

**MASTER'S THESIS**

**UNDERSTANDING PROJECT MANAGEMENT IN  
NATURAL RESOURCE INVESTMENTS FROM A  
LEGAL PERSPECTIVE.**

(An Experience from the Chad-Cameroon Oil and Pipeline Project)

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## ***ABSTRACT***

This thesis reports the findings of modern day trench and strategies related to project management- in this case, natural/sustainable resource investment projects analysed from a legal or why not a lawyer's perspectives. In a bid to further distinguish this from a scientific piece, the research proposals and analysis drawn here involves empirical judgement based on the rightful holistic legal approach.

The framework includes analysis or experience stemming from a high profile foreign investment project or public procurement project dope the Chad-Cameroon Pipeline Project (a project for the construction of an oil pipeline from Chad to the coast of Cameroon for storage and subsequent exportation to the world market; herein after referred to as "The Project"), whose improper management/execution has (is) produced a rather negative effect on nearby land, environment, nature and the local inhabitants thereby casting a gloomy cloud on, among others, the existing human rights standards.

Conducted interview and data analysis in this research build-up, proved most of the findings here. Also, constructive criticism and research analysis of which majority indicate the absence of a solid legal framework from The Project, forms the basis of a proposed generalised knowledge of ideas, suggesting a subsequent adoption in future investment projects of similar nature.

The conclusive remarks offer and recommend advocates of legal, development and environmental studies a chance to uphold its course while calling on fellow academicians to engage more in associated works all in a bid to change the mind-set of governments and those in authorities as such engaged in related works.

***KEYWORDS:*** Foreign Investment, Project Management, Sustainable Development, Oil pipeline Development, Public Procurement, Government Policy, Human Rights, Environmental Protection, Resource Management, Local Regulation/Legislations, International Law, Chad, Cameroon.

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## **CHAPTER ONE**

# **INTRODUCTION**

### **1.0 INTRODUCTION**

*This first chapter represents the research approach, background of the study, motivation of the study and introduces the reader to the objectives, problem, research question that leads us to the purpose. Subsequently it reports contribution of the study and the structure of the entire thesis.*



## **1.1 Overview:**

This thesis is based on a familiar but recent understanding of project management or why not resource project management studies. “Familiar” in the sense that it is not uncommon to find scholarly articles and scientific or academic journals which have elaborated extensively on related topical issues, be them on construction projects, public procurement or just some data analysis of similar topics. On the other hand what makes this thesis different and “recent” is the fact that it attempts a legal framework presentation of ideas and knowledge with regards modern project management and development- a legal perspective and understanding of familiar trends which prior to this has only been offered a scientific study approach; it offers to create a legal awareness into the mind-set of project actors (natural resource investors) both on and off the field in the course of making project decisions which must always aim to enhance sustainable development in all aspects. Wherein natural resources are at the verge of being exploited which means there is bound to be huge construction and investment works warranting the involvement of various stakeholders be them private companies, host and foreign governments, international community, local community, non-governmental bodies, civil society organisations and the general public interest.

The main source of experience or inspiration here which also doubles as the focal case study example where criticisms are and would be emanating is the Chad-Cameroon Oil and Pipeline Project (a project for the construction of an oil pipeline from Chad<sup>1</sup> to the coast of Cameroon for storage and subsequent exportation to the world market), whose improper management/execution has produced a rather negative effects on man, nature and the environment for the “benefactors”. In effect, the thesis suggest a legal framework understanding which should be attempted in every project planning stages, that is, regulations, legislations, international law standards. Also in the execution and post executor stages a series of laws and regulatory code standards are to be set in to attain both the short and long term developmental objectives of the project. While presenting a coordinated stream of ideas, this dissertation will conclude with some recommendations for stakeholders daring into future works of this nature

## **1.2 The Research Approach**

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<sup>1</sup> Chad is a land luck country but with a lot of rich oil reserves. The only way for its oil to be exploited and marketed to the world markets is via the construction of a pipeline passing through Cameroon right down to the coastal waters for subsequent exportation.

This research offers theoretical analysis of the legalities in project management and precisely, natural resource investment project management with the main example streaming from the Chad-Cameroon Oil Pipeline Project. A comparative analysis will be offered at some stages of the research wherein similar projects as such especially in the developed countries of Europe would be compared and analysed to better ascertain the reality of facts. This in a way will permit a theoretical understanding of ideas, capable of being transformed into practical or visual reality for a clear and succinct comprehension.

As the focus of this study is on legal and resource project management as a whole, which is considered a type of innovative social and developmental study, organisational and social systems such as civil society organisations, private companies, host and foreign governments, international community, local community, non-governmental bodies, should play the important role in determining the acceptance of the rightful methodologies. These individual groups of actors owe a duty to the public and particularly to the local community where such projects are scheduled to surface. Various environmental and social considerations must be put in place before, during and after the construction phases. A more meaningful approach more than ever before should be taken, wherein there is active participation by locals and adequate room for rightful criticism and an extensive level of understanding in all ramifications. As a result, an extension of trust must be seen as an important antecedent between the various actors. Trust itself must include perceived behavioural control and also intention<sup>2</sup>. Hopefully this thesis will provide a better understanding of the above mentioned trends especially with the help of maps, figures and table analysis.

### **1.3 Background of Study**

In projecting the background to this thesis, an inspirational quote by Jean Giraudoux, a French writer, plays an important tone in my subconscious when he says “There's no better way of exercising the imagination than the study of law. No poet ever interpreted nature as freely as a lawyer interprets the truth”. Not to dwell so much on the literal meaning behind such wordings, the legal interpretation as a whole forms a common starting point to this thesis. Project management and developmental studies seem to work hand-in-gloves these days and

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<sup>2</sup> Talking about intensions, most African projects wherein huge finances are being allocated for are usually characterised with bribery and corruption among an extensive level of mismanagement. In Chad for example, there were worry concerns and claims of mismanagement of funds meant for the construction of the Chad-Cameroon pipeline by the Chadian government for the purchase of weapons to fight rebel groups in the country. Some activists also claim this was part of the reason why the project itself took a very long time to commence after many years of rich oil discovery in the southern regions of Chad.

following the thinking of Jean Giraudoux, a lawyer can never be left out of the race. After all, their ‘services’ are often needed when “things do not to go well” according to plan (disputes). Setting the pace and making things right from the onset nowadays is the new root taken to avoid future disputes and litigations. Even though this might seem awkward in terms of the business part/benefit<sup>3</sup> of the lawyer’s calling, its academic importance cannot be over emphasis. This alone sums up a lawyer’s concern in projects which in the past had been left solely at the mercy of engineers, contractors or some unskilled politicians to decide.

Project management studies are a rather new field of study especially when talking about legal project management in the natural resource sector wherein the legalities or legal framework of an entire project has to be determined and set out straight by the various actors. As part of the developmental plans and public procurement policy of governments, large investment projects as such warrants outmost attention and commitments. This explains why a more legal and comprehensive view is being offered nowadays and projected by master pieces of this level.

As part of the background knowledge to this write-up, the focal example highlighted here which also forms the basis of criticism and a model for comparative analysis is the Chad-Cameroon Pipeline Project<sup>4</sup>. The reason behind the choice of this project is that it involves one of the biggest oil pipeline constructions in sub Saharan Africa wherein huge financial expenditure was involved, majority of which came from the World Bank and other top international monetary bodies and a host of country supports. Unfortunately the illegality and poor management and execution of the project left so many undesired results especially when one tends to compare it with the way similar projects are being handle in top European countries. A comprehension of the above brings us to the point of this study but leaves us with a stream of questions to answer pertaining to the legality and framework qualities of projects or how future projects should be handled.

Indeed the emergence of an academic piece like this has prompted many governments, contractors and various stakeholders involved in similar projects or in project

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<sup>3</sup> Lawyers and notably practice or field lawyers are usually consider as business men at least in the eyes of locals as they turn to make their monetary benefits from clients when they are caught up in worrying situations. In effect, they expect people to fall prey often as possible, thereby necessitating their services. As such it becomes awkward in those same eyes of the locals see a lawyer sounding a note of caution through an academic piece beforehand which in a way limits clientele

<sup>4</sup> More on the background summery of the Chad-Cameroon pipeline project would be presented in the introductory parts of chapter two.

management in general to rethink their strategies in order to stay in line with international standards especially when it comes to human rights, transparency, environmental protection and sustainable development.

#### **1.4 Motivation of Study**

The motivations of this research are as follows:

1. This is a rather new discipline wherein the legal framework of projects are being emphasised following international standards or roles of international investment rather than just focusing on the accomplishment of the projects. It is also a worldwide topic to study so that the quality of services in project management sector can be enhanced for the future.
2. Project management or more particularly legal framework of construction projects has been widely studied in developed countries. Very few related studies have been done in developing countries especially in Africa which nowadays have engaged in huge construction projects to raise their developmental standards. Thus, it is in a bid to raise this awareness that the motivation concerns surfaces.
3. The choice of the focal example; Chad-Cameroon Oil pipeline Project, comes as a result of a personal experience (witness to happenings) and self-evaluation of events as they unfolded and also because the project witnessed huge financial sums coming from international donors to be managed by two country's governments with poor corruption records. This alone permits a perfect scenario for a comparative study with similar works in developed policies.

Scholarly articles, literature review and personal experience shows that there is a problem in the way natural resource investment projects are handled in the world and particularly among the developing nations. Setting a legal framework at the base seems to be the starting point to problem solving and mismanagement controls.

#### **1.5 Objectives of Study**

The research aim at enriching the capacity knowledge and understanding of the importance of the legal framework study of natural resource project management especially those projects wherein huge finances are allocated and involving various stakeholders and personnel. The legality of projects as such forming part of the procurement policies of governments cannot be over emphasized.

Also, part of the general objective of this study after its completion is to improve the awareness of the relative effectiveness and suitability of alternative policies for the management and oversight of the petroleum sector.

Other objectives of this study include:

1. Qualify constructs concerning the current state of the handling of projects especially those of which involve huge funds and the exploitation of resources for developmental purposes which often than not are mismanaged in all stages of the project phases.
2. Propose opportunities for both researchers and participants to uncover unseen problems thereby improving the level of attention pertaining to rules and legislature often offered in the execution of project contracts.
3. Provide an opportunity for targeted governments like those of Africa and other developing countries to determine the root cause of the poor execution and frequent misappropriation of assets in project management schemes particularly those leading to untold iniquities of local populations etc.

## **1.6 Problem Definition and Discussion**

It is well known that many construction and developmental projects in most developing countries are often poorly handled both financially and project-wise. Huge amount of finances side-line for most projects are often used by supervisory and other authorities involve for personal benefits. Even though in the final analysis a good number of these projects are completed, the outcome and quality of them as such is never very pleasant in the eyes of some of the presume benefactors. For example, monetary compensation for displaced population like in the case of an oil pipeline construction which has to pass through a personal house and landed property is often neglected. Also, funds earmarked for environmental protection are often swindled into personal coffers, leaving that sector wanting and with so many unanswered questions. Human rights conditions are very much issues of dispute between project authorities and personnel. In effect it is in a bid to bring to the lamplight the irresponsibility of the various individual actors involved in such huge projects, be them government officials, construction companies, project coordinators, human resource personnel or stakeholders at various levels that this dissertation is out project. A path and atmosphere where future projects could and should follow is the by-product of this master

piece. Though not all about filed work but rather setting the roles (legal framework) straight from the start is what this dissertation is calling for.

As earlier mentioned, the Chad-Cameroon Oil Pipeline project presents a perfect scenario where numerous lessons can be drawn. This example fits perfectly in context not just because of the popularity of the project during the early years of the 2000s but also because it did receive very large attention and financing from top international financial bodies in the world to be managed by a rather undemocratic government whose records in that domain did not read so well all in a bid to strengthen investment partnership.

Issues for discussion would focus on the overview of construction/investment project phases wherein,

- Issues of planning and project delivery
- Procurement
- Construction
- Operations during and after warranty period.
- Corporate social responsibility issues.
- Governance, legislation regulations.
- Typical disputes and techniques to avoid them would be discussed during the project phases.
- Managing and transferring risk in natural resource investments.
- Occupational health and safety issues.
- Environmental protection
- Human rights protection
- Dispute resolution methods

Therefore, there is the need to understand how modern projects, particularly those dealing with construction works wherein communities would be affected should be managed and a need to identify how the legal framework of such project should be tackled to avoid unnecessary antagonism between stakeholders at various levels.

## **1.7 Research Question**

This research is remedying the lack of studies to the legal framework<sup>5</sup> often side-line in project management schemes, in this case investment and construction projects in the natural and sustainable resource sector wherein the absence of this strong legal base often leads to the mismanagement of other input resources involved particularly in developing countries, thus posing a resulting threat to man, nature and environment. This research deals with intention and understanding towards a better management of future projects in the oil and gas sector for sustainable development in the legal context and largely in the developing country setting. As such the research questions of this study will be:

- Why are there often mismanagement problems in most project schemes particularly in the developing countries especially when huge budget financing and resources are involve?
- What are the legal framework backings which ought to be set up-right in every project management scheme which involves outbound construction projects?
- What are the lessons to be taken from past construction projects like that of the Chad-Cameroon Oil Pipeline Project; to act as a leading guide to future projects of similar nature to better ascertain human, environmental and developmental objectives?
- How should governments, institutions and other concerned international bodies react in handling legality issues in project management schemes?

### **1.8 Practical and Theoretical Value of the Research.**

The need to understand project management in this field all from a legal perspective is worthy of importance to governments, project managers, policy makers, contractors, engineers, human rights and environmental activist, financial authorities/bodies, lawyers, researchers, and academicians. This is because experience has shown that side-leaving or neglecting basic legal framework provisions by some of the above mentioned actors or the non-implementation of existing ones has more often than not resulted in clashes among local inhabitants and project coordinators or authorities. Also most projects during and after their completion become risk areas for local population who are often forced to abandoned their homes and sources of livelihood. It is in the bid to address a host of these legal issues from the onset that the practical value of this research becomes relevant.

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<sup>5</sup> Most researches and other academic write-ups have focus mainly on the topic “project management” either from a scientific point of view without going into the root core of the legal aspects also involved which regulates all phases of planning, execution and after math phases. An example here is the work titled “Local science vs. global science : approaches to indigenous knowledge in international development / edited by Paul Sillitoe,

A master piece of this nature will acts as a working guide to civil society bodies, non-governmental organisations, pressure groups, local council bodies and authorities to comprehend and lobby for the correction of the illegalities usually surrounding major sustainable development and construction projects that work to their disadvantage. As would be mention in the later stages of the research, random sampling of opinion of local inhabitants along the Chad-Cameroon oil pipeline did indicate that most of them are neither aware of existing binding legislation/regulations nor the available legal redress to seek to tackle their inexhaustible list of woes neglected by the project authorities.

