disease: Evidence from Mineral Economies*, 23 WORLD DEV. 1765, 1776 (1995) (arguing that the resource curse is not a widespread and general phenomenon).

¹⁴ See Sachs & Warner, *supra* note 1 (analyzing ninety-seven countries over a nineteen-year period, and concluding that states with a high ratio of natural resource exports had abnormally slow growth rates even controlling for a wide range of variables); Terry Lynne Karl, *Oil-Led Development: Social, Political, and Economic Consequences* 7–10 (Ctr. on Democracy, Dev., and the Rule of Law, Stanford Univ., Working Paper No. 80, 2007) (reviewing data indicating that oil exporting countries grow more slowly than their non-oil rich counterparts).

¹⁵ Duruigbo, *supra* note 2, at 8.

¹⁶ Karl, *supra* note 14, at 7.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 10–11.

¹⁹ *Id.* at 22.

²⁰ UNITED NATIONS DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2009 OVERCOMING BARRIERS: HUMAN MOBILITY AND DEVELOPMENT 173–74 (2009).

²¹ UNITED NATIONS DEV. PROGRAMME, THE MILLENNIUM DEVELOPMENT GOALS REPORT 2009 5 (2009). There continue to be concerns with using the dollar-per-day metric, particularly on the African continent, based on a concern that it does not fully capture non-monetary income. ECON. COMM'N FOR AFR. ET AL., ASSESSING PROGRESS IN AFRICA TOWARD THE MILLENNIUM DEVELOPMENT GOALS: MDG REPORT 2009 5 n.4 (2009). Nevertheless, the dollar-per-day metric “continues to be widely used to measure progress toward poverty reduction.” *Id.*

Africa is a continent that can scarcely afford to be made poorer by its own wealth.

Literature analyzing the resource curse phenomenon illustrates a number of other worrisome effects that sub-Saharan Africa can ill afford.²² Oil wealth tends to negatively impact governance by reducing accountability, increasing corruption, and strengthening authoritarianism.²³ Why this should be so is the subject of some debate, but the literature analyzing *rentier* states²⁴ suggests that governments that can rely on the bulk of their wealth from external sources by exporting a commodity such as oil, with only a tiny minority participating in generating the rent, are less reliant on—and therefore less beholden to—the populations that they govern.²⁵ With low taxes, citizens, in turn, lose some of the incentive to demand accountability from their government.²⁶ At the same time, influxes of oil wealth provide strong incentive for economic actors to bribe those who control access to the resources, and some studies suggest that corruption is a driving force behind the resource curse.²⁷ Ultimately, because the source of governmental power becomes the control of revenue flows from natural resources such as oil rather than taxes or the ballot box, authoritarian regimes are strengthened, delaying or preventing transitions to democracy that might otherwise be expected.²⁸ One scholar concludes that not only does oil thereby hurt democracy, “[it] does greater damage to democracy in poor states than in rich ones.”²⁹

While the potential negative effects on accountability and governance are bad enough, there is also evidence to suggest that the probability of having civil wars is higher in natural-resource-exporting countries than in their resource-poor counterparts.³⁰ Though its results have been questioned, one

²² See Duruigbo, *supra* note 2, at 2 (listing the litany of ills that befall those countries stricken with the “resource curse”).

²³ *Id.*

²⁴ *Rentier* states are states that receive most of their revenues from external sources, often in the form of natural resource rents. Ross, *supra* note 10, at 312.

²⁵ *Id.* See also TERRY KARL, THE PARADOX OF PLENTY: OIL BOOMS AND PETRO-STATES 16 (1997) (describing how extensive reliance on oil money leads to the weakening of the state’s ability to exercise authority).

²⁶ Ross, *supra* note 10, at 312.

²⁷ See Nicholas Shaxson, *Oil, Corruption, and the Resource Curse*, 83 INT’L AFF. 1123, 1123, 1126 (2007). See also Carlos Leite & Jens Weidmann, *Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth* 29 (Int’l Monetary Fund, Working Paper No. 99/85, 1999).

²⁸ Jay Ulfelder, *Natural-Resource Wealth and the Survival of Autocracy*, 40 COMP. POL. STUD. 995, 996 (2007).

²⁹ Michael Ross, *Does Oil Hinder Democracy?*, 53 WORLD POL. 325, 356 (2001).

³⁰ *Id.* at 328.

study concluded that countries whose economy is substantially based on primary commodities are “radically more at risk of conflict.”³¹ Additional studies have continued to build evidence that the production of oil is “associated with the onset of conflict, particularly separatist conflict.”³² Today, at least one major international non-governmental organization (“NGO”), Global Witness, has made an industry out of documenting the linkages between the extraction of natural resources and conflict.³³

One need not look too deeply into this history and politics of sub-Saharan Africa’s older oil producers to see the troubling effects of the resource curse at work. In East Africa, the southern region of Sudan was for decades the locus of one of Africa’s most intractable civil wars, pitting the mostly black animist and Christian South—the site of Sudan’s oil—against the largely Arab Muslim dominated North.³⁴ In the course of that brutal conflict, oil wealth fueled abuses against civilians in the south.³⁵ In West Africa, oil companies have notoriously been complicit in human rights abuses in the Niger Delta, and the oil-producing region has become synonymous with environmental catastrophe, repression, and rebel movements.³⁶ Despite dramatic increases in oil revenues in recent decades, there has been scant improvement in Nigeria’s social and economic conditions due in large part to rampant corruption.³⁷ In southern Africa, the Angolan government has famously used oil revenues to fund civil

³¹ PAUL COLLIER, *ECONOMIC CAUSES OF CIVIL CONFLICT AND THEIR IMPLICATIONS FOR POLICY* 6 (2000). *But see* Benjamin Smith, *Oil Wealth and Regime Survival in the Developing World, 1960–1999*, 48 AM. J. POL. SCI. 232 (2004) (“Oil wealth is robustly associated with increased regime durability . . .”). It should be noted that regime durability and increased likelihood of conflict are not necessarily mutually exclusive. The fact that authoritarian regimes can use the proceeds from oil wealth to buy arms and sustain themselves in power, coupled with the fact that the access to enormous resources that only comes with power may tend to focus the minds of would-be rebel movements, may help to explain the different findings. The case of Chad, discussed in detail in Part III of this Article, would appear to follow this pattern.

³² Michael Ross, *What Do We Know About Natural Resources and Civil War?*, 41 J. OF PEACE RES. 337, 342 (2004). *See also* Michael Ross, *A Closer Look at Oil, Diamonds, and Civil War*, 9 ANN. REV. POL. SCI. 265, 267 (2006); RICARDO SOARES DE OLIVERIA, *OIL AND POLITICS IN THE GULF OF GUINEA* 37 (2007).

³³ GLOBAL WITNESS, *A CRUDE AWAKENING: THE ROLE OF THE OIL AND BANKING INDUSTRIES IN ANGOLA’S CIVIL WAR AND THE PLUNDER OF STATE ASSETS* 22 (1999).

³⁴ *See* JOHN GHAZVINIAN, *UNTAPPED: THE SCRAMBLE FOR AFRICA’S OIL* 280–81 (2007).

³⁵ *See* Amnesty Int’l, *Sudan: The Human Price of Oil*, AI Index AFR 54/01/00ERR (May 2000); HUMAN RIGHTS WATCH, *SUDAN, OIL, AND HUMAN RIGHTS* 48 (2003). It remains to be seen whether the anticipated secession of South Sudan following a January 2011 referendum will result in better use of oil revenues.

³⁶ *See* HUMAN RIGHTS WATCH, *THE PRICE OF OIL: CORPORATE RESPONSIBILITY AND HUMAN RIGHTS VIOLATIONS IN NIGERIA’S OIL-PRODUCING COMMUNITIES* 9–12 (1999).

³⁷ *See* HUMAN RIGHTS WATCH, *CHOP FINE: THE HUMAN RIGHTS IMPACT OF LOCAL GOVERNMENT CORRUPTION AND MISMANAGEMENT IN RIVERS STATE, NIGERIA* 1 (2007). *See also* INT’L CRISIS GRP., *NIGERIA: WANT IN THE MIDST OF PLENTY*, AFRICA REPORT NO. 113 1 (2006).

war efforts, and rampant corruption of oil revenues has guaranteed preciously few gains in health and education.³⁸

Against this backdrop, increasing oil prices and advances in technology in the area of deep-water drilling mean that new oil producers, such as Ghana and São Tomé and Príncipe, are coming online while others are likely to follow in the years to come.³⁹ African oil production is estimated “to rise by 91% between 2002 and 2025, from 8.6 to 16.4 million barrels per day.”⁴⁰ One energy consulting firm has predicted that West Africa will be the number one source outside the Organization of the Petroleum Exporting Countries (“OPEC”) of the additional oil needed to meet the rise in world demand between now and 2015.⁴¹ Taken together, increasing commodity prices and oil scarcity have produced what some have called a twenty-first century “scramble for Africa,”⁴² with the Chinese, Indians, and others emerging as major competitors to the former colonial powers and the United States.⁴³ Given the endemic poverty in many sub-Saharan African states, the scramble makes the question of the resource curse more pertinent and challenging than ever.

