

Note

Aligning Incentives for Development: The World Bank and the Chad-Cameroon Oil Pipeline

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I. INTRODUCTION

The precise causes of the “resource curse”—the relationship between natural resource extraction and an increase in poverty, violence, and political instability—remain unknown. Yet the relationship between natural resource extraction and low economic growth rates in underdeveloped countries is well documented.¹ It is therefore surprising that the World Bank approved funding

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1. Emeka Duruigbo, *The World Bank, Multinational Oil Corporations, and the Resource Curse in Africa*, 26 U. PA. J. INT'L ECON. L. 1, 7 (2005) (“Although doubts have been raised about the existence of this phenomenon, the evidence supporting the prevalence of the resource curse seems to be strong.”).

for the Chad-Cameroon Oil Pipeline on the premise that resource extraction would *reduce* poverty in Chad.² Critics argued that the Chadian government, with its questionable record on corruption, would surely squander Chad's oil revenue, thereby following the usual trajectory of the resource curse. In response, the World Bank required Chad to institute certain measures to ensure that oil revenue would be used for development purposes.³ This novel scheme—considered the World Bank's great “experiment” in combating corruption in oil-led development⁴—included a revenue management law and a local and international monitoring component.⁵ Some believed that in these measures the World Bank had found a viable solution to the resource curse.

From the project's very inception, however, its implementation was fraught with problems that revealed underlying flaws in the Bank's ideological approach to development. Nongovernmental organizations (NGOs) alleged that the Bank failed to listen to their concerns about corruption and human rights abuses.⁶ They begged the Bank to consider delaying the project until more thorough anticorruption measures could be instituted.⁷ The Bank nevertheless moved forward with the project. Despite the Bank's novel revenue management scheme, Chad's President, Idriss Déby, shocked the global community by using Chad's initial oil royalties to purchase weapons.⁸ The situation deteriorated as Déby openly manipulated the Bank's revenue laws and oversight bodies.⁹ Ultimately, the Bank determined that it could not remain as a project lending partner, and it withdrew officially from the project in 2008.¹⁰

At first glance the World Bank's great experiment appears to have utterly failed. Yet the source of the project's breakdown can be traced to flaws in the World Bank's neoliberal approach to development. As discussed in Part IV, the Bank failed in the case of the Chad-Cameroon Oil Pipeline because the Bank (1) did not adequately consider the local context; (2) failed to listen to all of the stakeholders within Chad; (3) did not ensure that all parties realized benefits from third-party coordination, thereby creating a culture hostile to intervention; and (4) failed to institute firm measures to ensure Chad's continuing compliance, which was crucial given the Bank's diminishing leverage in the project.¹¹ In this sense, the failure of the project manifested itself in the design

2. *The Chad-Cameroon Petroleum Development and Pipeline Project: News & Events*, WORLD BANK, <http://go.worldbank.org/6X4GPY4AZ0> (last visited Nov. 12, 2010).

3. See *infra* Section II.C.

4. See IAN GARY & NIKKI REISCH, CATHOLIC RELIEF SERVS. & BANK INFO. CTR., CHAD'S OIL: MIRACLE OR MIRAGE?: FOLLOWING THE MONEY IN AFRICA'S NEWEST PETRO-STATE 4 (2005), available at <http://www.bicusa.org/proxy/Document.9546.aspx>.

5. See *infra* Section II.C.

6. See, e.g., Mark Kantor, *The Increasing Role of Interest Groups in Investment Transactions Involving International Financial Institutions*, 7 ILSA J. INT'L & COMP. L. 291, 293-94 (2001); see also *infra* Section II.C.

7. *Id.* at 293-94.

8. See, e.g., GARY & REISCH, *supra* note 4, at 42; see also *infra* Section II.D.

9. See *infra* Section II.D.

10. See INT'L ADVISORY GRP., REPORT OF MISSION TO CHAD AND CAMEROON JAN. 11-31, 2009, at 2 (2009), http://siteresources.worldbank.org/INTCHADCAMPIPE/Resources/IAG_Mission_Chad-Cameroon_Jan09.pdf.

11. See *infra* Section IV.B.

details but was caused by the World Bank's more fundamental failure to consider the social and political context of its lending decisions.¹² The model of the Bank as a third-party coordinator of resource investments retains potential, but the Bank failed in this case because its neoliberal approach to development resulted in a project design that was both incomplete and hierarchical. The project was incomplete in that the anticorruption measures did not go far enough—they were designed primarily to offset project criticism that the Bank received from NGOs. The project was hierarchical in that the Bank followed a top-down approach to development and ignored local stakeholders and crucial evidence on political and social factors unique to Chad. The World Bank can and should step in to align incentives toward development, but the case of the Chad-Cameroon Oil Pipeline demonstrates that the World Bank's success as a development coordinator is contingent on significant internal institutional reform.

This Note aims to show that, due to the incentives that multinational corporations (MNCs) and government officials face, resource exploitation projects in nondemocratic and underdeveloped states create a “representation failure” (failure to include all relevant stakeholders in the decisionmaking process) and a “time-horizon failure” (failure to consider the long-term development consequences of the project). The World Bank could intervene in such projects to realign incentives and correct these failures by using its initial leverage to secure binding commitments from participants and to assist in the implementation of the development aspects of the project. To explore this thesis, Part II details the background and current state of the Chad-Cameroon Oil Pipeline, drawing on personal interviews from a field visit to Chad.¹³ Part III then explores the incentives of the actors involved in the pipeline project to show how representation failure and time-horizon failure occur, illustrating the potential space for World Bank participation. Part IV demonstrates how the World Bank could have acted as a successful mediator to correct the failures discussed in Part III if it had devoted more institutional attention to understanding and taking into account the social and political context of its loans.¹⁴ The Note concludes by reiterating the importance of the Bank's potential role as an intermediary in resource exploitation projects in

12. See *infra* Section III.D.

13. This Note is based, in part, on a series of open-ended qualitative interviews conducted by the author in Chad in October 2009. Most interviews required the assistance of a translator. Some interview participants wished to remain anonymous because they feared political persecution and/or employer retaliation. The author did not employ any scientific methodology to select interview participants. Subjects in N'Djamena were contacts obtained from foreigners who had prior experience travelling or working in Chad. Villages in the south of Chad were selected based on their proximity to the pipeline. Despite the lack of a scientific methodology in the selection of interview participants, there is no reason to believe that the sample is biased or skewed in a particular direction. The interviews and anecdotes included in this Note are meant to enhance its thesis, offering a rare glimpse of Chadians' current perspectives; interviews do not provide the sole or primary basis on which the thesis is formed. See *infra* Appendix for more detailed information regarding the interviews.

14. This Note focuses on the World Bank's role in Chad and does not address development in Cameroon. Although Cameroon receives revenue from the pipeline, the Bank did not institute anticorruption measures in Cameroon as it did in Chad. See Jeremy H. Keenan, *Chad-Cameroon Oil Pipeline: World Bank & ExxonMobil in "Last Chance Saloon,"* 32 REV. AFR. POL. ECON. 395, 399 (2005).

nondemocratic and underdeveloped countries in the continuing quest to solve the resource curse.

II. THE CHAD-CAMEROON PIPELINE: THE WORLD BANK'S GREAT EXPERIMENT

Part II begins with an overview of the Chad-Cameroon Oil Pipeline project, including an explanation of the structure of the project, its broader context, and criticisms of its design. Next, I consider the World Bank's involvement in and approval of the project and the anticorruption measures that Chad implemented as a prerequisite to the World Bank's approval. Third, I detail the events that transpired after the project was completed, which culminated in the World Bank's withdrawal from the project. Finally, drawing on personal interviews, I present a glimpse into the current state of Chad vis-à-vis the pipeline.

A. Concession Agreement

Chad's oil ambitions began in 1969, but widespread violence and political instability delayed those ambitions for decades.¹⁵ Following a civil war, the government of Chad signed its first concession agreement in 1988,¹⁶ which gave a consortium of oil companies the right to develop oil fields on and extract crude oil from 4.8 million hectares of Chadian territory.¹⁷ Because Chad is landlocked, the consortium considered building a pipeline that would transport the oil from Chad to the coast of Cameroon,¹⁸ where it could then be exported to international markets. By 1996, the governments of Chad and Cameroon had reached a bilateral agreement to allow for the construction and operation of such a pipeline.¹⁹ The project would enable the transportation of oil from the three major oil-pumping stations in southern Chad—Miandoum, Kome, and Bolobo—through a 1,070 kilometer-long pipeline.²⁰ At the time, the pipeline represented the largest private-sector investment project ever to be constructed in sub-Saharan Africa.²¹

Because it lacked the capacity to manage the project, the government of Chad sought outside investment assistance.²² By the time construction began in 2000, the final consortium was established, including ExxonMobil (forty

15. MARIO J. AZEVEDO, *ROOTS OF VIOLENCE* 104 (1998); see also *infra* Section III.B (discussing Chad's history).

16. *Development History*, ESSO, http://www.esso.com/Chad-English/PA/Operations/TD_History.asp (last visited Nov. 12, 2010).

17. S.A. Bronkhorst, *Introduction to LIABILITY FOR ENVIRONMENTAL DAMAGE AND THE WORLD BANK'S CHAD-CAMEROON OIL AND PIPELINE PROJECT* 8, 8 (S.A. Bronkhorst ed., 2000).

18. *Id.*

19. *Id.*

20. *The Chad-Cameroon Petroleum Development and Pipeline Project: News & Events*, *supra* note 2.

21. Jane I. Guyer, *Briefing: The Chad-Cameroon Petroleum and Pipeline Development Project*, 101 AFR. AFF. 109, 109 (2002).

22. *Consortium*, ESSO, http://www.esso.com/Chad-English/PA/About/TD_Consortium.asp (last visited Nov. 12, 2010).

percent ownership) and Chevron Texaco (twenty-five percent ownership) of the United States, and Petronas of Malaysia (thirty-five percent ownership).²³ In total, the oil consortium provided ninety-seven percent of the investment capital needed to undertake the project.²⁴ ExxonMobil's subsidiary Esso took the lead role within the consortium by acting as the operator for oil field development.²⁵

The structure of the project highlights the imbalance of resources between the governments of Chad and Cameroon on the one hand, which are extremely underdeveloped even by African standards, and the consortium of experienced multinational oil companies on the other. The concession agreement granted the oil companies approximately an eighty percent stake in the pipeline companies, while Chad owned a minority interest in both companies, and Cameroon owned a minority interest in only one of the pipeline companies.²⁶ This concession agreement, signed by all parties in the pipeline venture, has been kept private, although a few NGOs have managed to obtain copies.²⁷ In 2004, the agreement gave Chad a 14.5 percent royalty rate,²⁸ a relatively low rate in comparison to other oil-producing countries in Africa.²⁹ Chad's inexperience in resource extraction was at least partly to blame for the poorly negotiated concession agreement. When the initial concession agreement was first negotiated, President Déby was anxious to bring oil revenue to Chad but ill equipped to negotiate a high-stakes concession agreement. In her interviews with Chadians connected to the government, Margonelli reveals disquieting aspects of the story of Déby's accession to the contract proposed by Esso.³⁰ A government insider described his conversation with the Chadian President about his decision to sign the agreement as follows:

He had two things to say. First, he thinks oil will bring happiness to the country and people will say that Déby brought the oil. Secondly he knows that he gave everything to the oil companies. He can't exactly say that the contract was malnegotiated but that sometimes he regrets that he signed. He wanted the oil to come out of the ground so he didn't read the contract, he just signed.³¹

This narrative reveals the troubling circumstances under which the contract was negotiated. Chad experienced additional procedural problems when it came time to negotiate the new 2004 concession agreement. In an action the Chadian government would come to regret, an inexperienced government minister

23. *Development History*, *supra* note 16.

24. *Consortium*, *supra* note 22.

25. *Id.* Although other companies have a percentage ownership interest in the pipeline, the pipeline is known by the name of its operator within Chad. For that reason the oil consortium is generally referred to as Esso throughout the paper.

26. See, e.g., Genoveva Hernández Uriz, *The Application of World Bank Standards to the Oil Industry: Can the World Bank Group Promote Corporate Responsibility*, 28 BROOK. J. INT'L L. 77, 91 (2002).

27. GARY & REISCH, *supra* note 4, at 39. Esso has not responded to the author's repeated requests for documentation concerning the Chad-Cameroon pipeline or official interviews in Chad.

28. *Id.*

29. *Id.*

30. LISA MARGONELLI, OIL ON THE BRAIN 178 (2007).

31. *Id.* (quoting Abdoulaye Dionouma, President, Chamber of Commerce of Chad).

committed the Chadian government to unfavorable provisions in the 1988 concession agreement by signing a protocol agreement.³² Undoubtedly, Chad's comparatively low oil royalty rate was partially due to the quality of Chad's oil and the considerable risk associated with operating in what is perceived to be a highly unstable country. Yet the narratives above suggest that Chad's relatively small share of the profits from the project was at least partly caused by the government's inexperience in negotiation.

B. World Bank Involvement

Because of the high level of risk associated with operating a major infrastructure project in a highly underdeveloped state, ExxonMobil refused to participate without the support of the World Bank.³³ The oil consortium requested that the World Bank's lending agency, the International Finance Corporation, provide loans for the project.³⁴ The political legitimacy associated with Bank sponsorship, once secured, would also help the consortium obtain private funding.³⁵ Because of its significant role in offsetting the risk of investing in an underdeveloped country, the World Bank thus had substantial leverage at the initial stages of the project.³⁶ In fact, the viability of the project appeared to hinge on the World Bank's decision of whether to approve loans for the project.

