

# HUMAN RIGHTS AND THE INTERNATIONAL NATURAL RESOURCES INDUSTRY

## MULTINATIONAL CORPORATIONS AND THE BTC PIPELINE PROJECT: ANY HOPE FOR HUMAN RIGHTS AND SUSTAINABLE DEVELOPMENT?

**BEDE. O.N. NWETE**

[bon\\_law@yahoo.co.uk](mailto:bon_law@yahoo.co.uk)

This paper has been previously published in OGEL vol. 2 Issue 4 of October, 2004.

**Abstract:** Respect for human rights and sustainable development ought to be the basic tenets upon which any country rich in natural resources especially oil must base any investment in its extraction. This however does not seem to be the case, instead of sustainable development and respect for human rights, investments associated with oil exploitation have rather come to be a curse to the people depriving them of their basic rights and unleashing abuses and deprivation on them. This paper critically examines the BTC Pipeline project in the light of the above issues. It assesses the role of the Multinational Corporations involved in the project as well as the host governments, the IFC and other multilateral agencies with a view to ascertaining whether these roles conform to international human rights and sustainable development standards. It also suggests ways by which these issues can be improved upon.

## **List of abbreviations**

<b>ACG</b>	Azeri-Chirag-Gunashli
<b>BP</b>	British Petroleum
<b>BTC</b>	Baku-Tbilisi-Ceyhan
<b>BTC.CO</b>	Baku-Tbilisi-Ceyhan Consortium
<b>CIP</b>	Community Investment Programme
<b>FSU</b>	Former Soviet Union
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>ECA</b>	Export Credit Agencies
<b>EMP</b>	Environmental Management Plan
<b>ESIA</b>	Environmental and Social Impact Assessment
<b>HGA</b>	Host Government Agreement
<b>HR</b>	Human Rights
<b>ICCPR</b>	International Convention on Civil and Political Rights
<b>ICESCR</b>	International Convention on Economic, Social and Cultural Rights
<b>IFC</b>	International Finance Corporation
<b>IGA</b>	Inter-Governmental Agreement
<b>ILO</b>	International Labour Organisation
<b>IP</b>	Indigenous People
<b>MIGAs</b>	Multilateral Investment Guarantee Agencies
<b>MNCs</b>	Multinational corporation(s)
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OPCs</b>	Oil Producing Countries
<b>OPEC</b>	Organisation for Petroleum Exporting Countries
<b>SD</b>	Sustainable Development
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNEP</b>	United Nations Environment Programme
<b>UNGA</b>	United Nations General Assembly
<b>WB</b>	World Bank

## 1. INTRODUCTION

The importance of the natural resources industry especially oil cannot be over-emphasised. The oil industry remains till date the largest<sup>1</sup> and most important industry in the world. It has continuously provided the world's energy and industrial needs, from transportation to agriculture.<sup>2</sup> Aside industrial development is the revenue it generates for the investors (Multinational Corporations: MNCs), and the Oil Producing Countries (OPCs). The fact that it touches on both the rich and the poor<sup>3</sup> has made the industry an indispensable one in man's daily life.

Activities involved in its exploitation ought therefore to bring prosperity, sustainable development (SD) and the elevation of the human person, with the highest consideration

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<sup>1</sup> The total market capitalisation of listed oil companies worldwide is more than \$1000 billion, while commercial bank lending to the industry is an annual average of US\$1 billion ranking it the biggest in terms of size and scale of investment. See Razavi, H., *Financing Oil and Gas Projects in developing Countries*. Available at <http://www.worldbank.org/fandd/english/0696/articles/080696.htm> (last visited on 27/04/04) See also Zamora, A., *Setting The Scene*, unpublished paper, CEPMLP, p.1.11

<sup>2</sup> See Gidado, M., *Petroleum development contracts with multinational oil firms-the Nigerian experience*, 40 (Maidugiri, Nigeria: Ed-linform Services, 1999). See also Dias, A., *Oil and human rights*, available at [http://www.gasandoil.com/ogel/samples/freearticles/article\\_32.htm](http://www.gasandoil.com/ogel/samples/freearticles/article_32.htm) (last visited on 5/7/04)

<sup>3</sup> It provides fuel for daily transportation for the rich and the poor alike. For the poor however, its effect is noted more for the deprivation and subjugation its exploitation brings to their daily lives.

for the human rights (HR) of the owners of the oil.<sup>4</sup> Unfortunately, the contrary seems to be the case as vulnerable communities in many OPCs especially developing ones, are paying a tragic price to satisfy the world's indispensable need for oil.<sup>5</sup> The mineral resource wherever it is found seems to bring a curse to the people, by putting them at the receiving end of an apparent conspiracy between the MNCs and the Host Governments (HG), both of who need the resource wealth to satisfy different objectives.<sup>6</sup>

Thus they are exposed to abject poverty, conflicts, abuses, torture, and environmental degradation at times of unprecedented magnitude,<sup>7</sup> including forceful evictions<sup>8</sup> from their homelands, loss of farmlands and other means of subsistence. The oil wealth in addition breeds corrupt and repressive regimes, and rapacious leaders who to get this wealth, suppress the basic right of the people who by natural design *sit atop* this oil wealth.

This is the story of oil development from Angola to Nigeria, Chad to Cameroon, and Kazakhstan to Ecuador. All these happen despite international HR declarations, and SD treaties, norms and codes of voluntary principles that prescribe benchmarks in respect of transparency, HR and SD for all stakeholders, especially those in the extractive industries whose activities are potential sources of threat to human and environmental well being.

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<sup>4</sup> Though most Constitutions vest the ownership of mineral rights in the States, the State only holds such right of ownership in trust for the people as an expression of the collective will of the people.

<sup>5</sup> See Pendleton, A., *The oil curse* in fuelling poverty: oil, war and corruption, 4 (Jacques, A., ed., London: Christian Aid 2003). For a general comment on the oil curse, see *The oil curse*, available at <http://enews.tufts.edu/stories/091603OilCurse.htm> (last visited on 22/07/04).

<sup>6</sup> The objective of every responsible govt. should be the welfare of the governed. Unfortunately the oil wealth never gets to the poor. In place of the wealth they get environmental pollution, infrastructural decays and abuse of their human dignity. The MNCs' objective is primarily to increase shareholder values.

<sup>7</sup> See the Exxon Valdez oil spill of march 29 1989 in Bligh Reef, Alaska USA where about 11million gallons of crude oil was spilled into Alaska's Prince William Sound causing much environmental and social havocs across 1300 miles of coast line. Information is available at <http://www.fakr.noaa.gov/oil/> (last visited on 5/7/04) This is the same story with shell in Ogoniland, Nigeria, and Texaco in Ecuador, See Aguinda vs. Texaco, Inc. 142 F.Supp.2d 534 (S.D.N.Y.2001). See also <http://www.texacorainforest.org/why/index.htm> , for more on the case. (last visited 22/07/04)

<sup>8</sup> These evictions are done either to acquire the land for exploration activities or for building oil pipelines. See Banggol, A., *Sudan- Oil war, Oil peace* in fuelling poverty: oil, war and corruption. Supra note 5, pp. 27-29.

