China’s Impact on Human Rights

in African Development

Diplomarbeit
zur Erlangung des akademischen Grades
einer Magistra iuris

ingereicht bei
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Graz, February 2013

Esther Ludwig

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Graz, Februar 2013

Esther Ludwig
Acknowledgements

I would like to express warm appreciation to Univ.-Prof. Mag. Dr. Wolfgang Benedek, Institute of International Law and International Relations, University of Graz, for the time he invested, the support he provided and his valuable expertise and insights into the foundation of scientific research.

I would also like to extend my thanks to Mag. Reinmar Nindler, a highly qualified colleague and dear friend, for spending hours in inspiring and exciting discussions, for his encouragement and provision of helpful insights on the topic. Further gratitude is owed to Mag. Andrea Gerger, who spent days proofreading my thesis and has been of special help to me.

To Adrienne Molnar, Helena Vukadin, Franziska Lanz, Isabella Lackner, Theo and Pauline Vinnen, Lena Hußner and all close and dear friends, thank you for all your support, for all the memories we have together and for sharing an important chapter of my life with me.

Special thanks for all their support and love go to my parents, Monika and Andreas Ludwig, to my brother Anton, my grandfather Ewald and my whole family.

Particular thanks further go to Stefan, for what he means to me.

Lastly, I would like to thank my Lord Jesus Christ without whom I would not be where I am right now.

“Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond measure. It is our light, not our darkness that most frightens us. We ask ourselves; Who am I to be brilliant, gorgeous, talented, fabulous? Actually, who are you not to be? You are a child of God.”

To my grandpa, my mom and dad, and my brother.

For helping me to become who I am today.

Meinem Opa, meinen Eltern und meinem Bruder.

Die mir halfen der Mensch zu werden, der ich heute bin.
Table of Contents

Acknowledgements........................................................................................................... iii

Table of Contents .............................................................................................................. v

Abbreviations.................................................................................................................... ix

Introduction......................................................................................................................... 1

Part 1: Historical Outline and Background Information.................................................. 4

A. The historical dimension of the relationship between China and Africa .................. 4

B. The Chinese African Policy .......................................................................................... 11

   I. China’s motives and their changes over time............................................................. 14

   II. The Chinese policy and human rights .................................................................. 17

C. Defining development ................................................................................................. 21

   I. The relevance of sustainability ............................................................................... 25

D. Defining development cooperation ............................................................................ 28

   I. The different models of development cooperation ................................................. 30

      1. The “classical” OECD model .............................................................................. 30

      2. The Chinese concept .......................................................................................... 31

E. Development and human rights .................................................................................. 34

   I. The role of human rights in the Chinese encounter in Africa ............................... 37

Part 2: The effects of the Chinese encounter in Africa - Two case studies ...................... 40

A. The Democratic Republic of the Congo ....................................................................... 40

   I. Background .............................................................................................................. 40

   II. The case of Chinese engagement in the DRC ....................................................... 43

   III. Identifying the economic impact on the DRC ...................................................... 44

      1. An analysis of selected cooperation agreements in the light of their impact on the
         developmental situation in the DRC ..................................................................... 45

      2. The deal’s impact on the Congolese economy ..................................................... 47

   IV. Identifying the impact on the human rights situation in the DRC ....................... 49

      1. Investigating possible human rights violations .................................................... 50
2. The compatibility of operational business practices with human rights obligations of the state under international law ................................................................. 54
   a. Chinese human rights obligations ......................................................... 54
      aa. The International Covenant on Economic, Social and Cultural Rights ...... 55
      bb. The Convention on the Rights of the Child ........................................ 57
      cc. The Convention on the Elimination of All Forms of Racial Discrimination .... 60
      dd. The Conventions of the ILO ............................................................... 61
   b. Congolese human rights obligations ...................................................... 62
      aa. The International Covenant on Civil and Political Rights ..................... 63
      bb. The African Charter on Human and Peoples’ Rights ........................... 64
   c. Preliminary Conclusions ....................................................................... 65

3. Possible reasons for continuous human rights problems in Chinese-run enterprises 66
   a. The “failed state” phenomenon ................................................................ 67
      aa. Assessing the DRC’s situation .............................................................. 69

V. Conclusion: Connecting human rights and economy .............................. 72

B. Ethiopia .................................................................................................... 74
   I. Background ............................................................................................. 74
   II. The case of Chinese engagement in Ethiopia .......................................... 76
      1. Trade .................................................................................................. 77
         a. Imports .......................................................................................... 77
         a. Exports .......................................................................................... 78
      2. Investment ........................................................................................... 78
      3. Financial support ................................................................................ 80
      4. Technical and other support ................................................................ 80
      5. Political influence ............................................................................... 81
   III. Identifying the economic impact on Ethiopia ....................................... 83
      1. Consequences for economic development ........................................... 86
   IV. Identifying the impact on the human right situation in Ethiopia .......... 90
1. Investigating possible human rights violations ........................................ 92
   a. Workers’ rights and discrimination ...................................................... 93
   b. The “land grabbing” problem ............................................................... 95
   c. The Gibe III dam project ................................................................. 97
2. The compatibility of the engagement of China with human rights obligations of the state under international law ......................................................... 99
   a. Chinese human rights obligations ......................................................... 100
      aa. The International Covenant on Economic, Social and Cultural Rights .... 100
      bb. The Convention on the Elimination of All Forms of Racial Discrimination .. 101
      cc. The Conventions of the ILO .......................................................... 102
   b. Ethiopian human rights obligations .................................................... 103
      aa. The International Covenant on Civil and Political Rights .................... 103
      bb. The African Charter on Human and Peoples’ Rights .......................... 103
   c. Violations of international obligations by the Ethiopian government due to Chinese involvement .......................................................... 105
      aa. The right to life ................................................................................ 105
      bb. The right to liberty and security of the person ..................................... 106
      cc. Indigenous rights .......................................................................... 106
   d. Preliminary Conclusions ...................................................................... 108

V. Conclusion: Connecting human rights and economy .................................. 109

C. Comparison of the two cases .................................................................... 112

Part 3: Accountability for the human rights violations committed .......................... 114

A. Introductory outline .................................................................................. 114

B. State responsibility for human rights violations committed by non-state actors .... 115

C. State responsibility for violations committed by state-owned enterprises ........ 117

D. Corporate Responsibility for human rights violations ................................ 120

I. Customary Law ....................................................................................... 120

II. Treaty Law ............................................................................................. 121

F. The Guiding Principles on Business and Human Rights .............................. 122
I. The special character of the Ruggie Principles and their relevance for the future... 124

Conclusion................................................................................................................................................. 127

Bibliography .................................................................................................................................................. ix

Books ......................................................................................................................................................... ix

Articles ......................................................................................................................................................... ix

Reports ......................................................................................................................................................... xi

International documents ............................................................................................................................ xii

UN Documents ........................................................................................................................................... xii

Other Documents ....................................................................................................................................... xiv

Bilateral Agreements ................................................................................................................................. xiv

Internet sources ......................................................................................................................................... xv

Other .......................................................................................................................................................... xxi

Table of Cases ............................................................................................................................................. xxii

Table of Treaties .......................................................................................................................................... xxii
## Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>AChHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
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<td>ACIDH</td>
<td>Action against impunity for human rights</td>
</tr>
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<td>ASADHO</td>
<td>Association Africaine de Défense des Droits de l’Homme</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>CEO</td>
<td>Chief executive officer</td>
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<tr>
<td>CERD</td>
<td>Committee on the Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>CESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
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<tr>
<td>CoRC</td>
<td>Committee on the Rights of the Child</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<tr>
<td>DAC</td>
<td>Development Assistance Committee</td>
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<td>Doc.</td>
<td>Document</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic of the Congo</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>et al.</td>
<td>et alii (and others)</td>
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<tr>
<td>et seq.</td>
<td>et sequentia (and the following)</td>
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<tr>
<td>FOCAC</td>
<td>Forum of China-Africa Cooperation</td>
</tr>
<tr>
<td>GA</td>
<td>General Assembly of the United Nations</td>
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<tr>
<td>HDI</td>
<td>Human Development Index</td>
</tr>
<tr>
<td>HRC</td>
<td>Human Rights Council of the United Nations</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991</td>
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<tr>
<td>IDA</td>
<td>International Development Association</td>
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Introduction

China’s engagement in Africa has been a highly controversial topic and the cause of quite some heated discussions in the past. Many experts and even local politicians show deepest concern and are afraid of the consequences emerging from the Chinese engagement in African countries. Thabo Mbeki, former South African president, as many others fears that the Chinese and their rising influence in Africa present a huge risk of repeating some kind of colonial dependence and finally condemning Africa to underdevelopment once and for all.\(^2\) Others however, see China as a normal trading partner and assert that China is a significant driver of African development and growth.\(^3\) Particularly important is the role that Beijing plays for human rights and their evolvement in Africa. Sophie Richardson, deputy Asia director at Human Rights Watch, correctly states that “Africans do not need another external power enabling abusive regimes – they need all powers, including China, to place human rights at the center of their policies”.\(^4\)

The present thesis seeks to discuss the Chinese engagement on the African continent with special emphasis on African development and human rights and aspires to examine the influence of China on the developmental progress and in particular the human rights situation in Africa.

The main questions addressed are how Beijing presents itself towards Africa, what approach of cooperation it adopts and how exactly the Chinese engagement in Africa becomes evident. Furthermore, the difference of the Chinese approach from the traditional model of development cooperation is addressed. Additional research


questions are what impact China’s involvement has on the development and in particular the human rights development of African countries. Moreover, the mechanisms which exist designed to address the responsibility for occurring human rights violations under international law are discussed.

In this context two countries are chosen as case studies and are paradigmatically examined. The thesis is divided into three complementary parts which approach the issue from both theoretical and practical perspectives, are based on each other and successively answer the research questions outlined above.

The first part gives an overview of the historical relations between China and Africa and furthermore discusses the issue of the Chinese African policy in particular focusing on the Chinese motives and approach to human rights. In this context the Chinese principle of “mutual benefit”, which constitutes one of the key elements of Beijing’s African policy, is pointed out. Additionally, the notions of development and development cooperation are addressed elaborating on the aspects of sustainability and different cooperation models and constituting a profound basis for the classification of the Chinese approach of international cooperation. Finally, the importance of human rights within development and their interdependence is presented and in this context the general role of human rights within the Chinese engagement is discussed.

The second part presents a rather practical approach and deals with the two case studies, namely the Democratic Republic of the Congo and the Federal Democratic Republic of Ethiopia. The Chinese encounter is closer examined in both of these countries working out the different areas and ways of engagement. The resultant impact is analyzed in the light of two crucial aspects of the development process; economy and human rights. Both of these issues constitute highly relevant aspects of development and are clearly interdependent, making it absolutely necessary to adopt a dual approach in this respect. Therefore both issues are looked at in each particular case thereby identifying the impact on the country’s development and its human rights situation. At this point a closer look at the previously analyzed principle of “mutual benefit” is taken and its adherence in the respective cases is discussed.
Part three finally addresses the issue of accountability for the human rights violations committed by or through Chinese involvement. The mechanisms provided by international law concerning the responsibility of the state as well as the responsibility of engaging corporations are discussed and a possible accountability of the abovementioned is examined.

Lastly, a conclusion will summarize the results and reflect upon the gained insights.
Part 1: Historical Outline and Background Information

A. The historical dimension of the relationship between China and Africa

In order to guarantee a deeper understanding and a more holistic approach to the discussed subject I believe that a short outline of the history and relations between China and Africa is necessary. Naturally, given that the scope of this thesis is limited only a brief insight into the historic events is feasible and the emphasis of this part will be laid on key events that shaped Sino-African relations as they are today. Nevertheless, the relevance of this chapter must not be underestimated, since a first idea of China’s political and economic attitude towards Africa can be gathered bearing great significance in answering the first research questions.

In the first years after the foundation of the PRC the communist government was internationally isolated and only had few diplomatic contacts, mainly with the Soviet Union and other communist states. Africa was under the influence of European powers due to colonialism and therefore rather unimportant for China at that time.\(^5\)

This changed drastically after 1955 when the Bandung Conference took place in Java, Indonesia. The conference was known as the first big meeting of the non-alignment movement and featured a broad participation of 29 states including China and several African countries.\(^6\) At this important meeting of independent Asian and African states the first diplomatic relations between China and Africa in a long time were established by the Prime Minister of China Zhou Enlai and the president of Egypt Gamal Abdel Nasser. It was after this gathering when the Chinese leadership realized the potential that the developing countries, especially Africa, had as international allies when it came to political, moral or ideological goals.\(^7\)

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\(^7\) Mayer, Die Rückkehr Chinas nach Afrika, 8.
After World War Two and during the cold war the Western powers developed the European Recovery Program, also known as the Marshall Plan, and started giving aid to the destroyed countries in order to build up the European states and their economy once again. These first aid services started to become a further issue of competition between the US and the Soviet Union. The communist government of China, a country that was a lot poorer than some of the African countries at that time, joined this rivalry of two ideologies in the 1950s and started to show ambitions on its own.8

As a consequence the South-South dialogue was intensified and the Chinese launched a diplomatic offensive and started to gain more and more the favor of the few independently existing African developing countries. However, due to Chinas limited economic possibilities this assistance and the attempt of an outwardly focused new foreign policy had fatal consequences for the own population. Large famines killed up to 40 million people and the already underdeveloped China faced new internal challenges. Nevertheless, the basis for further development assistance and cooperation between the PRC and Africa was created.9

On the political level, the goal of China in those days was to get the official recognition as the representative government of China by as many states as possible in order to end the ongoing conflict between the PRC and Taiwan. Financial, economic and political assistance to Africa, so as to support further development and independence was an important and efficient tool to reach this political goal.

Mao Tse-tung stated at the Eighth National Congress of the Communist Party of China in 1956: “We must give active support to the national independence and liberation movement in countries in Asia, Africa and Latin America as well as to the peace movement and to just struggles in all the countries of the world.”10

8 Ibid, 16-17.

9 Ibid, 18.

Consequently, China started providing military assistance, including trainings, weapons, uniforms et cetera for many parts of Africa to help the independence movements of the African people. Beijing considered it its moral and ideological duty to support those countries and to help putting an end to the unequal contracts and repression of people by the colonists. The attempts of the African people to break free from the influence of the colonial powers and to develop their own political systems reminded China of its own struggle for independence. Subsequently, ideologies, political concepts and intellectual philosophies were exchanged. Additionally, a chance to introduce the Marxist-Leninist views and communist ideology was sensed and Beijing hoped to expand the socialist concept to more and more countries throughout the African continent. However, the expectation for a total break of these countries with the colonial powers was not met, since a European influence was still noticeable.\textsuperscript{11}

In the 1960s when numerous African countries finally gained independence the importance of Africa and these newly emerged countries for the PRC grew significantly, and the PRC sensed a great chance to get more and more recognition on the international scene, which would get it closer to its objective to replace Taiwan as official representative of China within the UN. Doubtlessly Taiwan was also aware of the importance of the new countries and their UN votes on the international stage. Thus, a competition between these two actors for the favor of Africa began in which the PRC started once again a diplomatic offensive. Between 1963 and 1965 the Chinese Prime Minister Zhou Enlai traveled to Africa three times visiting various countries such as Morocco, Sudan or Ethiopia. This clearly shows that Africa was the new focus of Chinese foreign policy and had top priority in its international relations.\textsuperscript{12}

In late 1964 the “Eight Principles of Economic and Technical Aid” were presented, which formed the basis for a new era of Chinese development aid and were crucial to the period of Sino-African cooperation that followed. These principles were: equality and mutual benefit in providing aid to other countries, respect for national sovereignty.

\textsuperscript{11} Mayer, Die Rückkehr Chinas nach Afrika, 9 et seq.

\textsuperscript{12} Ibid, 11-12.
and no conditionality, low-interest or interest-free loans, no dependencies, but strengthening of independent economic development, support of local projects, delivery of first-class equipment and material of China’s own manufacture at international market prices, ongoing technical assistance for aid projects and the same standard of living for Chinese experts and local ones.\textsuperscript{13}

Through this new policy of development assistance, the Chinese saw a chance to strengthen their moral superiority over Europe. While the European countries tied their help to certain criteria, China offered favorable credit terms with only one condition as will be seen below. This policy made China a popular substitute for European help.\textsuperscript{14}

With the Cultural Revolution beginning in China in the second half of the 1960s a change of focus in both Chinese foreign policy and domestic matters came along. China began to emphasize much more on its internal affairs, which can be seen as the reason for a temporal decrease of its diplomatic efforts on the international level.\textsuperscript{15}

Nevertheless, some aid projects in Africa were still completed between 1966 and 1968 and a few new aid commitments were undertaken. Even though a decrease of international action was noticeable, support for Africa was not abandoned entirely. In fact, during the time of the Cultural Revolution one of the biggest and most important infrastructure projects was put into practice in Eastern Africa.

The almost 2000-kilometer rail link “Tazara” between Kapiri Mposhi in the highlands of Zambia and the Tanzanian city of Dar es Salaam on the Indian Ocean was generously financed by the Chinese government with a loan of around 500 million US$. Zambia needed access to the ocean in order to export its natural resources and import goods and was therefore eager to find an alternative route in order to be more independent from the


\textsuperscript{14} Mayer, Rückkehr Chinas, 20-21.

\textsuperscript{15} Ibid, 13.
existing one that led to the South African coast. Together with Tanzania, its peaceful and friendly neighbor, a route to the Eastern coast was planned. After the World Bank refused the request of financing because the project wasn’t considered to be economically attractive, China came along as the knight in shining armor to help out. This humongous key project increased the prestige of China enormously and catapulted it into the first league of development aid, on one level with the US and the Soviet Union.\textsuperscript{16}

Finally, in 1971 the Chinese efforts were rewarded, as the PRC obtained the majority of 76 votes in the GA of the UN and received the seat it had been so eagerly waiting for.\textsuperscript{17} In return, the diplomatic relations continued to offer further generous assistance for African countries. By 1975, 37 out of 45 African states had recognized the PRC.\textsuperscript{18}

There is one fact that might appear quite extraordinary in this connection: On the one hand China managed to gain the international importance of a superpower comparable to the Soviet Union and the US, but on the other hand the country put itself on one level with Africa. This means that the PRC described itself as one of the developing, Third World countries thereby gaining Africa’s sympathy, whilst Europe, Canada, the US and Japan were considered to be Second or First World and thus “developed” states.\textsuperscript{19}

At the end of the 1970s Deng Xiaoping took power in China and strove for an economic reform. He opened China economically and modernized the business sector. Since the country needed all strength to push its economy and other domestic sectors, Africa lost once more part of its relevance on the Chinese agenda.\textsuperscript{20}

\begin{flushleft}
\textsuperscript{16} Ibid, 23.
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\begin{flushleft}
\textsuperscript{17} General Assembly Resolution A/RES/2758(XXVI) (1971) of 25 October 1971.
\end{flushleft}

\begin{flushleft}
\textsuperscript{18} Mayer, Rückkehr Chinas, 14.
\end{flushleft}

\begin{flushleft}
\textsuperscript{19} Ibid, 25.
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\begin{flushleft}
\textsuperscript{20} Ibid, 25-26.
\end{flushleft}
Nevertheless, the South-South dialogue was not fully interrupted. In 1982 China introduced a new long-term foreign policy strategy based on a neighborhood agreement signed with India about the “Five Principles of Peaceful Coexistence”. Once more China stressed its affiliation with developing countries and further emphasized the importance of the five principles that are: mutual respect for each other’s territorial integrity and sovereignty, mutual non-aggression, mutual non-interference in each other’s internal affairs, equality and mutual benefit, and peaceful co-existence.\textsuperscript{21} Africa welcomed this new policy which was another factor beneficial to their increasingly strong and enduring relationship with China.

In 1983, shortly after the five principles had been agreed upon, Prime Minster Zhao Ziyang presented a new policy paper of Chinese development aid for Africa which can be considered as a supplement of the “Eight Principles of Economic and Technical Aid” introduced in the 1960s. In these “Four Principles on Sino-African Economic and Technical Co-operation” the mutual benefit, as well as the economic efficiency were emphasized once more. This showed again that China was mainly focused on its own modernization and development.\textsuperscript{22}

Despite the declining assistance the Chinese experienced further support from their African partners, like in 1989, when Africa stood by China’s side while the world fiercely criticized the violent termination of the peaceful occupation of the Tiananmen Square.\textsuperscript{23}

China answered with new commitments to development aid and a new political offensive. Between 1989 and 1992 China’s Foreign Minister Qian Qichen paid visits to 14 African states. Beijing was looking for new allies on the international level that had


\textsuperscript{22} Li, Cultural Heritage and China’s Africa Policy; in: Men/Barton, China and the European Union in Africa – Partners or Competitors? Farnham, Ashgate Publishing Limited (2011) 54.

\textsuperscript{23} Mayer, Rückkehr Chinas, 15.
no ambitions to interfere with China’s human rights policy and used development aid as a specific cooperation instrument in its foreign policy to achieve this goal.24

In the 1990s the Sino-African relationship was shaped by a new agenda. The increasing globalization combined with the growing Chinese economy caused an immense demand for raw materials and resources that China itself could not provide anymore. Due to this new situation the Chinese relationship with certain African countries began to become essential for the economy of China. Consequently the efforts to please Africa increased significantly and China presented itself as a partner for intensive mutual economic cooperation. It was guaranteed that Africa would benefit from this cooperation just as much as the PRC would.25

In 1993, when China was forced to import oil for the first time due to its gigantic new consumption, Africa, rich in raw materials, gained in strategic importance for China.26 From then on the cooperation was shaped by economic aspects more than ever, followed by the establishment of the FOCAC in 2000.

The Forum of China-Africa Cooperation constituted a proper institutional frame to further intensify the economic and political cooperation between China and Africa. Founded in Beijing the forum comprises 50 member states: China and 49 African partner states. So far five Ministerial Conferences have taken place every 3 years starting in 2000, which were held in China and Africa alternately. The last conference in July 2012 was staged in Beijing. 20 billion US$ of credit line were promised by China to assist developing infrastructure, agriculture, manufacturing, et cetera on the African continent.27

24 Ibid, 27.


26 Ibid.

Today the cooperation between China and Africa is a well-known and fiercely discussed topic and the Chinese engagement seems to continue at the same pace as in previous years. The long historically shaped connection has formed a solid base to further intensify relations, especially on an economic level. The number of Chinese enterprises doing business in African countries has risen dramatically and a lot of gigantic projects are being carried out by Chinese companies. Even though mutual benefit is emphasized over and over again, the profit that China gains from this cooperation currently seems to be higher than Africa’s benefit.

B. The Chinese African Policy

In respect of China’s international profile and its presentation towards Africa the Chinese African policy has particularly great relevance. The policy provides us with a glance of the Chinese intention regarding cooperation with Africa, shows which issues and aspects China emphasizes and gives a hint of the approach of cooperation that the PRC adopts.

When taking a closer look at the Chinese foreign policy, especially in respect to Africa one comes across a rather significant curiosity compared to other foreign policies around the globe. Whilst the motives and political interests of China have repeatedly changed over the years, which seems to be fairly normal due to its long history, its foreign policy, however, hasn’t changed much in the last 50 years. In fact, today it is still guided by the same basic principles that originally have been presented in the 1950s.28

One of the first official documents to represent China’s foreign policy was presented in 1955 by Zhou Enlai at the Bandung Conference. This document featured the “Five Principles of Peaceful Coexistence” which are as earlier mentioned; mutual respect for each other’s sovereignty and territorial integrity, mutual non-aggression, non-interference in each other’s internal affairs, equality and mutual benefit, and peaceful

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coexistence. All of these principles were met with keen interest and approval by many states at the conference including Africa. In 1964 the “Eight Principles for Economic Aid and Technical Assistance to Other Countries” were developed by China. The crucial points were again mutual benefit, equality and respect of state sovereignty. The principles of mutual benefit and equality as well as a broad approach to development aid were stressed again in the “Four Principles on Sino-African Economic and Technical Cooperation” in 1982.