Many NGOs lobbied against the project, arguing that Chad lacked the institutional capacity to manage oil revenue without falling victim to the resource curse.³⁷ Both Chadian and international NGOs expressed concern to the World Bank prior to the project's approval that the government of Chad did not respect human rights and was plagued by corruption.³⁸ NGOs wanted the project to be delayed in order to address these concerns, fearing that the Bank's development goals for Chad would never be realized without immediate attention to these matters.³⁹ Chad has experienced a long history of precolonial violence,⁴⁰ decades of civil war,⁴¹ historical tension between the north and

32. In fact, Chad later attempted to annul the concession agreement, claiming that the actions of its officials were illegal under Chadian law. See GARY & REISCH, *supra* note 4, at 39; Christina Katsouris, *Chad: Growing Oil Revenues, Growing Instability*, ENERGY COMPASS, June 10, 2004, at 1.

33. See, e.g., Hernández Uriz, *supra* note 26, at 93.

34. See Bronkhorst, *supra* note 17, at 8.

35. See MARGONELLI, *supra* note 30, at 177-78.

36. See Hernández Uriz, *supra* note 26, at 80-81, 93.

37. See, e.g., Kantor, *supra* note 6, at 293-94.

38. See, e.g., *id.*; see also Interview with Masalbaye Tenebaye, President of Ligue Tchadienne Des Droits de l'Homme [Chadian League of Human Rights], in N'Djamena, Chad (Oct. 20, 2009) (noting that his organization and others, through expressing these concerns, pressured the World Bank to require that Chad adopt anticorruption measures); Interview with Helene Nekarmbaye, in N'Djamena, Chad (Oct. 20, 2009) (noting that civil society groups foresaw the corruption that was to come in Chad, but the Bank did not listen); Interview with Blaise Toumeladoundo, FM Liberté [Liberty FM], in N'Djamena, Chad (Oct. 17, 2009) (noting that the Bank failed to listen to the concerns of civil society groups).

39. See, e.g., Kantor, *supra* note 6, at 293-94.

40. See AZEVEDO, *supra* note 15, at 169.

41. See *id.* at 89-114.

south,⁴² continued violence involving rebel groups in the east of the country,⁴³ and frequent government violence against political dissidents.⁴⁴ The government also continues to be plagued by extreme corruption⁴⁵ and exceedingly low state capacity.⁴⁶ Moreover, critics noted that the resource curse is marked by a negative correlation between a country's natural resources and economic growth and predicts an increased incidence of poverty, human rights abuses, authoritarianism, civil war, and environmental damage from resource exploitation.⁴⁷ Given these facts, members of civil society did not share the Bank's optimism for oil extraction in Chad.

In response to these criticisms, the Bank required the consortium participants to hold public consultation sessions with communities that would be affected by the construction of the pipeline. Sources indicate that this consultation process was severely flawed.⁴⁸ Visits to affected communities were unannounced, and Esso employees were accompanied by armed guards.⁴⁹ The consultation sessions consisted of propaganda-like videos highlighting the positive aspects of the pipeline.⁵⁰ The consortium presented more detailed information in a nineteen-volume package; however, half of all Chadians are illiterate, and most could not even access the materials.⁵¹ The ability of such consultative meetings to foster a meaningful dialogue between the consortium and affected communities is therefore highly suspect.

While the World Bank responded to critics with a flawed consultation process, the Chadian government responded by attempting to intimidate opponents of the pipeline. In 1998, two journalists who published opposition

42. See SAM C. NOLUTSHUNGU, LIMITS OF ANARCHY 27-31 (1996); AZEVEDO, *supra* note 15, at 89.

43. See GARY & REISCH, *supra* note 4, at 20; *Chad Country Profile*, BBC NEWS, http://news.bbc.co.uk/2/hi/africa/country_profiles/1068700.stm (last visited Nov. 12, 2010).

44. See AMNESTY INT'L, CONTRACTING OUT OF HUMAN RIGHTS: THE CHAD-CAMEROON PIPELINE PROJECT 15-17 (2005), available at <http://www.amnesty.org/en/library/asset/POL34/012/2005/en/76f5b921-d4bf-11dd-8a23-d58a49c0d652/pol340122005en.pdf>; see also *infra* Section III.B.

45. In 2000, the year the World Bank approved loans for the pipeline, Chad was not ranked in the Transparency International Corruption Perceptions Index. *TI Corruption Perceptions Index 2000*, TRANSPARENCY INT'L, http://www.transparency.org/policy_research/surveys_indices/cpi/previous_cpi/2000 (last visited Nov. 12, 2010). In the 2009 Transparency International ratings, Chad received a Transparency Perceptions Index rating of 1.6 out of 10. This rating ranked Chad 175th out of 180 countries rated. *TI Corruption Perceptions Index 2009*, TRANSPARENCY INT'L, http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table (last visited Dec. 11, 2010).

46. In 2000, the year of the pipeline's approval, the U.N. Human Development Report rated Chad 167 of 174 countries. U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT (2000), available at http://hdr.undp.org/en/media/HDR_2000_EN.pdf. Chad was rated 175 of 182 countries in the 2009 U.N. Human Development Report. U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2009: OVERCOMING BARRIERS: HUMAN MOBILITY AND DEVELOPMENT 149 (2009), available at http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf.

47. See, e.g., Duruigbo, *supra* note 1, at 2.

48. See, e.g., Genoveva Hernández Uriz, *To Lend or Not To Lend: Oil, Human Rights, and the World Bank's Internal Contradictions*, 14 HARV. HUM. RTS. J. 197, 221 (2001).

49. *Id.* One Bank insider responds to this criticism by noting that many Esso employees had never been to Africa and may have felt the guards were necessary for their safety. ROBERT CALDERISI, *THE TROUBLE WITH AFRICA* 185 (2006). Though this may be true, it does not alter the effect of the armed guards on the objectivity of the process.

50. See Hernández Uriz, *supra* note 48, at 221.

51. *Id.*

materials on the pipeline received prison sentences and fines.⁵² Most famously, Ngarlejy Yorongar, a member of parliament and a public critic of the pipeline, was imprisoned for his opposition to the oil pipeline.⁵³ Amnesty International has documented the continued government repression of all opposition efforts related to the oil pipeline.⁵⁴

Convinced that the project was the only way to reduce poverty in Chad, the World Bank largely ignored the substance behind criticism of the project before approving the pipeline deal. Calderisi, a former senior World Bank official, has defended the Bank's actions by arguing that senior Bank employees felt a sense of urgency to move the project along because it had the potential to reduce poverty and save lives.⁵⁵ According to Calderisi and some other Bank members, critics of the project were obstructing progress by blowing potential problems out of proportion.⁵⁶ Institutional Bank policy reflected this viewpoint. A leaked memo from then-World Bank Vice President for Sustainable Development to the World Bank's Vice President for Africa outlines the Bank's strategy for dealing with NGO opposition to the pipeline; the strategy centered around creating listening sessions staffed by employees loosely connected to the pipeline project, aiming to placate NGOs, while simultaneously diverting negative attention away from the project.⁵⁷ The World Bank also approached a large public relations firm to promote the pipeline and keep public opinion positive.⁵⁸ The Bank officially approved funding for the project on June 6, 2000.⁵⁹

C. *The Revenue Management Law*

Partly in response to the widespread criticism of the project,⁶⁰ the World Bank made its acceptance of the loan agreement contingent upon Chad's approval of a Revenue Management Law (RML).⁶¹ This law was designed to prevent Chadian officials from misusing oil revenue.

Chad's RML is codified in Chadian Law 001, which was passed by the

52. AMNESTY INT'L, *supra* note 44, at 17.

53. Interview with Ngarlejy Yorongar, Member of Parliament and Executive Coordinator of the Fédération, Action pour la République [Federation, Action for the Republic], in N'Djamena, Chad (Oct. 2, 2009).

54. AMNESTY INT'L, *supra* note 44.

55. CALDERISI, *supra* note 49, at 180.

56. *Id.* at 184.

57. See Hernández Uriz, *supra* note 48, at 227-28.

58. See Korinna Horta, *The Chad-Cameroon Oil and Pipeline Project Plans for Environmental Monitoring: Multilayered Conflicts of Interest?*, in LIABILITY FOR ENVIRONMENTAL DAMAGE AND THE WORLD BANK'S CHAD-CAMEROON OIL AND PIPELINE PROJECT, *supra* note 17, at 17, 22.

59. *The Chad-Cameroon Petroleum Development and Pipeline Project*, *supra* note 2.

60. See, e.g., INT'L ADVISORY GRP., FINAL REPORT (Sept. 3, 2009), available at http://siteresources.worldbank.org/INTCAMEROON/Resources/LAG_Chad-Cameroon_Pipeline_Final_Report_Sept-3-2009.pdf.

61. Loan Agreement (Petroleum Pipeline Development Project) between Republic of Chad and International Bank for Reconstruction and Development 41, 43, Mar. 19, 2001 [hereinafter Loan Agreement], available at http://siteresources.worldbank.org/INTCHADCAMPIPE/Resources/td_la_en.pdf.

National Assembly in 1998 and signed into law by President Déby in 1999.⁶² The law specifies that oil royalties are to be deposited into an offshore escrow account that saves ten percent for future generations⁶³ and divides the remaining ninety percent among several sectors.⁶⁴ Of the royalty revenue available for current spending, eighty percent is earmarked for key priority sectors (public health, social affairs, education, rural development, infrastructure, the environment, and water resources), fifteen percent is set aside for the state's recurring operating costs, and the remaining five percent is to be spent on development in the oil-producing Doba region.⁶⁵ This novel scheme was meant to ensure that oil revenue in Chad would promote development.

Unfortunately, the RML had several loopholes, which were apparent from the project's inception. First, the RML's novel spending requirements covered only direct profits,⁶⁶ that is, the government's share of the dividends and royalties, excluding taxes, customs, and other duties. Revenue that the government receives from taxes was subject only to normal Chadian budget provisions.⁶⁷ Signature bonuses were left outside of the RML altogether.⁶⁸ Second, the RML only covered the three main oil fields in the original agreements: Kome, Bolobo, and Miandoum.⁶⁹ Additional oil fields, even if explored by the same oil consortium, would not be governed by the RML. As critics pointed out, these loopholes seriously weakened Law 001's ability to contribute to economic development in Chad, and they were ultimately exploited to undermine the project's success.⁷⁰

The RML also established the Petroleum Revenue Oversight and Control Committee, more popularly known as the Collège. The Collège is composed of representatives from the judiciary, government, and civil society, and is tasked with monitoring the disbursement of the oil revenue.⁷¹ To that end, the Collège oversees the allocation of funds and ensures that spending conforms to requirements of the RML.⁷²

Though innovative in theory, the Collège was in practice inadequate to fulfill its assigned role as an oversight agency. The main problems were the limitations on its enforcement powers⁷³ and its inadequate resources.⁷⁴ For example, when the Collège challenged spending irregularities, government

62. Republic of Chad, Law No. 001/PR/99, Jan. 11, 1999, *translated in* GARY & REISCH, *supra* note 4, at 98.

63. *Id.* § 2, art. 9.

64. *Id.* § 1, art. 3.

65. *Id.* § 2, art. 8(c).

66. *Id.* § 1, arts. 3-4.

67. *Id.*

68. *Id.* § 1, art. 2.

69. *Id.* § 1, art. 1.

70. *See infra* Sections II.D and II.E.

71. Republic of Chad, Law No. 001/PR/99 § 1, art. 15, Jan. 11, 1999, *translated in* GARY & REISCH, *supra* note 4, at 98.

72. *Id.* § 1, art. 18.

73. *See* GARY & REISCH, *supra* note 4, at 64-66.

74. *See* MARGONELLI, *supra* note 30, at 181.

officials often lacked the power or incentive to respond.⁷⁵ Moreover, the high turnover among Collège members made it difficult to accumulate human capital.⁷⁶ Finally, the structure of the Collège made it particularly susceptible to political manipulation.⁷⁷

The International Advisory Group (IAG) was also created to guarantee that the oil revenue received by Chad facilitated poverty reduction.⁷⁸ The IAG was intended as a second layer of project monitoring to identify potential compliance issues with Law 001 and report these findings to the President of the World Bank as well as to the governments of Chad and Cameroon.⁷⁹ Composed of five international experts, the IAG was arguably more independent than the Collège.⁸⁰ As with the Collège, however, the main problem with the IAG was its lack of enforcement power, which meant that its recommendations, though often useful, generally went unheeded.⁸¹

Another major flaw in all of the Bank's institutional provisions was the pace at which they were instituted. The capacity-building programs were originally intended to precede the physical infrastructure aspects of the pipeline.⁸² However, because the pipeline was built significantly ahead of schedule, this did not occur.⁸³ This flaw was famously known as *les deux vitesses*—the “two-speed” problem.⁸⁴

Chad's revenue management provisions collectively constitute one of the Bank's most intrusive and novel anticorruption efforts to date. Unfortunately, because Chad's baseline political institutions were so weak, the provisions did not ensure the type of compliance desired.⁸⁵ The interesting revelation with respect to the Chad-Cameroon Oil Pipeline is thus not that the institutions failed, but how and why they failed. The weaknesses in the Bank's model, which eventually led to its unraveling, were apparent from the very beginning—critics of the Bank had pointed these flaws out throughout the history of the project. One critic foreshadowed this turn of events, writing:

Nevertheless, there is a risk that the Project, presented as an ideal model to the international community, will end up being a failure. The Bank's disregard for certain realities of life in Chad and Cameroon, specifically concerning good governance and human rights, may render the guarantees cosmetic or, at best, only confront problems partially. The attitude of the Bank's staff has been quite defensive throughout the process, and one wonders whether their treatment of

75. See GARY & REISCH, *supra* note 4, at 58, 66.

76. *Id.* at 60.