With this background the World Bank's (WB) involvement in the Chad/Cameroon pipeline project can be understood. It was to make the oil beneficial to the poor and its extraction more sustainable and transparent, ensuring that its exploitation does not have the above catastrophic effect. There are indications that these have not been successfully achieved.<sup>9</sup>

It is on this note that the role of the various stakeholders in the Baku-Tbilisi-Ceyhan (BTC) pipeline project, which has raised so many HR and SD issues,<sup>10</sup> merits an examination. Not only because of its sheer size but also because of its strategic importance and the catastrophic consequence the failure to properly address these issues will have, in the three countries housing the pipeline and on the entire population of the Caucasian and Central Asian countries.

The International Finance Corporation (IFC), the private sector lending arm of the WB is leading the group of financiers for this project. The questions that crop up include, is IFC's participation while guaranteeing security against political risks, also able to transform a project whose principal aim is profitability for the MNCs and revenue for corrupt governments, into a development project that will benefit local populations, vulnerable communities and indigenous people (IP) spanning the length of the pipeline in Azerbaijan, Georgia and Turkey? Will the various stakeholders involved in the project especially the MNCs and the HGs observe international HR and SD standards in the pipeline project? What hope are there for HR and SD in the BTC pipeline project?

This paper in answering these questions, adopts a methodology that applies international HR standards, norms and codes of voluntary principles to the roles of the various

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<sup>9</sup> On the insistence of the WB, the Chadian govt. enacted a Revenue Management Law that mandated it to use 80% of the oil revenue for social and infrastructural development and 10% for future generation. This and the setting up of an International Advisory group (IAG) with oversight functions do not seem to have altered things much considerably as the Chadian govt. spent about \$4 million from the deal to purchase arms. See <http://www.ciel.org/Ifi/chadcamwatchdog.html> (last visited on 5/7/04)

<sup>10</sup> Till date the project has had the highest amount of criticism as a coalition of NGOs and other civil society groups have not only fought against the project but have consistently made representations to the financiers including the IFC and the Equator principle lenders on the need to stop funding the project. BP the operator of the project had its stall covered with blood at the CBI conference in 2002 because of the project. See Fawcett, M., *Death in the pipeline*, Ethical consumer, Feb/march 2003, p. 1.

stakeholders in the BTC pipeline project. It first chronicles the background and an overview of the project, examining the economic and political dimensions to the project. In doing so it takes a detailed study of the HR, environmental and social problems the project has thrown up, analysing and assessing the roles of the various stakeholders especially the MNCs in that direction. The fact that MNCs are driven primarily by profit motives and therefore owe their primary responsibilities to their shareholders is not lost on the writer in concluding on whether their roles in the BTC pipeline project are in accord with HR and SD benchmarks.

## **2. BACKGROUND TO THE BTC PIPELINE PROJECT**

Following the cataclysmic break up of the Former Soviet Union (FSU) in December 1991, the Caspian region and its economy was opened up to the rest of the world and with it, the Caspian basin. It soon became the focus of much international attention due to its huge oil and gas reserves, which has become the opium of the world.<sup>11</sup> The Caspian Sea, about 700 miles long, contains six separate hydrocarbon basins.<sup>12</sup>

This attracted a horde of MNCs who saw the region as unexplored following the era of command economy adopted by the FSU. Exploration activities, which revealed the geological potential of the region in respect of, estimated proven and recoverable reserves of crude oil ranks the region alongside the Gulf of Mexico and the North Sea. The discovery of the giant Azeri-Chirag-Gunashi (ACG) oil fields, off the coast of Baku with an estimated reserve of about 5.4 billion barrels is a pointer to the rich oil reserves in the region.<sup>13</sup>

The government of Azerbaijan in whose domain lay this discovery, was however unable to develop this oil resource due to lack of capital and technology, key elements in oil exploration, development and production. Thus in 1994, the Azerbaijani government

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<sup>11</sup> Oil and gas especially oil can be said to be the opium of the world because, all major issues in the world today, from the invasion of Kuwait, the war in Iraq, the tension in the Middle East, OPEC's oil price war and the BTC pipeline project are driven by the quest for energy security.

<sup>12</sup> See the *Regional review executive summary*, February 2003. See also <http://www.nigc.ir/eia/caspian.asp> (last visited on 6/7/04).

<sup>13</sup> Ibid.

signed a Production Sharing Agreement (PSA) with some Multinational Oil Companies, led by British Petroleum (BP) for the development and production of the oil reserves especially the ACG oil field.

The oil to be produced from this field and some other fields in Kazakhstan<sup>14</sup> needed an outlet to the major markets of Europe and America where it's desperately needed.<sup>15</sup> The landlocked nature of the Caspian Sea like Chad,<sup>16</sup> presented the Turkish Straits (TS) as the best option for transporting the oil. But the TS with an already congested traffic<sup>17</sup> could not carry this additional burden being a "highly sensitive biological and environmental corridor."<sup>18</sup> The development of a pipeline therefore became inevitable.

This among other reasons<sup>19</sup> led to the conception of the BTC pipeline project-a link between the Mediterranean and the Caspian Sea that avoids the TS. Thus the BTC pipeline project was conceived to fill a vacuum created by the inability of the Caspian Sea and the TS to handle the export of crude oil from the ACG oil fields in Baku, Azerbaijan to the markets of Europe and America.

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<sup>14</sup> For Kazakhstan's involvement in the project see Blagov, S., *Moscow may undermine US-backed pipeline project*. Available at <http://www.cnsnews.com/ForeignBureaus/archive/200402/FOR20040205d.html> (last visited on 6/7/04).

<sup>15</sup> For a detailed discussion on this, see pp 12-14.

<sup>16</sup> The land locked nature of Chad also necessitated the construction of the Chad/Cameroon pipeline-a 660-mile pipeline from the oil- rich Doha basin in Chad to the Cameroonian Port of Kribi, from where the oil will be exported.

<sup>17</sup> The TS connects the Mediterranean with the black sea and is one of the busiest waterways in the world, handling about 50,000 ships annually, about 500,000 people cross the water way daily in addition to fishing boats and local traffic. It traverses Istanbul with a population of about 15 million people. At one end it is 19 miles long and less than half mile wide. Any accident involving hazardous cargo especially crude oil will therefore endanger the lives of the people. See Brito, D., *Congestion of the Turkish Straits: A market alternative*, Economics papers, Rice University Houston Texas, USA (1999).

<sup>18</sup> See Turkey's Ministry of Foreign Affairs *information note on the Baku-Tbilisi- Ceyhan (BTC) crude oil pipeline project*. Available at <http://www.mfa.gov.tr/grupa/an/BTC2.htm>

<sup>19</sup> These other reasons border on the economic and the political as will be shown in the succeeding paragraphs.

