Linking Natural Resource Exploitation and Primary Health Care in Developing Countries

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Abstract: In exchange for loans from international financial institutions, natural resources companies should be made contractually responsible for achieving specific primary health care targets in certain developing countries they invest in. Primary health care is crucial for social/economic development, but many developing countries' governments fail in its provision. Any effort to make natural resources companies responsible for primary health care would need to focus on goal setting, monitoring and legal enforcement. The latter would include both monetary sanctions and incentives tied to specific targets. The challenges facing this project are significant, but none are problematic enough to prevent its implementation.

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Section I: Introduction

One of the vicious cycles facing developing countries is the interaction between their poverty and inadequate primary health care systems that under-perform because of corruption, inadequate resource allocation and other failures. The absence of primary health care in turn contributes to sub-standard economic performance by reducing the effectiveness of the country's work force. These failures can also impact the broader international community—as diseases jump borders and health failures in one country lead to epidemics in others. Developing countries' sub-standard economic and primary health care performance extends to those countries blessed with significant natural resource deposits, despite the significant revenues these natural resources can generate. A key challenge for international financial institutions and the broader development community is addressing this shortfall between the promise of natural resource wealth and broader economic and social development. One way of doing this is more closely linking natural resources investment and development of key social programs like primary health care.

In recent years, the World Bank, IMF and other international financial institutions have been experimenting with diverse programs that aim to stimulate economic growth in developing nations.[1] In creating these programs, international financial institutions have to grapple with diverse priorities and special challenges. Some of the most important include: The importance of social development (e.g. primary health care) to human and economic development;[2]

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[1] These types of projects can range from financing training for journalists, Paul Lewis, *World Bank Emphasizes Role of Free Media in Fighting Graft*, N.Y. TIMES, Oct. 11, 1998, at 21, to coordinating efforts to get developed nation to finance primary education in poorer countries, Elizabeth Becker, *Meeting to Focus on Poverty*, N.Y. TIMES, Apr. 24, 2004, at C2, to helping pressure developing countries to reveal oil payments, Heather Timmons, *Angola Set to Disclose Payments From Big Oil*, N.Y.TIMES, May 13, 2004, at W1.

[2] *See, e.g.*, WORLD BANK GROUP, WORKING FOR A WORLD FREE OF POVERTY 3 (2003), *available at* http://siteresources.worldbank.org/EXTABOUTUS/Resources/wbgroupbrochure.pdf.

continued, significant corruption and incompetence on the part of developing country governments;[3] and the critical role of natural resources in many developing country economies.[4] Different programs have attempted, with varied success, to link these factors with the dynamism that private industry often brings to its operations.[5] This paper proposes extending these experiments by explicitly linking the development of natural resources with improvements in primary health care. In return for loan guarantees and assistance from international financial institutions, private natural resource companies would be held legally responsible for meeting particular criteria linked to social development. While developing country governments' input and approval would be essential to the plan, and it would include a variety of measures to promote local ownership, the consequences of meeting or failing to meet these targets would be born by the natural resource companies involved.

Making private sector corporations responsible for the promotion of a basic government responsibility like primary health care is a radical step. It expresses a profound critique of many developing countries' governments' abilities and honesty. But the record of economic development since decolonization has often been so dismal[6] as to make this step worth exploring, at least in the short run. In contrast to developing country governments, private sector corporations are often extremely competent at efficiently using resources to achieve their ends.[7] Tying private corporations' profits to improvements in primary health care could lead to

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[3] *See, e.g.*, WORLD BANK GROUP, REFORMING PUBLIC INSTITUTIONS AND STRENGTHENING GOVERNANCE (2000) [hereinafter Governance]; WORLD BANK GROUP, HELPING COUNTRIES COMBAT CORRUPTION (1997) [hereinafter Public Institutions].
[4] *See, e.g.*, WORLD BANK GROUP, TREASURE OR TROUBLE? MINING IN DEVELOPING COUNTRIES (2002).
[5] *See, e.g.*, Paul Lewis, *A New World Bank: Consultant to Third World Investors*, N.Y. TIMES, Apr. 27, 1995, at D4.
[6] For example: "Sub-Saharan Africa faces enormous poverty…(and) almost across the board the story is one of stagnation…[e]conomies have not grown, half of Africans live in extreme poverty…and about one-sixth of children die before age five—the same as a decade ago". UNDP, HUMAN DEVELOPMENT REPORT 2003 at 37 (OUP 2003) *available at* http://www.undp.org/hdr2003/pdf/hdr03_complete.pdf [hereinafter HDI Report].
[7] See discussion in Section III C. This competence extends to the health sector. The government of Mozambique, for example, increased vaccination coverage and prenatal consultations by 80% partially through the use of private sector providers. See HDI Report, *supra* note 6, at 2.

significant improvements in the both life expectancy and quality of life for local populations in resource-rich developing nations. Health care in general and primary health care in particular have been identified by numerous experts as a core requirement for both human and economic development.[8] It is an important component of the UNDP Human Development index and is also a key requirement for promoting broader economic activity.[9] Primary health care, while a complex undertaking, is also relatively separated from certain cultural and nationalistic tensions inherent in the private provision of other key social services, like education.[10]

Although placing significant responsibility for primary health care targets in the hands of corporations is a radical concept, making them responsible for health care on a small scale is not. Natural resources companies have significant experience in promoting social programs in regions where they locate facilities and within their workforces.[11] Both developing country governments and international financial corporations have also experimented in making private industry a catalyst for social change.[12] In Chad, the World Bank made funding of an oil pipeline contingent on allocation of oil revenues to particular areas of social development, with the

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[8] *See, e.g.*, John Strauss & Duncan Thomas, *Health, Nutrition and Economic Development*, 36 JOURNAL OF ECONOMIC LITERATURE 766 (1998); T. Paul Shultz, *Health and Schooling Investments in Africa*,13 JOURNAL OF ECONOMIC PERSPECTIVES 67 (1999); DEON FILMER ET. AL., HEALTH POLICY IN POOR COUNTRIES: WEAK LINKS IN THE CHAIN (World Bank, Working Paper No. 1874, 1998) ("There is broad consensus that a mix of public health, preventive and simple curative activities provided through low-level facilities is the right policy for public expenditures on health in developing countries."); DAVID E. BLOOM ET. AL., THE EFFECT OF HEALTH ON ECONOMIC GROWTH: THEORY AND EVIDENCE (National Bureau of Econ. Research, Working Paper No. 8587, 2001); DESMOND MCCARTHY ET. AL., THE GROWTH COSTS OF MALARIA 20 (National Bureau of Econ. Research, Working Paper No. 7541, 2000); AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999).

[9] *See, e.g.*, Ravi Kanbur & Lyn Squire, *The Evolution of Thinking About Poverty: Exploring the Interactions, in* FRONTIERS OF DEVELOPMENT ECONOMICS 183, 200-02 (Gerald M. Meier & Joseph E. Stiglitz eds., 2001), Strauss, *supra* note 8 at 768; MCCARTHY, *supra* note 8 at 20; Shultz, *supra* note 8 at 85; HDI Report, *supra* note 6.

[10] Education almost inevitably includes a strong element of nationalism and nation building absent from primary health care interventions—*See, e.g.*, BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (1983).

[11] Shell's programs in the Niger Delta are an example of this, spending tens of millions of dollars on community development—though this investment faces criticism and obstacles. See, e.g., Robert Lenzner, *Damned if You Do*, FORBES, Nov. 27, 2000.

[12] These experiments include multinational oil companies BP and Shell, examples of which are discussed in Section IV.

agreement of private sector participants and the government.[13] In South Africa, the government has legally compelled private corporations to participate in efforts to promote economic development in its black population.[14] While not always welcoming these programs, private sector corporations have adapted to and accepted these efforts.[15]

This paper proposes that in return for loan guarantees from international financial institutions, private sector corporations (almost certainly in the natural resources sector) guarantee to meet a series of key performance targets in primary health care. Depending on their success in meeting these targets, they would be either rewarded or penalized. Before any loans were extended or projects begun, representatives of all interested parties, as well as civil society groups would agree to the terms of any plan. Any plan would include explicit stages encompassing goal setting, monitoring and enforcement activities. Any plan for primary health care promotion could exist alongside other commitments to regional development, payments to the developing country government and other programs.

Section II of this paper places the proposal in the context of relevant legal and non-legal literature and addresses some of the immediate normative considerations that challenge this proposal. Section III explores the context of this proposal—the importance of economic development and primary health care, developing country governments' poor record in promoting these and the capabilities of private sector corporations. Section IV of the paper explores in more detail previous experiments in encouraging private sector corporations to support broader social goals. The successes and challenges these efforts faced are key to

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[13] *See generally*, Genoveva Hernandez Uriz, *To Lend or Not To Lend: Oil, Human Rights, and the World Bank's Internal Contradictions*, 14 HARV. HUM. RTS. J. 197 (2001); World Bank, *The Chad-Cameroon Petroleum Development and Pipeline Project: Question and Answers, Why is the Bank Group Involved?, at* http://www.worldbank.org/afr/ccproj/questions [hereinafter World Bank, *Questions and Answers*].
[14] *See, e.g.*, Itumeleng Mahabane, *On the Dating Scene*, FINANCIAL MAIL, Apr. 30, 2004, at 60.
[15] *Id.*

understanding what types of innovations will be successful in new programs. Section V outlines the proposal in detail, examining goal setting, monitoring and legal enforcement activities. Section VI explores various legal and non-legal challenges the proposal will face, and explains why they should not stop this proposal from being implemented. Section VII suggests next steps and broader applications of the program discussed in Section V.

Section II: Existing Scholarship and Normative Considerations

a. Existing Scholarship

While there have been articles about spurring economic development in poorer countries, no serious proposals have been made that would make natural resource companies responsible for primary health care in the countries where operate. Instead, as discussed in the paragraphs that follow, there have been general works discussing (and often criticizing) particular projects; critiquing the current natural resource extraction processes; critiquing trade agreements and international financial institutions for causing problems to developing countries; and recommending increased control of natural resource revenues by the international community. These proposals, though sometimes contradictory, often contain valuable commentary about the problems facing developing nations. Potentially because of the normative problems sketched out in the second part of this section however, they avoid giving additional responsibility to natural resource companies.

The project most discussed by academics and in international development circles is the Chad oil pipeline project.[16] Discussed extensively in Section III, this project has been both praised for its innovative attempt to make international financing contingent on socially

[16] *See, e.g.*, Uriz *supra* note 13; Genoveva Hernandez Uriz, *The Application of the World Bank's Standards to the Oil Industry*, 28 BROOKLY J. INT'L L. 77 (2002); Dana L. Clark, *Boundaries in the Field of Human Rights: The World Bank and Human Rights: The Need for Greater Accountability*, 15 HARV. HUM. RTS. J. 205 (2002).

beneficial use of oil revenues and criticized for specific instances where the Chadian government either ignored or manipulated the control system it had agreed to. The World Bank and the IMF have also been criticized for providing support to other projects that either led to significant human rights abuses or led to corruption.[17] But the Chad oil pipeline project has been their most ambitious attempt to influence the use of natural resource revenues and has attracted the most attention in recent years.