The resource curse is not destiny, and natural resources need not produce disastrous results. The most famous counterexample from the African context is that of Botswana, where diamond wealth has successfully been channeled into economic development and poverty alleviation.⁴⁴ Unfortunately, there are precious few examples outside of Botswana of similarly successful efforts. Botswana’s unique features, including a small and homogenous population, may make it a model the rest of Africa will find difficult to follow.⁴⁵

The hunt for solutions in more challenging country contexts—countries with long histories of corruption, poor governance, human rights abuses, and ethnic conflict—continues. The stakes are high. The most famous example yet of an attempt to beat the resource curse in such a context is that of the Chad-

³⁸ GLOBAL WITNESS, *supra* note 33, at 2, 41–42; HUMAN RIGHTS WATCH, SOME TRANSPARENCY, NO ACCOUNTABILITY: THE USE OF OIL REVENUE IN ANGOLA AND ITS IMPACT ON HUMAN RIGHTS 1 (2004).

³⁹ Daniel Morris, *The Chance to Go Deep: U.S. Energy Interest in West Africa*, AM. FOREIGN POL’Y INTERESTS 225 (discussing drilling off the coast of Ghana).

⁴⁰ Jędrzej George Frynas & Manuel Paulo, *A New Scramble for African Oil? Historical, Political, and Business Perspectives*, 106 AFR. AFF. 229, 240–41 (2007).

⁴¹ Morris, *supra* note 39, at 236.

⁴² Frynas & Paulo, *supra* note 40, at 230.

⁴³ See generally *id.* (arguing for caution with the use of the term “new scramble”).

⁴⁴ Maria Sarraf & Moortaza Jiwanji, *Beating the Resource Curse: The Case of Botswana* 9 (World Bank Env’t Dep’t, Env’tl. Econ. Series Paper No. 83, 2001).

⁴⁵ Peter Rosenblum, *Pipeline Politics in Chad*, CURRENT HIST. 195, 198 (May 2000).

Cameroon pipeline project. The successes and failures of that experiment are of crucial relevance to oil-exporting countries across the continent, and will be discussed in detail in the following section.

II. THE CHAD-CAMEROON PIPELINE PROJECT

A. *The Political and Human Rights Context*

Chad is a large country, roughly twice the size of France, with a population of approximately 5.5 million people located just north of the African continent's center.⁴⁶ Chad was the last French territory in Africa to be occupied, developed, and given a civilian government.⁴⁷ Until recently, it made its post-colonial living off of cotton and foreign aid.⁴⁸ Today, despite being one of the world's newest petro-states, it remains one of Africa's poorest, worst-governed, and most conflict-ridden countries, ranking 175 of 182 on the United Nations Human Development Index,⁴⁹ 173 of 180 on Transparency International's Corruption Perception Index,⁵⁰ and 46 of 48 on the Mo Ibrahim Index of African Governance.⁵¹ Life expectancy is 47.7 years and 80% of the population lives on less than one U.S. dollar a day.⁵²

The impossible product of colonial border-drawing—cobbling together Chad's largely Muslim north and its largely Christian south—has produced a political powder keg.⁵³ Chad's post-independence history has been regularly punctuated by civil wars and *coups d'état*.⁵⁴ Idriss Déby, Chad's current president, came to power in a *putsch* some twenty years ago.⁵⁵ While enjoying relative longevity, the regime has faced nearly twenty armed challenges to

⁴⁶ See MARIO JOAQUIM AZEVEDO, *ROOTS OF VIOLENCE: A HISTORY OF WAR IN CHAD* 2 (1998).

⁴⁷ See MARIO JOAQUIM AZEVEDO & EMMANUEL U. NNADOZIE, *CHAD: A NATION IN SEARCH OF ITS FUTURE* 18 (1998).

⁴⁸ *Id.* at 78–79, 84–85.

⁴⁹ UNITED NATIONS DEV. PROGRAMME, *HUMAN DEVELOPMENT REPORT 2009 OVERCOMING BARRIERS: HUMAN MOBILITY AND DEVELOPMENT*, *supra* note 20, at 145.

⁵⁰ *Corruption Perceptions Index 2010 Results*, TRANSPARENCY INT'L, http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results (last visited Apr. 7, 2011).

⁵¹ ROBERT I. ROTBERG & RACHEL M. GISSELQUIST, *STRENGTHENING AFRICAN GOVERNANCE: IBRAHIM INDEX OF AFRICAN GOVERNANCE RESULTS AND RANKINGS* 13 (2008).

⁵² CLAUDIA FRANK & LENA GUESNET, "WE WERE PROMISED DEVELOPMENT AND ALL WE GOT WAS MISERY"—THE INFLUENCE OF PETROLEUM ON CONFLICT DYNAMICS IN CHAD 8 (2010).

⁵³ See AZEVEDO & NNADOZIE, *supra* note 47, at 89–114.

⁵⁴ See generally AZEVEDO, *supra* note 46, at 107–10. Since independence, Chad has spawned at least thirty-three different rebel groups. CHRYSANTUS AYANGAFAC, *RESOLVING THE CHADIAN POLITICAL EPILEPSY: AN ASSESSMENT OF INTERVENTION EFFORTS* 5 (2009).

⁵⁵ See AZEVEDO & NNADOZIE, *supra* note 47, at 62.

date.⁵⁶ Even when it does not produce open conflict, however, the north-south cleavage simmers under the surface and is one of the most salient features of Chadian politics.⁵⁷ While southerners are well represented in the civil service and dominate the press and local civil society, northerners have controlled the government and military since 1982.⁵⁸

Chad's human rights record is among the worst in Africa. The reign of Hissein Habré, Chad's most notorious military leader who served as president of Chad from 1982 to 1990, was marked by paranoia, clanism, severe political repression, and torture.⁵⁹

While no one is sure of the facts, the truth commission appointed after Habré's fall to investigate his crimes estimated that he is responsible for the torture and death of 40,000 individuals . . . most died of torture and starvation in the prisons of Habré's secret police, the Directorate of Documentation and Security ("DDS").⁶⁰

Although human rights conditions have undoubtedly improved since Déby took power in 1990, severe human rights abuses have continued over the last twenty years, including killings, torture, and arrests of real or perceived opponents of the Déby regime and their communities.⁶¹ Today, Chad is ranked among the world's most repressive regimes.⁶²

Though oil was discovered in the 1970s, civil war has several times delayed further prospecting and exploitation.⁶³ Given the history of conflict and ethnic cleavages in Chad, it is important to note that the oil that has long promised to deliver Chadians from poverty is located in the southern region of

⁵⁶ See Han Van Dijk, *Political Deadlock in Chad*, 106 AFR. AFF. 697, 700 n.8 (2007).

⁵⁷ Genoveva Hernandez Uriz, *To Lend or Not to Lend: Oil, Human Rights, and the World Bank's Internal Contradictions*, 14 HARV. HUM. RTS. J. 197, 215 (2001).

⁵⁸ See *id.* at 215–16.

⁵⁹ See Amnesty Int'l, *Chad: The Habré Legacy*, AI Index AFR 20/004/2001 (Oct. 2001). Habré, currently living in exile in Senegal, has for the last decade been the subject of potential criminal prosecution by Senegalese and other courts for crimes committed in Chad. See Dustin Sharp, *Prosecutions, Development and Justice: The Trial of Hissein Habré*, 16 HARV. HUM. RTS. J. 147, 147–77 (2003) (discussing the genesis of attempts to prosecute Habré).

⁶⁰ Sharp, *supra* note 59, at 165–66.

⁶¹ Amnesty Int'l, *Chad: A Country Under the Arbitrary Rule of the Security Forces with the Tacit Consent of Other Countries*, AI Index AFR 20/11/96 (Oct. 1996); Amnesty Int'l, *Chad: Never Again? Killings Continue into the 1990s*, AI Index AFR 20/04/93 (Apr. 1993); Amnesty Int'l, *Contracting out of Human Rights: The Chad-Cameroon Pipeline Project*, AI Index AFR POL 34/12/2005 (Sept. 2005).

⁶² Press Release, Freedom House, *Chad Joins Ranks of World's Worst Regimes, Others Decline Further* (May 6, 2008), www.freedomhouse.org/template.cfm?page=70&release=653.

⁶³ Rosenblum, *supra* note 45, at 197.