The most recent and also the most important African policy paper was published by China in January 2006. In this strategic document the long history of cooperation and the many historical similarities between Africa and China are pointed out and their relationship is described as a long and profound friendship. Furthermore, it is stated that: “Sincerity, equality and mutual benefit, solidarity and common development—these are the principles guiding China-Africa exchange and cooperation and the driving force to lasting China-Africa relations.”

According to this paper China’s main intentions in the years to come are to create a new type of strategic partnership and to intensify economic win-win cooperation. Once again the aspect of “mutual benefit” is pointed out. Beijing emphasizes that common prosperity is the goal of this relationship and should always be taken into account when supporting each other’s development on different levels.

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30 Ibid.


32 Mayer, Rückkehr Chinas, 26.

In its African policy the Chinese government does not only address a bilateral approach to strengthen mutual development, but also calls upon closer cooperation within the UN, the AU and other multilateral systems. It claims to be eager to urge international organizations to pay more attention to South-South cooperation and to encourage economic development, especially of developing nations. Moreover, China declares that the voices of the developing world are of highest importance in the decision-making of international financial affairs and trade systems. It promises to support the development of Africa on every level and pledges assistance to realize the MDGs in Africa.

Furthermore, cooperation and exchange in the field of education, science, culture and health is promoted and the intention to learn from each other’s experience in different areas is expressed. Also the term “sustainable development” is mentioned in the paper as the PRC assures its full assistance to ensure sustainability in Africa. China repeatedly promises to support Africa in every way in its process of development and states to be eager to work jointly towards a brighter future.

With regard to commodities China plans to foster the strengthening of cooperation with Africa, based on mutual benefit and joint development. As the policy paper explains, the goal is the rational development and exploitation of the available resources. In addition the policy paper emphasizes China’s intention to help Africa convert its richness in resources into competitive strength on global level. The realization of sustainable development on the continent is mentioned as well.

By showing the serious intention to actually fulfill all these assurances and by the way China presents itself, it takes a position that is rather different from the classical position of the industrial states. Ramo describes this new phenomenon as the “Beijing Consensus”. The approach that China adopts of featuring peaceful mutual growth on both sides, is extremely flexible. It takes into account various levels and forms, and is furthermore driven by a new openness and desire to explore all possibilities of innovation and experiments in different areas. This new Chinese concept increasingly challenges the classical concept of the so-called “Washington Consensus”. The experiences associated with the latter are rather negative, since it features a widely-
discredited Washington-knows-best approach as Ramo puts it. Its success has been low and a trail of destroyed economies was left in the past.34

The expectations that Africa and its countries put in the PRC are high. African leaders expect China to actively engage in areas essential to their development, help building up national and regional economies, and strengthen political stability as well as combating diseases such as HIV/AIDS. However, it remains to be seen whether these expectations actually will be met in the near future.

I. China’s motives and their changes over time
Even though the general principles of the Chinese foreign policy haven’t changed much over the years, the motives that accompanied Beijing in the very beginning of the Sino-African relationship and those that shape the Chinese diplomacy today are quite different. The consideration of Beijing’s motives and their development provides us with interesting information concerning today’s engagement of China in Africa. It explains the geographical focus and its shift in the recent past and furthermore is considered to be essential and complementary to the Sino-African history and China’s African policy discussed earlier. It is the motives and interests of China which constitute major indicators on how Beijing presents itself towards Africa and hence significantly contribute to answering the research questions of this thesis.

The motives in the early 50s were evident; due to international isolation China needed more allies on the international level, which clearly constituted the reason why the African continent with its many countries suddenly became the center of Beijing’s attention. With the Bandung conference taking place, China launched the establishment of diplomatic relations with African countries with the goal of getting more international support and finally escaping its global isolation.

As outlined above, this motive modified with the globally emerging concept of development cooperation after World War Two. The goal then was to keep up with America and the Soviet Union in the global battle of providing aid. In this stage the

motive as such was rather to establish an international reputation than to actually help the developing nations. The objective of winning the competition was followed by the new political aim of being recognized as the official representative of China.

During the period of African independence wars Beijing’s reason to support the uprising people was again a different one. Remembering their common historical dependence from other states, China felt obliged to support these movements. Furthermore, a chance was spotted to influence Africa both ideologically and politically thus advocating the Socialist system that China represented.

With the “Eight Principles of Economic and Technical Aid” Beijing officially presented principles that were based on mutual benefit, development and interest and hereby portrayed itself as the friendly partner who actually cared about Africa. The Chinese government declared that the only purpose of providing aid to other countries was to support them in taking steps towards an independent economic development. It was clearly pointed out that there was no intention whatsoever to make recipient states dependent on China. But at closer examination, its real intention to help the developing countries in Africa was not based on actual care, support and altruism, but on presenting China as the knight in shining armor and on attracting the attention of the international community.

The African continent holds huge potential for China to engage in different actions and areas with the ultimate goal to improve Beijing’s image, highlight moral superiority and demonstrate rising global power. It is due to those reasons that whenever the IMF or the World Bank refused to grant a loan or other forms of aid, as it was the case with the “Tazara” project, China was there providing generous offers of assistance, in this way increasing its prestige in Africa again and again.

As initially mentioned, with the introduction of the “Four Principles on Sino-African Economic and Technical Co-operation” in 1983 the focus on benefit and efficiency was stressed in particular. This emphasis strongly indicates the importance of China’s own

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35 The Government of the PRC, China’s Eight Principles.
development and the strengthening of its economy at that time. Shortly afterwards, it was pointed out that the PRC laid great stress on “mutual” benefit and argued that both economies needed to be supported and strengthened equally.

Another change of motives came along with the urgent need of raw material for the Chinese economy. State-owned enterprises started exploiting huge material reserves in commodity-rich African countries on the pretext that they helped building infrastructure such as roads and made the deposits more accessible through building mines and harbors. Beijing emphasized repeatedly that all the actions taken in Africa were based on benefit for both sides and that their ultimate goal was to support the development of Africa. 36

The role that China played in this game seems to be a little hypocritical is continuously questioned and harshly criticized by many experts and politicians37. Without a doubt Africa does profit from the establishment and extension of infrastructure, since they definitely constitute key elements in the development of countries. Nevertheless, the impression is that the mutual benefit, so often mentioned, is in danger of getting out of balance and that China profits a lot more than Africa does and maybe even supports the dependency of some people and countries on big cooperation partners like Beijing.

However, the other way around, “China needs Africa” just as much. Africa offers a lot that China desires and needs to push its global rise further in the future. Firstly, Beijing is desperately in need of Africa’s resources which are essential these days in order to guarantee continuous growth and development of the Chinese economy. For the same reason African markets have become an important issue for China and are highly competitive nowadays. Finally, political alliances to secure global power and influence

36 Yao, China and Africa – Mutual Benefit and Win-Win.

constitute another important aspect that China is in need of and that Africa with its many countries offers.  

The win-win situation that Beijing presents in theory actually does bear the potential that both sides can profit from cooperation. The problem however is practice. African leaders often simply act too slowly and do not realize or act on potential threats originating from Chinese actions. Moreover, many of them are not really aware of their role as equal partners being able to impose conditions as well. Currently the Sino-African cooperation is clearly dominated by China’s plan its strategy to once more achieve its objectives and motives.  

II. The Chinese policy and human rights

Whether and to what extent human rights are integrated in China’s foreign policy, appears to be a crucial question to consider especially when assessing the impact of the PRC and its involvement on human rights in Africa. Additionally, it is interesting to assess the particular relationship between human rights and the basic principles of China’s foreign policy and how they affect each other.

Compared to Europe, the US or other global players that integrate human rights into their foreign policies, strongly promote them and even make it a condition to respect them in order to receive financial, economic or other assistance, China addresses the human rights issue insufficiently and very vaguely.

In China’s African policy of 2006 the concept of “human rights” can only be found in one sentence: “China will continue to strengthen solidarity and cooperation with African countries on the international arena [...] and stand for mutual support on major issues concerning state sovereignty, territorial integrity, national dignity and human rights.”  

When considering the context of this sentence it is clear that human rights are

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40 Ministry of Foreign Affairs of the PRC, China’s African Policy.
mentioned in a rather incidental way along with many other issues and is not further elaborated.

In the light of its own human rights reputation it only seems comprehensible that the PRC cannot be regarded as the biggest human rights advocate internationally and rather declares to be neutral. “When it comes to human rights, China's foreign policy is deliberately agnostic.” 41 This is how Kenneth Roth, executive director of Human Rights Watch, puts it. He correctly describes the human rights policy of China as a “policy of indifference”. 42 This general indifference is especially reflected in the field of economic cooperation in Africa. When examining the different situations no doubt remains and it is shown that the Chinese human rights concept clearly influences its engagement in African countries giving awareness and respect for human rights merely secondary importance.

Beijing does not differentiate between tyrants, dictatorships, working democracies, a well-functioning and transparent government or total corruption. It seems to conduct business with every country, at least every country that possesses goods that China desires. This behavior justifies Beijing’s policy of non-interference and claims that human rights are relative and every country has the right to define them according to its own possibilities and reality. 43 The former deputy foreign minister of China, Zhou Wenzhong, stated in an interview “Business is business. We try to separate politics from business.” 44


42 Ibid.

43 Ofodile, Trade, Aid and Human Rights, 90.

Concededly, this behavior is anything but neutral. In fact, China’s largest oil suppliers are countries with repressive regimes, corruption and thousands of human rights violations every year. This *de facto* support of unstable and harshly criticized countries makes China a direct ally of states, which the Western world disdains. In a New York Times article Nicholas Kristof accuses the PRC of supplying the weapons for the very first genocide in this century by selling a huge amount of arms to Sudan for access to Sudanese oil in return. This example shows that the “policy of indifference” does not directly imply neutrality concerning human rights issues.

What is equally important to note, is that with its attitude China does not only support dictators and questionable regimes, but also directly undermines efforts undertaken by the international community and other state groups to reach the compliance of problematic African states with internationally recognized human rights standards, transparency or democracy. By offering whatever the EU, the World Bank or other donors deny owing to severe human rights abuses or insufficient transparency of government coffers, China sneaks into the gap that remains and consequently jeopardizes the international endeavors in that area. Especially arms sales to poor and already destroyed counties like Sudan or Ethiopia constitute a major danger and definitely do not contribute to enhancing peace and stability in the region as China claims in its African policy.

Apart from the abovementioned problems, the Chinese engagement in Africa is also accused of being exploitative in nature and doesn’t feature the aspect of mutual benefit as so often promised and highlighted by Chinese officials. A huge concern is that the pattern of trade is alarmingly similar to the former colonial trade structure and thus

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45 Ofodile, Trade, Aid and Human Rights, 90.

46 Ibid.


48 Ofodile, Trade, Aid and Human Rights, 91.
Sino-African relations are described as some kind of “neocolonialism” by critics. Additionally large-scale dismantling of non-renewable resources by Chinese companies is harshly criticized and judged as not sustainable and irresponsible behavior. African leaders have to take into consideration the limits of the raw materials and stop selling out those globally important and valuable treasures too fast and too cheaply. The day when the African countries themselves may need those amounts of commodities might not be too far away.

In conclusion it can be pointed out that unfortunately the issue of human rights does neither play a sufficient role in Chinese domestic affairs, nor in its foreign policy in general, and in its African policy in particular as the national interests of the PRC, may they be of political or economic nature, always outweigh human rights considerations. The principle of non-interference only strengthens China in its way of dealing with certain delicate issues. Basically China’s attitude can be summarized as “we don’t denounce you for a disregard of human rights, if you don’t denounce us for it”.

Nevertheless, in some particular cases, Beijing also undermines its highly praised “non-interference policy” as the example of arms supply to Sudan shows, which clearly does not constitute the best example of “not getting involved in internal affairs”. Most of the weapons used to kill thousands of people in this conflict actually came from China representing an indirect interference with Sudanese affairs, leading to killings and human rights violations of men, women and children. Incidents like this highlight the omnipresence of human rights yet again and demonstrate that China needs to seriously rethink its so-called neutrality and to take into account human rights with every action it takes.

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49 Ibid.


51 Ibid.

52 Kristof, China’s Genocide Olympics.

53 Ibid.
takes. For the time being Beijing’s approach to human rights and their insufficient consideration in China’s foreign policy pose a quite worrisome aspect.

C. Defining development

With development being the crucial topic of the present thesis a closer look at its emergence and history as well as the examination of the definition of development pose significant issues which are addressed in this chapter.

When it comes to the concept of development it may be noted that defining the term “development” as such has been part of the difficulties the whole concept has been facing over the last decades. In many respects a universal term and definition may even seem pointless and inexpedient, since the term “development” often appears in different contexts. Consequently, a differentiation between the development of the individual, the family and the group and the development of the state and its population can be made. Even though a close link between the human development of each individual and the development of the state exists, the main focus in this thesis is laid on the latter.

An internationally recognized definition as such has not been elaborated so far. However, many different approaches were introduced and discussed and several modifications of the original meaning of “development” could be observed in the past.

In the beginning a restriction of the term “development” to economic growth took place and it was stressed that this was the number one aim that needed to be achieved in order to further develop a country. The progress of development was measured using a single


56 Ibid.
indicator, which was the income per capita.\textsuperscript{57} One of the consequences of this definition was, for instance, that the funding of the IDA was originally bound to the purpose of promoting economic development and growth in the underdeveloped member states.\textsuperscript{58} A predominant conviction was featured that with economic growth and the increase in income per capita, other problems, such as social or political ones, would vanish automatically.\textsuperscript{59}

Years later, during the first United Nations Development Decade, the economic focus was set aside and the aspect of social change as a new component was introduced and complemented the concept of development.\textsuperscript{60} Experts realized that economic development didn’t necessarily entail social development, but nevertheless a clear link between economic and social development had been proved. In 1952 in its resolution 642 (VII) the General Assembly called explicitly for the first time for “\textit{integrated programs taking into account the various economic and social conditions and factors and their mutual relationships}”.\textsuperscript{61} The new definition was “growth and change”, and it considered “change” as alteration in value systems, political regimes, social behavior patterns, but also investments in the social area, such as education, food or health.\textsuperscript{62}

During the second United Nations Development Decade the term was expanded once more and the dimension of technical development was added.\textsuperscript{63} Furthermore, the


\textsuperscript{58} Articles of Agreement of the International Development Association, Article I .Synoptically presented in the German BGBl Part II of 23 August 1960, 2138.

\textsuperscript{59} Nohlen, Entwicklung/Entwicklungstheorien, 171.

\textsuperscript{60} Ibid, 171 et seq.


\textsuperscript{62} Nohlen, Entwicklung/Entwicklungstheorien, 171 et seq.

\textsuperscript{63} General Assembly Resolution A/RES/642(VII) (1952) of 20 December 1952.
original approach towards development was modified and the new focus was put on the basic needs of the individual and the essential physical and mental requirements for living. These basic needs were traditionally met by economic, social or cultural as well as civil and political human rights.

The Preamble of the International Development Strategy for the Second United Nations Development Decade adopted by the GA in 1970 stated that, “the ultimate objective of development must be to bring about sustained improvement in the well-being of the individual and bestow benefits on all.” The scientists Nohlen and Nuscheler connected different aspects of development to form a complementary and interlinked “magic pentagon”. These aspects were: work/employment, economic growth, social justice/structural change, participation and political and social independence.

In 1980 the first report of the Brandt-Commission stressed that; one cannot talk about development, if the quality of growth and social change is not taken into account. Moreover, it was pointed out that, the concept of development does not just cover material wealth, but also other dimensions including human dignity, security, justice and equality.

Another crucial aspect which was discovered was a clear dependence and causal connection of the promotion of development and human rights. Today it is clear that development and human rights are interlinked and share a deep connection. Due to the importance of this aspect for the present thesis a closer look at the abovementioned

64 Nohlen, Entwicklung/Entwicklungstheorien, 172.

65 Benedek, Das Recht auf Entwicklung in universeller Sicht und im Rahmen des afrikanischen Menschenrechtsschutzes, 288.


67 Nohlen/Nuscheler, Was heißt Entwicklung? 64 et seq.

68 Ibid.

relationship will be taken later on. What is more, is the extremely important element of sustainability nowadays, which will also be addressed in a subsequent sector at a later stage.

As we can see, the notion of development has been expanded more and more, finally uniting many different elements and dimensions. Today’s concept includes social, economic, cultural, technical, political and environmental elements as well as the human rights aspect and is therefore a concept covering a quite broad approach. ⁷⁰

In this context, it needs to be mentioned that there is no universal strategy for development that can be applied everywhere and always works the same. ⁷¹ Development needs to be adapted to the needs of respective country. Nevertheless, certain areas can be defined in which progress and change are necessary in order to develop a country as such. ⁷² These areas are, for instance, an efficient bureaucracy, legal certainty and the rule of law, an effective financial system, health, education, gender equality, a working economy, an expanding infrastructure and human rights.

Since defining the notion of development in some way seems important for the further evolvement of this thesis, even though no official definition has been developed so far, it appears to be reasonable to provide a working definition. For the scope of this work I will therefore define the term of “development” as “a process which entails the evolvement and change of a country, its government and society towards an economic, social, political, legal and cultural progress, taking place in a sustainable way, with respect for human rights and ultimately leads to an overall well-being of each individual.”


After determining a working definition for the notion of development and having disclosed the various development dimensions an examination of China’s engagement in Africa and its impact on all the mentioned aspects would be going too far. On that source two main dimensions which are found to be paradigmatic and essential basic prerequisites for development in African countries are selected and closer looked upon at later stage. The chosen dimensions, namely economy and human rights are clearly linked and mutually influence and complement each other, which is why they have been found to be suitable examples for the purpose of this thesis.

I. The relevance of sustainability

As mentioned before, in our modern time, characterized by globalization, immense industrial growth and a great need for resources, sustainability has become a more and more important facet of development.

With a great deal of China’s involvement in Africa concentrating on resource-rich countries and its obvious need for commodities in order to further fuel economic growth and development, the relevance of sustainability in this matter must not be underestimated. Therefore a short overview of the evolvement of sustainability within development and development cooperation is given at this point.

In the early 1980s scientists realized that the relation between the growth of population and the availability of resources was becoming an essential problem for development. Beginning in the 1980s the human energy consumption exceeded the sustainability of our planet. As a consequence it was realized that the human lifestyle, particularly the one adopted by the industrialized states, cannot be continued without having a serious impact on the generations to come. Furthermore, environmental consequences emerged such as the climate change and global warming, which still influence the Earth significantly. The relevance of sustainability as such found its way into development

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cooperation in the 1970s when sustainability became more and more important on a
global scale and its indispensability within the field of development was discovered.\textsuperscript{75}

The actual term of “sustainable development” was first coined in the early 1980s as
people’s awareness of the importance of our environment increased considerably. With
the foundation of the Brundtland Commission in 1983 the first step towards sustainable
development was taken. The Commission was founded as an independent organization
of the UN to raise global awareness concerning environment, sustainable development
and natural resources. In 1987 the Brundtland Commission, formally known as the
World Commission on Environment and Development, released the report “Our
Common Future”. This report is to be considered as one of the most important
documents when it comes to the term of “sustainable development”. The Brundtland
Commission combined the terms “sustainability” and “development” for the very first
time and created a definition which is still the most recognized one today. The
definition of sustainable development reads:

\begin{quote}
“Sustainable development is development that meets the needs of the present without
compromising the ability of future generations to meet their own needs. It contains
within it two key concepts: the concept of needs, in particular the essential needs of the
world’s poor, to which overriding priority should be given; and the idea of limitations
imposed by the state of technology and social organization in the environment’s ability
to meet present and future needs.”\textsuperscript{76}
\end{quote}

Janeiro, also known as the “Earth Summit” took place and discussed once more critical
issues concerning nature including global warming and sustainability. 172 countries
participated in this important conference and 108 heads of state or government members

\textsuperscript{75} König/Thema, Nachhaltigkeit, 25.

\textsuperscript{76} World Commission on Environment and Development (WCED), Brundtland Report, Our common
were present.\textsuperscript{77} This conference is known as one of the most important ones in the field of sustainable development and brought forth the “Agenda 21” which was considered to be the agenda of the 21\textsuperscript{st} century taking into account the environment and the concept of sustainable development as prior goals.\textsuperscript{78}

The Earth Summit in Rio was followed by two main conferences; the “Rio+10” and the “Rio+20” summit, both on sustainable development. Topics such as the implementation of the Agenda 21 were issued and concrete time-bound objectives were defined.\textsuperscript{79} Apart from that a “green economy”, an “institutional framework for sustainable development” and the “7 critical issues” namely; jobs, energy, food, water, cities, oceans and disasters were discussed.\textsuperscript{80}

Considering the history and evolution of sustainable development, it constitutes a principle that should not only be implemented by some governments or organizations, but by as many individuals as possible. This means that we have to be aware of the impact that different actions, taken to meet one of our needs, might have on others. It is of great importance that a general awareness of priorities is developed and that it is clear to everyone, in particular to the actors engaging in the enhancement of development, that basic needs overrule secondary ones in every case.

In that context it is unacceptable that the urge for economic growth of a country or company is more important than the need of an African to work under safe conditions, as it is the case in Nyabibwe, one of the biggest ore mines in South Kivu, a province in


\textsuperscript{78} Ibid.


As a matter of fact, many of people’s basic needs directly overlap with human rights and have to be seen as first priorities. Our duty and responsibility as human beings, and consequently states, in this world is to guarantee that human rights and sustainability are respected all around the globe and that the future generations will have the resources and means to satisfy their basic needs in the same way as we do today. This hold true for every actor, including the PRC that engage in developing countries in Africa especially in sectors which compromise commodity deposits and other environmentally crucial aspects.

**D. Defining development cooperation**

To answer the earlier determined question which approach of cooperation, particularly development cooperation, the PRC adopts it is necessary to elaborate on the definition and different models of development cooperation.

As the term “development cooperation” already indicates, it denotes international cooperation between countries or between countries and other actors in order to enhance the development of those states in the world that appear to be counted amongst the developing countries. This means that they are still considered as underdeveloped and therefore need assistance to improve their situation in today’s rapidly changing world. Development cooperation can be defined as technical and particularly financial cooperation and includes the sum of all material benefits, such as capital assistance or technical aid, as well as non-material benefits like the sending of experts, for instance.

Commonly today’s “development cooperation” was previously called “development aid”, since the actual designation was that one or several countries, institutions or other actors provided “aid” to a country thereby supporting the country’s development. However, in order to guarantee a more appropriate and balanced partnership of equals, a shift took place amending the term “aid” to the more suitable term “cooperation”.

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The WHO describes development cooperation as the “international transfer of public funds in the form of loans or grants....” The cooperation can be either bilateral, meaning directly between two states, or multilateral involving NGOs or other multilateral agencies such as the World Bank. Unfortunately, the development cooperation that has been carried out up to now can be described as quite uncoordinated, unpredictable and not very transparent. In order to guarantee maximum efficiency and effectiveness in that matter, several international meetings have taken place in the past, resulting in the Paris Declaration on Aid Effectiveness in 2005. The declaration, which was signed by over 100 countries, highlighted the principles of ownership, alignment, harmonization, managing for results and mutual accountability. In 2008 another important document the Accra Agenda for Action was endorsed based on the Paris Declaration and highlighting three fields, namely country ownership, building more effective and inclusive partnerships and achieving development results and publicly accounting for them.