## 2.1 An Overview of the BTC pipeline project

The BTC pipeline project<sup>20</sup> originates from Sangachal near Baku in Azerbaijan, runs through Tbilisi in Georgia and terminates at Ceyhan in Turkey, as shown in fig.1

FIGURE 1 Planned pipeline route



**Above:** Map of the proposed pipeline route from Baku, and Tbilisi, Georgia, and on to the Mediterranean port of Ceyhan, Turkey. The oil will be transported from the Mediterranean to the markets of Europe and America.

It is a 1760 km<sup>21</sup> pipeline that aims to transport about 50million tonnes of the Caspian crude oil annually to the Mediterranean. The crude oil will be supplied to the international markets of Europe and America by tankers to be loaded at a new marine terminal to be constructed on the gulf of Iskenderum in Ceyhan. There will be eight pumping stations along the route to boost the oil pressure.<sup>22</sup> The project which is owned by an 11 member consortium of MNCs led by BP (see figs. 2&3), is known as BTC.Co and is reputed to be the biggest pipeline project in the world.<sup>23</sup>

<sup>20</sup> The project infact consists of two parallel pipelines; the second one is to carry natural gas. It also starts from Baku and runs through Tbilisi but diverges off at Erzurum in Turkey and is known as the BTE gas pipeline. Work has since commenced on the BTC pipeline and is to be completed in 2005.

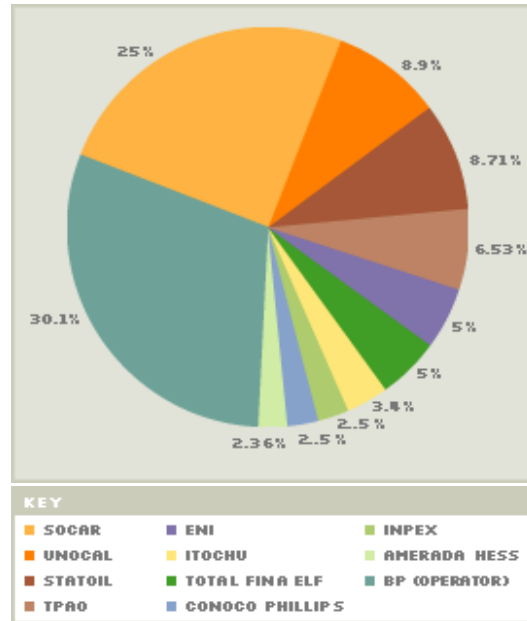
<sup>21</sup> Other sources put the length of the pipeline at 1768km. See *Industry projects*, available at [http://www.hydrocarbons-technology.com/project\\_printable.asp?projectID=2829](http://www.hydrocarbons-technology.com/project_printable.asp?projectID=2829) (last visited on 22/07/04).

<sup>22</sup> Ibid.

<sup>23</sup> See generally <http://www.caspiandevlopmentandexport.com/ASP/BTC.asp> and <http://www.caspiandevlopmentandexport.com/ASP/BTC.asp> ( both were last visited on 6/7/04)

The sensitive nature of the project concerning HR and SD, and the environmental and social risks associated with it stems not only from its size but also from pipeline routing near critical natural habitats and areas of particular environmental sensitivity, its impact on native communities, seismic activities<sup>24</sup> and potential impact of oil spills and pollution along the route, and the attendant wide spread human, economic and social disruptions.<sup>25</sup>

**Figure 2**



Above showing the MNCs involved in the BTC project. Culled from [http://www.caspiandevlopmentandexport.com/ASP/BTC\\_ProjectParticipants.asp](http://www.caspiandevlopmentandexport.com/ASP/BTC_ProjectParticipants.asp)

**Figure 3** showing the global spread of ownership.

Company	Country
Socar	Azerbaijan (state oil company)
Eni	Italy
Inpex	Japan
Unocal	USA
Itochu	Japan
Amerada Hess	USA
Statoil	Norway
Total Fina Elf	France
BP	UK
TPAO	Turkey
Conoco Phillips	USA

Adapted from the BTC project home page: [http://www.caspiandevlopmentandexport.com/ASP/BTC\\_ProjectParticipants.asp](http://www.caspiandevlopmentandexport.com/ASP/BTC_ProjectParticipants.asp)

<sup>24</sup> Much of these areas are seismically active: the pipeline route passes through three active faults in Azerbaijan, four in Georgia and seven in Turkey. This makes it highly volatile. See *industry projects*, supra note 21.

<sup>25</sup> These impacts are discussed in details on pp 19-20.

Financing for the \$3.9<sup>26</sup> billion pipeline project is led by the IFC, the European Bank for Reconstruction and Development (EBRD), some Equator Principles (EP) banks,<sup>27</sup> and other multilateral and exports credit agencies.<sup>28</sup> The ownership structure, the global spread of the financial backup for the project and the involvements of the three HGs through the execution of Host Government Agreements (HGAs) with the BTC.Co and Intergovernmental Agreement (IGA) among themselves, reflects the international interests, support and concern the BTC pipeline project has engendered. Does this support have the interest of the owners of the oil (without which there will be no BTC project) at heart? Is the project meant to benefit the people? Will these interests not come in conflict with the HR of the people of these countries? What hope is there for SD? These naturally lead us to the question, why the BTC project?

## **2.2 Why the BTC Project? - The Economic and Political dimensions**

Aside the issues of finding access for the ACG oil, the landlocked nature of the Caspian Sea and the congestion of the TS,<sup>29</sup> there are some other more important economic and political considerations that have made the BTC pipeline project a top agenda on the list of the stakeholders and their allies.

### **The Economic Considerations:**

For the MNCs involved in the project, the driving force is profit-increase in shareholder value. They are venture capitalists whose motive for embarking on any project is to maximise profit. And oil because of its high profit profile, presents a good opportunity. Any indirect economic benefit accruing to the people in terms of employment,

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<sup>26</sup> There is doubt as to the correct cost figures. Other sources put the cost at \$2.9 billion. See supra, note 21.

<sup>27</sup> These are banks that have adopted the Equator Principles (a voluntary set of guidelines based on the IFC and WB standards) for project financing. The EP adopted on June 4, 2003 aims at ensuring that only projects that comply with certain environmental and social risks assessment through an EIA and EMP will receive funding from the EP lenders. See <http://www.equator-principles.com>. The EP banks funding the BTC pipeline project include ABN Amro, Citigroup, Mizuho, Royal Bank of Scotland, West LB, Dexia, KBC and ING. See *Royal bank of Scotland to fund controversial pipeline project*, available at [http://www.wwf.org.uk/news/n\\_0000001107.asp](http://www.wwf.org.uk/news/n_0000001107.asp) (both were last visited on 22/07/04)

<sup>28</sup> These include the US Eximbank, Italy's SACE, Britain's ECGD, France's COFACE, Germany's HERMES, Japan's JBIC and the US Overseas Private Investment Corporation, OPIC.

<sup>29</sup> See the background to the BTC pipeline project supra.

opportunities for local business and the Community Investment Programme (CIP), is a fall out of the MNCs' mercantilism.