Doba.⁶⁴ In the 1990s, southern Chad was home to both a number of rebel groups that threatened the central government and a population alienated from the Déby regime.⁶⁵ During this same period, a memorandum of understanding was signed with an oil consortium for development of the Doba basin.⁶⁶ Not long thereafter, the government crushed the rebel insurgency using broad counterinsurgency tactics, including measures targeting the civilian population, with recorded massacres from 1992 to 1996.⁶⁷ Some have argued that the abuses perpetrated during this period were designed to eliminate any popular southern resistance to the oil project.⁶⁸ By the late 1990s, the rebellion had been quelled, and the way was cleared for oil exploitation.⁶⁹

B. The Pipeline Project

It is against this backdrop of political and ethnic schism, chronic instability, dire economic poverty, and severe human rights abuses that the Chad-Cameroon pipeline moved forward in the late 1990s.⁷⁰ Based on a partnership between the Chadian government, a consortium of oil companies (including Exxon, ChevronTexaco, and Petronas), and the World Bank, the pipeline would take oil 1070 kilometers from the southern Doba region of landlocked Chad to Cameroon's Atlantic coast where it could be delivered to world markets.⁷¹ The revenues generated by the pipeline seemed just the windfall needed for a desperately poor country like Chad.

The risks of operating in such an environment were not lost on the consortium of oil companies slated to develop the pipeline. Certainly the political and geographic dynamics of oil extraction in Chad carried echoes of neighboring Sudan, where the oil is located in a largely Christian South, while the government was largely controlled by Muslims from the North.⁷² But it was perhaps the internationally infamous oil development and public relations disaster in Nigeria—with the 1995 hanging of Ken Saro Wiwa and eight other

⁶⁴ *Id.*

⁶⁵ *See id.*

⁶⁶ *Id.*

⁶⁷ *Id. See generally* Amnesty Int'l, *Chad: A Country Under the Arbitrary Rule of the Security Forces with the Tacit Consent of Other Countries*, *supra* note 61 (discussing human rights violations in Chad during the 1990s).

⁶⁸ *See* INT'L CRISIS GRP., *supra* note 5, at 3–4.

⁶⁹ *See* Rosenblum, *supra* note 45, at 197.

⁷⁰ *See id.* at 197–98.

⁷¹ Duruigbo, *supra* note 2, at 38–39.

⁷² *See* GHAZVINIAN, *supra* note 34, at 280–81.

activists—that most strongly focused world attention on the linkages between oil extraction, corruption, and human rights abuses.⁷³ Oil companies had become the target of activist campaigns around the world, and they were eager to avoid similar outcomes in Chad.⁷⁴ If the oil companies recognized the risk of a publicity disaster, the World Bank was “keenly aware of the ‘paradox of plenty’ and the risks of the ‘resource curse’” and believed that without its involvement there was a “very low probability that Chad’s people would escape the oil curse.”⁷⁵

Though its direct financial investment in the project was comparatively insignificant, amounting to only three percent of the cost of the project,⁷⁶ thus began a marriage of convenience, with the World Bank and the oil companies eager to use what leverage they had over the other to avoid distinct but related outcomes.⁷⁷ Perhaps most important from the oil companies’ perspective, the Bank’s involvement promised to mitigate political risk, serving as a buffer between a potentially resentful population and international activism on the one hand and oil companies on the other.⁷⁸ If Chad were to become another “Ogoniland,” the oil companies would not be the only ones found morally culpable.⁷⁹ At the same time, the Bank was also to serve as “moral guarantor,” transforming a commercial project into a development project that would alleviate poverty and mitigate the risk of the resource curse.⁸⁰

⁷³ See Amos Adeoye Idowu, *Human Rights, Environmental Degradation and Oil Multinational Companies in Nigeria: The Ogoniland Episode*, 17 NETH. Q. HUM. RTS. 161, 177–80 (1999); Scott Pegg, *Can Policy Intervention Beat the Resource Curse? Evidence from the Chad-Cameroon Pipeline Project*, 105 AFR. AFF. 1, 22 (2005).

⁷⁴ See, e.g., Duruigbo, *supra* note 2, at 39 (discussing the addition of the World Bank as insulation from criticisms).

⁷⁵ INDEP. EVALUATION GRP., THE WORLD BANK GROUP PROGRAM OF SUPPORT FOR THE CHAD-CAMEROON PETROLEUM DEVELOPMENT AND PIPELINE CONSTRUCTION, PROGRAM PERFORMANCE ASSESSMENT REPORT 9–10 (2009) [hereinafter INDEP. EVALUATION GRP. REPORT].

⁷⁶ *Id.* at 71.

⁷⁷ See FRANK & GUESNET, *supra* note 52, at 25.

⁷⁸ *Id.*

⁷⁹ See *id.* (discussing how the oil companies are no longer the only parties responsible).

⁸⁰ See Press Release, World Bank, World Bank Group Approves Support for Chad-Cameroon Petroleum Development and Pipeline Projects (June 6, 2000), available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CHADEXTN/0,,contentMDK:20058876~menuPK:64282138~pagePK:41367~piPK:279616~theSitePK:349862,00.html>. When the World Bank Board of Directors approved the project in 2000, the World Bank boasted that the project was “an unprecedented framework to transform oil wealth into direct benefits for the poor, the vulnerable and the environment.” *Id.*

C. Legal and Policy Interventions

Projected to cost \$3.7 billion, the pipeline constitutes the single largest private sector investment in sub-Saharan Africa.⁸¹ The project has become known not for its scale, technical difficulty, or the size of Chad's oil reserves, however, but for a series of legal and policy interventions pushed by the World Bank in order to try to mitigate the resource curse by ensuring that Chad actually used the oil revenues for poverty alleviation.⁸² These strategies roughly fell into two basic categories.⁸³ First, a trust fund and revenue allocation scheme whereby the bulk of revenues would be allocated to priority development sectors such as health and education.⁸⁴ Second, a series of transparency monitoring and oversight bodies, both domestic and international, intended to follow project implementation and revenue.⁸⁵ Both categories are provided for under Chad's Revenue Management Law, adopted by Chad's National Assembly under World Bank pressure in 1998.⁸⁶

Under the Revenue Management Law as originally adopted, Chad's oil revenues are to flow through audited, offshore escrow accounts, and to be overseen by a national monitoring body, the *Collège de Contrôle et de Surveillance des Ressources Pétrolières* ("Collège").⁸⁷ The law further provided for the allocation of direct oil revenues, with 10% to go to a "Future Generations Fund."⁸⁸ Of the remainder, 5% is to be earmarked for the oil-producing region in southern Chad, 80% for poverty reduction spending, including education, health care, and social services, and the remaining 15% for general government expenditures.⁸⁹

Beyond the Revenue Management Law, further oversight arising out of loan conditionalities was provided for by the International Advisory Group

⁸¹ FRANK & GUESNET, *supra* note 52, at 25. By 2008, investment costs had reached \$6.5 billion. *Id.* at 25 n.31.

⁸² *Id.* at 25.

⁸³ The details of Chad's revenue management and oversight mechanisms have been covered in great detail elsewhere. See, e.g., IAN GARY & NIKKI REISCH, CHAD'S OIL: MIRACLE OR MIRAGE? FOLLOWING THE MONEY IN AFRICA'S NEWEST PETRO-STATE (2005); Uriz, *supra* note 57.

⁸⁴ See FRANK & GUESNET, *supra* note 52, at 26–27.

⁸⁵ See GARY & REISCH, *supra* note 83, at 51.

⁸⁶ Loi n°001/PR/99 du 11 janvier 1999 de gestion des revenus pétroliers [Law No. 001/PR/99 of January 11, 1999 on the Petroleum Revenue Management], Jan. 11, 1999 [hereinafter Revenue Management Law] (Chad). See also GARY & REISCH, *supra* note 83, at 42.

⁸⁷ See GARY & REISCH, *supra* note 83, at 51, 86.

⁸⁸ *Id.* at 99 (quoting Article 9 of Chad's Revenue Management Law).

⁸⁹ *Id.* at 42.

(“IAG”), an international monitoring body established to advise the World Bank on the adequacy of implementation.⁹⁰ Taken together, the various provisions for oversight and allocation of oil revenues were the most elaborate attempt yet to beat the resource curse through policy intervention, and to engineer good governance and transparency into a project environment noted for a lack thereof.⁹¹

Critics have long pointed to serious flaws in the project’s revenue management and oversight mechanisms, beginning with gaps and imprecision in the law itself.⁹² For example, with respect to the five percent of revenues to be allocated to the oil-producing region, the law does not define the “oil region”; it can be changed by unilateral presidential decree.⁹³ In addition, the provisions dealing with the priority social sectors to which revenues must be devoted under the law are vague, and no particular distribution among them is required, potentially inviting abuse.⁹⁴

Perhaps a larger issue, however, is that the way that the law is written puts a significant portion of the oil revenues outside its allocation and oversight mechanisms. The law distinguishes between direct (dividend and royalties) and indirect (taxes, charges, and customs duties) revenues.⁹⁵ Only direct revenues are placed into the audited escrow account and subjected to the various allocation requirements of the Revenue Management Law.⁹⁶ Furthermore, the law applies only to oil extracted from the three original oil fields in the Doba region of southern Chad, not to any new production areas.⁹⁷ While the exact numbers are difficult to determine, today it appears that less than half of Chad’s oil wealth is actually covered by the Revenue Management Law.⁹⁸

⁹⁰ *Id.* at 13.