We live in a world today where information is vital especially with the continuous spread of globalisation. In some parts of Africa and a host of other developing countries, transparency and access to open data and sources of information still remains a far fetch dream. This is especially so when in it comes to the management of huge finances as earlier mentioned. The interconnectivity of the world now is creating awareness in the minds of previously ignorant locals to start posing questions patterning to their various interests especially human rights and environmental concerns. This puts the importance of this research in context and in line with today's needs, though not to spark up a revolutionary battle by those whose rights had hitherto been violated, but to trigger the desire for openness, fairness, transparency and change for things to be made right in future projects.

Theoretically, the research continues an academic legal battle to strengthen the path earlier taken by writers and scholars of developmental studies for a meaningful sustainable development around the world.

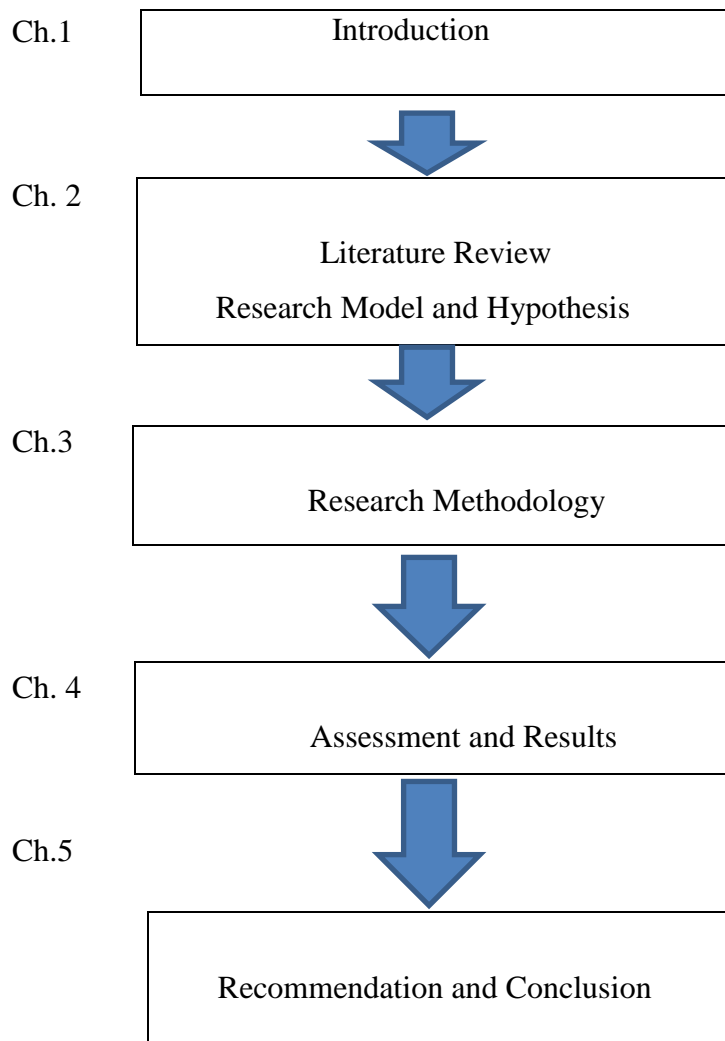
Undertaking a research on project management from an entirely new approach (legal framework methodology) enriches the research centers in African; a continent which is usually prone to misconducts of this nature and in various ramifications.

Also this research provides the standard of research that could receive wider recognition as African research organisations continue to look for guidance in creativity and innovation.

## **1.9 Structure of the Study**

This dissertation is organised into five chapters as shown in **Figure 1-1**





*Figure 1-1 structure of the study*

## **CHAPTER TWO**

# **LITERATURE REVIEW**

### **2.0 LITERATURE REVIEW**

*Chapter two is structured along several themes. First this chapter explains some basic terminologies associated with this field and which shall be frequently referred to in this thesis. Second, this chapter introduces the leading example of the thesis (Chad-Cameroon Pipeline Project) where focal criticism and comparative analysis shall be made. Then the chapter goes ahead to interconnect some of these link-up themes to the focal example for a better comprehension to this neo legal approach of legal project management and investment in the natural resource sector.*

## 2.1 Basics of Investment Project Management:

Project management in natural resource investment is the application of the concepts of good project management in general to the control and management of investment projects. Practitioners of legal-project management apply it to the mechanics and business of providing legal services rather than to the substantive legal work itself. In this thesis, though not entirely providing legal services nor substantive legal work, the phrase almost denotes and emphasise the application of a pre-conceived legal framework tools to a resource management scheme usually characterised with huge international financing and investment lending employed to attain a sustainable development objective. In effect the use of the term legal project management in this particular circumstance suits best and proper wherein the objectives of the thesis are to project a legal framework and sets of guideline principles or ideas which more often than not are usually kept aside (neglected or not properly followed) by authorities and actors of handy projects (International Investment projects). This explains why legal jargons shall be frequently used as opposed to the daily scientific or engineering term associated with construction dealings.

In view of any given project, it is the opinion of this writer that right after the conceptual stages of the project be it a pipeline construction development or just an ordinary management work, it is of utmost necessity that the feasibility studies be made and a well map-out legal framework be set out immediately. This involves developing legislations, acts and setting up rules and regulations. In most cases there is the signing of bilateral treaties (bilateral investment treaties are the commonest in this speciality)<sup>6</sup>, wherein the rights and limitations of the private and public parties are spelled out. This is because it is often taken into cognisance not only by policy makers but also by judicial and legal authorities (courts and arbitrary bodies) in times of conflicting interests on how to solve these problems in the best possible manner. The above two elements must be taken seriously as they hold the fundamental determinants of a successful project. It is worth mentioning at this stage that it is the absence of this well-grounded root preparation that has often raise questions for example on environmental care principles and human rights standards, both of which seems to be at

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<sup>6</sup> Under most bilateral investment treaties, the host country usually guarantees equal or preferential treatment of the investors alongside home or domestic investors. Some aspects of this fall under the international law policy of expropriation of foreign owned property. In majority of the investment disputes, the arbitral tribunal usually rely on business considerations of the investors rather than assessing the environmental impacts of their activities. Critics have often stressed that this practice and ideology always has a one sided benefit-solely on the foreign investors. And the hazardous effects of this activities are born by the public and why not the domestic producers.

the heart core for every project benefactors and interest groups in this modern times.

Thereafter the project planners can go ahead into forming commission teams or committees with the aim of getting them active at each stage/phase of the project. This strategy on its own facilitates control and coordination. Projects involving huge financing and forming parts of governmental public investment policies, often have committees in charge of finances, planning, environment, human and material resource, etc. the importance and ground work of these various committee bodies cannot be over emphasis.

At this juncture, the ground-work/ construction phase is set to begin wherein competent designed and engineering work-force must be put in place. This involves using qualified skilled contractors with competent work experience in the required sector. In most cases unskilled labour especially nearby inhabitants around project site or nationals in general are often hired at some stages of the construction. This is particular the case with projects involving the construction of underground pipelines or rail construction. For example the Chad-Cameroon Oil Pipeline project saw the employment of close to eleven thousand locals from both Chad and Cameroon at various project stages.

I often employ and stress on the importance of the operations and maintenance stages of any handy project. The emphasis here is because it is at this phase in the theories of legal project management that the life-span and sustainability of that project is determined. As mentioned earlier, the final aim or objectives of governments in their choice of international line of investment or public procurement policies is often geared towards a sustainable development. This is usually the primary goal and once it cannot be attained, then the project becomes a waste of resources. Operations and maintenance involves diligence during the work stages and frequent maintenance checks including a strategic back up plan to enhance its sustainability. In most developing countries it's not uncommon to find abandoned projects or uncompleted projects which could not be continued simply because of the absence of a maintenance scheme in place at the very conceptualisation stages of the work. Also some projects even after their completion are unable to meet up with their targeted long run objectives. Still, others in similar position cannot fully satisfy the economic potentials of which they were side-lined to attain. As such they become an extra burden to the governments and local authorities to handle or manage. The sum of this is that a well worked out operations and management scheme at the very beginning of planning a construction project under the rules of project management would inevitably lead to an almost accomplish aim both in the short and long run span of the project. In order to enhance the application of

the above cited policy rules, they must be legally frame up in by-laws and governing legislation regulating the project with firm emphasis on their strict application.

Modern project management must also see the process of decommissioning. In this particular instance, a complete hand-over of the accomplish project to local officials or governments, for example, in the case of private corporations. An independent management body is of utmost necessity then to be created to ensure proper management and control.

## **2.2: Standout Themes**

### **2.2.1 Oil Pipeline/Energy Development:**

Pipelines are generally the most economical way to transport large quantities of oil over land, and the development of oil resources via a constructed pipeline are often earmarked by governments as capacity building supported projects. The development of this technological method dates back in the late 19<sup>th</sup> century by some oil transport associations. Although pipelines can also be built under the sea, that process is economically and technically demanding, so the majority of oil at sea is transported by ship tankers. In our current case, and according to official World Bank report, the Chad-Cameroon project was supported by separate loans from the IFC and the IBRD necessitating the construction of 1,070km underground oil pipeline from land luck Chad to off-shore loading terminals at the Atlantic coast of Cameroon. Nevertheless the legal framework of the project required major modernization. The inadequacy of the oil legislation adopted in 1962 had forced the Chad government into bilateral agreements and ad hoc contracts. This explains why in this particular project, a new Petroleum Revenue Management Law (PRML) was later approved in 1999.

Talking of the oil industry and energy development, it is of general acceptance that the oil industry, especially that of the developing world of Africa, Asia and the Middle East has provided its citizens with income and employment over the centuries. And it has also made significant contributions to national government revenue and foreign exchange earnings<sup>7</sup>. Oil taxes are also a major source of income in many nations. However chemical and oil discharges to land and coaster ecosystems have increased in recent years. Most of the governments of these countries have been ineffective in protecting the integrity of the coastal

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<sup>7</sup> Doyle (1994) analysed that close to 2 billion US Dollar a day exchange hands in worldwide petroleum transactions. Now the figures have risen to 5 billion a day.

ecosystem from the adverse impacts of the oil industry. With increased pollution emanating from oil production, it is vital that pragmatic plans and procedures be formulated to address this fundamental issue. It is from this backdrop that the legal frame work analyses in this dissertation find some space. This explains why in the later stages of this write-up, the environmental impact of the oil drilling activity from Chad and along the 1.070km pipeline construction passing across a national and citizen's landed property to the coast of Cameroon would be assess. Also proposed recommendations for a better and improve environmental stewardship will be made.

According to British Petroleum, 2007 “about 90 countries produce oil and the 12 current member nations of the Organisation of Petroleum Exporting Countries (OPEC) (Algeria, Angola, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates, and Venezuela) accounted for about 76% of the world's proven oil reserves and 43.5% of world oil production in 2005”. It is estimated that ten years from that date, the figures would have increased giving the continuous growing need of both crude and refined oil, and with the emergence of potential oil nations with rich natural reserves in the world.

Field technicians and experts have said that the operations of the oil industry are grouped into three major stages: firstly the “upstream” phase comprising oil exploration, drilling and extraction, secondly transportation and thirdly refining. “The upstream phase involves remote sensing and satellite mapping techniques with seismic testing to identify potential oil reserves. The companies then drill exploratory wells to channel the oil to the surface. Transportation of crude oil occurs with tankers, barges, trucks and pipelines”. (see Burger 2007, for source).

The refining stage involves “cracking” where intense heat and pressure is applied to crude oil to separate and refine it into products such as gasoline distillate fuels. (Burger 2007).

As beautiful as this “three phase” oil extraction and refining tale my read, it is often pregnant with some “illegalities” if I may dare to say. Mismanagement of project funds and resources, bribery and corruption, embezzlement, human rights and environmental negligence, abuse of natural and aquatic space. Air and water pollution, non-compensation of displaced settlement, non-implementation of risk management schemes, social hazards, delay deficiencies, non-implementation of strategic developmental planning, etc.

It is against this in-depth background that this thesis considers examining a better understanding of project management of such magnitude and in this capacity, which exposes for example, some of the environmental and social loopholes often characterised in them. In this same study, outward criticism streaming from the prominent Chad- Cameroon oil pipeline project is used as a mirror example to reflect general research findings.

### **2.2.2 Foreign Investment**

International foreign investment has always been seen as the back born to a country's development. This explains why over the past ten years many states and economies have relied on foreign investments to guarantee employment, education, security, training and development, etc. most developing sates have relied on this strategy to kick-stat their own economic development. Before partaking in any form of foreign investment business in the host country, there are usually some paper work formalities which have to be carried out between the investor and the host state. This entails the signing of bilateral or multilateral investment treaties<sup>8</sup> with important clauses there on like the type of investment, nature of activity, duration of operation, use of skilled and or unskilled labour, rights and privileges of both parties, social and environmental protection, just to name a few. Unfortunately, the practice over these years as witnessed from foreign international investment growth statistics all over the world has left states, especially the developing ones on the wrong/backside of business as investors are deemed to be accorded so many rights and privileges<sup>9</sup> beyond the general standards and expectation of the public. This has made some of the investors to become overzealous; as such they tend to neglect some very important aspects of their investment obligations among which are the hazardous environmental and social impact of their investment activities. Some legal scholars have rightfully analysed that the root cause to this problem is as a result of the too many rights and privileges accorded to foreign investors in the multilateral treaties. Others have attributed this to mere negligence and the lukewarm attitudes of host states that are somewhat desperate for foreign investment to kick start their economic development. Aspects of astute management of resources, transparency, sustainable development, risk control, employment, and environmental and social protection policies forming part of foreign International Investment law ought and should be of great concern for states.

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<sup>8</sup> Visit <http://www.worldbank.org/icsid/treaties/intro.htm> for a list of some bilateral investment treaties.

<sup>9</sup> Some of these rights and privileges include the right to state protection, security, access to services and control of investment activities.

This thesis centers on project management which is the gate way to any successful foreign investment and developmental objectives of states. As such its findings therefore try to analyse not only the negative impact of the environmental and social ills coming as a result of foreign investment activities, which are posing a great threat to life, nature and the environment but also the emphasised notion of a legal binding framework plan at the very beginning and in each phase of related project works. Where human, natural and capital resources are at stake, the necessity for efficiency and control cannot be over emphasised.

Some personal research analysis on the root cause of this negligence behaviour by investors have reveille that under most bilateral investment treaties, the host country usually guarantees equal or preferential treatment of the investors alongside home or domestic investors. Some aspects of this fall under the international law concept of expropriation of foreign owned property. In majority of the investment disputes, the arbitral tribunal usually rely on business considerations of the investors rather than assessing the environmental impacts of their activities. This practice and ideology always has a one sided benefit-solely on the foreign investors. And the hazardous effects of this activities are often born by the public and why not the domestic producers.

In the old or traditional systems of investment, the foreign investor must as part of his rights and obligation guarantee to the host country certain “performance requirements”<sup>10</sup> but with the establishment of the ever powerful bilateral investment treaties, the situation has become different. Most of the terms in the treaties are contracted more in favour of the investors in a bid to secure their services (investments). Majority of the traditional clauses in foreign /private investment contracts are nowadays left at the mercy of the investors. Most of the terms are left at the discretion of the investors to provide. This has gone a long way to weaken the bargaining position of the government in host countries in terms of securing a much desired foreign investment partnership.

