MASTER-THESIS

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„Chinese Investment in Africa and Human Rights Abuses: Is There A Way Out?“

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Introduction

Research Approach

The People’s Republic of China (PRC) is an emerging power participating actively in the global market. By 2014, it had become the second-largest economy; since the establishment of “reform and opening-up policy”\(^1\), a policy established to pursue for a freer market. The implementation of this policy welcomes both inward foreign direct investment (IFDI) and outward foreign direct investment (OFDI), which stimulate Chinese rapid economic development. The economic surplus has grown\(^2\) from USD 10 million in 1988 to USD 2.35 trillion in 2014.\(^3\) This phenomenon indicates that Chinese outward foreign direct investment (OFDI) has developed rapidly. In 12 years, the amount of overseas Chinese investment has multiplied by 40 times.\(^4\) This dramatic growth results from domestic excess productivity and funds.\(^5\) In order to support its own economic development and transport the surplus, China has encouraged the OFDI by adopting the “going out strategy”.\(^6\) While opinions vary regarding China’s international intervention, its activities in Sino-Africa are commonly perceived as problematic when it comes to human rights issues.

Africa receives a great amount of foreign aid but remains poor and undeveloped\(^7\).

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\(^1\) “Reform and Opening-up Policy” was initiated by previous chairman Deng Xiaoping. Since 1979, this policy has been pursued for readjusting the economic structure of a “socialist market economy with Chinese characteristics”.


\(^6\) The “going out” strategy is China’s current strategy to encourage outward foreign direct investment. Ibid.

\(^7\) For example, in 1990, 56.5 percent people living in sub-Saharan African existed less than USD 1.25 per day, the number in 2011 was 46.8 percent, yet the annual inflows in Africa achieves USD 133.7 billion according to a report named “Honest Accounts? The True Story of Africa’s Billion Dollar Losses” which was released in 2014 by Curtis
China has provided aid including grants, interest-free loans and concessional loans to Africa since 1956.⁸ China upholds the Five Principles of Coexistence,⁹ principles that state the importance of a mutual respect of sovereignty, mutual benefits and equality. Adherence to principles, China claims that it respects recipient countries’ right to explore their own path for development, and declares to follow the “non-interference principle” when offering foreign aid.¹⁰ This reflects China’s intolerance towards outside interference in its own domestic issues, such as the debate over Taiwan.

China has given aid to every country in Africa except for Swaziland, which never gave up diplomatic ties with Taiwan.¹¹ China insists the “one-China principle”¹² when offering aid. The principle is a notion that only the People’s Republic of China (PRC) has the right to represent China and that Taiwan is an inalienable part of PRC, it serves as a requirement for states to receive funding. Chinese official aid is described as “no-conditionality”. This is because no conditions related to human rights improvement, good governance or transparency are attached. Some African countries that have poor human rights records such as Sudan and Democratic Republic of Congo¹³, favour Chinese no-conditionality aid. Aid that is provided by the World Bank, International Monetary Fund (IMF) and Organisation for Economic Co-operation and Development (OECD), for instance, is usually granted with conditions of good governance, human rights improvements and transparency. It is hard to get conditional aid when the

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⁹ See ibid (accessed 16 August 2015).
¹¹ Bräutigam, Deborah, The Dragon’s Gift, USA, Oxford University Press, 2011, p.2
¹² This principle means that only the People’s Republic of China (PRC) posses the right to represent China, Taiwan is an inalienable part of PRC. People’s Republic of China White Paper-the One-China Principle and Taiwan Issue, 21 February 2000.
¹³ Bräutigam (2011), p.3
recipient country shows little interest in fulfilling these obligations.

Unlike Chinese official aid, Official Development Aid Assistant (ODA) is conditional. It was adopted by the Development Assistance Committee (DAC) of OECD in 1969 to standardize the measurement of the resource flows from DAC member states to developing countries.\textsuperscript{14} ODA is characterized by flows of concessional financing, with a grant element of at least 25 percent, and are provided by official sectors to promote the recipients’ economic development and public welfare.\textsuperscript{15} Chinese official aid does not share the same definition. Because firstly, China is not a member state of OECD; secondly, whether China can meet the ODA ratio standard “at least 25 percent” is questionable;\textsuperscript{16} thirdly, the government encourages Chinese enterprise to participate assistant projects, in a purpose of earning benefits, which to some extent is in counter of the ODA purpose.\textsuperscript{17} Chinese OFDI in Africa serves as a strategic tool to transport domestic surplus and support the government’s political purposes. When China stays outside of OECD mechanism, more flexible practice of foreign aid can be ensured. Nevertheless, while Chinese no-conditionality aid has been blamed for causing the circumvention of human rights and undermining the democratic process in African countries, Chinese OFDI has also faced severe condemnation because of human rights abuses.

Chinese OFDI has been criticized for resource and land-grabbing with the support of the Chinese government. Frequent human rights abuses occur when Chinese corporate employers disrespect employees’ right to life, right to health and right to work. Problems can arise when Chinese companies fail to implement environmental protection in their projects. Though the Chinese government has released several guidelines on overseas investment and corporate social responsibility, these guidelines


\textsuperscript{15} ibid

\textsuperscript{16} “Concessional loans are primarily raised by the Export-Import Bank of China (EIBC) from the market; the central government only subsidizes the interest gap arising from the difference between the concessional interest rate (usually between 2 percent to 3 percent) and the national benchmark interest rate.” Ibid.

\textsuperscript{17} ibid
are not binding.\textsuperscript{18} In China, bribes in business are frequent.\textsuperscript{19} The rule of law is somewhat neglected by Chinese entrepreneurs. Labour law system has its shortages. Therefore when Chinese employees are about to solve labour disputes, they tend to ignore employers’ protests. Besides, Chinese environmental protection law is not implemented by an effective monitoring body, corporate employers may choose rather an economical than an environmentally friendly way to operate their companies. This behaviour will harm local people’s human rights and cause damages to the environment. However, this problem remains unsettled in China. When Chinese companies enter African market, they are likely to follow their experience which is learnt inside China, and disrespect local regulations in host countries. Human rights then will be violated in host countries. What’s more, when host countries have ineffective executive bodies to protect human rights, conflicts may occur and cause more violations in human rights. In additional, Chinese employers’ attitudes towards disputes are usually negative, they are not professional to communicate with victims who report human rights violations. Conflicts may be intensified by those attitudes.

In order to make connections between human rights abuses and Chinese OFDI in Africa, this thesis discusses the no-conditionality aid provided by the Chinese government. This will include discussion of the unclear definition of official aid and the derived impacts, political and economical reasons behind Chinese aid to Africa. Finally, an analysis of Chinese views on human rights will be provided. The thesis will demonstrate a connection between human rights circumvention in recipient countries when China is offering no-conditionality aid, then lead to an introduction of Chinese OFDI in Africa. It will proceed to analyse human rights abuses caused by Chinese

\begin{flushleft}{\textsuperscript{18}} “Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.” The definition can be resorted to the United Nations Industrial Development Organization, Available from http://www.unido.org/en/what-we-do/trade/csr/what-is-csr.html (accessed 17 August 2015)
\end{flushleft}
enterprises. Through an analysis of Chinese ineffective legislation with case studies, the thesis tries to figure out reasons behind those human rights violations.

The thesis is mainly based on qualitative secondary data. The secondary materials come from various sources which include books, journals, reports, government documents, thesis papers and online articles. Those sources can be categorised into three main areas which are Chinese official documents, academic publications and reports from organisations.

Firstly, Chinese official documents mainly include the White Paper of Foreign Aid and White Paper on China-Africa Economic and Trade Cooperation.

Secondly, academic publications contain books written by Debra Bräutigam and Dambisa Moyo, journals and articles written by Ian Taylor, Carol Lancaster, Patrick J Kennan, YunGuo Shu and Yonele Kong.

Thirdly, reports are mainly from non governmental organizations (NGOs) such as Global Witness, Human Rights Watch and China Labour Bulletin.

Besides, this thesis contains a few primary data from meetings and presentations; all of them are translated from Chinese to English.

Research Questions and the Structure of the Thesis

Considering the aforementioned, research questions formulated as followed:

· To what extent can human rights abuses be connected with Chinese OFDI?
  · What is the relation between Chinese official aid and Chinese OFDI?
  · Which kind of human rights has been violated by Chinese OFDI?
  · What are the reasons behind those human rights abuses?
· What are the challenges to be tackled for eliminating human rights abuses?