Finally, the emergence of the Development Assistance Committee of the OECD, which constitutes a viable forum for discussion of the big donor countries on the coherence and efficiency of their official development aid, has additionally been a fertile and proficient development concerning the effectiveness of development cooperation.

At this point it is important to point out that development cooperation; its execution and content vary quite a lot and depend on the approach taken by the actors. Nevertheless, an overall goal can be determined that is the enhancement of a country’s development though cooperation with other actors. In this matter, the introduction into different cooperation models that is to say the conventional OECD model and an alternative approach adopted by China is discussed in the following subchapters.

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I. The different models of development cooperation

Although the vast membership to the DAC, which includes countries from different parts of the world such as the US, Canada, Australia, New Zealand, Japan, South Korea and most of Europe, shows its international scope and relevance, other cooperation models are emerging that need to be discussed as well. With China being one of the pioneers of rising donor countries and obviously an important actor within the scope of this thesis, the importance of the Chinese approach to development cooperation in this context, especially with regard to its relevance for one of the initially outlined research questions, appears to be evident. Consequently, a closer look into the OECD model as well as the Chinese model of development cooperation will be taken in turn.

1. The “classical” OECD model

The Organization for Economic Cooperation and Development and its approach to development cooperation worked out in its Development Assistance Committee in the form of the so-called “official development assistance” has emerged to be the conventional and representative model for international cooperation over the last decades.

According to the OECD the definition of ODA includes flows to states and territories on a list of ODA recipients determined by the DAC as well as to multilateral development institutions. These flows have to be provided by official agencies such as governments or by their executive institutions, they have to present the promotion of the economic development and welfare of developing countries as their main goal and lastly show a concessional character including a grant element of 25 per cent as a minimum.85

The members of the DAC have further agreed to limits of the ODA such as military aid, actions to combat terrorism or research not directly relevant to the problems of a developing country which are consequently not reportable as ODA. According to the DAC “flows” comprise the transfer of all kinds of resources be it in the form of

commodities, services or money. Loans over a short period counting one year or less are not included in ODA due to their low developmental impact.86

The traditional organization of development assistance in most member states of the OECD assigns the responsibility for the execution of public development cooperation to outsourced implementation agencies. The agenda of development cooperation and its political decision-making, however, are often located in a separate governmental department or the Ministry of Foreign Affairs.87

2. The Chinese concept
What approach of cooperation China follows and how it differs from the conventional model pursued by the member countries of the Organization for Economic Cooperation and Development are two crucial research questions which shall be addressed in this section of the thesis.

The development cooperation concept of the PRC is quite different from the conventional concept provided by the OECD. In fact, Beijing does not use the term “development cooperation” as such, but rather refers to its cooperation with developing countries as “South-South cooperation”. Moreover, the policy and motivations which Beijing pursues are quite different from the conventional approach. Beijing clearly focuses on factors such as mutual interest and political and economic benefit, making it hard to properly classify its engagement in South-South cooperation.88 The scope in which it operates is quite broad, it includes all kind of cooperation on different levels and often blurs with its economic globalization process. In today’s rapidly changing landscape for development cooperation the approach of South-South cooperation

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86 Ibid.
87 Mayer, Rückkehr Chinas, 42.
constitutes a phenomenon of great significance which goes far beyond the traditional ODA, which is often equalized with the notion of development cooperation as such.\(^{89}\)

As stated above the approach which Beijing adopts is strongly based on the principle of equality rejecting the idea of a donor offering aid to another less developed country the way that most Western countries do. China’s South-South cooperation is based on a “win-win” situation for both sides rather emphasizing mutual benefit than a donor-recipient relation.\(^{90}\)

Chinese deputy permanent representative to the UN, Wang Min, strongly pronounced himself for China’s cooperation with Africa and commended the past years featuring “brisk financial and trading exchanges on the South-South front, with the creation of models of cooperation built on equality and mutual benefit through various forms, such as knowledge sharing, exchange of experience, training, technology transfer, contribution in kind and soft loans”.\(^{91}\)

In its African Policy Beijing declares to “do its best to provide and gradually increase assistance to African nations”.\(^{92}\) The assistance that China is providing contains both monetary and non-monetary aid, including technical assistance, and in many cases actually fulfills the criteria of official development assistance set by the DAC. Debt reliefs of huge amounts as it was the case in Ghana\(^{93}\) and technical assistance in the educational and medical sector constitute examples of aid practices which could be regarded as ODA. However, one of the reasons why the PRC does not clearly distinguish between ODA and other flows is the repeatedly emphasized aspect that it


\(^{91}\) Mu, China sees South-South cooperation as "effective engine" for African development, Xinhua (14 October 2010). Available at: http://www.focac.org/eng/jlydh/sjzs/t761307.htm (07.02.2013).

\(^{92}\) Ministry of Foreign Affairs of the PRC, China’s African Policy.

seeks explicit benefits from its aid.\(^\text{94}\) Equally unapologetic emerges China’s policy of non-interference which conducts to the non-imposition of conventional conditionalities with regard to its cooperation with other countries.\(^\text{95}\)

The Chinese case presents higher complexity than conventional cooperation, since many of the Chinese offers to African countries come in packages combining financial help, technical expertise and political alliances.\(^\text{96}\) What it more, is that many loans or grants are tied to the implementation of a project by a Chinese company or the use of Chinese products when carrying out the project. Chinese South-South cooperation is closely linked to trade and investment resulting in an large-scale intensification of economic linkages and a sharp increase of trade numbers up till today to over 100 billion US$.\(^\text{97}\) Furthermore, investment by Chinese companies has extended enormously creating a deeply interwoven cooperation environment producing benefit for both parties.\(^\text{98}\)

Practices like this make it difficult to compare the Chinese approach to the conventional OECD approach of development cooperation, since the assistance to other countries is connected with some kind of Chinese benefit in almost every case. As McCormick put it “Chinese aid is intertwined with trade in ways that make it difficult to separate the two.”\(^\text{99}\) This said, it seems reasonable to see Beijing’s approach in a broader and more holistic way.

Merely focusing on ODA does not satisfy the importance and approach of Chinese development cooperation. Apart from the strong connection with trade Beijing’s diplomatic and strategic considerations constitute additional important drivers for

\(^{94}\) Humphrey, Chinese Development Cooperation and the EU, 3.

\(^{95}\) Ibid.


\(^{97}\) Humphrey, Chinese Development Cooperation and the EU, 2.

\(^{98}\) Ibid.

\(^{99}\) McCormick, China & India as Africa’s New Donors, 84.
Chinese aid spending. Political ties and relationship on the international level are in fact a crucial part of South-South cooperation which once more shows the broad scope of this newly emerging type of development cooperation.100

Concerning the organization of Chinese cooperation with other countries, the majority of actions is planned and implemented by the “Department for Aid to Foreign Countries”, which is, however, located within the Ministry of Commerce and not the MFA.101 Furthermore, it is again the Ministry of Commerce which is handling the receipt of bilateral aid on the other hand.102

Concluding it can be said that both the general approach and attitude as well as the organization, planning and implementing of Chinese cooperation with other countries is fundamentally different from the conventional development cooperation concept defined more precisely through the ODA, which was determined by the DAC and its member states. According to the Chinese MFA Beijing holds the view that all developing countries should unite in international, economic and political affairs, cooperate closely and strengthen solidarity through South-South cooperation.103 From the Chinese perspective the Sino-African cooperation presents itself as a successful example of South-South cooperation featuring a vast engagement of China in Africa on various levels as will be seen later on.

**E. Development and human rights**

Human rights are universal and apply in every country on this globe. This is what the World Conference on Human Rights in Vienna reaffirmed on 25 June 1993.104 Every individual and every organ of state and society has the obligation to promote and

100 Humphrey, Chinese Development Cooperation and the EU, 3.
101 Mayer, Rückkehr Chinas, 41.
support human rights in order to assure their worldwide implementation for every single human being. The universality of human rights does not differ between race, culture, language, religion or sex. The international community of states has repeatedly stressed the importance of human rights in several declarations and conventions. The first truly revolutionary international document on human rights, namely the Universal Declaration of Human Rights, stressed that “all human beings are born free and equal in dignity and rights.”\textsuperscript{105} The UDHR was declared by the General Assembly of the UN on 10 December 1948. In 1966 the ICCPR and the ICESCR followed, both reassuring the importance of human rights and introducing new rights, such as the right to an adequate standard of living.\textsuperscript{106} Further human rights instruments were adopted, amongst them the Declaration on the Right to Development, which is of high relevance in this context. Article 1 states that “the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”\textsuperscript{107}

An interesting argument that can be deduced from this Article 1 is that development is described as a prerequisite and a crucial environment for the establishment and growth of human rights. Vice versa, the implementation of human rights favors the empowerment of people and their human development.

Human rights and sustainable development reinforce one another. Both share a common goal which is improving people’s lives and allowing them to live in human dignity and security. The main goal of development to achieve prosperity of society, guaranteeing equality and rights through growth and change, is supported by the very nature of human rights. With individuals being strengthened in their rights and personal safety the

\textsuperscript{105} Universal Declaration of Human Rights, General Assembly Resolution 217A (1948), UN Doc. A/810 (1948), Article 1.


\textsuperscript{107} UN, Declaration on the Right to Development, General Assembly Resolution, UN Doc. A/RES/41/128 of 4 December 1986, Article 1.
development of society and the whole state is being enhanced as a direct consequence. Abuse of power and lacking responsibility, for instance, are serious causes of poverty and show very well the direct connection between the two areas.\textsuperscript{108} Thus economic, social, cultural and political development is clearly interdependent with the implementation of human rights.

The General Assembly of the UN confirmed this inevitable link between human rights and development and stressed respect for all human rights and fundamental freedoms as crucial part of the base that is required to realize sustainable development.\textsuperscript{109} In the Millennium Declaration of 2000 the same principles are reassured and the importance of human rights in the field of development is strongly highlighted once more.\textsuperscript{110} Throughout the MDGs human rights are present and lay the cornerstone for the achievement of the eight goals of development.\textsuperscript{111}

To ensure the omnipresence of human rights and to make use of its linkage to development and wellbeing, global awareness needs to be raised on every level possible and different stakeholders need to jointly work on implementing human rights in different areas around the world. Ensuring human rights is a cross-cutting task and has to become an essential aspect in the daily routine of governments, companies, organizations and other institutions.

A human rights based approach is also relevant in the field of development cooperation. This means that the promotion of human rights and their implementation need to be taken into account in every sector of development cooperation, such as education, health, food, water, housing, security, labor and infrastructure. Furthermore, attention should be paid to human rights values in the different stages of development projects.


\textsuperscript{110} UN, United Nations Millennium Declaration, UN Doc. A/RES/55/2 of 8 September 2000.

\textsuperscript{111} Ibid.
The OHCHR in that context describes a human rights based approach as a conceptual framework for human development premised on international human rights standards with the aim to foster and protect human rights.\footnote{OHCHR, Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation, OHCHR Publication, HR/PUB/06/8 (2006) 15.} Approaching development on a human rights basis means that policies, processes and plans are embedded in an environment that seeks to meet the human rights obligations adopted on the international level.\footnote{Ibid.}

In summary, it can be said that the respect for and the promotion of human rights make up a considerable and important part of development and the connection and interrelation between these two cannot be put aside. Since the idea of development cooperation is to support and assist countries that are struggling with their development, the promotion and strengthening of human rights are of great importance in order to get on the right track of improving and fostering the process of development in these countries. Therefore it is the responsibility and obligation of each country supporting and cooperating with a developing country to make sure that a human rights-centered approach guides its policies, projects and relationship with this particular state.

1. **The role of human rights in the Chinese encounter in Africa**

It is commonly known that the Chinese human rights record is considered a rather poor one and internationally one can find fierce criticism on human rights issues referring to China. The state is still governed by a one-party authoritarian regime that carefully controls its people and their behavior. Freedom of expression, freedom of speech or freedom of the press and media are only a few basic rights that are exposed to the sharp restrictions of the Chinese government. Not only within the PRC but also beyond its borders in other countries in which China engages, severe grievances are recorded and human rights violations take place on an everyday basis. Wherever Chinese companies are involved, labor conditions are often below international standards and workers complain about an unacceptable working environment that violates human rights in
many cases. There are various NGO reports and other sources that confirm these horrible stories and turn them into cruel facts.

According to international law China is bound to oblige with international human rights standards. The PRC ratified the ICESCR in 2001 and hence does not only have the obligation to abstain from any actions that endanger the guaranteed rights within the covenant, but also has the duty to actively promote these rights and ensure their implementation within its sphere of influence. Other examples are the Convention on the Rights of the Child which was also ratified by China in 1992 as well as the ICERD in 1981. Moreover, several ILO Conventions have been ratified by Chinese authorities, such as the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor or the Convention concerning Discrimination in Respect of Employment and Occupation.

Most of the Chinese actors engaging in African countries are at least partly and often fully state-owned enterprises, another part comprises privately owned enterprises. Both kinds of companies are subject to the jurisdiction of Chinese law and thus within the reach of China’s government. This strongly indicates that the government should bear full responsibility for the implementation of human rights determined in the abovementioned international treaties. Principally, one can proceed from the assumption that it can be regarded as a state obligation to make sure that all Chinese actors comply with these particular human rights and respect them. A further elaboration on this topic will be carried out in the final part of the present thesis.

In addition to the international obligations, companies and enterprises conducting business in foreign countries have to abide by the national laws and regulations of their destination country. This means that national African laws have to be respected and followed by Chinese businessmen. Very often this is not the case. Even if human rights laws exist in the given country, there is a strong possibility that their implementation and monitoring through local or national courts is not guaranteed at all. In many countries corruption is quite high, which makes it even more difficult for those governments to support local or national development and guarantee legal protection. Nevertheless, it should be an absolute duty of Chinese investors to meet international
human rights standards and support human rights for each individual they engage with regardless of its nationality, race, language or gender.
Part 2: The effects of the Chinese encounter in Africa - Two case studies

After a theoretical analysis of the Chinese engagement in Africa and a determination of a solution to the first part of the initially outlined research questions, the second part of the thesis approaches the topic from a rather practical view. Two case studies examine how Beijing’s involvement actually becomes evident and additionally elaborate on the impact which this involvement has on the development of the respective countries. In this regard a particular emphasis is laid on the two development dimensions; economy and human rights. As already argued above both of these factors constitute crucial elements of development, are complementary and interdependent and thus serve as a valuable basis for an interpretation of the developmental impact. The aspect of human rights, especially human rights obligations as well as human rights violations, presents a particularly important issue and is furthermore profoundly discussed in each case study.

A. The Democratic Republic of the Congo

I. Background

During the Berlin Conference of 1884-85 the European colonization and trade in Africa was regulated and the Congo region was awarded to the Belgian King Leopold II as his private territory. The following construction of the so-called Congo Free State was merely used as a pretext for a systematic and especially cruel exploitation of the area during which between three and ten million people died.114

Due to international pressure and the discovery of several severe cases of abuse and exploitation on Congolese territory such as slavery and forced labor, King Leopold II was indirectly forced to step down. As a result the Congo Free State became a Belgian colony named Belgian Congo in 1908. Although Congolese affairs were treated a lot less brutally, the exploitations still went on.115


115 Ibid.
In 1960, after a traumatic end of colonial rule and the assassination of Patrice Lumumba, the first head of government of the new born state, General Mobutu Sese Seko took power in 1965. He built up a new country, the state of Zaire and africanized the former colony again. The rule of Mobutu turned out to be a cruel and dreadful dictatorship and just another way of exploiting the land’s treasures without the people actually benefiting from it.

Having killed hundred thousands of innocent people, the disaster of the genocide in Ruanda caused serious uprisings and consequently rebel groups supported by several bordering countries marched into Eastern Congo in 1996. One year later Mobutu escaped and just a few days later Laurent-Désiré Kaliba, one of the most important rebel leaders, was appointed president. Despite the regime change and several attempts of Kaliba to end the war including the conclusion of the Lusaka agreement, the rebellions continued especially in the Eastern part of the country.

In 2001 Kaliba was shot in front of his presidential palace in Kinshasa. His son, Joseph Kaliba took his place as president and the state was ruled by a transitional government till 2006, when Joseph Kaliba finally led his country to its first democratic elections.

After bad experiences with the West, such as the cruel exploitation by King Leopold II, and the dictatorship of General Mobutu the DRC was glad to welcome China on the international stage. Besides the economic interest, the prospect of a new global player of Eastern instead of Western origin was a promising change and was greeted with open arms.

117 Hütz-Adams, Die Rolle Chinas in der Entwicklungszusammenarbeit - Das Beispiel DRC, 188.
118 Ibid.
119 Ibid.
120 BBC, Democratic Republic of Congo profile.
Owing to the harsh war and the ongoing conflicts the DRC today is in desperate need of infrastructure development, peace and a stable government. According to the UN HDI in 2011 the state found itself on the very last place on the list of the HDI around the world.\textsuperscript{121} Since the DRC is a very resource rich country, is it not surprising that China is highly interested in building infrastructure, especially in the mining sector and claims to support enhancing the countries’ development through large-scale cooperation agreements.

Despite a quite rocky start owing to the initial establishment of political relations with Taiwan, the relations between the DR Congo and the PRC have always been good and since the establishment of diplomatic relations under President Mobutu a constant improvement has been taking place.\textsuperscript{122}

The involvement of Beijing in the DRC has increased tremendously in the last few years. Trade rates exploded starting from only 1.5 million US$ in 1995 and amounting to 368 million US$ only ten years later.\textsuperscript{123} During the years of the Mobutu regime China maintained friendly relations by engaging in huge prestigious projects like the “People’s Palace” or the Kinshasa football stadium.\textsuperscript{124}

With the wars leaving the country in total chaos and destruction, a reconstruction of roads and other infrastructure as the basis of further development is considered to be essential for the DRC. This is what China takes advantage of to present itself as a vital partner in expanding infrastructure. In the past years Chinese companies have been focusing on the province of Katanga in Eastern Congo, an area especially rich in raw materials. Referring to the Chinese principle of “mutual benefit”, enterprises engage in


\textsuperscript{124} Ibid.
resource exploitation and help develop the mining sector in the DRC under special conditions ensuring them parts of the extracted resources, which China needs so desperately.

II. The case of Chinese engagement in the DRC

The engagement of the Chinese in the DRC, which will be examined in this chapter, depicts itself as broad and rather complex as usual. With this in mind, the presented approach that will be used in this case concentrates on two perspectives. On the one hand, two sets of agreements will be looked at which appear to be paradigmatic for Beijing’s involvement in the DRC and in particular form the basis for the analysis of the Chinese influence on the Congolese economy. On the other hand, the PRC’s impact on the Congolese human rights situation will be examined with particular regard to the laborers’ situation.

Generally, the engagement of the PRC in the Democratic Republic of the Congo has featured a considerable increase over the last years. Bearing in mind the many resources which the DRC holds, this does not come as a surprise. In fact the Congolese relationship with China appears to be quite representative for China’s general engagement in Africa, especially in matters of resources. China has reinforced its status in the Democratic Republic of the Congo as “a dependable friend of the DRC” as President Kabila stated. Many projects in different sectors like telecommunications or health have been developed at rapid pace. Moreover, the shipping of military equipment, either through trade or aid agreements, has been taking place continuously. According to the “Final report of the Group of Experts on the DRC” in 2009, several

deliveries of military equipment by Chinese vessels have been observed.\textsuperscript{129} The business sector which is highly dominated by Chinese is the mining industry. More than 60 out of the 75 processing plants in Katanga were Chinese-owned in 2008; and over 90 percent of the minerals of the region go to China.\textsuperscript{130} Particularly affected by Chinese mining projects are the commodity-rich provinces in the East such as Katanga and North and South Kivu.

In this context, the conclusion of two paradigmatic agreements between the government of the DRC and a group of state-owned enterprises concerning the exploitation of Congo’s minerals and their impact on the economic development of the country, as well as the impact on human rights of other Chinese run companies, such as COTA Mining, Huachin Mining, Jia Xing Mining, Congo Dong Fang International mining and Lida Mining which mainly engage in the province of Katanga in Eastern DRC shall be investigated.

\textbf{III. Identifying the economic impact on the DRC}

As initially already mentioned the economic growth of a country is a crucial indicator for its development as such and therefore the assessment of China’s impact on the DR Congo’s economy constitutes an important part of the present case study. As one of the two dimensions of development which will be examined, the economic impact of Beijing on the DRC can be paradigmatically deduced from two cooperation agreements also known as “Congo’s deal of the century”. Subsequently a look at the content of the respective contracts will be taken entailing an assessment of their impact on the economy and particularly the resource business of the Democratic Republic of the Congo.


1. An analysis of selected cooperation agreements in the light of their impact on the developmental situation in the DRC

The first agreement in question is the “Protocole D’Accord” concluded on 17 September 2007 and will be further referred to as the “Protocol”. As mentioned earlier, the two contracting parties were the Congolese government represented by Mr. Pierre Lumbi Okongo, Minister of Infrastructure and Public Work, and a group of Chinese companies, namely the Export-Import Bank of China, the China Railway Engineering Corporation and the SINOHYDRO Corporation. All these companies were represented by Mr. Li Changjin, CEO of the China Railway Engineering Corporation.\(^{131}\)

The second agreement was concluded in 2008, again between Mr. Okongo and two Chinese enterprises, which are the China Railway Group Limited and the SINOHYDRO Corporation. Both companies were once again state-owned, and represented by Mr. Fan JiXiang and Mr. Li Changjin. This agreement, namely the “Convention de collaboration” will further be addressed as the “Convention”.\(^{132}\)

The content of these two agreements includes a loan in the amount of 6.5 billion US$ (which has been shrunk from 9 billion US$ after serious complaints by the IMF) for infrastructure construction in the DRC, which will be provided by the Export-Import Bank of China.\(^{133}\) The multiple construction works that arise will be carried out by Chinese companies and include the expansion of mines, and the construction and renovation of dirt roads as well as paved streets, railways, airports, hospitals, health centers, apartments, energy supply grids, universities and vocational schools.\(^{134}\) 3200 km of railway tracks between Matadi, the state’s Atlantic port, and Eastern Congo as

\(^{131}\) DRC/Ministry of Infrastructure and Public Work, Protocole D’Accord entre la République Démocratique du Congo et le groupement de Entreprises Chinoises (17 September 2007).

\(^{132}\) Convention de collaboration entre la République Démocratique du Congo et le Groupement d’entreprises Chinoises: China Railway Group Limited, SINOHYDRO Corporation relative au développement d’un projet d’infrastructures en RDC (22 April 2008).

\(^{133}\) Global Witness Limited, China and Congo – Friends in Need, 9.

\(^{134}\) Convention, Annex C and Protocol, Annex II.
well as 4000 km of roads will be provided. In order to repay the huge amount of money, a joint venture to extract resources, mainly copper and cobalt, is established holding a Chinese share of 68 and a Congolese share of 32 percent. For the process of reimbursement a provision of three different stages is included.

The first stage determines that all exploitation results coming from the joint venture will be used to reimburse the investments in mining infrastructure including interest. The first 30 percent of the said investments will be granted without any interest, whilst the remaining 70 percent have to be repaid at an interest rate of 6.1 percent annually.

In the second stage 66 percent of the profit serves to repay the costs invested in infrastructure. This part features an annual interest rate of LIBOR + 100 Basis Points, which adds one additional percent to the LIBOR. The rest of the profit will be proportionally distributed between the parties implying that the Chinese party will receive two-thirds and the Congolese party one third of the remaining benefit.

The last stage includes no direct repayment using the profit made by the joint venture, but specifies once again a distribution of the earnings proportionally between the parties. Nevertheless, this “commercial stage” features a second wave of infrastructure construction with an annual interest of LIBOR + 100 Basis Points. To guarantee the reimbursement of the costs incurred, the taxes paid to the DRC’s government during this commercial stage are to be used to repay all the investments made to allow further construction of infrastructure.