⁹¹ Pegg, *supra* note 73, at 2.

⁹² *See* Uriz, *supra* note 57, at 224. For example, a legal study conducted by the Harvard Law School Clinical Program in 1999 pointed out serious gaps in the law’s coverage. *Id.* at 224 n.212 (citing Managing Oil Revenues in Chad: Legal Deficiencies and Institutional Weaknesses (Oct. 1999) (unpublished briefing paper)).

⁹³ *See* Revenue Management Law, *supra* note 86, art. 8; Uriz, *supra* note 57, at 223.

⁹⁴ *See* Uriz, *supra* note 57, at 223.

⁹⁵ *See* GARY & REISCH, *supra* note 83, at 98 (quoting Article 2 of Revenue Management Law).

⁹⁶ *See id.*

⁹⁷ Several new oil fields have been discovered beyond the original Doba fields, and a number of prospecting studies have identified other new oil basins, suggesting that Chad’s reserves may be significantly higher than originally estimated. *See* GARY & REISCH, *supra* note 83, at 93.

⁹⁸ *See* INT’L CRISIS GRP., *supra* note 5, at 9 (estimating that indirect revenues account for sixty percent of Chad’s total annual oil income).

With respect to oversight mechanisms, the power of the committee (the *Collège*) created under the law to authorize and monitor disbursements has been inversely proportional to its willingness to do its job.⁹⁹ While early critics feared that the committee would be packed with Déby loyalists,¹⁰⁰ in practice, the committee's reports have been of surprising quality despite problematic staffing.¹⁰¹ However, because the committee has lacked the power to compel compliance with its recommendations and has no independent revenue stream, it has been left to the mercy of government funding cuts, and there has been limited to no follow up on its warnings and recommendations.¹⁰² In effect, one might argue that it has been little more effective than civil society groups in that its power was largely limited to publishing reports.¹⁰³

D. A Chronicle of Failure

Even before the project's revenue management and oversight mechanisms were implemented, there were signs that the highest priority of the Chadian government was not translating oil wealth into development opportunity. Notoriously, in 2000, the Chadian government spent \$4.5 million of the \$25 million signing bonus paid by the oil consortium on the purchase of arms,¹⁰⁴ an act that violated the spirit if not the letter of the Revenue Management Law. In response, the Bank protested and threatened to freeze Chad's debt relief program, but ultimately did nothing.¹⁰⁵

This inauspicious incident established a pattern that would continue until the World Bank's eventual pullout from the project in 2008, with the Chadian government pushing for greater autonomy and discretion over oil revenues and the Bank protesting before relenting.¹⁰⁶ While the "consistent ability of African leaders to outmanoeuvre external pressures for reform"¹⁰⁷ may not have been a lesson the World Bank has drawn from the literature, the Chadian government

⁹⁹ KORINA HORTA, SAMUEL NGUIFFO & DELPHINE DJIRAIBE, ENVIRONMENTAL DEFENSE, THE CHAD-CAMEROON OIL & PIPELINE PROJECT: A PROJECT NON-COMPLETION REPORT 12 (2007).

¹⁰⁰ See FRANK & GUESNET, *supra* note 52, at 50 (discussing government interference as being a common occurrence).

¹⁰¹ See *id.*

¹⁰² HORTA ET AL., *supra* note 99, at 12.

¹⁰³ See FRANK & GUESNET, *supra* note 52, at 51 (describing the *Collège* as a "toothless tiger").

¹⁰⁴ Uriz, *supra* note 57, at 225.

¹⁰⁵ See *id.* (citing Babette Stern, *Le Tchad a Acheté des Armes avec l'Argent du Pétrol*, LE MONDE, Nov. 22, 2000, at 5).

¹⁰⁶ See INT'L CRISIS GRP., *supra* note 5, at 1, 16.

¹⁰⁷ Scott Pegg, *Chronicle of a Death Foretold: The Collapse of the Chad-Cameroon Pipeline Project*, 108 AFR. AFF. 311, 312 (2009).

quickly grew frustrated with the terms of the agreement and recognized its growing ability to alter those terms.¹⁰⁸ With sunk costs and the oil flowing, it had long been recognized that the World Bank's leverage over the Chadian government would decrease with time, a phenomenon also predicted by the obsolescing bargaining theory.¹⁰⁹

The structural dynamics of the World Bank's partnership with the government of Chad were exacerbated by rising military and human insecurity that began not long after the oil started to flow because of the Darfur conflict spilling over the border and a host of Chadian rebel groups beginning to gain momentum.¹¹⁰ Confronting "several coup attempts, large-scale defections from the army, and an empty treasury," the regime was desperate for additional oil money.¹¹¹

These dynamics came to a head in late 2005 when the Chadian government demanded a larger share of revenues earmarked for development and poverty alleviation, bringing about a confrontation with the World Bank. After tough negotiations involving no small measure of brinksmanship—Déby at one point threatened to cut off all oil supplies¹¹²—the World Bank relented and Chad revised the percentage of direct oil revenues earmarked for priority development sectors from 80% to 70%, eliminating the Future Generations Fund.¹¹³ On the heels of its victory, the Déby regime would continue to consolidate its unchecked autonomy over oil revenues without great concern for a renewed memorandum of understanding with the World Bank, completely overhauling the committee membership and replacing the representatives with more compliant colleagues.¹¹⁴

By 2008, the World Bank's position had become untenable. The idea that the Bank could continue to serve as "moral guarantor" and use its involvement as a means of ensuring that the project achieved poverty alleviation objectives could not be sustained. When the Chadian government pre-paid all outstanding pipeline loans (\$65.7 million), the World Bank's involvement in Chad's oil

¹⁰⁸ *Id.* at 313.

¹⁰⁹ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at xvi. "[T]he strong assertions of ownership and commitment of the Government of Chad at the start of the program proved inoperative when the oil revenue started flowing." *Id.*

¹¹⁰ See generally JEROME TUBIANA, THE CHAD-SUDAN PROXY WAR AND THE "DARFURIZATION" OF CHAD: MYTHS AND REALITY (2008) (providing background and context to the recent conflict in Chad).

¹¹¹ Van Dijk, *supra* note 56, at 697 (citations omitted).

¹¹² HORTA ET AL., *supra* note 99, at 12.

¹¹³ Van Dijk, *supra* note 56, at 698–99.

¹¹⁴ INT'L CRISIS GRP., *supra* note 5, at 8.

sector came to a close.¹¹⁵ One of the world's foremost experiments in trying to beat the resource curse had effectively ended.¹¹⁶

E. The Return of the Resource Curse?

According to a World Bank post-mortem review of the project, the oil boom has brought precious little development to Chad thus far.¹¹⁷ Some key health indicators show that human development has stagnated or deteriorated since 2000.¹¹⁸ While Africa as a whole showed a slight improvement between 2000 and 2007, “Chad experienced a marked deterioration against all major governance indicators—with the decline especially sharp in rule of law, control of corruption, and government effectiveness.”¹¹⁹ These declining indicators are largely consistent with the patterns observed in other oil-producing states and the correlative phenomena of the resource curse, as discussed above in Part I.¹²⁰

The image of stagnation and decline stands in sharp contrast with Chad's oil revenues, which have greatly exceeded initial expectations due to a rise in world oil prices.¹²¹ The failure to improve is especially striking when one considers the change in governmental capacity to deliver on the promises of development, having gone from annual revenue of about \$112 million in 2000 to over \$2 billion in 2009, almost 90% of which was from oil.¹²² At the same time, between 2000 and 2009, annual military expenditure rose from \$14 million to \$315 million.

As noted herein, the resource curse literature also suggests a higher likelihood of civil war and conflict in petro-states than their non-oil-exporting counterparts.¹²³ While it would be difficult to attribute the recent conflict in Chad to oil alone, “the existence of the oil exercises the minds of actors both

¹¹⁵ Lydia Polgreen, *World Bank Ends Efforts to Help Chad Ease Poverty*, N.Y. TIMES, Sept. 10, 2008, at A12.

¹¹⁶ Press Release, The World Bank Group, World Bank Statement on Chad-Cameroon Pipeline (Sept. 9, 2008), http://web.worldbank.org/archive/website01210/web/0_co-20.htm.

¹¹⁷ See INDEP. EVALUATION GRP. REPORT, *supra* note 75, at v (discussing how fundamental objectives of the project were not achieved).

¹¹⁸ *Id.* at 22.

¹¹⁹ *Id.* at xiii.

¹²⁰ See *supra* Part I.

¹²¹ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at xii.