77. Alexandros Zervos, *Linking Natural Resource Exploitation and Primary Health Care in Developing Countries*, 11 UCLA J. INT'L L. & FOREIGN AFF. 227, 253 (2006).

78. See *The Chad-Cameroon Development and Pipeline Project*, *supra* note 2.

79. INT'L ADVISORY GRP., REPORT OF MISSION TO CAMEROON AND CHAD JULY 19-AUGUST 3, 2001, at 1 (Sept. 28, 2001), available at http://www.ciel.org/Publications/ChadCam_IAG_Sep01.pdf.

80. See *Chad-Cameroon Development and Pipeline Project*, *supra* note 2.

81. See, e.g., Zervos, *supra* note 77, at 253.

82. Nikola Kojucharov, *Poverty, Petroleum & Policy Intervention: Lessons from the Chad-Cameroon Pipeline*, 34 REV. AFR. POL. ECON. 477, 485-86 (2007).

83. *Id.*

84. Donald R. Norland, *Innovations of the Chad/Cameroon Pipeline Project: Thinking Outside the Box*, MEDITERRANEAN Q., Spring 2003, at 55.

85. See *infra* Section II.D.

the problems is a defensive reaction to the criticism or the result of a genuine plan.⁸⁶

The real question then becomes: why didn't the World Bank listen to these critics and self-correct?

D. *Chad's Disappointing Performance*

Even before oil flowed through the pipeline in Chad, the government tested the boundaries of the new RML. In 2000, the government received a \$25 million signing bonus and spent \$4.5 million of it on military equipment.⁸⁷ Although these actions generated outrage in the international community, Chadian revenue management provisions do not explicitly discuss signing bonuses,⁸⁸ indicating that the government's actions were technically legal.

The project was completed ahead of schedule, and oil began to flow through the pipeline in 2003.⁸⁹ From the beginning, Chad struggled to allocate the new petrodollars that flooded its government coffers. In 2004, Chad was already putting insufficient funds toward priority sector spending,⁹⁰ with money skewed in favor of public works,⁹¹ which are especially susceptible to corruption. Chad's compliance progressively worsened, and by 2005 the RML was under vigorous assault. In response to fiscal difficulties, the Chadian Parliament proposed a law amending the RML in order to eliminate the Future Generations Fund.⁹² Vehemently opposed by the World Bank, the law passed on December 29, 2005.⁹³ The World Bank took swift action, announcing in January 2006 that it would withhold new loans and grants to Chad and suspend the disbursement of all International Development Association funds.⁹⁴

Frustrated at having been treated as a "guinea pig" by the World Bank,⁹⁵ President Déby decided he had enough political leverage to take matters into his own hands. He demanded that Exxon pay \$50 million in oil royalties, directly bypassing the escrow account under the RML, and threatened to shut down the entire project and turn it over to Chinese interests if his demands were

86. Hernández Uriz, *supra* note 26, at 96.

87. GARY & REISCH, *supra* note 4, at 42.

88. Republic of Chad, Law No. 001/PR/99 § 1, art. 2, Jan. 11, 1999, *translated in* GARY & REISCH, *supra* note 4, at 98.

89. GARY & REISCH, *supra* note 4, at 35.

90. *Id.*

91. INT'L ADVISORY GRP., REPORT OF VISIT TO CHAD DECEMBER 5 TO 21, 2003, at 18 (Feb. 12, 2004), *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/02/19/000160016_20040219144852/Rendered/PDF/279590CD.pdf.

92. Press Release, World Bank, World Bank Statement on Chad (Dec. 8, 2005), <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20749536~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

93. Press Release, World Bank, World Bank Statement on Changes to Chad Petroleum Law (Dec. 29, 2005), <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20771610~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

94. Press Release, World Bank, World Bank Suspends Disbursement to Chad (Jan. 6, 2006), <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20778928~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

95. See MARGONELLI, *supra* note 30, at 197.

not met.⁹⁶ This demand prompted negotiations, and in April 2006, the World Bank announced that it had reached an agreement with Chad and would resume loaning activities.⁹⁷

Despite this renewed cooperation with the World Bank, Chad continued its pattern of misconduct. In August 2006, President Déby ordered Chevron and Petronas out of the country within twenty-four hours because they allegedly failed to pay a portion of their taxes.⁹⁸ In order to settle the dispute, the companies agreed to pay \$289 million and amend their previous tax agreements.⁹⁹ President Déby further chipped away at the new agreement with the World Bank, signing decrees that greatly expanded his control over the budget and allowed more spending for military purposes.¹⁰⁰

Eventually the friction between the World Bank and President Déby became unsustainable. On September 9, 2008 the World Bank announced that it was withdrawing from the Chad-Cameroon Oil Pipeline project altogether.¹⁰¹ As part of its withdrawal terms, the Bank required that the government of Chad repay its loans to the International Bank for Reconstruction and Development and the International Development Association.¹⁰²

E. *The Chad-Cameroon Oil Pipeline Today*

1. *Revenue Management*

Since the World Bank's departure from the project, the Chadian government has moved even farther from its commitment to the integrity of the RML. In February 2008, rebels from eastern Chad staged a serious attack in the country, making it all the way into N'Djamena, where a series of bloody battles ensued.¹⁰³ These attacks provided President Déby with justification to divert more oil resources to security operations. Chad's 2008 budget, adopted pursuant to emergency regulations, broke with International Monetary Fund (IMF) agreements.¹⁰⁴ By 2008, the neutrality of the Collège was also under direct attack—President Déby replaced all of its members except for the Chairman.¹⁰⁵

It is unclear exactly how well the 2009 budget complied with Chad's

96. *See id.*

97. Press Release, World Bank, World Bank, Chad Reach Interim Agreement on Funding, Oil Revenue Management (Apr. 26, 2006), <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20903775~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

98. *Chad's President Evicts 2 Oil Companies; Chevron Is Ordered To Leave the Country for Not Paying Taxes*, TELEGRAPH-HERALD (Dubuque), Aug. 27, 2006, at A7.

99. *Chad, Oil Companies Resolve Tax Dispute*, AFX NEWS (Oct. 7, 2006), <http://www.finanznachrichten.de/nachrichten-2006-10/7104983-chad-oil-companies-resolve-tax-dispute-020.htm>.

100. Lesley Wroughton, *World Bank Pulls Plug on Chad Oil Pipeline Agreement*, REUTERS, Sept. 9, 2008, available at http://www.reuters.com/article/idUSN09320796._CH_2400.

101. INT'L ADVISORY GRP., *supra* note 10, at 2.

102. *Id.*

103. *Id.* at 1.

104. *Id.* at 11.

105. *Id.* at 16.

RML. The government does not publish its oil revenues, and therefore, now that the World Bank is no longer involved as a lending partner, information is not made readily available to the public.¹⁰⁶ Without this information, it is now impossible for outside NGOs or other researchers to monitor Chad's performance.

2. *Compensation for Affected Communities*

The pipeline in Chad is located in the south of the country, where the federal government is nearly completely absent.¹⁰⁷ The IAG referred to this absence as both "alarming" and "disturbing" in its January 2009 Report.¹⁰⁸

Compensation for communities in the south of Chad can be conceptually organized into two basic forms: direct compensation to affected communities (direct payments for property purchased or materially altered) and community donations (payments to communities near the pipeline that may be affected by Esso's activities). As of 2007, Esso had paid out over \$20 million in direct compensation to affected communities,¹⁰⁹ primarily for those who lost "houses, crops, fields, or permanent trees."¹¹⁰ As of 2007, Esso had also donated \$8.75 million to various community projects, mostly in the areas of disease prevention, education, and environmental protection.¹¹¹ An ExxonMobil insider notes that community donations are sometimes made in noncash forms, such as development projects, specifically to avoid corruption and the misuse of money.¹¹²

There is a contentious debate in Chad over whether the compensation delivered to communities in southern Chad has been fair and equitable.¹¹³ In one village, the Chief explained that although an individual may have received a large sum of money for his property (i.e., one million Communauté Financière Africaine francs (CFA)—the Chadian currency—or approximately \$2,000), he would have grown crops on that parcel of land every year, and upon death he would have bequeathed the land to his descendants.¹¹⁴ In another village, villagers noted that because each parcel of land had previously supported eight to ten people, fair compensation should be great enough to continuously provide for all of these people in the future.¹¹⁵ According to studies carried out by Farmer Voice, those that sell their land receive approximately seven million CFA, while normal agricultural yields on these

106. *Id.* at 20.

107. *Id.* at 10.

108. *Id.*

109. ESSO, CHAD/CAMEROON OIL DEVELOPMENT PROJECT: FACT SHEET 3 (Aug. 2007), http://www.esso Chad.com/Chad-English/PA/Files/factsheet_2007.pdf.

110. Jane I. Guyer, *Briefing: The Chad-Cameroon Oil Petroleum and Pipeline Development Project*, 101 AFR. AFF. 109, 113 (2002).

111. ESSO, *supra* note 109, at 4.

112. Interview with Anonymous, Employee, Exxon, in N'Djamena, Chad (Oct. 20, 2009).

113. See Scott Pegg, *Can Policy Intervention Beat the Resource Curse? Evidence from the Chad-Cameroon Pipeline Project*, 105 AFR. AFF. 1, 14-18 (2006).

114. Interview with Roger Nguelmbaye, Chief of village in southern Chad, in southern Chad (Oct. 24, 2009).

115. Interview with Chief and members of Kome village, in southern Chad (Oct. 25, 2009).

parcels of land amount to less than one hundred thousand CFA yearly.¹¹⁶ One argument posits that the debate over compensation schemes is misleading because some Chadians eagerly agree to the large sums offered by compensation schemes, but come to regret the decision once the money has been misspent.¹¹⁷

Part of the problem with current compensation measures has to do with widespread misunderstandings as to how the compensation schemes function. The Chief of Milalgi village explained that no one in the village understood how Esso decides which communities to support with its development projects or compensation payments.¹¹⁸ In Kome village, the villagers were ecstatic when Esso built them a school but disappointed to learn that neither the government nor Esso had any plans to provide them with teachers.¹¹⁹ Communities have also found it difficult to communicate with Esso—the Milalgi Chief said that villagers often write to Esso representatives to no end.¹²⁰ Esso appoints a member from each affected community to negotiate between the village and the oil consortium, but villagers do not feel represented by this individual, whom they believe is dependent on Esso for his “daily bread.”¹²¹ Thus, villagers lack basic information about compensation programs and lack an adequate mechanism by which to access such information.

This dearth of information in the south has facilitated the creation of a dysfunctional culture of dependence on Esso. In many cases villagers expected large compensation payouts and unending development projects regardless of whether their community was significantly affected by Esso’s activities in the region. As a result of the anticipated economic benefits from the payouts, many villagers halted their normal economic activities. Then, when compensation packages or development projects did not meet their expectations, they found themselves in a worse economic position than before oil production began. This was the experience of Milalgi village. The Chief stated: “We used to have goats and cows. Now we don’t have those anymore and we don’t have anything from Esso.”¹²² This most likely occurred not because Esso stole the community’s livestock, but rather because the community stopped raising goats and cows in anticipation of oil revenue.

A related problem is the misuse of compensation payments. Chief Roger Nguelmbaye from a neighboring village said that, before Esso came, the people in the village had nothing and therefore, when they received compensation sums, they used the money “roughly.”¹²³ The Chief of Kome village reiterated this opinion, noting that Chadians in the south, who had practiced subsistence

116. Interview with Joseph, Employee, Farmer Voice Radio Station, in Doba, Chad (Oct. 25, 2009).

117. *See, e.g., id.*; Interview with Anonymous, Subcontractor, Esso, in Doba, Chad (Oct. 23, 2009).

118. Interview with Chief of Milalgi village, in southern Chad (Oct. 24, 2009).

119. Interview with Chief and members of Kome village, *supra* note 115.

120. Interview with Chief of Milalgi village, *supra* note 118.

121. *Id.*

122. *Id.*

123. Interview with Roger Nguelmbaye, *supra* note 114.

agriculture for generations, had no idea what to do with their relatively large compensation packages.¹²⁴ In one anecdote, a man was so overwhelmed by his sudden wealth that he purchased large quantities of beer and bathed in it.¹²⁵ These anecdotes highlight the fact that if such payments are to contribute to development in an area such as southern Chad, they must be paired with additional measures to ensure that the payments build community wealth rather than destroy it.

3. *Local Jobs*

Esso has made an effort to employ Chadians in its activities, but employment still falls drastically short of many Chadians' expectations. New procedures instituted in 2008 ensure that a certain number of Esso contracts are awarded to Chadian companies.¹²⁶ Esso also employed a large number of Chadians for the construction phase of the project, which required a high proportion of unskilled labor.¹²⁷ In 2007, Esso was employing approximately 6,300 people in Chad.¹²⁸ Although the exact employment data numbers are not presently available, Chadian employment by Esso has declined since 2007; the consortium has gradually phased out a number of jobs held by both Chadian and foreign employees as operations have moved toward basic operations and maintenance.¹²⁹

As with the compensation packages, the issue of Esso jobs has been complicated by widespread confusion among Chadians in the south. In speeches to communities, ExxonMobil employees and government officials stated that removing oil in Chad would take approximately twenty-five years.¹³⁰ Many Chadians believed this meant that jobs, once acquired, would be secure for that entire period.¹³¹ Most Chadians were therefore wholly unprepared for the layoffs they faced when Esso scaled back construction operations. Many made no preparations for unemployment and thus had no savings.¹³² According to sources in the south of Chad, some laid-off employees actually went crazy and died,¹³³ others sold their land out of necessity.¹³⁴ Many now resort to begging on the street and waiting around Kome 5, the pipeline production facility, for jobs to return.¹³⁵ The village that sprang up around Kome 5 has been informally called "waiting town," because of the many

124. Interview with Chief and members of Kome village, *supra* note 115.

125. *See* Interview with Joseph, *supra* note 116.