Interestingly, no specific time frame whatsoever is mentioned in the two agreements. Hence, there is no clarification concerning the duration of the agreements themselves, the established joint venture or the particular stages of reimbursement. This appears to be a major issue, which raises different problematic aspects concerning the countries’


136 Convention, Article 3 (4) and Protocol, Article 4.

137 Convention, Article 12 and Protocol, Article 5.
ligation with regard to the exploitation of its most valuable resources or its financial independence.

Another huge issue is the lack of transparency that the agreements feature. According to Global Witness, no response was given to the requests and letters written to companies, negotiators and other actors involved. The only answer received was from the China Exim Bank claiming that no statement can be made and it was not authorized to take position, since it was not an actual party to the agreements. Additionally, only leaked copies of the two agreements can be used as a reference, since no public release has taken place so far.

Another relevant issue that should be emphasized is the fact that Article 4 of the Convention contains a cession of rights from the public Congolese mining company GECAMINES to the Sino-Congolese joint venture concerning major resource deposits situated in the province of Katanga. Article 4 includes an estimated 10 million tons of copper, about 600 thousand tons of cobalt and other valuable minerals that are yet to be determined. This means that Chinese access to this amount of resources is explicitly guaranteed in the agreement and thus gives away huge amounts of the DRC’s non-renewable treasures of the soil.

On the whole, various difficulties arise when looking at the agreements under discussion. However, only a refined analysis of the documents will enable a proper assessment as to whether those treaties actually can be considered as “adhesion contracts” and what impact they might have on the DRC’s development.

2. The deal’s impact on the Congolese economy

Initially, it must be stated how important infrastructure is for a country and its development. The preliminary assumption that China could actually help the DRC

\footnote{Global Witness Limited, China and Congo – Friends in Need, 36.}

\footnote{Ibid, 4.}

\footnote{Ibid, 5.}
The problem is the extent and the manner of doing so, combined with the conditions tied to the proposed deal.

In many respects the contracts do not really seem fair, one example being the unequal participation in the joint venture. With 68 percent of share belonging to Chinese companies it seems evident that their Congolese partners are at a disadvantage. As Marysee and Greenen argue, the DRC will hardly have any benefits from the joint venture.\footnote{Marysee/Geenen, Win-win or unequal exchange, 383.} This will cause a problem particularly after the reimbursement process, since no time limit is addressed in the contracts giving the joint venture more or less open-end access to the DRC’s resources with the Chinese obtaining two-thirds of the profits made.

Moreover, the featured interest rates show that the discussed contracts are highly commercial. They do not show the concessional elements usually included in a conventional aid loan, but on the contrary end up including quite high rates of interest.\footnote{Ibid, 389.}

Another deeply troubling aspect concerning the reimbursement stages is the commercial stage, in which all incoming taxes are promised to the Chinese in order to repay the invested expenses of the second infrastructure wave. With taxes being the main source of revenue of a state, the question arises as to whether the Congolese government will have sufficient other possibilities to guarantee further revenues in order to cover public expenditure. This can be strongly doubted.

In this context one must not ignore the fact that the many kilometers of roads and rails as well as the constructed buildings and institutions will be in need of maintenance and personnel, requiring additional spending, which is not addressed in the discussed agreements at all. The current concern is that the new infrastructure might become “new

\footnote{Marysee/Geenen, Win-win or unequal exchange, 383.}
\footnote{Ibid, 389.}
white elephants that the country won’t be able to sustain.” In fact, there is no denying that it is highly unlikely that the government will be able to meet these new challenges with the obligation to give away the entire earnings resulting from taxes.

**IV. Identifying the impact on the human rights situation in the DRC**

After having examined China’s impact on the first dimension of development namely the Congolese economy and the benefit each party has from the mutual cooperation, the consideration and closer investigation of the impact on human rights as the second development aspect still needs to be applied. Consequently, this chapter deals with the operational practices of Chinese companies in the DRC and their attitude and respect for human rights and points out human rights violations perpetrated or supported by the respective companies.

Unfortunately no accessible information or data concerning the operative work and in particular the respect for human rights of “Sicomines”, the joint venture established through the two Sino-Congolese agreements discussed above, can be found. However several data of similar Chinese companies engaging in the mining sector in the DRC, both private and state-owned, are available in this matter. It is for those reasons that the following section will focus on the operating and work conditions of these companies. As mentioned at the beginning of this chapter companies such as Jia Xing Mining, Huachin Mining and others are included providing a representative picture of China’s engagement. The geographical focus lies in the province of Katanga in Eastern Congo, which is rich in mineral ore such as copper or cobalt.

Introductory it needs to be pointed out that according to international law, with the ratification of human rights treaties, a state has the obligation to comply with the provisions of these treaties and ensure the full enjoyment of the human rights determined therein, within its jurisdiction and territory.

Notwithstanding the ratification of various human rights treaties by the Congolese government, it emerges that the DRC still constitutes a country with serious ongoing

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human rights violations, armed conflicts and corruption. Apart from attacks on civilians, sexual abuse and the displacement of thousands, many troubling violations of human rights also occur in the labor sector. Humiliating and degrading working conditions and disrespectful treatment, depriving people of their human dignity, appear to be the case at many workplaces within the DRC. Corruption is quite common and the population is weak and poor. This situation features typical prerequisites for power struggles on every level and inhuman treatment of vulnerable groups amongst them the inferior work force.

Unfortunately, Chinese run companies in the DRC are not an exception. Violations of various kinds occur as will be seen later on and Congolese workers as well as Chinese immigrants who came to Congo in order to work for their state-owned companies are exposed to horrifying scenarios.

1. Investigating possible human rights violations

As it is frequently the case, Chinese companies conducting business in the DRC often provide unsatisfactory and inhuman working conditions. As shown in surveys undertaken by NGOs such as RAID, ASADHO or ACIDH, many Chinese-run companies in Katanga show various human right abuses.

Often companies have little knowledge about the actual obligations they have to meet according to international labor and human rights standards as well as Congolese laws and regulations applicable in their concrete cases. With regard to national laws Chinese mining companies are required to comply with the mining and labor legislation

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148 Rights and Accountability in Development (RAID), Chinese Mining Operations in Katanga, 3.
Particularly important in this matter are the Mining Code, the Labor Code and other laws such as Law No. 09/001 of 10 January 2009 on child protection. It is therefore crucial that both governments jointly work towards enhancing respect for human rights in Chinese-owned enterprises engaging in Congo.

In addition to that, a clear lack of high-quality equipment and working environment is evident, which is essential to enhance the safety and dignity of the workforce. Accidents appear to be common and neither protective clothing, nor training schemes or other preventive measures are provided. Consequently, serious injuries are suffered but little or no medical assistance is offered.

Another issue which is being complained about is the missing hygiene at the workplace and no convenient framework for discussion between workers and employers. Many aspects are just not negotiable and no possibility to express one’s concerns or grievances is given.

Furthermore, assault on workers and beatings are common and the illegal mining of minerals with the use of little children still takes place in many mining pits. Additionally, the workers’ health is being compromised by handling radioactive minerals and other substances with harmful dust without access to face masks or further protective clothing.

Patricia Feeney, executive director of RAID, an NGO based in England, stated that “The Chinese smelters have no regard for the health and safety of their workers or the children who dig the ore.”

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149 Action against impunity for human rights (ACIDH), Chinese private and public investments, 17.
150 Ibid.
151 Rights and Accountability in Development (RAID), Chinese Mining Operations in Katanga, 3.
152 Action against impunity for human rights (ACIDH), Chinese private and public investments, 27.
153 Rights and Accountability in Development (RAID), Chinese Mining Operations in Katanga, 3 and Association Africaine de Défense des Droits de l’Homme (ASADHO), Les Conditions de travail, 10 et seq.
154 Clark/Smith/Wild, China Lets Child Workers Die.
The conditions and basis on which most workers are hired are not even slightly comparable to Western standards. It appears to be quite normal to hire on a casual basis, often without contract or insurance payment. If a contract does exist, it is frequently written in Chinese without any appropriate translation available. Moreover, working hours are long, days off rare and arbitrary dismissals owing to minor offences occur regularly. Discrimination is common and the level of payment which differs from worker to worker does not guarantee equal remuneration whatsoever.\textsuperscript{155}

“One worker stopped drilling into a wall because the drill had started to overheat. His Chinese supervisor insisted he should go on but the worker refused. The Chinese supervisor then allegedly took the hot drill and pushed it against the worker’s genitals, severely burning him. The worker was not given any medical assistance and was forced to continue working. He struggled with the pain but was too unwell to keep on working. After three days he complained about his treatment and was fired on the spot during the night shift and sent packing.”

RAID field report\textsuperscript{156}

Several disputes are regularly reported mainly due to accidents, the refusal of employers to care for injured workers, abuse and other incidents clearly violating human and in particular labor rights. Many benefits for the work force which must be guaranteed by law are denied raising the impression that Chinese employers take advantage of the political, economic and judicial situation of the Democratic Republic of the Congo and simply don’t care to follow local laws.\textsuperscript{157}

It would be a mistake to ignore the aspect that Chinese enterprises, running smelters that process minerals, also buy copper and cobalt extracted through child labor. Usually, the deal is made with a supplier who serves as the middleman between the Chinese and the children who collect the so badly desired resources. The majority of these children can

\textsuperscript{155} RAID, Chinese Mining Operations, 3 and ASADHO, Les Conditions de travail, 10 et seq.

\textsuperscript{156} RAID, Chinese Mining Operations, 3.

\textsuperscript{157} Action against impunity for human rights (ACIDH), Chinese private and public investments, 28.
hardly survive, do not have a safe home or family background and have to crawl inside narrow hand-dug mineshafts, risking their lives in order to be able to buy some food.\textsuperscript{158}

By buying those minerals mined by children the Chinese indirectly support child labor and hence bear responsibility for their lives, endangered by unstable mineshafts and horrible working conditions. Joost Kooijmans, one of the legal officers at the ILO describes the situation as follows: “This is one of the worst forms of child labor. If they're buying ore processed by children, they're involved in violating the rights of the children.”\textsuperscript{159}

In the context of human right abuses, several grievances by Chinese workers have been recorded as well. The workers complain about threats to their personal security, since assaults by gangs, often racially motivated, burglaries and beatings increasingly occur. There have been statements ascribing those problems to the high level of corruption and security problems in the country. It goes without saying that the Chinese workforce faces the same work environment as the Congolese workers which repeatedly results in killings, work injuries and constitutes a clear non-compliance with international human rights standards.\textsuperscript{160}

Overall, the abovementioned cases represent just a few chosen examples and merely cover a small part of the actual amount of human rights violations taking place in the DR Congo under Chinese watch. Summarizing it can be stated that the impression arises that Chinese businessmen and big corporations merely exploit the Congolese material and human resources taking advantage of the complex domestic situation, which the country currently faces, and do not respect or care for local and international laws guaranteeing human rights for the people on their watch.

\textsuperscript{158} Ibid, 19.

\textsuperscript{159} Clark/Smith/Wild, China Lets Child Workers Die.

\textsuperscript{160} RAID, Chinese Mining Operations, 4.
2. The compatibility of operational business practices with human rights obligations of the state under international law

Considering the reported treatment of workers and the environment they have to work in, the question arises as to whether human rights standards set by international law are respected in these particular cases. In order to answer this question a deeper look into the applicable human rights tools and thus a brief analysis of the eligible international treaties, joined by the parties, seems reasonable.

Before diving into the content of the ratified agreements and the compliance with the provided rights, a general statement with regard to the obligations and duties that states have to comply with under international human rights law, will be given.

According to the OHCHR, states are bound to respect, protect and fulfill human rights laid down in international treaties which they have become parties of. The emphasis lies on three different kinds of obligations namely respecting, protecting and fulfilling. In this connection, “respecting” stands for refraining from interfering with the basic rights provided and not jeopardizing any efforts undertaken to strengthen these human rights. The obligation to “protect” commits states to make an effort to actually ensure the protection of citizens and other individuals against human rights violations. Finally, the “fulfillment” of the obligation means that states have to take action in order to enable and enhance the effective enjoyment of human rights.\(^\text{161}\)

This said, the different aspects of state obligations have to be borne in mind when looking at the following analysis of the compliance with the human rights provisions, set by the eligible agreements.

a. Chinese human rights obligations

The international obligations of China concerning the guarantee of human rights are clear. As briefly outlined before, contrary to expectations and despite its bad human rights record, the PRC in fact has ratified some human rights treaties elaborated by the

international state community. Due to their relevance in this particular matter some of them were singled out and will be examined in the following sections.

aa. The International Covenant on Economic, Social and Cultural Rights

The ICESCR as one of the most important human rights instruments and its provisions play a key role in determining the Chinese impact on the human rights situation in the Democratic Republic of the Congo. The nature of the legal obligations featured in this Covenant is crucial in order to holistically consider the different provisions and rights and is outlined in Article 2. Article 2, paragraph 1 of the Covenant determines that:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

Consequently the state parties including China have the obligation to take steps to the maximum of available resources in order to provide and foster the rights determined in the Covenant. Special emphasis has been put on legislative acts that are expected to be adopted by the states in order to nationally comply with the rights of the ICESCR. However, the CESCR in its General Comment No. 3 pointed out that the mere adoption of legislative measures does not exhaust the obligations of the state parties held by the ICESCR.

Furthermore, Article 2 points out that the guarantee of all rights enunciated in the Covenant shall be implemented without any discrimination resulting from attributes such as race, color, sex, language, national or social origin. In order to really ensure

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162 ICESCR, Article 2 (1).


164 ICESCR, Article 2 (2).
substantive equality, the scope to which this provision is applicable is wide and both formal as well as substantive discrimination are included.\textsuperscript{165}

Article 7 of the ICESCR recognizes just and favorable working conditions as everyone’s right. It records that every worker has to be provided with a remuneration that includes equal and fair wages and allows a provision of a decent living for himself and his family. Furthermore it mentions safe and healthy working conditions and the opportunity for everybody to receive advanced training and to have an equal opportunity of promotion. Another important provision included in Article 7 is just and reasonable working hours together with a fair amount of rest and breaks and a limited quantity of work. Shockingly, nearly all of the guarantees outlined above, provided in the ICESCR, are violated by the Chinese companies examined in the previous chapter.

Article 9 contains the recognition of the right to social security including insurance. Due to the lack of contracts in many cases and the casualness of employment, insurance rates often do not get paid at all, leaving the workers without any security concerning their health issues\textsuperscript{166}, most of them caused through the harmful working environment. In this matter particularly the enforcement of the right to social security represent a worrying aspect.\textsuperscript{167}

Other key provisions of the ICESR, relevant in this particular case, can be found in Article 11, which stresses everybody’s right to an adequate standard of living. Food, clothing and a certain standard of housing in order to improve the living conditions are emphasized and state parties commit themselves to taking appropriate steps to ensure this right. Taking into account the living conditions of the majority of workers employed in mining companies, portrayed earlier, a violation of the provision in Article

\textsuperscript{165} CESCR, General Comment 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2 of the Covenant), UN Doc. E/C.12/GC/20 of 2 July 2009.

\textsuperscript{166} Action against impunity for human rights (ACIDH), Chinese private and public investments, 29.

\textsuperscript{167} CESCR, General Comment 19: The right to social security (Art. 9 of the Covenant), UN Doc. E/C.12/GC/20 of 4 February 2008.
11 can be argued easily. It cannot be said that the promised guarantee of an adequate living has been met in this case.

Due to several grievances concerning the treatment and discrimination of workers in different fields, it is evident that the right of non-discrimination provided in Article 2 hasn’t been fulfilled, either.

In summary, numerous compliance failures regarding the ICESCR can be noted. The overall situation of the workforce in Chinese-run companies in the DRC clearly does not meet the human rights standards provided by the Covenant.

**bb. The Convention on the Rights of the Child**

As another international convention being valid for the PRC, the Convention on the Rights of the Child includes important provisions concerning the human rights of children. This Convention brings together all children’s rights in one treaty and thus bears great international significance.\(^{168}\)

Articles 3 and 4 of the Convention outline the obligations which the joining parties have towards the international state community that is to say other states and the UN. All appropriate administrative and legislative measures have to be taken by the parties in order to ensure the full care and protection necessary for the child’s well-being.\(^{169}\)

Again, all actions, taken to guarantee the full enjoyment of the rights provided, shall be undertaken to the maximum extent of the resources available.\(^{170}\)

The inherent right to life, that every child has, is recognized in Article 6 of the Convention. Associated therewith, the survival and development of the child to a maximum extent is explicitly addressed. Considering the numerous accidents that occur


\(^{170}\) Ibid, Article 4.
in mining pits or smelters in Katanga burying and consequently killing a lot of workers including many children, the compliance with this Article can only be disputed.

A further provision, guaranteed in Article 19, is the protection of the child from violence including all forms of physical or mental violence, abuse, maltreatment or exploitation. It is clear that the selected wording “all forms” does in no way leave room for any interpretation.\textsuperscript{171} It does not exclude any form of violence and does not provide the possibility for states to enable legalized violence against children.\textsuperscript{172} With beatings and harsh discrimination being common and children working underground in narrow, small and dark shafts, this right is neither respected nor protected or fulfilled.

Article 27 covers the child’s right to a standard of living that is adequate for its development on every basis. This provision shows that different circumstances, such as the standard of living, promote the development of the child, which can be seen as part of its right to live; a right that is more than just simple physical survival.\textsuperscript{173} It is obvious that the business practices of Chinese companies, which exploit children using their advantages for economic benefit and which certainly do not pay an adequate wage that allows a child to live in decent and reasonable conditions, do not foster children’s development. On the contrary, it can be assumed that the harmful environment, no access to medical assistance and working under heaviest bodily exertion\textsuperscript{174} have a rather negative influence on the child’s physical development.

The right of the child to rest and leisure, confirmed in Article 31, and the opportunity for children to play, to simply be a child and to enjoy their childhood suffers additional undermining through the children’s engagement in work and exploitation, supported by Chinese companies in Congo.

\textsuperscript{171} UN Committee on the Right of the Child (CoRC), General Comment 13: The right of the child to freedom from all forms of violence, UN Doc. CRC/C/GC/13 of 18 April 2011.

\textsuperscript{172} Ibid.


\textsuperscript{174} Action against impunity for human rights (ACIDH), Chinese private and public investments, 20.
One of the most important rights of the Convention on the Rights of the Child is the right to be protected from economic exploitation. Many children all over the world suffer from the performance of work which is likely to be harmful to their health and further development. Article 32 obliges states to take various measures to ensure the implementation of this right. Above all, legislative measures are emphasized, amongst them the adoption of several regulations in order to protect children and to guarantee a minimum age for work, provisions concerning working hours and work environment and severe sanctions to ensure compliance with these standards. Unfortunately, it goes without saying that the situation in the businesses under discussion is not compliant with the demands of this article.

Additionally, the prohibition of torture and cruel, degrading and inhuman treatment towards a child is a significant and essential element ensured in the CRC. Article 37 outlines the importance of a child’s liberty, its treatment with respect and dignity and the particular needs of children. Corporal punishment and other forms of cruel and violent treatment pose a serious threat to the child’s life and further development and highlight the particular importance of this provision. Considering the problematic atmosphere including heaviest discrimination, disrespectful treatment and beatings in Chinese-owned enterprises in the DRC, it can be assumed that the children, employed in these companies, are hardly the exception.

Sadly, various abuses of children’s rights provided in the CRC have to be noted. Human rights are broadly violated and it is evident that the commitments that the PRC has undertaken are not being effectively implemented by its companies engaging overseas, especially in Africa and countries like the DRC.

175 CoRC, General Comment 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Arts. 19; 28, para. 2; and 37, inter alia), UN Doc. CRC/C/GC/8 of 2 March 2007.
cc. The Convention on the Elimination of All Forms of Racial Discrimination

This Convention joined by China in 1981 condemns and aims to eliminate racial discrimination in every possible form and by all means.\textsuperscript{176} State parties commit themselves to fulfilling differently natured obligations in this matter as stated in Article 2. All parties declare to refrain from any engagement or sponsoring that supports racial discrimination in any way. Measures against, and the prohibition of such discrimination are assured and an encouragement of the promotion of equality and the elimination of racial barriers find further confirmation. In this matter, training of law enforcement officials in the protection of human rights\textsuperscript{177} as well as the adjustment of the legislation\textsuperscript{178} according to the obligations undertaken in the Covenant, constitute particularly important measures in order to ensure the effective implementation of the rights provided.

In the case of China, with human rights violations occurring in most of the eligible companies, discrimination is an important issue. According to the grievances of the workers, discrimination due to racial origin and nationality does in fact arise. Mainly Chinese workers complain about threats to their security, attacks and beatings owing to their foreign origin. Additionally, most of the burglaries and thefts occurring in the workers’ houses stem from racial bullying mainly by local gangs.\textsuperscript{179} This of course indicates that the DRC, which equally is a party to the Convention, cannot effectively guarantee its provisions within its territory. But also Congolese workers are subject to discrimination in particular concerning the differing wages and the cruel treatment they experience in Chinese enterprises. This implies that the obligations undertaken in this


\textsuperscript{177} UN Committee on the Elimination of All Form of Racial Discrimination (CERD), General Recommendation 13: Training of law enforcement officials in the protection of human rights (1994).

\textsuperscript{178} CERD, General Recommendation 7: Legislation to eradicate racial discrimination (Art. 4) (1985).

\textsuperscript{179} RAID, Chinese Mining Operations, 4.
Convention haven’t been met so far and severe discrimination in the discussed companies continues to take place.

**dd. The Conventions of the ILO**

The PRC ratified several conventions elaborated by the International Labor Organization such as the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, the Convention concerning Discrimination in Respect of Employment and Occupation and the Occupational Safety and Health Convention.

Article 1 of the Worst Forms of Child Labor Convention states that all the states being a party to this treaty shall take immediate measures to ensure the elimination and prohibition of the worst kinds of child labor.\textsuperscript{180} It is explicitly stressed that this issue is to be handled as a matter of urgency. Article 3 of the Convention determines work that is likely to harm the health and safety of children to be considered as one of the worst possible forms child labor can take. As stated before, child labor in Congolese mining pits and smelters, run by Chinese enterprises, or the support of child labor through buying minerals, extracted by the hands of children, can by all means be defined as a type of work that highly endangers the safety and the lives of these children.

The Convention concerning Discrimination in Respect of Employment and Occupation holds provisions that oblige parties to take actions against discrimination of any kind at the workplace. Treatment in respect and the same opportunity for everybody are addressed in Article 2.\textsuperscript{181} Article 1 defines the term “discrimination” and includes behavior such as distinction, preference or exclusion based on race, color, nationality or sexual origin that undermine the equal opportunity or treatment in employment. Since the field reports, examined before, relate to different levels of payment and other discrimination often due to nationality, color or social background, this eligible

\textsuperscript{180} International Labour Organization (ILO), Worst Forms of Child Labour Convention, C182 of 17 June 1999, Article 1.

\textsuperscript{181} ILO, Discrimination (Employment and Occupation) Convention, C111 of 25 June 1958, Article 2.
Convention is certainly not being taken into account and the state’s responsibility, determined in it, is being met insufficiently.

Finally, the Occupational Safety and Health Convention and its provisions concerning a healthy and safe working environment has to be mentioned. Article 3 of the Convention states that the term health does not only stand for the absence of illness and disease, but includes various other aspects such as sanitation or protectoral clothing, that could affect the health of the personnel.\footnote{ILO, Operational Safety and Health Convention, C155 of 22 June 1981, Article 3.} Needless to say, the horrible working conditions in Chinese-run firms in the DRC do anything but meet the provisions included in this Convention.

