



# CONTRACTING OUT OF HUMAN RIGHTS

The Chad–Cameroon pipeline project

Amnesty International



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# Glossary

CAPECE PAD	Cameroon Petroleum Environment Capacity Enhancement Project, Project Appraisal Document, 30 March 2000 <a href="http://www.worldbank.org/afr/ccproj/project/cecepad.pdf">http://www.worldbank.org/afr/ccproj/project/cecepad.pdf</a>
Chad PAD	Chad Petroleum Sector Management Capacity Building Project, Project Appraisal Document, 30 March 2000 <a href="http://www.worldbank.org/afr/ccproj/project/tdPAD.pdf">http://www.worldbank.org/afr/ccproj/project/tdPAD.pdf</a>
Chad 1988	1988 agreement between the consortium and the government of Chad
Chad 2004	2004 agreement between the consortium and the government of Chad
Chad-Cameroon PAD	World Bank and International Finance Corporation, Chad-Cameroon Petroleum Development and Pipeline Project, Project Appraisal Document, 13 April 2000 <a href="http://www.worldbank.org/afr/ccproj/project/tdpppad.pdf">http://www.worldbank.org/afr/ccproj/project/tdpppad.pdf</a>
Consortium	The oil companies involved in the pipeline project: ExxonMobil, Petronas and Chevron
COTCO	Cameroon Oil Transportation Company
COTCO-Cameroon	1997 COTCO Convention of Establishment between COTCO and the government of Cameroon
EMP	Environmental Management Plan (created by ExxonMobil, approved by the governments of Chad and Cameroon, and accepted by the World Bank)
ICSID	International Centre for Settlement of Investment Disputes
IFC	International Finance Corporation (private-sector lending arm of the World Bank)
TOTCO	Chad [Tchad] Oil Transportation Company
TOTCO-Chad	1998 TOTCO Convention of Establishment between TOTCO and the government of Chad

# Executive summary

A pipeline transporting oil through Chad and Cameroon brings with it potential threats to human rights in the two Central African countries. Amnesty International is concerned that these threats are more likely to be realised if the investment agreements underpinning the pipeline project prejudice the human rights obligations of the states and the human rights responsibilities of the companies involved.

A consortium of oil companies is extracting oil from the Doba oilfields in southern Chad and transporting it 1,070 kilometres by pipeline to Cameroon's Atlantic coast in one of the largest private-sector investment projects in Africa. The consortium is led by the US company, ExxonMobil, and includes Chevron, another US corporation, and Petronas, the Malaysian state oil company.

This project has been promoted by investors, agreed to by governments and supported by lenders such as the World Bank, export credit agencies and private banks – some of which have voluntarily adopted social and environmental standards. Yet the agreements could hold back the governments of Chad and Cameroon, which have poor track records on human rights, from taking steps to improve the human rights protection of those affected by the pipeline project. The framework of agreements could also make it more difficult to hold the consortium to account for abuses of human rights that result from its activities.

A related concern is that the project agreements could encourage the governments of Chad and Cameroon to ignore their human rights obligations, by claiming that the agreements prevent them from taking measures that would destabilise the financial equilibrium of the project, even if such measures are intended to respect, protect and fulfil human rights. This possibility should be expressly excluded in a revision of the terms of the contracts. The project agreements could also be interpreted to allow the oil companies to extract and transport oil and operate the pipeline project free from full accountability under domestic laws against human rights abuses. Amnesty International believes that such interpretations would be unsustainable in international law and would create unacceptable obstacles to the realisation of human rights and hamper access to remedies for victims of human rights violations.

Amnesty International calls for clarification of the agreements to ensure that those affected by the project are not exposed to increased risk and reduced protection of their human rights. The project should not create a zone of lower protection of human rights. Any new laws and regulations enacted to further the protection of human rights in Chad or Cameroon must be clearly applicable to the project.

In some countries, the exploitation of natural resources has contributed to a deteriorating cycle of corruption, social unrest, conflict and abuses. In Chad and Cameroon, the human rights of the population, be it communities living or working in the area of the pipeline or the wider population, are largely disregarded. Ineffective judicial systems in both countries are vulnerable to state interference. They are no match for powerful governments and commercial interests. The courts and the police are ill-equipped to uphold the human rights of the population from adverse effects of large-scale projects for economic development. Serious human rights violations in Chad and Cameroon have been documented by Amnesty International for more than three decades.

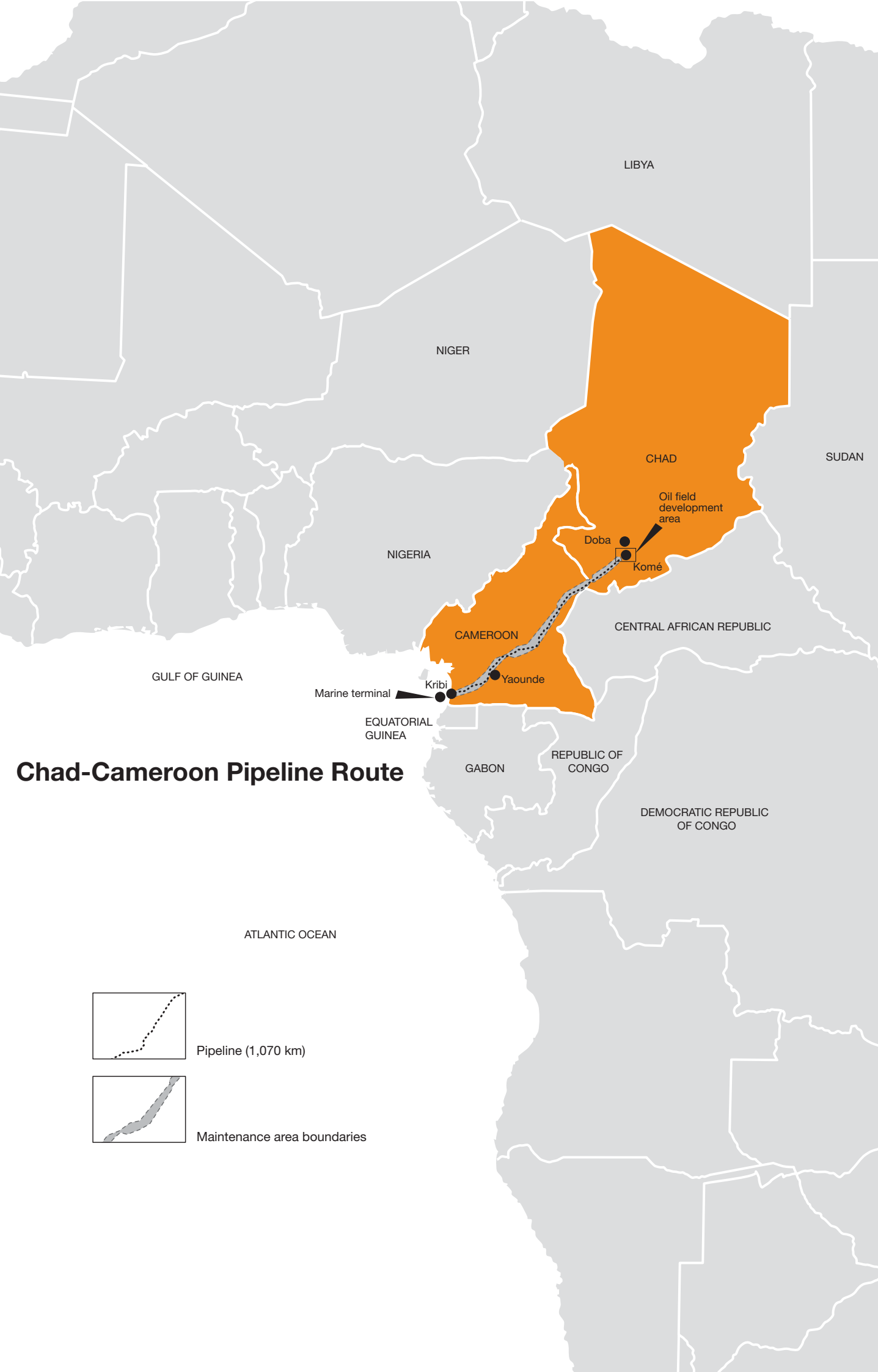
Almost constant armed conflict since 1960 has left most of Chad in a state of fragile peace, and sporadic clashes with armed groups continue in the north. Forces of the government of President Idriss Déby, who came to power in a military coup in 1990, have carried out mass killings and torture to subdue armed insurgencies. In the south in the 1990s, where the majority of the state's oil reserves are found, counter-insurgency operations were particularly brutal. Hundreds of people were summarily executed.

In Cameroon, under the 22-year rule of President Paul Biya, torture persists and political prisoners have continued to die in appalling prison conditions after unfair trials. Opposition activists and human rights defenders remain at risk of being detained, and their peaceful political activities are frequently obstructed by the authorities.

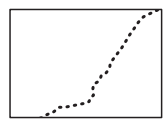
This report highlights the potential dangers to human rights posed by investment agreements underpinning the pipeline project, as well as the need for a new approach to investment that ensures respect for human rights.

Amnesty International is calling on the governments, international financial institutions and companies involved in the Chad-Cameroon pipeline project to revise the project agreements to include an explicit guarantee that nothing in the agreements can be used to undermine either the human rights obligations of the states or the human rights responsibilities of the companies. In particular Amnesty International is urging that the investment agreements:

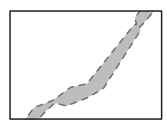
- **Allow the regulation of actions of the companies involved, to ensure that they do not abuse human rights.** The project agreements seek to protect the financial interests of the oil companies by restricting interference in and regulation of the project by Chad and Cameroon. However, the terms of the project agreements must be interpreted in a way consistent with the states' obligations under international law to respect, protect and fulfil human rights. International human rights law requires states to regulate the actions of private individuals and organisations, including companies, to ensure that they do not abuse human rights. This obligation cannot be made subordinate to any agreement which the state enters into and should not be interpreted as such. The project agreements should explicitly confirm that they do not prejudice the duty of the state to regulate the actions of private actors, such as companies, to ensure that they adhere to human rights standards.
- **Remove obstacles to progressive realisation of human rights.** Chad and Cameroon are required by their international human rights commitments to take deliberate, concrete and targeted steps towards fully realising rights such as the right to health and rights at work. The pipeline project agreements should not be used in an attempt to justify failure to comply with these obligations or to frustrate their implementation. The project agreements should explicitly state that those clauses which seek to restrict regulation of the project by Chad and Cameroon do not apply to any action taken in fulfilment of human rights obligations.
- **Avoid placing a price tag on human rights.** Any attempt by the companies involved to use the agreements to penalise the states for taking steps to protect human rights would be a breach of their human rights responsibilities. The project agreements should be amended to clarify that nothing in the agreements can be interpreted to penalise steps taken by the host states to meet their obligations to respect, protect and fulfil human rights.
- **Give precedence to international human rights law over industry standards.** International human rights law requires states to ensure that human rights are respected by all, including companies. One important way in which states should do this is to introduce legislation requiring all organs of society to respect human rights, and regulating corporate and other practice to enforce these standards. However, under the project agreements, the standards to be applied to the management of the project in Chad are those of prevailing custom and practice in the oil industry, which are not drawn from international human rights law. Amnesty International believes that human rights must be respected regardless of commercial expediency, and that priority should be given to human rights standards. The agreements should be amended to guarantee that reference to industry standards cannot be used to limit human rights protection.
- **Respect the right to an effective remedy.** International human rights treaties ratified by Chad and Cameroon guarantee individuals the right to a remedy. This must be guaranteed not only if other human rights are abused but also to prevent abuse of these rights in the first place.



# Chad-Cameroon Pipeline Route



Pipeline (1,070 km)



Maintenance area boundaries

The project agreements must not be interpreted in a way which frustrates the realisation of the right to adequate remedy. They must guarantee that local judicial and administrative officials can provide an effective domestic remedy, including full reparation, to individuals adversely affected by the oil project.

- **Ensure the right to equality.** International human rights treaties ratified by Chad and Cameroon guarantee equality before the law and equal protection of the law, and prohibit discrimination of any kind. The project agreements must not be interpreted to carve out a corridor where individuals – those living or working within the pipeline zone – enjoy lesser protection of the law. The project agreements must guarantee that they do not facilitate discrimination.

- **Protect labour rights and the rights to freedom of expression and assembly.** The rights to freedom of expression and assembly are guaranteed in international treaties to which Chad and Cameroon are party. However, the human rights of some pipeline critics have already been violated. The project agreements should not provide any justification for placing limitations on rights, such as freedom of expression and assembly, in a way that is inconsistent with international law.

Amnesty International is also calling for policy changes on state-investor agreements from:

- **all host states that receive foreign direct investment**, to make certain that investment agreements are consistent with, and do not compromise, their human rights obligations, and to open such agreements to public scrutiny before they are concluded;
- **all states where transnational corporations are headquartered**, to take steps to hold those companies to account for human rights abuses abroad. These ‘home states’ should regulate the activity of their export credit agencies and companies to ensure that all investment policies and practices are consistent with their human rights obligations;
- **international financial institutions, export credit agencies and commercial banks**, to ensure that the legal agreements underpinning projects they support do not undermine states’ human rights obligations or the human rights responsibilities of companies;
- **all companies**, to ensure that their investment agreements do not undermine either states’ human rights obligations or their own human rights responsibilities and that the agreements are open to public scrutiny before they are concluded;
- **international arbitration bodies and commercial arbitrators**, to ensure that in the context of investor-state arbitrations precedence is given to the human rights obligations of the state under national and international law.

# 1. Investment and human rights

International law places the primary obligation for realising human rights on states. However, there is increasing recognition that responsibilities extend to other actors in society, as is recognised in the Universal Declaration of Human Rights.<sup>1</sup> Amnesty International believes that companies have a responsibility for the human rights impact of their operations. These concerns apply universally, but particularly in countries without adequate protection for human rights. In their desire to attract foreign investment, some states have overlooked their obligations to protect people from human rights abuses that may take place in the context of large investment projects. These projects include resource extraction for oil, diamonds or timber, major infrastructure projects such as dams and oil pipelines, as well as plants producing chemicals or generating electricity.<sup>2</sup> As part of its work on business and human rights, Amnesty International calls upon all economic actors to respect and promote human rights within their sphere of influence and area of operations.

This report draws attention to some of the possible roots of human rights abuses that may occur in the context of foreign direct investment. Under particular scrutiny is the legal framework within which these investments are made. One of its important aspects is the contract that the private company signs with the government of the country where the investment will take place: the ‘host government’. Such contracts are known by various names, including host government agreements and transnational investment agreements, but throughout this report they are referred to as state-investor agreements. While these agreements are little known, rarely studied and generally confidential, their creation and content may have important implications for the enjoyment of human rights. Moreover, these agreements may provide incentives for the host state and the company to disregard their human rights obligations or responsibilities. Amnesty International aims to expose how these agreements may limit human rights protection for individuals affected by the projects and calls upon all parties to ensure that the risks to human rights described here are averted.

## 1.1 State-investor agreements and human rights

Amnesty International’s first report on state-investor agreements, *Human Rights on the Line: The Baku-Tbilisi-Ceyhan Pipeline Project*, argued that the legal agreements underpinning the project systematically undermined international human rights law and standards.<sup>3</sup> The project agreements imposed conditions on the governments of Azerbaijan, Georgia and Turkey that constrained them from giving effect to human rights law and standards. The Baku-Tbilisi-Ceyhan (BTC) consortium of oil companies led by BP responded to some of the concerns expressed in Amnesty International’s report by drawing up a ‘Human Rights Undertaking’.<sup>4</sup> The ‘Human Rights Undertaking’ is a legally binding agreement, which guides the interpretation of the SIAs underpinning the BTC project in an effort to ensure they cannot be used to undermine human rights protection in Turkey, Georgia or Azerbaijan. The World Bank’s private-sector lending arm, the International Finance Corporation (IFC), also privately acknowledged the arguments set out in the report and undertook to examine their implications.<sup>5</sup> The European Bank for Reconstruction and Development has reviewed the BTC agreements with reference to these arguments.<sup>6</sup>

It is not Amnesty International’s position that these agreements are in themselves a cause of human rights violations. However, certain aspects of them may signal a disregard for the

international framework set up to protect human rights and could:

- 1 hold back the governments of Chad and Cameroon from taking steps to improve human rights protection;
- 2 encourage the governments of Chad and Cameroon to ignore their human rights obligations;
- 3 be relied upon by the consortium in an attempt to frustrate efforts of Chad and Cameroon to fulfil human rights obligations.