Both legal and non-legal authors have heavily criticized the current arrangements for natural resources extraction and identified their negative impact on developing countries.[18] These authors have commented on the frequent failure of countries with natural resources to develop at appropriately high rates—and identified the high social cost this entails.[19] Natural resources have been linked to a wide range of problems, including corruption, power struggles, wars and various additional problems.[20] These pieces are often less focused on solving than on pointing out particular problems with natural resource extraction. But when they do propose solutions, these include more private control for natural resources,[21] greater transparency in

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[17] *See, e.g.*, Uriz, *supra* note 13.
[18] *See, e.g.*, Uriz, *supra* note 13, James C. Owens, Note, *Government Failure in Sub-Saharan Africa: The International Community's Options*, 43 VA. J. INT'L L. 1003 (2003); PAULINE JONES LUONG, RETHINKING THE RESOURCE CURSE: OWNERSHIP STRUCTURE AND INSTITUTIONAL CAPACITY (Yale Center for Int'l and Area Studies, Working Paper, 2003) ("The proposition that abundant mineral resources…are more often a curse than a blessing…is by now so familiar that it has become doctrine"); TERRY LYNN KARL, THE PARADOX OF PLENTY: OIL BOOMS AND PETRO-STATES (1997).
[19] *See, e.g.*, XAVIER SALA-I-MARTIN & ARVIND SUBRAMANIAN, ADDRESSING THE NATURAL RESOURCE CURSE: AN EXAMPLE FROM NIGERIA (National Bureau of Econ. Research, Working Paper No. 9804, 2003); CARLOS LEITE & JENS WEIDMANN, DOES MOTHER NATURE CORRUPT? NATURAL RESOURCES, CORRUPTION AND ECONOMIC GROWTH (IMF, Working paper WP/99/85, 1999); JEFFREY D. SACHS & ANDREW M. WARNER, NATURAL RESOURCE ABUNDANCE AND ECONOMIC GROWTH (National Bureau of Econ. Research, Working Paper No. 5398, 1995).
[20] *See, e.g.*, GLOBAL WITNESS, TIME FOR TRANSPARENCY 2-7 (2004), *available at* http://www.globalwitness.org/reports/show.php/en.00049.html; Leite, *supra* note 17; Sachs, *supra* note 17.
[21] *See, e.g.*, Luong *supra* note 18.

transfers between natural resource companies and governments[22] and additional international control of developing country resources.[23]

From the left wing of academia, commentary on development focuses on the social misery and neo-colonial[24] implications of international agreements on issues like trade and restrictions on budget spending by international lenders like the World Bank and the International Monetary Fund (IMF). Authors adopting this perspective specifically criticize "adjustment" and "investment" programs by international financial institutions for leading to human rights abuses, for limiting the sovereignty of developing country governments, and for causing social misery among the poor.[25] These pieces also advocate initiatives like an increased focus on social welfare and legal rights when making loans and grants to developing nations[26] as well as questioning the very idea of whether development as currently conceptualized is necessary or appropriate.[27]

A more coercive genre of scholarly work on developing countries acknowledges the manifest failures of developing country governments and recommends more coercive solutions to the problems facing developing nations. These types of solutions include more international

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[22] *See, e.g.*, GLOBAL WITNESS, *supra* note 20, at 79-95.
[23] *See, e.g.*, Owens, *supra* note 18, at 1033-49; For a more personal view and discussion see Jon H. Sylvester, *Sub-Saharan Africa: Economic Stagnation, Political Disintegration, and the Specter of Recolonization*, 27 LOY. L.A. L. REV. 1299 (1994).
[24] *See, e.g.*, Theophilus Fuseini Maranga, *The Colonial Legacy and the African Common Market: Problems and Challenges Facing the African Economic Community* 10 HARV. BLACKLETTER J. 105 (1993); Ruth E. Gordon and Jon H. Sylvester, *Deconstructing Development*, 22 WIS. INT'L L. J. 1 (2004); Tayaab Mahmud, *Postcolonial Imaginaries: Alternative Development or Alternatives to Development* 9T RANSNAT'L L. & CONTEMP. PROBS. 29 (1999); Charles R. P. Pouncy, *Stock Markets in Sub-Saharan Africa: Western Legal Institutions as a Component of the Neo-Colonial Project* 23 U. PA. J. INT'L ECON. L. 85 (2002).
[25] *See, e.g.*, Rajesh Swaminathan, Note, Regulating Development: Structural Adjustment and the Case for National Enforcement of Economic and Social Rights, 37 COLUM. J. TRANSNAT'L L. 161, 181-89, 195-97 (1998); Jonathan Cahn, *Challenging the New Imperial Authority? The World Bank and the Democratization of Development* 6 HARV. HUM. RTS. J. 159, 160-61 (1993).
[26] *See, e.g.*, Swaminathan, *supra* note 25, at 209-12.
[27] *See, e.g.*, Gordon, *supra* note 24.

control of natural resources revenues,[28] using debt relief as a way to achieve desired reforms[29] and increased focus on non-governmental civil society partners in economic development.[30] Even though these recommendations are not shy about discussing potentially coercive measures, they hesitate to recommend that natural resource companies be given responsibility for important social functions like primary health care. As discussed in more detail in sections III and IV, this timidity ignores the fact that natural resource extraction companies possess unparalleled knowledge, influence and even social welfare know-how in developing countries. The most likely reasons for this refusal to make the link are a number of normative concerns explored in the second part of this section.

A second set of literature discusses making nations and private companies liable for legal action outside their country of origin. The literature shows increasing theoretical acceptance and practical proposals for persecuting those responsible for human rights abuses,[31] as well as litigating disagreements over investment disputes.[32] There is also some discussion of actually enforcing economic and social rights in court,[33] but these efforts are considerably less advanced. Individual governments and even firms can potentially be sued in national courts for human rights abuses, and are often liable to international arbitration proceedings when investments do

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[28] *See, e.g.*, Owens, *supra* note 18, at 1033-49.
[29] *See*, Eric A. Friedman, New Development, *Debt Relief in 1999: Only One Step in a Long Journey* 3 YALE H.R. & DEV. L. J. 191, 198-200 (2000).
[30] *See, e.g.*, Richard Cameron Blake, New Development, *The World Bank's Draft Comprehensive Development Framework and the Micro-Paradigm of Law and Development*, 3 YALE H.R. & DEV. L.J. 159 (2000).
[31] *See, e.g.*, Harold Hongju Koh, *Transnational Public Law Litigation,* 100 YALE L.J. 2347 (1991); Anne-Marie Slaughter & David Bosco, *Plaintiff's Diplomacy,* 79 FOREIGN AFF. 102 (2000); Eric Marcks, *Avoiding Liability for Human Rights Violations in Project Finance*, 22 ENERGY L. J. 301 (2001) (discussing the liability of corporations in US courts for human rights violations associated with their operations abroad);
[32] In this case, international arbitration is increasingly preferred as a means of solving disputes, and required by the relevant contracts. *See, e.g.*, Dinesh D. Banani, Note, *International Arbitration and Project Finance in Developing Countries: Blurring the Public/Private Distinction*, 26 B.C. INT'L & COMP. L. REV. 355, 361-63 (2003). For a pessimistic view on its effectiveness in this role, see Amr. A. Shalakany, *Arbitration and the Third World: A Plea for Reassessing Bias Under the Specter of Neoliberalism*, 41 HARV. INTL. L. J. 419 (2000).
[33] *See, e.g.*, Michael J. Dennis and David P. Stewart, *Justiciability of Economic, Social and Cultural Rights: Should There be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing and Health?,* 98 A.J.I.L. 462 (2004).

not proceed as planned. But governments are much less liable to international legal sanction for misusing the money they gain from these projects.

b. Normative Concerns

Making private sector natural resource companies responsible for the provision of primary health care carries significant costs, even if accomplished with the acquiescence of all concerned parties. As outlined in the paragraphs below, there are significant risks that removing spending power from developing country governments could decrease the ability of often-weak central governments to exert control and command respect from the general population. There are also significant concerns about the democratic legitimacy of private sector companies when providing an essential public service. Less theoretically, there is the concern that private sector providers of essential services may put profits over principle and shortchange affected populations. Finally, some commentators have expressed fear of the consequences of creeping privatization. Despite the validity of these concerns, this paper will argue that there are ways to decrease these risks, and that the crisis in the proper use of natural resource revenues and in the provision of primary health care renders any remaining costs acceptable.

The most basic challenge to the idea of making natural resources companies responsible for primary health care provision is whether the benefits of any improvements in primary health care are worth the inevitable weakening of developing country governments' authority. Developing country governments often have weak governance structures in the first place,[34] and removing their ability to distribute patronage and provide citizens' with basic services like primary health care could significantly reduce national unity as well as the government's ability to achieve any other goals—at least some of which the international community supports.

[34] *See, e.g.*, Public Institutions *supra* note 3, at xi.

This basic challenge to removing primary health care functions from national governments addresses the very heart of this project's rationale. At a fundamental level, this project assumes that most developing country governments are so corrupt and incompetent at providing key social services like primary health care that weakening their authority will have only a limited negative impact on the general population. It also assumes that primary health care is extremely significant for social and economic development and that natural resource companies will achieve real improvements in its provision.

Unfortunately, the record of many developing countries in the provision of all social services, including primary health care, is so poor as to justify weakening their authority.[35] More broadly, somewhat competent governments will probably cooperate with natural resource companies, who will have a financial incentive to promote and even fund existing government programs when these are already efficient. These incentives will support the authority of competent governments and undermine that of governments whose service provision is inefficient and corrupt. Primary health care is also so important[36] that significant improvements in its provision seems worth some weakening of central authority—especially when this weakening is only a possibility, not a certainty. Primary health care is also not a key component of national identity and values—at least not to the same extent as educational services, another key component of social/economic development**.** Finally, the private sector's record in the developing world suggests a real ability to produce results,[37] especially when these are necessary

[35] Obviously where the line should be drawn with regards to justifying removal of authority differs depending on the commentator. This note will not spend a lot of time articulating a definite line—it suffices to agree that there are some countries which do fall into this category. Chad, discussed in Section IV, would be one country that outside institutions like the World Bank have deemed worthy of additional restrictions.
[36] *See, e.g.*, Strauss *supra* note 8, Filmer *supra* note 8, Shultz *supra* note 8.
[37] *See* discussion is sub-section III c.

to produce profits. Given these facts, the tradeoff between government authority and provision of primary health care seems acceptable.

Beyond the impact of this project on central governments, there are also legitimate concerns about the appropriateness of having natural resources companies be responsible for primary health care provision. In particular, making a private sector corporation responsible for this basic service raises the questions of whether it is sufficiently democratically accountable,[38] whether the natural resource companies will be tempted to deliver substandard health care in order to increase corporate profits, and whether this "privatization" of primary health care would be the precursor to the outsourcing of many other basic government services.

The most effective way of addressing concerns about democratic accountability lies in structuring a project that allows significant local commentary and input about the work accomplished by the natural resource company. It is true that developing country citizens rarely have any voice in the decisions of natural resource companies' management or shareholders, given their relative poverty and absence from senior managerial ranks.[39] But Section V describes a number of key aspects to this proposal--specifically "goal setting", "monitoring" and "enforcement"—that involve important roles for local civil society organizations as well as substantial oversight of the work accomplished by this project. In a final analysis, a government would also retain the right to stop the entire project from continuing—if it was willing to bear the impact of international finance companies recalling loans and/or the natural resource company withdrawal from its territory. Beyond these basic safeguards, there is also a comparative point—

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[38] *See,e.g.*, Symposium, *Public Values in an Era of Privatization*, 116 HARV. L. REV. 1229 (2003); John Tagliabue, *As Multinationals Run the Taps, Anger Rises Over Water for Profit*, N.Y. TIMES, Aug. 26, 2002, at A1.

[39] For example in BP, a major oil company, only 18% of staff in Global Leadership positions were from outside the US or UK in 2003, despite the company's extensive global operations. This was, however, an improvement from 2002 when the percentage was 16%. *See*, BP, Diversity *at* http://www.bp.com/genericarticle.do?categoryId=2011555&contentId=2016939.

that developing country citizens often have very little say over their natural resources even today. A large number of resource rich, impoverished nations are governed by autocratic governments which give their citizens very little voice in the operation of these projects.[40] In these cases, outside interference in the allocation of oil revenues might make the spending more, not less accountable.

A second concern about assigning natural resource companies specific targets involves their priority on making profits rather than improving health care. It is certainly true that charitable work is not the main goal of these companies. But again, the plan outlined in Section V includes a lengthy discussion of incentive planning and output monitoring, along with legal enforcement, which should align companies' profits with achieving primary health targets set in cooperation with governments, international financial institutions, and civil society members. Additionally, given the corruption and inefficiency discussed in Section III, even if natural resource companies spend a significantly lower amount than governments currently budget, they may do a better job providing primary health care, provided that the spending actually reaches communities rather than being wasted or stolen.

A final normative objection to assigning natural resource companies responsibility for provision of primary health care is the fear that this will begin an inevitable slippery slope process involving the privatization of major government functions. This is certainly possible, especially if primary health care provision improves as a result of this initiative. Of course, additional privatization in response to improved services would not necessarily be a bad thing—and could improve other developing country services as well. It could be that a mass privatization of key functions could precipitate problems like government weakness in the way

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[40] Out of the countries ranked as "Low Human Development" by the UNDP, only four score as "Free" on Freedom House's annual ranking. *See* HDI Report, supra note 6 at 237-41, FREEDOM HOUSE, FREEDOM IN THE WORLD 2004 at 243-44 (2004), *available at* http://www.freedomhouse.org/research/ freeworld/2004/table2004.pdf.

that a single plan like the one advocated here would not. But the balancing act required for these decisions is not the responsibility of those advocating this proposal—and should be left for potential future debate.