To sum up it can be stated, that the Chinese government has not been taking its responsibilities seriously and the state’s obligation, resulting from the ratified human rights agreements, have been implemented defectively. In fact, it appears to be quite difficult to look at this issue objectively without doubting the seriousness and importance that China claims to uphold when it comes to its international duties. However, taking into account the bad human rights record, the county presents, the current situation may not be too surprising.

b. Congolese human rights obligations

The Congolese government, similarly to most other states, has ratified several human rights treaties as well. Apart from the ICESCR, the ICERD, the Convention on the Rights of the Child and the ILO Conventions, further agreements were concluded. The agreements mentioned previously were all equally ratified by China and have been discussed in detail before. This section will therefore discuss and observe the ICCPR as well as the African Charter on Human and Peoples’ Rights, a regional human rights instrument. Both are considered to be additional treaties essential to the human rights situation, affected and partly caused by Chinese companies in the DRC.
aa. The International Covenant on Civil and Political Rights

Together with the UDHR and the ICESCR, forming the International Bill of Rights, the ICCPR constitutes one of the major human rights treaties of the international community.

Just like in the ICESCR and some other treaties, the first articles refer to the obligations that the state parties of the Covenant agree upon. Article 2 determines the commitment of the states to ensure the full enjoyment of the rights held in the Covenant to every individual under their jurisdiction and within their territory.\(^{183}\) To do so it is stated that all parties shall adopt different actions and steps necessary for the implementation of these rights. Furthermore, the human rights, ensured in the ICCPR, have to be carried out without any discrimination with a special emphasis on the equal rights of man and women.\(^{184}\) As Nowak put it, Article 2 is violated by a state “when it fails to enact the necessary laws to ensure the Covenant’s rights, when it discriminates against someone in the exercise of one of these rights or when it does not provide an adequate remedy for a violation of one of these rights.”\(^{185}\) This commentary clearly shows the broad scope of the state obligations enshrined in the Covenant.

Article 7 provides a prohibition of torture or degrading treatment. This provision constitutes one of the most basic, non-derogable rights the international community has recognized so far and furthermore can be determined as valid customary law. As explained above the compliance with this provision is definitely not given in Chinese businesses run in Katanga.

The protection of a child according to its special status, and guaranteed through all means necessary is addressed in Article 24. Hence, it is the state’s responsibility to provide for the protection of a child, be it through the family, public or private

\(^{183}\) International Covenant on Civil and Political Rights (ICCPR), adopted 19 December 1966, entered into force 23 March 1976, 999 UNTS 171, Article 2.

\(^{184}\) Ibid, Article 3.

institutions or the state itself.\textsuperscript{186} Sadly, but without any doubt it is not the case in most of the companies engaging in the DRC that children, especially underage ones, are protected adequately and do not pursue any activities that are considered to be child labor by the international community.

In respect thereof it can be pointed out that the Congolese law through legal provisions such as the “Labor Code” or the “national code on the Rights of Children” \textit{de jure} does provide for the protection of children from child labor.\textsuperscript{187} The implementation and enforcement of those respective norms however shows a serious lack which is the reason why the respective laws and consequently the Congolese state do not efficiently manage to fully provide for the protection of the children after all.\textsuperscript{188}

The issue of discrimination and equality of all individuals is addressed again in Article 26. The article asks the states to provide an effective legal framework that prohibits discrimination on any ground and provides for equal legal protection against discrimination for each person. It goes without saying that this article and the problem it addresses has not been fulfilled either, showing a further lack in state activity concerning the compliance with human rights.

\textbf{bb. The African Charter on Human and Peoples’ Rights}

As one of the most important regional human rights agreements in Africa, the African Charter on Human and Peoples’ Rights poses an additional key treaty bearing great relevance for the discussed situation. The Democratic Republic of the Congo, at that time still the Republic of Zaire, ratified the “Banjul Charter” in 1987 and thus committed to provide for the human rights enshrined in the Charter.

Articles 4 to 6 include crucial rights such as the right to respect for one’s life and the right to respect for the human dignity of each individual. All forms of exploitation and degrading treatment are harshly condemned and the right to the security of one’s person

\textsuperscript{186} Ibid, 424.

\textsuperscript{187} Action against impunity for human rights (ACIDH), Chinese private and public investments, 18.

\textsuperscript{188} Ibid, 20.
is explicitly stated. Considering the working conditions, the many accidents occurring and the mistreatment which the work force receive by their foremen and managers, the compliance with these rights does pose a worrisome aspect which can only be doubted.\(^{189}\)

The right to work under equitable and satisfactory conditions is comprised by Article 15 of the Charter. Additionally, equal remuneration is mentioned clearly addressing the issue of equality. Since the payment of workers differs very much, depends on arbitrary conditions and work contracts as a reliable basis for work remains exceptional, the provisions enshrines in this Article have evidently not been met either.

c. Preliminary Conclusions

Summing up, it can be said that several compliance failures with human rights agreements signed by the countries can be observed. Furthermore, national laws and regulations concerning the laborers’ rights are violated; obviously due to the countries week law enforcement without any further consequences. This said it seems evident that the engagement of China in the DRC obviously affects the human rights situation in a rather negative way.

Nevertheless, one has to bear in mind the current problems in the field of human rights that the DRC continuously faces anyway. Grave concern was expressed by the OHCHR, since, despite political commitments, the efforts, undertaken to improve the human rights situation throughout the country, remained limited.\(^{190}\) Many human rights abuses, amongst them torture and inhuman, degrading treatments, mass-rapes, summary executions, illegal arrests, extortions, looting and abduction, are continuously committed by security forces or armed groups such as the national army, the Congolese police force or the Lord’s Resistance Army.\(^{191}\) This shows the severity of the situation

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\(^{190}\) OHCHR, OHCHR in the DRC (2010-2012) – Human rights situation. Available at: http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/ZRSummary1012.aspx (18.01.2013).

\(^{191}\) Ibid.
and the challenging implications it entails for the Congolese government. Certainly these difficulties must be overcome and the achievement of more effective control by the government should be a clear objective in the future.

Nonetheless, the engagement of Chinese-run companies in the country does not improve the number of human rights abuses which occur, but on the contrary if anything worsens the situation. It has been laid out above, that shockingly the business practices of almost all the operating enterprises examined show a clear deficit of respect for human beings and consequently feature several human rights violations. It is for these reasons that an undeniable negative impact has been assessed.

Even though the Congolese government plays the leading role in ensuring the respect of human rights in the DRC, China bears further responsibility to implement and respect the provisions and rights of international human rights standards. As already stated, Chinese companies engaging in the DRC should have to respect human rights treaties ratified by both, Chinese and Congolese authorities. Considering all the aspects discussed, one may conclude that several violations of the eligible treaties can be noted, directly causing a deterioration of the already poor human rights record of the DRC.

As for the Congolese development process, the worrisome situation of human rights and personal security within the borders of the DRC depict a serious threat to the development of the country and potentially lead to an undermining of any other efforts undertaken to further improve the state’s development.

3. Possible reasons for continuous human rights problems in Chinese-run enterprises

Bearing in mind the influence of the Chinese presence in the Democratic Republic of the Congo and the human rights problems associated therewith, the question arises as to which potential causes for this highly worrying situation can be found.

One of the main problems in that matter is constituted by the fact that the Chinese authorities refuse to take responsibility for the existing difficulties, while the Congolese state is facing challenges concerning law enforcement that are very unlikely to be overcome in the near future. The PRC repeatedly refers to its non-interference policy
and claims that this issue is an internal problem stemming from the inefficiency of national law implementation. Liu Zhenmin, the Chinese Deputy Permanent Representative to the UN, stated, “This is an African problem.”

Katanga Mining manager Andre Boudreault assures that the definite goal is to increase safety standards up to the standards of Europe or North America; in fact some adaption has already taken place. The Congolese legislation complies with standards set by the ILO and a prohibition of child labor legally exists. The main concern, however, is the law enforcement, which appears to be extremely weak these days.

As already stated above this lack of law enforcement affords the opportunity for Chinese corporations operating in the DRC to just ignore international and national legislation concerning human rights. Even if they do violate those laws they have no impending consequences to worry about which clearly constitutes one of the reasons why human rights abuses in those companies are omnipresent.

The high level of corruption occurring in the DRC creates a problematic obstacle for the country’s law enforcement and the protection of human rights. If bribery is the prerequisite for a normal communication with a state officer and if no trust in the government, the country’s police force or legal courts exists, it is evident that the provision of human rights and its control is clearly malfunctioning. Bearing this in mind, the question arises as to whether the DRC can be defined as a so-called “failed state” and whether this phenomenon could be one of the causes of the state’s continuous bad human rights situation.

a. The “failed state” phenomenon
According to the Max Planck Encyclopedia of Public International Law, a failed state is usually associated with the collapsing of the state’s power structures that support law

192 Clark/Smith/Wild, China Lets Child Workers Die.

193 Ibid.

and order. Often this process goes hand in hand with internal violence and armed conflicts. Generally speaking the phenomenon is defined as a situation where state authorities can no longer fulfill their duties owing to the countries internal riots.\textsuperscript{195}

From the legal point of view three elements can be determined that characterize the term “failed state”. To begin with the geographical aspect has to be mentioned, meaning that the situation causing a failed state has to be within the territorial borders of that state. Nevertheless, cross-border conflicts can cause thorough internal troubles that lead to the undermining of the power structures, thus becoming the cause of a failed state phenomenon. Secondly, the political element of a total or almost total collapse of all structures, guaranteeing law and order, is required. The last aspect is a rather functional one, namely the lack of an institution that represents the state in question on the international scene. In this context, “lack” doesn’t necessarily mean that no such institution exists, but rather that it is unreliable and not truly representing the state as such. As the case of Somalia showed, it is possible that some states maintain diplomatic relations with the “failed state”.\textsuperscript{196}

Legally speaking, one could point out that if a state government loses its ability to exercise power on its own territory, a collapse of state power and thus a failed state situation are the possible consequences. One typical example is that state bodies, maintaining and executing law and order such as the police or the judiciary, cease to exist or stop operating correctly. Correlating with this situation, an intense level of brutality and violence combined with a large ineffectiveness of human rights can often be observed. In that connection it is evident that the protection of human rights is highly dependent on the existence of properly working state institutions and especially effective law enforcement.\textsuperscript{197}


\textsuperscript{196} Ibid.

\textsuperscript{197} Ibid.
aa. Assessing the DRC’s situation

Due to its historical complexity and cross-border conflicts, the concrete situation of the Democratic Republic of the Congo is quite hard to analyze. What is undisputed is that the state itself does not have the overall control over large parts of its territory and the security provided for Congolese citizens especially in the Eastern part is highly insufficient, if not non-existent.

The government barely manages to uphold the most basic elements of a modern state and has clearly failed to provide security of its national territory and Congolese citizens. Due to the state’s incapability to establish and maintain viable peace and security forces, rebellions and riots continuously have progressed further and human rights abuses reach incredible numbers. Uprisings throughout the country as much as the lucrative extraction of resources have brought forward a horrible reign of terror, violence and insecurity. The official army of the Congo, the “Forces Armées de la République Démocratique du Congo” features a unique mix of villains, bandits, former rebels and soldiers from Rwanda who came to the DRC through the “Congrès National pour la Défense du Peuple” backed by the Rwandan government. Considering this it seems obvious that such army can hardly fulfill the numerous and complex tasks necessary in a country like today’s Congo.198

In addition to that, Congolese militias, resolved into armed groups, led by military commanders and other individuals, use the state’s units and equipment and exploit state resources for their own benefit. Arms and drug trafficking by state officials and their involvement in similar questionable situations are just further examples of the undermining of state control and its monopoly of power, including the use of arms.199

Probably the best example is Bosco Ntaganga, a deserted Congolese general who committed several war crimes and is currently being sought for by the ICC. But also


199 Thürer, Failing States.
other warlords and criminals have occupied high-ranking positions within the state’s power structures.\textsuperscript{200}

A further point of concern is the lack of administrative performance and service that the Congolese government is responsible for. Despite the huge water reserves of the country, three-quarters of the population doesn’t have any access to safe drinking water.\textsuperscript{201} Moreover, the DRC’s vast natural resources and huge untapped deposits of raw materials have an immense value and in theory pose a solid basis for economic development.\textsuperscript{202} However, despite its wealth the country faces a huge economic crisis, a high level of unemployment and is counted among the poorest states of the world.\textsuperscript{203}

Additionally, the incapability of state troops to secure the borders results in illegal exportation of resources through Rwanda and other neighboring countries, exploiting the state’s commodities, endangering the people’s security and clearly showing the loss of governmental control over border regions.\textsuperscript{204}

It should be noted that the security issue in the DRC and therewith the human rights problem is mainly a political problem. With political and military officials being involved in criminal acts and the violation of law, it is evident that security forces follow the same line; disrespecting the rule of law, human rights and other provisions fundamental to the citizens’ safety.\textsuperscript{205}

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\textsuperscript{202} Nienaber, Why the Democratic Republic of Congo Is a Failed State.
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\textsuperscript{203} Ibid.
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\textsuperscript{205} Nzongola-Ntalaja, The Failing State in the Democratic Republic of Congo.
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Sadly, it is a fact that the involvement of international actors and other entities has done little to help, but rather led to the description of the DRC as being an artificial life-support system.\textsuperscript{206} Even though the state relies on the support of NGOs and the international community to carry out its state responsibility, the MONUSCO mission, sent into Congo in 1999, hasn’t improved the situation much.

Herbst and Mills even deny the existence of the state “Democratic Republic of the Congo”. They argue that Kabila has no control whatsoever over state territory and is dependent on aid flows and mining taxes as state revenues. One of the key statements is “Congo has become a collection of peoples, groups, interests, and pillagers who coexist at best.”\textsuperscript{207}

However, internationally speaking, the DRC still upholds its status as an internationally recognized, sovereign and independent state within the international community. Nevertheless, aid and effort provided by various actors in order to improve the country’s internal situation does not compensate for a functioning monopoly of power and a stable state, run by a legitimate and democratically elected government.

Coming back to the elements outlined in the previous section, the DRC presently does not feature all the premises called for and therefore barely manages to escape the status of a failed state. Notwithstanding, a further improvement of the internal situation specifically concerning transparency, national security and law enforcement has to be emphasized with deep concern and is considered to be crucial for the future development of the state especially concerning human rights.

However, the various internal problems that the Democratic Republic of the Congo faces do not excuse the behavior of Chinese companies and consequently do not relieve them of their duty to support and guarantee human rights within their reach. As a matter of fact with the DRC facing such a complex situation it is the Chinese government who

\textsuperscript{206} Tefon, Failed state: Can DR Congo recover?

\textsuperscript{207} Herbst/Mills, There Is No Congo, Foreign Policy (18 March 2009). Available at: http://www.foreignpolicy.com/articles/2009/03/17/there_is_no_congo (18.01.2013).
should all the more ensure the compliance of China’s companies with internationally recognized human rights.

V. Conclusion: Connecting human rights and economy

Around 80 percent of the people living in the DRC live on less than 2US$ a day.\textsuperscript{208} It is difficult to believe that even though Congo is the world’s largest cobalt producer, holding a third of the total reserves on its territory and further possesses huge amounts of copper, it still counts among the least developed and poorest countries in the world.\textsuperscript{209}

The Chinese engagement and cooperation that has been taking place over the last years does in fact hold the potential to sustainably change Congo’s current problems and enable a healthy development. Nonetheless, the actual influence that has been assessed in the previous chapters seems to be rather negative.

With economy and infrastructure being two important pillars of the development process, the general approach that the Sino-Congolese case presents isn’t devious at all. The actual implementation with particular regard to the more specifically analyzed agreements, however, doesn’t represent a positive example at all. Congo’s deprivation of huge amounts of its most valuable capital, its resources, in exchange for money and more precisely; infrastructure, which needs maintenance and other sorts of investments not at all considered in the cooperation agreements, is seriously questionable.

Based on this first analysis, the additionally analyzed impact of China on human rights in the DRC raises further concerns and does not stand for an exemplary behavior, either. As to the basic values, essentially needed for development, such as respect, equality, and general human rights awareness, China refers to its non-interference policy and does not take responsibility for any actions or human rights abuses taking place in Chinese companies in the DRC. There is no denying is that Congolese law as well as

\textsuperscript{208} Global Witness Limited, China and Congo – Friends in Need, 36.

\textsuperscript{209} Ibid, 9.
international law is not respected in many cases, resulting in the violation of human rights and many miners dying in work accidents.\textsuperscript{210}

Bearing in mind the outlined importance of human rights for development and vice versa, these evolutions are catastrophic, must not be encouraged at all and overall have a quite questionable impact on the DRC’s development process.

\textsuperscript{210} Ibid, 34.
B. Ethiopia

I. Background

The territorial state of Ethiopia, which has been upheld to the present day, dates back to the days of Emperor Menelik, who managed to protect Ethiopia’s independence in the 19th century when the colonial powers showed great interest in the country, and at the same time expanded his territorial dominion.211

Even though Ethiopia and Italy signed a bilateral friendship treaty in 1889, Italy still tried to occupy the country coming from the province of Eritrea in the north and caused a war which the Italian troops lost in 1896 in Adwa.212 It was this war that secured the definite independence of the Ethiopian state, and is further known for being the first victory of an African country over a colonial power.213 Owing to this event Ethiopia has remained to be the only African country that has in fact never been under colonial rule so far. However, Italy attacked once again in 1936, causing a war over vast regions of the country, which finally ended with Ethiopia losing several border provinces, such as Eritrea.214

In 1930 Emperor Haile Selassie came to power and reformed the country several times. He abolished slavery, reformed the educational and legal system and gave the country its first written constitution in 1931.215 During that time the Ethio-Sino relations had not really come into bloom yet. Due to different aspects such as China supporting the


214 Ibid.

215 Eikenberg, Äthiopien – Historische Entwicklung, 38.
“Eritrean People’s Liberation Front”, the establishment of diplomatic relations between the two countries was put back and finally took place in 1970.216

A few years later Haile Selassie was overturned by a military coup and in 1974 Ethiopia became a Socialist People’s Republic brutally reigned by the “Dergue” under Mengistu Haile Mariam.217 This dictatorship, which caused a terrible civil war within the country, came to an end in 1991, when oppositional troops, namely the Ethiopian People’s Revolutionary Democratic Front, marched in under former Prime Minister Meles Zenawi, finally ending the civil war after almost 30 years.218 It was after this military overthrow when relations between China and Ethiopia began to improve considerably and continued to grow ever since.219

Eritrea declared its independence in 1993, an act which was recognized by the Ethiopian head of government. Both countries agreed upon a close cooperation, especially in economic and political issues. This was particularly important for Ethiopia, since the agreement secured safe access to the harbors of the Red Sea. In 1994, a new constitution was introduced and Ethiopia became the Federal Democratic Republic of Ethiopia. As of 1996 the differences with Eritrea increased more and more, and continuous fighting over the boundary line followed. Soldiers of the “United Nations Mission in Ethiopia and Eritrea” were sent to secure the border and to maintain peace till 2008. Nevertheless the situation stays precarious and Ethiopia remains a politically unstable and fragile state.220


218 Ibid.


The PRC showed its support to Ethiopia through supplying significant amounts of military equipment during the conflicts in 1998-2000.\textsuperscript{221} Since the 1990s several assistance projects have increasingly been carried out and a long-term strategic partnership has been established.\textsuperscript{222} Moreover, High-class diplomatic visits have been taking place and in 2003 Ethiopia hosted an important event for Sino-African relations, namely the second ministerial conference of the FOCAC which took place in Addis Ababa.\textsuperscript{223}

II. The case of Chinese engagement in Ethiopia

With close diplomatic relations the engagement of China in Ethiopia, especially in the economic area, has equally increased and reached mentionable dimensions. The involvement reflects in many fields of action, varying from infrastructure construction to the production of manufactured goods or the provision of technical support. Girma Biru, Ethiopia's former Minister of Trade, describes China as "Ethiopia’s most reliable partner" offering a lot to learn especially in areas such as economy and politics.\textsuperscript{224} Taking into account the usual scope of Chinese action in Africa, an emphasis on resource-, oil- or service-rich countries can be observed. In these premises, the presence of China in Ethiopia, a country with small notable resource deposits\textsuperscript{225}, seems rather unusual, not very representative and insignificant. This said, the reason for the Chinese engagement specifically in Ethiopia appears to be all the more interesting.

The approach which will be applied for this particular case study is first of all the brief demonstration and interpretation of the different fields of involvement showing how China’s engagement becomes evident in Ethiopia. This part is followed by an analysis of the impact on Ethiopia’s development, again using the two indicators economy and

\textsuperscript{221} Shinn, China’s Approach to East, North and the Horn of Africa.

\textsuperscript{222} Gamora, Ethiopia and China Political and Economic Relations, 3.

\textsuperscript{223} Ibid.


\textsuperscript{225} Ibid.
human rights. Starting with the former, the main sectors of China’s engagement in Ethiopia will be discussed in turn.

1. Trade

Bilateral trade between the PRC and Ethiopia had risen from 100 million US$ up to 860 million US$ just between the years 2002 and 2007 and continuously keeps growing up to now.\(^{226}\) Chinese Commerce Minister Chen Deming stated that it is China’s intention to increase the trade numbers with Ethiopia to 3 billion US$ by 2015.\(^{227}\) In respect hereto, it is important to point out the significant gap, which is evident when looking at the development of Ethio-Sino trade numbers. A clear trade imbalance in favor of China can be noted, considering the rapid increase in imports to Ethiopia while export rates expand more slowly.\(^{228}\) Responding to this evolution, the Chinese government introduced a list of 442 commodities, which would be granted a preferential treatment, meaning duty-free and quota-free entrance into China.\(^{229}\) Subsequently, this measure in fact helped improving the situation to a small extent.\(^{230}\)

a. Imports

As pointed out before, the import volume of goods entering Ethiopia from China rose immensely in the last years shown by an increase of 233 percent between 2000 and 2004. Imports to Ethiopia consist mainly of manufactured products including both, labor intensive goods and such requiring a low intensity of labor. The main goods being

\(^{226}\) Thakur, Building on Progress? 7.


\(^{229}\) Thakur, Building on Progress? 8.

\(^{230}\) Ibid.
imported are garments, textiles and footwear, followed by electrical and electronic equipment and machinery.²³¹

a. Exports
Among the goods exported to China, sesame, other oil seeds and pulses, as well as skins, leather and leather products constitute the main products. Additionally, small amounts of coffee and natural gum are included in Ethiopian exports. Despite the rising export numbers, the potential that Ethiopia holds hasn’t been fully exploited yet. With regard to the preferential treatment of several products introduced by China, numerous export possibilities are still left that constitute a great opportunity for Ethiopia and its economy in the future.²³²

2. Investment
The investment of China in Ethiopia is evident. When touring through the countryside large modern buildings with Chinese signs attract one’s attention as they clearly stand out from the beautiful Ethiopian landscape.²³³ But also in the capital city, Addis Ababa, constant construction projects frame the skyline and Chinese investment is hard to overlook.²³⁴ Investment is diversified and covers several sectors, amongst them manufacturing and construction of infrastructure.²³⁵ The main fields of investment appear to be transport, telecommunication, the power sector as well as huge projects of road construction.²³⁶ Further fields of investment are textile, daily necessities,


²³² Ibid, 7.

²³³ Author’s observation on sight.


²³⁵ Thakur, Building on Progress? 9.