126. *See* INT'L ADVISORY GRP., *supra* note 10, at 9.

127. Interview with Anonymous, *supra* note 117.

128. ESSO, *supra* note 109, at 4.

129. *Id.*

130. *See, e.g.*, Interview with Joseph, *supra* note 116.

131. *Id.*

132. *See, e.g., id.*; Interview with Anonymous, *supra* note 117.

133. *See, e.g.*, Interview with Joseph, *supra* note 116; Interview with Anonymous, *supra* note 117.

134. *See, e.g.*, Interview with Joseph, *supra* note 116; Interview with Anonymous, *supra* note 117.

135. *See, e.g.*, Interview with Joseph, *supra* note 116; Interview with Anonymous, *supra* note 117.

people who have settled there for no other purpose than to wait for jobs.¹³⁶ Morale in the south of Chad is extremely low due to Esso's ongoing layoffs and the lack of viable economic opportunities in the area.

4. *Environmental Impacts*

It is difficult to ascertain the environmental impact of the pipeline on communities in the south, in part because of locals' tendency to attribute all problems to oil. One village Chief claimed that, because of oil operations in the region, "cows are dying and babies are dying,"¹³⁷ but it is unclear what connection Esso's operations might have to increased death rates of cows and babies.¹³⁸ Spills in the area have been limited and cleaned up quickly.¹³⁹ The pipeline itself is buried underground, which minimizes its potential environmental impact.¹⁴⁰ Air pollution from operations is generally limited to a small amount of flaring.¹⁴¹ There was a significant problem with dust pollution when Esso first began its operations,¹⁴² but new paved roads have greatly diminished this problem.¹⁴³ Villagers have also reported increases in skin itches,¹⁴⁴ and while the causal link between skin itches and oil production is unknown, a connection is not wholly implausible.¹⁴⁵ As with other matters related to the pipeline, the issue of what type and how much environmental damage the pipeline has caused has led to numerous competing factual claims.

The main factor prohibiting an accurate evaluation of the environmental damage is the insufficiency of scientific data. Prior to the project's approval, ExxonMobil conducted research on the oil sites and created an environmental assessment.¹⁴⁶ In 1999, the consortium used this information to create an environmental management plan (EMP), which was presented to the World Bank but not made public.¹⁴⁷ One major deficiency of the EMP was its overemphasis on worker health and lack of attention to impacts on the greater region.¹⁴⁸ The IAG Final Report commented on the disturbing lack of environmental data:

136. Interview with Anonymous, *supra* note 117.

137. Interview with Chief of Milalgi village, *supra* note 118.

138. Due to the lack of available scientific data on the health and environmental impacts of the pipeline in the south of Chad, I could not locate any evidence to substantiate these claims. Moreover, upon further questioning, the Milalgi Chief could offer no explanation for the increased number of deaths. *Id.*

139. See INT'L ADVISORY GRP., *supra* note 10, at 8.

140. Jürg Utzinger et al., *Assessing Health Impacts of the Chad-Cameroon Petroleum Development and Pipeline Project: Challenges and a Way Forward*, 25 ENVTL. IMPACT ASSESSMENT REV. 63, 84 (2005).

141. Although flaring is detrimental to air quality, a subcontractor in the area argues that any air pollution caused by Esso's activities in the area pales in comparison to the slash-and-burn agricultural activities practiced in the area. See Interview with Anonymous, *supra* note 117.

142. See GARY & REISCH, *supra* note 4, at 34.

143. See INT'L ADVISORY GRP., *supra* note 10, at 8.

144. See, e.g., Interview with Chief of Milalgi village, *supra* note 118.

145. See GARY & REISCH, *supra* note 4, at 34.

146. See INT'L ADVISORY GRP., *supra* note 60, at 7-8.

147. See *id.* at 8.

148. Utzinger et al., *supra* note 140, at 78.

The absence of some baseline studies, or their lack of depth, and the resulting dearth of information and related standards in the EMP, made monitoring, evaluating, and mitigating the Project's impact in the field more difficult, and also meant that some of the Project's direct and indirect effects will never be fully known.¹⁴⁹

In order to provide more information, the consortium began a regional study in 2004, which was abandoned, then resumed in 2006, and ultimately abandoned again.¹⁵⁰ The consortium has carried out studies in order to update its data,¹⁵¹ but the results of these studies have not always been made public. A comprehensive impact assessment was never carried out, and some have questioned whether Chad has the institutional capacity to conduct such an assessment.¹⁵² As the IAG report suggests, without comprehensive data that can be evaluated by neutral outside parties, it is impossible to draw firm conclusions about Esso's impact in the area.¹⁵³

III. MISALIGNED INCENTIVES: A ROLE FOR THE WORLD BANK

Resource extraction creates perverse incentives; altering those incentives can therefore assist in fostering sustainable development. As Macartan Humphreys, Jeffrey Sachs, and Joseph Stiglitz note:

Plaguing all well-meaning prescriptions . . . is the problem that the many individuals in the governments and in the private sector fare quite well in the short run when resources are misused. Even if such behavior does not benefit them in the long run, changing this behavior unilaterally may be too costly in the absence of reform by other actors. The challenge is to find ways to alter the incentives facing these actors to make it in their interest to do a better job.¹⁵⁴

Expanding on this idea, I argue in this Part that coordinating a successful development project involves aligning incentives between all major stakeholders toward the country's long-term development. Absent outside coordination, privatized resource extraction in nondemocratic underdeveloped countries results in a unique set of development failures: time-horizon failure (failure to consider the long-term development impacts of the project) and representation failure (failure to include key stakeholders in the project decisionmaking process). In this Part, I begin by exploring the incentives of each of the major participants in the Chad-Cameroon Oil Pipeline project in order to understand why the project failed in development terms. I then present an explanation of the development failures listed above. Finally, I examine the space in which the World Bank could act as a successful mediator and explain why the Bank failed in the case of the Chad pipeline project.

149. See INT'L ADVISORY GRP., *supra* note 60, at 8.

150. *Id.*

151. *Id.*

152. Utzinger et al., *supra* note 140, at 72.

153. Utzinger et al. carried out an extensive study of the health impacts of the pipeline, concluding that "public consultations have not looked into health-related issues of affected communities in sufficient depth." *Id.* at 79.

154. Macartan Humphreys, Jeffrey D. Sachs & Joseph E. Stiglitz, *Introduction* to ESCAPING THE RESOURCE CURSE I, 4 (Macartan Humphreys, Jeffrey D. Sachs & Joseph E. Stiglitz eds., 2007).

A. *Oil Consortium Incentives: Profit Maximization*

The oil consortium was one of the central players in the World Bank's strategic plan to use oil extraction to reduce poverty. The defining feature of the consortium is that it is composed of corporations, which, by their very nature, are profit-maximizing entities. The consortium includes Esso, which is a subsidiary of ExxonMobil, a private U.S. corporation; Chevron, a private U.S. corporation; and Petronas, a state-owned Malaysian corporation.¹⁵⁵ As incorporated entities,¹⁵⁶ these companies are ultimately accountable to their shareholders.¹⁵⁷ Under U.S. corporate law, for example, a corporation's board of directors must make decisions that reflect the profit motivations of shareholders or risk liability for a breach of fiduciary duty.¹⁵⁸

MNCs will choose to locate where they can maximize profits, and an MNC will therefore only invest in a high-risk country if profits are great enough to offset the risk.¹⁵⁹ One way in which an MNC can create higher expected profits is by negotiating a more favorable concession agreement, with a relatively low payout to the host government and a low tax burden. In some cases, this may be enough to offset the increased risk associated with doing business in an unstable country. Before investing in a country, the corporation calculates whether expected profits are high enough to warrant the risk of investment.¹⁶⁰ Academics note that “[c]orporations will, as a matter of policy, use some internal discount rate as a ‘hurdle’ rate to judge their own investments. If a prospective investment will not yield a rate of return in excess of this self-imposed hurdle, it will not be undertaken.”¹⁶¹ According to sources in the oil industry, most international oil investments operate under a “seven-year rule”¹⁶²—oil companies only invest if their calculations predict a one-hundred percent return on their investment within seven years.¹⁶³ Multinational

155. See *Development History*, *supra* note 16; see also *supra* notes 23-25 and accompanying text.

156. *About PETRONAS*, PETRONAS, http://www.petronas.com.my/about_us.aspx (last visited Nov. 12, 2010); *Company Profile*, CHEVRON, <http://www.chevron.com/about/leadership/> (last visited Nov. 12, 2010); *Company Profile*, EXXONMOBIL, http://www.exxonmobil.com/Corporate/about_who_profile.aspx (last visited Nov. 12, 2010).

157. Joseph E. Stiglitz, *What is the Role of the State?*, in *ESCAPING THE RESOURCE CURSE*, *supra* note 154, at 3, 28-29 (“It is standard doctrine, at least among American economists and in much of the business community, that firms should maximize the stock market value.”).

158. See *Sullivan v. Hammer*, Fed. Sec. L. Rep. (CCH) ¶ 95,415 (Del. Ch. 1990) (involving a shareholder derivative lawsuit against a Board of Directors for approving a plan to donate a large sum of corporate money to a museum); see also *Dodge v. Ford Motor*, 170 N.W. 668, 684 (Mich. 1919) (“A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes.”).

159. JONATHAN R. MACEY, *AN INTRODUCTION TO MODERN FINANCIAL THEORY* 17 (2d ed. 1998) (“Investors must be compensated for accepting greater risks through the promise of higher returns.”).

160. See John A. Gould & Matthew S. Winters, *An Obsolescing Bargain in Chad: Shifts in Leverage Between the Government and the World Bank*, 9 *BUS. & POL.*, no. 2, 2007 at 1, 3.

161. MACEY, *supra* note 159, at 6.

162. See, e.g., Interview with Anonymous, *supra* note 117.

163. See *id.*

oil companies operating in developing countries therefore make key investment decisions using exceedingly short timeframe calculations that center on risk calculations.

Moreover, when an MNC invests in an underdeveloped state, it will have an incentive to under-invest. Investments in highly underdeveloped states are usually undertaken despite a high risk of events that will endanger profits, ranging from civil war to government expropriation.¹⁶⁴ Therefore, as Stiglitz points out, “Without long-run secure property rights . . . there is an incentive to extract as much as one can as fast as one can—faster extraction than is efficient.”¹⁶⁵ Moreover, “Without long-run secure property rights, incentives to make the complementary investments required for efficient extraction are attenuated.”¹⁶⁶ Having recognized the risk of capital expropriation, MNCs will invest the minimal amount necessary to make a short-term profit on its investment. This may be efficient for the corporation, but it is inefficient for the country’s long-term development.

MNCs will consider the long-term development implications of their conduct where it is profitable to do so or where a regulatory scheme, either domestic or international, creates a high enough cost in the event that the MNC fails to do so. Human rights activists have long advocated tightening the international regulatory scheme in order to strengthen accountability for MNCs.¹⁶⁷ As the number of failed states has increased, the potential for abuse by MNCs has grown exponentially,¹⁶⁸ in part because a portion of sovereign control has been transferred from states to MNCs.¹⁶⁹ Moreover, MNCs operating in failed states rarely face liability because host states generally lack the will or capacity to prosecute corporations, and the states of incorporation often choose not to.¹⁷⁰ Additionally, most principles of international law concerning environmental or human rights obligations are binding on host states but not on the multinationals operating within them.¹⁷¹ Therefore, MNCs can operate in many underdeveloped nations with relative impunity.

There are a few unique U.S. laws that provide potential accountability

164. See, e.g., Richard J. Hunter, Jr., *Property Risks in International Business*, 15 CURRENTS: INT’L TRADE L.J. 23, 28 (2006).

165. Stiglitz, *supra* note 157, at 35.

166. *Id.*

167. See Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443, 461-75 (2001); see also Vassilis P. Tzevelekos, *In Search of Alternative Solutions: Can the State of Origin Be Held Internationally Responsible for Investors’ Human Rights Abuses That Are Not Attributable to It?*, 35 BROOK. J. INT’L L. 155, 160-161 (2010) (noting that MNCs “callously perpetrate [human rights] violations” in the face of lax domestic regulation and “inadequate” public international law remedies).

168. Ratner, *supra* note 167, at 461-63.

169. See Lee A. Tavis, *Corporate Governance and the Global Social Void*, 35 VAND. J. TRANSNAT’L L. 487, 520 (2002); see also Frank René López, *Corporate Social Responsibility in a Global Economy After September 11: Profits, Freedom, and Human Rights*, 55 MERCER L. REV. 739, 753-54 (2004) (noting the immense power that corporations have over the U.S. and foreign governments).