Section III: Context

The failure of many developing country governments to provide primary health care services compares unfavorably with private sector corporations' success in managing complex operations in these same countries. This observation is a key motivation for transferring responsibility for primary health care development to private companies. Managing primary health care is a complex enterprise, but private sector corporations have frequently proved able to address challenges of equal complexity. The largest private sector investors in most developing nations are those developing natural resources. They have extensive experience with large scale projects and unusual influence with their host governments. These private sector corporations are thus the ideal partners in any plan to make the private sector responsible for meeting primary health care expansion goals. This section will explain why primary health care is such an important government service, trace the corruption and inefficiency which currently plague many resource rich developing countries, point to the special capabilities of private sector corporations in developing countries and highlight the key role of natural resource investments in these same countries. This will provide an appropriate context for considering the role that private sector natural resource companies can play in delivering primary health care in developing countries.

a. Importance of primary health care

Expansion of primary health care is crucial for most developing countries. The health of a country's people is vital to their overall well being and is also important in assuring economic development. Primary health projects in particular target the poorest of citizens with the most cost-efficient services—improving basic indicators of national health like maternal and infant mortality. Primary health care usually does not produce prestige projects—like major hospitals that donors and governments can showcase. It often gets ignored for this reason. International development institutions have recognized the importance of primary health care to overall wellbeing of the general population.

Three of the United Nations Development Program's (UNDP) eight millennium goals focus on issues related to primary health care.[41] Fully one third of the UNDP's Human Development Index (HDI) is based on life expectancy at birth, a statistic closely related to primary health care availability.[42] More broadly, the International Monetary Fund (IMF) and academic analyses have suggested that good quality primary health care which benefits the poor is highly correlated to better health outcomes and higher per capita income.[43]

Primary health care projects are particularly beneficial to social development because they usually address basic health problems faced by the very poor. These basic health problems can often be addressed at relatively low cost by simple preventative and treatment measures. Campaigns to expand vaccination, prompt prevention and treatment for diseases like malaria and other relatively cheap measures can yield significant improvements to overall population health

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[41] Three of the eight major millennium goals set by the UNDP are directly related to primary health care—reducing infant and maternal mortality and combating HIV/AIDS and other diseases. Metrics used to calculate this include the number of deaths in childbirth, infant mortality at ages one and five and inoculation rates. HDI Report, *supra* note 6, at 15-16, 220-21.

[42] *Id*., at 349.

[43] *See, e.g.,* DAVOODI, HAMID R. ET AL., HOW USEFUL ARE BENEFIT INCIDENCE ANALYSES OF PUBLIC EDUCATION AND HEALTH SPENDING (IMF 2003); Strauss, *supra* note 8, at 767-68.

and consequently to economic development.[44] Richer, more influential populations often face health challenges that are more complex an expensive, like cancer, heart problems and the like. While addressing these challenges is important, addressing primary health care needs generally results in the most benefit to the most people.[45]

Certain developing country governments focus on prestige health care projects that do not cost-effectively address primary health care challenges. Researchers have documented a tendency to focus on items like expensive new hospitals and equipment for dealing with complicated diseases prestige at the expense of primary health care.[46] These types of high-tech initiatives address local elites' health concerns more directly than expanded primary care, which targets the very poor.[47] In many less developed nations, "[i]t is safe to say that targeting health spending to the poor…would require spending less on hospitals and more on primary care facilities."[48]

b. Corruption, Inefficiency and Developing Countries

Even resources that are devoted to basic health and education are often wasted and stolen by corrupt and incompetent bureaucracies. Corruption in particular can mean that even resources that are officially devoted to sectors like health care are actually allocated to private consumption. Numerous studies have suggested that corruption is a particular problem in many lesser developed countries. Incompetence can also sabotage spending on programs like primary care. Government bureaucracies, particularly in lesser developed countries, are often dominated by staff whose appointments depend on political patronage rather than competence. Especially

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44 *See, e.g.*, MCCARTHY, *supra* note 8 at 25.
45 *See* FILMER, *supra* note 8 at 3, 3 n.3.
46 *Id*. at 2; *see also* F. Castro Leal et al., *Public Spending on Health in Africa: Do the Poor Benefit?*, 78 BULL. OF THE WORLD HEALTH ORG. 66 (2000).
47 Studies on a number of African countries showed that health care resources were concentrated on the tertiary rather than the primary level, and that health care subsidies provided significantly more benefits to the richest 20% of the population than to the 20% poorest. *Id*. at 68-69.
48 *Id*. at 69.

in fields that do require technical expertise, like primary health care, having political appointees make key decisions can lead to inefficient allocation of resources.

Corruption has been identified as a major obstacle to economic development.[49] Though it takes numerous forms (ranging from enormous kickbacks in contract bidding to low level payoffs for policemen and others) its overall impact is almost always considered damaging for any economy.[50] Corruption also seems particularly endemic to the state sector. Civil servants' salaries are often relatively low, making them particularly susceptible to bribes when allocating government benefits. This type of corruption is particularly endemic to developing countries and exists even in relatively low profile sectors like primary health care.[51]

Developing countries are particularly susceptible to corruption.[52] Significant opportunities exist allowing corruption—often including high monopoly rents, great discretion for public officials, significant portions of the economy in the hands of the government and poor accountability. The combination of these factors, alongside the great poverty of many developing nations, means that both that those susceptible to corruption are presented with both motivation and opportunity.[53]

Some of the most corrupt developing countries (and, ironically, some of the least developed as well) are those relying on natural resources for all funding—like oil and diamonds

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[49] *See, e.g.*, TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT 2002 302-03 (2003) [hereinafter CORRUPTION].

[50] *See, e.g.*, Klitgaard, *Subverting Corruption*, 37 FIN. & DEV. 2 (2000); Robert Klitgaard, *Combating Corruption*, UN CHRON., 90, March 22, 1998 (discussing how different levels of corruption are associated with different levels of harm); SUSAN ROSE-ACKERMAN, CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM 2 (1999).

[51] *See* Rose-Ackerman, *supra* note 45, at 71-84; Sanjeev Gupta et al., *Corruption and the Provision of Health Care and Education Services*, *in* THE POLITICAL ECONOMY OF CORRUPTION 111 (Arvind K. Jain ed., 2001).

[52] *See id*., at 1-3. All of the countries classified by the UNDP as having "low human development" based on their HDI scores that were included in Tranparency International's Corruption Perceptions Index ranked in the bottom half. *See* CORRUPTION, *supra* note 49, at 302-03; HDI Report, *supra* note 6, at 243-44.

[53] See, e.g., Cheryl W. Gray and Daniel Kaufmann, *Corruption and Development*, FINANCE & DEVELOPMENT, March 1998, at 7.

in Angola.[54] In these countries, society sometimes becomes wholly focused on the wealth generated by natural resources. The absence of other types of private sector activity means that government revenues are even more central to private individuals' wealth creation plans.[55]

The provision of health care is usually a significant expenditure for developing country governments and is thus subject to pressures from private individuals willing to steal/misuse public funds.[56] While primary health care expenditures do not usually include major projects like large hospitals—with the inevitable opportunities for corrupt bidding and other income diversion schemes that these bring—the diffuse nature of this type of expenditure inevitably makes central monitoring harder. The large number of localities that need services like clinics/vaccinations increases the number of expenditures and also increases the number of individuals with access to government funds.[57] The diffuse nature of this spending provides many more opportunities for corruption. In the aggregate, small thefts of primary health funds can significantly constrict activities undertaken.[58]

Government funded primary health care also suffers from other inefficient practices. In particular, political patronage and nepotism often help determine staff allocation to government programs, especially in countries where government expenditure plays a significant role in the

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[54] Nigeria for example is ranked 101 out of 102 in Tranparency International's Corruption Perception Index, CORRUPTION, *supra* note 49 at 302-03. At the same time, the Nigerian government derives 65% of its budget revenues from oil. CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK 2003 (2003), *available at* http://www.cia.gov/cia/publications/factbook/geos/ni.html. *See also*, HUMAN RIGHTS WATCH, SOME TRANSPARENCY, NO ACCOUNTABILITY: THE USE OF OIL REVENUE IN ANGOLA AND ITS IMPACT ON HUMAN RIGHTS (2004) *available at* http://www.hrw.org/reports/2004/angola0104/. [hereinafter Transparency].
[55] *See generally* THORVALDUR GYLAFSON, GYLFI ZOEGA, NATURAL RESOURCES AND ECONOMIC GROWTH: THE ROLE OF INVESTMENT 8-10 (Central Bank of Chile, Working Paper No. 142 2002).
[56] Though it can often be below the level considered necessary by NGOs/IOs, it is still a significant expenditure.
[57] For example, usage surveys show that theft of government provided medicines is a significant problem in many developing countries. Gupta, *supra* note 51 at 118.
[58] An example of the effect that corruption on spending meant to reach a large number of recipients is a large Ugandan program in the mid and early1990s meant to provide a "capitation" grant to cover schools' nonwage expenditures. A survey of schools showed they received only 13% of the grants with much of the school grant "captured" by local officials. *See* Ritva Reinikka & Jakob Svensson, *Local Capture: Evidence from a Central Government Transfer Program in Uganda* 679 QUARTERLY JOURNAL OF ECONOMICS 119 (2004). *See also* Gupta, *supra* note 51.

economy.[59] Primary health care, with its diffuse hiring practices and need for local representatives is particularly accommodating to political interference in which relatives/clients of politicians and government officials are placed in appointed positions. Especially when combined with actual theft, this type of practice can significantly undermine the effectiveness of primary health care investments channeled through the government. In general, corruption and poor governance structures are often endemic in government funded activities carried out in developing countries.[60] Government provided primary health care is not magically exempt from these problems.

c. Special Skills of the Private Sector

The private sector in underdeveloped countries possesses special skills that often surpass those of government actors. In particular, various private sector companies are able to operate in remote locations within developing countries in a way that maintains profitability and a competitive return on equity to investors. Additionally, the private sector has demonstrated an ability to provide health care and other services to particular groups within underdeveloped countries—their employees and the communities in which their facilities are based.

While many underdeveloped countries have a relatively small private sector, almost all of them have a number of private international sector actors who are able to make profits. These include consumer product, communication and above all natural resource extraction companies that earn significant profits in developing countries.[61] These companies are able to adjust to

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[59] This is particularly probable when natural resource wealth is a major or overwhelming presence in the economy. For more discussion on the broader probability and effects of corruption, *see* GYLAFSON, *supra* note 16.

[60] *See, e.g.*, Governance, *supra* note 3; Public Institutions, *supra* note 3.

[61] Examples include: Celtel, with headquarters in the Netherlands and telecom operations in 13 African countries and profits in 2003 of $74 million on revenues of $446 million, *see* Marina Bidoli, *Loudest Ring on the Continent,* FINANCIAL MAIL, Jun. 4, 2004, at 44; BP announced that Angola would be one of its five “profit centers”, *see BP Reaffirms Focus on Core Areas to Drive Upstream Growth*, INTERNATIONAL OIL DAILY, Jun. 9, 2004.; Guinness distributes more beer in Africa than in the UK with its Nigerian operations alone making a profit of $71 million in 2003, *see* Ciaran Hancock, *Sales of Guinness Grow Stout in Africa*, SUNDAY TIMES, Apr. 18, 2004, Business 1.

numerous logistical obstacles—poor transportation and communication networks, frequent power outages and the like—and produce profits that satisfy shareholders.[62]

Private sector actors also operate throughout developing countries—not just in national capitals. Consumer products companies, for example, distribute goods like beer throughout many underdeveloped countries.[63] Natural resource companies in particular have no choice but to explore and extract resources where they occur—often in very rural areas far from traditional transportation and communication links--and they innovate relatively low-cost techniques for communicating with and transporting goods to whatever remote areas where they operate.[64]

Faced with the inability of governments in developing countries to provide adequate social services, private sector actors in many developing countries are also accustomed to providing additional services to key population segments. For example, natural resource companies often provide their employees with health care and other goods/services needed to maintain an acceptable quality of life (especially for western expatriate personnel…). Similarly, natural resource companies often invest in the areas where their facilities are located, providing support for services like education and health care.[65]

Private sector actors have a long tradition of providing services like health care to their employees. In South Africa for example, mining companies provided retroviral drugs to employees carrying the HIV virus before the government agreed to do this for the general

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[62] For publicly held private corporations, like major natural resources and consumer products companies, shareholder pressure will generally ensure that operations not generating sufficient profit are ended.
[63] *The Road to Hell is-Unpaved*, THE ECONOMIST, Dec. 21, 2002 [hereinafter Beer].
[64] *See, e.g.*, Nick Selby, *Growth (with challenges) for the satellite services industry*, INTERNATIONAL HERALD TRIBUNE, Oct. 13, 2003, at 10.
[65] *See, e.g.*, ROYAL DUTCH/SHELL GROUP, MEETING THE ENERGY CHALLENGE: THE SHELL REPORT 2002 at 38 (2002), *available at* http://www.shell.com/html/investor-en/reports2002/doc/pdf/sr_full.pdf. [hereinafter SHELL REPORT]. In Nigeria for example, Shell supported 29 permanent medical facilities treating 135,000 people in 2003. *See*, SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA LTD, 2003 PEOPLE AND THE ENVIRONMENT (2003) [hereinafter Shell Nigeria].

population.[66] Even beyond the example of HIV, natural resource companies in particular provide health care services to key parts of their workforce in developing countries.[67] As private companies, they have a vested interest in finding health care providers who can provide services at the highest quality for the lowest cost.