After gaining basic introduction into the topic, the content of this thesis is outlined
as follows. Chapter one specifically discusses the Chinese official aid, how it differs from ODA, its no-conditionality and its relation with human rights and Chinese OFDI. The second chapter introduces the state of Chinese trade, Chinese investment in Africa and the categories of investment to create a clear picture of Chinese investment. The discussion on the reasons behind direct human rights abuses, especially labor disputes and environmental rights abuses, will be covered in Chapter three. The subsequent chapter addresses a specific case in order to analyze existing problems that need to be solved. The final chapter includes recommendations and an assessment of their feasibility.
I. Chinese Official Aid

Chinese engagement in Africa has a history of being blamed on human rights abuses. Chinese government is criticized of providing no-conditionality aid that impairs human rights in recipient countries such as Sudan. Chinese OFDI is criticized of violating human rights directly. Beijing has maintained the economic and political co-operation with nations like South Sudan, Zimbabwe, and Democratic Republic of Congo, who cannot meet requests of conditionality aid because of their records of human rights violations and abusive governments. The difference between Chinese aid and conditionality aid is that the later one includes conditions of good governance, human rights improvements and transparency. Critics claim that China provides unconditional aid in exchange for extractive access\textsuperscript{20}. Compared to the west competitors, China is a latecomer to African market. Therefore, China needs to open a new market to transport domestic surplus. While western competitors maintain a closer tie with most African countries, China has to turn to notorious leaders who are refused western aid. Under the pretense of the “non-interference principle”, China cultivates a tie with states accused of poor human rights records. Among these states, China can defend its domestic human rights abuses by stating its respect of sovereignty. Nevertheless, it is doubtful that Chinese no-conditionality aid fuels local conflicts and provides funds for dictators to assist repressions. If so, Chinese aid has the responsibility of human rights violations that caused by local government, and indirectly interferes in recipient states’ internal affairs. Furthermore, to the extent to which Chinese no-conditionality aid can impact human rights in recipient countries should be discussed.

The direct human rights violation is a central issue. Chinese investment is contained in Chinese no-conditionality aid. In this case, companies become an actor to

violate human rights of employees and local people. Specific human rights categories will be analysed as well.

This part will start with an analysis on unconditioned aid, and show its connection with human rights; then proceed to the different understandings of aid, contrasting China’s view with the western view, which will help to illustrate the differences to obtain a better understanding. This part will end with an analysis of the direct impacts that are caused by Chinese investment. Each Sub-section will discuss categories of violated human rights.

1.1 Definition of China’s Official Aid

China has a long history of foreign aid since 1950s.21 From 1956, Africa has been provided Chinese aid. In 2014, China’s Information Office of the State Council issued the second White Paper on China’s foreign aid.22 This paper describes the scale of China’s aid and its trends from 2010 to 2012.23 According to the paper, China provided 89.34 billion yuan (around USD 14.4 billion) aid through grants, concessional loans and interest-free loans in a three-year period.24 Africa is the largest recipient region of China’s assistance, 51.8 percent of the aid went to African countries.

Chinese government uses unclear terms to describe official aid. In the first white paper on China’s foreign aid, China’s aid was named “foreign aid”.25 After three years, the term changed to “developing foreign assistance”.26 Though the government states

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24 ibid
25 Xiang (2012)
26 White Paper on Foreign Aid (2014)
objectives, types of financial flows and forms of China’s official aid quite clearly, an explanation of what the term “official aid” means is missing. The lack of clarity may cause confusion. The 2014 white paper on foreign aid in claimed that the objectives of China’s official aid were to “integrate the interests of the Chinese people with people of other countries, providing assistance to the best of its ability to other developing countries within the framework of South-South cooperation (SSC) to support and help other developing countries, especially the least developed countries (LDCs), to reduce poverty and improve livelihood.”

On the contrary, many argue that China’s aid projects serve its own developmental needs, especially its need for natural resources. According to Deborah Bräutigam, a top expert on China-Africa relations, between 2004 and 2011, China reached similar unprecedented deals with at least seven resource-rich African countries, with a total volume of nearly USD 14 billion. In addition, many reports allege China’s aid is leveraged by the government in exchange for diplomatic ties, market access, investment advantages and other benefits. In order to demonstrate the relation between Chinese outward foreign direct investment (OFDI) and China’s official aid, a further analysis on the objectives of China’s aid is necessary.

1.2 Political Considerations behind the Objectives of China’s aid

The 2014 White Paper on Foreign Aid states that China’s official aid is “within the framework of South-South cooperation.” This “South-South” concept is frequently stressed by the Chinese government in order to establish closer diplomatic ties with African states. As an emerging socialist country, China is under political pressure from western powers. Through emphasizing that Sino-African relation is “embedded in the

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27 A White Paper on Foreign Aid (2014)
30 Xiang (2012)
31 White Paper on Foreign Aid (2014)
long history of inter-exchange the similar historical experience”32, China intends to distinguish itself from western donors who once made African people suffer from colonialism and slavery. Providing aid to African states in a posture of the “sufferer of imperialism” can earn support and sympathizers.33

1.2.1 Five Principles of Peaceful Co-existence and Eight Principles for Economic Aid and Technical Assistance

*Five Principles of Peaceful Co-existence*

In 1955, the previous Prime Minister Zhou Enlai raised the Five Principles of Peaceful Coexistence34 at the Bandung Meeting, namely:

1. Mutual respect for sovereignty and territorial integrity,
2. Mutual non-aggression,
3. Non-interference in each other’s internal affairs,
4. Equality and mutual benefit,
5. Peaceful coexistence.

The Bandung meeting has been interpreted as an attempt to undermine US hegemony in Asia. Promoting economic and cultural co-operation between Asia and Africa is one of the Bandung meeting’s goals. In the following years, China provided aid to many countries, most of them “fellow socialists.”35 The principles represent a new era of co-operation between “third world” countries after the Cold War.

33 Kishi. Raleigh
China’s aid served more as a diplomatic tool in the early stage. In 1960s, China broke from the Soviet Union and sought new relationships with newly-established countries in Africa. At the same time, China was involved in the independence movement in Africa by supporting those countries with materials, advisors and funds. The “non-interference principle” seemed to be violated in this respect, though the Chinese government holds that China never breaches this principle, and will continue to uphold it.

*Eight Principles for Economic Aid and Technical Assistance*

In addition to the Five Principles of Peaceful Coexistence, Zhou Enlai announced the Eight Principles for Economic Aid and Technical Assistance in 1964, namely:

1. equality and mutual benefit in providing aid;
2. no conditions for any privileges;
3. imposing the lightest possible burden on recipients;
4. help the country gradually achieve self-reliance;
5. aid projects require little investment but quick results;
6. provide best-quality equipment of its own manufacture;
7. ensure the recipient country masters new techniques;
8. Chinese experts cannot enjoy special amenities. Among them, “mutual benefit”, “no condition attached”, and “self-reliance” are three principles that are worth further analysis.

* Mutual Benefit

To seek the “mutual benefit” is an objective of China’s aid though it is not mentioned in the 2014 White Paper. Mutual benefit is the critical principle of the SSC

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36 ibid
37 Ewert, 2013
mechanism, which plays an important role in China’s assistance to Africa. At the Forum on China-Africa Co-operation (FOCAC) in 2009, China and 49 African states agreed upon the Sharm El Sheikh Action Plan (Action Plan). China made commitments as follows:

1. to relieve certain debts owed by all heavily-indebted poor countries and the LDCs in Africa to the extent that they have diplomatic relations with China;
2. to increase investment and promote infrastructure development in Africa by not only providing free assistance and USD 10 billion concessional loans within the following three consecutive years but also encouraging investment from Chinese enterprises;
3. to provide RMB500 million (about USD 79.51 million) worth of medical equipment to thirty hospitals, which will be built by Chinese enterprises;
4. to increase the China-Africa Development Fund to USD 3 billion to support the expansion of investment from Chinese businesses to Africa.

One can see the relation between Chinese OFDI and China’s aid through the above agreements. The merging of firms and aid is a strategic concern of the Chinese government. China is a member state of the World Trade Organization (WTO), and opening up its market brings China plenty of foreign reserves and surplus. In order to export them outside China, and to seek a market access under fierce competition with developed countries, the Chinese government encourages Chinese OFDI. The emphasis on mutual benefit opens the African market to Chinese OFDI, though it is hard to tell who benefits more.

38 Xiang, 2012
39 “FOCAC can be understood as an imperfect multilateral undertaking knowing that bilateral relations are at the core of the relations between China and African countries both within and outside the institution.” Gazibo, Mamoudou, Mbabia, Olivier “Reordering International Affairs: the Forum on China-Africa Co-operation”, Austral: Brazilian Journal of Strategy & International Relations, Vol.1, p.51-p.74
Documents of Chinese government tend to treat African countries as a unit.\textsuperscript{41} Countries are diverse, needs of each one are surely different. While the government stresses a mutual benefit with “Africa”, it is doubtful whether China’s aid focuses on improving social welfare for people most in need.