¹²² *Id.*

¹²³ See, e.g., TUBIANA, *supra* note 110, at 10.

internal and external,”¹²⁴ and the violence in eastern Chad has its roots, at least in part, in “the Chadian people’s widespread frustration with the country’s unequal wealth distribution—particularly its oil wealth—and lack of democracy.”¹²⁵ Confronted with simmering frustration from all sides, “[it] is doubtful that Déby would still be in power had it not been for revenues from the exportation of crude oil.”¹²⁶ The overall image is that of a vicious circle in which a non-democratic government justifies the need for a crescendo of military spending on the threat of rebel attack, which is itself fueled in part by frustration with corruption and a desire to access patronage networks associated with the oil revenues. Oil wealth has thereby changed and contributed to the dynamics of conflicts over access to power “which have prevailed in Chad since independence, and are still ongoing.”¹²⁷

F. Analyzing the Analysis of Failure

The Chad-Cameroon pipeline was once trumpeted as a model to be emulated in other extractive industries projects around the world.¹²⁸ After its spectacular—if not predictable—collapse, the World Bank has nevertheless refused to exclude involvement in future extractive projects.¹²⁹ There is still some hope, at least in the minds of some policymakers, that policy intervention can beat the resource curse in the future.¹³⁰ In these circumstances, the lessons-learned narrative that ultimately carries forward will have great relevance to subsequent extractive industries projects. Could the models pioneered in the context of the Chad-Cameroon pipeline be revised and recycled in other contexts? Was the problem too much policy intervention, or too little? Was the problem one of design, or of implementation?

One of the major recognized flaws in project implementation is the fact that the project proceeded at two speeds.¹³¹ While the exploration, construction, and production phases of the project proceeded well ahead of schedule, with the first oil leaving for international markets one year ahead of schedule, efforts to build the capacity of the Chadian government to manage oil revenues

¹²⁴ Simon Massey & Roy May, *Commentary: The Crisis in Chad*, 105 AFR. AFF. 443, 446 (2006).

¹²⁵ TUBIANA, *supra* note 110, at 10.

¹²⁶ Van Dijk, *supra* note 56, at 698. *See also* INT’L CRISIS GRP., *supra* note 5, at 1.

¹²⁷ *See* FRANK & GUESNET, *supra* note 52, at 64.

¹²⁸ *See* GARY & REISCH, *supra* note 83, at 8 (describing the high hopes for the project).

¹²⁹ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at xx.

¹³⁰ *Id.* at 47.

¹³¹ *See* GARY & REISCH, *supra* note 83, at 80–81.

ran woefully behind schedule.¹³² The effect of the two-speed pace of implementation privileged exports and revenue generation over institution building, and oil money over human development.¹³³ This has led at least one commentator to conclude that future projects should focus on “front-loading” the capacity-building phase of project implementation, and only proceed to oil production once a certain minimum threshold of capacity has been reached.¹³⁴

This argument has particular cogency given the dynamics of obsolescing bargaining theory.¹³⁵ As was amply demonstrated in Chad, once the oil begins to flow, the leverage of international development institutions like the World Bank decreases dramatically, and with it, their ability to press for increases in revenue management expertise and other capacity building initiatives.¹³⁶ At the same time, in an increasingly competitive oil market, with China and India emerging as serious players in African markets,¹³⁷ it seems doubtful that a country would be willing to leave the oil in the ground until the World Bank has deemed them capable of managing the revenues.¹³⁸ As the World Bank has recently argued, a deal will be struck eventually with a group of oil companies less concerned about social impacts and negative publicity than the Exxon consortium was in Chad in the late 1990s.¹³⁹ This may be particularly true in the least stable and most conflict-prone countries since oil revenues in these volatile circumstances can mean the difference between a regime’s survival or toppling in a *coup d’état*.¹⁴⁰ In that sense, one might argue that policy interventions of the nature seen in the context of the Chad-Cameroon pipeline are most likely to work only in those countries where they are least needed.¹⁴¹ Therefore, perhaps the best that can be hoped is that capacity-building and preparations for extraction proceed concurrently, and that the latter do not largely outpace the former.

To focus on the modalities and sequencing of capacity-building initiatives, however, would seem to miss a larger point. The World Bank experiment in

¹³² *Id.* at 81.

¹³³ Pegg, *supra* note 73, at 20.

¹³⁴ Pegg, *supra* note 107, at 319.

¹³⁵ *Id.* at 313.

¹³⁶ *Id.*

¹³⁷ See Massey & May, *supra* note 124, at 447.

¹³⁸ See Pegg, *supra* note 107, at 317.

¹³⁹ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at xiv.

¹⁴⁰ See Van Dijk, *supra* note 56, at 698 (using Déby’s survival as a leader in Chad as an example).

¹⁴¹ See generally FRANK & GUESNET, *supra* note 52 (describing the pipeline’s devastating impact on the already unstable environment in Chad).

Chad did not fail simply because of a lack of trained national staff unable to make sense of the revenues or to adequately account for them.¹⁴² If inadequacies existed there, even several years of additional capacity-building efforts prior to production coming online likely would not have made a difference if the government was otherwise intent on resisting externally imposed reforms and had not prioritized the goal of translating oil wealth into development opportunity for the people of Chad.¹⁴³

Beyond issues of capacity-building and sequencing, many have pointed to flaws in the project's oversight and monitoring structures, including the *Collège*'s lack of enforcement powers and independent budget, as discussed above.¹⁴⁴ However, even if these issues were rectified, there is strong reason to wonder if the failure of the pipeline project does not illustrate the limits of transparency. According to the World Bank, the revenue management arrangements implemented in Chad "achiev[ed] a level of revenue transparency nearly unique in Africa and nearing best international practice."¹⁴⁵ Indeed, few would argue that the project failed because of a lack of awareness about what was going on.¹⁴⁶ Thus, while initiatives focusing on increasing transparency in the extractive industries sector—including the Extractive Industries Transparency Initiative ("EITI")¹⁴⁷ and the Publish What You Pay ("PWYP") campaign¹⁴⁸—are important, they are no panacea.

Moving beyond project implementation to project conception and design, in its own internal review of the project's failure, the World Bank has suggested that the "excessive rigidity" resulting from "the enshrinement of quantitative spending targets into formal law" may have contributed to the project's demise.¹⁴⁹ While many doubt that legal formalism is an absolute prerequisite for building the rule of law and economic development,¹⁵⁰ flexibility and informality is equally tricky business in a country like Chad. Chad's volatility has been amply illustrated by recent history, which might

¹⁴² *Id.* at 52.

¹⁴³ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at xx.

¹⁴⁴ *See supra* notes 92–103 and accompanying text.

¹⁴⁵ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at 25.

¹⁴⁶ *See id.*

¹⁴⁷ *See* FRANK & GUESNET, *supra* note 52, at 68 (describing the EITI); GARY & REISCH, *supra* note 83, at 7–8.

¹⁴⁸ GARY & REISCH, *supra* note 83, at 7 (describing the PWYP).

¹⁴⁹ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at 37.

¹⁵⁰ *See, e.g.,* Randall Peerenboom, *Human Rights and Rule of Law: What's the Relationship?*, 36 GEO. J. OF INT'L L. 809 (2005); Frank Upham, *Mythmaking in Rule-of-Law Orthodoxy* 1 (Carnegie Endowment for Int'l Peace, Paper No. 30, 2002).

seem to underscore the need for flexibility in project design.¹⁵¹ At the same time, if flexibility is to function in harmony with larger development objectives, genuine government commitment to the goals of the project must be clear.¹⁵² When poor governance indicators and a history of episodic armed challenges to the survival of the state are the norm, building a high degree of flexibility into a project could well increase the risk that a government will ultimately privilege spending for hard security over development priorities like health and education.¹⁵³ On the other hand, rigid program design in such an environment is almost guaranteed to produce confrontation with international partners and backlash.¹⁵⁴

G. The Question of Government Commitment

Many of the “lessons learned” discussed above skirt around the central problem of political will and government commitment to the core goals of the project.¹⁵⁵ Few would question that, without government commitment, no alternative program or package of policy measures is likely to succeed.¹⁵⁶ And yet, in a context such as Chad, the unspoken premise of legal and policy interventions such the Revenue Management Law is that the government in question is not entirely committed to translating oil revenues into development.¹⁵⁷ Such measures are therefore imbued with latent tension and paradox from the start.

In this context of questionable political commitment, the notion of externally designed and imposed legal and policy interventions is especially problematic. The Revenue Management Law, lauded as the one of the project’s boldest innovations, was “in effect designed largely by Bank staff and consultants.”¹⁵⁸ Some have criticized similar legal transplants as a form of neo-imperialism and suggested that they may have limited success in building rule of law due to cultural differences.¹⁵⁹ Others have noted that borrowing legal

¹⁵¹ See, e.g., INT’L CRISIS GRP., *supra* note 5, at 1.

¹⁵² See Upham, *supra* note 150, at 19.

¹⁵³ See, e.g., Laurence Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes*, 102 COLUM. L. REV. 1832, 1834 (2002).

¹⁵⁴ See generally *id.* (analyzing the dangers of rigidity in human rights enforcement in a different context).

¹⁵⁵ See *supra* notes 131–54 and accompanying text.

¹⁵⁶ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at xx.

¹⁵⁷ *Id.* at xix.

¹⁵⁸ *Id.* at 42.