Private corporations also have experience supporting the provision of health care and other social services to specific communities in developing countries. Multinational oil companies, for example, often decide to invest resources in communities that they locate extraction/exploration facilities in.[68] The type of health care initiatives supported are often those most appropriate to poorer areas—e.g. primary health care.

d. Resource Flows to Developing Countries

Private sector foreign investment in developing countries is heavily focused on natural resources.[69] These investments often turn into large scale enterprises that involve significant commitments of funds and significant involvement with the governments concerned.

The significant investments required for natural resource development projects usually force the companies that make these investments to interact heavily with the countries in which they operate. Especially in sectors like petroleum, where investments can cost billions of dollars, natural resource companies cooperate with local government, private sector and civil society

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[66] *See, e.g.*, Peter Clarke, *City View: Mining a Noble Seam*, EVENING NEWS (Edinburgh), Aug. 7, 2002 at 2.
[67] *See, e.g.*, SHELL REPORT, *supra* note 65, at 32.
[68] *See, e.g.*, *id*. at 36.
[69] Substantial investments into developing countries are often focused on the natural resources sector. Even when considering the least developed countries, a significant number have impressive natural resources within their territories. The low average incomes in these countries mean that they are relatively unattractive markets in themselves. The logistical problems that face any private sector actor—communications, transport and others—also make it less likely that private sector actors who do not have to locate there will. Natural resources companies, unlike most other private investors, often have fewer choices about where they invest. While they can choose whether to invest in particular developing countries, they usually have no choice about working in at least some of them. The lack of other investors (in addition to the large size of many investments in natural resources) often makes them the largest foreign investors by default. These natural resource rich, Least Developed Countries would certainly include Angola, Chad, the DRC, Liberia and Sierra Leone. *See generally* GYLFASON, *supra* note 55 at 4-6. *See also* David Blumental, *Sources of Funds and Risk Management for International Energy Projects*, 16 BERKELEY J. INT'L L. 267 (1998).

actors in order to assure the security of their investments.[70] This kind of interaction provides natural resource companies with a rich knowledge base about how to operate successfully within the particular political, economic and social context of the country in which they invest.[71] This knowledge, along with efficient business practices, allows natural resource companies to achieve their goals more effectively than most other actors.[72]

The fact that developing country governments often rely on natural resource revenues for a substantial proportion of their budgets makes them particularly responsive to requests by these companies.[73] While both companies and governments need the other party, multinational natural resource companies often have much more flexibility when choosing projects than do national governments, which are constrained by their geography and poverty. As a result, natural resource companies are justifiably assumed to wield great influence on the policies of developing country governments.[74]

Natural resource companies' significant influence in developing countries is not matched by any other private sector actor. Efforts to promote primary health care initiatives (and many other social programs) need to acknowledge these companies' prominence and use the resources they manipulate to achieve their goals. Their local knowledge and economic influence over developing world governments and civil society institutions is unmatched. International financial institutions are increasingly recognizing that the social/political goals which they

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[70] *See, e.g.*, *See, e.g.*, HUMAN RIGHTS WATCH, THE PRICE OF OIL (1999), *available at* http://www.hrw.org/reports/1999/nigeria/ [hereinafter Price of Oil]
[71] *Id*.
[72] *See, e.g.*, Beer, *supra* note 63. More broadly, private sector foreign corporations are very efficient in choosing what they need to know. Their focus will be on cultural features/practices relevant to their business—their expatriate staff in particular may seem quite cut off from non-business focused realities of the countries they operate in.
[73] *See, e.g.*, Price of Oil, *supra* note 70 at 2-4.
[74] *See, e.g.*, Id.; *Multinationals and their Morals*, THE ECONOMIST, Dec. 2, 1995 at 18 [hereinafter *Multinationals*].

pursue require the cooperation and support of large investors in developing countries—the natural resource companies.[75]

Section IV: Attempting to Mobilize the Private Sector in Developing Countries

a. Introduction

There have been significant and sometimes successful attempts to make the private sector a partner in achieving social change/improvement in developing countries. These efforts have relied on different means, including publicity, legal sanctions, incentive schemes and other tools. But though there are examples of private sector companies possessing and sometimes realizing the capability to play integral roles in social programs of developing countries, attempts to harness the private sector to achieve change have often faced obstacles. One example of efforts to influence corporations is provided by NGOs' publicity campaigns against Talisman Energy in Sudan. Another is a World Bank effort to ensure that the government of Chad uses its oil revenues in ways that directly benefit its general population, rather than diverting these funds to uses with less broad social utility. Though both these examples showcase problematic projects, they also underscore attributes that could prove key to successfully mobilizing the private sector: working cooperatively with the private sector and deemphasizing national government participation in projects.

b. Involving the Private Sector in Social Change

1. Case Study on the Talisman Energy Experience

One cautionary example of corporate interactions with social goals is the campaign against Talisman Energy in Sudan. Talisman Energy's operations were associated with significant human rights abuses and were perceived as not contributing to its surrounding community. NGO pressure on Talisman led it to leave Sudan—ending its association with human rights abuses.

[75] *See* discussion of Chad oil project in Section III for an example of these efforts.

But Talisman was replaced by an Indian oil firm less vulnerable to NGO pressure. NGOs decision to push for disinvestment and attack Talisman—rather than work with it to improve conditions in Sudan—ironically led to a situation where the international community ended up with much less leverage to lobby for improved social policies. This case study underscores the importance of calibrating pressure to ensure that private sector responses improve conditions in developing countries.

Talisman Energy's operations in Sudan were a major source of support for the Sudanese government.[76] Efforts to ensure that oil operations in southern operations in Southern Sudan were not disrupted included killings, bombings and other human rights abuses.[77] Revenues from these oil investments were primarily used for military spending.[78] While the company engaged in social development programs[79], NGOs and other groups harshly criticized the company's operations in Sudan. As part of a campaign to promote disinvestment, they launching lawsuits,[80] issued hostile media attacks,[81] and initiated shareholder actions.[82] As a result, Talisman decided to sell its stake in Sudanese oil operations.[83]

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[76] *See, e.g.*, Press Release, Human Rights Watch, Sudan: Oil Companies Complicit in Rights Abuses (Nov. 25, 2003), *available at* http://hrw.org/press/2003/11/sudan112503.htm [hereinafter OIL COMPANIES COMPLICIT].

[77] *See generally*, HUMAN RIGHTS WATCH, SUDAN, OIL, AND HUMAN RIGHTS (2003), *available at* http://www.hrw.org/reports/2003/sudan1103/sudanprint.pdf.

[78] *See* OIL COMPANIES COMPLICIT, *supra* note 76 ("the major share (60 percent) of the US$580 million received in oil revenue by this poverty-stricken country in 2001 was absorbed by its military, both for foreign weapons purchases and for the development of a domestic arms industry").

[79] *See,e.g.*, TALISMAN ENERGY, 2002 CORPORATE RESPONSIBILITY REPORT 11 (2003), *available at* http://www.talisman-energy.com/pdfs/TLM02CR.pdf.

[80] *See, e.g.*, Presbyterian Church of Sudan v. Talisman Energy, 244 F. Supp. 2d 289 (S.D.N.Y. 2003).

[81] An example of which is a form letter to Canadian Parliament members posted on the web. *See* Letter from Gary Kenny, Chairperson, Sudan Inter-Agency Reference Group, to Member of Parliament (Canada) (Feb. 13, 2001) *available at* http://www.web.net/~iccaf/humanrights/sudaninfo/memparl0201.htm ("We note with dismay that Canada's premier upstream oil and gas exploration and development company, Talisman Energy, is a 25% partner in Sudan's Greater Nile Petroleum Operating Company . . . . [w]e believe oil development, in the midst of a vicious civil war, is completely unacceptable").

[82] *See, e.g.*, TALISMAN ENERGY, *supra* note 79, at 3.

[83] *Id*.

Talisman's decision to divest of its Sudanese operations actually decreased the leverage possessed by the international community. Oil investments were sold to an Indian petroleum company[84] that is significantly less vulnerable to western public pressure and thus less motivated to pursue even minimal social/human rights programs than the Canadian owned Talisman.[85] The large scale campaign against Talisman Energy, while emotionally satisfying, did not improve the situation in Sudan—it simply led to changes in ownership, which even supporters of the campaign against Talisman saw as unhelpful.[86] This cautionary example illustrates the importance of working with corporate entities—and the limits of pressure that can be brought onto them. Western natural resource companies are often much more amenable to pressure than developing country governments or corporations.[87] But efforts to influence them need to take into account their profit making goals—and desire to preserve their corporate reputations—by providing intermediate options that allow them to maintain profitability. Otherwise, they may follow the example of Talisman and decide to divest controversial assets to actors less susceptible to outside pressure.

2. Case Study on the Chad Oil Pipeline Project

One of the most ambitious efforts to involve the private sector in delivering social benefits to developing nations has been the World Bank funded Chad oil pipeline project. The World Bank made its funding of this oil pipeline contingent on the government of Chad and the oil companies' agreement that revenues from the project would be allocated by a Board with

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[84] British Broadcasting Corporation, *Talisman Promises Sudanese Sale* (Mar. 5, 2003) *at* http://news.bbc.co.uk/2/hi/business/2821045.stm.

[85] Responding to the sale of Talisman's stake, Andrew Pendleton of Christian Aid commented that "We wanted them to halt production but not to leave and hand over to someone (ONGC) who will be harder to bring to account". *Pressed Talisman Quits Sudan*, THE GUARDIAN, Nov. 1, 2002, at 29.

[86] *Id*.

[87] Responding to protests over ONGC's takeover of Talisman's Sudan holdings, India's oil minister argued that India's energy needs were more important than "possible protests". Katy Salmon, *Development: Rebels Caution India on Sudan Oil Investment*, IPS, Jul. 2, 2002.

representatives of all parties according to pre-determined criteria. This was supposed to prevent the government of Chad from misusing the funds it was allocated. The project achieved some notable successes—however, the income allocation encountered significant problems, leading to the suspension of World Bank funding. While these problems are due to a variety of factors, the difficulties in controlling a sovereign government has been a particularly significant.

The Chad oil pipeline project was advertised by the World Bank as a new prototype in its poverty alleviation strategy.[88] The project consists of developing three oilfields (Miandoum, Kome and Bolobo) in the Doba basin of southern Chad, and building a pipeline to export the oil through Cameroon to the Atlantic ocean.[89] The oil consortium that initially developed this proposal (led by ExxonMobil and initially including Chevron and Petronas) was unwilling to invest unless it could obtain World Bank loan guarantees.[90] These were crucial to lowering the overall financing costs of investing in a very unstable region.[91]

The World Bank was wary about providing loan guarantees to the project. The government of Chad had a very poor human rights record and was also known for diverting funds away from social programs towards spending categories not perceived as beneficial to Chad's people.[92] But in return for significant concessions to its budget allocation preferences, the World Bank agreed to provide financing to both the governments of Chad and Cameroon and the private sector consortium, through the International Bank for Reconstruction and

[88] *Chad-Cameroon Pipeline Represents New Approach*, DEVNEWS MEDIA CENTER, Oct. 10, 2003, *available at* http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20131848%7EmenuPK:34460%7EpagePK:64003015%7EpiPK:64003012%7EtheSitePK:4607,00.html.
[89] World Bank, *The Chad-Cameroon Petroleum Development and Pipeline Project: Project Overview, at* http://www.worldbank.org/afr/ccproj/project/pro_overview.htm [hereinafter World Bank, *Project Overview*].
[90] WORLD BANK, CHAD-CAMEROON: PETROLEUM DEVELOPMENT AND PIPELINE PROPOSAL, PROJECT APPRAISAL DOCUMENT 20-23 (Apr. 13, 2000), 19343-AFR, *available at* http://www.worldbank.org/afr/ ccproj/ project/ tdpppad.pdf [hereinafter PROJECT APPRAISAL DOCUMENT]; *see also Uriz*, *supra* note 13.
[91] *See* Susanne Breitkopf, *The Chad Cameroon Petroleum Development and Pipeline Project: Risky Business*, 2000 (Center for International Environmental Law and Urgewald), 2000; Uriz, *supra* note 13.
[92] *See generally* U.S. DEP'T OF STATE, CHAD: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - 1999, Feb. 2, 2000, *available at* http://www.state.gov/g/drl/rls/hrrpt/1999/234.htm [hereinafter HUMAN RIGHTS PRACTICES - 1999], Uriz, *supra* note 13, at 218-19.