In effect, it does not come as a surprise when subsequently, foreign investors fail to protect or guarantee some environmental and other human and natural necessities. This explains why these factors; mismanagement of project funds and resources, bribery and corruption, embezzlement, human rights and environmental negligence, abuse of natural and aquatic space. Air and water pollution, non-compensation of displaced settlement, non-

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<sup>10</sup> Foreign investors were required to further their activities to generate economic growth and development through local hiring, technology transfer etc



implementation of risk management schemes, social hazards, delay deficiencies, non-implementation of strategic developmental planning, etc. usually plaque foreign investment projects.

Most foreign private investors, today act under the banner of ‘contributory state development’ through their investment activities to expropriate and encroach on individual land without caring much on the environmental and public safety regulations. This indirect but collaborative form of expropriation is often backed by government policy makers and in some cases tribunals in various cases from their rulings, all in a bid to safeguard foreign investment, the economic development and the integrity of the state.

Furthermore, disputes between states have shifted from the previous state-to- state arbitration procedure in the past, to an investor- to- state arbitration now under their bilateral treaties. The foreign investor partners are now using this tool to their sole advantage in total disregard to the rights of the host citizens. Nowadays the number arbitral proceeding against states has increased all in a bid to safeguard their interest. The International Center for the Settlement of Investment Disputes<sup>11</sup> has been a major organ for settlement of such disputes.

At this juncture, it should be noted that this thesis does not try to contest the entire rules laid down in state, regional and international treaties. It might act as a complementary knowledge to be understood alongside the general standards set by the international community. It is understood that various states and regional bodies have tried in their own way to tackle this worrying situation. As such, this does not focus on any particular state or regional community. It simply tries to make a general analysis from some research finding (experienced gathered from the Chad-Cameroon Pipeline project) on what should operate in the world of foreign investment.

### **2.2.3: Public Procurement/Government Policy**

Attempted definitions of public procurement together with governmental policies usually take the researcher to issues involving procurement priorities and procedures which must follow a logical pattern and are designed to ensure that, that procurement process adheres to a company/state’s financial regulations and the general procurement law. The

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<sup>11</sup> ICSID is an autonomous international institution established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States with over one hundred and forty member States. The Convention sets forth ICSID’s mandate, organization and core functions. The primary purpose of ICSID is to provide facilities for conciliation and arbitration of international investment disputes

main processes common to all procurements will include supplier selection, requesting information, tender submission, tender evaluation, contract award and inspection.

A more meaningful approach in this thesis calls for a “sustainable procurement”. This involves policies whereby a “secured future” is the outline objectives of governmental programs for a better sustainable development. If this new approach is followed, large scale governmental procurements like for example, the Chad-Cameroon oil and pipeline project would require a leadership agenda by the respective governments to reduce negative impacts like those mentioned above including; the mismanagement of project funds and resources, bribery and corruption, embezzlement, human rights and environmental negligence, abuse of natural and aquatic space. Air and water pollution, non-compensation of displaced settlement, non-implementation of risk management schemes, social hazards, delay deficiencies, non-implementation of strategic developmental planning. In effect the whole agenda here is to integrate the idea of sustainability into any procurement business, be them public or private so long as it is being control or supervised by government(s).

The idea behind this whole new proposal here is to:

- Create a certain standard of awareness and understanding in the mind-set and agenda of governments, especially those of them in the developing countries to understand the vision of a sustainable procurement well before the commencement of the much desired sustainable development programme. The two aspects must work hand in gloves in today’s modern project management.
- Target suppliers, contractors, companies, employers, and institutions, to understand how sustainability should be a priority in their supply of goods and services both before during and after the project phases. Some developmental experts have hitherto spoken of the lowest possible deficiencies and the least saving cost.

To sum up my take on modern day procurement policies, the following should be the main objectives of governments or institutional authorities:

- ✓ They must strive to maximize economy and efficiency in procurement. By this I mean the determination to establish a sustainable development project under the least possible cost.
- ✓ Governments or supervisory bodies must be able to strictly follow the designated rules and regulations governing procurement and procurement contracts. A legal

framework regulating project management remains the integral piece in every procurement proceeding. This framework offers the opportunity for stakeholders to decide following the country's needs which area sectors to invest more in.

- ✓ Host governments must promote competition among suppliers and contractors for the supply of the goods, construction or services to be procured<sup>12</sup>. In this way there will be the possibility of the desired project to be completed on time or within scheduled under the best possible methods.
- ✓ Furthermore, authorities must provide for the fair and equitable treatment of all suppliers and contractors. This eliminates discrimination and corrupt practices usually characterised in developmental projects especially those of them in developing countries. In this regard efficiency is almost guaranteed at the very beginning of any project.
- ✓ One very vital aspect of any procurement procedure and objective of government is the promotion of the integrity, fairness and public confidence in, the procurement process. The government and the entire public must be on the same footing in terms of any priority project at hand. This is because public trust often leads to transparency thus raising the integrity of the project.
- ✓ Governments or authorities in charge must foster and encourage participation in procurement proceedings by suppliers and contractors, especially where appropriate, participation by suppliers and contractors regardless of nationality, thereby promoting international trade.

#### **2.2.4: Resource Management**

According to the Business Dictionary, resource management is “the process of using a company's resources in the most efficient way possible. These resources can include tangible resources such as goods and equipment, financial resources, and labour resources such as employees”. This in a whole gives a basic idea of what resource management is all about. Under the scope of legal project management, this line of efficiency can be draw further to include a sustainable management of these resources for a sustainable development.

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<sup>12</sup> In the case of the Chad-Cameroon oil and pipeline project, the earlier withdrawer by some oil companies from the project weighted down on the credentials of the entire project. This alone casted doubt on how the entire project was proceeding. The absence of competition there proved vital owing to the fact that the two oil companies did not deliver up to the expectations of the public and authorities.

As part of this research kit, the following could act as guide principles to every resource management scheme in the context of project management and sustainable development;

- First, a resource management plan must guarantee the adequate supply and efficient use of materials, energy and land resources before, during and after the completion of the project. This means in all, there must be the possibility for the creation of wealth and well-being in societies and for future generations (the short and long term sustainable benefits)
- Secondly, the management of resources must be organised in such a manner that the risk of shortages, scarcity or economic malice would not act as a redressing factor to the success of the project.
- Also, the management and exploitation of resources must be carried out to avoid damages to the environment and ecosystem.
- Again, a successful sustainable management process must visibly demonstrate a fair distribution of resources depending on the nature of the project and in some cases, an equal distribution of the project burdens.

### **2.3 Overview of the Chad-Cameroon Oil Pipeline Project.**

The Chad-Cameroon Oil Pipeline Project which stand out as our focal example where analysis shall be drawn which involved a unique public-private partnership consisting of a consortium of oil companies, the government of Chad and Cameroon, and the World Bank. The main goal of the project was to drill and transport an estimated one billion barrels of oil from southern Chad through a 650-mile-long (1,070 kilometer)<sup>13</sup> pipeline across Cameroon to off- loading facilities at the coastal town of kribi on the Atlantic Ocean. Of cause apart from this main goal, all separate parties had their individual objectives which we shall later determine.

To better understand the context of this project, it is worth describing the various geographical locations and political position of the two countries.

**2.3.1: Chad:** Chad is a landlocked country with a population of approximately 7 million in the central African region. It is one of the poorest countries in the world, with a per capital

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<sup>13</sup> See Figure 2.1 bellow, indicating the mapping of the construction trench from southern Chad to the coast of Cameroon.

gross domestic product of \$230. 40% of their national products are derived from agriculture and primarily livestock. Cotton and food products are grown in the wet season. In 1995, as Chad was emerging from a protracted era of economic and political crisis<sup>14</sup>, the government embarked on an aggressive program of macroeconomic reform supported by the World Bank, the European Union, France, and Switzerland. The primary objective of this structural adjustment program was to institute meaningful economic reforms that would lead Chad out of the economic problems that had also paralyzed its political life. By 1999, Chad had made substantial progress in its reform efforts, although its weak management capacity precluded them from abiding completely to the reform commitments. Since 1995, Chad has experienced annual growth rates of 5% and has maintained low inflation. But these reform efforts have not begun to address the chronic problem faced by so many: poverty. In fact, those who have suffered the most adverse effects of economic reforms have been those with the lowest incomes<sup>15</sup>. The country still relies tremendously on international investors for growth.

**2.3.1.1: Exploration History:** “In Chad, exploration wells revealed the presence of oil in 1975, but efforts to develop this potential were halted in 1981 because of a civil war, which had started in 1979. With the restoration of peace, exploration resumed, and the legal foundation for a Chad-Cameroon pipeline was put into effect in 1988<sup>16</sup>. An agreement was signed that year between the government of Chad and a consortium of Shell, ELF (the French oil company), and ExxonMobil, which was granted an exploration permit valid until 2004. The 1988 agreement called for a thirty-year concession to develop the Doba oil fields in southern Chad and to produce and transport oil to the world market. However, on 7 February 2000, Shell and ELF pulled out of the consortium because the project was progressing painfully at a slow pace and was becoming too costly. Subsequently, Chevron and PETRONAS indicated an intention to buy the shares in the consortium held by Shell and ELF” (J Anyu Ndumbe).

A comparable analysis and criticism of the roles played by the governments of Chad and Cameroon, the World Bank, the oil companies, and other interest groups in developing a

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<sup>14</sup> Chad has suffered from political instability and internal conflict at least since 1979. When the World Bank Group embarked on support for oil development in Chad and the building of the pipeline, Chad was one of the poorest countries in the world, with a per capita GDP of about 1 US Dollar per day and a population of around 8.5 million spread over a large landlocked territory of half a million square miles (most of it is semi-desertic)

<sup>15</sup> See J. Anyu Ndumbe, “The Chad-Cameroon Oil Pipeline: Hope for poverty Reduction?” *Mediterranean Quarterly* 13, no.4(2002): 74-87.

<sup>16</sup> More on the legal foundation and exploitation history of Chadian oil can be found in [http://www.indexmundi.com/chad/economy\\_overview.html](http://www.indexmundi.com/chad/economy_overview.html)

framework for the project is part of the objectionable outcomes of this thesis. The inadequate handling of human rights issues and the poor level of supervision accorded to the “big” environmental plans remains the pivot worries of this project outcome.

**2.3.2: Cameroon:** Cameroon is situated directly to the south of Chad. It has an extensive Atlantic coast line in the south and south western parts with its neighbouring Nigeria and Equatorial Guinea. It has a population of about 20 million with an estimated per capita GDP of \$655. The country is richly endowed with natural resources- tropical rainforests, fertile soil, a favourable climate, and a variety of mineral resources. From 1960 to 1985, Cameroon experienced an average annual growth rate of 7%. Subsequently, this impressive growth rate was adversely affected by an unfortunate declines in crude oil prices in the world markets, a collapse in its terms of trade, dubious and unproductive public expenditures (bribery and corruption), and a sharp appreciation of its exchange rate. As a result, Cameroon has witness a high level of poverty especially within the peasant population despite its huge stock of natural resources (the paradox of plenty)<sup>17</sup>.

According to World Bank classification Cameroon is an HIPC (heavily indebted poor country) with total debt of \$4.9 billion and outstanding short-term debt of over \$950 million. This position placed the nation to now and then benefit from World Bank lending funds which could be visibly notice in the Chad-Cameroon Oil Pipeline project. Nevertheless Cameroon’s economy is less dominated by oil (petroleum) than many other national economies in Central Africa, although petroleum products represent a substantial part of Cameroon’s total export, agriculture (20% of GDP) and primary industry (31% of GDP) are the most significant parts of the economy, providing employment for over 70% of the population.

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<sup>17</sup> The “paradox of plenty” refers to the coexistence of mass poverty and valuable mineral resources. The notion, that abundant natural resources might be a curse rather than a blessing first emerged in the 1980s. Although such abundance should help development by providing the government and the private sector with capacity to finance productive investments and poverty reduction, most mineral-rich countries seemed to show lower economic growth and weaker governance. This “resource curse” has been attributed to the misappropriation of the revenue by an unaccountable ruling elite and to the exclusion of most citizens from political participation-through the use of the revenue to finance bribery and mechanisms of repression. The second major explanation is “Dutch disease,” that is, the discouragement of domestic production of other exportable(s) and import-competing goods by the exchange rate appreciation caused by the abundant proceeds from exports of minerals. Finally, it is also thought that abundant mineral resources are linked to civil conflict through the violent competition for control over the resources. See Karl (1997) quoted in Report No.: 50315, THE WORLD BANK GROUP PROGRAM OF SUPPORT FOR THE CHAD- CAMEROON PETROLEUM DEVELOPMENT AND PIPELINE CONSTRUCTION. Page 9 footnote 17.

In effect, the geographical advantageous position of Cameroon, together with the good history of the country's own exploitation records and imminent economic benefits made it a favourable passage ground for the pipeline construction.

To these countries (Chad and Cameroon), exploitation of the oil resource was seen as the best hope for economic, political, and social self-sufficiency, which would pave the way for a transition from a shaky subsistence existence to an industrial economy. But the striking paradox here is that what was expected to be the biggest success story in terms of mineral oil exploitation in sub-Saharan Africa turned out to be a perfect ground for mismanagement of resources<sup>18</sup>, corruption, human rights violation, environmental degradation, etc.

“The project had the potential to provide economic development, but it also had the potential to cause loss of farmlands, sustainable livelihoods, displacement of communities and the accompanying loss of cultural identities” (Prem Sikka 2011). In particular, the project posed challenges for the wellbeing of the indigenous peoples and their “right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions ... rights to life, physical and mental integrity, liberty ... right not to be subjected to forced assimilation or destruction of their culture” and the state's obligations to “provide effective mechanisms for prevention of, and redress for ... Any action which has the aim or effect of dispossessing them of their lands, territories or resources ...” (United Nations, 2008, p. 5). This paved an open path to critics and project opponents, who found enough reasons to put forth their grudges prominent among which was the political turmoil and inefficient bureaucracy in Chad. It is worth reminding ourselves that it is in a bid to better the same wrongs in future projects that this dissertation is out to project with specific emphasis on the importance of a legal framework foundation to be planted beforehand<sup>19</sup>.

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<sup>18</sup> The program also aimed at strengthening Cameroon's own capacity to manage and monitor the oil sector, including environmental risks, through an IDA-supported project. In this respect, the outcome was unsatisfactory, owing to modest relevance and efficacy (world Bank Report)

<sup>19</sup> See 1.5 above for the outlined presentation of the objectives of this write –out.

**Figure 2-1:** map of the 1,070km Chad-Cameroon Oil Pipeline from Doba to Kribi<sup>20</sup>



**Figure 2-1** map of the 1,070km Chad-Cameroon Oil Pipeline from Doba to Kribi

According to the World Bank reports on the Chad Cameroon Oil Pipeline Project, the project was executed efficiently by the private sector Consortium and completed ahead of schedule. Given the shortfall in oil production due to unexpected reservoir and well-productivity problems, revenues to the government of Cameroon were below expectations. On the other hand, with the high level of oil prices, Chad government revenues exceeded expectations. Though the investment climate in both Chad and Cameroon continue to be challenging (more so in Chad than Cameroon), the project has supported private sector development in the two countries and provided procurement opportunities to local suppliers of goods and services (See summary in Report No.: 503 15 of September 16,2009.)