\textbf{• No Condition Attached}

“No condition attached” plays an undoubtedly controversial part in China’s aid program in Africa. What does “no condition attached” mean? Does it mean that China’s aid is voluntary and any country can obtain this assistance? To answer those questions, one should first bear in mind that China’s aid is different than the ODA or other traditional official aid. Therefore, the “no condition attached” is a result of a comparison between China’s aid and ODA. China’s official aid has economic conditions for sure, since it stresses a mutual benefit, none of the assistance projects are voluntary. Besides, recipient countries have to disclaim Taiwan’s independence. This will be further discussed in subsequent section 1.2.2. What’s more, critics of the non-conditionality of China’s aid are well known. The condemnation focuses on the relation between circumvention of human rights and China’s aid. In order to understand the relation, an analysis will be given in section 1.5.

\textbf{• Self-Reliance}

The “no-condition attached principle” can be seen as a premise of “self-reliance”. It indicates that China’s aid should not make recipient countries be dependant on China. This principle shares a same background of the Five Principles of Peaceful Co-existence. In order to avoid the image of being an exploiter, China tries to impress African people in the posture of a collaborative partner, who brings them technology and useful experience. However, the reputation of China’s aid is marred by its ignorance of

\textsuperscript{41} Ewert, 2013
recipient countries’ human rights issues. Human rights violations that are committed by Chinese firms also damage the image of China’s aid, because many Chinese OFDI projects are sponsored by the government in the name of “foreign assistance”.

1.2.2 One-China Policy and Non-Interference Principle

• **One-China Policy**

The objective to seek diplomatic ties was predominant in the 1950s, when China was seeking a broader recognition of its authority. In 1949, the previous power, the Republic of China, was overturned by the People’s Republic of China (PRC) in the civil war. When the PRC announced its sole representation of China, the Republic of China established its regime in Taiwan. Since then, China is devoted to isolating Taiwan. In 1971, the PRC gained the permanent seat, replacing the Republic of China (Taiwan) in the United Nations. 26 African countries voted in support. Since 1956, China has provided aid to Africa, the support was earned by the aid in a great extent. Until now, China has been strict regarding the issue of Taiwan. Recipient countries of China’s aid must respect the “one-China policy”. The One-China policy states that Taiwan is an inalienable part of the PRC, and only the PRC posses the right to represent China. China’s aid has been given to every country in Africa with an exception of Swaziland, which never gave up its diplomatic ties with Taiwan. While the Chinese government claims that China will never impose political attachments with aid projects, the Taiwan issue seems to be an exception. Though compared to conditions of good governance, human rights and transparency, respecting the one-China policy is easier for some LDCs.

• **Non-Interference Principle**

Another well-known policy behind China’s aid is the “non-interference principle”.

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The non-interference principle means that countries should respect each other’s sovereignty, and that any intervention of one country’s internal affair is not allowed. This “non-interference” has historic origins. China has a long semi-colonial and semi-feudal history. During that period of time, China suffered from imperialist invasions, the people failed to make their own decisions to explore a developmental path when they were under suppression of imperialism. Therefore, when the PRC announced a liberation from “foreign forces” in mainland China in 1949, Chinese people realized that they finally could decide a developmental way without intervention. This history brings a sensitive attitude towards foreign interventions. The one-China policy shares the same base of the non-interference principle. The PRC government regards Taiwan as one province of China; as a result, the Taiwan issue is China’s internal affair. The recognition of Taiwan as a country breaches both the one-China policy and the non-interference principle. Taking Swaziland as an example, its denial of one-China can be seen as an intervention to China’s internal affairs; thus, policies behind China’s aid are consistent. In addition to the long semi-colonial and semi-feudal history, previous Chinese leaders learnt a lesson from the dissolution of Soviet Union. The previous premier Zhou Enlai expressed his ideas related to this issue. He believed that the failure of Soviet Union resulted from the central government’s excessive intervention. “The society of each state was various. Each state should make its own decisions to develop. However, the Supreme Committee promoted policies without a consideration of practical situation in each member state, the guidance from the central government was more like an intervention of member states’ internal affairs. Member states thereby lost their independence on implementing appropriate policies for their development.”44 The Chinese government claims that China is exploring a “Road of Socialism with Chinese Characteristics”45, which means the policy making is based on Chinese society and experience from previous economic reforms. This concept

44 Zhao, Jianwen, “Zhou Enlai’s Theory on Non-Interference” Journal of Zhengzhou University, Vol 31, No.2
45 Li, Gucheng, A Glossary of Political Terms of the People's Republic of China, 1995
somewhat can be used as an excuse when the government faces criticisms. For example, China is often blamed for its poor human rights record. The government usually claims that China has its own social characteristics and views of human rights, and the west should stop attacking China’s human rights situation. Because China’s human rights situation is China’s internal affair, no one should intervene. It is obvious that the non-interference principle is bilateral. It requires China to respect other states’ sovereignty, and China’s internal affairs are kept untouchable. Nevertheless, it is debatable whether China really follows this principle in a globalized world. For instance, China has sent about 2,000 peace keepers assigned to seven United Nations peace keeping missions.46

1.3 China’s View of Human Rights

China’s concept of human rights may be known with its “privilege of collective rights and socio-economic rights”, and it has remained consistent over time.47 Individual rights are valued more than before, though they do not lie at the heart of Chinese values. Chinese official aid reflects this theory. Compared to Western donors, China prefers to finance projects which can meet the basic needs of the whole community. Promoting good governance and human rights by establishing protective legal system emphasizes individual’s value to the whole community, whereas focusing on satisfying the fundamental and developmental needs highlights the value of the whole community.

Despite the fact that China regards itself as a communist country, and although the planned market has changed to a freer one, it still values collective rights over individual ones, with emphasis placed on socio-economic rights rather than civil and

political rights. When the Chinese government faces criticism regarding human rights abuses, it can counter with the fact that China has lifted 600 million people out of poverty from 1981 to 2004, accounting for some 75 percent of the poverty reduction in the developing world.\textsuperscript{48} The government believes that without the basis of a state leading economy, and a centralized power to collect the whole country’s resources and allocate them in different fields, poverty reduction may not be this successful. Before the beginning of establishing Reform and Open-Up Policy in 1980s, former President Deng Xiaoping raised a theory of “common prosperity”, but the premise was “allowing some people to get rich first”. During the Reform and Open-up period, the freer market, in which the government retained control over essential fields like resource resulted in an economic boom for China. Some bad outcomes were brought as well, which caused a shift within Chinese society.\textsuperscript{49} Since the “allowing some people to get rich first” policy has brought an imbalance to the whole society, the gap between the rich and the poor, the rural areas and the urban areas was widened.

For those people who have been lifted out of poverty, their concerns of human rights changed. They began to figure out how to enjoy human rights such as civil and political rights. This change made a development of the civil society. However, the change has not happened in an official level, Chinese government still avoids a development of civil and political rights. Because China is still a developing country, the government insists that without an accomplishment of an advanced socioeconomic foundation, it is too early to fulfill the civil and political rights of a population of 1.5 billion people.\textsuperscript{50} China’s aid to Africa in a great extent illustrates this concept. Because China perceives socioeconomic rights as a priority when it establishes foreign policies,


it strives to build a cooperative relationship that will reduce poverty and bring an economic boom to the recipient country. As mentioned above, taking account of the fundamental needs of a community is privileged. One may argue that if a foreign country like China can decide what kinds of rights are the most important for an African country, the answer is simple. China believes only African people themselves can decide their future. This is directly related to the non-interference policy, which will be explained later. Although the government of a recipient country may be a dictatorship, China may still finance projects in that country.