Development (IBRD) and the International Finance Corporation (IFC) respectively. Total funding by these organizations was about $192.9 million, with some assistance in raising additional amounts also offered.[93]

The most innovative conditions for the World Bank's support involved the use of revenues from the project. Chad's government was entitled to compensation amounting to at least 12.5% of the price of crude oil produced by the project (and potentially additional taxes).[94] But before the World Bank was willing to approve the project, it required that Chad's government pass a Revenue Management Law, outlining socially beneficial use of the income generated. This law required that direct revenues be deposited into an escrow account. Ten percent of these revenues are supposed to be saved "for future generations", Seventy two percent spent on priority sectors (e.g. public health, social affairs, education etc.), 4.5% spent on the people of the Doba basin and the rest allocated to the government operating expenses.[95] The disbursement of these funds is supposed to be controlled by an Oil Revenues Control and Monitoring Board, which includes representatives from the judiciary, government and civil society.[96]

Theoretically, the revenue management structure approved by the World Bank considerably lessened the ability of Chad's government to redirect funds in ways that do not benefit the general population of the country. But the structure of the board actually made it easy for the government of Chad to use the funds in ways that were not socially optimal. The Oil

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[93] *World Bank Group Approves Support for Chad-Cameroon Petroleum Development and Pipeline Project*, No. 2000/395/AFR (World Bank Press Release), June 6, 2000, *at* http://www.worldbank.org/afr/ ccproj/news/ index.htm.
[94] Thomas Sotinel, *Le Tchad Face aux Sirenes Petrolieres*, LE MONDE, Sept. 3, 1998, at 13.
[95] *Loi de Gestion des Revenus Petroliers* [Oil Revenue Management Law], No. 001/PR/99 (Chad), *translated in* PROJECT APPRAISAL DOCUMENT, WORLD BANK, CHAD-CAMEROON: PETROLEUM DEVELOPMENT AND PIPELINE PROJECT, PROJECT APPRAISAL DOCUMENT 101-04 (Apr. 20, 2000).
[96] *Id*; Uriz, *supra* note 13, at 222-25.

Revenues Control and Monitoring Board's makeup was obviously subject to manipulation.[97] While it is meant to have a mix of government and independent representatives, the Board was actually composed of two Members of Parliament, four high ranking officials and two civil society representatives.[98] Given the undemocratic reality of Chad, this meant government control of allocations with few opportunities to appeal. An International Advisory Group (IAG), set up to help maintain the Board's independence has the power to point out problems but limited enforcement means. But the allocation of funds was still in the hands of Chad's government—subject to the corruption and incompetent allocation.

An additional problem with the revenue control board is that there are almost no limits on how money allocated to particular social categories is actually spent. Thus there are no legal limitations on preferential allocation of funds to certain regions (e.g. those where the president derives his support) or on the type of projects that are actually funded. This led to the potential for massive corruption and nepotism. The Chadian government's past record did not suggest it will make special efforts to ensure that the money is well spent. In fact, the international monitoring of initial allocations rather than impact of spending provided strong incentives to the Chadian government to divert funds at lower levels towards measures that directly support its political and other goals. Animosity between northern and southern regions of Chad, with the north dominating politics[99] and the south producing oil, mades government control of the social spending even more problematic.

The Chadian government's actions on receiving its "welcome bonus" did not suggest that it intended to respect the Revenue Management Law. The government spent half of the $25m (spell out) it received without using the allocation mechanism required the law. Even more

[97] *See, e.g.*, Uriz, *supra* note 13, at 224.
[98] *Id*.
[99] *Uriz*, *supra* note 13.

troublingly, $4.5m (spell out) of this amount was spent on arms, not one of the socially optimal categories envisioned by its agreement with the World Bank.[100] While public outcry and World Bank intervention stopped this particular derogation by the Chadian government, it demonstrated the ability of Chad's government—and developing countries in general--to ignore national legislation. Chad, in particular, decided to abrogate its agreement and increase spending on its military, leading to the suspension of World Bank loans in early 2006.[101] The future of the oil project was unclear.

Despite the manifest and clear weaknesses of its revenue allocation plan, the Chad oil pipeline project's requirements were groundbreaking. The Chadian government and the multinational oil companies involved accepted an intrusive and detailed revenue allocation arrangement once they realized that initial, vaguer plans were not acceptable to the World Bank.[102] In return for a relatively small scale loan, the World Bank achieved a much higher level of monitoring than would traditionally have been acceptable for a sovereign government. The Achilles heal of the project turned out to be the difficulties the World Bank faced in controlling the activities of a sovereign government, even after it agreed to monitoring.

c.Extending Private Sector Involvement in the Provision of Social Services

Given private companies' profit making focus, their willingness to adapt to changing profit making incentives is not surprising. Western multinational natural resources corporations, with international reputations and asset holdings, are also vulnerable to concerted pressure by NGOs and governments. Similarly, international financial institutions and even large

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[100] Babette Stern, *Le Tchad A Achete des Armes avec l'Argent du Petrole*, LE MONDE, Nov. 22, 2000, at 5.
[101] Press Release, World Bank, World Bank Suspends Disbursements to Chad (Jan. 6, 2006), *available at* http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CHADEXTN/0,,contentMDK:20778928~menuPK:349881~pagePK:141137~piPK:141127~theSitePK:349862,00.html; Celia W. Dugger, *World Bank Suspends Loans to Chad Over Use of Oil Money*, NEW YORK TIMES, Jan. 7, 2006.
[102] *Stern, supra* note 100.

international NGOs also have reputational concerns and are vulnerable to regulation by the international community. In contrast, national governments like Chad's, with few assets and a problematic global reputation to begin with, have little to lose from global condemnation and are thus able to more easily flout their international obligations.[103] The independence enjoyed by national governments also means that it is much harder to prevent them from abrogating agreements, as the government of Chad's eventual actions in the Pipeline project demonstrated.

These facts suggest that the next step in promoting critical emergency social programs/economic development may involve less engagement with national governments. Especially when dealing with governments like Chad's, that consistently violate international community norms on issues ranging from corruption to human rights,[104] it may be necessary to limit their participation in spending of funds in order to assure that revenue allocation programs are successful. Instead, groups composed of multinational companies, civil society representatives and international financial institutions may be most effective in promoting social and economic development. Their international reputations and asset bases make them more vulnerable to international sanction, and thus more likely to follow through with their commitments. For example, private corporations are relatively vulnerable to enforcement of international arbitration decisions. Large natural resource companies possess far-flung international holdings[105] that could be vulnerable in the event that they were assessed penalties

[103] On a broader scale, the pressure Chad comes under to improve human rights may not be that great in any case. Oona Hathaway, writing about human rights law but in comments relevant to this case, has commented that "a nation's actions against its own citizens do not directly threaten or harm other states…[thus] countries have little incentive to police noncompliance with treaties or norms." Oona Hathaway, *Do Human Rights Treaties Make a Difference?,* 111 YALE L.J. 1935, 1938 (2002).
[104] See, e.g., PRICE OF OIL, *supra* note 70; Uriz, *supra* note 13, at 219-20.
[105] *See, e.g.*, ROYAL DUTCH PETROLEUM COMPANY, ANNUAL REPORT AND ACCOUNTS 2003 at 22 (2004) (listing diverse countries where new investments are being made and operations are continuing—these include Germany, the United States and Mexico).

for not meeting pre-agreed primary health care targets.[106] Beyond the slightly hazy idea of reputation integrity, the real possibility that national legal systems will enforce contracts and international arbitration makes natural resources companies more reliable interlocutors than developing country governments with very limited assets abroad.[107]

In the past, national sovereignty concerns and suspicion of multinationals' intentions might have torpedoed efforts to expand the role of private companies at the expense of national governments. But the poor record of developing country governments in respecting the rights of their peoples, the same governments' abandonment of traditional national sovereignty concerns in order to attract investment and the expanding role of private corporations suggests that it will be possible to make private corporations responsible not just for producing revenues efficiently but also allocating at least some of them in a fairer and more productive manner.

Section V: Proposal

a. Introduction

The inability of many developing country governments to provide primary health care to their citizens suggests that radical change is needed in the way that these services are allocated and funded. Making natural resource companies that invest in developing countries contractually responsible for the provision of at least some of these services would yield significant benefits. With the establishment of an appropriate regulatory framework, this type of arrangement would leverage these companies' ability to operate efficiently, their influence with developing country governments, and their susceptibility to outside monitoring and pressure.

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[106] International arbitration rulings are increasingly being enforced in national courts. *See, e.g.*, Jane L. Volz & Roger S. Haydock, *Foreign Arbitral Awards: Enforcing the Award Against the Recalcitrant Loser*, 21 WM. MITCHELL L. REV. 867 (1996).

[107] The tragicomic saga of a Ukrainian government plane being seized in a dispute with a private corporation illustrates the paucity of foreign holdings owned by developing country governments. Mikhail Melnik, *Crew Leaves Ukrainian Jumbo Plane Arrested in Belgium*, ITAR-TASS NEWS AGENCY, Aug. 22, 2004

A successful program linking primary health care provision and natural resource exploitation could have a very significant impact. Adhering to guidelines previously agreed to, natural resource companies would make a significant commitment to expanding primary health care opportunities in the developing countries they invested in. These resources would be invested with a minimum of corruption and inefficiency in order to protect the private corporation's profits. The government of the country would also have incentives to cooperate, out of concern for its citizens welfare but also in order to promote good relations with the corporation responsible for producing much of the income used for the government's own activities.[108] Eventually the primary health care investment would result in significantly improved health for the entire population. Failing to meet targets would carry sufficiently significant financial consequences that the company concerned would not permit shortfalls because of bureaucracy, lack of resources or a desire to make short term cost savings. Better primary health care would improve not just the overall well being of the general population but also aid general economic development, as the workforce became less prone to disease and could participate in additional wealth generating activities.[109]

In order for the program discussed above to be successfully implemented, international financial institutions will need to link their participation in natural resource development projects with the assumption of primary health care responsibility by natural resource companies. As discussed earlier, primary health care is a sector where investment is very important but all too

[108] This is a key reason for requiring the corporation to undertake responsibility for achieving specific targets, rather than simply requiring payments to a third party. Ideally, the corporation will use the influence it possesses as a major contributor to government revenues in order to achieve the targets it has committed to meet.
[109] The ideas sketched in this section obviously face significant practical challenges—these are addressed in Section VI.

often not successfully implemented. It is also relatively removed from cultural sensitivities,[110] at least in comparison to sectors like education.[111] Primary health care is thus an ideal sector within which to develop the program discussed above.

International financial institutions whose funding is required to permit natural resource projects to go forward would need to consider three core issues when making natural resource companies responsible for aspects of primary health care in a developing country: Goal setting, Monitoring and Enforcement. Addressing these issues will ensure that natural resources companies are set appropriate targets, meet them and are subject to rewards and penalties that deter failure to provide services.

A successful coordination of goal setting, monitoring and enforcement would improve links between natural resource exploitation and public welfare in developing countries.[112] The same profit incentive that makes private companies efficient at exploiting natural resources would be applied to the provision of primary health.[113] The influence that natural resource companies derive as wealth generators for government elites would also help ensure the success of their endeavors. Eventually, if links to primary health care provision proved successful,

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[110] As stated this is a relative issue—problems like Female Genital Mutilation (FGM) and some other health provision issues are still very controversial. But compared to the core nation building an attitude functions of education, these are less controversial.

[111] National identity and consciousness are more explicitly linked with particular school curricula than with the provision of basic health services. While views on history can vary widely, basic medical procedures vary less and are less influential in shaping national consciousness. Traditional medicine and other national symbols may increase national consciousness, but it is unlikely that traditional medical culture would be incompatible with child inoculation and other procedures crucial to basic primary health care. Finally, any goal setting process would set specific goals that were appropriate to country conditions—this could include consideration of any local health care traditions important to national identity.