For the financiers who altogether are contributing about 70% of the fund needed for the project,<sup>30</sup> the ECAs and MIGAs, their primary motive is also profit maximisation. The high interest rates etched to their lending and insurance activities will ensure maximum returns for their risks. The three countries hosting the project suffer high levels of economic hardship and poverty, and are in the lower-middle-income countries group by WB ranking.<sup>31</sup> The pipeline would provide economic benefits to them being the only Foreign Direct Investment (FDI) of note in these countries. It will generate revenue in throughput and transit fees,<sup>32</sup> and taxes.

The tussle for oil revenue for the HGs is the moving spirit behind their support for the project.<sup>33</sup> In Azerbaijan, the revenue is to go into the Azeri Oil Fund<sup>34</sup> especially for poverty reduction and economic growth. Georgia also has a similar plan for its oil revenue. These are desirable goals but the poverty alleviation benefits of the project for the poor will be addressed in the latter part of this paper. It's this drive for revenue and economic development through FDI that lured the HGs into the BTC project and made them amenable to the dictates of the MNCs in signing the IGA and the HGA.<sup>35</sup>

## **The Political Dimension**

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<sup>30</sup> Infra note 69.

<sup>31</sup> See [http://www.worldbank.org/data/countryclass/classgroups.htm#Low\\_income](http://www.worldbank.org/data/countryclass/classgroups.htm#Low_income) (last visited on 7/7/04)

<sup>32</sup> Turkey alone is to receive about \$200 million annually from transit and operating fees. See supra note 18.

<sup>33</sup> Russia has presently been pressurising Kazakhstan to sign a long-term throughput agreement for the transportation of its oil through the Caspian pipeline consortium (CPC) instead of the BTC to enable it share from the pipeline revenue. Both countries lie close to each other and to the Caspian Sea. If this happens it will deal a fatal blow to the financial premise of the BTC project as its capacity of one million barrels of oil per day was designed largely on the premise that Kazakh oil will be part of the flow stream. See supra note 14.

<sup>34</sup> The project is estimated to generate about \$58 billion into the coffers of this oil fund-State Oil fund for the Azerbaijan Republic (SOFAR) over a 30 yr period. See BP forecast 2002.

<sup>35</sup> See Amnesty International, *Human Rights on the line, the Baku-Tbilisi-Ceyhan pipeline project*, May 2003.

OPEC's successful "regulation" of the world's oil market through control of supply and price (by means of a price band<sup>36</sup>) has received hostility especially from the west<sup>37</sup> as it has consistently posed a threat to their energy security. Their effort to find allies in the oil war has proved abortive. Russia has been uncooperative while Iran, an OPEC member has rebuffed all overtures. The hostility in the Gulf region has also made supplies from that region uncertain.<sup>38</sup>

Any other options outside the above permutations would be acceptable and supported. The Caspian basin with its tremendous potentials was an attractive option, as it will "represent the largest non-OPEC production growth in the world."<sup>39</sup> Little surprise that transporting this oil from the landlocked Caspian region to the markets of Europe and America through pipeline development "has been a major US foreign policy priority since the mid-1990"<sup>40</sup>

The BTC project is therefore seen as a vital component of the "East-West energy corridor" project, which will not only call the bluff of OPEC but will enhance the US energy security.<sup>41</sup> Ambassador Steve Mann, a senior adviser on Caspian basin energy diplomacy served as a catalyst between the stakeholders to bring the project on stream.<sup>42</sup>

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<sup>36</sup> OPEC's price band of \$22 and \$28 per barrel ensures that prices are kept consistently at competitive levels in the interests of the members. For comments, see, Desta, M., *OPEC, the WTO, Regionalism and Unilateralism*, 37(3) J.W.T 547 (2003).

<sup>37</sup> This hostility has resulted to various judicial and legislative challenges against OPEC. See International Association of Machinists and Aerospace Workers vs. OPEC and member countries, 477 f. supp 553 (1979). See also Prewitt Ent., Inc. vs. OPEC, D.C Docket No. 00-00865-CV-C-S (Dec. 18, 2003). See generally Desta, M., supra note 33, pp 541-543. See the *Lautenberg Bill* of July 8, 2004 requiring the US Senate to enact a law empowering the US Trade Representatives to pursue anti-competitive practises against OPEC. The bill has been read twice and is presently before the Finance Committee of the Senate. See also the Moscow Times, July 12, 2004, p.1.

<sup>38</sup> See supra note 11.

<sup>39</sup> Larson, *Energy concerns cannot constrain US policy*, Washington file, EPF 209 of 4/8/2003.

<sup>40</sup> Ibid.

<sup>41</sup> According to Bill Richardson, former US Energy Secretary, "this is not just another pipeline; it is a strategic framework that advanced America's national security interest. It is a strategic vision for the future of the Caspian region" See Allison, G., and Van Burskirk, E., *U.S. Policy on Caspian Energy Development and Exports*, Harvard University, May 2001.

<sup>42</sup> See Larson, supra note 39.

To further ensure that this will serve US interests in the region,<sup>43</sup> the pipeline was routed through countries that are susceptible and amenable to US influence.<sup>44</sup> This necessitated Washington's pressure on Georgia to succumb to the project despite Georgia's initial opposition to the project on environmental grounds.<sup>45</sup>

For the HGs, the lure of regional integration and the opportunity of friendship with Washington, which the BTC project presented, were temptations too great to resist. With Washington in support of the project and Britain giving its tacit support through the DFID, the support of the IFC, the banks, and the ECAs was *a fait accompli*.

Beyond the mere intention of the MNCs finding a means of transporting the oil from the landlocked Baku to the Mediterranean, are the high profile politics and international interests the project has engendered. When money and politics meet at this level, little regard is usually given to issues of HR and SD. An examination of the roles of the various stakeholders in the project at this point is necessary to show how much the issues of HR and SD have gone into the planning and execution of this project.

### **3. THE ROLE OF THE VARIOUS STAKEHOLDERS.**

#### **The MNCs**

The MNCs led by BP is an 11-member consortium known as BTC.Co and includes corporations like Unocal and TotalFinaElf.<sup>46</sup> BP as the operator of the project captures their role in the project. Driven by profits the MNCs do not view the pipeline as a public interest project, which practically means that they owe no obligations to the public in respect of the operations of the project, in relation to HR observance, SD or any other

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<sup>43</sup> The BTC pipeline will supply the Mersin oil refinery through which aviation fuel will be supplied to the US air force in the region to enable it maintain constant US presence in the Middle East. See Fawcett, M., supra note 10.

<sup>44</sup> Russia and Iran especially Iran provided shorter, faster and cheaper alternative for routing the pipeline but both options were opposed by Washington for obvious reasons. See *Iran, the "only and biggest" loser in the BTC pipeline project*, Iran Press Service (no date given).

<sup>45</sup> See Fawcett, M., supra note 10.