Each of these threats has implications for both the investors' and lenders' human rights responsibilities.

Under these investment agreements, company codes of conduct and promises of high standards, which should be assurances *additional* to national regulation, appear to be in effect *replacing* state regulation of investment projects. The lack of a mechanism for enforcing company codes may reduce even further the chances of often desperately poor individuals or communities obtaining effective remedies through the courts for human rights violations. Moreover, the fact that different companies can subsequently step into the shoes of the original investor means that individual company standards provide an uncertain and variable benchmark.<sup>7</sup> The result is an investment with unenforceable and 'unstable' standards to protect human rights.

While Amnesty International's report on the legal agreements underpinning the BTC project was the first published human rights analysis of such agreements between companies and governments, similar concerns have been raised about bilateral investment treaties – agreements between two states.<sup>8</sup> The UN High Commissioner for Human Rights prepared a report on *Human Rights, Trade and Investment* in July 2003, which drew attention to the threat posed by such treaties.<sup>9</sup> Previously, the UN Sub-Commission on the Promotion and Protection of Human Rights had criticised an Organisation for Economic Co-operation and Development (OECD) investment agreement drafted in 1998, though not subsequently put into effect. They considered that the agreement, known as the Multilateral Agreement on Investment, failed to take into account several dimensions of states' obligations to respect, protect and fulfil human rights.<sup>10</sup>

## 1.2 The Chad-Cameroon pipeline project

Of the 177 countries in the world surveyed and ranked by the UN Development Programme's Human Development Index 2004, Chad and Cameroon are in the bottom quartile – Cameroon in 141st place and Chad 167th.<sup>11</sup> In addition to the widespread poverty these figures represent, there is a long record of persistent human rights violations in the two countries (see chapter 2).



An oil well in the Doba fields in southern Chad

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Yet Chad and Cameroon are endowed with considerable natural resources, Chad possessing large oil reserves. If properly harnessed, these resources have the potential to contribute significantly towards the progressive full realisation of human rights – for example, through improving the availability and quality of health care and education. Indeed, both Chad and Cameroon are obliged under international human rights law to use all available resources to the maximum, including such natural resources, to achieve progressively the full realisation of human rights.<sup>12</sup>

The presence of oil in Chad has attracted major international oil companies – including ExxonMobil and Chevron from the USA and Petronas from Malaysia. For transnational corporations hoping to operate in such an environment, the political and financial risks are significant. To mitigate these risks, the companies have raised finance from the International Finance Corporation, as well as from export credit agencies and private banks. The loans are for the construction of a pipeline to transport the extracted oil from the oilfields in southern Chad to the Atlantic coast of Cameroon, putting it in reach of international markets. This is the single biggest foreign investment project in Africa, a continent that receives the lowest amount of the world's international capital flows – less than 3.5 per cent.<sup>13</sup>

The project falls into two parts:

- extraction of oil from the ground – including the development of Chad's Doba oilfields in southern Chad, the drilling of about 300 wells and the construction of associated facilities and infrastructure; and
- export of oil – the transportation of oil along a 1,070km pipeline from the Doba oilfields to Cameroon's Atlantic coast at Kribi. The exporting project involves three pumping stations with ancillary facilities, an offshore floating storage and offloading vessel, and an 11km submarine pipeline from the coastline to the vessel.<sup>14</sup> It is expected that 225,000 barrels of oil a day will flow through the pipeline.<sup>15</sup>

The oil companies are working together as a consortium for the purposes of this project. ExxonMobil is the lead company, owning the largest share of the investment.<sup>16</sup> The consortium and the governments of Chad and Cameroon set up two joint-venture companies, the Chad [Tchad] Oil Transportation Company (TOTCO) and the Cameroon Oil Transportation Company (COTCO), to own and operate the sections of the pipeline in Chad and Cameroon respectively.<sup>17</sup> The consortium is the majority shareholder of both COTCO and TOTCO, the governments of Chad and Cameroon minority shareholders.<sup>18</sup> Esso Chad, ExxonMobil's subsidiary, has managed the exploration, extraction and development of the oil as well as the building of the pipeline, while COTCO and TOTCO have built and now operate the export aspects of the project.<sup>19</sup>

Construction of the pipeline was completed and oil began to flow in July 2003.<sup>20</sup> In Chad, which is the main focus of this report, other companies are also exploring for oil now that the pipeline is in place.<sup>21</sup> Oil is expected to increase government revenues by 45 to 50 per cent.<sup>22</sup> The pipeline project is seen by the World Bank as a means of bringing about economic development and 'poverty alleviation' in both Chad and Cameroon – and especially Chad.<sup>23</sup> The project will provide fewer economic benefits in Cameroon, accounting for a much smaller proportion of government revenue – around 3 per cent.<sup>24</sup>

### 1.3 Corruption and conflict

There is a danger that the widespread corruption, conflict and human rights violations linked to resource extraction in other parts of Africa may be repeated in Chad and Cameroon unless human rights safeguards are put in place from the start of the pipeline project. Corruption is prevalent in both Chad and Cameroon. Of the 146 countries on the Corruption Perceptions Index 2004 produced by the non-governmental organisation, Transparency International, Chad

is ranked 142nd and Cameroon 129th.<sup>25</sup> The oil consortium has itself been accused of corruption and non-compliance with the concession agreement of 1988 by President Déby.<sup>26</sup>

The interplay of oil and other natural resources with a deteriorating cycle of corruption, uneven wealth distribution, social unrest and conflict has been a key element in many countries where there have been serious human rights abuses.<sup>27</sup>

- In **Angola**, vast oil revenues have been lost to corruption. The war between the government and the União Nacional para a Independência Total de Angola (UNITA – National Union for the Total Independence of Angola) ended in 2002, but its legacy included profound social inequalities generated by oil wealth and underdevelopment. Widespread poverty in the Cabinda enclave, a major source of oil, has fuelled demands for independence. Although the fighting has ended, the government retains thousands of troops in Cabinda who continue to commit abuses. All the fighting forces in Angola have been responsible for killing and torturing civilians, and for forcing more than a million people from their homes.<sup>28</sup>

- In the **Democratic Republic of Congo (DRC)**, armed conflict since 1998 has been propelled to a great extent by a scramble to secure control of key mineral resources, drawing in both local armed groups and the armies of neighbouring countries and allied factions. Lucrative deals were struck by the belligerents with foreign commercial interests. The income gained from these deals sustained the conflict. Around four million people are estimated to have died in the course of the conflict and more than two-and-a-half million have been driven from their homes. Grave human rights abuses, including killings, rape, torture and the use of child soldiers, have been routinely committed. Most of the abuses were in the east, where Rwanda and Uganda, in alliance with Congolese armed political groups, systematically plundered the region on a vast scale.<sup>29</sup>

- In **Nigeria**, local communities have historically been denied a fair share of the oil revenues generated in the Niger Delta region. Protests under military governments in the early 1990s were suppressed with force, and the execution of Ken Saro-Wiwa and eight other activists from the Ogoni ethnic group in 1995 attracted worldwide condemnation both of the violations taking place in the Delta, and of the massive corruption and the role of the oil companies. The subsequent growth in intercommunal rivalry and violence in the area has its roots in competition for access to economic resources.<sup>30</sup>

- In **Sierra Leone**, the opposition armed group, the Revolutionary United Front (RUF), sustained a campaign of terror against civilians throughout the 1990s through its trade in illegally extracted rough diamonds with neighbouring Liberia, which provided military assistance in return. The UN Security Council banned the direct and indirect import of rough diamonds from Sierra Leone except for gems traded under a government-run Certificate of Origin scheme. The Security Council also maintained a ban on arms transfers and rough diamond exports from Liberia, which had supported the RUF.<sup>31</sup>

- In **Sudan**, the protracted civil war in the south was driven by competition for control of oilfields in the Upper Nile and Southern Blue Nile regions. The opposition to the government, the Sudan People's Liberation Army, attacked government-backed oil installations, while government forces carried out aerial bombings and pro-government militias attacked civilians living in areas with potential for oil exploitation, causing the forced displacement of tens of thousands of civilians.<sup>32</sup>

These experiences provide a compelling reason why international human rights law and standards must be integrated into the Chad-Cameroon pipeline project and reflected in the investment agreements. The key question that this report addresses is the extent to which the framework of agreements underpinning this investment is compatible with the protection and fulfilment of human rights in Chad and Cameroon.

## 2. The human rights context

Amnesty International has documented human rights violations in Chad and Cameroon for more than three decades. Longstanding concerns about past and continuing abuses and government inaction in holding those responsible to account are the context in which the oil companies are operating. Continuing violations and the prevailing climate of fear and intimidation may influence interactions between the consortium, the governments, local communities and human rights defenders.

In Chad, the backdrop to the pipeline project is the internal armed conflict in the 1980s, attempts under the governments of former President Hissène Habré (1982-1990) and current President Déby to crush armed political groups, and the reprisals inflicted on communities suspected of supporting opposition groups. Failure to bring to justice those responsible for such abuses has perpetuated the violence. The authorities have attempted to stifle peaceful political opposition and non-violent criticism of the government, including allegations made by critics that government forces have been involved in human rights violations. Freedom of expression is constantly undermined by harassment, and arrests and intimidation of activists critical of the pipeline have raised fears that force may be used to stifle peaceful protests about the project by local communities in the south.

In Cameroon, human rights violations documented by Amnesty International in recent years have included extrajudicial executions, torture and other forms of cruel, inhuman or degrading treatment, life-threatening prison conditions, threats against human rights defenders, denial of the rights to freedom of expression and association, failure to protect the rights of women, and imposition of the death penalty. The perpetrators have enjoyed almost total impunity.

### 2.1 'Pacification' in southern Chad

The level of killings and other serious human rights violations by government forces in Chad has raised concern in international human rights bodies. Chad was considered under the UN Commission on Human Rights confidential 1503 procedure for gross and systematic abuses of human rights. In 2003 the commission made its findings public in resolution 2003/81, stating that 'Chad has an obligation to implement all the international and regional instruments to which it is a party.'

The Chadian government's response to outbreaks of violence in the internal armed conflict was characterised by killings, torture and arrests of real or perceived opponents and their communities. The counter-insurgency forces involved in such attacks enjoyed complete impunity. Opposition armed groups, too, were responsible for systematic abuses against civilians. The government has signed peace agreements with a number of armed political groups. However, outbreaks of fighting have continued in the north where divisions within the forces of the Mouvement pour la démocratie et la justice au Tchad (MDJT – Movement for Democracy and Justice in Chad) have undermined a 2003 peace agreement.

Several armed political groups have operated in the southern oil-rich regions, where oil reserves have fuelled secessionist ambitions and where counter-insurgency operations have been particularly brutal. Severe reprisals by government forces against whole communities were triggered by the activities of armed political groups in southern Chad in the 1990s – including the Comité de sursaut national pour la paix et la démocratie (CSNPD – Committee of National

Revival for Peace and Democracy) and a breakaway faction, the Forces armées pour la république fédérale (FARF – Armed Forces for a Federal Republic). The reprisals were part of a campaign of repression and intimidation. Real and suspected members of both groups, as well as the communities in the areas in which they operated, were subjected to systematic human rights violations.<sup>33</sup>

- In 1992, at least 250 people were extrajudicially executed by government forces. About 100 were killed in January in the area around the capital, N'Djaména, and around 150 people suspected of being CSNPD sympathisers were killed in Doba, Logone Oriental province, over several days in August 1992.<sup>34</sup>

- In 1993 in the south, the security forces reportedly killed at least 300 unarmed men, women and children in the first half of the year as suspected CSNPD supporters. The wave of killings began on 21 January in Goré, Logone Oriental, after an unsuccessful attempt by the army to capture CSNPD leader Moïse Ketté. Soldiers reportedly burned several villages to the ground and killed entire families. At least 45 civilians were allegedly killed in January by members of the Republican Guard, an army unit directly responsible to President Déby.<sup>35</sup>

- In August 1994, following a FARF ambush, soldiers were said to have rounded up the inhabitants of a number of villages in Logone Occidental province before selecting and shooting dead at least 25 civilians, including children and a pregnant woman.<sup>36</sup>

- In October 1997, several dozen former FARF combatants and suspected supporters were killed by the security forces in and around Moundou, Logone Occidental province. Shooting broke out during the registration of former FARF fighters as members of the armed forces, under a peace agreement between the government and FARF. In the days that followed, the security forces combed the town and neighbouring area, detaining, torturing and killing people they suspected of being loyal to the FARF. The killings sparked the arrests and intimidation of human rights activists, some of whom had been actively involved in peace negotiations, and others who had made public criticism of the government.<sup>37</sup>

- In March 1998 over 100 people in the Logone region, most of them civilians and including 16 village chiefs, were killed by government troops, apparently in response to FARF activity in the area. Local human rights activists were arrested or threatened for protesting at the killings, including on a day of protest in Moundou organised by the Collectif des associations de défense des droits de l'homme et des syndicats (Collective of Associations for the Defence of Human Rights and Trade Unions). The government subsequently banned activities by Chadian human rights organisations and their offices were occupied by members of the security forces.<sup>38</sup>

A number of leaders and former leaders of armed political groups were extrajudicially executed as the government struggled to maintain control of the country and to establish the stability necessary for investment in oil exploitation. Abbas Koty Yacoub, a former army chief of staff and senior official, was shot dead by government forces in October 1993, reportedly for resisting arrest. He had fled the country in 1992 after being accused of plotting a coup, but had returned in August 1993 after signing a peace agreement with the government. On the eve of his death, one of his close supporters, Adoum Acyl, was extrajudicially executed. FARF leader Laokein Bardé died in about April 1998. According to some sources, he died from injuries sustained in an ambush by government troops. According to others, he was killed by FARF members following disagreements about negotiations with the government. In May 1998 the FARF joined the central government. CSNPD leader Moïse Ketté was killed in September 2000 – in fighting with government troops according to officials, following his arrest by the authorities according to unofficial sources.<sup>39</sup>

## 2.2 Pipeline critics targeted

Since an initial opening up when President Déby came to power in 1990, freedom of expression has been under constant threat in Chad. Human rights activists have been arrested, detained and subjected to death threats and other forms of intimidation for their human rights work and attempts to hold state officials accountable for their actions, particularly in law enforcement.<sup>40</sup> Violence and human rights abuses in the area of oil exploration during its ‘pacification’ in 1997 and 1998 forced the issue into the open, and led to international non-governmental organisations linking with civil society groups in Chad in a public campaign.

The independent media have also been attacked on several occasions in relation to their work on issues around the pipeline project. In 1998, two journalists who published articles reporting accusations made by Ngarlejy Yorongar, an opposition member of parliament, accusing President Déby and the president of the National Assembly of corruption in relation to the pipeline project, received suspended prison sentences and large fines. Ngarlejy Yorongar was sentenced to three years’ imprisonment. Their trial was blatantly unfair and the sentences exceeded the maximum penalties prescribed by law. Ngarlejy Yorongar served eight months of his sentence before he was released for ‘humanitarian reasons’ following international protests that he was being denied adequate medical care for malaria and typhoid fever.<sup>41</sup> He was again detained shortly after the May 2001 presidential elections and was reportedly tortured in custody. In April 2001 he had filed a request with the World Bank’s Inspection Panel for an investigation into allegations that people and the environment in the project area in southern Chad had suffered or were likely to suffer harm as a result of failures and omissions in the design, appraisal and supervision of the project by the World Bank.