170. Ratner, *supra* note 167, at 461-75.

171. See Saman Zia-Zarifi, *The (Lack of) Responsibility of Multinational Oil Companies in the Proposed Chad-Cameroon Pipeline*, in LIABILITY FOR ENVIRONMENTAL DAMAGE AND THE WORLD BANK’S CHAD-CAMEROON OIL AND PIPELINE PROJECT, *supra* note 17, at 42, 48.

mechanisms for MNCs operating abroad. The Alien Tort Statute (ATS)¹⁷² has been used to bring MNCs to justice for their participation in extreme cases of human rights abuses,¹⁷³ though its application remains limited. The ATS provides a basis of jurisdiction in U.S. courts for aliens who are injured by tortious conduct in violation of general principles of international law or a specific treaty to which the United States is a party.¹⁷⁴ The Second Circuit first recognized ATS prosecutions against nonstate actors in the case of *Kadic v. Karadžić*, in which it held that private individuals could be found liable for extreme violations of human rights when committed in association with government officials.¹⁷⁵ Since then, the ATS has been applied to a number of corporate actors for their participation in human rights abuses,¹⁷⁶ though recent case law in the Second Circuit suggests that the door may be closing on liability for corporate entities under the ATS.¹⁷⁷ The ATS is celebrated for its ability to signal to corporations that there are potential repercussions for human rights abuses committed abroad.¹⁷⁸ In this way, the ATS may alter corporate incentives, but ATS claims are limited to customary international law norms that are “definable, universal and obligatory.”¹⁷⁹ In practice, this means that the ATS is restricted to only the most extreme cases of human rights abuses.¹⁸⁰

The Foreign Corrupt Practices Act (FCPA)¹⁸¹ in the United States may be one of the most promising legal instruments available for promoting corporate accountability in underdeveloped states. The FCPA prohibits the payment of bribes or gratuities to “foreign officials”—broadly defined—to obtain or retain business.¹⁸² Liability under the FCPA extends to domestic entities (U.S.

172. 28 U.S.C. § 1350 (2006).

173. *See, e.g., Presbyterian Church of Sudan v. Talisman Energy*, 244 F. Supp. 2d 289, 318 (S.D.N.Y. 2003) (“Historically, states, and to a lesser extent individuals, have been held liable under international law. However, as examined *supra*, substantial international and United States precedent indicates that corporations may also be held liable under international law, at least for gross human rights violations.”).

174. 28 U.S.C. § 1350 (2006).

175. *Kadic v. Karadžić*, 70 F.3d 232, 239 (2d Cir. 1995).

176. *See generally Doe I v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002) (finding that the Unocal corporation aided and abetted the Myanmar government in its practice of forced labor, murder, and rape, and was therefore liable under the ATS).

177. The Second Circuit refused to extend ATS liability to a corporate entity in the recent case *Kiobel v. Royal Dutch Petroleum*, finding that while international law “has sometimes extended the scope of liability for a violation of a given norm to individuals, it has *never* extended the scope of liability to a corporation.” 621 F.3d 111, 119 (2d Cir. 2010).

178. Anna Triponel, *Business & Human Rights Law: Diverging Trends in the United States and France*, 23 AM. U. INT’L L. REV. 855, 907 (2008).

179. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004) (quoting *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 781 (D.C. Cir. 1984) (Edwards, J., concurring)). Moreover, the Supreme Court has made statements indicating its intentions to further limit the jurisdiction of the ATS. “Whereas Justice Scalia sees these developments as sufficient to close the door to further independent judicial recognition of actionable international norms, other considerations persuade us that the judicial power should be exercised on the understanding that the door is still ajar subject to vigilant doorkeeping, and thus open to a narrow class of international norms today.” *Id.* at 729.

180. *See, e.g., Unocal Corp.*, 395 F.3d 932; *Bowoto v. Chevron Corp.*, 557 F. Supp. 2d 1080, 1083 (N.D. Cal. 2008); *Presbyterian Church of Sudan v. Talisman Energy*, 244 F. Supp. 2d 289, 318-19 (S.D.N.Y. 2003); *Wiwa v. Royal Dutch Petroleum Co.*, 1998 U.S. Dist. LEXIS 23065 (S.D.N.Y., Mar. 31, 1998).

181. 15 U.S.C. § 78dd (2006).

182. *See* 15 U.S.C. § 78dd-1(f) (2006).

companies and nationals),¹⁸³ foreign issuers (foreign companies listed on a U.S. stock exchange),¹⁸⁴ and non-issuing foreign agents or corporations who take steps in furtherance of a corrupt payment while in U.S. territory.¹⁸⁵ Criminal and civil penalties for FCPA violations are severe and include fines, disgorgement of company profits, and prison sentences for individuals.¹⁸⁶

The threat of FCPA indictments alters corporate incentives in several critical ways. First, it increases the cost of basing operations in places where corruption is high because there is a substantial risk that a corporation may ultimately face FCPA charges. The more aggressively the FCPA is enforced, the less likely MNCs will be to locate operations in countries where bribery is a prerequisite to doing business. That said, the potential profits to be had in corrupt failed states are often high enough to offset the risk of a potential FCPA action.¹⁸⁷ Second, in order to avoid FCPA charges, MNCs routinely create internal accountability mechanisms to ensure that they do not participate in the type of corruption covered by the FCPA.¹⁸⁸ Corporations will often receive more favorable agreements from the Securities and Exchange Commission or the Department of Justice if they demonstrate that they have taken steps to eliminate corruption from their affiliates and subsidiaries.¹⁸⁹ In this way, the FCPA discourages MNCs from investing in locations where corruption is mandatory and encourages MNCs to ensure that their investments remain free from corruption.

Still, the FCPA remains limited in several fundamental ways. For one, it only alters the incentives for those companies that are at some risk of falling under FCPA jurisdiction. Although jurisdiction for the FCPA is broad, it is not all-inclusive.¹⁹⁰ Additionally, despite the increasing pace of FCPA enforcement, much of the corporate response has been reactionary; in other words, corporations generally institute an FCPA compliance program only after

183. 15 U.S.C. § 78dd-2(a) (2006).

184. 15 U.S.C. § 78dd-1(a) (2006).

185. 15 U.S.C. § 78dd-3(a) (2006). The breadth of this jurisdiction, in practical terms, means that if a foreign MNC has a subsidiary that does business within the United States, that MNC may find itself subject to FCPA jurisdiction even for corrupt payments made by another one of its subsidiaries in a different country.

186. See 15 U.S.C. § 78dd-2(g) (2006); 15 U.S.C. § 78ff (c) (2006); 18 U.S.C. § 3571(d) (2006).

187. For example, despite the numerous FCPA charges arising from transactions in Nigeria, foreign direct investment in Nigeria by the United States in 2006 totaled \$339 million. See Joseph P. Covington & Jessica Tillipman, *Client Advisory: The Foreign Corrupt Practices Act & Risks of Doing Business in Nigeria*, JENNER & BLOCK (Aug. 3, 2007), http://www.jenner.com/files/tbl_s20Publications%5CRelatedDocumentsPDFs1252%5C1782%5CTheForeignCorruptPracticesAct080307.pdf; see also *Background Note: Nigeria*, U.S. DEPARTMENT OF STATE, <http://www.state.gov/r/pa/ei/bgn/2836.htm> (last visited Nov. 12, 2010).

188. *Foreign Corrupt Practices Act Antibribery Provisions*, U.S. DEPARTMENT OF JUSTICE, <http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf> (last visited Dec. 6, 2010).

189. See Memorandum from Larry D. Thompson, Deputy Att'y Gen., to Heads of Dep't Components and U.S. Att'ys (Jan. 20, 2003), available at http://www.justice.gov/dag/cftf/corporate_guidelines.htm; SHEARMAN & STERLING, LLP, RECENT TRENDS & PATTERNS IN FCPA ENFORCEMENT 7-8 (2008), available at http://www.shearman.com/files/upload/FCPA_Trends.pdf.

190. The FCPA may not reach entities like the state-owned Chinese oil companies that are expanding their role in Africa. JOHN GHAZVINIAN, UNTAPPED: THE SCRAMBLE FOR AFRICA'S OIL 275 (2007).

their subsidiaries have been indicted.¹⁹¹ Moreover, while the FCPA addresses corporate involvement in corruption, it does not address government misuse of revenue, one of the fundamental causes of the resource curse.¹⁹²

The existing international legal structure thus does not sufficiently encourage MNCs to be mindful of the long-term development impacts of their conduct on a host state. I do not mean to imply that existing efforts are without merit or lack the potential to contribute to international development efforts. Many gains have been made over the past few decades to strengthen international MNC accountability. Yet as discussed above most laws are limited in jurisdiction (whom they cover) and scope (what type of conduct they cover). Moreover, such laws often fail to prevent the onset of the problem because they fail to adequately alter corporate incentives on the front end. They do not change corporate incentives to under-invest in host states or limit their time horizons to the short term. In short, the current international legal regime is no replacement for an adequate domestic legal regime in the host country.

B. *Chadian Incentives: Rent Seeking*

Chad is perhaps the most important player in the development of the Chad-Cameroon Oil Pipeline. Yet Chad is not a monolithic entity. Chad, the country, does not participate in the development process; rather, Chadian government officials negotiate deals that, in theory, are designed for the benefit of the people. Too often, donor agencies conflate a country's people with its ruling elite, assuming that the elites have the interest of the people in mind, when in fact they often have their own motivations.¹⁹³ It is therefore essential to examine the government's political and social structure, as well as the historic underpinnings of that structure, to better understand what incentives motivate the decisionmakers within the particular country at issue. Only then can we begin to understand how these incentives might be successfully manipulated.

Chad's history has been plagued by extreme levels of violence and instability. This violence and instability can be traced back to precolonial times, when feuding between tribes escalated significantly with the rise of trans-ethnic Islam in the east and north of the country.¹⁹⁴ Muslims in the north created new alliances based on their common faith and captured non-Muslims in the south to serve as slaves,¹⁹⁵ creating sharp ethnic and geographic divisions that would dominate the country's subsequent history.

Chadian society under colonial rule by the French was equally violent. Chadians in the south faced unique hardship,¹⁹⁶ as the French attempted to

191. One encouraging trend, however, is the increasing number of FCPA cases that are self-reported rather than government initiated. SHEARMAN & STERLING, *supra* note 189, at 8.

192. Duruigbo, *supra* note 1, at 17-18.

193. See George B.N. Ayittey, *Aid for Black Elephants: How Foreign Assistance Has Failed Africa*, in PERPETUATING POVERTY: THE WORLD BANK, THE IMF, AND THE DEVELOPING WORLD 125, 145 (Doug Bandow & Ian Vasquez eds., 1994).

194. AZEVEDO, *supra* note 15, at 19.

195. See *id.*

196. See *id.* at 68; see also Hernández Uriz, *supra* note 48, at 215 ("French colonization exacerbated the historical North/South conflict because the French found much more receptive territory

“[m]ake the region—le Tchad-utile—productive and beneficial to the colonial apparatus.”¹⁹⁷ While the south produced the majority of the country’s exports, government positions were filled mostly by educated Muslim Arabs from the capital.¹⁹⁸ To make matters worse, in order to maintain political stability, the French employed extremely violent tactics,¹⁹⁹ which would prove difficult to eradicate from the fabric of Chadian society.

Given Chad’s brutal colonial history and lack of political or social cohesion, it is unsurprising that the country’s postcolonial history was dominated by civil war and development failure. Francois Tombalbaye, Chad’s first president after independence, banned all political parties,²⁰⁰ arrested opposition members,²⁰¹ and instituted a policy of violent repression of insubordinate territories.²⁰² Tension between the north and the south continued, culminating in the creation of the organization *Front de Libération Nationale du Tchad* [National Liberation Front of Chad] (Frolinat), consisting mostly of Chadian Muslims²⁰³ “[w]hose objective was the forcible overthrow of the regime in N’Djamena.”²⁰⁴ Following the assassination of Tombalbaye in 1975, Chad deteriorated into a state of chaos characterized by a series of civil wars, violence, and the ascent of politically repressive leaders. General Malloum was sworn in as head of state after the assassination of Tombalbaye²⁰⁵ and fought against Frolinat forces in a devastating civil war²⁰⁶ that virtually destroyed the Chadian state.²⁰⁷

In the wake of this devastation, Hissène Habré, a northern Muslim, took over the country in 1982.²⁰⁸ Habré’s rule failed to alter Chad’s trajectory. Habré’s regime was “extremely repressive, resulting in 40,000 deaths and 200,000 persons tortured.”²⁰⁹

In 1990, Colonel Idriss Déby, a former trusted lieutenant of Habré, seized power in Chad, forcing Habré to flee.²¹⁰ President Déby made some initial efforts toward democratization,²¹¹ but they quickly disintegrated. President Déby won his first election in 1996, at which time the legislature approved a constitution. Notably, however, each of Déby’s electoral victories has been marred by allegations of fraud and corruption.²¹² By 2003 Chad’s security

in the South.”).

197. AZEVEDO, *supra* note 15, at 87.

198. *See id.*

199. *See id.* at 88.

200. *See id.* at 91.

201. *See id.*

202. *See id.* at 92.

203. *See* Hernández Uriz, *supra* note 48, at 216.

204. AZEVEDO, *supra* note 15, at 92.

205. *Id.* at 100.

206. *Id.* at 106.

207. *See id.* at 107-08.