<sup>46</sup> See figure 2 supra p. 10.

thing whatsoever. The IGA for the project provides that the BTC project is not “intended or required to operate in the service of the public benefit or interest in its territory”<sup>47</sup>

Despite this the MNCs have pledged their commitment to a policy of transparency<sup>48</sup> and adherence to international best practices in environment, labour, HR, security and Corporate Social Responsibility (CSR) standards<sup>49</sup> in respect of the project. In furtherance of this they adopted a voluntary undertaking, “the BTC human rights undertaking and security protocols.”<sup>50</sup> Outside these there is nothing in the project agreement that requires the MNCs to promote or protect HR or encourage SD.

In their roles as venture capitalists, they got more than the ordinary protection offered by international law and HR standards in respect of foreign investment without any corresponding obligations.<sup>51</sup> The role of the MNCs in the project therefore is no more than the role of every venture capitalist. Whether this role is in tune with the responsibilities of non-state actors under various international conventions, treaties and norms will be answered shortly. The MNCs have played the following specific roles in respect of the project;

Their promises of anticipated gain from the pipeline has escalated ethnic tensions among local communities; they have tacitly encouraged plans to militarise the pipeline corridor<sup>52</sup> through their *scoping report*<sup>53</sup> which noted the continuous existence of regional conflict

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<sup>47</sup> Article 11(8). This makes them avoid liability for any act committed against the public interest.

<sup>48</sup> See [http://www.caspiandevlopmentandexport.com/ASP/PD\\_BTC.asp](http://www.caspiandevlopmentandexport.com/ASP/PD_BTC.asp) for key project agreements. (Last visited on 22/07/04).

<sup>49</sup> See Joint statements of May 16, 2003. For more on the joint statement and BP’s update on the BTC pipeline project in compliance with the Global compact, see *the BTC pipeline case study: following through on global compact commitments*, available at [http://www.unglobalcompact.org/Portal/Default.aspGlobal\\_Compact\\_Learning\\_Forum](http://www.unglobalcompact.org/Portal/Default.aspGlobal_Compact_Learning_Forum) (last visited on 22/07/04)

<sup>50</sup> These are not part of the HGA and IGA, which are the binding legal instruments in respect of the project. The IGA and HGA override all domestic laws of the HGs except the constitution. The BTC human rights undertakings and security protocol therefore do not have any legally binding force

<sup>51</sup> These include compensation for expropriation, economic equilibrium clause, compensation for delays in construction works and security of property rights. See Sporrang and Lonroth vs. Sweden. (1983) 5 EHRR 35. This is discussed in detail infra, pp. 17 and 23

<sup>52</sup> Walsh, P., *oil fuels US army role in Georgia*, the Observer, 12 May 2002.

<sup>53</sup> See BP, *BTC crude oil pipeline project. Georgian section. Environmental and social overview and scoping*. BTC-PRO\_REF\_003, Revision 2, 17 July 2001, p.31

and the fact that the pipeline through this conflict areas will increase security threat to pipeline facilities and operations' personnel.<sup>54</sup>

The PSA, which formed the basis for the project, was tainted with allegations of corruption,<sup>55</sup> and this if extended to the BTC will exacerbate poverty in these countries.<sup>56</sup> There are also allegations of discriminatory labour practices in respect of the hiring of staff for the project.<sup>57</sup> BP has also refused to give an undertaking to supply energy to communities along the route that previously had electricity saying, "access to energy/gas is a wider issue for government."<sup>58</sup> Do these<sup>59</sup> give hope for HR and SD?<sup>60</sup>

The governments that carry the primary burden of protecting HR and SD don't seem to have fared better.

**The HGs:** For the HGs their role in the project is dictated by the IGA and HGA<sup>61</sup> and include;

1. Provision of access to land- compulsory acquisition of land for the project.<sup>62</sup>
2. Obligations to refrain from applying new laws<sup>63</sup>
3. Turkey is to build the Turkish section under a lump sum turnkey agreement<sup>64</sup>

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<sup>54</sup> BP welcomed the deployment of US forces in Georgia with a special benefit for the pipeline project. See Rising Tide briefing on Baku-Ceyhan pipeline, February 2003.

<sup>55</sup> Bribes were said to have been channelled through two offshore companies of the Azerbaijan International Oil company (AIOC), made up of many members of the BTC.CO. See Baku-Ceyhan Campaign, *Development, human rights and environmental impacts of the BTC oil pipeline*, November 2002, pp 8-11.

<sup>56</sup> For the correlation between corruption and poverty in infrastructure and project development, see <http://www.worldbank.org/viewpoint/HTMLNote/207summary.html> (last visited on 7/7/04)

<sup>57</sup> It is alleged that villagers had to pay bribes of \$500 to secure pipeline jobs and have had to sell cattle to raise the money. See Baku-Ceyhan Campaign supra note 55. This further impoverishes the people as some may not get the jobs even after paying the money.

<sup>58</sup> See supra note 53.

<sup>59</sup> BP will also play a monitoring role in the project by monitoring the special advisory panel on the project (the Caspian Development Advisory Panel-CDAP). This appears to defeat the whole essence of setting up the CDAP as their reporting to BP questions their independence and the integrity of the whole arrangement.

<sup>60</sup> BP as a member of the voluntary principles and Human rights (see <http://www.state.gov/g/drl/hr/fs/>) has undertaken that all actions of BP, BTC.Co and their contractors and sub-contractors are bound by the requirements set forth in the voluntary principles.

<sup>61</sup> See supra note 35.

<sup>62</sup> This is so even where the project is not for public interest. See art.11 (8) of the IGA supra note 47.

<sup>63</sup> These by inference include laws that border on the protection of HR, SD and the environment. The Economic Equilibrium clause (stabilisation clauses) makes the government liable for compensation in the event that it enacts a new law that negatively impacts on the project.

<sup>64</sup> The turnkey contract implies that any cost overrun will be covered by the govt. from the public purse, thereby further impoverishing the people. For details of the Agreement, see supra note 48.

4. Providing security for the pipeline<sup>65</sup>
5. Security of property rights and payment of compensation in the event that the property rights of BTC.Co are affected or nationalised.
6. Resettlement of people affected by the project.<sup>66</sup>
7. Obligation to make the IGA the prevailing legal regime in each State in respect of the BTC project.<sup>67</sup>
8. Submission of disputes to international arbitration thereby limiting the State's use of local laws to improve HR and SD standards.
9. Guarantee to honour all the contents of the IGA and HGA.
10. Monitoring the project in line with their policies and guidelines and subject to invitation on periodic lender monitoring visits.