²³⁶ Ibid.
machinery, building materials and leather;\textsuperscript{237} as well as real estate, renting, hotels and restaurants.\textsuperscript{238} Geographically speaking, the focus of Chinese investment has so far been Addis Abeba and its surroundings, showing a high concentration of road construction projects that were completed in the last years, many of them carried out by the Chinese Road and Bridge Construction Company.\textsuperscript{239} Overall it can be stated that besides the capital, which holds a focus of about 70 percent of the total Chinese investment, the Oromia region also features a concentration of around 15 percent.\textsuperscript{240} The remaining 15 percent is split up among the rest of the country, leaving it with a rather low impact of Chinese involvement.\textsuperscript{241}

A further important point of Chinese investment in Ethiopia is the increasing amount of joint Sino-Ethiopian companies, most of them established for the engagement in the Ethiopian construction sector.\textsuperscript{242} A typical example is the Road and Bridge Construction Company which was formed by the Chinese Road and Bridge Corporation and local Ethiopian investors and has been engaging in many road, bridge and other infrastructure projects throughout Ethiopia.\textsuperscript{243} In short, big projects such as the Tekeze hydro electronic project, scheduling an immense dam on the Tekeze River, financed or built with Chinese help, are not unusual.\textsuperscript{244}


\textsuperscript{239} Gebre-Egziabher, The Developmental Impact, 12.

\textsuperscript{240} Gamora et al., The Implementation of the ‘Nine Principles’ 48.

\textsuperscript{241} Ibid.

\textsuperscript{242} Thakur, Building on Progress? 10.

\textsuperscript{243} Ibid.

\textsuperscript{244} Gamora et al., The Implementation of the ‘Nine Principles’ 42.
3. Financial support

Another increasing involvement of the PRC in Ethiopia is the dealing in credits or loans. In 2007 Ethiopia was among the four countries, which were chosen to receive soft loans from Chinese financial institutions in order to develop Africa’s infrastructure. Consequently, huge amounts have been allocated to Ethiopia, one example being an understanding which allowed China the provision of 100 million US$ to finance water projects in Ethiopia’s capital. The financial means made available, helped the construction of housing and schools; the rehabilitation of bridges and roads and furthermore provided training in fields such as agriculture and management. However, it should be stressed at this point that it is common for the help, provided through Chinese loans, to be tied to conditions such as the purchase of products, needed for the implementation of the projects, from China.

Compared to the amount of financial aid received from other donors, namely the EU or the United States, the Chinese don’t account for the biggest part, but doubtlessly make up for a mentionable share. In this connection it seems interesting once again that the Chinese focus on the capital Addis Abeba with representative flagship projects such as the important interchange road project.

4. Technical and other support

Despite the usual emphasis on the economic sector, the support that China provides for Ethiopia is not only limited to investment and finance. The PRC has also allocated assistance to the Ethiopian government in terms of education, health care and medicine.


248 Ibid.

A hospital and a malaria treatment center were built, anti-malaria medicine was provided and Chinese medical teams have been sent to Ethiopia over the years in order to assist and train local doctors.\textsuperscript{250} Furthermore, educational scholarships for students from Ethiopia, which allow them to study in China, have been introduced and financed by the PRC.\textsuperscript{251} The exchange of students as well as medical cooperation presents additional concrete and widespread involvement and several teams have been particularly engaging in hospitals in Jimma, Adama or Addis Abeba.\textsuperscript{252} In the field of education a focus on vocational education and training has been evident resulting in Beijing repeatedly sending batches of teachers to Ethiopia in order to provide training.\textsuperscript{253}

5. Political influence

The Chinese influence on the political level, whether it is a direct or implicit one, can definitively not be denied. It seems evident that a country, which openly engages in Ethiopia to the extent China currently does, does inevitably have some kind of impact on the policies and practices of the state.

As pointed out before, China hasn’t merely drawn its attention to Ethiopia owing to its resources, but is rather interested in other strategic advantages that cooperation with Ethiopia fosters; geopolitical clout.\textsuperscript{254} Ethiopia has a unique feature, combining geographically and strategically important aspects, such as the source of the Nile or the

\textsuperscript{250} Thakur, Building on Progress? 13.


\textsuperscript{252} Gebre-Egziabher, The Developmental Impact, 13.

\textsuperscript{253} Foreign Ministry of the People’s Republic of China, Ethiopia – Exchanges and cooperation.

\textsuperscript{254} Leggett, To Further Global Goals.
seat of the AU, with important political influence, like being one of the key players in
the Horn of Africa.255

The influence of Beijing in Ethiopia has reached overwhelming dimensions. Political
high-level visits from China by far exceed visits from Western countries and the
Chinese embassy in Ethiopia has grown to be among the largest in the country.256

Ethiopia views China as a good reliable partner, not posing any uncomfortable
conditions concerning human rights or democracy and just coming in the right moment
to complement, if not replace, the already existing cooperation with other countries.
This is exactly where the problem lies.

It is obvious that today’s Ethiopia has de facto a one-party state with a very strong
government, suppressing its citizens and totally undermining its opposition. Basically
no independent institutions exist and the phenomenon of a “democratic Ethiopia”
appears to be nothing more than a well-established façade. This is all the more true with
view to the 2005 elections where the regime arrested many supporters of the opposition,
some of its leaders and silenced the media and other neutral actors observing the
election.257

Incidents like these are exactly why the Chinese involvement in the country is
politically highly worrying. Local citizens accuse the PRC of helping the Ethiopian
regime monitor its people258, and the restriction of the freedom of speech and
expression is omnipresent.259 It is commonly known that China and its policies are not
that different from the Ethiopian ones.

255 Thakur, Building on Progress? 16.

256 Leggett, To Further Global Goals.

257 Ibid, 17.

258 Interview with a local Ethiopian conducted by the Author.

259 Human Rights Watch, One Hundred Ways of Putting Pressure – Violations of Freedom of Expression
and Association in Ethiopia (2010).
By supporting the regime without any restrictions due to its policy of non-interference, the governmental power is reinforced and China *de facto* legitimizes undemocratic practices and human rights abuses. It is for these reasons that the political impact that China has on Ethiopia, its governance, policies and human rights constitutes an altering and highly problematic aspect of its involvement in the country.260

### III. Identifying the economic impact on Ethiopia

Regarding to the initially outlined research questions and bearing in mind the different aspects of Chinese engagement in Africa, it is interesting to actually look at the impact the involvement has on the country and its development. As aforementioned, a strong indicator for a country’s development is its economy, which is why a closer evaluation of China’s actions on the economy of Ethiopia is undertaken at this point.

Generally, it can be stated that the overall impact that China entails in the economic field is considered to be quite positive. The growth of trade, endorsing a huge increase of imports and exports, most certainly has a beneficial impact on Ethiopia’s economic situation, bringing expansion and support to the country’s trade system. Associated herewith, the preferential treatment program offered by the Chinese, which was initially applicable for 190 products, and eventually has been expanded to more than 440 products, can be mentioned.261 As a reaction to the rapidly increasing import of Chinese goods to Ethiopia and the trade imbalance in favor of China, this treatment program has visibly had a positive impact on Ethiopia’s export situation.262

Additionally, one of the positive effects for Ethiopia is a diversification of export markets. The enhanced trade relationship with China constitutes a welcome and strong

260 Thakur, Building on Progress? 18.


262 Thakur, Building on Progress? 8.
counterpart to the ones with Europe, Japan, Djibouti and Saudi Arabia who have been the countries that Ethiopia has been exporting to for many years.\footnote{Gebre-Egziabher, The Developmental Impact, 7.}

As mentioned above the Chinese presence in Ethiopia within the investment business is clearly felt. Overall, China’s growing investment in Ethiopian business sectors has in fact been quite positive for Ethiopia and its economic growth in the past. Especially, investments in infrastructure and partly manufacturing have been reasonably beneficial for the country. The recent construction of roads, schools, dams and other essential infrastructure would not have been possible without Chinese engagement, mainly due to the weak local capacity to take on such big projects with similar conditions.\footnote{Gamora et al., The Implementation of the ‘Nine Principles’ 49.}

The creation of employment that is caused by the engagement of Chinese firms and companies in Ethiopia can be mentioned very positively. Although most of the companies bring along their own workers from China, they also provide local employment.\footnote{Zhao/Chen, Shoeing into Ethiopia, China Daily (25 December 2012). Available at: http://www.chinadaily.com.cn/cndy/2012-12/25/content_16049572.htm (17.02.2013).}

 Nonetheless, the Chinese engagement does not only bring positive attributes to the stage, but also features some worrying points that evoke a negative impact, in particular, in the long run. In this context the significant source of competition for local businessmen, which Chinese companies represent, is worth mentioning. With Chinese products being incredibly cheap, it is obvious that most of the local producers are being outmaneuvered, lose income or resort to informal production. The concrete economic consequence of this phenomenon will be further examined below.\footnote{Thakur, Building on Progress? 8.}

Another aspect is the quality of Chinese goods and materials, which has been used for construction works and in some cases turns out to be rather poor. Considering that, the
level of enhancement and sustainability of development that Chinese works, in particular infrastructure works, offer, is limited. This raises the question as to whether such involvement actually contributes to the country’s growth and development in the long run.267

If the protection of the environment is among the main concerns of Chinese firms engaging in Ethiopia, is to be doubted seriously. It is often argued by the Chinese that the projects which they implement are not pollutant and have nothing to do with environmental destruction as such. This claim appears quite dubious, since usually all of today’s production in the manufacturing and construction sector in any case, directly or indirectly, affects the environment in one way or the other. Many locals complain about the dust coming from road construction and blame it to be detrimental to both environment and health. The main problem in this connection is the weak enforcement of environmental protection by local authorities. However, Chinese enterprises, operating in Ethiopia, also bear responsibility for these issues and cannot just as easily dismiss their obligations as companies when it comes to environmental protection.268

Concerning the remuneration of the workforce, employed by Chinese-run enterprises, extremely low wages constitute the average. In the light of the low costs that Chinese companies offer for the implementation of different projects, it is evident that several budget cuts, including cutting the wages and salaries of the workers, have to be made. If local workers are employed, it is mainly on a temporary basis with ridiculously low wages, which not always meet the wage level of Chinese workers. The average daily wage for unskilled labor, for instance, rarely exceeds 3.50 US$. With wages that low, the growth of the local economy cannot be enhanced effectively, which relativizes the creation of new employment opportunities in Ethiopia through Chinese investors and companies.269

267 Ibid.

268 Gamora et al., The Implementation of the ‘Nine Principles’ 57.

269 Thakur, Building on Progress? 10.
Overall, it can be said that the economic impact of China on Ethiopia and its presence in the country is clearly noticeable. A clear support and improvement of the economic situation is noticed, but there is also potential that weakens and undermines the newly won benefit resulting from this cooperation.

1. Consequences for economic development

Generally speaking the economy of Ethiopia benefits from the bilateral cooperation with the PRC. Nevertheless, critics state that in the short term the flooding of the Ethiopian market with cheap Chinese goods may have troubled local producers.270

One example is the influence upon small scale footwear producers closely examined in a study by Gebre-Egziabher. The high pressure from imported shoes, which those small producers face, is the major challenge they are confronted with within their sector.271 In this context different highly interesting sides and aspects were found that representatively show the huge impact that China has on industrial sectors in Ethiopia.

The impact of Chinese imports on Ethiopian producers is evident and to a certain extent can be seen everywhere. Nonetheless, the hardest hit, are definitely small companies reporting severe consequences for their businesses. In many cases, downsizing activities, cutting back of production and reduction of either labor force or working hours are the typical reactions to such competitive foreign imports. Above all, workforce reduction results in many layoffs, clearly affecting both the workers and their families and the company as such.272

Taking this into consideration the impact seems more far-reaching and casts a negative shadow on Chinese imports to Ethiopia as a whole. In this context, the creation of employment for local people through Chinese companies coming to Ethiopia, could make up for the loss of working places due to their country’s imports.

270 Gamora et al., The Implementation of the ‘Nine Principles’ 41.


Bankruptcy and loss of assets and money are further direct consequences of shoes imported by China as Gebre-Egziabher presents in his study. After selling their assets and machinery, many producers are then forced to exit the market either permanently or for a certain period of time. In any case, the imports heavily challenge Ethiopian producers, posing a rather distressing aspect for the developmental future of Ethiopia’s economy and in particular the manufacturing sector.\textsuperscript{273}

In this context, different coping mechanisms exist with most local producers applying two main approaches, namely the “high road” and “low road” approach:

The low road competition shows a rather negative impact on the local productivity and often forces producers out of their business sector. A common reaction is the lowering of the price and profit margin so that producers can manage to stay in the market. Additionally, exiting the formal, registered manufacturing sector and joining the informal one can be observed quite often. This of course, means that none of the businessmen obtain a proper license or pay taxes, which results in a loss of valuable public revenues that Ethiopia desperately needs. It is evident that this way of coping with the situation, caused by Chinese shoe imports, isn’t very desirable for the development of the country and its economy, indicating the acute problem that the emerging plastic and textile manufacturing industries pose for the country.\textsuperscript{274}

The high road approach, however, in fact offers the potential to sustainably enhance the Ethiopian manufacturing performance in the long run. In this case, local businessmen attempt to deal with the new competition by trying to improve their quality, design and other important features that boost the image of the shoes they are supplying. This reveals another, rather positive, side of the impact which Chinese and other foreign competition have, particularly on the improvement of quality, design, time of production and price. Also the producers’ awareness concerning the demands of the

\textsuperscript{273} Ibid.

\textsuperscript{274} Gamora, Ethiopia and China Political and Economic Relations, 9.
market and the attempt to address and match those needs have consequently been enhanced owing to the impact of the shoes imported from China.\textsuperscript{275}

Generally speaking, it can be observed that the producers which follow the low road coping mechanism are mainly small businesses, while medium and big enterprises try to go the high road. Thus, it is arguable that especially for the big shoe giants the challenges they are facing through foreign shoe production do have a positive impact on their industrial development and consequently on their competitiveness in the future. For small local businesses however, the struggle is much more serious and many of them are actually fighting for their survival on the market. Considering this, the flooding of the Ethiopian shoe market with foreign goods is alarming and boils down to an elimination of small local businesses, which obviously is not a good prerequisite for the economic development of Ethiopia as such. Furthermore, despite the chances that arise from this situation, an actual change in the domestic market has not been observed so far and the great quantities of Chinese shoes and other products crossing the border still rather pose a danger than a real opportunity for Ethiopia. The main problems for local firms are lack of skills and working premises, outdated technology and little educated workforce, making it especially hard for them to compete with their big Chinese rivals.\textsuperscript{276}

Another quite positive consequence of Chinese engagement in Ethiopia is the Chinese industriousness, which highly impresses many local workers. The workers coming from China set a good example of hard work and discipline and demonstrate what an attitude like theirs is able to achieve. Despite the differences in culture and mentality, which need to be considered, the hope for a spillover effect onto local Ethiopian employees is continuously existent.\textsuperscript{277}

\textsuperscript{275} Gebre-Egziabher, The Developmental Impact, 18-22.

\textsuperscript{276} Ibid, 22.

\textsuperscript{277} Gamora et al., The Implementation of the ‘Nine Principles’ 51.
Otherwise, the lack of technological transfer, which results from the predominant employment of Chinese citizens in higher professional positions, presents another poor consequence for the enhancement of professional skills in Ethiopia. The transfer of technology taking place often features old backward technology and doesn’t really improve the Ethiopian know-how. Additionally, most local people are usually hired as low-paid workers or administrative assistants without any responsibility, or chances of promotion or improvement of skills. It is obvious that this situation does not foster the independence and advancement of Ethiopian professionals.

Interestingly enough, the sectors in which the Chinese mainly engage in Ethiopia, like infrastructure and manufacturing, are of course those that potentially bring the most benefit for them. Other fields like agriculture, which is essential to Ethiopia and where the support of this sector could sustainably and to a large extent help the development of the country, are not among the main concerns of Chinese investors.

Then again, the many infrastructure projects, carried out with Chinese help of different kind, do have a supportive impact on the Ethiopian development since infrastructure, in particular roads, bridges and houses, are part of a solid basis on which the country can further develop economically. It is important for farmers, contractors and people from other occupational areas to have a strong infrastructure at their disposal, which they can use in everyday life. This opens new horizons, offers more opportunities in transport and traveling, and thus directly enhances Ethiopia’s development.

The possibility that a certain dependence on big Chinese companies and other Chinese help in the infrastructure sector emerges, can be regarded as a further problem. Critics fear that a Chinese monopoly is unnoticeably established in specific sectors, which

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278 Ibid, 63.

279 Thakur, Building on Progress? 14.

280 Gamora et al., The Implementation of the ‘Nine Principles’ 63.

281 Thakur, Building on Progress? 14.
could evidently lead to an increasing dependency on these big foreign players. Some claims actually accuse Chinese firms of taking advantage of their good connections to government officials in order to rule out domestic competitors. This problem of monopoly development is, of course, also possible in the manufacturing sector, which currently makes it difficult for local companies to survive, owing to the increased engagement of China, which was discussed above.  

Finally, it can be summed up that from an economic point of view the Chinese involvement in Ethiopia hasn’t been entirely negative. Some sectors are, in fact, improving and show potential for the bilateral cooperation between China and Ethiopia with regard to the further development of Ethiopia. The many infrastructure works as well as the growing bilateral trade relations have to be mentioned in this connection. However, it is up to the Ethiopian government to negotiate wisely in the future, and to continue working for its country and people and to keep holding the reins tightly. One must not overlook the fact that the Chinese involvement is driven by the possibility to expand Chinese influence globally and benefit from international relations. In this context, Africa in general and Ethiopia in particular are not an exception, since the economic development of Ethiopia and other African countries does not constitute the main focus of China’s cooperation aid, but rather a positive side effect. It is for these reasons that the Ethiopian government has to effectively meet the concerns and threats resulting from the relationship with China and enhance Ethiopian law enforcement in order to protect the interests of its country and citizens and fruitfully cooperate with the PRC in the future.

IV. Identifying the impact on the human right situation in Ethiopia

After having examined the economic impact of Chinese engagement in Ethiopia a closer look at China’s influence on the human rights situation in general as well as a particular investigation of the protection and promotion of workers’ rights in Chinese companies operating in Ethiopia will be undertaken.

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282 Gamora et al., The Implementation of the ‘Nine Principles’ 63.
The issue of human rights violations is a highly disputed and rather controversial one. Compared to countries like the DRC, where the existence of an effective government itself is being questioned, the situation that Ethiopia currently faces, appears to be more stable and secure. In fact, the current government presents itself as strong and irrefutable, partially exercising tight control over the Ethiopian people.\textsuperscript{283}

Nevertheless, the human rights situation depicts itself as problematic, since the strict rules of the regime lead to many human rights abuses taking place in the country every day. The abuses of human rights, committed by citizens themselves, do not represent the major part of the problem. As a matter of fact, Ethiopia is a country composed of over 80 different ethnic groups and identities, and at least 80 languages are officially recognized. It is for these reasons that most of the internal conflicts originate in disputes between the different ethnicities, above all between the two biggest groups, namely the Oromo and the Amhara people. In this context, many human rights abuses are committed by the government itself.\textsuperscript{284}

State authorities show no scruples and consistently violate human rights including the rights to life and personal security or the right to privacy.\textsuperscript{285} Moreover, they frequently engage in torture and absolutely inhuman punishments.\textsuperscript{286} With these highly worrisome incidents occurring throughout the country, and the involvement of the government in most cases, it is evident that human rights are not given a very high priority in Ethiopia.

This is why it is exceptionally important for foreign countries to promote human rights, more than ever, through the bilateral relations, which they maintain with the Ethiopian regime. As mentioned before, the support of the local government, however, as currently provided by China, is not only counterproductive but actually promotes the government’s practices and thus directly enhances human rights abuses and undermines

\textsuperscript{283} Author’s observation on sight.


\textsuperscript{286} Ibid.
a stable and sustainable development of a human rights culture for the well-being of Ethiopia as a country.

Having said that, it comes down to the point that China’s policy of non-interference and the no-strings-attached aid that it offers, are not as neutral as always claimed. With China internationally presenting itself as a viable partner for bilateral cooperation without any conditions and requirements in the direction of human rights and democracy, it obviously competes strongly with its’ Western counterparts. This, of course, gives Ethiopia the choice between pressure and changes in the field of human rights, accountability and democratization on the one hand, and avoiding all that through an easygoing partnership with the PRC on the other. Looking at the interests and goals of the current regime in Ethiopia and the harshness with which it operates, it is obvious which partner it prefers.\textsuperscript{287}

As a consequence, the support resulting from the Chinese cooperation is undermining an efficient mechanism created by the international community, which puts pressure on the government in order to promote the provisions considered essential for the country’s further advancement, including human rights. A situation like this automatically enhances the authoritarian development and marginalizes important civil society actors. Consequently, the use of force, mainly through state authorities, and coercion as a means to suppress rebels, political opposition and other Ethiopian citizens, can be expected to be continued.\textsuperscript{288}

1. Investigating possible human rights violations

When looking at concrete human rights violations caused by Chinese engagement in Ethiopia, different aspects have to be taken into account and the respective situation has to be looked at from various angles. Having said this it appears reasonable to pick out different scenarios and look at China’s human rights influence in Ethiopia in the light of different situations. First, the human rights situation of workers in Chinese-run

\textsuperscript{287} Thakur, Building on Progress? 18.

\textsuperscript{288} Ibid.
companies, thus a condition directly induced by Chinese, will be examined. Second, the circumstance of “land grabbing”, the human rights violations associated therewith and China’s indirect instigation form another subsection. Finally, Beijing’s human rights impact regarding its investment in projects in Ethiopia will be discussed by means of the Gibe III dam project highlighting the mediate impact of economic projects on human rights within the country.

a. Workers’ rights and discrimination

Generally speaking, an overall respect for local Ethiopian laws and labor standards by Chinese-run companies in Ethiopia does exist, but questionable situations still occur. The Ethiopian labor law is quite strict and strongly favors and protects the employee. Compared to other African countries the case of Ethiopia in this respect is rather unusual. It goes without saying that Chinese companies engaging in Ethiopia, have to obey the national rules and laws, including the local labor laws. The Chinese often complain about these protectoral laws and argue that they constitute an obstacle to development.\(^{289}\)

Whether or not the companies concerned actually abide by local rules is quite controversial. Mostly, it is the big companies who seem to have a commitment and show efforts to comply with the local laws. Many of them pay monthly salaries, do not demand unpaid overtime work and do not dismiss their employees without prior notification. However, there are some complaints that are still recorded, including bribery of labor union officials and rude, disrespectful treatment of workers. In the context of human rights and with regard to equal treatment, the fact that some local workers do not enjoy the same privileges and rights as the Chinese employees is quite worrying. Also differences in payment are recorded, as well as a dependency of workers’ treatment on the closeness to and sympathy of the Chinese foreman. This is also why domestic workers have been fired without prior notification or were forced to

\(^{289}\) Gamora et al., The Implementation of the ‘Nine Principles’ 56.
leave because they did not get along with their Chinese manager. Chinese employees, in contrast, usually experience a different treatment.\(^{290}\)

On the one hand, the work that is created by the Chinese in Ethiopia constitutes a big chance for local people to get jobs, have a regular income and to be able to feed their families. On the other hand, the jobs provided are under-paid, often only available for a short period of time and furthermore involve long exhausting working hours with hardly any breaks. Additionally, as stated before, the employment that is given to Ethiopians mainly contains tough, menial and physically exhausting work, while the remaining jobs in superior ranges are left to Chinese employees. A treatment like this hardly seems fair and equal to local citizens.\(^{291}\)

While the big companies actually show efforts to comply with local and international employment standards and the criticism existing is limited, as elaborated above, the small companies pose a greater challenge in that respect. Regarding the local employees’ rights, their reputation is indeed very bad. The difference is that due to the size of the firm, the pressure felt to abide by labor standards is less. Additionally, local workers of smaller companies are often not really aware of their rights, or are not as well organized as employees of big companies. This, of course, gives the manager more power to act arbitrarily and consequently to disregard the rights of the workers. Salary cuts for no profound reason, sometimes even for more days than the worker took off, or cuts due to the fact that the worker did not show up for health reasons, are quite common. Furthermore, Ethiopian holidays are not respected and therefore days off are not granted, and workers that come to work on such holidays are not reimbursed adequately.\(^{292}\)

Just recently in January the Ethiopian Satellite Television reported that gross human rights violations have been taking place at CDCA, a Chinese company operating in

\(^{290}\) Ibid, 56-57.