<sup>20</sup> Original picture borrowed from FT.com Reports on “Chad-Cameroon pipeline: A leap into the unknown?” By David White, Published: February 28 2006 15:34



## **CHAPTER THREE**

# **METHODOLOGY**

### **3.0 METHODOLOGY**

*This chapter discusses the research methodology of the dissertation. This will be analysed alongside the purpose, the approach and the research strategy which by same method allows a comprehensive legal presentation to the distinctive classification of themes at each project stage.*

### 3.1 Categorisation and placement of research:

The categorizations of research into various types depend largely on the nature of the purpose and the research problem. According to Zikmund 2000, the purpose of an academic research can be exploratory (ambiguous problem), descriptive (aware of problem) or explanatory (clearly defined problem). Some scholars often use the term quantitative and qualitative research approach<sup>21</sup> especially those of them in the social sciences.

Zikmund further differentiates them by stating that “an exploratory research is conducted to clarify and research a better understanding of the nature of the problem”. This makes it appropriate for such a research type to be employed when researching on a topic where there is very little prior knowledge of the research. His views are backed up by Saunders 2000, when he says that “an exploratory study is a valuable means of finding out what is happening; to seek new insight; to ask questions and to assess phenomena in a new light”. The use of such technic permits an insight understanding and not conclusive evidence to ideas. The advantage of this type of research is that it is flexible and adaptable to change.

For the second research model, Zikmund’s ideas on descriptive research were backed by Robson 1993, when they argued that a “descriptive research portray an accurate profile of a person, event or situation”. When a particular phenomenon is under study or is in a rise by its increase popularity, it is understandable that research is needed to describe it, to explain its properties and inner relationships (Huczynski and Buchanan 1991). The most important factor under this method is the ability of a descriptive research to answer the what, where and how questions without a mandatory explanation for the cause of the findings.

On the part of an explanatory research, the focal point there is to link up disjointed variables or facts. Usually this is often performed after the exploratory and descriptive research.

On the path taken by this research, if we go through our research problem and purpose, which is aim at creating a new legal path of reasoning by establishing a strong legal

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<sup>21</sup> These are two broad approaches often used in research studies. While quantitative research involves numerical representation and observation for the purpose of describing and explaining the phenomena that those observations reflect, qualitative research on the other hand involves non numerical examination and interpretation of observation for the purpose of discovering the underline meaning and pattern of relationships. Qualitative research emphasis the process and meaning that are not rigorously examined or measured in terms of quantity, amount of intensity or frequency. In contrast, quantitative study emphasis measurements and analysis of casual relationships between variables, not processes (Casebeer and Verhoef, 1997; Zikmund, 2000; McDaniel and Gates, 1996; Miles, 1994; Easteby-Smith, 1991).

framework at every project stage under this new legal project management course, then we will accept that this study is primarily a descriptive research. In effect, we are going to analyse data and information collected from the Chad-Cameroon Oil and pipeline project (representing the developing world), then make a comparative study with some selected few elsewhere in Europe (representing the developed world) and then offer a generalise conclusion to the what, where and how questions.

### **3.2 Research Strategy:**

Base on the fact that this research is streaming from a case study, that is; Experience from the Chad- Cameroon oil pipeline project, this makes the research strategy easy to be determine (Case Study Research Strategy). In further assessing this strategy, we will refer back to the research question which is: understanding project management from the legal perspective. This means that the *what*, *how* and *why* questions are the appropriate questions to use under this rightful case study strategy.

It is worth mentioning here that eye witness experience from this writer together with sample opinion from local inhabitants in project sites, ex workers and local supervisors at the time of construction of the Chad-Cameroon Pipeline form a reasonable amount of evidence in writing this research.

In other to begin finding answers to these vital questions, under this case study strategy, the following elements will be put into consideration under the legal framework approach to project management: a) International protocols, treaties and agreements, b) Regulatory frameworks, institutions and legislative bodies, c) governance and management policies, d) institutional development and capacity building.

### **3.3 International Protocols, Treaties and Agreements:**

One rare form of investment strategy witnessed by states in recent years is the ability of huge financial organisations like the World Bank Group to fund investment projects in the extractive sector (industries) in a bid to improve governance through the best possible use of the oil/gas revenue, in an environmentally and socially sustainable manner. Though this type of investment strategy always seems risky for the funding partners to engage in, their long term sustainability and developmental effects are usually visible and glaring when the right project management approach is being followed by the host countries and companies, making any available risk worthy to take.

The international community by their standards are aware of the importance this form of investment strategy and the resurgent risk it might involve. This explains why certain amount of care and attention are usually emphasised when drafting investment protocols<sup>22</sup>, treaties and agreements with both host countries and involving companies. Under the ‘new’<sup>23</sup> International Legal Framework on Foreign Investment which appears to be the main legal instrument in investment matters, bilateral and multilateral investment treaties seem to be the most common form of binding precedent. Whether the proliferation of such instruments has a direct effect on state sovereignty, and their ability to regulate in areas of environmental protection and human health safety remains a vital question this dissertation also seek to answer in this chapter.

In order to contextualise international investment treaties and agreements into the focus of this thesis; which is to lay a legal framework for a proper understanding and comprehension of project management or more precisely natural resource investment management schemes for a sustainable development, consideration will be placed on the following:

**3.3.1: Investment Liberalization:** Investment liberalization is the ability of a host country to decrease or elimination of all forms of restrictions on the entry and operation of foreign

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<sup>22</sup> The UN Charter (Article 55) promotes, inter alia, the goal of economic and social progress and development. The UN Millennium Development Goals call for a Global Partnership for Development. In particular, its Goal 8 (Target 12) encourages the further development of an open, rule-based, predictable, non-discriminatory trading and financial system, which includes a commitment to good governance, development, and poverty reduction, both nationally and internationally – concepts that apply equally to the investment system.

<sup>23</sup> “In the past, foreign investment was largely regulated domestically. In general, the only international rules that applied to some aspects of foreign investment were rules of customary international law, and their application was purely exceptional. With the adoption of bilateral investment treaties beginning in the 1980s, an international legal framework started to emerge. Both developed and developing countries were eager to negotiate investment rules in order to further transnational investment. Because domestic laws and policies can be changed unilaterally, while bilateral and multilateral rights and obligations cannot, industrialized countries have preferred to rely on treaties as a more stable basis for their companies wishing to invest abroad. Developing and countries in transition on the other hand hope to attract foreign investment through the granting of extensive investor protection in treaties. They believe that the existence of an investment treaty will influence an investor in its choice whether or not to invest and that an increase in foreign investment will contribute to rapid economic development. Whether investment treaties actually benefit potential host states is debatable” (see **Nathalie Bernasconi-Osterwalder May 2003**). A recent World Bank report refers to research which seriously questions the efficacy of existing bilateral investment treaties in assisting developing countries in attracting new investment flows. The report advises that ‘unilateral reforms to liberalize foreign direct investment (FDI) are likely to have the greatest and most direct benefit for the reforming country. Investors have many other considerations for deciding whether or not to invest into a country, including political instability, infrastructure, labour costs or the presence of skilled labour. See [www.worldbank.org/prospects/gep2003](http://www.worldbank.org/prospects/gep2003).

investment in that host country. This may include among others the opening for international trade and investment, tax reforms, inflation control measures, deregulation and privatisation.

To elaborate more on this aspect of liberalization that was also mentioned in brief under section 2.3 of this dissertation, the increase in investment liberalization today has also revealed some negative sides on the part of investors which warrant some criticism. These include among others the extensive rights and privileges which are being accorded more than ever today to them in investment contracts. Surprisingly enough International Foreign Investment law has not provided adequate guidelines in the form of rules and regulations to address environmental and social aspects link to foreign investment (at least not until 2003 that the Governance Principles on Foreign Direct Investment in Hazardous Activities was adopted at the Kiev Ministerial Conference, done “Environment for Europe” which acted as a supplementary choice for nations). As such there is (was) a loose bond when it comes to corporate accountability and corporate governance. A lot of privilege obligations and binding rights are being offered to investors by the current foreign investment rules but on the other hand these rules do not as much subject the investors to strict environmental and other human and social protection obligations. The rules do not provide other private stakeholders with any rights concerning the conduct of foreign investor partners or of the host state. In some cases, dispute related settlements are usually initiated by these foreign investors themselves which gives them the opportunity to exercise more of their rights and privileges over the host state. Most foreign investors believe that the existence of an investment treaty (bilateral investment treaty) signed directly with the host state will influence their choice whether or not to invest. And on the other hand, states believe that an increase in foreign investment will contribute rapidly to the much desired economic development which they seek. In effect, investors usually prefer to negotiate a multilateral treaty as oppose to the traditional treaty standards of the past,<sup>24</sup> which in a way accords more rights and privileges to them (investors) and leaves the host state unable to influence their activities among which environmental and social issues fall prey. Nevertheless the number of investment treaties has witness a tremendous rise in the last two decades.

**3.3.2: Investor Protection:** This involves the protection of investment against governmental action once establish in the host country. It is not very different from investment liberalization as the liberalization of trade indirectly leads to some degree of protection

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<sup>24</sup> In the past the traditional standard of treaty was based on a state-to-state standard and the settlement of disputes for example was arbitrated in the department of investment arbitration of the ICJ

accorded to investors and their investments. Investor protection prohibits the expropriation or taking of investor's assets whether through legislative or administrative measures. Some legal systems and economies have talked of indirect or "disguise" or "creeping" expropriation which are regulations and measures that aim to protect public health, nature and the environment<sup>25</sup> (Nathalie Bernasconi-Osterwalder 2003).

This research study suggests that the protection and enforcement of these laws is as crucial as their contents in the field of resource and investment project management. It holds a strong opinion that, these laws and regulations among others ought to be enforced in part by the various actors in play. This includes the funding partners and institutions, the host governments, the companies, the civil society and watch-dog bodies, and recognised public representatives. All this is in a bid to guarantee the respect and protection of individual rights and obligations in the course of the investment work.

**3.3.3: Investment Agreements:** investment agreements are individual or internal agreements usually signed between governments and foreign investors to regulate or discipline their various actions in investment activities. Legal writers sometime refer to them as "concession contracts" famous for being negotiated behind closed doors out from the general awareness of the necessary third parties. For example referring back to the Chad –Cameroon Oil Pipeline Project, there exist so many annoying and unclear negotiations between the government of Cameroon and the investor companies. For instance, the figures in the amount of compensation due for the displaced population along the pipeline track did not exactly meet the general standards established under international law but was freely negotiated and agreed upon.

The experienced gathered from the Chad-Cameroon oil pipeline project indicates that there was much paper work preparations in terms of following international policies on investment standards at least as per the final reports from the World Bank and other international bodies. Concerns were largely raised especially in the sector of the environment and nature protection. The World Bank is applauded for its efforts to raise the standard and quality of the environmental assessments<sup>26</sup> and the mitigation plans, including significant

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<sup>25</sup> See the case of Metalclad Corp. v. United Mexican States, Int'l Centre for the Settlement of Inv. Disputes, No. ARB(AF)/97/1 (2000).

<sup>26</sup> "Over the years, the Bank has been criticized for funding extractive industries without due diligence on their environmental and social impact in the societies in which they are developed. Increasingly, a group of NGOs have complained about the corruptive nature of economic rents from these projects. Local communities started to become more vocal as well. In response, the Bank implemented more stringent processes to

adjustments to project design. IFC and the Bank supported stability of the project's arrangements and operation, and played a critical role in the project by enhancing armpit cooperation between the two governments and the international oil companies.

For both Chad and Cameroon, their respective governments did apply their respective legislation on investment policies; adding and supplementing them in some areas where such was needed. However according to classified reports from concern authorities including private and independent analyst, a substantial amount of investment revenue was swindled by Chadian authorities. The "Los Angeles Times", in its December 26, 2003 edition did make a report on the lavishing of oil bonus by some Chadian government authorities. It was reported that "the Chadian government spent about \$478,000 to import 35 Peugeot automobiles from France for members of the regime. Other expenditures paid for catering and lodging for an educational conference and to renovate the Ministry of Foreign Affairs. The head of the National Assembly was given \$41,000 to be used at his discretion"

### **3.4 Regulatory frameworks, institutions and legislative bodies:**

My take on this neo-legal form of project management approach on investment for sustainable development is also based on an accessible preconceived and executable policy framework. Inspiration on this framework is drawn from the Investment Policy Framework for Sustainable Development, created by the United Nations Conference on Trade and Development in July 2012. This was developed to help governments formulate sound investment policies<sup>27</sup>. It is meant to provide guidance on investment policies, with a particular focus on foreign direct investment (FDI). This includes policies with regard to the establishment, treatment and promotion of investment. The policies are pregnant with some core values within which supplements from my legal research together form the cutting edge to this studies. While discussing the core values, I will mirror their implementation on our focal case-study example of this thesis to better emphasize their importance.

- a. The first on this list is investment for sustainable development as we earlier discussed under resource management in section 2.5. This calls for enhancing sustainable

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evaluate environmental and social impact of extractive industry projects" see report from the Center for Energy Economics on Chad-Cameroon Pipeline.

<sup>27</sup> These guidelines are designed to ensure that investment policy is coherent with the overarching development strategy of countries, enhance the sustainable development impact of investment and promote responsible investment. The guidelines further aim to balance maximizing sustainable development outcomes while maintaining an attractive investment climate. See 2012 United Nation's year book on Trade and Development

development as part of investment policies, balancing rights and obligations of states and investors in the context of investment protection and promotion, including Corporate Social Responsibility (CSR) into investment policymaking, and encouraging international cooperation on investment-related challenge.

In the Chad-Cameroon Oil Pipeline experience, though the level of international corporation could be visibly seen, (activities of the World Bank Group, together with Chadian and Cameroonian authorities with the series of investment companies) not much<sup>28</sup> in terms of corporate social responsibility could be determine as the separate level of skilled and unskilled employees had numerous complains ranging from untimely wage payments to unfavourable working conditions.

- b. Secondly, there is the need for policy coherence (country's overall development strategy). As emphasised by the United Nations Conference on Trade and Development, investment policies should be developed involving all stakeholders, and embedded in an institutional framework based on the rule of law that adheres to high standards of public governance and ensures predictable, efficient and transparent procedures for investors (Source: UNCTAD). This is one of the most important factors under this neo-legal investment strategy. First, the representation of the wishes and desires of the people or citizens presented by their civil representatives is vital. Policy coherence also means initiative investment whereby priority is offer to what is absolutely needed by the country in terms of investment needs which will overflow into other developmental sectors primarily in the long. A glaring example of this in the developed world is the country, Finland<sup>29</sup> whom in the late 1950s and early 1960s was still lingering behind most western European countries in terms of development. But following a well construe developmental policy framework, this country with the notion of the need for policy coherence in development, embark on a long term sustainable developmental policy. Today, the results are visibly gearing, counting it among one of the most developed countries of the world.
- c. Third, investment strategy for sustainable development calls for governments to indulge in public governance (see also policy coherence above) through well placed

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<sup>28</sup> A propose solution to this problem to meet up with this thesis's legal framework standards will be discussed in chapter four.