[112] International financial institutions already have experience in setting and monitoring targets for complex projects. *See, e.g.*, Wayne Arnold, *Indonesia Vows to Pursue Economic Plan*, NEW YORK TIMES, Sept. 16, 2003, at W7. To assist them, numerous consultancies have developed expertise in assessing private company's performance against social, community development environmental criteria. *See, e.g.*, Shell Nigeria, *supra* note 60, at 28.

[113] The idea that non-financial obligations would be forced onto natural resource companies is also not unusual. Project finance agreements increasingly specify that companies will meet environmental and social standards set by international financial institutions. *See, e.g.*, John W. Head, For Richer or for Poorer: Assessing the Criticisms Directed at the Multilateral Development Banks, 52 Kan. L. Rev. 241, 280 (2004); Demetri Sevastopulos, *Four Banks Adopt IFC Agreement*, FINANCIAL TIMES, Apr. 7, 2003, at 17.

developing countries and international donors could consider bringing the same model to other government activities.[114]

b. Goal Setting

Setting challenging but achievable performance targets is crucial to ensuring that natural resource companies positively impact primary health care in developing countries. International financial institutions that sponsor this program will have to create processes to set targets that natural resource companies are responsible for meeting. This process should include wide consultations with numerous partners and aim to set achievable but challenging goals. Crucial to the program's success will be avoiding excessive lobbying by natural resource companies and their representatives. Any goals that are set will also need to avoid interfering or drawing support from other necessary social programs.

Any goal setting process will need to include consultations with and representatives from numerous constituencies. The consultations can include both information sharing and participation in the actual goal setting process. These consultations can both leverage existing knowledge/ideas and create a feeling of shared ownership over the program. Core constituencies that will definitely need to be consulted include representatives of the natural resource companies concerned, the developing country government, large donors to the government, international NGOs and domestic civil society institutions.[115] The latter might include domestic NGOs, academic and journalists.[116] These groups will need to decide the types of targets that

[114] This assumption of responsibility might raise even greater normative concerns than the current proposal, and would need to be considered separately.
[115] While the Chad pipeline project conducted significant public consultations, these were marred by accusations that presentations were one sided. *See* Uriz, supra *note* 13, at 220. Consultations and discussions would need to be planned in conjunction with multiple civil society organizations.
[116] Local level consultations (as opposed to information sessions) may be difficult to achieve. Communicating complicated ideas via video or text can be challenging, see Uriz, *supra* note 13, at 220-21. Even simple security

must be met, and whether they consist solely of inputs (e.g. number of children immunized) or of outputs as well (e.g. child death rate).[117]

The most substantial part of the goal setting process will be choosing appropriate targets for extending primary health care. It is vital that this process include input from the private sector corporations potentially responsible for implementing the plans (input would probably be solicited from all companies interested in bidding for a particular project). These private corporations will help determine what targets might be impossible to actually achieve.[118] To balance these cautionary views, local and international NGOs and other local civil society representatives, along with government officials can indicate their ideal in terms of increasing primary health care services. The international financial institution coordinating the project can serve as a moderator, collecting proposals. Eventually, a pre-set committee, composed of academics, development experts and officials from the financial institution can decide on the performance targets that will accompany any loans. Prior coordination with natural resource companies should ensure that they accept these terms and take part in the project.

The committee that decides on goals for improvement in primary health care can also be responsible for additional aspects of the project—e.g. the percentage of income normally allocated to the government which will be forfeited to help pay for the primary health care programs run the by the natural resource company. All of these targets will be individualized for

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measures like security guards can complicate message delivery, *Id*., and village level meetings may subject individuals to social pressure for speaking freely. Carefully chosen, local civil society partners may be more appropriate for gauging popular opinion.

[117] Input targets will be easier to measure but are not immediately linked with concrete results. Output targets will be more difficult to tie directly to the efforts of natural resource companies. In the consultation process described below, the full merits of choosing between these types of targets can be explored. It is likely however that companies will resist any output targets, arguing that intervening events could undermine their best efforts. In this case, it will be incumbent on the committee to propose input targets that are clearly linked to improved public health.

[118] While providing full developed country health care levels everywhere would be ideal, this program's limitation is that overambitious targets will simply not be accepted by natural resource companies and will thus not be implemented. More modest but actually realizable goals will thus be necessary.

each developing country considered, depending on the size of the project being funded and particular country conditions.

In setting targets and engaging in consultations, the committee will need to avoid excessive attempts to lobby for particular results. Natural resources companies can be expected to mobilize lobbyists to advocate for less challenging targets.[119] They may also co-opt representatives from the developing country's civil society and its government.[120] Additionally, government and NGO representatives may try to exert public pressure for over-ambitious targets. In designing a goal setting process, specific rules on lobbying will need to be drawn up, with sanctions for excessive or dishonest attempts to influence committee members. But these regulations can only be expected to address part of the problem. Committee members, and the international financial institutions sponsoring them, will need to remain vigilant about attempts to influence their decision.

A crucial challenge for the committee will involve setting targets that influence appropriate behavior. Target setting for public services has had a mixed record in developed countries,[121] and has in some cases let to behavior with negative social utility. Appropriate targets will measure both quantity and quality of services provided. They will also be set taking into account other programs that are underway in the developing country. To the greatest extent possible, the committee setting these targets should try not to undermine existing social programs.

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[119] Oil companies can mobilize teams of experts, coalitions and political allies to advocate legal changes they support. *See, e.g.*, Andrew C. Revkin, *Clashing Opinions at Meeting on Alaska Drilling*, N.Y. TIMES, Jan. 9, 2001, at A15.

[120] Oil companies do this in developed countries as well, *see id*.

[121] *See, e.g.*, Tash Shifrin, *Government Promises Targets Shakeup*, GUARDIAN, Nov. 11, 2003, *available at* http://society.guardian.co.uk/futureforpublicservices/story/0,8150,1082712,00.html.

Target setting, even with input from a broad cross-section of concerned actors, runs the real risk of reducing efforts in other areas. In the case of the natural resource companies concerned, it is almost certain that other social programs may be curtailed—this would be a natural consequence of the program's focus on primary health care. During consultations on target setting, concerned actors would be able to highlight the potential that particular, valuable social programs would be harmed by the targets set. The committee setting these targets would then be able to evaluate these concerns and, when necessary, alter the targets.

c. Monitoring Activities

Monitoring the success of natural resource companies' provision of primary health care will be crucial to assuring the success of this plan. Successful monitoring will consider both the quality and quantity of health services provided, assisting with assessments of what progress has been made in meeting the targets agreed in the goal setting process. This will enable the assignment of rewards or sanctions to the natural resources company responsible. It could also allow feedback on ways that the goals might need to be changed. Monitoring activities also provide an opportunity to make civil society actors meaningful partners in the project, helping to improve their cooperation with overall project goals. Material incentives may be a useful way of encouraging NGOs and other civil society representatives to participate in monitoring.

Successful monitoring activity is predicated on appropriate goal setting. At least some of the targets set in this phase should be tied to easily measured performance indicators. But targets need not all be quantitative and monitoring reports should not be universally tied to particular performance criteria. Instead, a mix of qualitative and quantitative reports, some focusing on specific criteria and some not will yield the most appropriate results.

Quantitative monitoring in response to particular targets is most easily imagined and will be very useful. This type of monitoring might include statistics on the percentage of children receiving vaccinations, the number of primary care facilities, the number of people treated in primary health facilities, the percentage of deaths in childbirth, and other relevant statistics.[122] Monitoring this type of data will be relatively simple—it is often already collected, though there are significant opportunities for improving data collection in particular developing countries.[123] These statistics can also provide general information on the levels of investment natural resource companies are making and on the overall health impact this investment is having.

Qualitative monitoring will also be important, both independently and in response to particular targets. These types of reports can include information on particular innovations that are being made, popular reaction to the increase in primary health care, and the means that natural resource companies use to achieve any quantitative targets that they set. Qualitative reporting requirements also provide ideal opportunities for integrating NGOs and other civil society representatives. These types of reports allow local representatives increased freedom to shape the structure of their reports around the particular concerns they are identifying. Certain qualitative reports might even be procured with no pre-set requirements, but rather a request for an overall assessment. These will be an ideal context with which to understand more focused qualitative and quantitative data.

Utilizing a large number of monitoring mechanisms is crucial because the data will be used to decided significant financial rewards and penalties. The large financial import of the data makes it particularly important that information collected is accurate. Using a large number of

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[122] This selection of goals deliberately includes potential input and output targets. As discussed earlier, corporations may insist that only input targets be used.
[123] See, e.g., HDI Report, *supra* note 6 at 208-17; WORLD HEALTH ORGANIZATION, WHO & UNICEF ESTIMATES OF NATIONAL IMMUNIZATION COVERAGE (2004), *at* http://www.who.int/vaccines-surveillance/WHOUNICEF_Coverage_Review/.

information gathering mechanisms will allow double checking of reports' accuracy. It will also reduce the ability of interested actors to influence the content of monitoring in ways that they find financially beneficial. These potential wrongdoers could include not only the natural resource companies responsible for the provision of health care but potentially their financial competitors and/or governments seeking to obtain additional investment in their health care networks.

Monitoring will certainly need to include collection of official health care statistics and dedicated teams affiliated with international institutions sponsoring the project. But involving local and international civil society institutions would significantly increase the number of monitoring mechanisms, as well as giving affected communities (e.g. international development professionals, domestic civil society members, and others) a sense of ownership over the project.

Official teams from the financial institution monitoring the project will be able to tailor their activities to the needs of the actual project. Because monitoring will be one of their core activities, they will be able to collect specific data needed to measure progress towards meeting previously agreed goals. They will also be an independent voice and relatively impervious to pressure from interested parties like natural resource companies and host governments. These monitoring teams will form the base of the monitoring effort.

International development NGOs' assistance with monitoring activities will provide valuable alternative perspectives. Many international development NGOs are skeptical of natural resource companies and international financial institutions.[124] Their alternative perspectives will provide a good balance to the views of official teams, who while independent of outside actors, may be affected by their institutions' sponsorship of the project. Involving international

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[124] *See, e.g.*, OXFAM, THE IMF AND THE MILLENIUM GOALS: FAILING TO DELIVER FOR LOW INCOME COUNTRIES (2003); CHRISTIAN AID, FUELLING POVERTY: OIL, WAR AND CORRUPTION (2003).

development NGOs might also provide them with a greater sense of project ownership. This could encourage constructive engagement with criticisms, rather than media campaigns that could undermine the entire project's success.

Domestic civil society representatives are the third prong of a successful monitoring effort. Involving local NGOs, media, government officials and others in the project will help ensure that local perspectives are adequately represented. Domestic civil society institutions will have local connections and insights that official teams and international NGOs may lack. Some of these groups' members will directly experience the primary health care provided through oil revenues, a perspective that other monitors will not share. Giving domestic civil society groups a sense of ownership in the project will also reduce nationalistic protests. Providing real opportunities for all sectors of society, including the government, to see the new services for themselves might also reduce suspicions that the project is undertaken to benefit any particular group in society—e.g. the government or opposition parties.

Data collected by monitors does not have to be used exclusively to determine sanctions and rewards for the natural resource company concerned. The reports may also provide evidence of particular approaches to primary health care that should be replicated in other societies. They may also be used in constructive dialogue with the responsible natural resource company. Encouraging monitors and those they monitor to discuss their findings could lead to useful group problem solving and even partnerships to address particular roadblocks. This type of activity could also reduce strains in relationships that monitoring could introduce in the developing country. An eventual goal of the monitoring program should be for civil society monitors to involve themselves more in facilitating development—both alone and in conjunction with those they are monitoring.

d. Enforcement

Enforcement mechanisms will motivate natural resources companies to comply with pre-agreed goals. Preferably, enforcement mechanisms will combine a system of inducements with a penalty system. Whatever system is designed will need to be significant enough to influence resource allocation decisions of the companies concerned. In order to reassure all parties to the process, the enforcement system will need to be administered by an independent Board whose decisions can then be appealed. This Board will assess criteria previously agreed to by all parties, collected by the international financial institution concerned and, in the case of penalties, enforced through western court systems. The Board will also need to consider situations where goals were not achieved for reasons beyond the control of natural resource companies—as specified in loan agreements with international resource companies.

1. Enforcement Procedures

An independent Board constituted according to preset procedures will be crucial to both the effectiveness and the legitimacy of any enforcement system. This Board will need to regularly assess progress against previously agreed criteria set out in project agreements between these companies and international financial institutions. It will then need to decide on what inducements or penalties are appropriate. The decisions of the Board will need to be both public and open to appeal by both international financial institutions and the natural resource companies.