In October 2003, the minister of territorial administration closed the privately owned radio station *FM Liberté* after it criticised President Déby, although the constitutional authority to take such action rests with the Higher Communication Council. *FM Liberté*, a vocal critic of human rights abuses, had voiced concerns about increased insecurity and the Chad-Cameroon pipeline. The ban was lifted in December 2003.<sup>42</sup>

In March 2005, local human rights organisations came under government pressure to remove Dobian Assinger as their representative on Chad’s oil revenue oversight committee, the Collège de Contrôle et de Surveillance des Revenus Pétroliers. The request for his removal was made in person by the prime minister, Pascal Yoadimnadj, the day after Dobian Assinger, a former head of the Chadian League for Human Rights, was reported as saying in an international radio interview that the law on the management of revenues was discriminatory as it applied to only three oilfields (Komé, Miandoum and Bolobo) to the exclusion of the others.<sup>43</sup>

The UN special representative of the secretary general on human rights defenders, Hina Jilani, has requested a country visit to Chad and has communicated her extreme concern over serious violations against journalists and human rights defenders in the country.<sup>44</sup> As well as decrying the closure of *FM Liberté*, she has raised the case of human rights defender Souleymane Guengueng, founder of the Chadian Association of Victims of Political Repression and Crime, who was dismissed from his job with the World Bank-backed Lake Chad Basin Commission, reportedly because of his human rights work.<sup>45</sup>

# 3.

## The legal framework

At the heart of this report is the tension between the human rights obligations under international law of the governments of Chad and Cameroon, and their contractual duties arising under investment agreements. States' obligations under international human rights law cannot be superseded by the signing of a private agreement for an investment project. However, in practice such investment agreements could be used in an attempt to sidestep states' human rights obligations and companies' human rights responsibilities. At issue in particular is the obligation to protect human rights from interference by third parties – namely companies.

### 3.1 States' obligations under international human rights law

Chad and Cameroon have ratified a number of international and regional treaties that establish a wide range of human rights obligations, and have adhered to certain International Labour Organisation (ILO) standards.<sup>46</sup> Additionally, they are bound by customary international law. To pursue their human rights obligations, Chad and Cameroon are required to ensure that human rights are realised in three ways: by respecting, protecting and fulfilling them. States must:

- refrain from interfering directly or indirectly with the enjoyment of a right;
- take measures to prevent third parties, including companies, from interfering with the right in question; and
- adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of rights.<sup>47</sup>

This framework is equally applicable to *all* human rights.

### 3.2 National implementation of international human rights obligations

Both Chad and Cameroon accept the direct applicability of their international obligations under their domestic law. The Chadian and Cameroonian constitutions reaffirm their attachment to the human rights defined in the UN Charter, the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights.<sup>48</sup> Both countries' constitutions also specifically recognise a range of civil, political, economic, social and cultural rights.<sup>49</sup>

States must implement their human rights obligations by 'all appropriate means'.<sup>50</sup> These could include legislative measures, judicial remedies, or administrative, financial, educational and social measures, among others.<sup>51</sup> Likewise, the African Charter on Human and Peoples' Rights, ratified by both Chad and Cameroon, states: 'The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them' (Article 1).<sup>52</sup>

Both Chad and Cameroon have the obligation under international law to regulate the conduct of third parties, including companies, to ensure they respect human rights.<sup>53</sup> The legal instruments

adopted in the framework of the International Labour Organisation also require states to ensure that labour rights are respected by private employers.<sup>54</sup>

### 3.3 The rule of law side-stepped

*It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.*

**Universal Declaration of Human Rights, 1948, preamble**

This report illustrates how the companies and lenders involved in the pipeline project have attempted to sidestep regulation and how this may frustrate efforts to protect human rights. Amnesty International believes that there is an alternative approach to investment, one that ensures respect for human rights while providing adequate safeguards for investments. The two sets of goals are not incompatible. Both depend on respect for the rule of law. Respect for the rule of law would require at a minimum ensuring respect for states' human rights obligations.<sup>55</sup>

As this report shows, the legal framework of investment can deter host governments from integrating human rights protection into the regulation of the project, making it more difficult for them to hold companies accountable for adverse human rights impacts of their activities. Given the human rights record of Chad and Cameroon, and an understanding of how resource extraction in other countries has contributed to corruption, conflict and abuses, it is essential that all parties to the pipeline project ensure that the protection of human rights is an explicit and unambiguous central feature of its development.

### 3.4 The responsibilities of companies for human rights

Like all non-state actors in society, business has a duty to operate in a responsible manner, and this includes respecting human rights. This duty can be drawn from the Universal Declaration of Human Rights, as well as from national legislation outlining the responsibilities of companies towards human rights.<sup>56</sup> While states bear the primary duty to protect human rights, companies too have responsibilities within their sphere of influence.

The allocation of responsibilities between government and business is evolving and developing, as can be seen in recent recommendations by the UN High Commissioner for Human Rights to the UN Human Rights Commission to 'act expeditiously to ... define and clarify the human rights responsibilities of business entities'.<sup>57</sup> There is also a clear trend to extend human rights obligations beyond states, to individuals, armed groups, international organisations and private enterprises.<sup>58</sup> The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, and their Commentary, adopted by the UN Sub-Commission for the Protection and Promotion of Human Rights in 2003, are the most comprehensive attempt at filling the gaps in understanding business responsibilities for human rights.

Although the UN Norms themselves are not legally binding, they constitute a benchmark by which the corporations involved in the Chad-Cameroon pipeline project can assess the compatibility of their activities with relevant human rights standards. The UN Norms can also serve as the basis for governments with an interest in the project, or with authority over the corporate partners in the consortium, to assess whether their national legislation and practice meet their obligations to ensure that consortium members respect human rights.

The legal agreements that underpin the pipeline project could therefore benefit from being framed in a way that is consistent with the principles reflected in the UN Norms. This requires that the companies involved in the project:

- ‘have the responsibility in ensuring that their activities do not contribute directly or indirectly to human rights abuses and do not directly or indirectly benefit from human [rights] abuses’;
- ‘shall refrain from activities that would undermine the rule of law as well as governmental and other efforts to promote and ensure respect for human rights’;
- ‘shall inform themselves of the human rights impacts of their principal activities and major proposed activities so that they can further avoid complicity in human rights abuses’;<sup>59</sup> and
- ‘shall recognise and respect applicable norms of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and authority of the countries in which the enterprises operate’.<sup>60</sup>

These responsibilities are particularly relevant in a situation where the project agreement could be relied on in an attempt to sidestep the application of domestic law adopted in fulfilment of human rights obligations.

The need for companies to inform themselves of the human rights impacts of their activities, and to refrain from action that would undermine the host government’s capacity to fulfil its human rights obligations, is particularly important where human rights are routinely violated, as is the case in Chad and Cameroon. Failures by companies in these areas could perpetuate the failures of these states to live up fully to their international human rights obligations.

### 3.5 The legal foundations of the pipeline project

The legal foundations of this project were established in 1988 by a convention between Chad and the consortium. The 1988 convention grants an exploration permit (Permit H), valid until 2004, and a 30-year concession to develop the oilfields around Doba in south-western Chad. The concession accords the rights to produce, transport and market the oil from the Doba fields.<sup>61</sup> In 2004 the consortium signed an additional convention with Chad to renew Permit H to explore and extract hydrocarbons. This convention is valid for an initial period of 35 years with the automatic extension of an additional 35 years if needed.

For the export portion of the project, the framework agreements became effective in 1997 and 1998, when the COTCO Convention of Establishment (COTCO-Cameroon) and the TOTCO Convention of Establishment (TOTCO-Chad) respectively were signed into law in Cameroon and Chad. These conventions define the framework in which the companies have constructed and operated the pipeline, as well as the legal and fiscal terms applicable to the companies. COTCO-Cameroon is initially valid for 25 years, with a renewal option for a further 25 years; TOTCO-Chad for 30 years initially, with a renewal option for another period as considered necessary.<sup>62</sup> Two further conventions were agreed in 1988 and 2004 by the consortium and the government of Chad (Chad 1988 and Chad 2004) for the exploration and development of oilfields.

These conventions, and the 1999 Environmental Management Plan created by ExxonMobil, accepted by the World Bank and approved by the governments of Chad and Cameroon, are the focus of this report.<sup>63</sup>

**Table 1: Major framework agreements**

Investor-state agreements ('project agreements')

Date of agreement	Parties	Scope	Duration in years	Short name
1988	Consortium-Chad	Development of oilfields	35 + 35	Chad 1988
2004	Consortium-Chad	Development of oilfields	35 + 35	Chad 2004
1997	COTCO-Cameroon	Construction/operation of pipeline	25 + 25	COTCO-Cameroon
1998	TOTCO-Chad	Construction/operation of pipeline	30 + *	TOTCO-Chad

\*Renewable to extend until last concession expires

### 3.6 The legal regime and regulation of agreements

A pivotal legal instrument in investment projects is the agreement or contract between the company making the investment and the host government of the country receiving the investment. These agreements, known variously as host government agreements, transnational investment agreements and state-investor agreements, aim to ensure that investing companies can operate under stable, predictable conditions. For the Chad-Cameroon pipeline project there are a number of such agreements. This report focuses on four, which could be used by states to attempt to justify failures to fulfil human rights obligations.

As noted above, two of the contracts (Chad 1998 and Chad 2004) are between Chad and the consortium for exploration and development of oilfields, and two (TOTCO-Chad and COTCO-Cameroon) are between Chad, Cameroon and the joint-venture companies set up by the states and the consortium to transport the petroleum.<sup>64</sup> While these project agreements differ in some ways, when taken together they are designed to achieve two major objectives: to secure the smooth operation of the projects by eliminating interference with their activities; and to reduce the financial risks to the consortium by stabilising the regulatory regime in which the investment takes place.

### 3.7 Applicable law

The activities undertaken under the project agreements are subject to a special legal, tax, customs and exchange control regime, defined in the project agreements themselves. For example, Article 30 of the COTCO-Cameroon agreement expressly outlines the national laws and regulations that are to be applicable to the project, as well as those that are not to be applied. Other national laws and regulations may be applied to the project where they are consistent with the agreements.<sup>65</sup> According to the agreements, where national laws and regulations conflict with the terms of the agreement itself, the agreements are declared to prevail.<sup>66</sup> On the face of the agreements, this supremacy would govern both existing law and all future law.

The host states committed themselves to guarantee the stability of the legal, tax, customs and exchange control regime applicable to the project activities. Each of the four project agreements discussed in this report has a 'stabilisation of law' clause.<sup>67</sup>

### Article 21.3 of the TOTCO-Chad agreement specifies:

*'During the term of this Convention, the Republic of Chad guarantees that no governmental act taken after December 19, 1988 will be applied to TOTCO, without prior agreement between the Parties, which has the duly established effect of increasing, directly, indirectly or by virtue of its application to Shareholders, the obligations and charges imposed by this Convention or which has the effect of adversely affecting the rights and economic benefits of TOTCO or of Shareholders as provided for in this Convention, including the effect duly established and passed on to TOTCO of the adverse effect on the charges of Affiliates or of the Contractors as a result of such act' (translated from French).'*<sup>68</sup>

Where Chad or Cameroon decide to change the regulatory environment around the project, they should, according to the agreements, seek the prior consent of the consortium. In the case of one agreement, the consortium has the right to request that the changes do not apply to the project; in another, the government and the consortium should agree on modifications to balance any economic impact on the consortium.<sup>69</sup> In the event that the consortium believes that its rights are adversely affected, either by existing or by fresh law and regulations, it may resort to arbitration to request compensation.<sup>70</sup>

The restrictions on the application of government acts and new laws last for the lifetime of the project, which can be as long as 60 or 70 years.<sup>71</sup>

Those clauses that define the applicable legal regime and the 'stabilisation clauses' could be used in an attempt to frustrate any regulation in fulfilment of human rights obligations.

Amnesty International believes that the domestic law of the host states, including the constitutional provisions that are the domestic manifestation of international legal obligations, cannot be made subordinate to a commercial agreement and should not be interpreted as such.

Were the consortium to use this and similar clauses to argue that any legislation enacted during the terms of the project agreements cannot be applied to the project if it would impose additional costs on the consortium, irrespective of whether it is in furtherance of its human rights obligations, Amnesty International believes that the members of the consortium would be in breach of their human rights responsibilities.

While the agreements place a duty on states to compensate for measures taken in disregard of this commitment, Amnesty International underlines that this should not be relied on by a corporation to penalise states for acts taken to fulfil their human rights obligations.<sup>72</sup> A company so doing would be in breach of its human rights responsibilities.

The agreements do not explicitly exclude the possibility of penalties being placed on the state for acts taken in conformity with human rights obligations. In practice, the mere threat of international arbitration, backed up by the broad text of the agreements, may be enough to 'chill' the host states' regulatory bodies. In other words, the lawmakers and regulatory bodies in the host states may choose to minimise the risk of arbitration claims by avoiding the application of new regulations to the consortium – even for the purposes of protecting human rights.

The text then, whether legally enforceable or not, could have the effect of blocking the states' ability to protect human rights.

The project agreements must be amended so as to avert the possibility that the 'stabilisation of law' provisions could be interpreted to apply to legislation and other governmental actions taken to protect human rights.

As the project agreements stand, there is sufficient ambiguity to carry the danger that the agreements will be used at least informally, and perhaps also through arbitration, to block the application of current or future laws to the project.<sup>73</sup> In this way the agreements aim to insulate the project from any new legislative measures enacted by Chad and Cameroon.

### 3.8 Arbitration

All four of these investment agreements are enforceable only through international arbitration.<sup>74</sup> The designated arbitration is to take place under the aegis of the International Chamber of Commerce in the case of Chad and under the rules of the International Centre for Settlement of Investment Disputes (ICSID) in the case of Cameroon.<sup>75</sup> International arbitration between companies and states is frequently used in international commercial practice.<sup>76</sup>

In both Chad and Cameroon, the international arbitrators are to consider and provide their own interpretation of the domestic laws that apply to the project, as well as of general principles of law.<sup>77</sup> The agreements require that no legislation, regulation or administrative measure will be interpreted or applied in a way that adversely affects the economic advantage of the consortium. For example, the Chad 2004 agreement reads:

*The Consortium shall respect the law and regulations of the Republic of Chad. Any reference to these laws and regulations, throughout this Convention, shall not in any way be interpreted so as to aggravate, directly or as a consequence, the obligations and responsibilities imposed on the Consortium through the measures of this Convention, nor to undermine the rights and economic advantages of the Consortium specified in this Convention.*<sup>78</sup>

Amnesty International believes that any interpretation of the project agreements must consider, as part of the legal context, the international human rights obligations of the host state as they develop over time.

Yet the agreements themselves do not require explicit consideration of the host state's international legal human rights commitments. In this way, the project agreements open up the possibility that human rights law will be overlooked by the arbitrator. The danger is that the consortium will receive favourable treatment at international arbitration irrespective of the impact on the protection of human rights. The interpretation provisions must be amended to guarantee that arbitrators will ensure that the protection of human rights is not superseded by the economic interests of the consortium.

### 3.9 Limits on state power: an undefined limit on standards

The project agreements also aim to restrain the state from intervening with the investment by placing limits on project standards.

The consortium, in oil exploration and development activities, is under a contractual duty to carry out its operations in conformity with (1) the relevant national petroleum code and ordinary laws that do not conflict with the project agreement and (2) the operating standards generally accepted in the international petroleum industry.<sup>79</sup>

Moreover, the consortium is contractually required to compensate any person prejudiced by the non-conformity to the standards '*generally accepted*' in the international petroleum industry.