<sup>29</sup> It is worth mentioning that this thesis uses Finland to represent ideas from the developed world when making comparative examples. It also challenges underdeveloped countries of Africa and Asia to copy suit the developmental policies of Finland which relatively have very little in terms of natural resources.



institutions. Just like policy coherence, a proper governance policy must comply at both the national and international level.

- d. While laying the core policies, the UNCTAD did stressed on the need for dynamism in investment policy making. To this I will add the concept of flexibility. This means investment policies should be regularly reviewed for effectiveness and relevance and adapted to changing development dynamics. Policies must be designed in such a flexible manner to allow changes and adaptations wherever needed. In the mid-1980s, when the price of petroleum went down in the world market, most African countries suffered drastic economic downturn because they had heavily relied and invested predominantly in oil with little or no prior framework policies. Their rigid or inflexible economic policies prevented these countries from switching instantly to other sectors. Flexible and diversification is what states and economies ought to be thinking in modern project management strategies.
- e. Investment policies must see into it that while laying the entry rules for foreign investors, their operational activities should be also monitored up to the standards of international commitments and for the best interest of the public or its citizens. This should be done alongside limiting all possible negative effects. Regulating investment should be seen as a right for the state.
- f. 'In line with each country's development strategy, investment policy should establish open, stable and predictable entry conditions for investment' ( see UNCTAD for source). Stability here should not be confused with flexibility mentioned in (d) above. Stability at the time of contracting with host state is of utmost importance. Also, already established investors ought to be protected and the treatment given to them has to be non-discriminatory in nature. In our focal example, when Shell and ELF pulled out of the consortium, some of the reasons they gave to that effect was of the unstable and tied bottleneck complications surrounding the investment policies including entry conditions.
- g. Furthermore, while living up to the level of sustainability in investment as previously mentioned in (a) above, the risk of harmful competition should be minimise or eliminated in whatever form.
- h. Investment policy framework warrants the adoption and compliance of high international corporate social responsibility standards including good corporate governance responsibilities. With the increase in globalization, multilateral companies and big business investors are called upon to adopt more decent and ethical

approaches in both internal labour plus social responsibilities to employees/staff and also external policies to tackle environmental protection and emerging trends. The absence of quality corporate governance in the Chad-Cameroon Oil and pipeline Project left so many hired unskilled labour forces without paid wages or low wages in cases when they were managed to be paid.

- i. In addition, under the new investment policy framework model, there is a strong call for International Corporation by the international community to address challenges hindering investment for development. While this course had earlier seen the green lights in some countries of Europe and the United States, their assessment in the least developed countries still remain a worrying challenge. There is the need for collective efforts to tackle these challenges.
- j. Finally, under this same category is the issue of rights and obligations for both states and investors to abide. Some of these rights range from freedom of establishment to non-expropriation of investment.

This research proposes three levels to address investment policies by governments.

- 1) Strategic: this is the ability of policy makers and authorities in charge to manage the existing international protocols (IIAs)<sup>30</sup>, agreements and treaties like the exiting human rights conventions and environmental protection treaties together with national policies. A strategic harmonisation of these existing instruments permits coherency leading to the achievement of the desired sustainable development.
- 2) Commitment: The second by my model is being wise and committed to the sustainable development course by designing policies and decisions that favours its legitimate long term accomplishment nevertheless the drawbacks on current economic trends. By doing so, aspects of rights and obligations of investors and states are put into consideration as previously explained and investment goals are versioned to be accomplished.
- 3) Practicable: being practical in this sense comes with flexibility and the ability to take the right initiative when needed through practical interpretation of the treaties/protocols. For example, “governments can choose from these explicit policy options those that best suit their countries’ levels of development and respective policy objectives. Among others these include: adjustments of existing IIA provisions

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<sup>30</sup> This is widely referred and known to as International Investment Agreements (IIAs)

( like making them more sustainable development-friendly through formulations that safeguard policy space and limit State liability); new provisions in IIAs (e.g. to balance investor rights and responsibilities and to promote responsible investment); and the introduction of Special and Differential Treatment (SDT) (e.g. clauses for less-developed Parties to calibrate the level of obligations to the country's level of development.”<sup>31</sup> (See the investment Policy Framework for Sustainable Development for updated source)

### **3.5 Governance and Management policies:**

Although it is often stressed that states and governments must construct their internal framework policies and laws to comply with international standards, treaties, agreements and protocols as seen in the previous discussions, it must also be underlined here that the protection of human rights, control of corruption, enforcement of the rule of law, and the management of the economy for the benefit of economic and human development are the fundamental responsibility of a country's government, and not of the international institutions that may support its stated objectives and intentions. That said, discussions around governance and management must center on how well a particular state or government is able to strengthen governance including arrangements for public resource management of goods and services based on the rule of law.

This research does not limit governance to the role of state agencies alone, but also includes recognition of non-state actors in governance such as private consultants; firms that deliver public goods; and nongovernmental organizations that provide welfare services. It also can be used with reference to activities of international organization such as the International Monetary Fund (IMF) and World Bank, in monitoring, offering expertise and financial assistance to states as was the case in the Chad-Cameroon Oil Pipeline Project. This research further looks at governance principles in two dimensional angles:

**3.5.1: *Economic Governance*:** it is no hidden truth that the global economy suffered economic downturn since 2008 and is still at the verged of recovery. This no doubt has reshaped the way states and other non-state actors go about handling governance and management issues especially in sensitive areas (investment) of the economy that act as kick-starters to overall economic growth- the natural resource sector; at least for those countries

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<sup>31</sup> [http://en.wikipedia.org/wiki/Investment\\_Policy\\_Framework\\_for\\_Sustainable\\_Development](http://en.wikipedia.org/wiki/Investment_Policy_Framework_for_Sustainable_Development)

who rely heavily on natural resources for economic development. As such governance policies in the extractive sector must be offered the absolute attention they deserve. It is always the duty of the government of a country under the auspices of the ministry in charge of the economy to guarantee updated economic governance policies. Under this same very body, economic governance should lead to an added value to the gross development product (GDP) of the country resulting from the investment activity whether direct or indirect investment. This, however is not the sole indicator of economic governance but the underline factor here is that an efficient management scheme in placed to cater prioritised investments areas (natural/extractive resource sector) is an indicator of good governance as subsequently revealed in GDP statistics. Other forms of economic governance covered by this research include job creation indicators (labour impact). This include the total number of jobs created by the investment activity both direct and indirect or induced including dependent and self-employed job creation resulting from that particular investment. Job creation also comes with generation of household income and wages and assessment of livelihood of the benefactors. Good economic governance policies emphasise the importance of technological transfer and improved employee skill level. Locals and citizens must benefit from the economic investment activities through their employment and subsequent training and transfer of technological knowledge. Following this policy, non-discrimination should reign through employment of women (with comparable pay) and disadvantageous groups. Their health and safety also remains a priority by this same governance standard. Other economic governance indicators include social impact assessment wherein there must be some reasonable amount of people uplifted from poverty through improve wages above subsistence level. This means provision and easy access to basic goods and services at affordable prices. Economic governances in today's investment world must tackle issues of the environment. An example worth emulating for developing countries is the introduction of "carbon credit revenue scheme"<sup>32</sup> in most developed countries of Europe. Last but not the least on my list of economic governance is the aspect of local development. Governments must ensure that the long term impact of an investment activity is felt in the locality of the investment project.

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<sup>32</sup> By this scheme, there is the control of the release of carbon dioxide and other harmful gases into the atmosphere through compulsory implementation of binding regulation and necessary tax deductions or credit revenues to that effect. It is also worth mentioning here that even though individual countries have developed internal policies to tackle environmental pollution by harmful industrial gases, there are existing bilateral and regional agreements tackling same challenges which have substantially provisioned for their control. In 2010, representatives of states at various levels met in Copenhagen in a conference on climate change and environmental pollution and debated extensively on issues of a sustainable environment in development.

This includes the construction of basic necessities or the development of local resources for the inhabitants of the locality within the project zone to improve their livelihood<sup>33</sup>.

**3.5.2: Financial governance:** financial governance remains one of the most vital challenges for governments especially in the less developed countries. There, it is not uncommon to hear frequent reports of mismanagement of investment funds or even their embezzlement. In any investment project whether financed by international financial bodies or national treasury coffers, a strong government commitment and growing compliance with budgetary rules is important. Therefore, what key elements of financial governance need to be understood by states under this neo-legal framework approach to managing investment projects? One of such elements is the risk factor. A qualification of my risk factor would include the notion of “reasonable risk factor”. This means that though it is important for both states and financial support bodies to take risk in financing investment projects, such risk itself must be reasonable enough to guarantee long term development objectives. A “reasonable risk” by this research is one which after a theoretical and practical assessment of the developmental project, not minding the political and economic factors of a given polity at a particular point in time, is still worth financing, as a way of assisting and achieving sustainable development in a country or region. Financial matters and regulations must be adequately enforced by impartial, competent and efficient public institutions, which is as important for policy effectiveness as policy design itself. These financial policies aiming to address implementation issues should be an integral part of the investment strategy and should strive to achieve integrity across governments. This situation even becomes more diligent when managing projects commanding large capital finances as was the case with the Chad-Cameroon Oil and Pipeline Project. In fact, experience has shown that financial governance in the extractive industrial sector demands total diligence both in management and control. This challenge even became more so after the recent global financial crisis stroke, wherein, major financial banks of the world found themselves bankrupt necessitating huge financial bailouts of some and nationalisation of others as the case warranted. This therefore means that whatever decisions are made to address this global financial problem will certainly have an adverse effect in the way states, governments, international bodies and private consortiums go about

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<sup>33</sup> Source “Indicators for measuring and maximizing economic value added and job creation arising from private sector investment in value chains”, Report to the G20 Cannes Summit, November 2011; produced by an inter-agency working group coordinated by UNCTAD.

handling governance issues. In effect, after the Basel III Accords<sup>34</sup> these various group of actors have added more meaning to their policies and decisions regarding governance policies. Also staggering is the fact that with the advent of globalization, banking activities are no longer confined to the borders of any individual country, thus the need for international cooperation. This no doubt has reshaped the internal financial governance in some host countries especially when foreign or international investors “come knocking”.

### **3.6 Institutional Development and Capacity Building:**

This section looks at the way forward to establish the legal framework ideologies analysed in this research to another level to ensure a lasting legacy for sustainable investment projects in the extractive sector. By this I mean the ability to promulgating the right laws and ensuring their ratification, bringing national laws and practices into conformity with treaty commitments, decentralization strategies like strengthening local authorities and their associations, encouraging local participation and civic engagement to understand their opinion also count, the ability to prevent or manage disputes that may arise in investment projects, creating a review and supervisory commission to verify periodically the extent of achieving the desired results in terms of investment attraction and enhancing sustainable development, and most importantly ensuring a conducive atmosphere that permits the flow of information and communication.

Haven ascertained the fact that economic and social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, it is but normal that the right technics and strategies are put in place to ensure a long last beneficiary effect. This can only be achieved through a well-structured institutional development and capacity building policy. Also, if we accept that when the right managerial skills are permitted by way of outbound legal principles under the modern day investments in

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<sup>34</sup> Basel III, published in 2010, is the most recent Accord developed by the Basel Committee on Bank Supervision (BCBS). In its role as the international advisory authority on bank regulation, the BCBS has promulgated guidance on issues critical to ensuring health in the banking systems across the world. One such issue, and one that played an important role in the recent global financial crisis, is the regulation of bank capital. Addressing this issue has been an on-going process for the BCBS over the past twenty years, and has resulted in the promulgation of capital adequacy standards that national regulators can implement. These standards are known collectively as the Basel Accords, named after the city in Switzerland where the BCBS resides. The Basel Accords have caused disagreement at times, but they are nevertheless important to the formulation of regulatory policy relating to bank capital. In all, the BCBS has produced three such accords. Each Accord has purported to improve upon the previous one, but early indications suggest that Basel III is not flawless and so it will likely not be the last Accord. **Source: See THE BASEL CAPITAL ACCORDS BY JOE LARSON APRIL 2011.**

sustainable development projects (oil and gas), then it is but normal to bid for their sustainability through good institutional development and capacity building policies.

First, governments must ensure that international investment projects wherein international financial bodies are involved together with international companies should comply with the right laws and agreements. They (stakeholders) must have the ability to freely negotiate and ratify these laws on behalf of their countries. This should particularly be so for the less developed nations who more often than not put their self-interest first. Also they must bear in mind the distinction between the conclusion of an agreement and its entry into force. This is because the legal rights and obligations deriving from it do not become effective before the treaty has entered into force. The time lag between the conclusion of an IIA or a bilateral/multilateral investment treaty and its entry into force may therefore have implications, for both foreign investors and their respective host countries.

Another aspect of institutional development and capacity building this research is out to uphold is the ability of host governments and authorities to freely harmonise national laws and practices into conformity with the IIAs and other international treaties. “As with any other international treaty, care needs to be taken that the international obligations arising from the IIA are properly translated into national laws and regulations, and depending on the scope of the IIA, e.g. with regard to transparency obligations, also into the administrative practices of the countries involved” *See Investment Policy Framework for Sustainable Development page 64.*

To shed more light on the issue of decentralization, institutional development and capacity-building should aim at empowering all interested parties, particularly local authorities, the private sector, the cooperative sector, non-governmental organizations trade unions, and community-based organizations, to enable them to play an effective role in large scale investment projects, especially those in the extractive sector which usually play a key part in the lives of citizens of the entire country. This is an essential tool for developing countries and countries with economies in transition which if properly managed the aspects of accountability, transparency and broad-based public participation would become a reality. Experience from the developed world has shown that giving “power to a people” (citizens) is a strategic aspect of participatory development and an aspect of capacity building which should not be undermined. In effect, this is a strong call for the international community to

help these developing countries to develop their capabilities, identify and assess their institutional-building priorities and strengthen their management capacity.

As is the case with most investment projects, the frequent occurrence of disputes remains inevitable but how well the authorities are able to manage the problems is what capacity building is all about. Again this research gives much credit to the Investment Policy Framework for Sustainable Development 2012 report published by the United Nations Conference on Trade and Development UNCTAD, and refers the reader<sup>35</sup> to same from where I quote; “...this involves assuring that the State and various government agencies take account of the legal obligations made under investment agreements when enacting laws and implementing policy measures, and establishing a system to identify more easily potential areas where disputes with investors can arise, and to respond to the disputes where and when they emerge...” where finally the dispute becomes a reality, how well states prepare themselves to manage the dispute effectively and efficiently remain also a key aspect of the institutions in-placed and the their capacity to act accordingly.