¹⁵⁹ Rosa Ehrenreich Brooks, *The New Imperialism: Violence, Norms and the “Rule of Law,”* 101 MICH. L. REV. 2275, 2280 (2004) (“In an increasing number of places, promoting the rule of law has become a fundamentally imperialist enterprise, in which foreign administrators backed by large armies govern societies

rules or institutions from other countries may be the main source of legal change throughout the world.¹⁶⁰ Nevertheless, whether a law was imposed from the outside as opposed to being pushed and adopted by local champions makes a difference in a context like Chad. Finally, whether the Revenue Management Law was internally or externally driven, Chad's track record of less than rigorous adherence to its own laws would suggest that any faith in the idea of a technocratic legal solution to Chad's governance issues is ill-founded.¹⁶¹

The Revenue Management Law is, in effect, an attempt to bootstrap or engineer good governance from the outside into a context where it is lacking.¹⁶² Such measures are fraught with paradox in that they are likely to work best in those countries that need them least.¹⁶³ At the core of such measures is a challenge to the notion of national autonomy over natural resources and, more particularly, "a challenge to the sovereignty of undemocratic rulers."¹⁶⁴ As the case of Chad vividly illustrates, undemocratic rulers will often find a way to outmaneuver the international community, especially when their grip on power, if not their very survival, is at stake.¹⁶⁵ Assessing government commitment to any package of reforms in this context is therefore challenging but paramount.

H. Moving Forward

While the World Bank now acknowledges that government commitment is key to success,¹⁶⁶ there are reasons to be less than sanguine about prospects for

that have been pronounced unready to take on the task of governing themselves.") (citation omitted). According to some accounts, law and development projects of the 1950s and 1960s often consisted of nothing more than the wholesale transplantation of Western legal codes. *See, e.g.*, ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* (1974).

¹⁶⁰ Upham, *supra* note 150, at 33.

¹⁶¹ As one local civil society activist put it, "[i]f laws could make a difference in this country, we would already be well advanced. But the problem lies in implementation." FRANK & GUESNET, *supra* note 52, at 29.

¹⁶² *Id.* at 26.

¹⁶³ *See generally id.* at 28–29.

¹⁶⁴ Rosenblum, *supra* note 45, at 195. In 2009, the director of Chad's newly created national oil company lamented, "We are the only country in the world which cannot do what it wants with the resources generated from its primary commodities." Cheikh Yérim Seck, *Où va l'argent du pétrole*, JEUNE AFRIQUE (Jan. 6, 2009, 5:12 PM), <http://www.jeuneafrique.com/Article/ARTJAJA2525p038-040.xml0/>.

¹⁶⁵ Indeed, the ability of local elites to outwit and outmaneuver foreign interveners to their own survival and gain has been a feature of African politics since colonial times. *See* WILLIAM EASTERLY, *THE WHITE MAN'S BURDEN: WHY THE WEST'S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD* 276 (2007).

¹⁶⁶ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at v, xx.

success in future extractives projects. Even if the World Bank is aware of a possible lack of government commitment in a given context, the Bank has historically greatly overestimated its ability to build capacity for a project and to “transpose good governance and sound economic policies as intervening variables in countries with no prior history of them.”¹⁶⁷ In the context of Chad, a Bank review recently concluded that it “was right to support the program in 2000 and did so in full cognizance of the risks involved,” including the risk of the lack of political commitment.¹⁶⁸ Despite this awareness, the Bank moved forward with the project with the (over)confidence that the risk could be managed.¹⁶⁹ There is no reason to think that it will not act similarly in future circumstances.

In addition, while the World Bank has stated that it will place greater emphasis on ensuring country ownership in the future, it has failed to explain how such ownership might be better assessed *ex ante* much less ensured *ex post*.¹⁷⁰ In its post-mortem analysis of the Chad project’s collapse, the World Bank concludes:

The question arises whether the [World Bank] could have demanded at the beginning a sufficiently robust test of government’s ownership to use the oil resources as agreed It is hard to see what else the Bank could have done to increase its degree of *ex ante* comfort with government ownership. The only real test would come, as it did, when the oil revenues begin to flow.¹⁷¹

Given the centrality of government commitment to a project’s success, a key question going forward is therefore whether the Bank is correct in its assertion that there are no better metrics that it can rely on to assess commitment than strenuous and repeated public assurances by high-level government officials.¹⁷² This Article argues below that the Bank could achieve this objective by developing a more coherent human rights policy, and by conducting human rights assessments that would help to measure whether the enabling conditions for project success are in place.

¹⁶⁷ Pegg, *supra* note 73, at 20; *see also* GARY & REISCH, *supra* note 83, at 80–82.

¹⁶⁸ INDEP. EVALUATION GRP. REPORT, *supra* note 75, at viii.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at xxi.

¹⁷¹ *Id.* at 42–43.

¹⁷² *Id.*

III. THE NEED FOR HUMAN RIGHTS ASSESSMENTS IN EXTRACTIVES PROJECTS

It is amazing to what extent in most countries the entire official aid rhetoric and all the written documents tiptoe around the key human rights challenges, preferring silence, insinuation, self-censorship, and gentle neologism to any frank mention of the stakes, the problems, and the unfulfilled challenges.¹⁷³

Though there is increasing recognition that extractive projects and development assistance can create devastating human rights impacts under certain conditions, the World Bank has no overarching human rights policy or process that would serve to assess these impacts, guide lending decisions, or mitigate impacts during project implementation.¹⁷⁴ This stands in contrast to existing policies to address issues of cultural property, environmental assessment, forests, indigenous peoples, and involuntary displacement, some of which include human rights related issues.¹⁷⁵

In explaining this lacuna, many scholars, policymakers, and advocates focus on restrictions in the Bank's Articles of Agreement, or founding constitution.¹⁷⁶ Under Article IV, Section 10, interference in "political affairs" is prohibited and only "economic considerations" are to be used in decision-making.¹⁷⁷ Article III, Section 5(B) excludes "political considerations" from the factors the Bank may consider in granting loans.¹⁷⁸

Historically, these provisions have served as a stumbling block to a more explicit engagement with human rights, particularly civil and political rights, which have been interpreted as "political considerations."¹⁷⁹ In contrast, the

¹⁷³ PETER UVIN, HUMAN RIGHTS AND DEVELOPMENT 81 (2004).

¹⁷⁴ See HUMAN RIGHTS WATCH, *supra* note 36, at 32–33.

¹⁷⁵ OPERATIONS MANUAL: TABLE A1—ENVIRONMENTAL AND SOCIAL SAFEGUARD POLICIES—POLICY OBJECTIVES AND OPERATIONAL PRINCIPLES, WORLD BANK (2005), available at <http://go.worldbank.org/YFA8D3WJS0>.

¹⁷⁶ INT'L BANK FOR RECONSTRUCTION AND DEV., IBRD ARTICLES OF AGREEMENT (1989) [hereinafter ARTICLES OF AGREEMENT], available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20049557~menuPK:63000601~pagePK:34542~piPK:36600~theSitePK:29708,00.html>.

¹⁷⁷ *Id.* art. IV, § 10.

¹⁷⁸ *Id.* arts. III, § 5, IV. The original separation between economics and politics may have arisen out of a political calculation of what was necessary to facilitate Soviet acquiescence to Bretton Woods Institutions. Henry J. Bittermann, *Negotiation of the Articles of Agreement of the International Bank for Reconstruction and Development*, 5 INT'L LAW. 59, 79 (1971).

¹⁷⁹ Galit A. Sarfaty, *Why Culture Matters in International Institutions: The Marginality of Human Rights at the World Bank*, 103 AM. J. INT'L L. 647, 659 (2009).

Bank has been more open to economic and social rights, which have been seen as non-political development issues.¹⁸⁰

In practice, the political-economic distinction has been approached with some flexibility because it is recognized that non-economic issues often have economic consequences or implications.¹⁸¹ Thus, interpretation of the Bank's Articles has shifted over time, allowing for involvement in areas, such as legal reform and anticorruption efforts, which were formerly deemed too political.¹⁸² Similarly, in examining factors that can affect its investments, the Bank analyzes a country's policy and institutional framework.¹⁸³ Nevertheless, many human rights issues are still deemed too political for the Bank to address directly.¹⁸⁴ Some have argued this results in selective and self-serving interpretation of the Articles, with the Bank seemingly interpreting its mandate narrowly when it comes to some governance and human rights issues, while ignoring limitations on involvement in political affairs when it comes to neo-liberal economic policies prescribed through loan conditionalities for developing countries.¹⁸⁵

Despite the controversy, as an opinion from the World Bank's outgoing legal counsel has confirmed, nothing on the face of the Articles of Agreement prohibits more direct engagement in a fuller range of human rights considerations; indeed, there is a strong legal argument that the Bank *should* engage in such considerations.¹⁸⁶ Therefore, the debate over interpretation of the Articles of Agreement is more of a policy argument disguised as a legal argument than an absolute legal roadblock.