These provisions of the project agreements provide a minimum standard for oil exploration. Yet the project agreements also contain an enforceable *ceiling* on standards. The 1988 and 2004 Chad agreements state explicitly that any regulation imposed by Chad *must not* contain standards that *are inconsistent* with international petroleum industry standards. Article 17.4 in both agreements provides:

*In the management of Oil Operations, the Consortium shall observe all written directives made by the Secretary of State in compliance with the Oil Code, as well as all directives given, restrictions imposed, or injunctions made in writing by an agent duly authorised for the purpose. However, **no directive, restriction or injunction shall be given, imposed or made if it is not reasonable or in compliance with the measures of this Convention or international petroleum industry standards.** If the Consortium refuses such directives, restrictions or injunctions because it considers them to be unreasonable or non-compliant with this Convention or the rules of art of the international petroleum industry, the dispute shall be submitted to arbitration, in compliance with the measures of clause 33 hereafter.<sup>80</sup> (emphasis added)*

This provision is problematic for two reasons. First, it is vague. Second, it is enforceable. This provision referring to industry standards could be interpreted as 'best practice', 'good practice', 'common practice' or some other type of industry standard. Therefore the Chadian authorities that regulate the oil industry do not have a clear indication as to when the consortium may use this provision to threaten arbitration. The consortium may argue that it has the right to enforce a 'ceiling' on standards whenever it feels that regulations are unreasonable, not in line with the convention (including the 'stabilisation of law' provisions discussed above) or when the provision offends the undefined industry standard.<sup>81</sup>

Amnesty International believes that this provision should not be applied to any regulation or other measures taken by Chad in fulfilment of its human rights obligations. As it stands, this ambiguous provision, and the threat of arbitration that lies behind it, may provide enough of an incentive to convince Chadian regulatory bodies to avoid applying regulations to the consortium. Likewise, although arbitrators ought to take the international human rights obligations of the host state into account, which would allow higher regulations in line with protecting human rights, there is no guarantee that they will do so. This provision should be amended to make it clear that it does not apply to any act taken in fulfilment of human rights obligations.

### 3.10 The duty of the state to protect the pipeline from interference

Chad has agreed with the consortium that, within a perimeter of protection of the pipeline, it is forbidden for ‘any person to undertake activities which may interfere with the construction, operation and maintenance of the TOTCO Transportation System’.<sup>82</sup> Cameroon has agreed to a similar clause, which states that it is prohibited ‘for any person to undertake activities which may interfere with the construction, operation and maintenance of the Cameroon Transportation System’.<sup>83</sup> Amnesty International believes that these provisions should not apply to any interference by the host states undertaken for the protection of human rights. However, the broad language used in this provision seems to provide a contractual duty for the states to protect COTCO and TOTCO from any ‘interference’ with the pipeline, even where such interference is as the result of the exercise or protection of human rights – such as those of local communities or industry workers. The record of extractive industries elsewhere in the world has frequently been one of injustice, with the demands of industry workers, local communities and the wider population for the protection and fulfilment of their human rights being stifled by imprisonment, torture and killings, all in the name of protecting companies from interference in their activities.

The danger of this broad provision is that it will be interpreted to apply even when state ‘interference’ is justified by the need to protect human rights. The provision should be amended so as to guarantee that it could not be interpreted in this manner.



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A Chadian security guard protecting an oil installation

# 4. The financial framework

The Chad-Cameroon pipeline project is being supported by international public financial institutions and governmental export credit agencies, as well as private lenders. Some funding has been made available to address adverse effects of the project.

## 4.1 Sources of funding

The cost of the project is estimated at US\$4.2 billion, more than half of which was financed by the equity partners – ExxonMobil, Chevron and Petronas.<sup>84</sup> The World Bank is the most important source of funding because the consortium, export credit agencies and commercial lenders were unwilling to proceed with the investment unless the World Bank mitigated the political risk involved.<sup>85</sup> The main lending body of the World Bank, the International Bank for Reconstruction and Development, provided about \$93 million in loans to finance Chad and Cameroon’s minority holdings in TOTCO and COTCO. The IFC has provided \$200 million in loans. About \$900 million has been obtained from export credit agencies – \$200 million each from the US Ex-Im Bank and France’s COFACE and \$500 million from the African Export-Import Bank. The European Investment Bank is providing \$41.5 million.<sup>86</sup> The arranging banks for the export credit agency facilities are ABN AMRO (for the US Ex-Im Bank) and Crédit Agricole (for COFACE).<sup>87</sup>

## 4.2 Capacity-building projects

The World Bank approved loans for the project in 2000, and at the same time approved two ‘capacity-building’ projects, which are aimed in part at assisting Chad and Cameroon to mitigate potential negative impacts of the project.<sup>88</sup>

**Table 2. Funding for the Chad-Cameroon pipeline project**

### World Bank Group

International Bank for Reconstruction and Development loans to Chad and Cameroon	\$92.9 million
IFC loan	\$200.0 million

European Investment Bank \$41.5 million

### Export credit agencies

US Export-Import Bank	\$200.0 million
COFACE	\$200.0 million
African Export-Import Bank	\$500.0 million

More than half the total cost of the project was financed by the equity partners – ExxonMobil, Chevron and Petronas

The remaining financing was provided by:  
ABN AMRO  
Crédit Agricole

Source: I Gary and N Reisch, *Chad's Oil: Miracle or Mirage? Following the Money in African's Newest Petro-state*, Catholic Relief Services and Bank Information Center, 2005, [http://www.catholicrelief.org/get\\_involved/advocacy/policy\\_and\\_strategic\\_issues/chad\\_oil\\_report.pdf](http://www.catholicrelief.org/get_involved/advocacy/policy_and_strategic_issues/chad_oil_report.pdf), p6, Box 1.

The Cameroon Petroleum Environment Capacity Enhancement Project (CAPECE) ‘aims to ... support the implementation of programs for compensation, prevention and management of health impacts, protection of cultural property, monitoring indigenous peoples’ development programs and biodiversity conservation schemes, and information sharing’.<sup>89</sup> The World Bank provided a US\$5.77 million credit to Cameroon for this project. Similarly, the Bank provided Chad with a \$17.4 million credit for a project aimed at strengthening the government’s ability ‘(i) to manage the environmental and social impacts of the Doba Petroleum Project, and (ii) to effectively promote and manage the development of the petroleum sector in general’. Among goals for this project was the development of a ‘sound framework for making petroleum development in Chad environmentally sustainable’.<sup>90</sup>

### 4.3 The role of lenders

The profile of the project has been raised because of the World Bank’s role as a lender to the governments of Chad and Cameroon, as well as a lender to the consortium of oil companies through the World Bank’s private-sector arm, the IFC.

Amnesty International’s analysis of the project agreements calls into question the role of international financial institutions, export credit agencies and commercial banks in financing this pipeline. The involvement of these bodies should be viewed with a critical eye towards their policies to provide environmental and social safeguards, particularly in the light of the potential for negative impacts on the protection of human rights stemming from the project agreements. For example, the IFC social and environmental safeguard policies have been criticised by civil society organisations worldwide for failing to take into account international human rights, labour and environmental law.<sup>91</sup> The IFC policies are not only relevant to IFC projects, but have also become benchmarks for some regional development banks and for commercial banks that have adopted the Equator Principles, voluntary standards to ensure the banks finance only those projects that are ‘socially responsible and reflect sound environmental management practices’.<sup>92</sup> Yet, as this report illustrates, these policies fail to ensure that the legal framework governing these projects respects human rights.

# 5.

## The human rights implications of the investment agreements

Key features of the project agreements cause concern at two levels. First, some features frustrate, penalise or threaten fulfilment of human rights. Second, some features place the protection of human rights at risk in both Chad and Cameroon.

- The project agreements may conflict with human rights obligations of the host states.
- The stabilisation clauses present potential obstacles to the fulfilment of human rights.
- The threat of financial penalties imposed on the state if it breaches the terms of the project agreements potentially undermines its commitments to protect and promote human rights.

Some terms of the project agreements can be interpreted as creating an obstacle to the realisation of human rights in Chad and Cameroon. The agreements aim to protect the oil companies by constraining the ways in which the states can interfere in the project or impose obligations on it, irrespective of how this might affect human rights. Yet, international human rights law requires states to consider the human rights consequences of all their actions, and to regulate the actions of private individuals and organisations, including companies, to ensure that they do not abuse human rights. This obligation must be paramount and should not be minimised by any contractual provision. To make certain that the project agreements cannot be used to create obstacles for the protection and promotion of human rights, they should be amended to state this explicitly.

### 5.1 A price tag on human rights

*A human rights approach would raise the question as to the effect that a requirement to give compensation, or a threat of compensation, might have on the ability or willingness of a State to take the necessary action to promote and protect human rights. Importantly, a human rights approach would seek to avoid the situation where a requirement to pay compensations might discourage States from taking action to protect human rights – such a situation could reinforce the status quo or exacerbate human rights problems.*

**UN High Commissioner for Human Rights<sup>93</sup>**

All human rights – economic, social, cultural, civil and political – require immediate action by states. Part of a state's duty to protect human rights is to ensure that third parties do not interfere with the enjoyment of these rights. This duty requires states to adopt necessary and effective legislative and other measures to restrain third parties such as companies.<sup>94</sup>

Amnesty International believes that all states should take immediate action to respect, protect and promote human rights regardless of any agreement reached with a private investor. However, the project agreements as written do not explicitly support the host states' obligations to protect and promote human rights – leaving open the danger of a different contractual interpretation. In fact, the agreements may be interpreted to:

- i) impose an industry-determined limit on operating standards;
- ii) create disincentives for the state to apply new laws to the consortium that have the potential to affect its profits; and
- iii) allow the consortium to threaten to seek the imposition of penalties for state measures taken to protect or promote human rights.

In Chad, this interpretation would be particularly damaging for the protection of human rights:

- First, both TOTCO-Chad and the Chad 1988 agreement seek to set in stone the laws applicable to those agreements as of 1988. Chad at that time was struggling with an internal armed conflict, corruption at the highest levels of government and a human rights climate characterised by suppression of opposition to the government and a lack of due process. At a minimum, this context was not conducive to putting in place an effective and comprehensive framework for regulating major companies willing to make a large inward investment.
- Second, according to the World Bank, Chad lacked the expertise necessary to develop regulations appropriate to its oil-producing capabilities *even 12 years after 1988*, the date of reference used in two of the three Chadian agreements.<sup>95</sup> Regulations to safeguard human rights were therefore not adequate as of the date upon which the agreements seek to ‘freeze’ the legal framework applicable to the project.
- Third, since 1988 Chad has developed an impressive record of ratification of human rights treaties.<sup>96</sup> Under international law, these commitments take precedence over contractual duties under investment agreements, meaning that the terms of the contract should be inapplicable when they are incompatible with the protection or promotion of human rights. However, in practice, the possibility of penalties being imposed on the state, under binding arbitration of the International Chamber of Commerce, is likely to act as a more significant incentive to comply with the terms of the contract, even where this means violating binding human rights agreements. The result is to threaten the protection of human rights under Chad’s commitments since 1988, and to provide a potential argument for failure to comply with those commitments.<sup>97</sup> Amnesty International believes that in no event should this clause be relied upon to attempt to frustrate any regulation in fulfilment of human rights obligations, including those undertaken after 1988. Any company that attempted to do so would be in breach of its human rights responsibilities.

Any other interpretation of the agreements would in effect amount to a ‘price tag’ on human rights protection and promotion. Amnesty International believes that this would be unsustainable in law and that such a danger should be averted through renegotiation of such provisions.

A state’s obligations to respect, protect and fulfil human rights require that it modify commitments if, for example, the commitments have unforeseen negative consequences for the protection of these rights.<sup>98</sup> The importance of safeguarding a state’s power to modify investment commitments when it is understood that such obligations have a negative impact on human rights has been highlighted by the UN High Commissioner for Human Rights in a report on trade, investment and human rights:<sup>99</sup>

*States should not enter into commitments in investment agreements that might threaten the enjoyment of human rights. Consequently, it will be important to undertake human rights impact assessments prior to undertaking commitments to liberaliz[e] investment.*

**UN High Commissioner for Human Rights<sup>100</sup>**

The high commissioner<sup>101</sup> warned against locking states into commitments that may threaten the enjoyment of human rights. The warning was in the context of state-to-state investment agreements, but the principle applies equally to contracts between a state and a private investor. The project agreements should be amended to ensure that they do not frustrate measures (including the adoption of laws and other regulations) taken to fulfil human rights.

## 5.2 Obstacles to progressive realisation of human rights

*As economic, social and political conditions change, it is appropriate that in response States might introduce appropriate regulations strengthening protection for human rights.*

**UN High Commissioner for Human Rights<sup>102</sup>**

The stabilising conditions of the project agreements are sufficiently vague that they could be

The full realisation of human rights requires time and available resources.<sup>103</sup> States must therefore take action over time to achieve progressively the full realisation of human rights. This requirement, called 'progressive realisation', includes the 'obligation to move as expeditiously and effectively as possible towards' the goal of ensuring the protection and fulfilment of all rights.<sup>104</sup> An important step towards ensuring rights is the adoption of legislative measures and other acts by government.<sup>105</sup>

used in an attempt to undermine the requirement of progressive realisation of human rights. The agreements could discourage Chad and Cameroon from taking positive steps that would impose costs on the consortium without its consent, even if such steps are intended to advance human rights. Human rights law requires governments to take steps to improve peoples' health, environment and working conditions. At the same time, Chad and Cameroon are threatened under the investment agreements with penalties for breaching the 'stabilisation of law' provisions. The obligation to comply with human rights commitments ought to take precedence over duties according to an investment agreement. Amnesty International believes that this has to be made explicit.

Even if, as the consortium may argue, current consortium practices are superior to the minimum standards required of oil companies by Chad or Cameroon, the principle stands: states cannot escape their international legal obligations to regulate companies by simply signing an investment agreement. Moreover, over several decades the standards required by the two states may be higher than those practised by the consortium. The agreements must be amended to avoid the danger that states are discouraged from imposing new requirements on the consortium to ensure the full protection of human rights. As an example, if Chad were to establish new regulations entailing costs for the consortium on the dumping of waste, usage of water or other industry practices that have implications for human rights, the consortium could attempt to rely on the project agreements to seek an exemption from these laws. Amnesty International believes that any company that did so would be in breach of its human rights responsibilities.

The need to regulate companies is particularly relevant to this project because of its potential for far-reaching effects over many decades. In Chad, the pipeline project has a large social and environmental footprint, and represents a significant proportion of the state's revenues.<sup>106</sup> In Cameroon, the pipeline also has considerable impact on society and the environment, although it brings less economic benefit. Despite the formal position that international human rights law has over investment agreements, the threat of penalties can deter states from adopting laws and taking other steps to achieve progressive realisation of human rights.<sup>107</sup> This eventuality must be avoided through appropriate amendment of the agreements.

## 5.3 Threats to international human rights standards

States are obliged under international human rights law to protect human rights by regulating companies. Amnesty International believes that investment agreements cannot supersede that obligation by placing a ceiling on human rights standards for investments. However, the project agreements could be relied on in an attempt to do just that. Under such an interpretation, not only would Chad lack the freedom to regulate irrespective of direct or indirect costs for the consortium, but Chad would also have to respect the industry standards ceiling beyond which the consortium cannot be regulated. Accordingly, such an interpretation forces Chad to replace the benchmark that should guide regulatory changes – the obligation to protect and promote human rights – with an industry standard benchmark.<sup>108</sup>

Petroleum industry standards are an inappropriate benchmark for states. Human rights law has been developed independently of extraneous interests. The strength of human rights law is that it places respect for the fundamental rights of the individual above economic or political exigencies. It is politically neutral and may be given effect in a range of economic systems. However, whatever economic system is adopted, economic actors must be subject to sufficient regulation to ensure that their actions do not breach human rights. In contrast, the project agreements could be relied on by the consortium to use standards determined by the petroleum industry in an attempt to frustrate regulation by Chad. While Amnesty International believes that Chad's legal obligations to protect and promote human rights prevail, the threat of penalties expressed in the project agreements may in effect lead to states favouring the substitution of human rights standards by industry standards. This eventuality must be avoided through appropriate amendment of the agreements.