A modern aspect of institutional development and capacity building in today’s reality world is the issue of information communication. Where there is an existing barrier to this, the desired long term sustainability itself cannot be attained. In the Chad-Cameroon project for example, the transmission of information from the authorities in charge to the locals was poor or inappropriate. This explains why attempted boycotts and strike actions were inevitable from local hired labour force and some sub-project controllers who did not effectively know what was happening at each point in time. As such the question is; if there are communication barriers when the project is still at its construction phases, what will be the situation upon its completion and total handing to the local authorities for control? This in sum would affect issues of transparency and usher in corruption related claims. In effect, capacity building should empower all category of authorities to upgrade, develop and maintain their information infrastructure and technology, and encourage their use by all levels of government, public institutions, civil society organizations and community-based organizations, and consider communications as an integral part of the developmental strategy

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<sup>35</sup> This writer/researcher holds the opinion that the Investment Policy Framework for Sustainable Development report produced by the UNCTAD remains veritable practical and academic tool for lovers or scholars of investment and developmental studies to clinch on. Its simplicity in language and style cannot be over emphasised thereby making it an invaluable referential piece to rely on. I recommend various governmental authorities to consult diligently in the choice or course of their investment projects at hand.



in this neo-legal project management framework; the emphasis over this is even more likely based on the speedy globalisation of our world and the rise of modern electronic communication tools which permits an easy dissemination of information.

Part of the existing legacy<sup>36</sup> of a project lies in its institutional development and capacity building policies. The absence of this slows down developmental goals of an investment project. This is even more likely the case in international investment projects in the gas and oil sector wherein large amount of capital flows are required and millions of lives are deemed to be affected.

### **3.7 Legal Dimensions in Project Phases:**

Under this section, our main focus is to go into the three phase structuring of projects in general (at least as understood by the lay man) and point out the legal issues/dimensions which are often the key elements empowering the projects. Bearing in mind that other factors and not just the legal framework qualities alone, account for the smooth handling and efficient delivery of scheduled investment projects, this research however does not go into details of those factors. This is because it is understood from research finding methods that lack or shortage of ‘legal attention’<sup>37</sup> seems to be the handmaid to poor quality project management and delivery.

**3.7.1: Pre-Construction/Exploitation/Implementation Phase:** the identification and classification of needs are crucial aspects of the life cycle of projects. This includes infrastructural requirements, legal and institutional framework mappings. Setting up this straight is important at the very early or better still planning stages of a project. The legal framework at this phase should ensure active participation through the easy access/ flow of information and communication. In other words, the legal instruments that govern any investment project be them bilateral, regional or internal should be made assessable at all times and strictly followed. The institutional framework created in this stage should permit active participation by the various project heads, and representatives of the beneficiary population (NGOs, civil society groups and local authority heads). In effect, active

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<sup>36</sup> Finland for example have realise a near future scarcity of oil and gas resources. As such, in a bid to curb the devastating effects, they have emphasized on the importance of institutional development and capacity building programme in their current projects. The deal is that infrastructure and services related to mobility and logistics are created and supported by public purchases, subsidies and experimental pilot programmes, among other steering methods. The hope is to create an attractive ground for prospective investors.

<sup>37</sup> Legal attention comprises laws, agreements, petty internal rules, transparency, accountability, corporate responsibilities, dispute settlement, etc.

participation of all possible stakeholders in the preparation and implementation phases is as important as completing a successful investment project. Also it is during the project planning stages that issues of institutional development and capacity building are discussed. This is because the developmental goals of the project must be preconceived and strategized as part of the plan; in this case, a sustainable development plan.

**3.7.2: The Construction/Exploitation/Implementation Phase:** under this head, our research focuses on the aspect of Corporate Social Responsibility (CSR) as the keynote factor necessitating binding compliance for a successful project management scheme. This is because; CSR is pregnant with legalities ranging from employer/employee relations, to external environmental, human and social conditions. Thus, as soon as an investment construction project phase begins, project authorities must instruct themselves to implement CSR requirements. At this juncture, this research proposes the following means/ methods for a complete and successful implementation of the CSR by investment firms at the construction/implementation phase of an investment activity.

- Firstly, during the implementation phase, investment companies (oil consortium in this case) could still be encourage to maximise profits while developing policies which are beneficial to the society or nearby public even if such policies are affecting the short term interest of the company. The solution can also come from pressure from shareholders who must not always desire immediate profits<sup>38</sup> but must see and demand the need for sustainable growth in profitability thereby forcing the managers to take up such policies. This might just lead to the replacement of incompetent managers/project heads and the putting in place of an executive body whose personal incentives are geared towards both CSR and long term profitability.
- Also, on a strong legal note, companies have and ought to be operating with the notion that: “they can do well by doing good principle”<sup>39</sup>. This entails

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<sup>38</sup> Scholarly reviewed articles have summarised the problem in some cases seem to be that the executive are either incompetent or are putting their own interest ahead of the company’s long term interest. For example an executive board or management team might be unwilling to take up CSR ventures or even introduce environmental friendly products that might jeopardise not only their position but also the short-term financial performance of the company and thereby affecting the profits even if he realises taking such risk would have a positive long term benefit to the company

<sup>39</sup> See, “Doing well by doing good”: A leader’s guide. September 2013, by Mary Brainerd, Jim Campbell, and Richard Davis.

sacrificing some profits through development of strict legal rules which will help or facilitate the implementation of CSR by the company heads.

- Again, just to drift away from the legal line of thoughts, though it is widely accepted that CSR are costly, like for example reducing pollution caused by manufacturing is costly and weights on the profits of the company or again paying workers more wages and charging less for the products from consumers in a bid to reduce poverty is very costly for the consortium. Base on this research paper findings, firms can still be encourage to carry out such ventures whose long term benefits are enormous if the policies are well planned in terms of securing a motivated labour and a secured and ready market who by now belief in the quality of services. In other words CSR if well implemented acts like incentives for both the workers and the consumers. Also a well strategies policy though affecting the short term profits will certainly led to long term profitability from an already guaranteed and trusted market. Nevertheless this is not an appeal for investment firms to always strike a balance between profits and public good (CSR). It should only be viewed by these firms as a means to limit the negative effects of their investment/ production activities and also a measure to assist in corporate contributions to community, and community development.
- This research also proposes the empowering of a strong judicial body to ensure absolute CSR compliance by investment firms. This entails putting in place judiciary services which are independent and empowered with authority to ensure strict application of CSR policies and where possible met out the necessary sanctions (like fines and banns) to companies for non-implementation. Another possibility is that international regulations could be structured in such a manner that reduces the ability of corporations to sue states in investment dispute in trade or investment treaties. The desire for CSR protection should always be at the core of these treaties and ought and should be respected. This proposer is coming from the backdrop knowledge that the government is the only institution that can back-up a society's interests as a whole, thus this seems to be the most important and primary starting point for an effective implementation of CSR if well followed and supervised.

- Also under the legal dimension in the implementation phase of an investment activity, civil society activist and non-profit organisations must advocate for adequate implementation of CSR by multinational investment firms existing in their countries. They can effectively do this by working in collaboration with governmental stakeholders to ensure that the regulations are adhered with. Our research therefore suggest that to add more to this action plan, civil society activist must take vigorous action including direct-action campaigns, (writing letters to newspapers and politicians), demonstrations, boycotts, rallies, marches, strikes, and in some cases, guerrilla protest tactics, as a means of achieving the aim of proper implementation of CSR policies which usually are well spelled out by the firms, nevertheless their lukewarm attitude to follow or implement them. Human rights concerns under CSR remain a vital factor which if not advocated for by these non-profit organisations may lead to serious violations. In places like Africa the violation of human rights by some multinational corporations has for long been noticed even though gone unpunished. Some of these actions by companies have gone on over the years and have become more of a habitual dealing requiring no protest from the public whom have somehow become accustomed with the practice and can do nothing in terms of remedying the situation. In effect, if the civil society advocates and non-governmental and non-profit making organisations can work together as mentioned, the situation of CSR may well be improved.

This research therefore holds the believe that in order to effectively supervise an investment activity project, when it is already at its implementation stages/phase, the control of the corporate social responsibility alone (CSR) of that firm or consortium company can account for about 90% success of that investment project, at least judging from a legal perspective. Other similar implementation experience would include aspects of timing, monitoring and supervision, fiduciary aspects, and procurement.

**3.7.3: Post Construction/Exploitation Phase:** under this phase, issues of how well a community, government or local authorities have been able to perform and carry on with the measures executed during the construction phase. This includes aspects of monitoring, supervision and control. Also how well governments have been able to implement most of the technical assistance project brought as a result of the investment activity is an issue

assessed in the post construction investment phase. In most developing countries, it is not uncommon to get complains regarding financial and management challenges. This is because additional required capital is usually expected from host governments to sustain and fully implement capacity building projects and other environmental and social responsibilities. The major way of realising post construction objectives is to set up and develop a management body with an independent but strong financial backing. This is in a bid to realise the desired long term project investment objectives without any dependence on the main funding bodies. With this method for example, due compensations owed to displace population would be paid. Also, there will be ready cash to finance technical support projects, and maintain or facilitate human and infrastructural improvements.

### **3.8 Possible Disputes and Resolution Methods:**

The most common of all investment disputes in the natural resource project sector is pollution dispute claims<sup>40</sup>. Even though there are numerous types of investment grievances like land encroachment claims, low wage pay, failure to compensate displaced population<sup>41</sup>, etc. pollution disputes still remain the number one worrying factor. Previous researchers have argued that in most foreign investment disputes as such, the local population usually or if not always end up on the losing side. The reasons behind this dilemma seems to lie in the content of most bilateral investment treaties which usually seem to offer as priority, extensive protection to their foreign investor partners prior to their activities and at the end find themselves unable to cope with the negative spill overs of their operations which are in no small way a threat to the existence of man, nature and the environment. This research paper therefore encourages courts and government authorities to step up their control over the

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<sup>40</sup> Chevron vs. The Republic of Ecuador is a perfect example demonstrating current pollution law suits. In that case, Texaco conducted oil extraction operations led to massive pollution of the Ecuadorian jungle with grave health consequences for the local population. Source: *Chevron Corporation and Texaco Petroleum Corporation v. The Republic of Ecuador, UNCITRAL Rules (PCA), Notice of Arbitration (23 September 2009)* ('Chevron v. Ecuador - NoA'), para 1-2.

<sup>41</sup> A demonstrative case here on failure to compensate displaced population is the dispute between CDSE vs. Costa Rica. This case concerns a dispute over the amount of compensation due by Costa Rica for the direct expropriation of a biodiversity-rich land that the investor-CDSE had acquired to develop a resort. In their judgment after listening to both parties, the arbitrary court disposed Costa Rica's argument without effectively analysing the content of the signed treaty. They stated clearly that "the purpose of protecting the environment for which the property was taken does not alter the legal character of the taking for which adequate compensation must be paid...the international source of the obligation to protect the environment makes no difference". The minimal success story behind CDSE's investment activities must have been the influential reason behind the unsatisfactory judgment. This is a clear revelation that environmental protection always comes second to foreign investment activities. And so long as the purpose of the latter are being achieved, the concerns of former can 'take care of itself'. Source *Campania del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica, ICSID Case No. ARB/96/1, Award (17 February 2000). UNCITRAL Rules.*

activities of foreign investors and uphold the assertion that human safety remains the number one priority in any natural investment project activity whether or not the economy and the investor partners are experiencing a boom.

The absence of a single global international investment agreement in the world is a big challenge to the international community and it is posing a very serious problem to guaranteeing a harmonious environmental protection by foreign investors, which most of the time work in their favour. Nevertheless the existing regional centers in Europe and the South American areas are offering their utmost best to provide harmonised governance principles for foreign direct investment in hazardous activities. An example here is the Regional Environmental Center for Central and Eastern Europe<sup>42</sup>. The principles and rules here have been incorporated as a background document for the United Nations Economic Commission for Europe. Nevertheless most investors usually prefer to by-pass the rules provided by these regional bodies and sign bilateral treaties directly with the states concerned.

This research therefore proposes some eight performance standards<sup>43</sup> under our new legal approach to project management in sustainable investments course for both investors and states to regulate or put into consideration to avoid possible disputes.

- Social and environmental assessment/management system.
- Labour and working conditions.
- Pollution prevention and abatement.
- Community health, safety and security.
- Land acquisition and involuntary resettlement.
- Biodiversity conservation and sustainable natural resource management.
- Indigenous Peoples.
- Cultural Heritage.

It is worth mentioning that putting the above factors into action at the right moment in time (each construction/project phase) in any investment project is a step closer to a successful management scheme. Also note should be taken that a well worked-out corporate

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<sup>42</sup> The Regional Environmental Center for Central and Eastern Europe (REC) is an international organisation with a mission to assist in addressing environmental issues. See [www.rec.com](http://www.rec.com) lastly visited on the 12.11.2013.

<sup>43</sup> Also compare the International Financing Institutions (IFI), part of the World Bank Group's performance standards. Also see The World Bank Group's guidelines concerning the environment, health and safety (called "EHS Guidelines") could also be considered, if certain performance standards in the existing bilateral agreement are not implemented.

social responsibility mentioned above<sup>44</sup> should be able to comprehensively accommodate all the eight performance standards listed above.

Talking about the settlement of investment disputes, the importance of the International Center for the Settlement of Investment Disputes (ICSID)<sup>45</sup> over the years cannot be over emphasised. ICSID convention, regulations, rules and case reporting system have for long reshaped the way investment decisions are being made.

If we earlier agree that empowering of a strong judicial body to ensure absolute CSR compliance by investment firms is of absolute necessity, then the existence of means or methods to solve investment disputes is even more important.

The most common of such methods is arbitration. "...a proceeding in which a dispute is resolved by an impartial adjudicator whose decision the parties to the dispute have agreed, or legislation has decreed, will be final and binding" (J E Venuales, Research Paper 9, 2012). Arbitration is also binding in the sense that no party can unilaterally withdraw from the proceedings or resort to court litigation once the parties have agreed to submit a dispute to arbitration. With an objective to encourage a large flow of capital investment, the immediate reason for this type of settlement is to maintain a careful balance between the interests of investors and those of the host States. However, those who are not necessarily part of such international convention treaty method have traditionally provided for their own dispute settlement mechanisms in the area of investment, based on such rules; there is equitable guarantee of treatment for investors in accordance with the international principle of reciprocity<sup>46</sup> and due process. Practically, how well a disgruntled group of citizens, particularly those of them in the local and remote areas where constructed investment activities have taken place can effectively challenge the investors under this very procedure is an issue of much debate. Nevertheless it is an opportunity for local NGOs and civil society organisations to always be ready to defend the rights of these "vulnerable" groups.

Another form of dispute resolution is by negotiation. This is an informal process wherein the parties attempt to resolve their differences through direct interaction. It has been noted over the years that Negotiations are often the first step in more complex dispute-resolution

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<sup>44</sup> See 3.7, (ii) above

<sup>45</sup> Cf. footnote 11 under 2.3 above.