#### **IFC and other stakeholders**<sup>68</sup>

The major reason for involving the IFC, International Financial Institutions and MIGAs is to provide funds and share the investment risks in the project especially country risks. Their roles in the project include;

1. Provision of funding for the project<sup>69</sup>
2. Mitigation of and security for country risks
3. Consultations with project affected groups<sup>70</sup>

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<sup>65</sup> See art. 111(2) which provides that "Each State shall ensure the safety and security of all personnel within its Territory associated with the MEP Project, the Facilities, all other assets of Project Investors within its Territory associated with the MEP Project, and all Petroleum in transit within its Territory with respect to the MEP Project; and, without limiting the foregoing, each State shall use the security forces of that State, and/or make provision for such security personnel and services, as may be necessary to satisfy this obligation, to ensure the safety and security of all personnel within its Territory associated with the MEP Project, the Facilities, all other assets of Project Investors within its Territory associated with the MEP Project, and all Petroleum in transit within its Territory with respect to the MEP Project. The extent of any liability arising under this Section (2) of Article III with respect to Georgia shall be reflected in the applicable Host Government Agreement." However the joint statement stipulates that all pipeline security operations shall be carried out in accordance with the UDHR, the UN code of conduct for law enforcement officials, and voluntary principles on security and human right laws (the international norms) It does appear that the failure to incorporate this into the IGA and HGA which have forces of law, is to make them a non-legally binding obligation. MEP means main export pipeline and refers to the BTC pipeline.

<sup>66</sup> BOTAS the Turkish construction company is responsible under the HGA for resettlement and payment of compensation at the Turkey section of the Project.

<sup>67</sup> See art.11 (1) of the IGA. Available at [http://www.caspiandevlopmentandexport.com/ASP/PD\\_BTC.asp](http://www.caspiandevlopmentandexport.com/ASP/PD_BTC.asp) (last visited on 22/07/04).

<sup>68</sup> See supra notes 27 and 28.

<sup>69</sup> The IFC and other lenders are to provide about 70% of the fund for the project while 30% is to come from the equity holders in the BTC.Co. See Alexander's oil and gas connection, *Financial institutions come under pressure about BTC funding*, available at <http://www.gasandoil.com/goc/company/cnc34698.htm> (last visited on 8/7/04)

<sup>70</sup> IFC and EBRD held 6 multi-stakeholder forum meetings on the project (in the 3 countries) and 4 months comment period on the Environmental and Social Impact assessment provided. IFC also published a detailed response to

4. Ensuring compliance with the EP<sup>71</sup>, the WB and IFC safeguard policies and guidelines for project financing especially with respect to environmental and social issues.
5. Provision of credits (ECAs) and insurance (MIGAs) against project risks
6. Ensure that local people and communities benefit from the project, and the project is saved from the catastrophic effect of similar past projects<sup>72</sup>
7. Undertaking of regional review report by IFC
8. Assessment of the projects in line with the EP<sup>73</sup> by lending EP banks.
9. Periodic lender monitoring both by the IFC and other lenders
10. IFC to assist in effective and transparent management of the oil fund in Azerbaijan in coordination with the WB and input from IMF and to assist in conjunction with the consortium,<sup>74</sup> in community development programmes.

What are the HR and SD issues involved in the project?

### 3.1 THE HUMAN RIGHT ISSUES-

#### Oil and HR

Human, social and environmental degradations are usually the tale tell signs of every activity in the oil industry, due to the nature of oil development.<sup>75</sup> Its negative impacts weigh heavily against its positive contributions, especially with respect to HR and SD in

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comments. Though in Azerbaijan, a culture of fear was said to have prevented widespread scepticism from being properly voiced out. See sustainable development International, *oil pipeline project claims new standard*, 13/11/03. See also <http://www.ifc.org/btc> for IFC's role in the BTC pipeline project. See also Suellen, L., *a matter of principle*, project finance magazine, 3<sup>rd</sup> March 2004.

<sup>71</sup> See supra note 27.

<sup>72</sup> This is the essence of the IFC and the WB involvement in the project. See introduction especially the WB involvement in the Chad/Cameroonian pipeline project

<sup>73</sup> All the processes outlined in the EP in respect of E&S risk assessment, management, consultations, documentation and compliance were carried out by the EP lenders but the NGOs alleged 127 violations of the EP. See the *Evaluation of the BTC Pipeline with the Equator Principles*, International conference by Friends of the Earth, October 2003.

<sup>74</sup> For a general information of the IFC role in the BTC project see <http://www.ifc.org/ifcext/btc.nsf/e11ffa331b366c54ca2569210006982f/ff9ede88e269481885256d97004c3dbf?OpenDocument> (last visited on 19/07/04)

<sup>75</sup> From exploration, production to pipeline operations, the potentials for environmental degradation are great while the human and social fatalities that occur, result from the important value the world has placed on this "opium" and the desire to get it at all cost especially where the government in its desire to attract development tacitly supports the erosion of the human and social rights of its citizens.

the communities surrounding the project site. Oil operations especially in developing countries leave in their trails stories of repressions, forceful evictions, destruction of aquatic and marine lives and access to means of subsistence, loss of bio-diversity, conflicts (war)<sup>76</sup>, and health related problems, corruption, repressive and sit-tight regimes, HR abuses and communal impoverishment among others.<sup>77</sup> The roles of the MNCs involved in its extraction seem to worsen the matter.

Reductions in foreign aid and economic globalisation have made the MNCs the new vehicles of growth and economic development, especially in the emerging economies of Africa, Asia and Latin America.<sup>78</sup> But the negative impact of the MNCs operations especially in oil shows the tragic human and social price paid by vulnerable communities and countries in their quest to attract development through the MNCs. The pattern of this abuses lead to the conclusion that there is a correlation “between environmental degradation, human rights violations and unsustainable development.”<sup>79</sup>

It is on the above premises that the BTC HR issues are discussed. At stake in the project are land acquisition and compensation, access to means of subsistence and interference with family and private life,<sup>80</sup> all of which may be affected by the project.<sup>81</sup> The rights of IP,<sup>82</sup> and ethnic minorities, discriminatory labour practices in recruitment of pipeline staff<sup>83</sup> are issues that impact negatively on the rights of the people.

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<sup>76</sup> See supra notes 8 and 11.

<sup>77</sup> See generally, Dias, A., *Oil and human rights*, supra note 2. See also the introduction to this paper.

<sup>78</sup> It is this apparent role and influence of the MNCs in the global economy that made them the target of the UN global compact. See <http://www.unglobalcompact.org/Portal/Default.asp> (last visited on 8/7/04)

<sup>79</sup> Dias, A., supra note 2.

<sup>80</sup> The stretch of land affected by the project is enormous (1768 kms) and the number of people overwhelming (the consortiums documents put the number of people affected by land acquisition in Turkey alone at 30000). Despite the fact that the BTC project is not in the public interest (supra note 47), the acquisition has been made compulsory and compensation inadequate as those without title to land were deemed ineligible for compensation (see Amnesty International, supra note 35).

<sup>81</sup> The consortium has in place a Resettlement Action Plan (RAP) which ensured that there were no permanent resettlement but any temporary resettlement of rural people who have “agriculture and live stock as the main source of food, income and livelihood” will have dire consequences for them and will deny them access to means of subsistence even if temporary. See art.1 (1) of the ICCPR (1966), art 12 UDHR and art 1(2) ICESR.