1.4 A Comparison with Official Development Assistance

China’s aid tries to avoid a label of ODA, which can leave room for more flexible aid practices. This concept also paves the way for the government to raise “mutual benefit”.51

A relatively small portion of the aid shares similar characteristics with “official development assistance” (ODA), such as humanitarian assistance, development grants, social welfare programmes, and food aid.52 ODA, which is recognized as a major type of foreign assistance internationally, is characterized by the Organization for Economic Co-operation as “flows of concessional financing, with a grant element of at least 25 percent, and are provided by official sectors to promote the recipients’ economic development and public welfare.”53 Chinese aid covers mostly government-sponsored investment. This type of assistance cannot be recognized as ODA. The second-largest flows of funds named concessional loans, which are raised by the Export-Import Bank of China (EIBC),54 differ from ODA as well. The central government only subsidizes

51 ibid
52 Lum, Fischer, Gomez-Granger, Leland (2009)
53 ibid
54 EIBC is a policy bank founded in 1994 and owned by the Chinese government, the EIBC is under the direct administration of the State Council. “Notice of the General Office of the Ministry of Commerce on Adjusting the Division of Work Functions in Connection with the Administration of China Foreign Aid Projects”, the General
the gap between the concessional interest rate and the benchmark interest rate,⁵⁵ which is usually between two to three percent. Whether this subsidy can meet the ODA ratio standard is debatable. For example, if the Chinese government provides USD 100 million in concessional loans with an interest rate of 2 percent, the subsidy should be USD 20 thousand. However, according to ODA standards, the subsidy should be over USD 25 thousand. Thus, it is hard to include all concessional loans provided by China into ODA’s category. Besides, China provides military assistance and aid including commercial purposes to benefit Chinese private sectors.⁵⁶ Those forms of Chinese official aid cannot be reported as ODA.

1.5 Types and Implementing Agencies of China’s Official Aid

• Types of China’s Official Aid

China’s official aid contains eight types of assistance, they are: “complete projects, goods and materials, technical cooperation, human resource development cooperation, medical teams, emergency humanitarian aid, debt relief, and an overseas volunteer program.”⁵⁷ Grants, interest-free loans and concessional loans are three financial mechanisms of official aid; the former two are allocated within the national budget and the latter one is raised by the EIBC.⁵⁸ Concessional loans refer to “the medium- or long-term, low-interest credit basically targeted to profitable projects for the aided states aligned with the purpose of stimulating the export of Chinese mechanical and electrical products.”⁵⁹

Office of the MOFCOM, 5 March 2007
⁵⁵ China’s Foreign Aid (White Paper), 2011
⁵⁷ ibid
⁵⁸ Xiang (2012)
Assistant projects are diverse, based on different types of financial sources. There are precise explanations in the white paper on foreign aid. “Grants are mainly offered to help recipient countries build small or medium-sized social welfare projects, and to fund human resources development cooperation, technical cooperation, material assistance and emergency humanitarian aid. Interest-free loans are mainly used to help recipient countries construct public facilities and launch projects to improve people's livelihood. Concessional loans are mainly used to help recipient countries undertake manufacturing projects and large and medium-sized infrastructure projects with economic and social benefits, or for the supply of complete plants, machinery and electronic products.”60

• *Implementing Agencies*

The Ministry of Commerce (MOFCOM) is the lead agency to: “draw up the foreign aid plan, map out and implement foreign aid policy and programs, update the pattern of foreign aid, determine aid programs and organize implementation, and manage Chinese government funds for foreign aid.” 61 The Ministry of Finance (MOF) administers the foreign aid fund by drawing up the foreign aid budget and managing final accounts. It also takes charge of the administration of Chinese donations to other states. 62 The EIBC is responsible for accepting and reviewing loan applications, signing relevant agreements, issuing the loans, and supervising post-lending and repayment processes. 63

1.6 No-Conditionality Aid

After introducing the basic information of China’s official aid, its relation with

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61 General Office of the MOFCOM (2007)
62 ibid
63 Xiang (2012)
Chinese investment and the difference with ODA, one can now move to the analysis of no-conditionality.

In previous part, economic conditions and one-China policy have been mentioned to question whether China’s aid is unconditioned. According to the Provisions of Export-Import Bank of the People’s Republic of China on Post-Credit Management of Concessional Loans to Foreign Countries, interest-free loans are granted upon economic conditions of developing countries. Concessional loans also have requirements on choosing recipients, they are:

1. The recipient must have a stable political status, relatively strong economy, and the ability to repay.
2. Mutual approval by China’s government and the aided country’s government.
3. Profitable projects, a borrower with good credit, and a guarantor with the ability to repay.
4. The amount of Chinese RMB borrowed is generally no less than an amount equivalent to USD 2 million
5. Materials, techniques, and services purchased or imported from China are in general not less than 50 percent of the total amount of the loans.

Aid is not free, especially when China requires that it be granted for a mutual benefit. The conditions which are not attached to Chinese official aid share similarities with the conditions attached to the ODA and other traditional aid. The no-conditionality of China’s official aid means no conditions of human rights, good governance and transparency.

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64 Provisions of Export-Import Bank of the People’s Republic of China on Post-Credit Management of Concessional Loans to Foreign Countries, EIBC, 31 October 2000

65 ibid
The major criticism directed against China is that it provides unconditional aid to pariah states or states with bad human rights records, and that this behaviour may harm human rights improvements in recipient countries. Chinese authority insists on upholding the “non-interference principle” and emphasizes the importance of sovereignty. It states that China will never interfere other countries’ internal affairs as well as human rights issues. However, several researches show that Chinese unconditional aid increases state violence against civilians. In the working paper named Chinese Aid and Africa’s Pariah States, researchers compare Chinese aid and ODA flows across 48 countries in Africa during 2000 to 2011 by extracting violent events. Events involve organized, armed participants and attacks of civilians with a combination of annual GDP, aid totals and population counts. Researchers get to a conclusion that Chinese aid “will lead to an increase in instances of violence against civilians by the state”. Since armed groups like militias have a strong presence across Africa, and they are found to be supported by political elites, Chinese unconditional aid increases their ability to repress domestic opposition and civilians. Though no statistics can prove that China chooses autocratic states to send aid, nations that receive increasing levels of Chinese aid may stagnate in a human rights progress and democratizing.

Kennan raises a similar opinion on this issue; he further discusses effects of funds brought through Chinese investment. Chinese investment is one actor to implement Chinese no-conditionality aid; it is thereby meaningful to discuss Chinese investment and its risk of increasing human rights abuses. “Its (Chinese) investments amount to what I will call unconditioned wealth, which creates the risk that the investments will cause harms rather than improve the lives of people without conditions related to human rights will lead to human rights abuses.”

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66 Kish. Raleigh
67 ibid
68 ibid
69 Kennan, J. Patrick. Curse or Cure – China, Africa, and the Effects of Unconditioned Wealth, Berkeley Journal of
Kennan further proposes effects of unconditioned wealth brought by Chinese investment from two aspects. One is from governance effects and the other is from management effects. He first points out that without conditions of good governance, the political power will be retained as long as possible by politicians in order to maintain their access to wealth. Second, unconditioned wealth may reduce the dependence on tax and revenues, and as a result, politicians may begin to pay less attention to the requests of citizens. Finally he assumes that government jobs will increase beyond an optimal level when politicians can distribute wealth however they wish, and by doing this, politicians are more likely to be reelected. This model of policies is built based on the unconditioned wealth. Benefits will be reaped by elites while the poorest remain at the same situation. Contradictory to some arguments indicating that African leaders know the primary need of the people, Kennan believes unconditioned wealth will lead politicians to sell resources too soon or make poor investment decisions.

So can one make a conclusion that conditional aid is much better while the unconditional aid should be blamed of impairing human rights? The answer is not so simple. Conditions fail when they are favoured only in a short period by the government for gaining conditionality aid. The efforts of reforming policies have to be implemented sustainably. However, poor countries are usually short of consistent ability to enact the reform.

Other critics point out that conditional aid causes more harm than it fixes due to the fact that people in the most need of development often live under autocracies. The poorest are made to suffer when aid is cut off. Some argue that it is too soon to

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request governments to make progress in human rights, transparency and democracy. Dambisa Moyo, a Global economist and author who analyzes the macroeconomy and international affairs, points out that African countries need to improve their economies first, and outstanding leaders are needed for development, which means that compared to the democratic environment, a relative centralized power can collect resources and proceed a consistent development. She particularly mentioned China’s methods of providing aid, and encouraged African countries to build partnerships with it. Khan demonstrates a similar situation in Eastern Asia. The early period of growth was accompanied by corruption, the rule of law was far from satisfactory and “accountability was often far removed from the democratic ideal.”

Chinese no-conditionality aid increases conflicts in recipient countries, and it does not require recipient governments to improve human rights protection mechanisms. Chinese official aid may provide funds for state violence, especially violence against civilians. What’s more, China somewhat provides military assistance to recipient countries. However, it is debatable that whether Chinese no-conditionality aid harms human rights. Although Chinese official aid the wealth to countries that are lack of good governance and transparency, the government does not pick those countries in purpose. In addition, Chinese investment is sponsored by the Chinese government, and the investment is also included in aid projects. However, governments of recipient countries can fully decide where and how to use the wealth. Therefore, Chinese official aid cannot be proved to be responsible for human rights violations against civilians, though it may indirectly increase the risk of human rights abuses. Intent on obtaining access to wealth, politicians centralize power and ignore the wishes of citizens. In the end, human rights

can be marred.