\(^{291}\) Thakur, Building on Progress? 11.

\(^{292}\) Gamora et al., The Implementation of the ‘Nine Principles’ 57.
Ethiopia. It was stated that Chinese officials had beaten, killed, raped and kidnapped workers of CDCA and that the company has become a serious threat to the workers’ security. Incidents like this reveal that there are not only minor human rights violations occurring in Ethiopia.

This demonstrates that the disregard for the workers’ rights stipulated in local laws and international law treaties obviously poses a problem for the human rights situation in Ethiopia. To which extent such violations are actually committed by Chinese companies and which human rights provisions are said to be violated, will be discussed in one of the following chapters.

b. The “land grabbing” problem
Shifting the focus away from the Chinese engagement as such, another important aspect is worth emphasizing. With the tremendous numbers of Chinese enterprises conducting their business in Ethiopia the question arises as to where the land they require is taken from. In this connection the phenomenon of “land grabbing” has to be mentioned. Huge areas of fertile land are sold by the Ethiopian government as farmland or for industrial purposes to domestic and foreign investors, including governments. Although Middle Eastern countries such as the United Arab Emirates and Saudi Arabia are the leading investors, other states including China are currently increasing their efforts and are, in fact, likely to catch up soon.

In this connection it is interesting to note that the Ethiopian government is continuously moving thousands of indigenous people to different areas in the country by force. This process, the “villagization” program, as the government calls it, is claimed to contribute to the eradication of the development problems in rural areas, since the construction of new villages in these appointed areas with access to clean drinking water and other


basic socioeconomic infrastructure is promised by government authorities. However, in most cases the people end up in temporary camps next to the road consisting of tents not even provided by the government, but put up by themselves.\(^\text{295}\)

The Ethiopian government claims that the whole “villagization” program does not stand in any relation with the ongoing selling of land to big investors and that most of the land is not inhabited but unused, plain land. Moreover, it is argued that the resettling process is based on the voluntary willingness of the people involved and that no violence whatsoever is used.\(^\text{296}\)

This statement stands in direct contradiction to what the victims of this new resettlement policy report. They state that state soldiers forced them out of their villages and accustomed surroundings, depriving them of their home, identity and livelihood. The measures taken against reluctant habitants are severe with torture, unlawful killings, rape and other actions of intimidation on the top of the list. Many of the concerned people are afraid to state their experiences and opinions publicly, fearing persecution by the government.\(^\text{297}\)

“When soldiers came almost two years ago to move Chan, a 37-year-old farmer and mother of four, they beat her on the arm and face with a stick. The skin on the right side of her face, just below her ear, is uneven and marked. The soldiers also beat her then 18-year-old son on the head with a gun. Nobody could fight back.”\(^\text{298}\)

According to a Human Rights Report published in 2012 the government’s plan for the future is to move 1.5 million people by 2013. The main area in which most of these resettlements take place is the Gambella region in the west of the country. But also


\(^{298}\) Clar, Ethiopia’s Resettlement Scheme Leaves Lives Shattered.
other regions such as Afar, Somali and Benishangul-Gumuz are particularly affected.299

The involvement of Beijing in these particular regions and the benefit that it gains from the operations exercised by the Ethiopian government is not deniable. A huge Chinese mining company, namely Sino Tech, has just recently started engaging in the Benishangul-Gumuz region with the intention to gain gold.300 The required land for this project amounts to 756.91 sq. km of exploration area.301 A further example is the Chinese company Zhonguan Petroleum Exploration Bureau, which explores oil in the Gambella basin near the Sudanese border as a subcontractor of Petronas, a Malaysian Petroleum Company.302 These examples show without question that Chinese involvement can clearly be seen in the areas concerned. This said, it is evident that through an engagement like this, combined with China’s non-interference policy and so-called “neutrality”, an indirect support of the human rights violations against the indigenous people committed by Ethiopian authorities can be observed.

c. The Gibe III dam project
In addition to the abovementioned operations, another extremely worrying area is the Omo valley and the construction of the Gibe III dam project. This huge dam project is being carried out in the upper Omo basin with the constructing party being an Italian

299 Human Rights Watch, Waiting here for Death, 2.


301 Ibid.

company and the expenses being covered by the Ethiopian government and China as the second party, covering a huge amount of the costs.\textsuperscript{303}

The Omo River is home to a vast variety of indigenous tribes and was declared a UNESCO World Heritage Site due to its unique ecosystem and great significance for thousands of human and animal inhabitants. The people living in the Omo basin and their livelihood strongly depend on the river and its ecosystem. They grow crops and raise cattle on the meadows which owe their fertility to the annual flooding of the river.\textsuperscript{304}

The construction of the Gibe III dam is believed to bring a great catastrophe upon these people and everybody else relying on the flood cycle of the river. The UN urged Ethiopia to suspend the construction of the dam until a further assessment of its impact on Ethiopia’s people, animals and nature as well as on the ecosystem of Lake Turkana, located in Kenya at the estuary of the Omo River, has taken place. Negative impacts on food security and the local economy of around half a million Ethiopian and Kenyan citizens are expected from the construction of the dam.\textsuperscript{305}

The human rights situation that this huge project entails, gives rise to concerns. The Ethiopian government again displaces thousands of people living around the Omo river bed, driving them off ancestral land by methods that can by no means be tolerated.\textsuperscript{306}

The people who are still allowed to stay in their homes will sooner or later be heavily affected by the Gibe III dam and its consequences. According to Human Rights Watch

\textsuperscript{303} Ashine, UN calls for suspension of giant Ethiopian hydropower dam, Daily Nation (28 July 2011). Available at: http://www.nation.co.ke/News/africa/UN+calls+for+suspension+of+giant+Ethiopian+hydropower+dam/-/1066/1209288/-/item/0/-/240n25/-/index.html (18.01.2013).

\textsuperscript{304} Human Rights Watch, What will happen if hunger comes? – Abuses against the Indigenous Peoples of Ethiopia’s Lower Omo Valley (2012) 1.

\textsuperscript{305} Ashine, UN calls for suspension.

the Ethiopian government was responsible for numerous, arbitrary detentions and arrests, the use of violence and vast destruction of the property of indigenous tribes in the Omo valley.\textsuperscript{307} Moreover, beatings, harassment and stealing or killing of vitally important cattle by state agents and the denial of access to the river itself were recorded.\textsuperscript{308}

With China financing great amounts of the Gibe III project’s expenses, the responsibility for the tragic occurrences and the unacceptable operational practices of the Ethiopian government associated herewith, at least morally, have to be attributed to Beijing, too. Once more, the questionable non-interference policy and the Chinese support of the brutal Ethiopian regime entail horrible human rights violations, fatal for hundreds of thousand people living on Ethiopian territory.

2. The compatibility of the engagement of China with human rights obligations of the state under international law

The involvement of China in Ethiopia is complex and, as seen earlier, covers different fields and areas. Compared to other African countries such as the Democratic Republic of the Congo, the treatment of workers in Chinese-run enterprises operating in Ethiopia has been a lot less severe, although violations of work laws still occur especially in small companies. Bearing in mind the beatings, disrespect for physical integrity or the unbelievably bad conditions, workers are facing in Chinese companies engaging in the DRC, the issues encountered in Ethiopia appear to be less significant in comparison. However, as described above gross violations of human rights in Chinese firms including beatings and rape have recently been reported in Ethiopia too. In this context, it is necessary to investigate international human rights standards with special regard to the human rights obligations entered into by the two states.

The violations of people’s rights through the “villagization” program set up by the government of Ethiopia, from which Beijing obviously profits, and the support of

\textsuperscript{307} Human Rights Watch, What will happen if hunger comes? 2.

\textsuperscript{308} Ibid.
Ludwig | China’s Impact on Human Rights in African Development

projects such as the Gibe III dam clearly constitute another severe problem for the guarantee of human rights for the Ethiopian people. Here, interference into and disrespect for the basic and essential rights of the individual are observed, and horrible actions such as rapes, killings and torture show that human rights are anything but supported by the authoritarian regime which currently rules Ethiopia.

In those cases the problem clearly lies within the policy that China advocates and its lack of international values and morals which it could be fighting for as a country. Unlike other donor and cooperation countries, China gives aid to and keeps engaging with the Ethiopian government without requiring any compliance with international human rights standards and in this matter always refers to its non-interference policy.

Therefore, it is all the more interesting to examine the international human rights obligations of China and consequently those of Ethiopia, which both have to be respected on either side in any kind of business the countries engage in.

a. Chinese human rights obligations

The different human rights instruments which tie China internationally and the key treaties, to which the PRC is subject, have already been outlined in the previous case study. Nevertheless, a closer look into the different treaties with regard to the special case of Ethiopia will be taken at this point.

aa. The International Covenant on Economic, Social and Cultural Rights

As stated before, Article 2 of the ICESCR holds the provision that all rights included in the aforementioned Covenant have to be guaranteed without any discrimination due to inherent attributes, namely; race, color, sex, language, national or social origin.309

Bearing in mind the current situation of workers’ rights in Ethiopia, a certain level of discrimination can be observed. However, the extent to which such discrimination actually occurs, is mainly limited to the smaller Chinese companies which conduct business in Ethiopia.

309 ICESCR, Article 2 (2).
Since the Ethiopian labor code is rather strict and implements international standards, favorable working conditions, which are explicitly provided by Article 7 of the ICESCR, including a healthy working environment and training as well as promotion opportunities, are usually respected by bigger enterprises. Again, the small companies seem to pose challenges in this matter. A further point of concern is equal remuneration and treatment, as well as fair wages, which are based on non-discrimination and equality of all workers. In this field a rather big lack of compliance can generally be observed in almost all kinds of Chinese companies operating in Ethiopia. Preferential treatment of Chinese workers in various situations and further discrimination in hiring, show that not all the provisions of Article 7 have been met sufficiently. This said, it goes without saying that the right of non-discrimination, which Article 2 holds, is continuously violated as well.

Concluding it can be said that due to the strict Ethiopian labor code and the honest efforts of most of the big companies, violations of human rights, provided in the ICESCR, are kept within limits. Nonetheless, some abuses of workers’ still remain mainly in the field of remuneration and discrimination. It must be pointed out again that for the further development of Ethiopia equal treatment and respect for the country’s citizens are crucial issues, and clearly constitute international obligations that China has to comply with and thus have to be met by all enterprises operating in Ethiopia.

**bb. The Convention on the Elimination of All Forms of Racial Discrimination**

The assurance of the equality of all people and the condemnation of discrimination due to people’s race or color is the crucial human right determined in the ICERD. The goal is to eliminate racial discrimination in every possible form and by all means.\(^{310}\)

As already pointed out above, the issue of discrimination continuously raises severe concerns in Ethiopia, particularly with regard to Chinese corporations engaging in the country. A good example in this context is that sophisticated, well-paid jobs are mainly given to the Chinese workforce while the easy jobs with less opportunity for promotion are usually carried out by Ethiopians. Furthermore, number and length of breaks and

\(^{310}\) ICERD, Article 2.
days off often depend on the mood of the manager and the workers’ relationship to him, which does not seem fair at all. Another point of concern are the wages, which differ quite a lot and do not correspond to a fair and equal system, but rather increase the risk of unequal remuneration based on race and color. This said, it is clear that discrimination due to people’s race and national identity, is one of the biggest human rights problems in Chinese companies, that the Chinese engagement in Ethiopia brings with it and therefore constitutes an issue which has to be worked on as number one priority in the future.

cc. The Conventions of the ILO

In the particular case of Ethiopia the ILO Convention concerning Discrimination in Respect of Employment and Occupation is another important international human rights treaties, which the PRC is subject to. It contains special rights of equality with the aim of eradicating discrimination at the work place.

Article 2 addresses the right of every worker, to be treated with respect and to have equal opportunities.311 Additionally, the 34th general recommendation of the CERD explicitly emphasizes the importance of racial equality of people of African descent, and stresses the enjoyment of their human rights and fundamental freedoms set by international standards, without any discrimination.312

Bearing in mind the above stated rights, it seems evident that the provisions determined in this Convention, haven’t been met either. Discrimination still takes place and various privileges as well as exclusions based on race and origin as well as on connections to managers and other key actors can be observed.

Concluding, it may be stated that human rights violations through Chinese companies in Ethiopia mainly occur in the field of discrimination and workers’ rights. In this context, the indirect Chinese support of human rights violations in Ethiopia, committed by the

311 ILO, Discrimination (Employment and Occupation) Convention, Article 2.

Ethiopian government by tolerating governmental practices and by enhancing bilateral cooperation without any conditions attached, has to be stressed once again. The example of Ethiopia clearly shows the extent of this non-involvement policy and the importance and responsibility of the international community to improve the provision of human rights in individual countries such as Ethiopia.

b. **Ethiopian human rights obligations**

In addition to the treaties that have been discussed above, other international agreements relevant in this context, that Ethiopia is also part of, are the International Covenant on Civil and Political Rights as well as the African Charter on Human and Peoples’ Rights also known as the Banjul Charter, which will be analyzed in turn.

**aa. The International Covenant on Civil and Political Rights**

The ICCPR is yet another international treaty which obliges its parties to ensure the non-discrimination of all individuals and to promote equality on every level within the scope of the rights guaranteed in the Covenant. Particularly Article 26 is of great relevance in the present case since it holds the right of each individual to be treated equally and not to be subject to discrimination on any grounds. Even though it is Ethiopia and not the PRC which has ratified this covenant, Chinese companies should equally have the duty to comply with these international standards. Unfortunately, there has not been much of compliance so far, since ongoing discrimination can still be observed in Chinese companies in Ethiopia. One of the reasons for this practice is of course the lack of Ethiopian law enforcement; however, similar to the situation in the Democratic Republic of the Congo, the blame for this situation cannot just simply be shifted onto the Ethiopian authorities.

**bb. The African Charter on Human and Peoples’ Rights**

The African Charter on Human and Peoples’ Rights was ratified in 1998 and holds rights and duties of human beings and peoples including several human rights provisions that are of relevance for the given situation of Chinese engagement.

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313 ICCPR, Article 2.
Article 10 and 11 for instance provide the right of free association and the right to assemble, which has to be guaranteed to every human being within the limits and restrictions of the eligible national law. Article 9 holds an additional provision which is the right to receive information and to express one’s opinion. Furthermore, Article 25 determines the duty of the parties to promote and ensure the general awareness and full comprehension of the rights enshrined in the Charter. Put into concrete terms, this means that every human being under the responsibility of the state has to be informed down to the detail about all the rights and duties included in the AChHPR.

Taking into account the situation in small Chinese-run companies, where the respect for human rights, in particular the rights of the employees, is indeed very bad, the question arises as to whether the described state obligations have been met in those particular cases. Often the workers are not aware of their rights at all and are not organized like their colleagues from other companies, which they would probably be, if proper information about their rights and possibilities had been provided by state authorities. It is for these reasons that a lack of a fundamental awareness of rights can be assumed indicating that the obligation to promote an understanding of individuals concerning their rights has not taken place, especially in small companies.

Once again the aspect of equal wages and the therewith associated right is addressed in Article 15 and clearly has not been guaranteed successfully referring to the discriminating situation in Chinese companies which at this point doesn’t need further explanation. What is more, is the overall discriminating situation which does not provide equality or security for the workers in any way. Short term employment, low and differing wages, preferential treatment, no or inadequate reimbursement of overtime work and unexpected termination of employment, clearly create a good breeding ground for arbitrary treatment and human right abuses and point out the omnipresence of discrimination at the workplace in many Chinese-run companies in Ethiopia. This said, the right of equality provided in Article 19 hasn’t been ensured, inter alia, in vast parts of the Ethiopian economy.

c. Violations of international obligations by the Ethiopian government due to Chinese involvement

As mentioned in the prior chapters, many human rights abuses by Ethiopian authorities against the country’s citizens occur resulting from the increasing engagement of the PRC in Ethiopia. Even though these actions are not set by Chinese actors per se, in many cases it is owing to their projects and undertakings that the government deprives its citizens of their basic rights. Strictly speaking, many of the abuses occurring wouldn’t take place without the PRC engaging in Ethiopia in search of a cheap market, good business and attractive economic opportunities. This accounts for the fact that China as a country has to assume some kind of responsibility in those particular matters. It is not acceptable that Beijing hides behind its non-interference policy when at the same time it is not only looking away from serious governmental mistreatment of citizens without any legal consequences, but actually is causing some itself. In this context appears reasonable to demonstrate some of the most severe violations of international obligations taking place in this connection.

aa. The right to life

The right to life is one of the most basic human rights and is widely recognized. Every individual has the right to life which is inherent and shall be protected by law. There shall be no arbitrary deprivation of an individual’s life. The provision of this right is guaranteed in various international human rights instruments to which Ethiopia is subject, in particular, in Article 6 of the ICCPR and in Article 4 of the AChHPR.\(^\text{315}\) The prohibition of arbitrary killing poses an important provision in this context, since it holds the protection of citizens’ lives against an arbitrary interference by state organs.\(^\text{316}\) The actions taken by Ethiopian state authorities, however, show anything but respect for the life of the people whose land they are taking coercively. Arbitrary killings are no exceptions to the cruel governmental means applied against the Ethiopian population.

\(^{315}\) ICCPR, Article 6 and AChHPR, Article 6.

\(^{316}\) Nowak, U.N. Covenant on Civil and Political Rights, 110.
Clearly, the government has failed to comply with its international obligations and does not provide these citizens with the protection and safety they are entitled to.

**bb. The right to liberty and security of the person**

A further right violated by the Ethiopian government is the right to liberty and security of the person. Many arbitrary arrests and detentions have been taking place in the corresponding regions in Ethiopia. A lot of them seem to have been used as a tool of intimidation and thus have been carried out publicly in front of other village inhabitants.\(^{317}\) Furthermore, beatings and assaults of people by government soldiers during the villagization process are common.\(^{318}\) It was even reported that the military used high voltage stun guns and tasers to assault villagers affected by the government’s resettlement process in rural Ethiopia.\(^{319}\) Moreover, cases of sexual violence, rape, forced marriage and abduction, all carried out by government authorities, have been reported.\(^{320}\) Article 9 of the ICCPR as well as Article 6 of the Banjul Charter hold the provision that no individual shall experience arbitrary arrest or detention and that it is the obligation of the state to ensure the security and corporal integrity of every human being under its responsibility.\(^{321}\) With government soldiers beating, raping, assaulting and unlawfully arresting Ethiopian people a violation of these rights can definitely be stated.

**cc. Indigenous rights**

Most of the people and tribes affected by the government’s resettlement plan and the villagization process describe themselves as indigenous to the eligible areas and have lived there for generations.\(^{322}\) It goes without saying that indigenous people are

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317 Human Rights Watch, Waiting here for Death, 34.

318 Clar, Ethiopia’s Resettlement Scheme Leaves Lives Shattered.


320 Human Rights Watch, Waiting here for Death, 37 et seq.

321 ICCPR, Article 9 and AChHPR, Article 6.

322 Human Rights Watch, Waiting here for Death, 75.
naturally entitled to all rights provided in international human rights treaties, just as every other human being is entitled to them. Additionally, since they are facing extreme difficulties concerning their customs, way of life, territory and livelihood in many regions of the world, they can be defined as a vulnerable group and thus require an even more intensive protection of their rights and environment. The UN Declaration on the Rights of Indigenous Peoples is one of the great achievements in this matter. It was adopted by the UN General Assembly in 2007 and Ethiopia was one of the states voting in favor of the Declaration. Even though the UNDRIP is not legally binding and thus does not constitute specific rights that oblige states to guarantee their fulfillment, the impact of this Declaration is still considerable.323

Some of the core rights outlined in the UNDRIP concern the protection of indigenous peoples’ environment, their lands and territories. Article 10 condemns forced removal of peoples from those areas and determines that in any case the consent of the indigenous peoples affected is needed and furthermore an appropriate compensation shall be provided.324 The right to participate in the decision-making of matters affecting the rights of those peoples, as well as the right to prior cooperation and consultation, are included in Articles 18 and 19. Another essential right guaranteed in Article 26 of the UNDRIP is the right to the lands, territories and resources of indigenous peoples.

None of these rights, laid down in the Declaration, were guaranteed by the government of Ethiopia but on the contrary violated by the same authorities that should in fact be responsible for their protection. Despite the non-binding character of the UNDRIP, it appears to be shocking and downright hypocritical that a state like Ethiopia after a long process of discussion, votes in favor of such a groundbreaking declaration and then shamelessly breaks some of the core provisions by its very own state authorities.


d. Preliminary Conclusions

Summing up, it may be said that a clear impact of Chinese engagement on the human rights situation in Ethiopia can be assessed, fostering a rather negative progression of the human rights development. Similarly to the Democratic Republic of the Congo, it is the government and the state institutions that fail to promote and guarantee the human rights obligations in an effective way or even emerge as the major perpetrators of human rights abuses.

As examined above, the main violations directly carried out by the Chinese, occur in the field of discrimination and workers’ rights but also grievances concerning beatings, rape and killing have been reported. The most frequent problems are unfair treatment of workforce, long working hours with insufficient breaks, unfair and differing remuneration as well as discrimination in hiring processes and employment. Some of these difficulties stem from discrimination due to the employee’s race, nationality and origin, while others simply issue from arbitrary behavior of leading staff members such as the managers.

All things considered, one may conclude that the actual violations of the international obligations examined that are carried out in Chinese firms, are usually limited to rights which do not affect the corporal integrity or dignity of human beings as such. Nevertheless, there have also been reports of other more severe violations of human rights within Chinese corporations. Therefore the significance of the provisions breached and in particular their importance for a country like Ethiopia facing the increasing engagement of actors from other countries, must not be underestimated. Particularly in the light of an intensive future cooperation between Beijing and Addis Abeba, the role of good and fair treatment of employees, provided mutually, appears to be a crucial one.

As to the abuses of human rights carried out by the Ethiopian government, the situation depicts itself quite differently. The violations in question turn out to be much more severe than those occurring in Chinese-run companies. Rapes and other forms of sexual violence, killings, abductions, arbitrary detentions, severe beatings and other cruelties can be directly accredited to the government itself. Additionally, a vast disrespect of the
rights of the indigenous tribes living in Ethiopia and the deprivation of their livelihood, food security and ancestral environment must be noted. Although it has to be admitted that these cruel practices are applied as standard operational behavior by the Ethiopian authorities in many other matters as well\textsuperscript{325}, it is still due to Chinese projects that the basic human rights elaborated above are violated in the most dreadful way one can image. Therefore, a further engagement of China in projects such as the Gibe III dam and others, results in the support of the regime and its’ practices, directly enhancing further human rights violations in this context.

It is for the reasons stated above that the Chinese impact on the Ethiopian human rights situation has to be classified as quite negative and in this way actually diminishes the chances of improvement of the provision of human rights for every individual in Ethiopia, opposing all the efforts taken by other international players in that matter. Taking into account the importance of human rights for development, it is all the more important to enhance and promote the human rights development in Ethiopia and not diminish it like the Chinese engagement entails.

V. Conclusion: Connecting human rights and economy

Ethiopia, one of the biggest and most populated countries in Africa, with around 80 languages and over 200 dialects, has made great developmental progress in the last years, showing the improvement of several development indicators such as life expectancy at birth or the Gross National Income.\textsuperscript{326} Nevertheless, Ethiopia continuously faces severe developmental challenges and further relies on the assistance of partner countries, NGOs and others.