<sup>46</sup> Basically, the principle of reciprocity states that favours, benefits, or penalties that are granted by one state to the citizens or legal entities of another, should be returned in kind. See [http://en.wikipedia.org/wiki/Reciprocity\\_\(international\\_relations\)](http://en.wikipedia.org/wiki/Reciprocity_(international_relations)) lastly visited on 1.12.2013.

activities. M. Sornarajah (2000) argues that “...negotiations can be structured in advance by determining, for example, the participants, the subject matter to be addressed, or various activities to be undertaken by the parties at various stages of the process. Such structures can be agreed upon by the parties, or imposed by external sources, such as self-regulatory instruments or legislation”.

The last by our research standard and methodology is judicial settlement. The power of the judicial courts has often been relied upon by private bodies and separate individual personnel. Research has revealed that it is not probably a good method of dispute resolution because the proceedings turn to be very complex and overburden on the part of the plaintiff/applicant. More so, if successfully completed, it might just be a means to scare off the investor or potential investors. This research therefore proposes and calls for private bodies, states and governments, representative authorities to avoid this method of dispute resolution when negotiating investment agreements under this legal approach of project manage.

Overall the touch- line conclusive view under this descriptive methodological research reveals that the proliferation of such international instruments like the International Legal Framework on Foreign Investment has a less direct effect on state sovereignty, and their ability to regulate in areas of environmental protection and human health safety. As such the so called “too big to fail” companies have the upper hand in investment related matters which explains why most important social and environmental conditions are not often respected.



## **CHAPTER FOUR**

# **ASSESSMENT AND RESULTS**

### **4.0 ASSESSMENT AND RESULTS**

*This chapter is focus on making a legal/literary assessment of the legal frame work approaches revealed in the methodology study; this time on the leading case study- the Chad-Cameroon Oil and Pipeline Project. Also encouraging under this section is the fact that the results to this study acknowledge most of the research findings.*

#### **4.1 Comparative Assessment of the Governance and Management Policies in the Chad-Cameroon Oil and Pipeline Project:**

This section tries to analyse by means of a comparative assessment method the overall governance and management climate that reign in the Chad-Cameroon Oil and Pipeline Project in order to evaluate if our above discussions on good governance and management policies were achieved there.

Previous projects of similar nature in Africa and other developing parts of the world have showed that a sudden large flow of revenue spending in the extractive industrial sector has rather led to a worsening of the governance climate. This has attracted criticism on the World Bank and IMF for financing such projects despite the risk involve. This also explains why developmental scholars have also had time to write extensively on the subject expressing their views. The situation was never going to be different for this Chad-Cameroon case<sup>47</sup>. In 1996, the Country Assistance Strategy (CAS) for Chad listed the restoration of public sector capacity as the first strategic priority under the banner of “strengthening governance, including institutional arrangements for public resource management and service delivery [and] the rule of law.” It is interesting to note that no progress has been made either in economic governance in general or in public financial governance. The former is considered even worst off since 2008 than it was when previously assessed in 2000. In assessing the overall governance situation in general in Chad, it is painful and disheartening to know that there is very little progress in that respect as revealed by some independent observant organisations like Transparency International, the Mo Ibrahim Index of African Governance<sup>48</sup>, and the World Governance Indicators. All organisations indicate the persistent existence of bribery and corruption in that part of Africa. When the World Bank<sup>49</sup> allowed the project to move forward, it was considered an apparent role model for development, because the mechanisms for managing oil revenues seemed to guarantee an effective fight against poverty. These mechanisms specified that the revenues were to be dedicated primarily to

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<sup>47</sup> This was also a major criticism by some NGOs of the Bank support for the program. (See, for example, EDF 2006 and Amnesty International 2005.)

<sup>48</sup> According to the 2012 Mo Ibrahim Index of African Governance Chad currently occupies the 48<sup>th</sup> position in Africa in terms of governance only better than Central African Republic Eritrea, Democratic Republic of Congo and Somalia.

<sup>49</sup> “in the eyes of many observers, by deciding to get involved in the oil project the World Bank was betting that the success of the project would constitute a model that could be applied more widely to poverty reduction initiatives in the developing world and one that could also restore its standing after the criticisms that had been made of its structural adjustment policies in Africa. See Eric Toussaint and Damien Millet, “La Banque mondiale dans de sales draps au Tchad”, in *Les autres voies de la planète*, no. 29 (Brussels, 2005)

improving the lives of Chad's present and future population. The failure to attain this goal has resulted in tension around the country and several attempted coups d'état by close collaborators of the president who subsequently joined the rebellion fighting the government. The governance climate in Chad can be summarised as per the following extract from the International Crisis Group; Policy Briefing "... oil has become a means for the regime to strengthen its armed forces, reward its cronies and co-opt members of the political class. This has further limited political space for the opposition and helped keep the country in a state of political paralysis that has stoked the antagonism between the regime and its opponents. As a result, there is recurrent political instability that is likely to ruin all efforts to use oil for the benefit of the country and its enduring stability. For the people who have not seen their lives improve and who are subjected to increased corruption, oil is far from a blessing..." *Source: Crisis Group African Briefing N°65 Nairobi/Brussels, 26 August 2009.*

It is nevertheless appropriate as a legal mind to judge a particular situation based on the existing laws. Does the existing legislation provide for clear and transparent governance? Looking at the situation in the Chad-Cameroon project, the practical implementation of laws in Chad is far from the actual theoretical reality. Take for example in promulgating Law no. 001/PR/1999, on 11 January 1999, President Idriss Déby of Chad reluctantly "accepted the principle of a fair share-out of the oil revenues". Thus, under the initial version of this law, 10 percent of the direct oil revenues were to be set aside "for the benefit of future generations" and paid into a savings account opened at an international financial institution. The remaining 90 per cent was to be paid into accounts at banks in Chad. The state was then supposed to spend 80 per cent of this sum on priority sectors which were listed by the law; public health and social affairs, education, infrastructure, agriculture, livestock and water; and to allocate five per cent to the oil producing region" *See, Chad: Escaping from the Oil Trap; Crisis Group Africa Briefing N°65, 26 August 2009 page 4* for source. It would only use the final five per cent to meet its routine current expenditure. The full implementation of this law was far from reality. But for the external pressure from the World Bank, the compulsory savings into international financial institutions would have been farfetched reality. In Chad and abroad, critics spoke out against Law no. 001/PR/1999, which they saw as part of a new mechanism designed to enable the international financial institutions to control the resources of poor countries (cf *Crisis Group Africa Briefing N°65 page 5*). Nevertheless this thesis would not go into political details and rivalries surrounding the entire project. Their brief

mention here is only an intention to reveal their overall impact among others, the weak legal and judicial systems on governance that this section itself is out to demonstrate.

In all, the overall governance climate orchestrated by the oil revenue from the Chad-Cameroon Project is far from accomplishing the general goals and satisfaction from both Chadian citizens and international watchdogs. Some analysts have excused the government authorities for now by arguing that they are still finding their way out from long decades of war fighting and so they need more time. Others have argued that it is rather the existence of bribery and corruption which is plaguing the country's system. From this writer's personal view point and the part followed by this research, it is rather the mismanagement of project funds<sup>50</sup>, weak internal institutions, absence of expertise, weak partnership and cooperation ties with international bodies together with the absence of a constructive legal framework and management system which seems to be the cause. There must be an organised system of rules and supervisory bodies acting as check and balances for the entire country. If necessary, the use of expertise knowledge from external source will do. One suggestion which has never been an issue of debate and which is strongly recommended by this research is the aspect of "learning and copying assistance" from more developed partners.

For Cameroon, but for the fact that the oil had to pass through its territory in a more than 1000 km underground pipeline, they had little or no problem to worry about concerning the oil revenues. It's true they are entitled to some royalties and taxable incomes which overall are very minimal after looking at some agreements signed by both partners and the expected revenue income from the entire project itself. The only worrying issue was how to tackle the environmental and social impacts orchestrated by the construction of this pipeline. No doubt huge finances were also scheduled for this purpose but how well these impacts have been solved to this present date remains a vital problem for some of the locals. This is particular so owing to the fact that the consortium together with the World Bank conducted an extensive environmental and social report survey believed by many to be one of the most voluminous environmental surveys in recent years. In its issues of financial rewards or compensations were not left unhandled. For the locals to still be crying their grievances to this day is an indication of poor governance also on the part of the Cameroonian authorities.

The table below is the present mirror reflection of the governance situation of both Chad and Cameroon brought about as a result of the oil and pipeline project. A project, which

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<sup>50</sup> Side-line to buy weapons and machineries to equipped the military to target opposition groups.

is (was) deemed by many, including its funding partners to be a model investment and development project in the natural and extractive sector; (hopes for stamping out poverty) for the rest of Africa and the developing world.

**Figure 4-1**

**Governance Indicators Percentile Rankings, Cameroon, Chad, and Africa, 2000-2012(\*)**

Country	<i>Voice and accountability</i>		<i>Political stability</i>		<i>Government effectiveness</i>		<i>Regulatory quality</i>		<i>Rule of law</i>		<i>Control of corruption</i>	
	2000	2012	2000	2012	2000	2012	2000	2012	200	2012	2000	2012
Cameroon	16	29.9	28	38.5	24	13.1	31	26	11	34.4	9	20
Chad	20	24.4	11	9	29	6	19	13	20	27.4	22	7
Rest of Africa(**)	30.5	41.5	32.6	38.9	27.7	29.5	29.9	28.1	29.7	47.6	32.5	35.8

*Source: 2013 Ibrahim Index of African Governance*

(\*): Based on the relative scores, countries are rank by percentile on a worldwide basis with higher values indicating better ratings. For example, a percentile of 70 on a given dimension means that 70% of countries score worse and 30% score better than the country in question. The indicators for 2013 were not available at the time of writing.

(\*\*): This statistic is drawn from 52 African countries.

In the above table, a closer look at the dimensional scores reveals that the overall governance climate in Cameroon is a bit better than that of Chad. Nevertheless this is not as a result of the managerial benefits she made from the partnership project with Chad. Other internal factors as such do account for the country’s overall slide improvement. On the other hand, majority of the table scores for Chad pathetically indicate an overall worsening of the governance climate beginning from the year 2000 when they dream of the exploitation of their rich Doba oil region became a reality. Since that period up to 2012, most of their governance indicators have witness paradoxical low values. This is because the a poor management of the entire project characterised by mismanagement of project funds and resources, bribery and corruption, embezzlement, human rights and environmental negligence, abuse of natural and aquatic space, non-compensation of displaced settlement, non-implementation of risk management schemes, social hazards, delay deficiencies, and the non- implementation of strategic development planning, etc.

A concluding remark on this comparative assessment indicates that the qualities of both economic and financial good governance as discussed above have not been adequately fulfilled in the Chad Cameroon Oil and Pipeline Project. In Chad, paradoxically a project which was supposed to change the lives of the citizens in the entire country has rather turn up to enhance a perfect atmosphere favourable for mismanagement, bribery and corruption, just to name a few. This is surprising and deem paradoxical because a project of such magnitude and grandeur with such high ratings as a model example and a medium to express the possibility of another form of international investment via the extractive sector turned out to rather diminish the overall governance climate of a nation. Not entire by any fault though of its funding partners and oil consortium but from the poor handling by the country's (Chadian) authorities. On their part, Cameroon found another room to show the world why they had twice previously top the chart as the most corrupt nation in the world from their failure to implement a well worked out environmental and social scheme entirely financed by the funding bodies. It was a failure because field experienced gather from locals around the project site did indicate that majority of the displaced population were neither compensated fully nor were they provided with replaced constructed sources like wells and potable waters to replace the polluted natural sources. Others are yet to start enjoying the benefits of long term sustainable development spill overs promised to them by the project coordinators at the time. This research nevertheless still strongly upholds and abides to its qualities of good governance in this neo legal form of project management in the natural resource investment sector.

#### **4.2 Research Results and Implications:**

The results to be revealed here are drown from both on- the- field research findings and general assessment made of the course. The attention of our readers is drown to the point that some of the results predict future implications/consequences not only for the two model country examples used here but also for potential rich oil resource nations willing to engage in similar line of investments.

Consider the following statement from Crisis Group African Briefing N°65 Nairobi/Brussels, 26 August 2009, on the future results of Chad's oil "...The initial political obstacles to oil development are partly explained by the fear that this resource could, in the long term, become a fresh cause of instability in the country, rather than a special tool for

development. This fear is rooted in the theory of “Dutch disease<sup>51</sup>”, which posits that a resource such as oil invariably has a destabilising impact on the socio-economic equilibrium of the producing countries.” Perhaps Judging by the governance assessment made above, this assertion is more than closer to the truth. Neither of the two countries (Chad and Cameroon) has been lifted out of underdevelopment rather it has caused economic disparities. In Chad for example oil revenue resources have rather drifted the country into civil war. As earlier mentioned, the ruling government there has been able to build up its military strength against opposition groups. Some might argue that this had nothing to do with the management of the project but on the other hand, it has everything to do with it, judging from the legal and political atmosphere which reigned at the time of the project construction. Laws were being hesitatingly legislated only after considerable amount of pressure from the project funding partners. This research concludes that; had it been the Chadian authorities were willing to incorporate transparency into the project, they would have prepared a “favourable path” for both the oil consortium and the funding partners to effectively carry out the investment project in the rightful legal manner. On the part of Cameroon, the creation of the pipeline which cuts across road networks, farms buildings landed property and streams has caused a lot of damage to the environment and nature, thereby affecting agriculture, livestock herding and fishing which are the traditional economic mainstay of most of the local population, especially those of them in the center and south regions. Even though on paper, an extensive environmental assessment was conducted with funds and compensation side-lined for affected persons; field research did prove otherwise, judging from some disheartened youths in the southern localities along the pipeline corridor who say their lives would never be the same again owing to the loss of their rich cultivated farm land for the pipeline construction passage.

It would be unfair however to say that the project was a complete mess and should not entirely receive some praise or use out as a model project for future reference. This is largely so owing to the technical and financial success of the project which stated benefiting a lot from oil money earlier than anticipated due to a rise in the prices of oil revenue. The only worrying contrast comes from the implementation of the poverty reduction program, governance, expenditure management, and institutional aspects of the program; all of them, being aspects criticised by this thesis while sounding a legal note of caution for future types.

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<sup>51</sup> The “Dutch disease” theory refers to the difficulties that faced the Dutch economy as a result of the exploitation of natural gas reserves in the north of the country.

The project also no doubt created employment and other similar benefits like training, supply development, infrastructural improvement, and community donations by the main project operators. However what this research “cries loud” is the fact that more is needed and still needs to be done when assessing the plight of the people of both Chad and Cameroon with the financial bounty splashed in the project. It suggest that, even the least individual living in the nooks and corners of Chad could be a beneficiary from a project of such magnitude if and only if the right legal project management skills proposed in this research were put in place. The mistakes made hear must be revealed as such, for them not to be copied in future by potential oil and natural resource nations desiring to engage in similar investments; at least if they are to someday be associated with the attributes of a developed economy.