The rules of procedure for the Board (and, relatedly, its membership) which monitors these contracts will need to be drafted with care. Some of these rules can be derived from existing codes like those drafted for international arbitration by organizations like the

International Center for the Settlement of Investment Disputes (ICSID)[125] and the the United Nations Commission on International Trade Law (UNCITRAL).[126] Others will need to be specifically crafted to ensure that the Board is independent and focused on regularly measuring progress in the implementation of primary health care (as opposed to rendering isolated decisions). Additionally, unlike international arbitrators (who generally change for every arbitration), the Board's membership will be relatively unchanging, with members serving for fixed time periods.

Given the Board's mission to regularly measure progress in meeting primary health care commitments, it will need to develop a speedy process for considering evidence while still giving a fair hearing to the reports of very diverse parties. To accomplish this, rules of document submission for all parties will need to be strict, with early deadlines and responses to specific data requests by the Board. NGOs', especially ones from the country concerned, may be given additional leeway in order to accommodate their more limited resources and the importance of creating a feeling of ownership over the natural resources project. Representatives of the natural resources companies and other entities will also need to be available for conversations with the Board about the information it is considering.

Depending on the particular loan agreement, the particular targets and types of progress the Board measures will adjust from case to case, and it will need to accept evidence and information from a very wide variety of parties, including national governments, national and international lenders and NGOs. The Board will be particularly useful in the event of mixed progress against key benchmarks (e.g. exceeding some but falling short on others). In this case,

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[125] *See* INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES, ICSID CONVENTION, REGULATIONS AND RULES, *available at* www.worldbank.org/icsid/basicdoc/basicdoc.htm
[126] *See* UNCITRAL Model Law on International Commercial Arbitration, U.N. GAOR, 40th Sess., Supp. No. 17, Annex I, at 81, U.N. Doc. A/40/17 (1985); *24 I.L.M. 1302*.

even with the clearest benchmarks possible, a balancing will need to take place, and an independent Board is more likely to be trusted by the concerned parties than a simple committee formed by the lenders. In the long term, the Board would also be able to recommend on whether goals and/or inducements/penalties should be restructured to more accurately reflect circumstances encountered by the natural resource company.

In order for the enforcement mechanism and the Board to be successful, it will be important to obtain strong consensus when particular inducements/penalties are linked to specific goals. These inducements/penalties are not meant to be independent revenue generators but rather mechanisms that influence compliance with pre-set targets. Additionally, the enforcement mechanism should be easy to implement—to reduce both the possibility of natural resource companies "gaming the system" and to give the appearance of transparency, which will be important for the program's overall credibility. This suggests that any enforcement system should be almost wholly financial in impact.

During the goal setting process, careful thought must be given to the exact mix of enforcement techniques that are appropriate for a particular lending project. Factors that might need to be taken into account include the rigor of the goals agreed to, the types of enforcement procedures that a natural resource company will agree to be subjected to in order to participate in the project, and the impact that particular enforcement measures will have on the natural resource company involved. The ultimate goal will always be to ensure that the company meets or exceeds challenging goals in the provision of primary health care. This will require balancing the rigor of the goals and the magnitude of inducements/penalties.

A final consideration when setting up a Board is that its decisions can both be submitted to speedy international arbitration and that they are enforceable in national courts. Loan agreements should set out a clear set of criteria under which decisions of the Board's decisions will be subject to an arbitration process. These should allow for speedy consideration of evidence and decisions. This option to appeal may increase the confidence of natural resource companies in the process and thus their willingness to participate. Concomitantly though, the legal framework in any loan agreement should clearly provide for a right to recovery in multiple national jurisdictions for any financial penalties. This will be different from standard contract clauses allowing lenders to demand immediate repayment under particular conditions. Instead, it will usually demand a penalty for not having met targets but proceed on the assumption the primary health care program will continue under the aegis of the natural resource company, unless there is an absolute failure to meet primary health care targets.

The Board should be open to submissions by NGOs, host governments and other third parties. But appeals from its decisions should be allowed only by the specific lenders and borrowers. This will provide some security to natural resource companies worried that activist NGOs or host governments may decide to try and enforce tougher standards than those previously agreed to. More broadly, the Board itself should be the same for all loan contracts completed under this framework. Though the exact conditions for the loan may differ, having a consistent membership and set of procedures for the evaluating Board will make the process more predictable and the responsibilities of natural resource companies clearer.

2. Inducements

Inducements will be relatively uncomplicated and primarily provided by the international financial institutions sponsoring the project. These inducements will be mostly financial, including reduced interest payments, extended repayment periods and/or other financial rewards.

The exact triggers for award of these inducements will apply will be determined the goal setting section. But it would be reasonable to expect these if natural resource companies over deliver on key primary health care targets.

Additional incentives for good performance on pre-assigned targets will include positive press coverage and may extend to preferential consideration for future projects by both the developing country government and the international financial institution. Natural resource companies which are financially rewarded for improving primary health care will be able to use this award in their public relations campaigns and as proof of the positive impact they have on the developing world. This could be an extremely valuable fringe-benefit to the purely financial incentives.[127] It is also likely that good performance in providing primary health care will yield additional opportunities for cooperation with the international financial institution and developing country governments. These opportunities could be formally codified as additional incentives. But even if not officially provided, a publicized positive track record in this regard will almost inevitably make it easier to obtain additional contracts.

3. Penalties

Penalties for failing to meet pre-set targets will be more complex to implement than inducements. In some cases, they may not be appropriate at all because of the inherent tension and legal complexities they give rise to. But if they are necessary, a number of additional considerations will have to be taken into account. The supervising Board will need to calculate these penalties in an open, previously agreed and transparent way. International Financial Institutions will then need to collect these awards, possibly using developed world legal systems

[127] Oil companies like Shell have demonstrated how important they feel this type of publicity is by issuing auditor approved reports on their ethical and environmental behavior. See SHELL REPORT, *supra* note 65.

to enforce judgments against the companies concerned. The possibility of open legal battles over penalties will encourage natural resource companies to comply with any judgments against them to avoid reinforcing public relations problems.

As with inducements, the process of setting penalties will need to be previously agreed in order to avoid giving rise to disputes. Because of the large financial and public relations impact these penalties can have, natural resource companies can be expected to lobby heavily against their imposition. This will make it crucial that the procedures used and penalties applied are very clearly delineated beforehand, and that their application is not subject to widely differing interpretation. The penalties will almost certainly be financial and will depend on the extent to which pre-agreed targets were not met.

One potentially challenging aspect of any penalty program will be ensuring that any monetary awards are collected. It will be crucial to ensure that any contracts signed can be enforced by national courts in countries where natural resource companies have assets that can be impounded. Any court ruling exempting natural resource companies from penalties will seriously undermine incentives to comply with previously agreed targets in primary health care provision. Assuring adequate courtroom enforcement of penalties will be especially crucial in the case of natural resource companies based in jurisdictions where the judiciary may not reliably enforce contracts (e.g. China and other developing countries).[128] In the case of companies like these, enforcement provisions may be less useful or may need to be secured by assets in countries with more reliable judicial systems.

[128] *See, e.g.*, Volz *supra* note 110, at 904.

Given the increasing acceptance of international arbitration and the enforcement of cross-border contracts,[129] it is not unrealistic to expect at least some court systems to fully support efforts by international financial institutions to collect penalties decided by the Board. The actual procedure of the Board will be more similar to that of various UN human rights committees which meet regularly to assess progress towards particular goals by nation states than to court decisions.[130] But styling the Board's deliberations as the results of international arbitration may make them seem more familiar and acceptable to national courts.[131] Thus, the loan agreements specifying the existence of the Board and its procedures may need to constitute it as a pre-authorized arbitration panel—rather than a completely new entity with which enforcing national courts have no experience. Conveniently, large natural resource companies often possess far flung holdings in numerous countries—making it easier to enforce the award in jurisdictions more open to enforcing penalties agreed by international arbitration.[132] In this sense, large natural resource companies are much more vulnerable to international pressure than governments, as they do not possess ultimate control over a particular geographical area where most of their resources are concentrated.

A non-legal motivator for natural resources companies' compliance with penalties for not meeting pre-set goals are the strong public relations and credibility blows they will suffer

[129] An example of this was the impounding of a Ukrainian plane, by a Belgian court on the order of a Swedish Court of Arbitration in a dispute with a Cypriot company. *See* Melnik, *supra* note 111.

[130] The actual deliberations of the UN human rights committees are relatively secretive and time consuming, often taking years before condemnation and action. See DAVID WEISSBRODT ET AL., INTERNATIONAL HUMAN RIGHTS: LAW, POLICY AND PROCESS 156-72 (3rd. ed. 2001). While monitoring of natural resources companies would be more public and action swifter, it would share an emphasis on yearly/continuous monitoring. Additionally, given the highly specific nature of arbitration agreements, there should be no problems in setting up a Board with permanent members whose judgments can, in certain cases, be appealed to a more standard international arbitration panel.

[131] Some national courts are still reluctant to enforce international arbitration agreements, *see, e.g.*, Volz, *supra* note 110 at 870, but these would still be more acceptable than a new and untried international procedure.

[132] For example, Belgium is noted for enforcing international arbitration awards, with relatively minimal judicial control over enforcement of awards. *See*, *id*. at 895. Other European Union nations also have a good record enforcing foreign arbitration awards. *See*, *id*. at 894.

otherwise. This is especially the case for western natural resource companies, whose "clean" reputation is most developed and valuable. For these companies, failing to meet goals in primary health care provision will negatively affect public relations. Any court battles against penalties will increase coverage of their failure and could also reinforce perceptions that they care less about developing social capital than they claim.[133] Additionally, companies that refuse to pay penalties may suffer official or unofficial penalties when bidding for additional contracts with international financial institutions or developing country governments (as well as seriously damaging their public image). These factors should ensure that carefully structured penalty programs are not continuously challenged in court.

Any Board considering the performance of natural resource companies will need to consider extenuating circumstances. These can be partially negotiated in advance but the board will also need to consider unforeseen ones as they arrive. Factors like civil wars and natural disasters such as earthquakes are obviously beyond natural resources companies' control. Boards will need to decide whether these types of events justify deviations from previously agreed targets and what magnitude this deviation may be. But the powers (and limitations) of the Board in this case will need to be clearly delineated in the loan agreement, in order to reduce the ability of natural resource companies to challenge penalties based on open ended definitions of circumstances beyond their control.

e.Potential Impact

Making natural resources companies responsible for promoting primary health care development in areas within which they invest will bring significant benefits. Natural resources companies have demonstrated their ability to achieve their goals in developing countries.[134]

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[133] For examples of the types of claims that would be undermined, *see, e.g.*, SHELL REPORT, *supra* note 65.
[134] *See* discussion in section IV.

Linking natural resource development with improvements in primary health care is an excellent way of aligning natural resource companies' profit making incentives with broader societal goals.

As discussed in Section III, natural resource companies have significant influence over developing countries. Their activities are major revenue producers for the government and their requests are taken extremely seriously. More broadly, natural resource companies can be a powerful example of best practices for domestic businesses—with their business operations training business and political elites. The positive—and negative—impact of natural resource companies' policies and values on developing country elites is hard to overstate.

Ensuring that primary health care has a significant impact on natural resource companies' revenues has the potential to affect programs beyond those directly focused on primary health promotion. Correctly aligned programs may induce natural resource companies to make primary health care promotion a central component of many activities. Companies will have an incentive to pressure governments into promoting sensible health care policies that will help them meet their pre-set targets. Natural resource companies may also be able to mobilize local businesses to assist it with efforts to promote primary health care programs. Ideally, all employees in particular developing countries will be encouraged to consider the primary health care impact of their projects and to assist in promoting particular campaigns/goals. This mobilization of society would assist in conserving and increasing company profits. But it could also lead to a new focus on primary health care by wide swaths of developing country elites.

More broadly, international development NGOs and other organizations assisting with development will also have an incentive to cooperate with natural resources companies participating in this program. The integral role that the company will be required to take in promoting primary health care will require cooperation. NGOs will need to engage the selected corporation to remain relevant on the issue of primary health care—but the corporation will also have an incentive to use NGOs' expertise in primary health care development. This cooperation between entities that have often had hostile relations in the past could lead to significant learning opportunities and additional cooperation particular development projects, beyond the specific country and in sectors other than primary health care.

The goal setting, monitoring and enforcement measures which are developed should take into account the ability of companies to transform their entire behavior and that of the societies they interact with. Effort which pour short term resources into programs that meet particular primary health care goals may be less sustainable that others which focus on company and society-wide behavior. Appropriately structured goal, monitoring and enforcement efforts will reward sustainable efforts by natural resource companies.