ExxonMobil and other companies may argue that this is not a problem because their own codes of conduct or their company principles on human rights will ensure that their operations neither abuse human rights nor contribute to their abuse by others. They may even assert that their prevailing practices are superior to the current standards required by Chad or Cameroon. Yet codes of conduct and other voluntary promises of good behaviour are never guarantees of company actions, particularly when the company acts through contractors or when the investing company can be replaced.<sup>109</sup> Moreover, any such voluntary codes should complement rather than substitute for regulation of corporate conduct in fulfilment of the state's obligations to protect human rights. Codes must also respect the right to a remedy for the victims of any human rights violations. Instead, in the case of Chad, the project agreements may be interpreted to provide considerable incentives to limit new legislation that exceeds industry practice and codes of conduct.

The parties to the agreement may also argue that the contractual standards – even if limited to industry practice – are positive in that they are higher than those currently in place in Chad. But this argument misses the mark. The oil exploration agreements could last for up to 70 years, the most recent having been signed in 2004. Current standards in Chad are not an accurate measure against the contractual ceiling that applies for the lifetime of the project. Additionally, Chad is just now developing its petroleum industry. Over a period of 70 years, it has the opportunity to improve domestic legislation and regulations to ensure that human rights are more effectively protected. Over 70 years, industry practices may improve and the standards become more robust. However, human rights protection is too important an obligation to be dependent on such variables.

## 5.4 Commercial interests favoured over rights

*While an investor-to-State dispute settlement mechanism might resolve subsequent problems of a commercial nature, the lack of mechanisms to resolve other issues risks weighing the balance in favour of resolving problems according to the terms of investment agreements which might not necessarily take into account the many other non-commercial dimensions of the issue at hand. To the extent that this prioritises commercial considerations over other issues, it raises concerns for the promotion and protection of human rights.*

**UN High Commissioner for Human Rights<sup>110</sup>**

Amnesty International believes that any interpretation of the project agreements must take into account the international human rights obligations of the host state, as such obligations prevail over the economic interests of the consortium. However, the project agreements fail to state this explicitly, and instead they give an instruction to arbitrators to favour the economic interests of the consortium.

If the consortium were to challenge the enforcement of a law that it felt should not apply to its operations or should apply in a less restrictive manner, to avoid imposing added costs, the arbitrator, in failing to consider human rights, could enforce the least costly interpretation of the law – even if less protective of rights. In other words, the project agreements’ instruction to the arbitrators provides potentially dangerous guidance, which, if accepted, could lead to violations of rights in order to give an investor an economic advantage.<sup>111</sup>



**A Chadian cowherd stands beneath a 66,000-kilowatt power line built by ExxonMobil to provide power to pump oil from fields in southern Chad**

© AP

The legal provisions instructing arbitrators to favour the commercial interests of the consortium pose risks to human rights because they could be relied on by the consortium not only to secure stability of the regulatory framework, but also to remain shielded from laws that existed at the time the project agreements were signed.

Favourable treatment for investors' 'economic advantage' is especially worrying when coupled with the contractual clauses giving the consortium a right to resist any domestic regulation coming from Chad that is 'unreasonable'.<sup>112</sup> Judgements on the 'reasonableness' of the rules made by the state should involve considering the balance being struck between commercial and non-commercial interests, and deciding whether that balance is acceptable. As it stands, the favourable treatment for commercial interests provided in the clauses could be interpreted to provide a very narrow scope for determining what are 'reasonable' rules made by the state.

The arbitration context permitted by the agreements does not guarantee that the agreements will not be used to frustrate the fulfilment of human rights. Indeed there is a weighting of interests in favour of the consortium. Upholding the agreements must not result in a frustration of steps to fulfil human rights, and states must not face even the threat of penalties for introducing such measures as they are obliged to take to protect and fulfil human rights. The agreements, and their arbitration provisions, should be appropriately amended to exclude this eventuality.<sup>113</sup>

## 6.

# The human rights at stake

The project agreements may place Chad and Cameroon in violation of specific human rights obligations under international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights. The rights referred to in this chapter illustrate the potential for the pipeline project contracts to interfere with the protection of human rights. The list of rights at stake is not exhaustive, but draws on Amnesty International's work against human rights violations in Chad and Cameroon, and in other countries in connection with the extraction of natural resources and where the state has failed to regulate companies properly.<sup>114</sup>

## 6.1 The right to a remedy

The Universal Declaration of Human Rights states in Article 8 that 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.' International human rights treaties that Chad and Cameroon have both ratified, including the International Covenant on Civil and Political Rights, guarantee individuals the right to an effective remedy with regard to its provisions. Article 2 of the International Covenant on Civil and Political Rights states:

*Each State Party to the present Covenant undertakes:*

*(a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*

*(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*

*(c) To ensure that the competent authorities shall enforce such remedies when granted.*

The introduction of a major petroleum infrastructure and development project has the potential to exacerbate longstanding failures of local courts and the judiciary in Chad and Cameroon to provide effective remedy for violations of human rights. Thousands of people across a wide area have been or will be affected by the pipeline project and oil development. Individuals may be aggrieved because the land they use or own is expropriated, or because the pipeline is buried under large areas of land where they fish, farm or use the forests.<sup>115</sup> They may want to claim reparation if their homes, land, crops, forests or waterways are polluted, their health damaged or their livelihood impaired. Offering them an effective remedy requires a judiciary capable of handling the claims of wrongdoing by the consortium or its contractors. The potential exists for the project agreements to be used in an attempt to limit the realisation of the right to effective remedies, and this is cause for concern.

Crucial to the ability of the Chadian and Cameroonian populations – and particularly local communities – to participate meaningfully in consultations around the pipeline project was access to necessary information and the opportunity to raise concerns and questions without fear of reprisal. However, these project agreements and others like them are shielded from public scrutiny before they come into effect because the signatories maintain that they are private, commercial agreements.

The agreements for the pipeline project were published in Chad and Cameroon once they were signed into law in each country – beyond the point at which scrutiny of such documents is meaningful.

The agreements underpinning the oil development concessions signed in 1988 and 2004 were provided to Amnesty International by a non-governmental organisation in Chad. This organisation only obtained copies after these agreements came into effect as law and only as a result of the group's own 'interpersonal contacts' – in other words, they were not open to public scrutiny.<sup>116</sup>

Such agreements need to be transparent and open to public scrutiny before coming into effect as law because of their potential impact on the promotion and protection of human rights. Although the agreements relate to a commercial venture, they are not simply commercial agreements insofar as they aim to shape the applicable law in the host state. The agreements' potential to have an important impact on human rights makes them an issue of public concern. This is why Amnesty International believes they should be open to public scrutiny before becoming law in the host state. Governments must respect people's right to seek, receive and impart information so that they may enjoy the full range of human rights, including the right to take part in public affairs and the right to the highest attainable standard of health.<sup>117</sup> Also among these rights are those related to environmental protection, the realisation of which requires those living near facilities with the potential to cause environmental pollution to make informed decisions.<sup>118</sup> According to the Principles on Freedom of Information Legislation (endorsed by the UN special rapporteur on the right to freedom of opinion and expression), 'public bodies should be under an obligation to publish key information', including the content of any decision or policy affecting the public.<sup>119</sup>

In the COTCO-Cameroon agreement, the company has undertaken to 'make reparation in accordance with ordinary law, for damages incurred by any person due to the construction, operation and maintenance of the transport system'.<sup>120</sup> The TOTCO-Chad agreement has a similar clause. Likewise, the two oil development agreements with Chad state that the consortium will indemnify the people prejudiced or damaged by the petroleum operations or employees or agents of the consortium.<sup>121</sup> However, based on the other clauses in the project agreements and the possibility that these agreements as a whole could be interpreted as superior to domestic law, Amnesty International remains concerned about how individuals and groups can in practice obtain an effective remedy for human rights grievances relating to the pipeline and oil production.

For the pipeline project, COTCO, TOTCO and the consortium set up a grievance procedure following World Bank guidelines for individuals.<sup>122</sup> However, this grievance procedure does not provide an effective remedy in human rights terms. First, it applies only to the initial phases of the project: expropriation of land and the construction of the pipeline. It is therefore not a remedy for human rights violations occurring during the pipeline operations or linked to the further oilfield development in Chad. Second, it is not fair. Individuals have to bring complaints directly to liaison officers who are representatives of the consortium. The consortium then either accepts or rejects the complaint. If accepted, the consortium or its representative offers compensation for the damage claimed. If rejected, the individual has no appeal to an independent forum. Moreover, there is no enforcement mechanism to ensure delivery of compensation. This procedure is unsatisfactory in human rights terms because it lacks fairness and enforcement. The consortium or its contractors, not independent bodies, ultimately control the process and the remedy to be given, if any.

Lengthy delays in obtaining remedies, if any, seem likely to follow the pattern seen in other countries. In one case, fishermen in Kribi, Cameroon, complained of the loss of offshore fishing resources. An independent inspection and advisory body, the Independent Advisory Group (IAG), set up by the World Bank to monitor the pipeline project, detailed the complaints in a report in December 2003. COTCO had promised to lay artificial reefs in response to the

complaints. However, the IAG's June 2004 report stated that 'very little progress' had been made. It recommended immediate action by COTCO, but had no powers to enforce it.<sup>123</sup>

There is no special grievance procedure for the oil development projects in Chad. Individuals must use the local courts and administrative procedures to obtain remedies, but there is a possibility that the power of local officials to operate effectively may be limited by the project agreements. Amnesty International believes that local courts and administrations in Chad, pursuant to Chad's international human rights obligations, must provide full and effective remedies to individuals even if this requires the state authorities to interfere with the normal operations of the oil development project. However, the project agreements are open to the interpretation that the state (via local courts and agencies) would not be able autonomously to provide individuals with *full* remedies, for example by granting an injunction against the oil development activities to halt continuing damage.<sup>124</sup>

The project agreements should be amended to clarify that local officials are not limited in their powers against the consortium if their actions are necessary to provide an effective remedy pursuant to the state's international human rights obligations.

## 6.2 Non-discrimination and equal protection of the law

Both Chad and Cameroon have ratified the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, which guarantee non-discrimination, equality before the law and equal protection of the law.<sup>125</sup> The guarantees of non-discrimination prohibit discrimination based on distinctions 'of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.<sup>126</sup>

Amnesty International believes that investment agreements must be interpreted in a way that is consistent with the host state's international human rights obligations, regardless of any ambiguities in the text or incentives to apply a different interpretation. This means that where the agreements may be interpreted to carve out an area in which those affected by the project will not enjoy the same protection of the law as others, such an interpretation must be resisted.

An interpretation of the project agreements that precludes regulation, or awards compensation for regulation that puts the consortium at economic disadvantage, may lead to discrimination in that people living and working in the pipeline zone will not have the same protections as others.

Amnesty International believes that any interpretation of these agreements affording such differential treatment among people could facilitate violations of the host states' international human rights legal obligations.<sup>127</sup> If one person enjoys the legal protection provided by laws and regulations in a country while another does not, and the only reason for the difference is that one works or lives in the pipeline zone and the other does not, then this offends the human rights principle of equal protection of the law and may lead to discrimination in the realisation of rights.<sup>128</sup>

The agreements should be amended to guarantee that the provisions cannot be interpreted in a manner that discriminates against those affected by the pipeline and oil development operations.

## 6.3 Environmental protection and human rights

*The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.*

### **Judge Weeramantry sitting in the International Court of Justice in The Hague<sup>129</sup>**

The protection of the environment is instrumental to the realisation of human rights. States are obliged to ensure, at the very least, that environmental degradation does not seriously impair the right to life, the right to the highest attainable standard of health and the right to an adequate standard of living, in particular the right to adequate food and clean water.

The duty of each state to ensure that other states do not suffer damage from activities by private individuals within its jurisdiction or control was recently affirmed by the International Court of Justice.<sup>130</sup> In two opinions the Court stated: '[T]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.'<sup>131</sup>

Amnesty International believes that the project agreements must be interpreted as consistent with the host states' obligations under international human rights law. Any alternative interpretation would endanger the respect for states' international human rights obligations and could facilitate abuse of human rights by economic actors. The lessons learned from other African oil development projects reinforce the need for an interpretation of these agreements that favours human rights.



Two Chadian girls stand in front of ExxonMobil's Miandoum gathering station

The African Commission on Human and Peoples' Rights found Nigeria in violation of several articles of the African Charter on Human and Peoples' Rights in respect of human rights abuses associated with oil operations in Ogoniland in the Niger Delta. Delivering its judgement in 2001, the commission declared that the rights to enjoy the best attainable standard of health and to a healthy environment, protected in the African Charter, 'recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual'.<sup>132</sup> The commission declared that 'the right to a healthy environment ... imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources'. In considering state responsibility for acts of third parties, including oil companies, the commission stated:

*Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties. This duty calls for positive action on part of governments in fulfilling their obligation under human rights instruments.*<sup>133</sup>

The project agreements for the Chad-Cameroon oil pipeline could place the right to a safe environment and related rights at risk. If interpreted as setting limits on new laws and a ceiling on standards, the agreements will over the lifetime of the project, if not immediately, increasingly place the governments in a position where they must breach the contracts to fulfil their human rights obligations.

Oil exploration and extraction is a highly technical undertaking. New methods, standards and technologies are constantly being developed that can reduce the risks to health, safety and the environment.<sup>134</sup> However, with these project agreements in place, the governments of Chad and Cameroon may be deterred from demanding that the consortium implement new technologies, raise standards or implement safer methods for waste disposal, offloading of oil or for detecting spills over the lifetime of the project.

The agreements must be amended to ensure that they cannot be used by either Chad and Cameroon or the consortium in any way that would undermine human rights protection and specifically the rights related to a healthy environment.

## 6.4 The rights to health and to safe and healthy working conditions

The International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights guarantee the right to the enjoyment of the highest attainable standard of physical and mental health.<sup>135</sup> The International Covenant on Economic, Social and Cultural Rights provides that all states shall take steps to achieve the full realisation of this right, including steps necessary for 'the improvement of all aspects of environmental and industrial hygiene' and the 'prevention, treatment and control of epidemic, endemic, occupational and other diseases'.<sup>136</sup> Moreover, in Article 7 the Covenant guarantees 'the right of everyone to the enjoyment of just and favourable conditions of work,' which includes, among other things, 'safe and healthy working conditions'.<sup>137</sup>

In complying with these obligations, Chad and Cameroon should impose requirements that both protect workers on the project and also protect the population from resulting health risks. The willingness of Chad and Cameroon to apply progressively improved health and safety requirements for those working on the pipeline and in the oilfields could be diminished by a broad reading of the stabilisation clauses. For example, if Chad or Cameroon demanded that

the consortium and its contractors do more than is currently required by the contract or the Environmental Management Plan to address newly understood effects on health stemming from the oil project, then the consortium could attempt to use the stabilisation clauses to resist further demands by the governments. Equally, if the governments, in an effort to protect workers and the community at large, required higher safety and health standards over the lifetime of the project, the consortium could attempt to rely on the agreement to resist such demands.

The agreements should be amended to ensure that they cannot be used by either Chad and Cameroon or the consortium in any way that would undermine human rights protection and specifically the right to health and the rights of workers.

## 6.5 The rights to freedom of expression and freedom of assembly

The African Charter on Human and Peoples' Rights guarantees the right to freedom of expression (Article 9) and the right to freedom of assembly (Article 11). The International Covenant on Civil and Political Rights guarantees the same rights (Articles 19 and 21).