More Chinese companies invest in Africa; the economic strategic interest becomes another important objective of Chinese aid. Through merging OFDI with foreign assistance, China expands its market in Africa in the purpose of exporting surplus, labour, experience of infrastructure construction, and seeking resources.
II. Chinese Outward Foreign Direct Investment in China and Human Rights Violations

The previous chapter gets to a conclusion that Chinese government provides unconditional aid that can increase recipient states’ violence against civilians. However, it cannot prove that Chinese government should be blamed of human rights violations. Because the no-conditionality aid provides funds and assistance to recipient countries, the governments are likely to obtain the wealth by maintaining their power. Therefore, they can fully decide how to use the wealth. Governments of recipient countries have limited interest to protect civilians’ human rights. The last chapter also demonstrates a relation between China official aid and Chinese OFDI. Chinese OFDI is government-sponsored, and supported by favourable policies. China claims that the Sino-African co-operation is based on a “mutual benefit”. Nevertheless, many cases of human rights abuses which are caused by Chinese OFDI have been reported.

Now questions arise: which kind of human rights has been violated by Chinese OFDI? Does Chinese government should be blamed of human rights violations because it provides support to Chinese OFDI? Is there any connection between China’s domestic legal system and overseas human rights violations? If so, to what extent the government should take the responsibility? In order to answer those questions, this chapter is about to introduce the background of Chinese OFDI first. It aims to give basic information about the scale, supportive policies, and involving industries of Chinese OFDI in Africa. It can also show China’s ideology and strategic concerns behind Chinese OFDI. Besides, this chapter will discuss why Chinese government encourages Chinese OFDI in both strategic and economic concerns. And then, the question of “which kind of human rights has been violated by OFDI” will be discussed. Furthermore, a brief introduction of China’s legal system of related human rights will be given, in order to figure out government’s responsibility.
2.1 Background of Chinese OFDI

2.1.1 Scale of Chinese OFDI

China has become the second-largest economy by 2014. China enlarges its engagement into the global market, Chinese OFDI achieved USD 0.1160 trillion overseas in the same year. It is a turning point indicating that the amount of Chinese OFDI has exceeded the inward foreign direct investment (IFDI). In 12 years, Chinese OFDI increased by 40 times. Presently, Chinese OFDI covers almost all industries containing service industry, mineral industry, wholesale trade, retail industry as well as other 15 industries locates in 156 countries and regions. According to the 2014 review published by the Ministry of Commerce, the rapid growth of Chinese overseas investment is attributed to Chinese economic reform and “going-out strategy”.

2.1.2 Chinese Economic Reform and the Going-Out Strategy

- **Chinese Economic Reform**

  In 1978, China started a programme of economic reform named “socialism with
Chinese characteristics.”82 Due to the copying of Soviet Union’s planned economy without a consideration of Chinese situation, Chinese economy was stagnated during a 20-year period from 1957 to 1977.83 The collective and planned economic system which enacted by China could harm initiatives of stakeholders. In the early of 1960s, some peasants tested the contract system in a purpose to stimulate agricultural production. Through assigning portions of collective land to each farming household, peasants’ enthusiasm as well as the production had been improved. Deng Xiaoping, the previous president of China then raised an idea of economic reform. The concept of economic reform was to adopt whatever appropriate forms in the purpose of promoting economy; at the same time, the socialism must be adhered to. In 1978, the “reform and opening-up policy” was raised to guide Chinese economic reform. At the first stage of economic reform, China was made open up for foreign investment, and entrepreneurs were allowed to start business. It was a period when Chinese state-owned enterprises (SOEs) began to develop. At the later stage, privatization was involved. China’s gross domestic product (GDP) has risen tenfold since the beginning of economic reform.84 The opening up policy has brought an obvious development of IFDI and Chinese OFDI.

The rapid growth of Chinese OFDI brings China trade surplus,85 and the surplus further increases foreign-exchange reserves in China. At the end of 2014, reserves reached USD 3.8 trillion, making it the highest record in the world.86 The domestic market is relatively saturated for plentiful Chinese enterprises. Entrepreneurs thereby invest abroad to get market access. In addition, China is in need of natural resources, a large portion of Chinese OFDI gets involved in energy industry. In order to consume

85 Wan (2011)
reserves, promote competitiveness of Chinese enterprises and obtain natural resources, the government further encourages Chinese OFDI.

• Going-Out Strategy

The “going-out strategy” is China’s current policy to encourage Chinese OFDI. This strategy was initiated in 1999 to promote Chinese OFDI abroad.\(^\text{87}\) Besides transporting surplus, consuming reserves and obtaining resources, Chinese OFDI is aiming to increase technology output as well. For instance, China has advanced experience in building express rail ways. However, the domestic market has saturated, thus China begins to provide assistant railway-construction projects in African countries.\(^\text{88}\) Chinese government also has a strategic concern of economic transition. China has been a popular market because of its low labour cost. Cheap labour price stimulates the development of manufacturing industry; China has gained a name of the “world factory”, products which are labeled “made in China” seem to be found everywhere. Nevertheless, Chinese economy is imbalanced. The reliance on manufacturing industry and exportation bring risk which can cause economic stagnation. As a result, the government encourages China’s other industries to going out with a concern of breaking economic imbalance. While Chinese investment is still at the early stage, Chinese companies are lack of experience and capacity. Plentiful cases of Human rights violations have been reported. Analysis on human rights violations caused by Chinese companies will be presented at the end of this chapter.

• Forum of China-Africa Co-operation

The Forum of China-Africa Co-operation (FOCAC) is a main political platform for Sino-African relations. FOCAC was established in 2000 with an object of promoting

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political dialogues and economic co-operation. FOCAC members include China, 50 African countries, and the commission of African Union. Ministerial Conference is the most important level of the dialogue and consultation mechanism, it is held every three year. There were five meetings which took place in Beijing (2000), Addis Ababa (2003), Beijing (2006), Sharmel Sheikh (2009) and Beijing (2012). The 2015 Ministerial Conference is about to be held in South Africa, with a highlight of implementing a post-2015 international development agenda. China and African states made a series of commitments to promote trade and investments. Chinese government also announced debt relief of African countries, infrastructure programmes and other assistant projects during each submits. In 2012, the former president Hu Jintao introduced the “new type of China-Africa strategic partnership”. This new strategy is in a purpose of strengthening China-Africa cooperation in five major areas:

1. Investment and financing
2. Assistance
3. African integration
4. Non-governmental exchanges
5. Peace and security

The government put investment as a crucial point to promote Sino-African co-operation. It is obvious that Chinese government is supporting Chinese OFDI in a strategic

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89 China in Africa, the Role of FOCAC, Institute of Developing Economics Japan External Trade Organization, Available from http://www.ide.go.jp/English/Data/Africa_file/Manualreport/cia_04.html
91 China and Africa have been engaged in the UN Millennium Development Goals (MDGs) since 2000, the same year when FOCAC was established. At the previous Ministerial Conference, China and Africa stressed that poverty reduction and sustainable development should be the focus of the new agenda. http://www.norrag.org/en/publications/norrag-news/online-version/education-and-skills-post-2015-and-the-global-go vernance-of-education-agendas-and-architecture/detail/the-face-of-the-post-2015-international-development-agenda-in-the-6th-focac-meeting.html
92 Ewert (2013)

“[t]he two sides will strengthen dialogue and exchanges in the area of human rights. They reaffirmed respect for the principle of universality of human rights and support for all countries in choosing the path of human rights development in the light of their own national conditions with the priority on the right to development, and oppose politicizing human rights issues and setting double standards.”

This action plan reiterates the non-interference principle. It further emphasizes right to development as the primary human rights instead of civil and political rights. Because this action plan was jointly issued by both Chinese government and African government, therefore, this reflection of human rights did not present only the Chinese view of human rights. At least, many African leaders hold a similar view towards human rights.

2.2 Chinese Investment in the African Perspective

Premier Li Keqiang paid a visit to four African countries including headquarters of the African Union, putting forth a framework for China-Africa cooperation to upgrade the China-Africa cooperation. The visits marked the 50th anniversary of Premier Zhou Enlai’s visit to Africa. It is regarded as an effort to further strengthen the Five Principles of Co-Existence and eight principles for China’s economic aid and technical assistance. Though frequent criticisms point out that China is leading the FOCAC with its stronger power, the platform is still described by the government as a key to

93 ibid
95 Ewert (2013)
accelerate multilateral trade between China and African countries.\textsuperscript{96} In the purpose of extending and developing its foreign aid, China has increased aid to African countries year by year.