208. Hernández Uriz, *supra* note 48, at 216.

209. *See id.*

210. AZEVEDO, *supra* note 15, at 111-12.

211. Hernández Uriz, *supra* note 48, at 217.

212. *Q & A Chad Votes*, BBC NEWS (May 2, 2006), <http://news.bbc.co.uk/2/hi/africa/4957894.stm>; *Timeline: Chad*, BBC NEWS (Oct. 27, 2009), <http://news.bbc.co.uk/2/hi/africa/country>

situation worsened significantly, largely as a result of spillover violence from Darfur into eastern Chad, which forced Chad to cope with approximately two hundred thousand refugees from Sudan.²¹³ In February 2008, rebel forces in Chad reached N'Djamena, where they fought with government forces openly in the streets, accumulating high casualty rates and creating a culture of panic and terror that spread throughout the country.²¹⁴

It is within this context that Déby and his administration make decisions concerning Chad's resources. Déby has shown a tendency to act to increase and secure his own personal wealth and power,²¹⁵ and the government's policies on oil revenue directly affect Déby's likelihood of remaining in power.²¹⁶ A regime may have an incentive to inefficiently extract resources in the short term where, as in Chad, the political system "gives disproportionate influence to the support of a small part of the population."²¹⁷ Groups in such nepotistic systems expect large payouts whenever their group is in power. Because the political economy is inherently unstable, actors within the system find it more profitable to focus on the short-term raiding of government coffers than on long-term development planning.²¹⁸ Additionally, Humphreys and Sandbu argue that "[a] government may ideally want to spread spending evenly across all periods, but the possibility that another group takes power in the next period, and one's own group loses out as a result, creates an incentive to spend too much now."²¹⁹ Chad's history of rebel takeovers and the tendency of the ruling party to engage in nepotism thus create powerful incentives for the current government to overspend in the short term. Humphreys and Sandbu further note that "[t]he less stable the government—in the sense that there is a higher likelihood of an imminent change in government—the stronger the incentive for spending a lot today,"²²⁰ and "[t]he deeper is the division among the groups—the more pronounced is the tendency of politicians to favor only their own group at the expense of others—the greater will be the incentive to spend too much while one is in power."²²¹ Therefore in a country such as Chad, with extremely deep divisions between ethnic groups and a high level of instability, the ruling government will have an exceedingly short time horizon.

C. *Misaligned Incentives: Time-Horizon and Representation Failures*

Absent an outside intermediary, when an MNC operates in an underdeveloped state such as Chad, the parties to the transaction will not

_profiles/1068745.stm.

213. *Chad Country Profile*, *supra* note 43.

214. *See id.*; Interview with Anonymous, *supra* note 112; Interview with Anonymous, Foreign Journalist, in N'Djamena, Chad (Oct. 20, 2009).

215. This tendency is evidenced by Déby's past conduct, discussed *supra* Part II.

216. Macartan Humphreys & Martin E. Sandbu, *The Political Economy of Natural Resource Funds*, in *ESCAPING THE RESOURCE CURSE*, *supra* note 157, at 194, 206-07.

217. *Id.* at 207.

218. *Id.* at 207, 209.

219. *Id.* at 201.

220. *Id.* at 203.

221. *Id.*

sufficiently consider the long-term development interests of the country. The MNC, motivated by profit, will maintain an especially short time horizon due to the risky investment climate.²²² The elite faction in power, representing the host state, will seek to maximize its own benefit and, due to political uncertainty, will have a strong incentive to spend too much in the short term.²²³ Therefore, neither participant will have an incentive to give adequate consideration to the long-term development impacts of the project. This systemic failure to generate equilibrium results that give due consideration to the long term is a time-horizon failure.

Additionally, no party has an incentive to listen to all of the stakeholders involved. The MNC negotiates directly with the political elites within the host state. The political elites consider only the constituents upon whom their power depends. In a nondemocratic and underdeveloped country, such as Chad, they are not required to consider the needs of the entire population. Therefore, a significant portion of the population—in this case the population in the south of the country—has no representation in the process, creating representation failure.

Time-horizon failure and representation failure are not anomalies unique to Chad; they are part of the natural equilibrium that occurs when rational actors pursue their self-interest in the context of an MNC resource investment in a fractured and underdeveloped host state. This phenomenon can be conceptualized as a facet of the broader problem of the resource curse. Much of what separates successes from failures in resource management are the decisions that key participants, such as the government and the MNC, make with regard to the investment. These decisions are largely the product of structural incentives. Therefore, if one wants to alter the outcome of the game, one must first understand what motivates the players and then change the rules to meaningfully alter their incentives. The question then becomes: who has sufficient leverage to substantially alter the incentives of participants and the institutional incentives to do so?

D. *The World Bank as an Intermediary: Institutional Hurdles*

In the case of the Chad-Cameroon Oil Pipeline, the World Bank could have acted as a third-party mediator to realign incentives for investment participants, thereby avoiding the equilibrium development failures described above. The World Bank initially had considerable leverage over potential investors²²⁴ and was well suited to act as an intermediary in the project investment. The Bank was in fact somewhat successful initially—it capitalized on its leverage and gained substantial concessions from the Chadian government with respect to the RML.²²⁵ Moreover, with its immense financial resources, the World Bank possesses the necessary institutional capacity to act

222. See *supra* Section III.A.

223. Humphreys & Sandbu, *supra* note 216, at 201-03.

224. See, e.g., Hernández Uriz, *supra* note 26, at 77 (noting specifically that the International Development Association has more financial resources than the entire United Nations).

225. See *supra* Section II.C; see also Zervos, *supra* note 77, at 252.

as a coordinator in a major investment project.²²⁶ For these reasons, the World Bank was in a unique position to serve as a mediator to ensure that the Chad-Cameroon Oil Pipeline served Chad's long-term development goals.

Yet the World Bank failed to incorporate the idiosyncratic challenges posed by Chad's political and social climate into its project design. High-level World Bank staff pursued the pipeline project as if it were the *only* path for Chadian development.²²⁷ NGOs warned the Bank about coordinating a project in such an underdeveloped state, with its long history of violence, corruption, and tensions between the north and south.²²⁸ But the Bank seemed more concerned with its own reputational risks, in particular, the criticism that it received for backing a project that had the potential to increase corruption and entrench authoritarian rule in Chad.²²⁹ By failing to take stock of Chad's political and social realities, the Bank proved an ineffective mediator at best. It did not address the representation failure because it did not create space for marginalized communities in Chad in the decisionmaking process. Instead, the Bank sought to placate NGOs and members of civil society during the loan approval process.²³⁰ The Bank also did not adequately deal with the time-horizon failure problem because, although the Bank was concerned with Chadian development, top-level Bank staff were most concerned with moving the project forward and did not consider delay a viable option.²³¹ As one critic notes, the Bank consistently overestimates its ability to build capacity,²³² and, in Chad, it did not make the necessary initial investment in Chad's political institutions to ensure that revenue streams did not outstrip capacity. In short, the World Bank failed to institute mechanisms that would support healthy, long-term development in Chad.²³³

The Bank's failure in Chad is merely a symptom of a greater institutional failure: the refusal of the World Bank to systematically take political and social considerations into account in its lending decisions. In the early years of the Bank's formation, it sought to solidify its credibility as a multinational lending institution by claiming to ignore political considerations in lending decisions.²³⁴ Yet throughout the period of the Cold War lending decisions consistently reflected an anti-Communist ideology²³⁵ and often had the practical effect of entrenching authoritarian regimes.²³⁶ In the 1990s, the Bank changed course

226. Hernández Uriz, *supra* note 26, at 77.

227. *Id.* at 93; *see also supra* Section II.B.

228. *See* Kantor, *supra* note 6, at 293-94; Interview with Masalbaye Tenebaye, *supra* note 38; Interview with Helene Nekarbaye, *supra* note 38; Interview with Blaise Toumeladoundo, *supra* note 38.

229. Horta, *supra* note 58, at 21-22.

230. *See* Hernández Uriz, *supra* note 48, at 227-28.

231. *See* CALDERISI, *supra* note 49, at 180.

232. *See* Pegg, *supra* note 113, at 20-21.

233. Hernández Uriz, *supra* note 26, at 96.

234. *See* Hernández Uriz, *supra* note 48, at 201, 203.

235. *See id.* at 209.

236. *See* Korinna Horta, *Boundaries in the Field of Human Rights: Rhetoric and Reality: Human Rights and the World Bank*, 15 HARV. HUM. RTS. J. 227, 231 (2002).

with a new “good governance” approach to lending.²³⁷ In 1998, the Bank clarified its position on human rights, deciding that, while it considered human rights to be of critical importance, it considered itself an institution with scarce resources whose primary concern was the promotion of economic development.²³⁸ The Bank’s current policy distinguishes between economic rights, which it takes into account in its lending decisions, and political rights, which it does not.²³⁹ The Bank has thus refrained from establishing a cohesive policy on human rights, choosing to focus instead on more strictly economic variables.

Despite the Bank’s attempt to abstain from politics, its policy of lending to authoritarian governments has led to “a long and dismal record of underwriting human rights atrocities.”²⁴⁰ For example, the World Bank financially supported the former leader of Tanzania, Julius Nyerere. In the 1970s, with Bank aid, Nyerere instituted a villagization program, forcing the migration of villagers, often by violent means, into new government-created villages in order to “make them easier to control.”²⁴¹ Similar accounts abound from Vietnam to Indonesia.²⁴² The case of Ethiopia illustrates some of the devastating results of such policies:

The World Bank provided massive assistance to the Ethiopian Marxist regime of Mengistu Haile-Mariam. In the midst of the 1984-85 famine, when starvation reportedly threatened 7 million Ethiopians, the government launched a massive “resettlement” program to forcibly move hundreds of thousands of people in the north of the country to the south . . . [T]he resettlement program may have killed more people than the famine itself. *The Economist* cited Ethiopia in 1986 for the worst human rights record in the world.²⁴³

As a result of its politically indiscriminate policy of distributing loans and aid, the World Bank has had an unfortunate record of supporting—and arguably entrenching—repressive regimes.

Although the Bank’s institutional philosophy of lending on an apolitical basis is not inherently problematic, if it seeks to achieve its mandate of development, it should take into account all factors that affect development. In that vein, human rights and other political and social factors cannot be ignored. Some governments “are neither trustworthy nor creditworthy.”²⁴⁴ In certain cases, the best solution may actually be to leave the oil in the ground until the government can be trusted to use the revenue for the benefit of its people.²⁴⁵ However, if the World Bank does choose to lend to high-risk, nondemocratic governments, it should have an affirmative policy to ensure that project revenue contributes to development within that country.

237. See Hernández Uriz, *supra* note 48, at 201, 204.

238. See *id.* at 206.

239. See Horta, *supra* note 236, at 228.

240. James Bovard, *The World Bank and the Impoverishment of Nations*, in PERPETUATING POVERTY, *supra* note 193, at 59, 60.

241. *Id.*

242. *Id.* at 60-61.

243. *Id.* at 62.

244. *Id.* at 73.

245. Humphreys et al., *supra* note 154, at 15.

Another central problem with the World Bank's institutional approach to development is the perverse internal incentives underlying its lending decisions. Both the IMF and World Bank measure their success as institutions by their *quantity* of lending,²⁴⁶ despite the fact that fewer and smaller loans are sometimes more conducive to development.²⁴⁷ The explanation for this policy is that the World Bank needs clients in order to stay in business. The Bank must provide loans to justify its very existence.²⁴⁸ Moreover, it is virtually impossible to measure the Bank's contribution to economic growth,²⁴⁹ and thus "the bank officially grades itself primarily on the amount of financial resources that it shifts to the developing world. This means, then, that 'bigger is better' by definition."²⁵⁰ Unfortunately, however, the World Bank's internal operations are shrouded in secrecy,²⁵¹ making internal reform difficult. The reality is that, despite its institutional mandate, the World Bank currently lacks the right incentives to promote long-term development.

The World Bank's neoclassical ideology provides another hurdle to its potential success as a coordinator of resource investment in underdeveloped states. Despite the fact that the Bank has publicly acknowledged the failure of its structural adjustment policies, the economic logic behind these policies continues to govern decisionmaking within the Bank.²⁵² Many commentators have noted that the Bank's "new governance approach" is merely its old neoliberal ideology with a new name:

Indeed, although over the years there has been enormous pressure to shift the reform process towards a comprehensive approach that takes into account social and political dimensions of the law, the Bank has, in the end, resolutely stuck to the principles of economic deregulation and liberalization embodied in the Washington Consensus.²⁵³

Due to increasing pressure from the international community, the World Bank shifted focus toward "governance" but still maintained its emphasis on getting the economic variables right, maintaining the same "one size fits all" approach to development.²⁵⁴ Consistent with this ideology, the Bank's attention to "corruption" and "governance" with respect to Chad was shallow at best, and arguably merely represented a strategy to pacify the opposition.²⁵⁵

The Bank's one-size-fits-all, neoliberal approach is particularly problematic because the Bank does not address local conditions or engage with

246. Bovard, *supra* note 240, at 59.

247. Doug Bandow & Ian Vasquez, *Introduction: The Dismal Legacy and False Promise of Multilateral Aid*, in PERPETUATING POVERTY, *supra* note 193, at 1, 10.

248. *Id.*

249. See James B. Burnham, *Understanding the World Bank: A Dispassionate Analysis*, in PERPETUATING POVERTY, *supra* note 193, at 75, 79.

250. *Id.*

251. Bandow & Vasquez, *supra* note 247, at 6.

252. HOWARD STEIN, BEYOND THE WORLD BANK AGENDA: AN INSTITUTIONAL APPROACH TO DEVELOPMENT 55-56 (2008).

253. Julio Faundez, *Rule of Law or Washington Consensus: The Evolution of the World Bank's Approach to Legal and Judicial Reform*, in LAW IN THE PURSUIT OF DEVELOPMENT: PRINCIPLES INTO PRACTICE? 180, 180-81 (Amanda Perry Kessaris ed., 2010); see also STEIN, *supra* note 252, at 55-56.