While the rights to freedom of expression and assembly are guaranteed in the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, clauses in the project agreements that prohibit any activity that might interfere with the pipeline project could encourage Chad and Cameroon to claim justification in stifling even peaceful protest if such activity risked interfering with the pipeline project.<sup>138</sup> The International Covenant on Civil and Political Rights allows restrictions on peaceful assembly only in conformity with the law and if they are 'necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others'. Likewise, the limits on freedom of expression must be necessary 'for respect of the rights or reputations of others' or 'for the protection of national security or of public order (*ordre public*), or of public health or morals'. Therefore, states must draw limits on these freedoms very narrowly and the interference with the rights must be no greater than is necessary to address the pressing social need.<sup>139</sup>

The human rights records of Chad and Cameroon do not inspire confidence in the states' ability to protect human rights, such as freedom of expression and assembly, while addressing security concerns related to the pipeline.<sup>140</sup> As supporters of the Voluntary Principles for Security and Human Rights, devised by governments in consultation with companies and non-governmental organisations, ExxonMobil and Chevron are committed to guaranteeing that security for the pipeline project is accomplished in a manner consistent with the human rights obligations of the states. Yet, the human rights of some pipeline critics have already been violated, and the agreements provide further encouragement for the states to place limits on freedom of expression and assembly that may go beyond permitted limitations in international human rights law.

The clauses barring interference in the pipeline may also be used in an attempt to prohibit activities such as interrupting work in order to contact a labour inspector because of a concern about health and safety. Such an outcome would be contrary to states' human rights obligations and corporate human rights responsibility with respect to labour rights, as reflected, for example, in ExxonMobil's statement on human rights includes endorsement of the ILO's Fundamental Principles and Rights at Work, which guarantee the right to freedom of association:

*Wherever ExxonMobil operates, certain principles consistently apply to the Company's relationships with its employees and its expectations of conduct in the workplace. ExxonMobil's Standards of Business Conduct provide a worldwide framework for responsible operations and are consistent with the spirit and intent of the Fundamental Principles and Rights at Work of the 1998 International Labour Organisation (ILO) Declaration ... ExxonMobil and its affiliates support these principles. The Company and its affiliates develop and implement suitable policies, procedures and practices in light of applicable laws and specific circumstances.*<sup>141</sup>

The ILO has regularly made it clear that if employees are meaningfully to have such a freedom, then they must be permitted recourse to industrial action.<sup>142</sup> The right to strike is also specifically guaranteed in the International Covenant on Economic, Social and Cultural Rights.<sup>143</sup> The provision forbidding interference in the project could be used as a pretext for violations of workers' rights recognised under international law and ExxonMobil's own code of conduct.<sup>144</sup>

The project agreements, as written, pose potential risks to the protection and promotion of human rights. They should be amended to eliminate such risks by clarifying the contractual language to remove any incentive to the host states to violate human rights. The amendments should give an explicit right to the host states to fulfil their human rights obligations, specifically the civil and political rights of the local populations and workers, as well as their obligations to workers pursuant to ILO conventions.



Villagers living under the light of a gas flare close to an ExxonMobil oil facility in Chad

© Jacob Silberberg/Panos Pictures

# 7. Recommendations

## 7.1 Recommendations for immediate action

**Amnesty International calls on the governments of Chad and Cameroon and the ExxonMobil-led consortium to amend the relevant agreements underpinning the Chad-Cameroon pipeline project to:**

- ensure that these agreements do not put human rights protection at risk in Chad and Cameroon. The project agreements should explicitly uphold a commitment to human rights and should not undermine the ability of the host state to meet its international human rights obligations;
- ensure that individuals can obtain an effective judicial or other appropriate remedy for violations of their human rights stemming from the project. The project agreements must be clarified to explicitly allow adequate reparation, including restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition, for individuals in local courts or through local procedures;

**and to amend or repeal:**

- any terms of the agreements that may discourage the state from fulfilling its human rights obligations under threat of penalties;
- any terms of the agreements that frustrate implementation of the host state's international obligation to regulate activity under the project to protect human rights

## 7.2 Recommendations for policy changes

**Amnesty International calls on all host states (states that are recipients of foreign direct investment) to:**

- ensure that the investment agreements the states enter into are consistent with their human rights obligations;
- ensure that their investment agreements with companies do not compromise their ability to fulfil their international human rights obligations; and
- demand that all parties make project agreements available for public scrutiny before they become effective.

**Amnesty International calls on home states (states in which the parent company has its headquarters or is listed) to:**

- take steps at the domestic level to minimise the adverse impacts on human rights of the extra-territorial operations of their transnational corporations. For example, states should require their institutions, such as export credit agencies, and home state companies to:
  - ensure that their investment policies and practices are consistent with the host government's obligations to improve human rights protection over time; and
  - make agreements available for public scrutiny before they become effective.

**Amnesty International calls on the World Bank, multilateral development banks, export credit agencies and commercial banks to:**

- ensure that their institutions do not support projects underpinned by legal agreements that could undermine the ability of the host state to meet its international human rights obligations through clauses that can be interpreted as either (1) curtailing the host state's ability to fulfil its human rights obligations; or (2) discouraging the host state from fulfilling its human rights obligations.

**Amnesty International calls on all companies, with regard to their investment agreements with host states, to:**

- ensure that the agreements they sign with host states cannot be interpreted so as to undermine the ability of the host states to respect, protect, fulfil and promote human rights; and
- endorse the principle that all parties to project agreements make them available for public scrutiny before they become effective.

**Amnesty International calls on international arbitration bodies and commercial arbitrators to:**

- ensure that in the context of investor-state arbitrations precedence is given to the human rights obligations of the state under national and international law; and
- ensure that state-investor agreements are not interpreted so as to (1) curtail host states' ability to fulfil human rights obligations or (2) impose penalties on host states for the effects of regulatory or other measures put in place in fulfilment of the state's human rights obligations.

## Appendix:

### Selected human rights treaties ratified by Chad and Cameroon

Treaty	Cameroon	Chad
<b>International instruments</b>		
International Covenant on Civil and Political Rights (1966)	1984	1995
International Covenant on Economic, Social and Cultural Rights (1966)	1984	1995
Convention against Torture, Inhuman and Degrading Treatment (1984)	1987	1995
Convention on the Elimination of all Forms of Racial Discrimination (1965)	1971	1977
Convention on the Elimination of all Forms of Discrimination against Women (1979)	1994	1995
Convention on the Rights of the Child (1990)	1993	1990
<b>International Labour Organisation Conventions<sup>145</sup></b>		
Convention 29 on Forced or Compulsory Labour (1930)	1960	1960
Convention 87 on Freedom of Association and Protection of the Right to Organise (1948)	1960	1960
Convention 98 on the Right to Organise and Collective Bargaining (1949)	1962	1961
Convention 100 on Equal Remuneration (1951)	1970	1966
Convention 105 on Abolition of Forced Labour (1957)	1962	1961
Convention 111 on Discrimination (Employment and Occupation) (1958)	1988	1966
Convention 138 on Minimum Age (1973)	2001	Not ratified
Convention 182 on the Elimination of the Worst Forms of Child Labour (1999)	2002	2000
<b>Regional instruments</b>		
African Charter on Human and Peoples' Rights (1981)	1989	1986
Cotonou Partnership Agreement (2000) <sup>146</sup>	2000	2000

# Endnotes

## 1. Investment and human rights

- 1 The Universal Declaration of Human Rights states in its preamble that ‘every organ of society ... shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures ... to secure their universal and effective recognition and observance’.
- 2 See chapter 2 and Amnesty International, *Clouds of Injustice: Bhopal Disaster 20 Years On*, 2004, ASA 20/015/2004 [http://web.amnesty.org/library/pdf/ASA200152004ENGLISH/\\$File/ASA2001504.pdf](http://web.amnesty.org/library/pdf/ASA200152004ENGLISH/$File/ASA2001504.pdf); *Nigeria: Are Human Rights in the Pipeline?*, 2004, ASA 44/020/2004 <http://web.amnesty.org/library/index/engaf440202004>; *Making a Killing: The Diamond Trade in Government-controlled Democratic Republic of Congo*, 2002, ASA 62/017/2002 <http://web.amnesty.org/library/Index/ENGAFR620172002>; *Sudan: The Human Price of Oil*, 2000, ASA 54/001/2000 <http://web.amnesty.org/library/Index/ENGAFR540012000?open&of=ENG-SDN>; and *India: The ‘Enron project’ in Maharashtra: Protests Suppressed in the Name of Development*, 1997, ASA 20/013/1997 <http://web.amnesty.org/library/Index/engASA200311997>.
- 3 Amnesty International UK, *Human Rights on the Line: The Baku-Tbilisi-Ceyhan Pipeline Project*, 2003, [http://www.amnesty.org.uk/images/ul/H/Human\\_Rights\\_on\\_the\\_Line.pdf](http://www.amnesty.org.uk/images/ul/H/Human_Rights_on_the_Line.pdf).
- 4 According to the BTC consortium’s published information, the partners in the project are: SOCAR (the state oil company of Azerbaijan); BP (UK); TPAO (Turkey); Statoil (Norway); Unocal (USA); Itochu (Japan); Amerada Hess (Saudi Arabia); Eni (Italy); TotalFinaElf (France); INPEX (Japan) and ConocoPhillips (USA).
- 5 Meeting between the International Finance Corporation, BP and Amnesty International, 27 January 2004.
- 6 See Walid Labadi (senior counsel, European Bank for Reconstruction and Development) and Harry Boyd-Carpenter (senior associate, Allen & Overy), ‘Striking a balance: intergovernmental and host government agreements in the context of the Baku-Tbilisi-Ceyhan pipeline project’, LiT Online (autumn 2004), <http://www.ebrd.com/pubs/legal/lit/OL04e.pdf>.
- 7 For example, the original shareholders in the Chad-Cameroon project included TotalFinaElf and Shell, but after these two companies pulled out, Chevron and Petronas took their place.
- 8 See, for example, L E Peterson, *Bilateral Investment Treaties and Development Policy-Making*, International Institute for Sustainable Development, 2004, [http://www.iisd.org/pdf/2004/trade\\_bits.pdf](http://www.iisd.org/pdf/2004/trade_bits.pdf).
- 9 UN High Commissioner for Human Rights, *Human Rights, Trade and Investment*, E/CN.4/Sub.2/2003/92003, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.9.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.9.En?Opendocument).
- 10 Working paper by J Oloka-Onyango and D Udagama, ‘The realization of economic, social and cultural rights: human rights as the primary objective of international trade, investment and finance policy and practice’, E/CN.4/Sub.2/1999/11, <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/414357dfe8c9ce76802567c9002f6dec?Opendocument>. Also see Amnesty International, *Human Rights must be Central Component of Multilateral Investment Rules*, 1999, <http://web.amnesty.org/library/Index/ENGIOR300101999?open&of=ENG-398>.
- 11 UN Development Programme, *Human Development Report 2004*, [http://hdr.undp.org/reports/global/2004/pdf/hdr04\\_HDI.pdf](http://hdr.undp.org/reports/global/2004/pdf/hdr04_HDI.pdf).
- 12 See, for example, the International Covenant on Economic, Social and Cultural Rights, Article 2(1), and the Convention on the Rights of the Child, Article 4.
- 13 See UN Conference for Trade and Development (UNCTAD), *World Investment Report, 2004*, [http://www.unctad.org/en/docs/WIR2004\\_en.pdf](http://www.unctad.org/en/docs/WIR2004_en.pdf).
- 14 World Bank, Chad-Cameroon Petroleum Development and Pipeline Project, Project Overview webpage, [http://www.worldbank.org/afr/ccproj/project/pro\\_overview.htm](http://www.worldbank.org/afr/ccproj/project/pro_overview.htm).
- 15 World Bank and International Finance Corporation, Chad-Cameroon Petroleum Development and Pipeline Project, Project Appraisal Document (hereafter Chad-Cameroon PAD), 13 April 2000, p18, <http://www.worldbank.org/afr/ccproj/project/tdppad.pdf>.
- 16 ExxonMobil owns 40 per cent of the private equity, Petronas 35 per cent and Chevron 25 per cent. See World Bank, Chad-Cameroon Petroleum Development and Pipeline Project, Project Overview webpage, [http://www.worldbank.org/afr/ccproj/project/pro\\_overview.htm](http://www.worldbank.org/afr/ccproj/project/pro_overview.htm).
- 17 Chad-Cameroon PAD, p10.
- 18 Ibid, p29.
- 19 Ibid, p19.
- 20 World Bank, ‘Chad government announces the start of oil production in the country’, 14 July 2003, <http://www.worldbank.org/afr/ccproj/news/index.htm>
- 21 Other companies, such as Canadian EnCana, are now exploring for oil in Chad and would also use the pipeline to export oil, <http://www.encana.com/operations/upstream/chad/index.html>.
- 22 World Bank, Chad-Cameroon Petroleum Development and Pipeline Project, Project Overview webpage, [http://www.worldbank.org/afr/ccproj/project/pro\\_overview.htm](http://www.worldbank.org/afr/ccproj/project/pro_overview.htm).
- 23 UN Development Programme, *Human Development Report 2004* (see note 11).
- 24 Chad-Cameroon PAD, p9.
- 25 Corruption Perceptions Index 2004, <http://www.transparency.org/cpi/2004/cpi2004.en.html#cpi2004>.
- 26 ‘Government accuses consortium headed by ExxonMobil of “looting” the country’s resources’, *Arab Oil and Gas*, Arab Petroleum Research Center, 1 November 2004, p38.
- 27 See, for example, Catholic Relief Services, *Bottom of the Barrel: Africa’s Oil Boom and the Poor*, June 2003, [http://www.catholicrelief.org/get\\_involved/advocacy/](http://www.catholicrelief.org/get_involved/advocacy/)