While the interpretation of the Articles of Agreement continues to be "a locus of contention among Bank staff, advocates, and policymakers,"¹⁸⁷ it has

¹⁸⁰ 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, 47 (1988); see also Korinna Horta, *Rhetoric and Reality: Human Rights and the World Bank*, 15 HARV. HUM. RTS. J. 227, 228 (2002) (questioning the Bank's distinction between civil and political rights, and economic and social rights).

¹⁸¹ See Horta, *supra* note 180, at 229.

¹⁸² Sarfaty, *supra* note 179, at 659.

¹⁸³ Legal Opinion from Roberty Danino, Senior Vice President and General Counsel, The World Bank, *Legal Opinion on Human Rights and the World Bank* 5 (Jan. 27, 2006), available at <http://www.ifwatchnet.org/?q=en/node/335>.

¹⁸⁴ Sarfaty, *supra* note 179, at 659.

¹⁸⁵ Uriz, *supra* note 57, at 208.

¹⁸⁶ Legal Opinion from Roberty Danino, *supra* note 183. Issued his last day in office, this opinion has had limited impact on the Bank's official policy. See Sarfaty, *supra* note 179, at 663-66.

¹⁸⁷ Sarfaty, *supra* note 179, at 688.

also been argued that the ambivalence toward a fuller and more direct engagement with human rights issues is more a feature of institutional culture than legal proscription.¹⁸⁸ Developing a more comprehensive and cohesive human rights policy at the Bank may therefore depend more on building consensus around the idea that human rights are important as a matter of fundamental economic and project design policy than any argument based on their intrinsic deontological value or legal force.¹⁸⁹

A. *The Argument for Human Rights Assessments*

Whether caused by disputes over legal interpretation or institutional culture, the World Bank's continuing ambivalence towards human rights issues is not without its real-world costs. In the case of Chad, a more direct and coherent approach to human rights issues up front may have forced the Bank to better grapple with factors that ultimately doomed the pipeline project to failure, and may have served as a better way to measure political commitment than those currently employed by the Bank.¹⁹⁰ There are reasons to fear that if the Bank fails to develop a more coherent approach to human rights, other projects will similarly fail in the future.¹⁹¹ One step toward better human rights policy at the Bank would involve conducting human rights assessments for any potential project, much as the Bank currently undertakes in social and environmental impact assessments.¹⁹²

Conducting human rights assessments in the context of an extractive industries project would serve three goals. First, it would allow the World Bank to predict and mitigate immediate to medium-term human rights impacts of the project. Second, in examining potential human rights impacts, the assessment would serve to predict a set of risks that may affect the economic bottom line and the long-term viability of the project. Third, and perhaps most relevant to the World Bank's core mission, the assessment would serve as a

¹⁸⁸ See *id.* at 647.

¹⁸⁹ It is worth noting in this regard that other development institutions involved in poverty reduction have adopted formal human rights policies, including the United Nations Development Programme, The United Nations Children's Fund, and the United Kingdom's Department for International Development. See generally TAM O'NEIL, MARTA FORESTI, TIM BRAUNHOLTZ & BHAVNA SHARMA, DFID'S HUMAN RIGHTS POLICY SCOPING STUDY (2007); UNICEF, HUMAN RIGHTS FOR WOMEN AND CHILDREN: HOW UNICEF MAKES THEM A REALITY (1999); UNITED NATIONS DEV. PROGRAMME, INTEGRATING HUMAN RIGHTS WITH SUSTAINABLE HUMAN DEVELOPMENT: A UNDP POLICY DOCUMENT (1998).

¹⁹⁰ See, e.g., Sarfaty, *supra* note 179, at 679–80.

¹⁹¹ See *id.*

¹⁹² *Id.* at 669, 680.

proxy to assess the likelihood of the project itself contributing to poverty reduction in the long-term, including the question of political commitment.

The purpose of project assessments, be they environmental or social-impact assessments, is to determine a set of harms that might follow in the direct or indirect wake of project activities.¹⁹³ A human rights assessment would require the World Bank to assess, monitor, and mitigate those immediate human rights impacts that might be associated with an extractive industries project, whether they come in the form of displacement or political repression.¹⁹⁴ Some of these impacts—displacement, for example—might be captured by existing assessments that are already carried out under World Bank policy, but others would not.¹⁹⁵ In conducting an assessment, the World Bank would look at both civil and political rights impacts, as well as social and economic rights impacts.¹⁹⁶ The latter would include immediate impacts on social and economic rights such as clean drinking water and health care.¹⁹⁷ Thus, since it casts a wider net than existing impact assessments, the addition of a human rights assessment in and of itself would go a long way to more fully capturing the immediate to medium-term impacts of a project.

As discussed above, there are strong humanitarian reasons to attempt to capture a fuller range of impacts that may flow from a given project relating to a desire to reduce the amount of human suffering and harm that will result.¹⁹⁸ At the same time, there are also pragmatic reasons to conduct human rights assessments relating to the bottom line. In the business world, one would expect a corporation to rely upon an analysis of *all* of the factors that might affect its investment and other activities, be they social, environmental, political, or otherwise.¹⁹⁹ Thus, one of the main business motivations to include human rights analysis in advance of a project would be to accurately

¹⁹³ See Tarek Maassarani, Margo Drakos & Joanna Pajkowska, *Extracting Corporate Responsibility: Towards a Human Rights Impact Assessment*, 40 CORNELL INT'L L.J. 135, 144–45 (2007) (describing the use of project assessments for private corporate actors).

¹⁹⁴ See *id.* at 157–58 (proposing the International Financial Corporation Equator Principles, which would guide the adoption of a Human Rights Impact Statement).

¹⁹⁵ *Id.* at 157. According to Danino, resettlement issues are considered political. Legal Opinion from Roberty Danino, *supra* note 183, at 7.

¹⁹⁶ See *id.*

¹⁹⁷ See Shihata, *supra* note 180, at 55–56.

¹⁹⁸ See *supra* notes 192–98 and accompanying text.

¹⁹⁹ See Maassarani, Drakos & Pajkowska, *supra* note 193, at 149–50 (listing the “guiding principles” for evaluating corporate impacts on human rights).

predict the business risks related to human rights.²⁰⁰ As has been noted, “long-term revenue considerations require an analysis of the human risks that may burn slowly for years, ultimately exploding years later in disaster, severe losses, and bad publicity.”²⁰¹ Perhaps one of the best examples of this is the chaos in the Niger Delta, one of the situations that likely led the oil consortium in Chad to seek political risk mitigation from the World Bank.²⁰² If a corporation were to ignore the full sets of risks to the bottom line, it might be labeled bad business.²⁰³ When the World Bank fails to do so, however, it is called standard procedure.²⁰⁴

In addition to helping the Bank foresee and mitigate more immediate human harms and providing a better picture of the economic and business risks, human rights assessments could also serve as proxy for the likelihood of the project itself contributing to long-term poverty reduction. Under international law, social and economic rights—the right to health and education, for example—are not absolute, but require a government to “progressively realize” them based on available resources.²⁰⁵ Therefore, analysis of the economic and social rights impacts of a project would necessarily include analyzing the project’s potential impact on the government’s ability to progressively realize economic and social rights over the long-term.²⁰⁶

At its most crude, such an assessment might conclude that because the duty of progressive realization is connected to the availability of resources, and because the project in question will increase revenues flowing into government coffers, it follows that the project will have a positive impact on the government’s ability to “progressively realize” economic and social rights.²⁰⁷

²⁰⁰ *Id.* at 159 (discussing the risks inherent in being perceived as a bad corporate citizen); *id.* at 167 (“[E]mbracing and addressing human rights issues related to their operations is a matter of maintaining a sound reputation and exercising sound business judgment.”).

²⁰¹ *Id.* at 167.

²⁰² See HUMAN RIGHTS WATCH, *supra* note 36, at 10–11.

²⁰³ See Maassarani, Drakos & Pajkowska, *supra* note 193, at 136 (describing the current patchwork of corporate liability for human rights); *id.* at 142 (describing how one corporation, Unocal, learned the “hard way” of the consequences of being a bad corporate citizen); *id.* at 167 (explaining that “good corporate conduct” and “good corporate citizenship” mandate the recognition of human rights in business judgments).

²⁰⁴ See Legal Opinion from Roberty Danino, *supra* note 183, at 4–5.

²⁰⁵ International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368.

²⁰⁶ See Legal Opinion from Roberty Danino, *supra* note 183, at 4–5.

²⁰⁷ *But see generally* HUMAN RIGHTS WATCH, *supra* note 37 (discussing the corruption and human rights violations that have occurred in Nigeria).

Such a superficial analysis would miss the mark. As has been increasingly demonstrated, government capacity to progressively realize economic and social rights is directly linked to levels of corruption and broader dimensions of good governance more generally.²⁰⁸ Thus, to fully assess whether progressive realization is likely to take place with an increase in revenues, a wide range of political and governance variables would need to be studied as part of the assessment.²⁰⁹ This, in turn, would give project planners a much more nuanced view of a project's potential to impact economic and social human rights, both positively and negatively.