254. STEIN, *supra* note 252, at 55-84.

255. See Hernández Uriz, *supra* note 48, at 227-28.

domestic stakeholders in the process of formulating its individual development strategies. Commentators have remarked on the numerous occasions in which World Bank programs failed because the Bank did not take into account the political and social realities of the host countries.²⁵⁶ As a result, commentators note that Bank programs have suffered from “construction delays, poor design, inadequate supervision, inappropriate technology . . . corruption, and pilfering.”²⁵⁷ The World Bank is also notorious for failing to listen to the local communities most affected by its lending decisions.²⁵⁸ With respect to Africa, “[t]he World Bank employs the services of management consultants. About 80,000 expatriate consultants work on Africa alone. [Fewer] than 0.1 percent are Africans.”²⁵⁹ This strategy substantially undermines the ability of the World Bank to serve as a mediator and to correct misaligned incentives in resource development projects, particularly with respect to the problem of representation failure.

Thus, the institution that was best situated to realign participant incentives and solve the development failures in Chad was itself suffering from an internal problem of perverse incentives. The most pressing step in creating a model for successful resource investment will therefore necessarily involve institutional reform of the World Bank.

IV. APPLICATIONS: ALIGNING INCENTIVES FOR DEVELOPMENT

As William Easterly has noted, “Prosperity happens when all the players in the development game have the right incentives.”²⁶⁰ In this Part, I argue that the failures inherent in the World Bank’s pipeline project design, discussed in Part II, are the result of a failure on the part of the World Bank to alter the misaligned equilibrium incentives discussed in Part III. I suggest specific solutions to these problems that the World Bank could have instituted in order to produce a more favorable outcome in Chad. Finally, I explore the model’s repeatability for other similarly situated countries and the broader implications for development and the resource curse.

A. *Creating Participant Support: Mediating Contract Renegotiation*

In order to be an effective third party, the World Bank must maintain leverage throughout the project’s duration. Securing leverage and legitimacy as a third-party coordinator involves, among other things, outward neutrality toward all participants. To that end, the Bank should be conscious not to position itself in an unduly adversarial role against the host government—something the Bank failed to do in Chad. For example, although President Déby was acutely aware of the cumbersome conditions placed on Chad, he did not see what tangible benefits Chad gained from World Bank participation, or

256. Faundez, *supra* note 253, at 187.

257. Ayittey, *supra* note 193, at 139.

258. *Id.* at 141.

259. *Id.*

260. WILLIAM EASTERLY, *THE ELUSIVE QUEST FOR GROWTH* 289 (2001).

what conditions, if any, were placed on the oil consortium.²⁶¹ To avoid such pitfalls, the World Bank should ensure that all participants recognize that Bank participation continuously results in a net gain; the Bank must use carrots as well as sticks.

The most effective carrot in the Chad pipeline project would have been to assist Chad in renegotiating a better concession agreement, contingent upon contractually built-in protections for the Bank's own leverage as a development institution.²⁶² Most developing countries lack the necessary experience and capacity to negotiate fair resource concession deals without outside help.²⁶³ The royalty rate that Chad received was very low in comparison to other oil-producing countries.²⁶⁴ Considering the leverage that the World Bank had at the dawn of the pipeline project, the Bank could have made contract renegotiation a precondition to lending.²⁶⁵

At the most basic level, the World Bank should have promoted transparency in the pipeline contract. As previously discussed, the oil consortium did not make the concession agreement readily available to the public.²⁶⁶ This created unnecessary adversarialism between the insiders (the oil consortium and the Chadian government) and outsiders (NGOs, community members, journalists, etc.).²⁶⁷ It would have been a minor concession for both the consortium and the Chadian government to agree to greater transparency, but a major gain for the development process in Chad.

Any Bank-facilitated contract renegotiation should take the MNCs' economic bottom line into account, including the seven-year rule. Thus, the contract renegotiation could proceed under a scheme in which royalty rates remain the same until the consortium makes a full return on its investment, at which point a new set of royalty rates is applied to oil production. This scheme would prevent the contract renegotiation from affecting the consortium's short-term concerns regarding risk and profit recuperation. Additionally, the increases in the bargained-for royalty rate should be tied to Chad's performance under the RML, such that the royalty rates revert back to their original levels if Chad materially breaches its contractual terms with the World Bank's policies on revenue management. The increase in royalty rate would only be achieved through World Bank assistance and therefore would be contingent on compliance with World Bank development requirements.

261. See MARGONELLI, *supra* note 30, at 197 (noting that Déby felt like the World Bank had treated Chadians like "guinea pigs").

262. See Pegg, *supra* note 113, at 23.

263. Jenik Radon, *How To Negotiate an Oil Agreement*, in ESCAPING THE RESOURCE CURSE, *supra* note 154, at 89, 90-94.

264. NICHOLAS SHAXSON, POISONED WELLS: THE DIRTY POLITICS OF AFRICAN OIL 2 (2007). It should also be noted that some argue the rate that Chad obtained from its concession agreement was due to other factors such as the low quality of oil and high transportation costs. David Johnston, *How To Evaluate the Fiscal Terms of Oil Contracts*, in ESCAPING THE RESOURCE CURSE, *supra* note 154, at 53, 72. See *supra* Section II.A for a full discussion of royalty rates.

265. Others have suggested the hiring of outside consultants to assist developing nations in contract negotiation with MNCs. See, e.g., Radon, *supra* note 263, at 93-94.

266. GARY & REISCH, *supra* note 4, at 39.

267. Radon, *supra* note 263, at 105.

One fundamental goal of contract negotiation should be the promotion of contractual stability, and, more specifically, the avoidance of unlawful exit from the original terms of the contract. The Bank should be capable of convincing an MNC that contract negotiation is in its interest because World Bank participation ultimately will decrease its risk profile.²⁶⁸ Because the World Bank can ensure a higher level of stability through its coordination efforts, companies should be willing to pay a premium for this stability.²⁶⁹ Gould and Winters speak to this point, noting that the repeated incidents in which Déby acted outside of the original terms of the contract can be analyzed using the obsolescing bargaining theory.²⁷⁰ They argue that Déby's actions were not surprising given that leverage shifted to Déby once the pipeline had been built.²⁷¹ An MNC negotiating with an inexperienced and underdeveloped state may be able to gain a favorable concession agreement at the front end of the process, but it will face a risk of expropriation after the state gains experience and leverage over time.²⁷² Therefore, it is in MNCs' interest to work with an institution such as the World Bank to create a more stable concession agreement because such agreements will decrease the risk that states will resort to extra-contractual measures.

B. *Maintaining Leverage: Addressing the Time-Horizon Failure*

One of the major weaknesses in the World Bank's plan in Chad was its failure to maintain its leverage after loans were distributed and oil revenue began to accumulate.²⁷³ Although the Bank used its leverage to force Chad to adopt revenue management laws,²⁷⁴ President Déby easily manipulated those laws once they were in place.²⁷⁵ Once the pipeline had been built, President Déby had his own source of revenue; since he no longer depended on the oil consortium nor the World Bank, neither had any influence over him.²⁷⁶

There is a documented positive correlation in oil-producing states between oil revenue and antidemocratic pressures. Once state leaders have access to oil revenue they tend to eliminate democratic checks on power. The enlarged pot of rent available increases their incentive to stay in power, and existing petrodollars give them the leverage needed to further entrench their

268. *Id.* at 93 (“Investors everywhere want and require legal and institutional stability, and seek to avoid instability from political, institutional, and societal inexperience in handling resource wealth.”).

269. *Id.*

270. Gould and Winters's central argument is that, once the World Bank and the consortium had made a significant physical investment in Chad, the bargaining power shifted to President Déby. They further contend that the Bank underestimated the antidemocratic pressures and destabilizing effects that resource extraction would have on Chad. *See generally* Gould & Winters, *supra* note 160.

271. *Id.*

272. *Id.*

273. The failure of the World Bank to maintain its leverage after loans are distributed was highlighted by critics even before the World Bank exited from the project. *See* Pegg, *supra* note 113, at 21.

274. *See* Loan Agreement, *supra* note 61; Zervos, *supra* note 77, at 252-53.

275. *See supra* Section II.C.

276. *See* Gould & Winters, *supra* note 160, at 1-2.

power.²⁷⁷ Leaders in such a “rentier economy” rely on oil rather than tax revenue to stay in power and are therefore less receptive to the public’s needs.²⁷⁸ Moreover, political elites in developing countries have a long history of gaming international financial institutions (IFIs) in the same way that they manipulate their domestic populations.²⁷⁹ Elites pretend to cooperate with IFIs that may finance their resource extraction projects while exploiting the underlying loopholes in the program.²⁸⁰ Therefore, the participation of an IFI may not prevent the typical democratic deficit that occurs in resource states. In sum, the incentives created by a rentier economy often lead to a dismantling of existing democratic institutions (often weak to begin with) and pose unique challenges for development within these states.

The Bank could have fought the inertia of the rentier economy by better promoting institutional and democratic development within Chad. First, slowing down the timeline for the project would have better promoted institutional and political development. Self-interested political elites would have been less able to manipulate more mature institutions. Second, as discussed below, promoting greater stakeholder participation and transparency would have fostered further democratic development within Chad, making authoritarian political actions less tolerable to the Chadian public. Third, as discussed above, the Bank should have used carrots in addition to sticks to gain the support of political elites. Fourth, the Bank should have used its initial leverage in the project to expand its control over the oil revenue until Chad’s political institutions matured enough to absorb oil revenue without undue risk of falling into a rentier economy. These policies would have the cumulative effect of promoting institutional and democratic growth within Chad.²⁸¹ This growth would have created a crucial counterweight to the perverse political incentives created by oil revenue.

One way to strengthen control over oil revenue would involve the creation of a resource trust fund. Trust funds can be particularly effective in weak states because countries with frail political institutions can use natural resource trust funds to replace, so to speak, their inept institutions.²⁸² A trust fund is most successful at stemming corruption when the trust fund is characterized by participation by multiple stakeholders,²⁸³ oversight and transparency,²⁸⁴ and true independence.²⁸⁵ There is no standard resource fund

277. *Id.* at 7-8.

278. Keenan, *supra* note 14, at 399.

279. See Gould & Winters, *supra* note 160, at 7.

280. *Id.* at 6-7.

281. For example, if oil revenue went directly to the people of Chad, it could transform Chad’s economy to a “non-oil economy” (one in which the government is accountable directly to the people) and in this way offset the inertia of the resource curse. See Pegg, *supra* note 113, at 24.

282. Humphreys & Sandbu *supra* note 216, at 221-22.

283. *Id.* at 219 (“If several political actors (including potentially nongovernment actors) participate in spending decisions, it can become necessary for each party to take the interests of the others into account in each period, thus altering the types of policies that emerge.”).

284. Joseph C. Bell & Teresa Maurea Faria, *Critical Issues for a Revenue Management Law, in ESCAPING THE RESOURCE CURSE*, *supra* note 154, at 286, 287.

285. Humphreys & Sandbu, *supra* note 216, at 220-21.

that can be systematically transplanted into all contexts successfully; the process of creating an effective institution in a weak state must be specifically tailored.²⁸⁶ Nevertheless, with enough time, effort, and attention to local context, it is possible.

Unfortunately, in Chad, the institutions that were created to manage Chad's oil revenue did not take due consideration of Chad's local context.²⁸⁷ Additionally, as discussed in Part II, Chad's RML suffered from many other flaws including inadequate independence, oversight, and transparency.²⁸⁸ Part of the failure of the Bank's experiment can be attributed to specific design flaws in its revenue management plan. A carefully designed revenue management plan will help address the problem of the rentier state and should be considered a key component of any plan to coordinate oil investments in highly underdeveloped countries.

One criticism of natural resource funds is that they impinge on state sovereignty and raise problems of paternalism and neocolonialism.²⁸⁹ A response to such criticism is that Chad's sovereignty deserves less respect because its government is not democratic and therefore does not represent the "will of the people." Moreover, interviews with Chadians confirm that much of the public wants external institutions such as the World Bank to exert greater control over the Chadian government, particularly if such interventions have the potential to reduce poverty.²⁹⁰ The debate over sovereignty deserves far more attention than is addressed in this Note. Yet when citizens themselves demand intervention, appeals to sovereignty need not constitute an absolute bar to action.

C. Increased Participation: Addressing the Representation Failure

Another major shortcoming in the Bank's plan was its inability to address the representation failure. While the Bank did provide some space for NGOs, such space appeared to be part of a strategy to appease NGOs in order to curtail criticism of the project.²⁹¹ The views of communities in the south directly affected by the pipeline were not adequately represented, as these communities had little interaction with the World Bank²⁹² and faced repression from their own government.²⁹³ If the Bank had allowed greater civil society participation, it might have better understood the context in which it was operating. Enhanced participation also would have given the project a greater degree of legitimacy. The cost of such participation would have been felt in terms of project delays, but delay would have been a small price to pay to avoid the failure that resulted

286. *Id.* at 214.

287. *See supra* Part II.

288. *See id.*

289. *See* Pegg, *supra* note 113, at 24.

290. *See, e.g.,* Interview with Masalbaye Tenebaye, *supra* note 38; Interview with Helene Nekarmbaye, *supra* note 38.

291. *See supra* text accompanying notes 48-51, 57-58.