Chinese OFDI to Africa has expanded rapidly in recent years; Africa has become an emerging destination of Chinese OFDI. In January to November 2014, Chinese enterprises made a non-financial direct investment of USD 3.5 billion in Africa, up 19 percent year on year. Investment amount differs dramatically according to different countries.\textsuperscript{97}

![Figure 1\textsuperscript{98}](image)

The chart above shows regions of Chinese OFDI. Chinese main investment destinations in Africa were South Africa, Zambia, Nigeria, Algeria, Angola and Sudan by 2012; and according to the White Paper on China-Africa Economic and Trade Cooperation, South Africa is the first choice for Chinese companies in the Sub-Saharan

\textsuperscript{96} ibid


\textsuperscript{98} ibid
area. Those host countries are all resource-rich and undeveloped, they are in a need of infrastructures. China has raised an “Angola Model” which means to exchange resource with infrastructures; it is a well known Chinese special pattern of assistance.\(^9^9\)

According to Deborah Bräutigam, a top expert on China-Africa relations, between 2004 and 2011, China reached similar unprecedented deals with at least seven resource-rich African countries, with a total volume of nearly USD 14 billion\(^1^0^0\).

More than 2,500 Chinese enterprises did business in Africa by 2014,\(^1^0^1\) and it covered industries including finance, telecommunications, energy, manufacturing and agriculture. More than 100,000 jobs have been created directly for local people.\(^1^0^2\) A pie chart below is picked from the China-Africa Economic and Trade Cooperation 2013 White Paper\(^1^0^3\). It can show the percentage of each industry.

![Figure 2](image)

According to Figure 2, mining covers 31 percent of Chinese OFDI in Africa, indicating that the focus of investment is resource access. Another main field is

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infrastructure construction, this is also a focal point of Chinese investment. As mentioned in supra chapter, Chinese government is sponsor of the constructive projects. Except for the practical need in Africa, China has an initiative to export domestic experience of infrastructure constructions. Taking the construction of express railways as an example, the mileage of Chinese express railways has achieved 11,028 kilometres by 2013, exceeding the total amount of the world’s 11,605 kilometres.\textsuperscript{104} Since the worldwide economic flop in 2008, China has speeded up the constructions in order to keep Chinese economic increase because constructive industry can consume raw materials and surplus labour. However, this simple economic pattern buried potential risk for the long term economic growth. It may cause an imbalance of Chinese economy if China puts too many efforts on developing one industry. Thus, China encourages companies in this industry to invest abroad and avoid an adherence to Chinese saturated market. The export of infrastructure construction is consistent with the going-out policy.

The White Paper states that China will further expand investment and financing cooperation with Africa, and will fulfill its commitment on the provision of USD 20 billion-worth of loans to Africa. It particularly mentions to provide assistance to small and medium-sized enterprises, which can be seen as a trend for Chinese further engagement in the business respect.

2.3 Factors Involved in Chinese OFDI

Generally speaking, state owned companies (SOEs) play a dominant role in Chinese OFDI. It is estimated that the total share of Chinese OFDI invested by SOEs accounted for 65 percent of all investments between 2003 and 2010.\textsuperscript{105} Moreover, SOEs almost take over Chinese natural resources sector because the industry is mainly


controlled by the government. Many investment projects launched by SOEs located in Sub-Saharan Africa. The government encourages SOEs to invest in extractive industry because China is in a great need of natural resources. SOEs are equipped with advanced facilities and technologies, thereby they have advantages in investing in mining sectors.

Though SOEs covered more industries at the early stage of foreign investment, more and more private companies have entered African market. It is reported that more than 2,500 companies have invested in Africa, and over 70 percent are private companies by 2014. Private companies contain various small-scale companies. Many of them are lack of regulated management, and they are more likely to disrespect human rights.

Chinese government has acknowledged of the frequent human rights violations. Therefore, institutions have established several guidelines to ask companies to follow local regulations. For example, China Chamber of Commerce of Metals Minerals and Chemicals (CCCMC) Importers and Exporters Institutions have published Chinese Guidelines for Social Responsibility in Outbound Mining Investment. However, none of the guidelines is legally binding.

Chinese enterprises these days are facing condemnations of human rights abuses. Violations mainly occur because of labor disputes and environmental pollutants. Thus, the government published two relative guidelines including environmental protection and staff management. Both of the guidelines encourage companies to meet the

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international standards. Nevertheless, non-mandatory guidelines to what extent can restrain business operations are debatable. In addition, Management Guidelines on Staff Management of Overseas Chinese-funded Enterprises stresses to establish a “harmonious labor relation” and “a favorable external atmosphere”. It focuses more on a friendly labour relation than labour rights. Employees’ human rights are not mentioned, therefore employers will not realize the importance of respecting human rights. Regarding to the environmental rights, the guidelines appeal companies to implement corporate social responsibility in order to achieve a “win-win” situation without mention local people’s environmental rights. This may result from a Chinese concept of human rights which focuses more on collective rights.

2.4 Chinese OFDI and Human Rights Violations

Many Chinese companies are reported to violate human rights in Africa. Violations occur mostly in labour disputes and environmental pollutions. In the purpose of demonstrating the relation between Chinese OFDI and human rights abuses, a brief introduction of present types of violations will be given firstly.

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109 Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.” The definition can be resorted to the United Nations Industrial Development Organization, Available from http://www.unido.org/en/what-we-do/trade/csr/what-is-csr.html (accessed 17 August 2015)

1010 MOFCOM, “Guidelines on Environmental Protection”, 4 March 2013Available from http://english.mofcom.gov.cn/article/policyrelease/Cocoa/201401/20140100453042.shtml (access at 26 July, 2015) But it also states that enterprises should “respect the religions and ethnic customs of the host country, protect workers' legitimate rights and interests”. This is an improvement for Chinese government to mention cultural rights and worker’s rights, though it is subtle to include those rights in the environmental protection guidelines.
2.4.1 Types of Violations

• **Labour Disputes**

Various Chinese companies face labour disputes in Africa. A common feature of working conditions in Chinese companies is the absence of employment contracts and positive attitudes of arbitrary. Because of the absence of contracts, labour law enforcement has been hindered even in countries with regulated labour system such as South Africa. What’s more, they have little experience either to handle collective bargaining or arbitrary. Chinese employers are more likely to keep negative attitudes towards employees’ discontent.

Another common feature is that some Chinese companies provide African employee a position of “casual worker”. In some African countries, such as Zambia, labour law is clearly defined and effective. There are regulations of minimum wage, annual leave payment, sick leave payment and other thorough protective mechanisms. However, those are based on a “permanent worker” status. Chinese employers thereby hire “casual workers” to avoid following regulations.

Chinese employers who violate labour rights also provide wage which tends to be the lowest within one industry or even lower than the minimum wage. Wages above the national average are only found in companies with strong trade unions. Such as a textile company in Nigeria and some copper mining companies in Zambia.

In addition, some employers fail to protect employees’ safety, especially those who

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112 ibid

113 ibid


are in mining sectors. According to a report released by Human Rights Watch, Chinese companies were complaint to neglect workers’ working condition under the mine shaft, not to provide protective equipment and ignore employees’ health condition. For example, workers asked for a sick leave, but Chinese manager did not take it seriously and requested them to work. Discriminations also exist in Chinese firms. Chinese employees get more benefits than local employees.\textsuperscript{117}

\textbf{Environmental Damages}

Chinese OFDI has covered a large number of resource extractive projects. Investments in the mining, oil, gas, hydropower and timber sectors generally carry high environmental risks. Chinese companies develop those projects in remote and ecologically fragile regions,\textsuperscript{118} which increase risks of environmental damages. Many of those regions are not protected by effective legal system. Besides, Chinese enterprises are thought to use lower environmental standards to gain larger business share in global market,\textsuperscript{119} and Chinese government has not committed any binding international standards of environment.\textsuperscript{120} It is more likely that Chinese employers will choose more economical way to operate projects compared to western competitors. Environmental pollutions can be caused with the absence of environmental friendly facilities. Human rights further will be violated.

\textbf{2.5 Human Rights Violations in Categories}

As mentioned above, Chinese enterprises violate human rights in Africa mainly in two aspects, labour disputes and environmental damages. It is also important to discuss which kind of human rights has been violated.

\textsuperscript{117} ibid


\textsuperscript{119} ibid

\textsuperscript{120} ibid
2.5.1 Labour Respect

Chinese employers who violate employees’ human rights, breach follow kinds of human rights in a labour respect:

• Right to work

According to the Article 23 of Universal Declaration of Human Rights, “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” However, Chinese employers fail to protect employees’ employment through providing them only “casual workers” status, which not only prevents them to fully enjoy benefits such as a higher wage, but also keeps them away from protective mechanism. Because labour laws can protect permanent workers’ rights to a great extent, but it is not the case for “casual workers”.