As part of a human rights assessment that attempts to predict future impacts, the Bank would also need to look at the government's record with respect to human rights. If a particular government has an egregious history with respect to the rights of political dissidents, civil society critics, and the management of revenues for health and education, for example, it seems unlikely that increased oil wealth will reverse these tendencies. As has been noted in the context of the Chad-Cameroon pipeline project and elsewhere, oil wealth tends to magnify existing patterns, not reduce them.²¹⁰ Identification of existing and past trends and patterns is therefore integral to predicting the likelihood that a project will result in poverty alleviation or otherwise result in detrimental human rights impacts.

In assessing human rights impacts though the steps outlined above, the World Bank would, in effect, be indirectly assessing indicia of government capacity and willingness to use project revenues to alleviate poverty.²¹¹ As such, this type of assessment would provide the Bank with a more grounded basis for evaluating a government's professions of faith in the project and provide policymakers with a more accurate sense of a government's likely "political commitment."²¹²

²⁰⁸ See *id.* at 2 (arguing that the local government in Rivers State, Nigeria, has violated its duty to progressively realize rights to health and education through widespread and flagrant corruption and mismanagement of oil revenues); HUMAN RIGHTS WATCH, *supra* note 38, at 39–40 (arguing that, due at least in part to mismanagement and corruption, the government of Angola has impeded Angolans' ability to enjoy their economic, social, and cultural rights, including healthcare and education, in violation of the government's own commitments and human rights treaties to which it is a party).

²⁰⁹ See, e.g., HUMAN RIGHTS WATCH, *supra* note 38, at 4 (listing many variables in its recommendation to the government of Angola).

²¹⁰ Pegg, *supra* note 107, at 311–12.

²¹¹ See, e.g., HUMAN RIGHTS WATCH, *supra* note 38, at 6.

²¹² See Horta, *supra* note 180, at 228 (calling on the Bank to adopt a "rights-based approach to development that pays close attention to the political environment of a country by examining who holds the power and how it is exercised").

In the case of Chad, analysis of the likelihood that the government of Chad would be able to “progressively realize” economic and social rights as a result of increased revenues flowing from the project might have forced the Bank, at a much earlier stage, to more openly confront issues of corruption, governance, and capacity to manage oil revenues.²¹³ This might have resulted in the reconfiguration or re-sequencing of the project at a stage when the World Bank had more leverage.²¹⁴ It is also possible that such nuanced assessments may well have revealed that the likelihood that economic and social rights would be progressively realized was so low that the project was not worth doing, or at least not worth subjecting the Bank’s credibility as political risk bearer and moral guarantor to great risk.²¹⁵ For example, it may be that a government’s track record with respect to human rights issues is such that professions of commitment to use oil revenues for the betterment of its people ring hollow.

The approach outlined above recalls the results of a major assessment commissioned by the World Bank in 2001 to study the question of future World Bank involvement in extractive industries projects.²¹⁶ That study concluded that involvement should include projects where Bank interventions would contribute to poverty alleviation.²¹⁷ The study further emphasized that this can only happen when the right “enabling conditions” are in place, including governance, social, and environmental policies, and respect for human rights.²¹⁸ Conducting human rights assessments, in addition to the assessments which the Bank already conducts, would place the Bank in a better position to evaluate whether those enabling conditions are in place.

B. Potential Objections

Several objections to mandating human rights assessments for international financial institutions might be raised. First, assessments are costly and time consuming, potentially delaying a project by several years.²¹⁹ At the same

²¹³ *Id.* at 237.

²¹⁴ FRANK & GUESNET, *supra* note 52, at 67.

²¹⁵ *See* Horta, *supra* note 180, at 237.

²¹⁶ *See* EXTRACTIVE INDUS. REVIEW, STRIKING A BETTER BALANCE—THE WORLD BANK GROUP AND EXTRACTIVE INDUSTRIES: THE FINAL REPORT OF THE EXTRACTIVE INDUSTRIES REVIEW vii (2004) [hereinafter EI REVIEW].

²¹⁷ *Id.* at vii.

²¹⁸ *See id.* at v.

²¹⁹ *See* Bård Anders Andreassen & Hans-Otto Sano, What’s the Purpose? Observations on Human Rights Impact Assessments 17 (Feb. 2004) (unpublished manuscript), available at <http://www.fao.org/righttofood/kc/downloads/vl/docs/214054.pdf>.

time, given that the World Bank already conducts a battery of impact assessments, including environmental and social impact assessments, some measure of delay is already part of the program planning and assessment process.²²⁰ Therefore, it seems unlikely that a human rights impact assessment would delay things significantly further if conducted concurrently with other assessments.²²¹

Perhaps more seriously, there is a risk that to the extent that a project is delayed on human rights grounds, it could negatively affect perceptions of local human rights NGOs and human rights principles in general.²²² In the context of the Chad-Cameroon pipeline, for example, early efforts by local human rights advocates to delay the project in order for more capacity building to be done were met with open public hostility.²²³ Given the endemic poverty in Chad and the perception that the pipeline project would rapidly alleviate it, many saw efforts by human rights activists to delay the project as holding them hostage to a set of luxuries they could ill afford.²²⁴ In the end, the solution to this problem might be greater awareness by both civil society and the World Bank about the negative consequences of oil production seen in other countries, and the need for an assessment to avoid these same pitfalls.

Another objection might be that, insofar as human rights assessments examine civil and political rights issues and are used to analyze indirect indicia of a government's likely commitment to a project, the process will come to be seen as "political," potentially raising objections by policymakers at the World Bank, to say nothing of the governments of the countries being assessed.²²⁵ However, while the accusation of playing politics can arise in any assessment process, the advantage of human rights assessments is that they would be grounded in obligations under international law.²²⁶ Thus, one might argue that the advantage of approaching issues of government capacity and willingness to use the revenues for poverty alleviation through the window of an assessment of human rights impacts is that the evaluation of a government's commitment may come to look less like a partisan assessment and condemnation than a legal and technocratic review of a government's ability to fulfill its duties

²²⁰ See Legal Opinion from Roberty Danino, *supra* note 183, at 4–5.

²²¹ See, e.g., *id.* at 5 (demonstrating understanding of and preparation for the other assessments involved).

²²² See Rosenblum, *supra* note 45, at 198–99.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ See ARTICLES OF AGREEMENT, *supra* note 176, arts. III, § 5, IV, § 10.

²²⁶ See Legal Opinion from Roberty Danino, *supra* note 183, at 5.

under international law.²²⁷ At the same time, it is possible that this approach could also serve to illustrate how more comprehensive human rights analysis and assessment makes pragmatic policy sense as a tool for predicting likely success of a project, defined as serving to alleviate poverty.²²⁸ In so doing, this might serve to ease the cultural divide between lawyers and economists within the World Bank, to which some have attributed, at least in part, the current impasse with respect to a more comprehensive human rights policy.²²⁹

CONCLUSION

The gap between the promises of the revenues of newly discovered natural resources and the effects of those revenues in practice cannot but disappoint. When facing conditions of dire poverty, it is tempting to make a high-stakes gamble and try to beat the odds of the resource curse through any series of legal and policy interventions possible under the circumstances. The Chadian experience is an admittedly limited example, but as the world's leading attempt yet to beat the resource curse,²³⁰ it is instructive for the future projects that will surely come. While it may be too early to say that legal and policy interventions cannot serve to mitigate the resource curse, the Chadian experience suggests that those interventions are unlikely to have a major impact unless certain "enabling conditions" are present.²³¹

The World Bank's central aim of reducing poverty has little chance of being advanced when it ignores a broader perspective on a country's conditions, including human rights conditions.²³² While human rights assessments cannot prevent the resource curse, they could better steer the World Bank and other development institutions towards those extractive projects where the chances of mitigating the resource curse are the highest, and therefore where the chances of using the project to alleviate poverty are best.²³³ Far from being peripheral to the World Bank's core mission, human rights assessments would serve as a valuable tool in choosing and structuring projects in ways that could increase the possibility of success. To be sure, assessments

²²⁷ *Id.*

²²⁸ *See supra* notes 216–18 and accompanying text.

²²⁹ *See Sarfaty, supra* note 179, at 673.

²³⁰ Pegg, *supra* note 73, at 20.

²³¹ *See EI REVIEW, supra* note 216, at v.

²³² *See HORTA ET AL., supra* note 99, at 12–13 (describing the circumstances surrounding the failure of the Chad project).

²³³ *See* Legal Opinion from Roberty Danino, *supra* note 183, at 7–8.

would take time, money, and if conducted rigorously and with integrity, would mean that certain projects do not go forward with World Bank sanction or support.²³⁴ In the long run, this can only result in focusing institutional resources on those projects where the World Bank's stated aim of poverty alleviation is most realistic. While poverty alleviation in Chad has proved to be a pipedream for now, careful attention to the notes of the requiem played in the pipeline project's wake could serve to ensure that future projects do not suffer the same fate.

²³⁴ See generally Legal Opinion from Roberty Danino, *supra* note 183.