- policy\_and\_strategic\_issues/oil\_report\_full.pdf; Global Witness, *Time for Transparency: Coming Clean on Oil, Mining and Gas Revenues*, March 2004, <http://www.globalwitness.org/reports/show.php/en.00049.html>; Amnesty International, *Sudan: The Human Price of Oil* (see note 2); and *Amnesty International Reports 2002, 2003 and 2004* at <http://www.amnesty.org/ailib/aireport/index.html>.
- 28 The UN Security Council has passed resolutions 864 (1993), 1127 (1997) and 1173 (1998), and established a panel of experts to investigate sanctions violations pursuant to resolution 1237 (1999). These sanctions cover arms and related matériel, petroleum and petroleum products, diamonds, funds and financial assets, and travel and travel representation, and followed widespread human rights abuses committed by UNITA in Angola.
- 29 See Amnesty International, *Democratic Republic of Congo: 'Our Brothers who Help Kill us' – Economic Exploitation and Human Rights Abuses in the East*, 2003, <http://web.amnesty.org/library/Index/ENGAFR620102003?open&of=ENG-COD>; and *Making a Killing: The Diamond Trade in Government-controlled Democratic Republic of Congo* (see note 2).
- 30 See Amnesty International, *Nigeria: Are Human Rights in the Pipeline?* (see note 2), and 'Nigeria: fears of human rights violations after troops deployed in Bayelsa State, Niger Delta', 8 March 2005, <http://web.amnesty.org/library/Index/ENGAFR440062005>.
- 31 See UN Security Council resolutions 1171 (1998) and 1343 (2000), which imposed arms and diamonds sanctions on Sierra Leone and Liberia.
- 32 See Amnesty International, *Sudan: The Human Price of Oil* (see note 2).
- ## 2. The human rights context
- 33 See Amnesty International, *Chad: The Habré Legacy*, 2001, <http://web.amnesty.org/library/index/ENGAFR200042001>.
- 34 See *Amnesty International Report 1993*, Chad entry.
- 35 See *Amnesty International Report 1994*, Chad entry.
- 36 See *Amnesty International Report 1995*, Chad entry.
- 37 See *Amnesty International Report 1998*, Chad entry, <http://www.amnesty.org/ailib/aireport/ar98/afr20.htm>.
- 38 See *Amnesty International Report 1999*, Chad entry, <http://www.amnesty.org/ailib/aireport/ar99/afr20.htm>.
- 39 See Amnesty International, *Chad: The Habré Legacy* (see note 33).
- 40 Ibid.
- 41 See *Amnesty International Report 1999*, Chad entry (see note 38). See also the Committee on the Human Rights of Parliamentarians, Report of the Committee's Delegation on its Mission to Chad (21-27 November 1998), concerning Ngarléjy Yorongar (CL/164/13(b)-R.2, April 1999); the report stated that his treatment breached his rights under Articles 9, 14 and 19 of the International Covenant on Civil and Political Rights.
- 42 See report by Hina Jilani, special representative of the UN secretary general on human rights defenders, UN Doc. E/CN.4/2004/94/Add.3, 23 March 2004 [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(symbol\)/E.CN.4.2004.94.Add.3.En?OpenDocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(symbol)/E.CN.4.2004.94.Add.3.En?OpenDocument).
- 43 Letter dated 9 March 2005 from Pascale Yoadimnad, prime minister of Chad to the Collectif des associations de défense des droits de l'homme.
- 44 See report by Hina Jilani, paras 19, 101 (see note 42).
- 45 See *ibid*, paras 85-88; and Human Rights Watch, 'Chadian activist fired by international agency', 30 September 2003, <http://www.hrw.org/press/2003/09/chad093003.htm>.
- ## 3. The legal framework
- 46 See Appendix: Selected human rights treaties ratified by Chad and Cameroon.
- 47 See UN Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para 33, which discusses the requirements to 'respect, protect, fulfil', [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument). See also the International Covenant on Civil and Political Rights, Article 2(1), which requires 'respect' for the rights in the Covenant, and Human Rights Committee, General Comment 31, 2005, UN Doc.CCPR/C21.Rev.1/Add.13, para 8, which discusses the state's obligation to 'protect' rights in the Covenant from interference by third parties [http://www.bayefsky.com/general/ccpr\\_gencom\\_31\\_2004.pdf](http://www.bayefsky.com/general/ccpr_gencom_31_2004.pdf).
- 48 Constitution of Cameroon, 1972, amended 1996, <http://www.prc.cm/instit/consti.htm>; Constitution of Chad, 1995, <http://www.tchad-gmpms.org/constitution.html>. The preamble to the constitution of Cameroon also affirms the attachment to 'all duly ratified international conventions relating thereto'.
- 49 Chad Constitution, Article 47: 'Toute personne a droit à un environnement sain.'
- 50 See UN Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of states parties' obligations (Article 2, para 1), 14 December 1990, UN Doc. E/1991/23, para 3, [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument).
- 51 See *ibid*, paras 5 and 7.
- 52 African Charter on Human and Peoples' Rights, [http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Banjul%20Charter.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf).
- 53 The African Commission on Human and Peoples' Rights has held that state parties to the African Charter on Human and Peoples' Rights must protect rights from interference by third parties. See *Commission Nationale des Droits de l'Homme et des Libertés v Chad*, Comm. No. 74/92 at para 22, citing *Soc. & Econ. Rights Action Ctr. v Nigeria*, Comm. No. 155/96, para 57.
- 54 'ILO's instruments do not suppose that important human relations exist only between states and

- individuals. The tripartite nature ... means that most ILO instruments are directed towards employment of service relations, in which that state exists as a guarantor rather than a direct player ... For this reason, ILO instruments most often speak of an obligation of a ratifying state to “ensure” or “promote” the situation posited in a Convention. They contemplate a situation in which employers must be regulated or assisted in their relations with their employees’: L Swepston, ‘The International Labour Organization’s system of human rights protection’ in J Symonides (ed), *Human Rights: International Protection, Monitoring, Enforcement* (Aldershot: Ashgate 2003), pp91-109, at p93.
- 55 This is underlined by the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 2003, UN Doc. E/CN.4/Sub.2/2003/38/Rev.2, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/o/293378ff2003cebOc1256d7900310d90?Opendocument>.
- 56 ‘Every individual and *every organ of society*, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction’: Preamble, Universal Declaration of Human Rights, 1948 (emphasis added).
- 57 Report of the Sub-Commission on the Promotion and Protection of Human Rights, Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights, 15 February 2005, UN Doc. E/CN.4/2005/91, <http://www.ohchr.org/english/bodies/chr/docs/61chr/E.CN.4.2005.91.doc>  
In addition to state obligations to ensure respect for customary international law norms (for example, the prohibition of genocide, torture or slavery), all major human rights and humanitarian law treaties call on states to ensure that non-state actors respect the human rights obligations therein.
- 58 UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights Commentary on Article 1, para b) (see note 55).
- 59 Report of the Sub-Commission on the Promotion and Protection of Human Rights, Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights, p18, para 52 (see note 57).
- 60 UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, Article 10 (see note 55).
- 61 Chad-Cameroon PAD, Annex 14, <http://www.worldbank.org/afr/ccproj/project/tdpppadann14.pdf>, p1. There have been a number of amendments to this agreement, including to change the consortium members, who in the 1988 agreement originally included Shell but not Petronas.
- 62 COTCO-Cameroon, Article 3.1; 1998 TOTCO-Chad, Article 3.1. Also relevant is the 1996 bilateral treaty between Cameroon and Chad, which forms the basis of the cooperation between the two countries for the construction and operation of the project, including the export of Chadian oil through Cameroon. A discussion of the relevant bilateral treaties on this investment and their potential implications for human rights is beyond the scope of this report. There are at least three important reports on bilateral investment treaties and human rights: see notes 8, 9 and 10.
- 63 For other agreements on the pipeline project, not directly relevant to the present analysis, see a complete list of legal agreements as of 2000 in the Chad-Cameroon PAD, Annex 11, <http://www.worldbank.org/afr/ccproj/project/tdpppadann11.pdf>, pp42-45.
- 64 See Table 1, above.
- 65 COTCO-Cameroon, Article 30.
- 66 COTCO-Cameroon, Article 30.2; Chad 1988, Article 34.4; Chad 2004, Article 34.4.
- 67 Article 34.3 of Chad 2004 provides: ‘During the period of validity of this document, the State shall ensure that it shall not apply to the Consortium, without prior agreement of the Parties, any future governmental acts with the duly established effect of aggravating, directly, as a consequence, or due to their application to the shareholders of the Consortium, the obligations and charges imposed by the provisions of this Convention, or with the effect of undermining the rights and economic advantages of the Consortium or its shareholders, specified by this Convention, including the effect duly established and reflected over the Consortium of the aggravation of the charges of the Affiliated Companies or of the Contractors due to these acts. Only the Consortium shall be able to cite this stability clause, which is offered to it to the exclusion of any third party to this Convention. This shall notably apply to the following elements: (a) exemption from rights, taxes and levies; (b) obligations in the matter of royalties and taxes on profits; (c) the right to keep and repatriate abroad funds and foreign currencies; (d) non-discrimination for charges by way of services rendered by the State in relation to those applied by the State for similar services provided in the public domain.’  
In Cameroon, the COTCO-Cameroon agreement contractually obliges the state not to modify any law or tax after the date of the agreement without COTCO’s prior consent, if such modifications might adversely affect the rights and obligations of COTCO, its shareholders (the consortium), lenders and others. COTCO-Cameroon, Article 24.2 states: ‘With regard to the activities undertaken under this Convention, the Republic of Cameroon shall not modify such legal, tax, customs, and exchange control regime in such a way as to adversely affect the rights and obligations of COTCO, Shareholders, Affiliates, Contractors, Sub-Contractors, Shippers or Lenders arising from this Convention and no legislative, regulatory or administrative measure contrary to the provisions of this Convention shall apply to the persons mentioned above without COTCO’s prior written consent.’  
Chad 1988 Annex, Article 34.3 provides: ‘While these terms remain in force, the Government

undertakes that, without the prior agreement of the parties, no government instruments shall be applied to the Consortium with the effect of increasing, whether directly or consequentially, the duties and obligations imposed on the Consortium by the provisions of this Convention, or with the effect of adversely affecting the rights and economic benefits of the Consortium intended by this Convention. This shall apply in particular to the following matters: (a) exemption from duties, levies and taxes; (b) payment of commission and taxes on profits; (c) the right to keep and transfer abroad foreign funds and currencies; (d) non-discrimination in relation to charges for services rendered by the Government compared with those applied by the Government for comparable public sector services. In the event that such changes shall be implemented by the Government of the Republic of Chad without the prior agreement of the Consortium, the parties shall agree the necessary amendments in order to ensure that the Consortium achieves the same financial terms, duties and obligation, as well as the same rights and economic benefits as existed before such changes were made' (translated from French).

- 68 TOTCO-Chad 1998, Article 21.3.
- 69 COTCO-Cameroon, Article 24.3; Chad 2004, Article 34.3.
- 70 COTCO-Cameroon, Article 24.4; Chad 1988 Annex, Article 34.3; Chad 2004, Article 34.3; TOTCO-Chad, Article 21.3.
- 71 Chad 1988, Article 2.2; Chad 2004, Article 2.2; TOTCO-Chad, Article 3.1; COTCO-Cameroon, Article 3.1.
- 72 If a state purports to exclude or alter the legal effect of certain provisions of a treaty in their application to that state, they must make a 'reservation' (see Articles 2(1)(d) and 19-23 of the Vienna Convention on the Law of Treaties 1969). Neither Chad nor Cameroon has entered such reservations to their international human rights obligations.
- 73 Although the contracts explicitly prevail over domestic law, it is unclear whether they might also have legal supremacy over the constitutions of host states if they were challenged before domestic courts for violation of constitutional human rights guarantees. Whatever the formal position in law, there are fears that the power of the investment community in practice is such that, unless its policies are altered, the legal regime it has put in place will prevail.
- 74 TOTCO Article 32.1: 'In case of dispute arising between the Republic of Chad and TOTCO concerning the interpretation or execution of this Convention or of any of its provisions, the Parties shall use their best endeavours to resolve the dispute amicably. If the Parties fail to resolve the dispute amicably within a period of one (1) month, the dispute may be settled by optional conciliation under the Rules of Arbitration and Conciliation of the International Chamber of Commerce. In case of rejection or failure of the conciliation attempt, the dispute shall be finally settled by three (3) arbitrators under the Rules of Arbitration and Conciliation of the International Chamber of Commerce. Awards shall be final and binding on the Parties from the date

they are made and judgment upon the award may be entered in any court having jurisdiction. The Parties renounce, formally and without reservation, any right to challenge said award, to oppose its execution by any means or to resort to any other jurisdiction whatsoever. The Republic of Chad, within the context of arbitration, waives its right to invoke immunity from execution of the arbitral award and, if necessary, from the judgment for enforcement of the arbitral award' (translated from French).

COTCO Article 36.1: 'The Parties agree that any dispute between the Republic of Cameroon and COTCO arising out of this Convention, including as to its validity, shall be the object of an attempt at an amicable settlement. In the absence of an amicable agreement, such dispute shall be settled by the arbitration procedure provided for in this Article 36.'

Chad 1988 Article 33.1: 'In the event of a dispute arising between the Government and the Consortium with regard to the interpretation or the execution of this Convention or of one or more of its provisions, the parties shall endeavour to resolve it by agreement. If the parties are unable to resolve the dispute by agreement within a period of three (3) months, the said dispute shall be decided finally under the Arbitration Procedure of the International Chamber of Commerce by three (3) arbitrators named in accordance with the said Procedure. The decision of the arbitrators shall be final and binding upon delivery and its execution may be required before any competent tribunal' (translated from French).

Chad 2004 Article 33.2: 'In the event of dispute arising between the State and the Consortium concerning the interpretation or the execution of this Convention or any of its measures, the Parties shall attempt to resolve it amicably. If the Parties cannot manage to resolve the dispute amicably within a period of one (1) month, the dispute may be settled by optional conciliation in accordance with the International Chamber of Commerce. In the event of rejection or failure of the conciliation attempt, the dispute shall be definitively settled by three (3) arbitrators in accordance with the Rules of Arbitration and Conciliation of the International Chamber of Commerce' (translated from French).

- 75 In the case of Chad, Paris is the designated place of arbitration, under the rules of the International Chamber of Commerce (TOTCO-Chad, Article 32; Chad 1998, Article 33; Chad 2004, Article 33); Chad has not signed the ICSID treaty, so ICSID arbitration was not open to it. See COTCO-Cameroon, Articles 36 and 37 designating the ICSID rules for arbitration. The ICSID Convention came into force on 14 October 1966: <http://www.worldbank.org/icsid/>. As of 20 November 2004, 141 states had ratified the convention. Under the convention, ICSID provides facilities for the conciliation and arbitration of disputes between member countries and investors who qualify as nationals. Arbitration under the auspices of ICSID is similarly one of the main mechanisms for the settlement of investment disputes under four recent multilateral trade and investment treaties, namely the North American Free Trade Agreement, the Energy Charter Treaty, the Cartagena Free Trade Agreement and the Colonia Investment Protocol of Mercosur.
- 76 See UN Conference on Trade and Development, 'International investment disputes on the rise', 29

November 2004, <http://www.unctad.org/Templates/webflyer.asp?docid=5646&intItemID=2807&lang=1>.

- 77 Article 32.3 of TOTCO-Chad states: 'The arbitrators shall decide all questions on the basis of: (a) the provisions of this Convention; (b) subject to application of the provisions of Article 21 above, the provisions of the Petroleum Code and, inasmuch as necessary, those of the Consortium Convention; (c) subject to application of the provisions of Article 21 above, the other laws and regulations of Chad supplemented where necessary by the general principles of law applied internationally' (translated from French). COTCO-Cameroon provides, in Article 41: 'Cameroon Law, the general principles of international law and common practices widely used in the international petroleum industry shall apply within the scope of this Convention.' Chad 1988, Article 33.3, states: 'The arbitrators shall decide the entire dispute by application of: (a) the provisions of this Convention; (b) the provisions of the Petroleum Code subject to the provisions of article 34 below; (c) subject to the provisions of article 34 below, the other laws and regulations of the Republic of Chad and, where necessary in order to complement Chad law, the general legal principles applied internationally' (translated from French). Chad 2004, Article 33.4, provides: 'The arbitrators shall have to settle any dispute in applying: (a) the measures of this Convention; (b) subject to application of the measures of clause 34 hereafter, the measures of the Oil Code; (c) subject to application of the measures of clause 34 hereafter, the other laws and regulations of the Republic of Chad and, insofar as it is necessary to complement Chadian law, the general principles of law applied on an international level' (translated from French).
- 78 Chad 2004, Article 34.2 (translated from French); Chad 1988, Article 34.2 and TOTCO-Chad, Article 21.2, contain similar clauses.
- 79 Chad 1988, Articles 4.1 and 4.2; Chad 2004, Articles 4.1 and 4.2.
- 80 Translated from French.
- 81 Chad 1988 and Chad 2004, Article 17.4.
- 82 TOTCO-Chad, Article 23.12(b) (translated from French).
- 83 COTCO-Cameroon, Article 27.8(b), prohibiting 'any person to undertake activities which may interfere with the construction, operation and maintenance of the Cameroon Transportation System'.

#### 4. The financial framework

- 84 I Gary and N Reisch, *Chad's Oil: Miracle or Mirage? Following the Money in Africa's Newest Petro-state*, Catholic Relief Services and Bank Information Center, 2005, [http://www.catholicrelief.org/get\\_involved/advocacy/policy\\_and\\_strategic\\_issues/chad\\_oil\\_report.pdf](http://www.catholicrelief.org/get_involved/advocacy/policy_and_strategic_issues/chad_oil_report.pdf), p6, Box 1.
- 85 See Chad-Cameroon PAD, p22: 'The Bank Group's support has been a key element in catalyzing the involvement of the Private Sponsors, who have stated that they would be unwilling to proceed with the project without the Bank Group's participation, given the significance they attach to the mitigation of

political risks provided by the Bank Group's involvement. Bank Group involvement would also be crucial to catalyze the US\$900 million in financing from commercial lenders/export credit agencies (including under IFC's B-Loan), who have also indicated their unwillingness to proceed without the Bank Group's involvement, and the US\$400 million bond issue.'