The provision of security by the HGs in areas of regional and national conflicts<sup>84</sup> without binding obligations to observe international HR standards especially where they have had poor HR records in the past<sup>85</sup> and with the militarization of the pipeline corridor in Georgia, may negatively impact on the abilities of the States to protect, respect, fulfil and promote HR.<sup>86</sup>

### 3.2 ENVIRONMENTAL AND SOCIAL ISSUES

The high potentials of oil pipeline for environmental degradation and social dislocation is legendary.<sup>87</sup> The BTC pipelines cross 700 watercourses in Azerbaijan, 200 in Georgia and 600 in Turkey.<sup>88</sup>

Aside six main waterways and several ground water basins as well as other environmental sensitive and nature protected areas<sup>89</sup>. These, added to crosses of over 3000 roads, railways and utility lines both over ground and underground, including crosses through seismic active fault areas.<sup>90</sup> The mineral water springs in Borjomi Georgia, a major source of employment is also under threat.<sup>91</sup>

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<sup>82</sup> See ILO Convention (No. 169) concerning Indigenous and Tribal peoples in independent countries. (1991). The Kurds were alleged not to have been treated as IPs as required under the ILO convention

<sup>83</sup> See supra note 57.

<sup>84</sup> For example, between the Turkish State and the Kurdish workers party. The pipeline security may exacerbate this conflict.

<sup>85</sup> In July 2002 the Council of Europe condemned HR abuses by Turkish security forces, the same force that is to provide pipeline security. See Amnesty International supra, note 35.

<sup>86</sup> These are the primary duties of the States with respect to HR under various international conventions, treaties, norms and declarations.

<sup>87</sup> For the environmental effects of oil pipeline generally see Razavi, H., Financing Energy Projects in Emerging Economies, 209 (Tulsa, Oklahoma USA: Penn well Publishing, 1996)

<sup>88</sup> See [http://www.caspianddevelopmentandexport.com/ASP/BTC\\_KeyFacts.asp](http://www.caspianddevelopmentandexport.com/ASP/BTC_KeyFacts.asp) (last visited on 9/7/04).

<sup>89</sup> These include the Gobustani reserve in Azerbaijan (under UNESCO natural heritage list), The Ktsia Tabaskuri managed Reserve (protected territory, IUCN IV category) Borjomi-Karagauli national park multiple support zone and the Borjomi Aquifer in Georgia. See Kochladze, M., *BTC pipeline-Overshadowed Development?* Caucasus Environmental NGO Network (CENN) Magazine (no year given).

<sup>90</sup> See Industry projects supra note 21.

<sup>91</sup> Borjomi supplies 70% of the Russian mineral water market. The pipeline is poses a threat to this source of export income and the major source of employment in the area. See Baku-Ceyhan Campaign, supra note 55.

The combined effect of these on the marine and aquatic life, the biodiversity and the ecosystem in general if not properly handled makes it a time bomb waiting to detonate. These are not only against ILO, WB and IFC policies but also against BP's labour and environmental policies.

Other specific issues include pollution of air, land and water, bio-diversity, destruction of wetlands, rainforest, generally the ecosystem, forestry, and other foreseeable environmental hazards arising from oil spills; and from the generation, transportation and disposal of wastes,<sup>92</sup> from project site.

The social issues bothers on the manner of land acquisition and resettlement, the influx of work force and their needs, the use of child and forced labour, impacts on IPs and communities,<sup>93</sup> and destruction of archaeological, religious<sup>94</sup> and cultural sites.

The workforce may also put a strain on the social structures and infrastructures especially medical facilities<sup>95</sup>, which may lead to health hazards. The project may also meet volatile resistance from the community especially as its construction and operation affects the community's means of livelihood,<sup>96</sup> or where the alien workforce enthrones a culture of living that debases the moral fabric upon which a community lives. Where these issues are not properly addressed, it can lead to conflicts which if not well managed will have a catastrophic effect on the people.

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<sup>92</sup> See OECD guidelines for multinational enterprises (Paris 1976), 15 ILM (1976) p.967, revised in 1991.

<sup>93</sup> Some of these though issues of HR also have a social dimension to it.

<sup>94</sup> The issue of desecration or destruction of revered religious site including native shrines can pose a serious problem especially in a religious sensitive state and also infringes the people's religious rights and cultural rights. For the cultural rights of the people see ICESCR (1966).

<sup>95</sup> See Razzavi, H., supra note 87, p.219.

<sup>96</sup> E.g. oil and pipeline projects, cause pollution of rivers, streams and agricultural lands, especially where they are fishermen and farmers. Nigeria's Niger Delta communities are always battling the oil companies especially Shell, for polluting their land and rivers, their only source of livelihood. These at times, lead to the disruption of operations leading to huge financial losses, and kidnapping of Oil workers by these communities and the consequent catastrophic repression by the government through the use of military personnel, with the tacit support of the MNCs. See Campbell, G., *The killing fields: oil ravages the Niger Delta*, Times magazine, June 2001. p.20.

Are there remedies to overcome these? An assessment of the roles of the various stakeholders in line with HR and SD will provide an answer to this.

### **3.3 ANY HOPE FOR HUMAN RIGHT AND SUSTAINABLE DEVELOPMENT?**

#### **Assessment of the roles of various stakeholders -**

To overcome some of the human, environmental and social hazards discussed above, the various stakeholders carried out an Environmental and Social Impact assessment (ESIA) and drew up an Environmental Management Plan (EMP).<sup>97</sup> Multi-stakeholder consultations were held raising the hope of the people in respect of the benefits which the pipeline will bring to them and to their communities. Sadly though, the people are becoming short-changed in this respect as the pipeline will provide little hope for employment and access to energy supply<sup>98</sup> which can bring new employment opportunities and infrastructure development in the communities.

Outside the HR undertakings and security protocols, and the Joint Statements to observe HR and international petroleum practices, there is nothing in the project agreement that requires the MNCs to promote or protect HR and SD especially with the understanding that the project is not for the public interests.<sup>99</sup> The role of BP and Unocal in their operations elsewhere leaves much to be desired.<sup>100</sup> If this is an indication of what is to come, then there is doubt as to whether there'll be any hope for HR and SD. Their aim to comply with relevant international guidelines, such as ILO standards and OECD guidelines for MNEs is not backed up with any force of law, which can turn the aim to reality. Any violations will not attract sanctions "as these are wider issues for government."<sup>101</sup> Though the primary duty of the MNCs is to increase shareholder value,

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<sup>97</sup> These are available at

[http://www.caspiandevlopmentandexport.com/ASP/BTC\\_EnviroConsiderations.asp](http://www.caspiandevlopmentandexport.com/ASP/BTC_EnviroConsiderations.asp)  
(last visited on 27/07/04) These were particularly required by the lenders to mitigate the risks that may impair

the project's ability to generate enough revenue to satisfy the needs of the various stakeholders.

<sup>98</sup> Supra note 58.

<sup>99</sup> Supra note 47.