The cooperation between China and Ethiopia is noticeable in many different areas, featuring engagement in sectors such as trade and investment, but also in the technical sector and other fields. It provides a useful example of bilateral cooperation that boosts

\textsuperscript{325} Interview with a local Ethiopian conducted by the author.

the Ethiopian economy in many ways, particularly increasing the country’s trade
d-numbers and expanding infrastructure. However, a negative impact on the economy
with regard to the survival of small local companies, low remuneration and employment
can be observed, too. Despite those aspects, the overall influence of Chinese
engagement on Ethiopia’s economy seems to be quite good.

However, with regard to human rights problems, which constitute are another crucial
indicator for a country’s development, the state of affairs depicts itself rather differently.
Various violations of workers’ rights in Chinese companies occur, especially in terms of
discrimination and unequal or arbitrary treatment. Even though human rights standards
are tried to be respected by bigger companies, smaller ones often abuse them regularly.

Furthermore, the Ethiopian regime, just like China, is well-known for its authoritarian
rule and disrespect for human rights, resulting in severe human rights abuses by
Ethiopian authorities due to projects planned by the Chinese in Ethiopia. A further
engagement in these kinds of projects results in an indirect support of human rights
abuses and thus clearly has a truly poor influence on human rights in Ethiopia.

The lack of law enforcement and Ethiopia’s shaky legal framework do not only keep the
Chinese from abiding by the law and from protecting the basic rights enshrined in it, but
actually help them advance Beijing’s wider goals. Jiangxi International for instance, one
of the Chinese state firms operating in Ethiopia, was hired to build new homes for
hundreds of people left homeless after a terrible flood. After the construction of the
ordered apartment houses, the personnel of Ethiopia’s Ministry of Defense were
accommodated there. The flood victims never got the chance to move in. A senior
executive at Jiangxi said that they simply don’t care who uses it. “It was a political task
for us and so long as Ethiopia officials are happy, our goal is fulfilled.”

This example shows exactly the approach that Beijing follows and demonstrates once
more its absolute indifference towards internal issues of other countries, including
human rights. As a matter of fact, this attitude goes further than respecting a nation’s

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327 Leggett, To Further Global Goals.
sovereignty and not interfering in internal affairs, but actually features a total callousness.

In conclusion one may say that the developmental impact of China on Ethiopia does enhance the economy in many ways and appears to be a good evolution in order to support Ethiopia efficiently. Nonetheless, some particularities need to be improved in a further cooperation in order to sustainably entail the country’s development on every level, above all human rights and their enforcement by Chinese companies and Ethiopia’s government.
C. Comparison of the two cases

After having looked at two different African countries and their cooperation with the People’s Republic of China, a reflection upon the similarities and differences of these cases appears worthwhile.

First of all, one cannot talk about “the Chinese influence in Africa”, since every case is different and needs to be looked at in a different way. As Thakur notes, “China’s approach to Africa as a continent is as multifaceted as the continent itself; therefore, making general assertions on the logic of Chinese engagement in Africa is unfruitful and ignores the pragmatic and nuanced approach that China employs on the continent.”

Nonetheless, some similarities concerning the engagement can be determined. Especially when looking at how the Chinese engagement becomes evident interesting scenarios can be found. It is common knowledge that Beijing strongly emphasizes the involvement in the infrastructure and commodity sector. In this regard, the DRC with its vast resource deposits constitutes a typical example of Chinese involvement. With Ethiopia being a rather unconventional African partner country for China, the approach that the PRC follows here appears to be a little different.

Looking at the two case studies undertaken, the different impact, which Beijing’s engagement in those counties has on their development, is apparent. On the one hand, the case of the Democratic Republic of the Congo appears to be fatal, equals an appalling phenomenon of exploitation and is easily arguable with China only pursuing its own interest. The Ethio-Sino cooperation, on the other hand, actually comes with a positive influence on the country’s development, in particular, with respect to economic growth. Moreover, the level of human rights violations committed by Chinese companies is a totally different one. Considering the horrible beatings, accidents and assaults related to Chinese mining operations in the Congo, one may describe the discriminating practices applied in Ethiopia substantially less shocking.

Thakur, Building on Progress? 15-16.
Summarizing, it can be noted that not all Chinese engagement in African countries is the same and leads to the utmost exploitation of those countries. Although China’s rush for resources cannot be denied, the example of Ethiopia demonstrates that Beijing also puts emphasis on different things such as strategic importance, geographical location and political influence. Deeply troubling, however, is China’s impact on human rights which seems to be considerably poor in all its engagement and traceably worsens the human rights situation in the respective countries.
Part 3: Accountability for the human rights violations committed

A. Introductory outline

As evinced in the previous chapters, terrible human rights violations in the context of the Chinese encounter in Africa have been witnessed. The range of the actors involved is wide and includes the state itself as well as privately and state-owned companies. In this regard the question arises as to whether those actors can be held accountable for the human rights abuses they are involved in. The issue of accountability in international law features quite a level of complexity and due to the limits of this thesis, cannot be fully explored at this point. However, owing to the relevance of international accountability regarding the Chinese actions in Africa and with regard to one of the research questions, the following part constitutes a concise attempt to address the issue in the particular case discussed in this thesis. Thus, the mechanisms designed to address the responsibility for occurring human rights violations will be discussed in turn.

Initially, it is important to point out that up to the present, the primary entity that internationally and nationally has been responsible for the promotion and granting of human rights, is the state. Since the state also constitutes the original subject of international law\(^{329}\), possesses international legal personality and thus international rights and duties, international human rights treaties primarily impose obligations on the state itself. However, the very nature of human rights and their universality make it obvious that it cannot solely be the obligation of states to guarantee their full enjoyment for every individual.

The emergence of other entities and global players over the last years has not been dealt with sufficiently by the international community and despite the efforts that have been taken, it still seems to be quite a challenge to internationally develop obligations and duties that ensure that these emerging actors can actually and legally be held accountable for their actions. According to a UN Secretary-General report “the

development of international human rights law as means of holding Governments accountable to a common standard has been one of the major achievements of the United Nations. The challenge is to sustain that achievement and at the same time ensure that our conception of human rights remains relevant to the world around us."^330

The situation that has evolved over the last years is definitely a new and challenging one. Consequently, the ability of the state to internationally exercise power and control and regulate situations where necessary, has been questioned repeatedly.\(^331\) However, it has to be examined whether the holistic provision and guarantee of human rights for each individual is fully and appropriately covered by the current international human rights law.

In this context, the following chapters will look at possible ways of how a state itself might be held accountable for human rights violations, committed by non-state actors or state-owned enterprises, and in what way non-state actors internationally bear responsibility for their actions concerning human rights.

**B. State responsibility for human rights violations committed by non-state actors**

Since international human rights treaties are conventionally concluded between states, the obligations and duties which they entail, primarily oblige states to comply with the human rights provided in those treaties. Therefore, a direct state attribution of human rights violations perpetrated by non-state actors, be it individuals or other entities, can generally not be accepted.

Nevertheless, cases exist where the state itself is held liable for certain abuses committed by non-state actors. One of the most important cases in that matter is the Velásquez-Rodríguez case, where the Inter-American Court of Human Rights decided


that “An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”

This shows that in some cases the state does not only have the obligation to comply with international human rights standards, but is equally obliged to react to human rights violations caused by others, to prevent them and thus ensure the full enjoyment of the rights determined in international human rights law.

This decision corresponds to the commentary of the OHCHR addressed earlier, stating that human rights obligations incorporate three different layers, namely respecting, protecting and fulfilling. It is obvious that the omission of actions which violate the obligations undertaken in that matter, is not sufficient, but has to be complemented by state actions for the protection, promotion and realization of human rights.

Moreover, the ICESCR and the ICERD, both treaties to which the PRC is subject, explicitly address the obligations of the state and describe them as more than just refraining from any state actions that could endanger the rights provided. The ICESCR states that the parties to the covenant are obliged to take steps to assure the full realization of rights “by all appropriate means”. Article 2 of the ICERD includes the duty that “Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization...” Having said this, it is not farfetched to attribute


333 Danailov, The Accountability of Non-State Actors for Human Rights Violations, 17 et seq.

334 OHCHR, International Human Rights Law.

335 ICESCR, Article 2 (1).

336 ICERD, Article 2 (1) d.
the occurrence of human rights abuses to the state itself, even though the action was not set by actors imputable to the state.

With this in mind, one can conclude that international human rights law can be violated by a state in virtue of a lack of action, set to ensure the compliance of other actors with international human rights standards. In other words, the PRC has failed to incorporate its human rights obligations on the national level in order to effectively keep companies under its jurisdiction from committing severe human rights abuses and thus, generally speaking, China has to be held accountable for the violations committed. However, to what extent the accountability of the PRC, as outlined above, can actually be applied in these particular cases, remains to be determined by a court’s judgment in each individual case.

C. State responsibility for violations committed by state-owned enterprises

The accountability of a state for acts which are internationally considered as wrongful is elucidated in the Draft Articles on Responsibility of States for Internationally Wrongful Acts, a major international instrument in the field of state accountability, elaborated by the ILC in 2001. Even though these Draft Articles are no internationally binding treaty, they partly constitute customary international law and are furthermore an important document whose value mustn’t be underestimated and has been recognized by the GA\(^{337}\) as well as the ICJ\(^{338}\).

According to Article 1 of the Draft Articles, the international responsibility of a state is entailed by every internationally wrongful act of this state.\(^{339}\) This of course means that the act as such has to be imputable to the state, meaning that the state itself is actually liable for it. As pointed out in the general principles of the Draft Articles, an internationally wrongful act of a state means that the action or omission is attributable

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to the state under international law and that it constitutes a breach of an international obligation which the state has entered.  This said, the question arises as to whether acts of fully or partly state-owned enterprises, as it is the case in the earlier discussed violations, are actually attributable to the state itself.

In Chapter 2 of the Draft Articles the attribution of a conduct to the state is addressed, particularly focusing on conducts of state organs and conducts of persons or entities that exercise governmental authority. However, Article 8 additionally declares that “the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct.”

At this point, it is interesting to examine whether the conducts of fully or partly state-owned companies causing human rights violations in the cases described above, can be subsumed under this article and thus attributed directly to the state, meaning the PRC.

In this context a closer analysis of the terms “instructions”, “direction” and “control” used in Article 8 is necessary. While the interpretation of “instructions” appears to be quite clear and in fact gives little rise to uncertainty, the terms of “direction” and “control” require a more detailed consideration.

Since the responsibility of the state for actions set by non-state actors can only be assumed in specific cases and thus poses an exception to the general principle, the interpretation in this matter has to be rather narrow. In the Genocide Convention Case the ICJ stated that the mere possibility of state influence is not sufficient and that the state’s control or instructions have to be “in respect of each operation in which the

340 Ibid, Article 2.


342 Ibid.
alleged violations occurred, not generally in respect of the overall actions taken by the persons or groups of persons having committed the violations.”

Concerning the notion of control, the ICJ further decided that “effective control” of the state over the conducts has to be presented in order to give rise to the legal responsibility of the state. With regard to state-owned companies this however raises quite a problematic issue, since the effective control of the state over specific actions undertaken cannot clearly be observed and determined in most cases. The mere fact that enterprises conducting business have been established and are owned by the state cannot be seen as a sufficient basis to attribute their conducts to the state. Contrarily to the ICJ, the judgment of the Tadić case pronounced by the ICTY in 1999 predicates that the act of a group must merely be under “overall control” of the state in order to be imputable to it. With this in mind, the overall control of the state over an entity which is partly or even fully owned by it, seems arguable. Nevertheless, the ICJ clearly objected the ICTY’s opinion and does not accept the Tribunal’s perception in this matter.

It is for these reasons that the imputability of perpetrations set by state-owned companies has to be assessed individually in each particular case and cannot be attributed per se to the state itself, using the overall control argument elucidated by the ICTY.


D. Corporate Responsibility for human rights violations
After having examined the state responsibility for companies breaching international human rights law, a further investigation of the responsibility of the concerned corporations themselves seems obvious.

The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie, analyzed in his many reports that the face of corporations and enterprises has been changing a lot on the international level. A shift has been observed from the conventional status towards a new position entailing more rights and duties. Even though a \textit{de jure} inclusion of enterprises into the full dimension of international human rights law has not been taking place so far, Ruggie believes that a change of great significance will inevitably occur in the following years, integrating enterprises into the international legal system.\textsuperscript{348}

Subsequently, it remains to take a look at the existing legal framework on the international level and the question whether it provides for a legal basis of corporate accountability for human rights abuses.

I. Customary Law
According to Article 38 of the Statute of the International Court of Justice customary law is defined as \textit{“a general practice accepted as law”}.\textsuperscript{349} This definition implies two elements of which both are required, in order to create a new binding law. The first of those elements is “state practice”, meaning \textit{“the practice of states in relation to each other, or in relation to other recognized international actors, such as international organizations.”}\textsuperscript{350} The second element is the state’s belief that such a practice exercised


\textsuperscript{349} UN, Statute of the International Court of Justice, 18 April 1946, Article 38.

by it, is legally obligatory, meaning that the state is convinced that it is legally bound to behave in a certain way.\textsuperscript{351} This conviction is commonly referred to as “opinio juris”.

Due to the diverse national regulations concerning corporate responsibility, it is quite hard to clearly notice an international practice in the direction of holding corporations accountable for their actions, particularly with regard to human rights. Therefore, a uniform and consistent state practice creating internationally binding obligations for enterprises under customary international law has not been observed up to now, not to mention the required conviction of the state to be internationally bound in this matter. It is for these reasons that no customary law relevant to the addressed issue exists, clearly highlighting the lack of effective international accountability mechanisms for corporations.\textsuperscript{352}

\textbf{II. Treaty Law}

A further issue which must be looked at, is whether international treaty law poses a basis for the corporate responsibility to respect human rights and consequently whether it creates a foundation for corporate accountability.

As a general rule, responsibilities imposed by international human rights instruments primarily address states as main actors and only indirectly may create responsibilities for companies. However, it is argued that treaties do impose legal responsibilities directly on corporations and other actors to the same extent as on states, but merely do not provide for any mechanism to ensure corporate accountability. Furthermore, the content of human rights treaties also includes the state’s duty to ensure the full enjoyment of the rights provided in respect of other actors involved. This expression does leave room for interpretation and could lead to an extension of the obligations to all actors concerned, including corporations.\textsuperscript{353}


\textsuperscript{353} Ibid, 12 et seq.
However, the general comment No. 31 of the HRC points out that obligations do not have direct horizontal effect and thus are only binding on state parties.\(^{354}\) Therefore, it can be summarized that neither customary international law, nor international human rights treaties explicitly address corporations as such. This relativizes their accountability and hence demonstrates that no legal instruments which directly impose clear human rights obligations on companies and other actors, currently exist in international law.

**F. The Guiding Principles on Business and Human Rights**

The "Guiding Principles on Business and Human Rights" elaborated by Professor Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises as earlier mentioned, constitute a major instrument for the process of the establishment of international corporate responsibility concerning human rights. The Guiding Principles are based on the "Protect, Respect and Remedy" framework presented to the HRC and welcomed by it in its resolution 8/7.\(^{355}\)

The framework is premised on three pillars outlined in the "General Principles" of the Guiding Principles.\(^{356}\) The first pillar reflects the states' obligation to respect, protect and fulfill human rights; the second one addresses the role of enterprises and their respect for human rights and the final pillar refers to the need of effective remedies. The Special Representative has developed the Guiding Principles in a long process including different multi-stakeholders from various continents and has further tested the Guiding Principles with different experts all around the world.\(^{357}\)

\(^{354}\) HRC, General Comment No.31, UN Doc. CCPR/C/21/Rev.1/Add.13 of 26 May 2004, para. 8.


Even though the Principles do not “per se” constitute international law obligations and thus are not binding, they entail a different value, collect existing standards and practices, and are expected to emerge to an internationally important source of soft law. The application of the Principles is outlined in the introductory "General Principles" which include all states and business enterprises, be they transnational or national.

The part addressing the “state duty to protect human rights” holds obligations for states highlighting their key role in ensuring the rights of individuals. The Guiding Principles particularly stress the obligation that all human rights abuses, including those of third parties such as corporations, lie within the responsibility of the state. Hence the state has to take effective steps to prevent and prosecute all human rights violations within its territory and jurisdiction. Additionally, the state should promote the respect for human rights in businesses by actions such as clearly defining expectations, enforcing laws or providing effective guidance to enterprises. Special emphasis is put on the protection of human rights by state-owned or controlled businesses and companies operating in conflict-affected areas.

Regarding the responsibility of corporations to respect human rights, the second pillar of the Guiding Principles addresses practices of businesses, their policies and other aspects. In general, enterprises should respect internationally recognized human rights such as the International Bill of Human Rights or fundamental ILO provisions. Enterprises are urged to stop contributing to human rights violations, directly caused by them or such that are linked to operations carried out by the concerned company. Furthermore, a business policy should be adopted at highest corporate level, including the promotion of and respect for human rights. Ruggie additionally emphasizes human rights due diligence, which may be carried out by corporations within their responsibility to respect human rights.

The mere duty to respect and protect human rights is of course not enough. In order to guarantee the effectiveness of the proposed framework consequences for human rights

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358 Ibid, 5.
violations constitute an important factor. This is why the third part of Ruggie’s Guiding Principles refers to the necessity of access to remedies for business-related human rights abuses. In particular states have to take appropriate steps to ensure effective remedy through judicial, administrative, legislative or other means including non-judicial or non-state-based grievance mechanisms. Additionally other stakeholders like the businesses themselves, initiatives or industry sectors are addressed and invited to engage in the establishment and facilitation of remedies.

I. The special character of the Ruggie Principles and their relevance for the future

Professor Ruggie’s Guiding Principles are of a special nature and follow an entirely different approach than previous proposals in this direction. Remarkably the framework has gained a broad support in a very short amount of time from different stakeholders including governments, international organizations and businesses.\footnote{Frankental, Business and human rights – towards global standards; in: Haynes/Murray/Dillard, Corporate Social Responsibility – A research handbook, New York, Routledge (2013) 222. BIB s. 221-228} Important international bodies such as the HRC, the OECD, the European Commission or the UN Global Compact have endorsed these Principles and acknowledged their relevance for corporate human rights responsibility.\footnote{Blitt, Beyond Ruggie’s Guiding Principles on Business and Human Rights - Charting an Embractive Approach to Corporate Human Rights Compliance, Revised Draft (2012). Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907778 (20.02.2013).} This wide consensus is truly unique and indicated that the principles’ legitimacy is not doubted.

The approach that Ruggie takes is quite different from the conventional concept of corporate social responsibility, since it connects the responsibility of the state and the one of corporations and sees the compliance with human rights as obligatory and not optional. Even though the Guiding Principles are not binding and thus do not constitute any hard law instrument they determine expectations towards different kinds of corporations exceptionally well and thus create a document of quality. The content provides a good normative framework and foundation for future developments in the direction of corporate accountability. The provisions included present useful
Benchmarks and pose a good premise from which good or even best practice examples can derive. 361

Furthermore, the Guiding Principles are likely to strongly influence present and future evolutions and entail new developments in the direction of corporate responsibility for human rights violations. A good demonstration for their relevance is the incorporation of the Guiding Principles into the OECD Guidelines for Multinational Enterprises in 2011. The OECD framework was specifically revised to be consistent with Ruggie’s Principles highlighting the impact that the latter has in the present and is likely to have on other future developments. 362

The main objective of the principles is obviously to hold corporations accountable for the human rights abuses committed within their sphere of influence as well as to further explicitly expand the responsibility of states concerning violations of international human rights standards, perpetrated by businesses and other entities. 363 Bearing these Guiding Principles in mind, the situation at hand in countries such as the DRC and Ethiopia would be clear. The enterprises engaged in and responsible for human rights abuses in those countries could be held accountable without any problems no matter whether they are privately owned or state-owned. Unfortunately, as mentioned before Ruggie’s Guiding Principles do not evoke any binding obligations neither for the states, nor for the addressed enterprises and consequently can only be referred to as a soft law mechanism.

Concluding, it may be summarized briefly that so far public international law does not provide an effective accounting mechanism which ensures that companies engaging in other countries and committing human rights abuses can efficiently be held accountable for their breach of international human rights standards. The mere lack of an international jurisdiction however, does not mean that corporations are under no

361 Frankental, Business and human rights, 222-226.
362 Ibid, 226.
international obligation.\textsuperscript{364} The very nature of human rights implies that every human being is entitled to these rights and that their concept is universal and applies in every context making it an obligation for corporations as well and thus can be seen as a global imperative for all companies.

Conclusion

This thesis has concentrated on the Chinese impact on Human Rights in African Development and has evaluated several aspects and implications of the Chinese involvement on the African continent. The main focus has been put on the questions of how Beijing presents itself towards Africa, how exactly the engagement becomes evident, what particular impact it has on the development and in particular on the human rights situation of African nations and what mechanisms exist that address the accountability for committed human rights abuses.

Beginning with the provision of historical and other information essential to the present topic, the definitions of “development” as well as “development cooperation” have been discussed and the significance to be attached to human rights has been set out. As a practical illustration, two case studies have formed the core of the present thesis. In an ostensive and vivid way, particular cases of engagement have been examined and their impact on two representative elements of development, namely economy and human rights, has been analyzed. Furthermore, abuses of human rights and obligations stemming from international human rights treaties have been subject to a closer scrutiny. Lastly, the responsibility for violations committed has been elucidated taking into account the various actors involved.

“China-Africa relationship is truly one of equality, friendship and mutual benefit based on the common interests.”365 This statement by China’s former Ambassador to South Africa, Liu Guijing, characterizes the relationship between China and Africa and includes some of the key elements of China’s African policy. Based on this statement the Sino-African relationship is depicted as absolutely positive and beneficial for both parties involved.

However, a closer look on China’s engagement in Africa shows that the traces left differ greatly and especially the impact on human rights appears to be rather poor, which

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deteriorates the countries’ human rights record significantly and poses great challenges to African governments and law enforcement sectors.

Most of China’s actions in Africa take place within the framework of South-South cooperation and as pointed out above claim to be mutually beneficial and to contribute to the development and growth of African nations. With the PRC’s attitude concerning human rights and the insufficient consideration of this crucial concept in its African policy it appears to be quite difficult to deal with Beijing’s course of action internationally.

The evolution of the DAC and the OECD model of development cooperation constitute an important first attempt to unite the development cooperation carried out by different states and pose a good framework to coordinate international cooperation. Nonetheless, a further development in this direction is necessary.

In order to guarantee more efficiency and global standards within bi- and multilateral cooperation it is first of all crucial to establish one universally accepted definition of development cooperation taking into account the various different cooperation models which currently exist. In this context a clear necessity for an international convention in that area is demonstrated.

A legal framework at the international level furthermore offers a viable opportunity to address essential issues within development cooperation in particular human rights and to highlight their importance for development. Such a convention would further enable the establishment of a monitoring body with the mandate to monitor human rights within international cooperation and the states’ compliance with their human rights obligations undertaken. According to the principle of naming and shaming this monitoring body could assess and analyze human rights abuses occurring due to the involvement of a partner state and publish reports comprising the results of such analyses. This practice would publicly put a certain pressure on the states involved and be a useful tool to meet the current human rights challenges in development cooperation as the example of China in Africa shows.
Even though it is not very likely that the international community will accomplish to negotiate a convention addressing all the issues above, it still may be the only way to actually take steps forward and to improve the current situation. Despite the necessity and desirability of such a development, the plausibility that the states will come to the suggested agreement any time soon is unfortunately dwindling small and realistically cannot be expected in the near future.
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