The project did indicate that transparency is a major factor that must not be taken lightly in any investment project especially in the extractive industrial sector. The experience from the Chad-Cameroon project shows that it is vital for developing countries to first of all address this issue of transparency by their own institutional and administrative capacity before trying to introduce the much sophisticated measures discussed under this research standard.

Also the efforts of the World Bank must be applauded and encourage despite the heavy criticism meted on them for their risky engagement in the project of one of the most controversial and unstable countries in recent times-Chad under the banner of poverty reduction. Whether or not this Bank strategy will be implemented again in future on similar investment projects would largely depend on the long term revenue outcome envisage in this current project. Nevertheless their presence is very vital in the formulation of new investment agreements and with better chances of enforcement. Results from the project showed that the Banks’s corporation with IFC (International Finance Corporation) provided funding for the sustainability of some of the capacity building projects. An effort which also must be applauded as it remains a sign of hope for future investment projects.

The overall program outcome must be considered unsatisfactory, when assessed against the stated core objective of reducing poverty and improving governance by the best possible use of the oil revenue in an environmentally and socially sustainable manner. Minor successes were noticed in the environmental and social aspects coming from the external



monitoring sources, even though in practical reality, majority of the local inhabitants are still facing the ills of the project and are pleading for external intervention.

## **CHAPTER FIVE**

# **RECOMMENDATION AND CONCLUSION**

### **5.0 RECOMMENDATION AND CONCLUSION:**

*In this final chapter, efforts are being made by looking back at the ideas and research findings discussed under this legal understanding of natural resource investment study to propose some recommendations for all acting partners involved. The research results also offer an opportunity to draw certain conclusions while also paving the path for future research in the field.*

## 5.1 Recommendations:

The recommendations made here are coming under the backdrop of knowledge that host governments, investors, funding partners, local and civil representatives, non-governmental organisations and other interested project participants all have rules to play in any meaningful sustainable development efforts. This is even more so when it comes to natural resource investment projects; not just because of the economic value of these resources and how their exploitation might change the developmental status of a country, but also because the host community often find reasons for their long lasting protection. As such, the recommendations made here are only a guide which thereafter requires incorporation/implementation into the project management framework schemes of developmental actors. They might not be all the way scientific, but their holistic legal understanding is what this research hopes and calls for.

With this introductory note at the back of our mind, as part of the process to ensure a successful project management course in natural resource investments, the following should be considered:

The first lines of recommendation here is for host governments, states and project authorities both local and foreign to device, examine and adopt policies and legal frameworks right at the very beginning of project planning, that will subsequently guide regulate investment works<sup>52</sup>. The notion of “too big to be regulated” must be wiped out from the mind-set of some international investors. This generally is the overall point stressed out in this thesis paper. This in other words also means that the various mentioned authorities must be proactive rather than reactive to guideline project specifications and needs.

Secondly, an effective review and revision of the appropriate legislation to increase autonomy and participation in decision-making, implementation, and resource mobilization and use, “especially with respect to human, technical and financial resources and local enterprise development, within the overall framework of a national, social, economic and environmental strategy, and encourage the participation of the inhabitants in decision-making regarding their cities, neighbourhoods or dwellings.”<sup>53</sup> In this regards, each group of persons

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<sup>52</sup> A leading example of such device strategy was effectively implemented in Finland under the gas infrastructure project referred to as the Balticonnector; an 80km pipeline which serves to interconnect the Baltic States and their markets. A smooth and proper lying of the investment legal framework permitted the easy planning of investment activities.

<sup>53</sup> UN document: The Habitat Agenda chapter IV.

sees the importance of their respective contributions which in no small way eliminates the wanton complains of mismanagement in investment projects.

Thirdly, in order to improve on the weak management performance in natural resource investment projects, the capacity of local authorities should be strengthened to permit the private and community sector in establishing local priorities and environmentally sound standards for infrastructural development, service delivery and local economic development. The strengthening of this authority includes policy dialogue among all levels of government and the private and community sectors and other representatives of civil society to improve planning and implementation. By doing this, local authorities are also taught the mechanism of managing revenues to live up to the sustainability of investment projects and other capacity building projects therein. Lessons from the Chad-Cameroon Oil and Pipeline Project reveal the lack of transparency and effective corporation ties between project actors and local representatives to be the existing cause to the miseries of the affected and ‘forgotten’ local inhabitants along the pipeline passage who lost most of their life saving benefits.

Furthermore, in a bid to eradicate the wanton corruption characterising construction and investment projects of this nature and particularly in developing countries, the various actors as earlier mentioned are called upon to collect, analyse, evaluate and disseminate all necessary information, making sure that scheduled funds are utilised as planned and all necessary feedbacks are made in terms of investment spending. In this way, governance, transparency, accountability, responsiveness and active participation of both community and state authorities is seen in the management of resources.

In addition, one of the most effective measures to strengthen governance in international investment projects is to tighten up the cooperation ties between central/ local network authorities with international associations, experience developed countries and relevant global organisations. By permitting this, the possibility of training, access to reliable information<sup>54</sup>, exchange of experience and the transfer of technological know-how and expertise are all assured possibilities. The sustainability of investment projects and how well communities are able to manage capacity building projects all depend on the amount of experience gathered from the experienced partnerships.

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<sup>54</sup> For example Information concerning compensation for involuntary resettlement and damage caused to cultural property some of the aspects which must be made clear to local communities.

Also, in the social domain, project heads and government authorities are encouraged to uphold human rights qualities in their investment agendas. They can effectively do this by removing the barriers to participation by socially marginalised groups and promoting non-discrimination legislation. This means recruiting local labour (youths) without discrimination in project works. This also means promoting equality and equity, incorporating gender considerations and the full and equal participation of women, and involving vulnerable and disadvantaged groups<sup>55</sup>, including people living in poverty and other low-income groups, through institutional measures to ensure that their interests are represented in policy- and decision-making processes and through such techniques as advocacy training and seminars, including those that develop mediating and consensus-building skills that will facilitate effective networking and alliance formation<sup>56</sup>. This recommendation again stems from revelations witnessed in the Chad-Cameroon investment project.

More so, under this legal framework approach to investment project management, the judicial rights of the people must stand a chance against being violated. Scott, W. R., Levitt, R. E., and Orr, R. J. (2011) argue that there should be access to effective judicial and administrative channels for affected individuals and groups so that they can challenge or seek redress from decisions and actions that are socially and environmentally harmful or violate human rights, including legal mechanisms to ensure that all State bodies, both national and local, and other civil organizations remain accountable for their actions, in accordance with their social, environmental and human rights obligations.

The aspect of mediation as a means of settling investment disputes discussed in chapter three above is strongly recommended. Mediation itself must be free and fair. Decisions made should be binding and enforceable. Some developmental study researchers and environmentalist have hitherto called on the international law community to establish its own tribunals at regional and sub-regional levels, empowered to entertain investor to state disputes and for the need to guarantee fair and reasonable settlement to social and environmental worries or act as an arbiter in the event of such disputes.

Investors should be encouraged frequently to conduct independent assessments to ensure that their operations meet all legal and regulatory requirements. In this way, they

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<sup>55</sup> An example of a disadvantageous group mention here are the pygmy inhabitants of a local community village of Bakola near the southern region of Cameroon. It is particularly sad to mention that this group of people were discriminated against at the time of recruiting unskilled labour for the digging and construction of the underground pipeline tunnel due to their physical limitations

<sup>56</sup> Ibid 53

themselves will be able to tackle more than 80% of any social and environmental hazards. Independent assessment also entails investors to provide national and local authorities with analysis of how proposed investments will fit into environmental and developmental plans of the host state. By this means, they should be compelled to join Global Reporting Initiative and regularly submit sustainable reports.

The last to this list of recommendations to ensure a successful project management scheme in natural resource investments is the requirement of “self-control”. This recommendation is more of a plea on international investors or multinational corporations to structure their governance policies having in mind the desire to satisfy not only their unlimited desire for profits, but also the satisfaction of employees, consumers, immediate community, nature and the respect for environment and nature protection. This entails imposing on themselves an unacceptable cost, regulatory mandates, taxes on some of their products (as the case may be) to play back in CSR coverage, charging punitive fines on wrongful acts of miss-management or from employee misbehaviour and utilising these sums on corporate social responsibility coverage. Some people have referred to self-control methods as advocating for good fate which under the investment/ business world must find itself in a visible position. In all, this recommendation calls for cooperate social responsibility to be considered more by these investors/ corporations as corporate moral responsibility.

Responsible foreign investment behaviour entails the investors, and all other participatory stakeholders to take all moral, legal and regulatory steps required under the laws, regulations and administrative practices of host countries to protect the environment, conserve resources and avoid accidents that could result in social and environmental harm or harm to human health. Also they must see it as a challenge that the sustainability nature of their investment and its developmental impact are archived.

## **5.2 Conclusion:**

The emphasis placed on responsible project management at this level and in today’s continuous globalise world is phenomenon. More so the importance of integrated and coherent development and investment policies is appealing. The stress and impact of fair and equitable control or management of projects whether by internal project managers or by external supervisors is also vital. This responsibility is even more necessary in the natural resource sector where resources like oil and gas are particularly at the verge of being exploited under side-marked construction projects. In some case scenarios, the number of

consortium firms/companies, funding bodies and host governments involve only make stakes and expectations higher, thereby sparking the need for some kind of organised project management scheme. This is the reality which has caught up with the fast developing pace of the world and world economies. While it is said that the so called developed countries have almost attained a completion of the demands set out in managing projects of small or large scale sizes and magnitude, most developing countries and countries in transition are said to be still facing difficulties in handling similar projects with the same rankings. Countries in this latter group have been linked with so many worrying reasons to be the root cause to such poor quality project/investment output. Some of these factors as discussed in this paper include bad governance coupled with bribery and corruption practices, absence of peace and stability, lack of infrastructural network mismanagement of existing resources and long history of war fighting for the worst case scenario. All these have played a tremendous impact in seeing investment projects go unsuccessful, uncompleted and poorly managed. For those of them which are finally completed, they cannot survive (sustain) the taste of development and developmental needs. This as such is the sustainable effect of investments under modern day project management this thesis was out to project. And such is the overall worry that our research was out to investigate: What are the legal framework backings which ought to be set up-right in every natural resource investment project management scheme which involves outbound construction projects? This is but one out of a series of questions from which this research was based and upon which a classic attainment of answers were provided. However, a legal approach was followed in coming up with the suggestive actions to be followed for a successful investment under the right project management scheme.

The legal path here meant, the permitted legal framework qualities required in all three construction or project phases; that is, the pre-construction/implementation phase which involves base-work project planning, the implementation or construction phase which involves ground work construction, interpretation and execution of framework policies and designed rules, and the post-construction phase which has as priority the sustainability of the project and its human, social and environmental effects. Also, upholding the institutional building and capacity development objectives of the project remain inevitable under this stage. In effect, the legal effects of the framework policies and their contributory implications to first, the investors, funding partner(s) and host state(s); and secondly to the entire investment project as a whole sums up the 'legal understanding' projected by our research.

Talking about legal understanding, project management in natural resource investment has revealed that the contributory influence of one of a project's actors- the funding body, now has a vital role to play in modern day investment projects. This is so not only because of the inevitable need of its financial contributions but also because they now work under the disguise mandate of influencing socio-economic development, poverty eradication and the overall influence to the sustainability of the environment and nature protection. They today add a fresh impetus to major investment projects particularly in the extractive and natural resource sector like never before.

It is worth mentioning that in international investment, the World Bank has taken up this challenging task in major investment projects throughout the world and particularly in Africa. This explains why our chosen case study example used here- the Chad-Cameroon Oil and Pipeline Project, offered the perfect opportunity to see the interplay between the Bank achieving their mandate and investors with states gaining their own share. This also explains why the experience gathered from that same project remain vital to demonstrate the legal framework ideologies which this study deems as necessary in natural resource investment projects. The meeting of all these "big guns" as such immediately calls to mind the overall impact this type of major developmental challenge might mean for the host state(s) and the local community.

In that very Chad-Cameroon case, the major challenge that had to be met, at least by the World Bank that would determine the project's success or failure was to ensure that project revenues go to benefit the people of Chad failing which it would be a cruel deception. The magnitude of the challenge itself was evident in the fact that no developing country has successfully channelled resources into economic development despite anti-corruption legislation, exhortations and threats. Chad would be the first; if it was successful. Thus, this ushered in the developing and emerging country setting of the research in context. And so the very first question asked was: should the Chad –Cameroon Oil and Pipeline Project be used as a model ground for natural resource development? This question itself still remains rhetorical judging from the literary works of some scholars and sustainable development lovers and commenters; however, this writer holds a drifted opinion and thinks rather for the 'wise and careful trial before a meaningful judgment' as the project did produce some positive take home lessons which should not be entirely written off.



Albeit research findings showed that a well worked-out legal foundation couple with a strict application of the corporate social responsibility appeals seems to be a summarised answer to overall mismanagement problems, fears and worries often characterising and plaguing major projects particularly in the developing countries. In effect, by failing (host state) to provide a strong legal and regulatory framework in which oil companies would conduct investment, and by failing (investors) to guarantee the basic socio- economic, environmental and cultural needs of the population, both actors in the investment course are in no position to be void of criticism. The state in particular in this case is in no position to criticise the corporate social responsibility policies of an oil company. Most investment companies on the other hand argue that they are not responsible for further socio economic development. They rather see this as part of a long term governmental responsibility resulting from their investment activity. In the Chad-Cameroon project, the government of Chad is both unwilling and unable to regulate state activities generated by the project. This has made critics among who is this researcher himself to question the ability of the government of Chad and other potential rich natural resource nations of Africa to create or formulate and manage firm legal framework qualities and mechanisms like those discussed herein in order to supervise/control some activities of investment projects in their countries.

The Chad-Cameroon Oil and Pipeline Project is unique as it is a mirror reflection of some the investment elements and managerial conditions albeit necessitating review for future investment projects following our new legal approach to project management in natural resource investments. Again, whether or not it should be made as a reference example for potential rich oil resource countries for strategic investment is not the present concern for this work to decide but certainly the lessons learned from that project helped to reshaped the discussions and proposers made in this research for the benefit of investment lovers and comparative international law researchers.

Legal transposition, transparency and accountability, good governance (financial and economic governance), sustainable procurement are the watchwords this research upholds and to which it adds: good sustainable investment practices wherein effective attention is accorded to the environment under the best environmental and nature protection schemes. Also, socio-cultural protection remains a formidable concern under project management in natural resource investments.

END

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## Appendix

- BCBS: Basel Committee on Bank Supervision.
- CAS: Country Assistance Strategy.
- FDI: Foreign Direct Investment.
- GDP: Gross Development Product.
- IBRD: International Bank for Reconstruction and Development.
- ICSID: International Centre for the Settlement of Investment Disputes.
- IFC: International Financial Corporation.
- IIAs: International Investment Agreements.
- IMF: International Monetary Fund.
- NGO: Non-Governmental Organisation.
- OPEC: Organisation of Petroleum Exporting Countries.
- PRML: Petroleum Revenue Management Law.
- SDF: Special and Differential Treatment.
- UNCTAD: United Nations Conference on Trade and Development.