<sup>100</sup> See Doe vs. Unocal, case No.: CV 96-6959-RAP (BQRx) in the U S DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. For BP's records in Forties (Scotland), TAP (Alaska) and OCESNA in Columbia, see Platform et al., "some common concerns", London 2001, p.74

<sup>101</sup> Supra note 47.

their overwhelming influence in the global economy and their dynamism in taking over some roles of government especially in the provision of some public services<sup>102</sup> renders them liable to account, with respect to HR and SD in their dealings with the people.<sup>103</sup>

Contrary to their duty not to impede the protection of HR,<sup>104</sup> they extracted clauses from the HGs in the IGA and HGAs, which tie back the hands of the HGs with respect to the promotion of HR and SD.<sup>105</sup> This is a clear subjugation of the rights of the people expressed through the government. This will also hamper the ability of the HGs to ratify Conventions, that promotes the observance of HR and SD, or to honour international HR commitments, especially with respect to the pipeline.<sup>106</sup> On labour practices, nothing suggests that the rights of women and children will be respected or that affirmative actions will be taken to promote the rights of these vulnerable groups. Above all some MNCs and HGs have been known not to be affected by social labelling or mobilisation of shame,<sup>107</sup> which unfortunately may be the only means to call them to account in this instance. The fact that there will be no permanent resettlement due to the RAP is a welcome development, but security arrangements near conflict zones need to be re-appraised in line with international HR standards.

The collapse of the Caspian fishing industry is evidence of the ecological degradation and environmental decay, which the region has been previously subjected to. The ESIA and EMP particularly address issues of pipeline construction and maintenance but silent on operations and fallback measures for arresting oil spills and clean up especially at

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<sup>102</sup> These were previously the domains of State actors.

<sup>103</sup> See Addo, M., (ed.), *Human Rights and Transnational Corporations- an introduction*, in Human Rights Standards and the Responsibility of Transnational corporations, 23-30 (The Netherlands: Kluwer Law International, 1999). See also the *Norms on the responsibilities of Transnational corporations and other business enterprises with regard to human rights*. Though not adopted it provides the way forward for MNCs and HR. See the UDHR which in its preamble urges “every organ of society” to promote respect for HR. See also Professor Henkin, cited in Dias, A., supra note 2.

<sup>104</sup> Ibid, Addo, M.

<sup>105</sup> The economic equilibrium clause (stabilisation clause) though a way of protecting the investment should not impede the powers of the government to make laws for the protection and promotion of HR, the environment and SD, even where they affect they investment, since these are higher values than the urge to increase shareholder value.

<sup>106</sup> The stabilisation clauses make any new environmental, social or labour law inapplicable to the pipeline, which will create discrimination and inequality in terms of the areas and the people to which these laws will apply, contrary to international declarations and conventions against discrimination and inequality.

<sup>107</sup> For example Unocal in Myanmar. See supra note 100.

Ceyhan, in view of the huge impact the pipeline will have on the surrounding environment in the event of any spill. As environmental abuse translates to threats to the health and lives of the people, this further heightens considerations for HR abuses. The Azerbaijan National Contingency plan for oil spill and the re-routing of the pipeline to avoid some nationally protected areas is a welcome development, but restoration of degraded habitats, erosion control and bio-restoration standards have not been seen to apply to areas under construction.

Aside paper frameworks, no practical steps have been taken in respect of cleaner production in line with the UN Global Compact, and to allay fears over green house gas emissions resulting from gas flaring and other oil field practices.<sup>108</sup> On social issues and capacity building which enhances SD,<sup>109</sup> the CIP may act as a catalyst for building sustainable local economic and community capacity<sup>110</sup>, but the absence of institution building capacity to act as a back up measure to SD is lacking.

The vast majority of the people in the region especially in Azerbaijan and Georgia are suffering from deprivation, inadequate social services, ruined environment and poor quality of life due to the high level of corruption in the region.<sup>111</sup> Aside the creation of oil funds there is no evidence that the Extractive Industries Transparency Initiative and the Global Compact principles on transparency and corruption<sup>112</sup> will be complied with, as there is no monitoring of the revenues accruing from the project except in Azerbaijan.<sup>113</sup> There is doubt as to how far the IFC's monitoring of the oil fund in Azerbaijan will go in keeping the government in check considering that the WB involvement in the

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<sup>108</sup> See Huhtala, A., *the role of the United Nations environment programme (UNEP) and the financial services sector*, work in progress. Available at <http://www.financingcp.org/library/PDF/Greenleaf-Final.pdf> (last visited on 5/04/04). However see supra note 49 for BP's recent 'efforts' in this direction.

<sup>109</sup> For the collective roles of the various stakeholders in enhancing sustainable development see *UNEP Statement by Financial Institutions on the environment and sustainable development*, as revised –May 1997, at <http://www.unepfi.net/fii/english.htm> (last visited on 05/04/04)

<sup>110</sup> \$25m is to be spent on CIP for the construction phase of the pipeline. See <http://www.caspiandevlopmentandexport.com/ASP/FAO.asp#1> (last visited on 22/07/04)

<sup>111</sup> Azerbaijan and Georgia are ranked 124 out of 133 in the list of corrupt countries by transparency international while Turkey ranks 77. See <http://www.transparency.org/cpi/2003/cpi2003.en.html> (last visited on 23/07/04)

<sup>112</sup> These were recently added to the global compact principles thereby making it the tenth principle.

<sup>113</sup> The only evidence of monitoring here is in respect of Azerbaijan.

Chad/Cameroonian pipeline project did not stop the Chadian Government from spending about \$4million in the purchase of arms.<sup>114</sup> The IFC involvement may not therefore hold much hope for the impoverished people of this region.

### **3.4 THE WAY FORWARD**

Aside what has been stated above, the concern of all should be on how to ensure respect for the HR of the people and help them overcome poverty, environmental pollution, and corruption and bring good governance to them through SD. Institution-building should go alongside oil development. Compensation for acquired land is no panacea to the problem of SD. The people need to be engaged in productive ventures.

Embarking on CSR will be a way to achieve these but building practical global partnership with public entities like UNDP and NGOs in the areas of SD and HR will have greater effect, as these will culminate in the promotion of HR, development, project monitoring, transparency, resolution of conflict and multi-stakeholder involvement at all levels of the pipeline development and operation,<sup>115</sup> including fund monitoring and management.

In line with this, a cue can be taken from the partnerships between Chevron/Texaco and UNDP in Angola and Kazakhstan, Statoil and Amnesty International in Venezuela and PetroChina/Shell and UNDP in China. This may be the only way to also reduce corruption and make the pipeline revenue beneficial to the poor, and bring improvement to the countries' educational and health systems, access to water supply, sanitation, severe energy crisis and unemployment which are the effects of unsustainable development. There is also an urgent need to amend the HGA and IGA to reflect HGs' duties in the protection and promotion of HR.

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<sup>114</sup> See supra note 9.

<sup>115</sup> The principles of the global compact are instructive in this regard. See Ayesha, D. supra note 2.

#### **4. CONCLUSION**

The issue of HR and SD has being a sore point for MNCs especially in relation to oil and pipeline development. The BTC pipeline project is no different in this respect. The various stakeholders have no doubt taken bold steps to depart from the pathetic stories of the past. The steps have however proven not to be enough to give very glaring hopes for HR and SD.

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