“Everyone, without any discrimination, has the right to equal pay for equal work.” Local employees suffer from discrimination compared to their Chinese colleagues. Chinese employers pay more to Chinese employees, and give them more benefits such as subsidies of transportation. On the contrary, local employees can barely enjoy those benefits. Besides, they are paid less than Chinese colleagues. Wages differ in different industries in various countries. Most regulations clarify a minimum wage in each industry, and local workers who work in Chinese companies tend to be paid the lowest.

• Right to health

Right to health means a wide range of factors that can help us lead a healthy life. Those factors are described as “underlying determinants of health”, which include “healthy working condition and housing.” Chinese companies violate the right to

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121 Article 23, UDHR
122 The Fact Sheet of Human Rights World Health Organization Office of the United Nations High Commissioner for
health because they fail to provide safe working condition and protective equipments. For example, Human Rights Watch released a report named “You’ll be Fired If You Refuse” to disclosure labor rights abuses done by Chinese mining company in Zambia in 2011. The report revealed that Chinese SOEs provided a danger working condition, and refused to change protective equipments when workers asked for new ones. Bad working conditions can lead to occupational diseases. In addition, Chinese employers sometimes ignore employee’s request of a sick leave, and ask for excessive working hours. Those behaviours increase risk that can threaten employees’ right to health.

* Right to life

According to the Article 3 of Universal Declaration of Human Rights (UDHR), “everyone has the right to life, liberty and security of person.” Many cases have been reported that Chinese companies failed to handle labour disputes in an appropriate way, such as negotiating with representatives of employees. When conflicts occur, the fear of protested workers can drive employers to resort to violence. A case study later in Chapter VI stated that Chinese administrators once used guns to threaten marching workers and caused injuries. Local employees’ right to life therefore can be violated when Chinese companies resort to violent means to handle collective labour disputes.

2.5.2 Environmental Respect

Human rights have interrelation with environmental protection in three main dimensions. First the environment is a pre-requisite for human rights enjoyment. For

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124 Article 3, The Universal Declaration of Human Rights (UDHR)


126 High Level Expert Meeting on the Future of Human Rights and Environment: Moving the Global Agenda
instance, a polluted environment can harm the ecosystem, and further impact residents’
health. Sometimes threaten is even fatally. In this case, a full enjoyment of human rights
cannot be satisfied. The access to information is a basic human rights listed in the
UDHR and other international instruments (e.g., Declaration on the Rights of
Indigenous People).\textsuperscript{127} It implies that residents have the right to be informed potential
dangers of a project. Besides, the participation in decision making process and access to
justice in environmental issues are essential to maintain a good environment. Thirdly,
the right to a safe, healthy and ecologically-balanced environment should be a human
right; though this remains debatable.

Chinese employers who violate employees’ human rights, breach follow kinds of
human rights in an environmental respect:

\begin{itemize}
  \item \textit{Right to adequate living standard}
\end{itemize}

Chinese investment covers extractive industry and construction projects such as
building hydropower stations. Mining sectors usually locate in remote and ecologically
fragile regions, impacts made to environment are obvious.\textsuperscript{128} Pollutions and damages of
environment are inevitable. Taking Sinopec, a giant SOEsenterprise as an example, it
has been accused of mass pollutions in the forest by prospecting oil.\textsuperscript{129} Environmental
pollutions can lead to ecological damages, which will impact the living condition. The
loss of adequate living condition can further harm the right to health of residents.
Chinese companies are transporting illegal timber from Africa as well.\textsuperscript{130} This
behaviour threatens the livelihood of the local.

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\textsuperscript{127} Mathiesen, Kay, Access to Information as A Human Rights, University of Arizona, Available from
\url{https://www.ideals.illinois.edu/bitstream/handle/2142/15236/Conf_information_as_a_Human_Right.doc.pdf?sequence=4} (accessed 22 August 2015)

\textsuperscript{128} Bossard (2008)

\textsuperscript{129} Taylor, Ian, “China’s Environmental Footprint in Africa”, 2 February 2007, Available from

\textsuperscript{130} Verbeelen, Filip, “Role of the African Timber Trade in the Creation of Conflict and Poverty-A Call for Action”
Available from \url{http://www.greenpeace.org/belgium/PageFiles/19005/timbr pov.pdf} (accessed 23 August 2015)
• Right to access to information

Chinese investment projects are lack of enough risk evaluation,\(^{131}\) and companies do not report possible harms to related administrative departments. In some cases, companies are not authorized by the Ministry of Environment while they start projects.\(^{132}\) The local communities usually are not informed about potential dangers of projects, and they cannot participate in the decision-making process before a project. Their environment is about to be polluted, however, they have no access to protect it.

• Right to adequate housing and livelihood

Some Chinese construction projects displace local communities, and their right to adequate housing. In Sudan, the EIBC invests the Merowe Dam project, two Chinese companies (China International Water and Electric Corporation, the China National Water Resources and Hydropower Engineering Corporation) are about to jointly build the dam. Yet 70,000 people from the fertile Nile Valley will be displaced to desert locations because of its 174 kilometer-long reservoir. Though the project administers promised to establish irrigation system to the resettlement sites, the poor soil cannot provide displaced farmers a source of livelihood. The project authorities promised to provide irrigation water to the resettlement sites, but the soils are so poor that this does not offer the displaced farmers a realistic source of livelihood.\(^{133}\)

Chinese OFDI brings impacts to environment and local people’s life like other countries’ investment. Poor practices implemented by overseas investment are numerous. Nevertheless, the human rights violations done by Chinese OFDI may be resulted from its negative practices inside China. Those negative practices are caused partly by deficiency of China’s domestic legal system.

\(^{131}\) Leung, Denise, “How Are China’s Overseas Investments Affecting the Environment?” 9 May 2013 Available from \(\text{http://www.wri.org/blog/2013/05/how-are-china-percentE2-percent80\_percent99s-overseas-investments-affecting-environment}\) (accessed 23 August 2015)

\(^{132}\) Sinopec has not been authorized for its oil exploration activity. Taylor (2007)

\(^{133}\) Bosshard (2008)
2.6 Deficiency of China’s Domestic Legal System

Deficiencies of China’s domestic legal system will be discussed in two aspects: labour and environment, in order to figure out Chinese government’s responsibility of human rights violations mentioned before.

2.6.1 Labour

• *Deficiencies of China’s Labour Dispute Resolution System*

The Labour Contract Law of the People’s Republic of China has been enacted since 1995, together with the Civil Procedure Law of the People’s Republic of China (1991), the Interpretation of Several Issues Concerning the Application of the Law in Labor Dispute Cases Promulgated by Supreme Court (2006), and the Labour Contract Law and Labour Dispute Mediation and Arbitration Law of the People’s Republic of China (as described “New Law”). They govern the labour issues. The New Law aims to reduce burdens of employees, they can request rights through mediation and arbitration instead of going to a court. This is seen as an improvement of settling labour disputes.\(^{134}\) Actually, before the establishment of the Labour Law, the government had already effectively enforced in 1993 with the Regulations on Handling Labour Disputes in Enterprises. Literally, the resolution of disputes is a linear process containing consultation, mediation, arbitration and litigation in a court. However, in reality, more cases are placed by the authorities on an emphasis of mediation.\(^{135}\) The rapid growth of the economy since 1970s drove the massive demand of labour; urbanization process attracted rural people to seek a fortune in various industries including constructions,

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mining and manufacturing. Those workers who travel to cities from their hometowns are named “migrant workers”; they contribute to China’s development. However, without an effective regulation to ensure their return of work, in 1990s, labour disputes dramatically increased because of low wages, overtime work, and insecurity.

Taking the insecurity in the working place as an example, in 2007, China’s centres for disease control and prevention recorded 14,296 new cases of occupational disease; about 77 percent were pneumoconiosis cases.\textsuperscript{136} This is a disease caused by inhalation of mineral dust over a long period of time. The main cause of it is the intense exposure, and it can be prevented through appropriate dust control. The Legal Daily newspaper estimated that at least one million Chinese workers are suffering from this disease\textsuperscript{137} Until now, the government does not admit the collective bargain or strike as a legal right; sick workers remain helpless while companies escape from paying the compensations.

The incredible number of illness indicates that the working place insecurity is a problematic issue, and it is neglected in some industries in China. Under insufficient supervision, other problems including low wage and excessive working hour are also common in Chinese enterprises that invest abroad. Chinese enterprises bring bad practices to Africa. Those practices stem from the deficiency of domestic laws.