- 86 World Bank, Chad-Cameroon Petroleum Development and Pipeline Project, Project Overview webpage, [http://www.worldbank.org/afr/ccproj/project/pro\\_overview.htm](http://www.worldbank.org/afr/ccproj/project/pro_overview.htm).
- 87 International Finance Corporation, 'IFC signs loans for Chad-Cameroon pipeline', 21 June 2001, <http://ifcldn001.worldbank.org/ifcext/pressroom/ifcpressroom.nsf/PressRelease?openform&69D3E7E2C40EAE6185256A72007085D2>.
- 88 World Bank, Cameroon Petroleum Environment Capacity Enhancement Project, Project Appraisal Document (hereafter CAPECE PAD), 30 March 2000, p1, <http://www.worldbank.org/afr/ccproj/project/cecepad.pdf>; World Bank, Chad Petroleum Sector Management Capacity Building Project, Project Appraisal Document (hereafter Chad PAD), 30 March 2000, p2, [http://www.worldbank.org/afr/ccproj/project/td\\_PAD.pdf](http://www.worldbank.org/afr/ccproj/project/td_PAD.pdf). Alongside the capacity-building projects, there is a revenue management project, set up by the World Bank for the purpose of ensuring the Chadian government uses the revenues for the benefit of the population. However, this revenue management has been the subject of criticism in one recent report: see Gary and Reisch, *Chad's Oil: Miracle or Mirage? Following the Money in Africa's Newest Petro-state* (see note 84).
- 89 CAPECE PAD, p2.
- 90 Chad PAD, pp5-6.
- 91 The IFC is currently reviewing its safeguard policies, which can be found on the IFC website: <http://www.ifc.org/ifcext/policyreview.nsf/0/1790644170c3547485256dfe0056243d?OpenDocument>. The public consultation on the review ended on 29 April 2005. The new Policy on Social and Environmental Sustainability and Performance Standards, and the Policy on Disclosure of Information, are due to come into force in 2006.
- 92 See Equator Principles website, <http://www.equator-principles.com/>.

#### 5. The human rights implications of the investment agreements

- 93 UN High Commissioner for Human Rights, *Human Rights, Trade and Investment*, para 31(b) (see note 9).
- 94 See for example, UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The right to water, UN Doc. E/C.12/2002/11, 20 January 2003, para 23 <http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94?openDocument>.
- 95 See Chad PAD, p3: 'These problems in the energy sector are attributable partly to the long series of political crises and armed conflicts that marked the country's history, but also partly to the lack of

- investment, lax management, the land-locked nature of the country, the shortage of alternative energy sources, and a dearth of trained and qualified staff. Despite efforts to build capacity, which have seen some success over recent years, institutional and administrative skill levels remain well below those in most of the other countries in the region' (emphasis added). See also p7, where one of the goals of the capacity-building project is described as 'Strengthening the environmental and social regulatory framework applicable to petroleum development activities in Chad, building on the lessons of the Doba Petroleum Project' (emphasis added). Despite this goal, the new regulations would not be applicable to the consortium's activities.
- 96 See Appendix.
- 97 International regulation of human rights obligations primarily involves states reporting periodically to non-judicial bodies, without power of enforcement, and only infrequently individual or group communications to those same bodies. On 25 January 2004, the Protocol on the African Court on Human and Peoples' Rights entered into force to establish a court for individual complaints. However, neither Chad nor Cameroon have ratified the Protocol, which recognises jurisdiction of the court to hear complaints from people in their territories.
- 98 See section 3.1 above. For a recent analysis of state contracts in the context of developing countries, see UN Conference on Trade and Development, *State Contracts*, UNCTAD Series on Issues in International Investment Agreements (UN: New York and Geneva) (draft).
- 99 See UN High Commissioner for Human Rights, *Human Rights, Trade and Investment* (see note 9).
- 100 Ibid, The High Commissioner was referring to liberalisation agreements between states; however, by analogy, the need to allow for stronger protection of human rights also applies to agreements between states and commercial investors.
- 101 The High Commissioner post was held by a high commissioner *ad interim* at the time the report was published.
- 102 UN High Commissioner for Human Rights, *Human Rights, Trade and Investment*, E/CN.4/Sub.2/2003/9, para 31(d)(see note 9).
- 103 See, for example, Human Rights Committee, General Comment No. 6: The right to life, 1982, in particular para 5, <http://www.unhcr.ch/tbs/doc.nsf/0/84ab9690ccd81fc7c12563ed0046fae3?Opendocument>.
- 104 UN Committee on Economic, Social and Cultural Rights, General Comment 3: The nature of states parties' obligations (Article 2, para 1) (see note 50).
- 105 Ibid, para 3: 'The means which should be used in order to satisfy the obligation to take steps are stated in article 2(1) to be "all appropriate means, including particularly the adoption of legislative measures".' For example, see also UN Convention on the Rights of the Child, Article 4.
- 106 See notes 22 and 23 and accompanying text regarding revenues expected in Chad from oil developments. 'ExxonMobil holds the rights to 10 million gross acres in the Doba, Dosseo, and Lake Chad basins': Gary and Reisch, *Chad's Oil: Miracle or Mirage? Following the Money in Africa's Newest Petro-state*, p29 (see note 84). Of the 1,070km of the pipeline, approximately 890km is in Cameroon and 180km in Chad: Chad-Cameroon PAD, p53 (see note 15).
- 107 As required, for example, under the International Covenant on Social, Economic and Cultural Rights, Article 2(1) and the UN Convention on the Rights of the Child, Article 4.
- 108 The potential interference in Chad's ability to regulate the consortium is only increased by the vagueness of the terms used in the contract because with the lack of objective and identifiable criteria, the threat of arbitration looms for every regulation put in place.
- 109 For example, TOTCO-Chad, Article 5, details how TOTCO's rights can be assigned to another company, with a 60-day period for prior approval by the government.
- 110 UN High Commissioner for Human Rights, *Human Rights, Trade and Investment*, para 55 (see note 9).
- 111 For this point in the general context of trade, investment and rights, see S Leader, 'Human rights and international trade' in P Macrory et al (eds) *The World Trade Organisation: Legal, Economic and Political Analysis* (Springer/Kluwer, 2005), pp2257 ff; S Leader, 'Collateralism' in R Brownsword (ed), *Global Governance and the Search for Justice* (Hart Publishing, 2005), pp54 ff.
- 112 Chad 2004, Article 17.4.
- 113 Some commentators have begun to warn against the public policy implications of commercial arbitration. For example, see International Institute for Sustainable Development (IISD), *International Human Rights in Bilateral Investment Treaties and in Investment Treaty Arbitration* (April 2003), [http://www.iisd.org/pdf/2003/investment\\_int\\_human\\_rights\\_bits.pdf](http://www.iisd.org/pdf/2003/investment_int_human_rights_bits.pdf).

## 6. The human rights at stake

- 114 See Amnesty International reports cited in notes 2 and 29.
- 115 See Environmental Management Plan, Executive Summary and Update Chapter 6, 'Existing environmental, social and health conditions', describing the estimated population to be affected by the project, as well as the environmental resources and animal species in the pipeline zone: <http://www.essochad.com/Chad/Files/Chad/EAESU6.pdf>.
- 116 Correspondence from GRAMP-TC to Amnesty International UK: 13 May 2005 and 17 May 2005.
- 117 The right to seek, receive and impart information is expressed in the Universal Declaration of Human Rights, Article 19. The right to take part in the conduct of public affairs, directly or through freely chosen representatives, is expressed in the International Covenant on Civil and Political Rights, Article 25. See on this point: Commission on Human Rights, *Civil and Political Rights including the Question of Freedom of Expression*, report of the special rapporteur on the

- promotion and protection of the right to freedom of opinion and expression, Mr Abid Hussain, submitted in accordance with commission resolution 1999/36, UN Doc. E/CN.4/2000/63, 18 January 2000, para 42, <http://www.unhcr.ch/Huridocda/Huridoc.nsf/o/af2df a9b6305cf38025689b00508989?Opendocument>.
- 118 *Anna Maria Guerra and 39 others v Italy*, 1998-1 ECHR 14967/89, judgement of 19 February 1998.
- 119 Principle 2, 'The Public's Right to Know: Principles on Freedom of Information Legislation', annex II of Commission on Human Rights, *Civil and Political Rights including the Question of Freedom of Expression*, report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Abid Hussain (see note 117).
- 120 COTCO-Cameroon, Article 17. The domestic law referred to is Law No. 96/14. Also TOTCO-Chad, Article 20.2, states 'TOTCO shall indemnify any person in case of damage caused' (translated from French).
- 121 Chad 1988 Article 4.3; Chad 2004 Article 4.3.
- 122 World Bank Operational Directive 4.30, Involuntary Resettlement (OD 4.30).
- 123 See World Bank, IAG Report of Visit to Cameroon December 1 to 5, 2003, pp8-9; and IAG Report of Visit to Chad and Cameroon May 17-June 5, 2004, p29, [http://www.worldbank.org/afr/ccproj/project/pro\\_monitor.htm#iag](http://www.worldbank.org/afr/ccproj/project/pro_monitor.htm#iag).
- 124 The project agreements' arbitration clauses could be interpreted to force the state to go to arbitration before intervening with the project activities, even if it is acting to protect aggrieved individuals.
- 125 African Charter on Human and Peoples' Rights, Article 3; International Covenant on Civil and Political Rights, Articles 26. See General Comment 18 at para 1 by the Human Rights Committee explaining how equality before the law and equal protection of the law constitute basic and general principles fundamental to protecting human rights: Human Rights Committee, General Comment 18 Non-discrimination (Article 2), (1989), UN Doc. HRI/GEN/1/Rev.6, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument).
- 126 International Covenant on Civil and Political Rights, Article 2.
- 127 Human Rights Committee, General Comment 18, para 13 (see note 125).
- 128 For example, the European Court of Human Rights has found that it was not permissible for a state to have discriminated between people on the ground of one being a tenant in a private dwelling and another in government housing. See *Larkos v Cyprus*, Application No. 29515/95 [1999] ECHR 11.
- 129 Case Concerning the Gabcikovo-Nagymaros Project (*Hungary v Slovakia*), 1997 ICJ Rep 7 (25 September; sep op, Judge Weeramantry), 4.
- 130 Recognised in the Declaration of the UN Conference on the Human Environment, Stockholm, 1972, Principle 21, and the Rio Declaration on Environment and Development, 1992, Principle 2: 'States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.'
- 131 'Legality of the Threat or Use of Nuclear Weapons', Advisory Opinion, ICJ Reports 1996, p226, para 29; Gabcikovo-Nagymaros Project (*Hungary v Slovakia*), Judgement of 25 September 1997, para 54.
- 132 African Commission on Human and Peoples' Rights, Communication 155/96, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, Decision Regarding Communication No. 155/96, African Commission on Human and Peoples' Rights, done at the 30th Ordinary Session, held in Banjul, The Gambia, from 13-27 October 2001, Ref: ACHPR/COMM/A044/1, 27 May 2002.
- 133 The African Commission referred to its own jurisprudence in *Union des Jeunes Avocats v Chad*, Communication 74/92; and that of the Inter-American Court of Human Rights in the Velásquez Rodríguez Case, Judgment of July 19, 1988, Series C, No. 4; as well as that of the European Court of Human Rights in *X & Y v Netherlands*, 91 ECHR (1985) (Ser. A) at 32.
- 134 For example, the president and CEO of the American Petroleum Institute, Red Cavaney, speaking to the 16th World Petroleum Congress in June 2000, remarked on the improvements to environmental and social performance of the petroleum and automobile industries owing to technological advances in the past 30 years, and the accelerating pace of technological progress: 'The quality of gasoline, diesel fuel and other products has continually improved, while massive investments in pollution control equipment have been made ... The effect of pollution reduction has been dramatic ... Nonetheless, we are at a critical turning point. Three important forces are converging to shape a new world reality and to present a new set of challenges to both of our industries: the accelerating pace of technological innovation; the increasing transparency of borders in a rapidly globalising world; and society's ever greater push for improved quality of life.' See <http://www.worldpetroleum.org/docs/red.doc>.
- 135 The African Charter on Human and Peoples' Rights protects the right to the 'best attainable state of physical and mental health' (Article 16). The African Commission on Human and Peoples' Rights has ruled that states' parties must, among other things, 'take concrete and targeted steps, while taking full advantage of their available resources, to ensure that the right to health is fully realised in all its aspects without discrimination of any kind': Communication 241/2000, *Purohit and Moore v Gambia*, decision at 33rd Ordinary Session of the African Commission, 15-29 May 2003.
- 136 International Covenant on Economic, Social and Cultural Rights, Article 12(b).
- 137 *Ibid*, Article 7(b).
- 138 TOTCO-Chad, Article 23.12(b): Within the

'perimeters of protection for the specific needs related to the construction, operation and maintenance activities of the TOTCO Transportation System' it is forbidden 'to any person to undertake activities which may interfere with the construction, operation and maintenance of the TOTCO transportation system' (translated from French). COTCO-Cameroon, Article 27.8(b): Within the 'perimeters of protection for specific needs related to the activities of construction, operation and maintenance of the Cameroon Transportation System' it is prohibited 'for any person to undertake activities which may interfere with the construction, operation and maintenance of the Cameroon Transportation System ...'. See section 3.10, above.

139 The International Covenant on Civil and Political Rights (Article 19) 'expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a state party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be *justified as being "necessary" for that state party for one of those purposes*': Human Rights Committee, General Comment 10 Freedom of expression (1983), UN Doc. HRI/GEN/1/Rev.1 at 11 (emphasis added), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/2bb2f14bf558182ac12563ed0048df17?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/2bb2f14bf558182ac12563ed0048df17?Opendocument).

140 See section 2.2, above.

141 See [http://www.exxonmobil.com/corporate/files/corporate/Statement\\_Labor.pdf](http://www.exxonmobil.com/corporate/files/corporate/Statement_Labor.pdf).

142 'The right to strike is one of the essential means through which workers and their organisations may promote and defend their economic and social interests': ILO Committee on Freedom of Association, Digest of Decisions 1996, para 474.

143 Article 8(1)(d).

144 'The right to strike can only be restricted and even prohibited in the public service (public employees being those who act as agents of the public authority) or in the essential services in the strict sense of the term (ie those services whose interruption would endanger the life, personal safety or health of the whole or part of the population)': ILO, Freedom of Association Committee, 272nd Report, Case No. 1503 (Peru), para 117.

## Appendix:

145 These conventions are the eight fundamental ILO conventions. For a full list of the ILO conventions ratified by Chad and Cameroon, see <http://www.ilo.org/ilolex/english/newratframeE.htm>.

146 Article 9 urges parties to respect and promote human rights in their quest for development: [http://europa.eu.int/comm/development/body/cotonou/agreement\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/agreement_en.htm).

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One of the largest private-sector investment projects in Africa is threatening human rights in Chad and Cameroon. A consortium of oil companies, led by ExxonMobil and including Chevron and Petronas, is extracting oil from the Doba oilfields in southern Chad and transporting it through a newly built 1,070 km pipeline to Cameroon's Atlantic coast.

International law places the primary obligation for realising human rights on states. However, there is increasing recognition that responsibility for contributing to the protection of human rights extends to other actors in society, as acknowledged in the Universal Declaration of Human Rights. Amnesty International believes that companies have human rights responsibilities within their spheres of influence. These extend globally and are particularly relevant when companies operate in countries where grave violations of human rights are part of the context of their activities, as is the case in Chad and Cameroon.

This report highlights the potential dangers to human rights posed by investment agreements underpinning the pipeline project, as well as the need for a new approach to investment that ensures respect for human rights.

Amnesty International calls on the governments, international financial institutions and companies involved in the Chad-Cameroon pipeline project to revise the investment agreements to include an explicit guarantee that nothing in them can be used to undermine either the human rights obligations of the states or the human rights responsibilities of the companies.

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