292. *See id.*

293. *See supra* text accompanying notes 52-54.

from the Bank's haste.

Many scholars have noted the importance of local participation in the development process.²⁹⁴ James C. Scott uses the term *mētis* to describe local knowledge, or "indigenous technical knowledge," "folk wisdom," "practical skills," etc.²⁹⁵ He argues that this knowledge is crucial to fill in the gaps in technical or empirical knowledge, which provides only principles in the abstract of a concrete event.²⁹⁶ Indigenous individuals are the best potential providers of *mētis* because they live and work in the very field of observation, and, because their survival depends on it, they have the greatest incentive to observe and create sustainable development solutions.²⁹⁷ Fostering full participation not only stems criticism and increases democratic participation, but it also ensures better development solutions.

If the World Bank had interacted more with affected communities, it could have ensured that compensation schemes were in line with long-term development goals. First, the Bank should have required the oil consortium to conduct a thorough environmental impact assessment and publish its results. Competing claims of environmental impacts presented one crucial problem regarding community compensation.²⁹⁸ A careful scientific study of the environmental impacts would help clarify where adverse environmental impacts have occurred, the severity of such impacts, and who should receive what level of compensation. The Bank could have easily placed such a requirement on the consortium under the initial terms of the loan agreement.

Another major deficiency relating to the compensation scheme was the lack of adequate information distributed to communities. Rumors have played a devastating role in villagers' interactions with the oil consortium.²⁹⁹ The lack of accurate information with regard to jobs in the oil industry and compensation schemes has made it nearly impossible for communities in the south to use compensation or wage payments for development purposes. The World Bank could have launched an information campaign concerning the nature of compensation payments and the length of jobs, or it could have required the oil consortium to do so. Additionally, the Bank should have implemented a program where compensation payments were delivered in installments, rather than lump sums. This would also help ensure that compensation money promotes development, rather than hinders it.

D. *Global Implications*

The foregoing analysis has largely been specific to Chad; the conclusions, however, are broadly transferable to a host of other contexts. The time-horizon failure and representation failure do not represent an equilibrium outcome that is unique to Chad alone. Rather, these failures will arise in comparable

294. See generally JAMES C. SCOTT, *SEEING LIKE A STATE* (1998); Horta, *supra* note 236.

295. SCOTT, *supra* note 294, at 313.

296. *Id.* at 316.

297. *Id.* at 324.

298. See *supra* Subsection II.E.4.

299. See *supra* notes 118-121, 126-136 and accompanying text.

situations in which an MNC carries out a resource investment project in an underdeveloped country. The extent to which these failures occur will depend, among other things, on the extent to which MNCs are regulated by domestic and international legal regimes, the institutional capacity of the host state, the risk climate of the host state, the historical and sociological factors unique to the host state, and the political regime in the host state.

The Niger Delta presents one of the starkest examples of the consequences of unregulated corporate activity in an underdeveloped state. The Niger Delta, in the southwest corner of Nigeria, has suffered from extreme environmental devastation, beginning with the arrival of Royal Dutch Shell in 1937.³⁰⁰ Oil was extracted from Nigeria at a time when there were even fewer international mechanisms for corporate accountability. Oil companies have laid environmental waste to the Niger Delta with gas flaring,³⁰¹ oil spills, gas leaks,³⁰² and toxic waste.³⁰³ As a result of these activities, the economic livelihood of communities in the Delta has been all but destroyed.³⁰⁴ Government officials in Nigeria failed to prevent this catastrophe largely because they were either paid illegal bribes, or else they recognized that their potential government rents depended on the success of the oil industry.³⁰⁵ In short, it was in their self-interest to ignore the long-term development consequences of their actions. The situation became so volatile that it has bred an intractable entanglement of violence where “[i]nternal disputes and civil unrest are commonplace in the Niger Delta.”³⁰⁶ Nigerians themselves describe the violence in the Niger Delta as overwhelming and endemic.³⁰⁷ Rebel factions fight over control of the oil fields, with some rebels claiming to be fighting on behalf of the exploited people of the Delta,³⁰⁸ while others are clearly in the business of making profit for themselves.³⁰⁹ The situation has escalated to such a degree that the government has struggled to control the violence. Some territories are effectively controlled by rebel factions that operate with virtually no sanction by the government.³¹⁰ This has even led some to ask whether

300. IKE OKONTA & ORONTO DOUGLAS, *WHERE VULTURES FEAST* 49 (2003).

301. *Id.* at 73 (“More gas is flared in the course of Shell’s operations in Nigeria than in any of the other hundred countries in the world where the multinational is involved in oil exploration and production activities.”).

302. *Id.* at 72.

303. See Victoria C. Dawson, *Environmental Dispute Resolution: Combining Settlement Mechanisms for Transnational Enforcement of International Environment Disputes*, 14 *MO. ENVTL. L. & POL’Y REV.* 97, 102-05 (2006); see also Social and Economic Rights Action Center, Meeting with Community Members and Civil Society Members in Lagos, Nigeria (July 13, 2009) [hereinafter Meeting with Community Members].

304. See Dawson, *supra* note 303, at 103; see also OKONTA & DOUGLAS, *supra* note 300, at 63-68; Meeting with Community Members, *supra* note 303.

305. OKONTA & DOUGLAS, *supra* note 300, at 28-36.

306. Dawson, *supra* note 303, at 104.

307. Interviews with Nigerian NGO civil society members, in Lagos, Port Harcourt, and Abuja, Nigeria (June-July 2009).

308. See Meeting with Community Members, *supra* note 303.

309. For example, kidnapping has become a profit industry, where the wealthy are targeted, particularly foreign oil workers and their families. See *Nigeria’s Growing Kidnap Culture*, SKY NEWS (July 5, 2007), <http://news.sky.com/skynews/Home/Sky-News-Archive/Article/20080641273871>.

310. See Meeting with Community Members, *supra* note 303; see also *Debate: Is Nigeria a*

Nigeria is a “failed state.”³¹¹ The violence and pillaging have even forced Shell to cut their oil production on several occasions. In many ways the problems Nigeria faces can be conceptualized as an extreme example of development failure caused by misaligned incentives.

There are also more hopeful examples of countries that could still benefit from the intervention of a third-party coordinator. Countries such as Ghana, which is at the birth of its oil industry, could potentially benefit from the assistance of the World Bank. For example, the Ghanaian government has had difficulty effectively negotiating its petroleum licenses.³¹² The government of Ghana issued a license to the Kosmos oil corporation, which discovered offshore oil in 2007, but it successfully blocked Kosmos’s attempted sale of the oil fields to ExxonMobil.³¹³ Additionally, although Ghana has an arguably superior governance record as compared to Chad, its population has nonetheless expressed concern about corruption and oil revenue.³¹⁴ Because Ghana is comparatively more developed and less risky than Chad, the World Bank would not have nearly the same degree of leverage in this context. Yet the Bank could offer assistance in brokering a deal between Ghana and Kosmos and could potentially mediate the terms of the new concession with ExxonMobil or another partner. In exchange, the World Bank could offer both parties greater contractual stability (a lower probability of exit) and could potentially obtain additional concessions in terms of corruption abatement, institutional capacity building, and increased stakeholder participation.

I wish to temper my optimism with an open recognition of this model’s limitations. I do not wish to propose that the World Bank, as a lending institution, can singlehandedly solve the resource curse. In fact, unbridled optimism for the pipeline project was partly to blame for its design flaws and subsequent unraveling.³¹⁵ Rather, I posit that the World Bank can play a positive role in some unique situations. If MNCs invest in underdeveloped countries with the type of equilibrium failures discussed above, the World Bank

Failed State?, BBC NEWS (July 7, 2009), <http://news.bbc.co.uk/2/hi/africa/8112800.stm>.

311. *Debate: Is Nigeria a Failed State?*, *supra* note 310.

312. Chuck Neubauer, *Ghana Discovery Sparks Fight Over Oil*, WASH. TIMES, Mar. 26, 2010, at A1, available at <http://www.washingtontimes.com/news/2010/mar/26/ghana-discovery-sparks-fight-over-oil/>.

313. Simon Hall & David Winning, *Exxon, Kosmos Cancel Ghana Oil Asset Deal*, FOX BUS. (Aug. 18, 2010), <http://www.foxbusiness.com/markets/2010/08/18/exxon-kosmos-cancel-ghana-oil-asset-deal/>.

314. Neubauer, *supra* note 312.

315. Kojucharov argues that the failure of the pipeline project was caused by the fact that World Bank interventions were external, and as such they could not solve the resource curse. *See generally* Kojucharov, *supra* note 82. Yet the specific flaws in the project design that Kojucharov points to are many of the same flaws that I address here: rushed capacity implementation, a failure to appreciate the local conditions of Chad, and the fact that President Déby did not see any gain from Bank participation. These problems are not inherent to the Bank’s role as an external actor. Rather they are the result of the Bank’s institutional choices and can be remedied by a change in Bank policy. Kojucharov also argues that Chad’s lack of institutional development reflects an overreliance on the World Bank. Yet, given Chad’s current political and economic state as well as its history, I would argue that this is not the case. In the absence of Bank intervention it would have been highly unlikely that Chad’s institutions would have seen superior development. Resource investments in other highly underdeveloped countries are informative on this point.

can improve the status quo by slowing down this process and better aligning incentives toward long-term development goals. This will not work in every case. Certainly, in some situations, countries will opt for the easy solution and will choose to work with those oil companies that do not come with such stringent conditions. Yet when the World Bank does choose to participate as a lending partner, it should do everything within its power to ensure that it promotes development. This model will not be the magic bullet solution to the resource curse, but it can improve the equilibrium development failures that result absent coordination.³¹⁶

V. CONCLUSION

The Chad-Cameroon Oil Pipeline project has been called the World Bank's great experiment. Some conclude that this experiment is a complete failure and should therefore be abandoned. I argue, to the contrary, that despite the failure in the context of Chad, the model of the World Bank as a third-party coordinator of resource investment projects has potential. But tapping that potential requires a close examination of the institutional agenda of the World Bank. The World Bank's failure in Chad was not one of capacity, but one of will. Unfortunately, this may prove to be the most difficult problem to remedy.

The case of the Chad-Cameroon Oil Pipeline demonstrates that there is every reason to believe that the Bank can act as a successful third-party mediator in resource investment projects. At the initial stages of the pipeline project, the World Bank held a unique amount of leverage, and it could have used that leverage to realign incentives toward the long term, which would have decreased the risk of the venture and made all stakeholders better off. This was evidenced by the significant conditions the Bank was able to enforce prior to the project's approval. Unfortunately, such reforms were never intended to be deep and fundamental governance reforms, and as a result they fell apart at the first test of their strength.

Picking up the pieces of the Bank's failed experiment in Chad means coming to terms with some hard truths. It involves recognizing that such a failure was by no means inevitable—it was born from within the World Bank itself. Calls for World Bank reform are not new, a fact that highlights the vast institutional inertia that must be overcome in order to effect meaningful change. While the Bank has publicly admitted to past failures in both lending decisions and ideology, it has done little to correct them. The crucial question therefore is whether the World Bank will step up and play a positive role in the quest to support development and combat the resource curse. In order to answer in the affirmative, the Bank must deal with the perverse incentives that are driving its own decisions. It must realign its own institutional incentives toward development. Then and only then can it step up to its role as a third-party coordinator in the quest to combat the resource curse.

316. See Pegg, *supra* note 113, at 24.

APPENDIX: INTERVIEWS CITED

Name	Position	Date	Location	Language*
Members of Nigerian NGOs and civil society		6-09 and 7-09	Lagos, Port Harcourt, and Abuja, Nigeria	English
Anonymous	Oil subcontractor	7-3-09	Lagos, Nigeria	English
Meeting with community members and civil society members, Social and Economic Rights Action Center		7-13-09	Lagos, Nigeria	English
Blaise Toumeladoundo	Journalist, FM Liberté [Liberty FM]	10-17-09 and 10-18-09	N'Djamena, Chad	French
Anonymous	Foreign journalist	10-19-09	N'Djamena, Chad	English
Helene Nekarmbaye		10-20-09	N'Djamena, Chad	French
Mme. Marie Larlem	General Coordinator, Association pour la Promotion des Libertés Fondamentales au Tchad [Association for the Promotion of Fundamental Liberties in Chad]	10-20-09	N'Djamena, Chad	French
Masalbaye Tenebaye	President of Ligue Tchadienne Des Droits de l'Homme [Chadian League of Human Rights]	10-20-09	N'Djamena, Chad	French

Anonymous	Esso executive	10-20-09	N'Djamena, Chad	English
Ngarlejy Yorongar	Member of Parliament and Executive Coordinator of the Fédération, Action pour la République [Federation, Action for the Republic], in N'Djamena	10-20-09	N'Djamena, Chad	French
Anonymous	Esso subcontractor	10-23-09 and 10-24-09	Doba, Chad	English
	Chief of Milalgi village	10-24-09	Southern Chad near Kome, Chad	French and local languages
Roger Nguelmbaye	Chief of village in the south of Chad	10-24-09	Southern Chad near Kome, Chad	French and local languages
Joseph	Employee of radio station Farmer Voice	10-25-09	Doba, Chad	French
	Chief and members of Kome village	10-25-09	Southern Chad near Kome, Chad	French and local languages
Anonymous	Esso employee	10-25-09	Kome, Chad	English

* “Language” refers to the language that the interview was conducted in. All interviews conducted in French and local languages required the assistance of a translator or multiple translators. Quotations included in this Note that come from interviews conducted in French or local languages have been translated into English for the purposes of this Note.