Section VI: Practical Challenges

The ideas outlined above are an extension of current efforts but are still relatively radical. Making private sector natural resource companies responsible for meeting core primary care targets in developing countries could fundamentally alter relationships between international financial institutions, governments, private sector corporations and civil society actors. Before even considering this type of plan, some key challenges need to be addressed. These include: whether natural resource companies are actually equipped to handle primary health provision on a national level; whether companies, civil society actors and especially developing country governments will be willing to cooperate with this program; the vulnerability of this program to cheating by governments or corporations and the enforceability of legal constraints on companies. Though it is hard to address all these issues definitively, it seems clear that none are so compelling as to overturn the rational for this program.

A basic challenge to this proposal is whether natural resource companies will actually have the capacity to reach challenging targets for improvements in primary care provision on a national level. Their organizational expertise is in extracting, refining and marketing natural resources and their experience promoting health care is often limited to their employees and regions around their key production sites. Some critics would suggest that employing a third party contractor to undertake a health promotion program and requiring payments to them by the natural resource company could be a better way of achieving key targets.

Unfortunately, primary health care if often so terrible that basic increases in efficient/uncorrupt delivery mechanisms would be a giant improvement. As discussed previously, certain developing nations' primary health care spending has a very low impact because of public sector inefficiency/corruption.[135] More broadly, the experience of natural resource companies in providing social services to regional areas should be very useful when providing more limited services on a national scale. The companies themselves could contract with other organizations to provide particular sets of services and would be able to use the most efficient means of meeting/exceeding the goals that have been set. The ability of natural resource companies to radically restructure themselves when the business climate requires it suggests that this responsibility would not be beyond the companies' abilities.[136] Most significantly, ensuring that the natural resource companies' are directly involved in the provision

[135] *See e.g.*, Filmer, *supra* note 8 at 15-19; Gupta, *supra* note 51.

[136] In the unlikely case of large natural resource companies ceasing operations/otherwise withdrawing from the project, their health care operations would need to be continued by national governments and/or NGOs. Theoretically, while the operations would lose the extra clout brought by being run by a large investor, the actual operations will continue to run under new management, and the revenues from the relevant national resources will be transferred to the government and/or new owners (potentially the international financial institutions who are creditors of the natural resource company)—still able to fund the health activities.

of primary care leverages a key asset they possess: sufficient influence and experience to achieve targets in environments that have corrupt and inefficient government actors.

A second challenge to this program is the willingness of companies, civil society actors and governments to participate in the program. Each set of actors has its own agendas, many of which do not make promoting primary health care in developing countries a high priority. More broadly, it will take the agreement of a large number of international actors to make this program work. If any of these actors creates obstacles, the experiment could fail.

A key way of addressing this challenge is taking account of the individual parties' interests. As was obvious from the Chad oil pipeline project and the experiences of multinationals like Shell and BP, it is possible to create an environment in which unlikely parties find it in their interest to advance social goals not immediately connected to their individual aims. Natural resource companies in particular are able to show great flexibility in their operations if their profits depend on it. In situations like the Chad oil pipeline, where international financial institutions' cooperation is needed in order to achieve specific goals, they will probably be amenable to cooperating with social programs like primary health care promotion. Their record of supporting community development elsewhere[137] suggests this type of support is possible for them, especially in a situation that provides for a healthy corporate profit margin.

Civil society actors are diverse in their interests and motivations. Ensuring that they cooperate will probably require multiple approaches. But a combination of financial rewards for assisting with monitoring activities, active consultation and the promise of influence and press attention will probably be useful tools for both domestic and international NGOs. The broad

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[137] *See* discussion in section III.

benefits of primary health care promotion are also close to the mission statements of many NGOs, who will be particularly likely to participate in the project.

Probably the most difficult actors to convince will be developing country governments. It is their asset distribution systems that are being questioned by this program, and the program will reduce the resources under the direct control of the government. Removing the opportunities for patronage and power that oil resources provide governments will reduce their desire to support any natural resource development or cooperate with either international financial institutions, civil society groups or even private sector natural resource extractors. To address these problems, it is crucial that developing country governments be given direct control of a portion of the revenue, which provides an incentive for them to cooperate with the program. Those revenues allocated to the developing country government may be money wasted, but can be seen as a facilitation payment to allow more effective promotion of the public good by outside actors.

Convincing all actors to cooperate is obviously a complicated problem. In situations where projects can go ahead even without international financial institutions, it may be much harder to initiate an experiment like the one described. But, as the Chad pipeline case demonstrates, there are at least some circumstances in which international financial institutions hold enough trump cards to convince other actors to take part in the program.

A third challenge to the viability of this program is the vulnerability to cheating by natural resource companies, national governments or NGOs. Chad's breaching of its international agreements soon after it signed them demonstrates the very real threat that contracts will not be honored. Natural resource companies and governments may have strong incentives to reduce spending on primary health care if they can divert these resources to their own ends.

They may also be tempted to collude with each other, especially once the project has been completed and international financial institutions can no longer withhold funds for the project.

Setting up effective monitoring systems is the first step in addressing this challenge. Section V outlines the importance of both dedicated monitoring teams and recruiting civil society partners to assist with the monitoring process. A core part of the proposal is this realistic assessment of whether primary health care targets are met. The variety of monitoring mechanisms will make it harder for natural resources companies to skew results in their favor. A mix of qualitative and quantitative goals, and the subjective assessment of a committee of experts will also help prevent efforts to respect the letter of the targets while ignoring their spirit. National governments will also have a strong incentive to allow primary care provision to go ahead unimpeded, if only because this could improve their own popularity with voters. Governments who want to favor some regions or punish others may be dissuaded by pressure from natural resource companies, which may face sanctions for uneven development.

A particularly challenging problem will develop if the government and natural resource companies collude to skew reporting and divert funds away from primary health care. Governments can reduce the ability of civil society representatives to report on targets through repressive measures, especially if natural resource companies cooperate. In this case, the formal monitoring teams discussed in Section IV will be extremely important, as will the sanctions assessed if this collusion is discovered. Any natural resource company that participates in this kind of collusion will need to given exemplary punishment, with heavy fines, significant bad publicity and a potential ban on future cooperation with international financial institutions. Even these types of measures may not totally prevent cheating. But thoughtful goal setting, monitoring and assessment should be able to significantly reduce the scope for cheating.

Beyond the specific parameters of this program, any corrupt actions taken by corporations could lead to significant consequences because of regulations in anti-corruption frameworks like the US Foreign Corrupt Practices Act (FCPA) and the OECD convention on Combating Bribery of Foreign Public Officials in International Business Transactions.[138] Engaging in corrupt actions to evade the primary health care requirements could bring heavy penalties beyond the confines of this program.

The existence of the FCPA and OECD frameworks may also dissuade companies from engaging in corrupt behavior in order to achieve (as opposed to evading) the health care goals. There is the potential that natural resource companies would sanction the bribing of government officials to cooperate with health care programs designed to meet previously agreed targets. While less troubling than bribing to avoid targets,[139] any encouragement to additional corruption in developing countries would constitute a significant negative impact of the program. The FCPA allows facilitation payments to promote expedited government action,[140] and it is exactly these types of bribes that might increase as a natural resource company sought to achieve pre-set targets. But these payments have generally been limited to less than $1000 in practice,[141] and any large deviations from this would probably be declared illegal.[142] Given the law and the

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[138] *See* Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-23, 91 Stat. 1494, (codified as amended at 15 U.S.C. §§ 78m(b), (d)(1), (g)-(h), 78dd-2, 78ff (1994)), *amended by* International Anti-Bribery and Fair Competition Act of 1998, 15 U.S.C. §§ 78dd-1 to 78dd-3, 78ff (West Supp. 1999); Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 17, 1997, 337 I.L.M. 8. The OECD convention has been signed by all OECD countries, covering all the major developing countries where most natural resource companies would be based. *See* Walter Perkel, *Foreign Corrupt Practices Act*, 40 AM. CRIM. L. REV. 683, 684 n.6 (2003).

[139] A bribe with health care targets met seems a better bargain that bribe with health care targets not met, all else being equal.

[140] 15 U.S.C. § 78dd-1(b) (1994) (for issuers); 15 U.S.C. § 78dd-2(b) (1994) (for domestic concerns); 15 U.S.C. §§ 78dd-3(b) (1994 & West Supp. 2000) (for any person).

[141] *See, e.g.*, Arthur F. Mathews, *Defending SEC and DOJ* FCPA *Investigations and Conducting Related Corporate Internal Investigations: The Triton Energy/Indonesia SEC Consent Decree Settlements*, 18 J. INTL. L. BUS. 303, 315 (1998).

[142] *Id.*

relatively extensive monitoring of this project as discussed in Section V, it would be foolhardy for natural resource companies to go beyond the allowed facilitation payments.

Another type of collusion that could cause concern is the effective "buying" of NGOs. This would involve natural resource companies bribing local NGOs engaged in monitoring programs to produce positive reports about their activities. This type of collusion would escape sanction under the FCPA and OECD frameworks, as they deal with the bribing of government officials rather than NGO officials.[143] In cases like this, international financial institutions would need to rely on the diversity of reporting sources (including international NGOs and local governments). Additionally, if this type of cheating appears to be significant, it will be possible for international financial institutions to dispatch additional independent monitors who can check the information submitted by local NGOs. Those that are found unreliable can be dropped from the program. As in the case where government officials are bribed, corporations that engaged in these types of payments would need to be sanctioned in an exemplary fashion.

A second set of challenges may develop after the project is completed. The government will have the facilities to allow income generation independent of loans/grants from developed nations and international financial institutions. Though the natural resources company will still be able to influence the government and will still be vulnerable to punishments, the government could theoretically nationalize the assets concerned and ignore the international community. But given the size of the assets concerned, this type of action would have repercussions far beyond simple primary care provision. The nationalization would create significant new problems for the government concerned and would be taken up by the broader international community. While this might not guarantee primary health care provision, the broad negative consequences

[143] *See*, Perkel, *supra* note 140 at 692-94.

of nationalizations would dissuade most developing country governments from reverting to them.[144]

The challenges discussed above are only some of those that this program would face if it were to be implemented. But they form some of the key questions that need to be answered. As discussed above, none are compelling enough to stop the program being implemented. Instead, they raise points to be discussed more fully in any goal setting stage, where targets and incentives would be structured to take into account these types of concerns.

Section VII: Conclusion

The proposal outlined in Part V could have radical consequences for the relationships of governments, the private sector, civil society and International Organizations. The potential risks—to national sovereignty, target populations and the like—would not be acceptable if all developing country populations were receiving even fair primary health care provision. But the frequent, abject failure of developing country governments to provide key social services like primary health care to their people make radical steps like the ones proposed in this program acceptable. If this experiment succeeds, it could open the way for significant improvements in the way that a variety of core services are now provided to developing country populations.

The key impetus for the proposal in Section V is the growing appreciation of the international community that developing country governments have regularly failed to mobilize natural resources wealth to benefit their general populations. Some commentators have even viewed natural resources as a "curse"[145] and suggested that countries without these resources are better off. This proposal does not deal with all the negative consequences that natural resource

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[144] An additional point to make about the threat of nationalization is that governments' ability to exercise this option (albeit with negative consequences) rebuts to some extent accusations that this program gives natural resource companies too much control/influence in developing countries. The governments' ultimate prerogatives still stand under this proposal.
[145] *See, e.g.*, Xavier Sala-i-martin, *supra* note 17.

wealth brings with it, but in improving the efficiency and equity of their distribution does reduce the possibility of conflict over unfair/privileged enjoyment of core revenue streams. The proposal incorporates the international community's growing appreciation for the efficiencies of private enterprise and extends current experiments in using the private sector. The efficiency of private sector corporations can be harnessed by innovative legal agreements and the opportunity to enforce these agreements worldwide, evading the problems posed by less-developed countries legal systems. Though radical, this approach is not completely out of step with current initiatives—instead it reflects and builds on the experience of current experiments like the Chad oil pipeline.

The approach discussed may not work in all situations. It is best suited to those situations where international financial institutions' contributions are essential to the project's going forward—and especially when developing country governments have few alternative resources to exploit. But these are exactly the situations where primary health care provision is often at its worst, and where the benefits of outside provision may be most keenly felt. The circumstances in which this program would most likely be accepted are fortuitously those where it would be most needed.

If this proposal did succeed in significantly improving access to primary health care, there would be scope for expanding its application. Other core social services, like primary education, might also benefit from private sector involvement. While this would pose different challenges than the provision of primary health care, it could be the beginning of an even more radical experiment in assuring that citizens of resource rich countries are provided core prerequisites for social and economic development. Changing natural resources from a "curse" into a real benefit would be a revolution in international affairs worth supporting.