The Labor Contract Law of People’s Republic of China is written as “Lao Dong He Tong Fa” in Chinese. However, the Labor Law that is implemented in African market should be written as “Lao Gong Fa” in Chinese. The difference can be understood as the distinction of the focus. The latter one pays more attention on the workers and further, a union of workers’ rights.\textsuperscript{138} However, the former one emphasizes

\begin{itemize}
\end{itemize}
a contracted employment. It means only when a contract is signed, employees’ rights are legally recognized, and their rights can be protected. On the contrary, if employees are not given contracts, their rights can be easily violated by Chinese employers. In order to giving employees benefits that are ensured by contracts, Chinese employers tend to hire temporary workers without signing a contract. What’s more, employers can escape from punishments when they violate temporary workers’ rights, because they are not protected by the labour law. This is commonplace in Africa.

The previous President Hu Jintao announced to build a Chinese Harmonious Society; facing frequent labour disputes, the government tried to introduce the mediate mechanism into dispute resolution system. This more time-saving method seems helpful for workers who are seeking legal redness for violations instead of resorting to formal litigation. (See Figure 4 below)

(Figure 4)

In the long term, companies may gain more experiences on mediation and arbitration, the atmosphere in the whole industry can exert pressures to regulate business operation along with companies invest in overseas market. But again, collective labour disputes are hardly resolved since the system is designed for individual labour disputes. In addition, no legal right is admitted for strikes and protests.

• *Labour Union and Disrespect to the Rule of Law*

In China, “independent labour organizing and independent trade unions are banned and workers do not have the legal right to strike.”¹⁴¹ China has the largest union called All-China Federation of Trade Union (ACFTU), and it is the only legal union in China, which has a membership of 280 million in 2014. “Members” do not exercise any democratic control. It retains governmental positions.¹⁴² Besides, branches of the union are compulsory in many workplaces while their roles are not to be the counterbalance with the power of entrepreneurs. Thus, they provide little help for employees to negotiate with companies. Though the Union has experienced slight reformation and it sometimes can represent for collective bargaining, the outcomes seem ineffective. Conversely, in African countries such as Zambia, labor union has strong impact, and it has effective methods to request for a better treatment. The labour legislation is advanced as well, though executive organs may be corrupted to some extent. Chinese companies have little knowledge that workers have a right to complain, they tend to cover problems up when disputes happen.

What’s more, since the legal system in China is ineffective, it is common for Chinese people to respect a “rule of man” instead of “rule of law”. Chinese people pay much attention on building relationship, which can be described in Chinese as “guan xi”. This means when someone needs a help, he or she can go to an acquaintance. Normally, the relationship serves for a mutual benefit. When next time that acquaintance needs help, he or she can ask for a return. This phenomenon still prevails in Chinese society. If there is a chance to directly request for help from someone, people will avoid the regulated process, which in their opinions, is a waste of time. When Chinese companies get used to this way of doing business, they will bring bad experience abroad.

¹⁴² Ibid
African countries normally carry on the western legal system.\textsuperscript{143} Though the legal system is somewhat ineffective, but it has a more complicated political background, and more independent media. The impact of Chinese investment will be monitored by the African society. Any behaviour that can harm workers’ rights will subsequently harm Chinese reputation, and it can trigger conflicts as well.

The ignorance of employees’ rights causes severe problem. If employers do not respect the rule of law, the business interest will make them neglect workers’ request, even if it is the basic need such as a safe working place, qualified protection facility and reasonable sick-leave. Compared to the SOEs, Chinese small-scale companies are more likely to violate employees’ rights, because they also ignore those rights inside China.

This causes a vicious circle. The disrespect to the rule of law embeds a trigger of disputes. When contradictions happen, the ignorance of communication will intensify problems, and finally leads to an uncontrolled conflict. This negative model has caused many tragedies. For example, miners had been shot dead during conflicts.\textsuperscript{144}

Employers are interest-oriented, therefore they tend to use economical way when they operate business. Employees’ rights can be harmed when employers do not pay attention to their needs. Effective labor law can reduce harm. Therefore, the core of regulating Chinese companies is to make them be aware of the rule of law.

2.6.2 Environment

China’s domestic policies have prioritized economic growth over the protection of the environment; though economic development has lifted millions out of poverty, but the result is harrowing. Heavy industry stimulated Chinese economy while the

\textsuperscript{143} Liang, Xiaojun, Chinese Official Negotiations Mindset and Practice, Institute for Security & Development Policy, December 2012

environment was damaged severely. China is currently well-known of the pollution haze and high carbon dioxide emission. The Chinese government sets laws and institutions to prevent environmental pollutions, while the outcome is unsatisfactory.\textsuperscript{145} Chinese policies encourage polluters to relocate their productions overseas such as Africa.\textsuperscript{146}

Besides, China has not adopted international standards to regulate Chinese OFDI. For instance, in 2001, OECD had established environmental guidelines in the Common Approaches to the Environment. The financing agencies committed to “benchmark projects against host country standards, against one or more relevant environmental standards and guidelines published by the World Bank Group” or other multilateral development banks.\textsuperscript{147} China is not a member of OECD, and EIBC has not signed the Common Approaches. Serving as a major fund raising agency, EIBC has responsibility to access the environmental risk in one project, but it fails to do so. Plentiful environmentally unfriendly projects have been invested by EIBC.

In addition, the Chinese government has always rejected criticism of its environmental impacts to Africa. A Foreign Ministry spokesperson stated that “China has adopted the principle of non-interference of other nations’ internal affairs in its foreign relations. China does not accept any country imposing its values, social systems and ideology upon China. Neither will China allow itself to do so to others.”\textsuperscript{148} Though the official statement held a tough stance, Chinese government is more aware to the environmental and human rights issues recently. The Ministry of Commerce cooperated with OECD on


\textsuperscript{146} Bosshard (2008)


the issue of corporate social responsibilities (CSR) in 2005. In 2008, the State-Owned Assets Supervision and Administration Commission (SASAC), which administers the enterprises owned by China’s central government, issued “instructing opinions about SOEs fulfilling social responsibility”. The SASAC urged SOEs to promote their CSR, including work safety, labour rights and environmental protection. The Ministry of Environmental Protection (MEP) released Guidelines on Environmental Protection and Cooperation, which apply to overseas investment. But it is not mandatory. However, most of the guidelines are not legally binding, Chinese enterprises do not face any repercussion for failing to implement it.

Human rights that abused by Chinese OFDI mainly cover mainly the right to life, right to health, right to work, right to adequate housing, livelihood and right to be access to information. Chinese government is partly responsible for human rights violations, because it does not implement effective legal systems inside China. Chinese companies can escape from punishments when they break the law, thus they are likely to bring this negative experience overseas. Regarding to the environmental issue, Chinese government encourages polluter to allocate their productions abroad in a strategic concern. As a result, the government has responsibilities for the overseas human rights violations which are caused by Chinese OFDI.

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149 Bosshard (2008)
150 ibid
151 Leung (2013)
III. Reasons behind Chinese OFDI’s Human Rights Violations

This part will analyze reasons behind human rights abuses that are caused by Chinese OFDI. Chinese government is partly responsible for violations, whereas there are more reasons to be discussed. People in Africa hold complex opinions towards the investment. On one side it brings a development of economy, cheap products, and infrastructures; but on the other side, improper business behaviors to a great extent harm the reputation of Chinese OFDI. Chinese companies invest a great amount of funds and put much effort in projects, they should have brought a mutual benefit. Nevertheless, failures of Chinese investment are common. What are reasons behind those failures? Why Chinese OFDI is blamed of human rights violations? This part will try to answer those two questions.

Human rights are frequently violated during labour disputes and environmental damages. Except for deficiencies of China’s legal systems which have been discussed in the supra part, there are other reasons that can cause human rights violations.

3.1 Factors Included in Abuses and Contradictions

It is helpful to first get a clue that what factors can be involved in disputes.

3.1.1 Government

When Chinese enterprises encounter problems, to search for help from the government is their first choice. Especially for those SOEs, official supports make them more dependent on the government. In domestic market, companies cultivate an idea that if they obtain a good relationship (guan xi) with local government, they can seek

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help from officials. Corruption is still common place in Chinese business. Transparency International ranked Chinese company 21st out of 22 countries, for companies bribe overseas. Chinese employers bring domestic practices abroad. Instead of analyzing overseas market and laws, they prefer to establish relationship with local government. The relative local authority to some extent is ineffective, which gives Chinese enterprises a chance to take advantage of legal loophole. For example, the police may be bribed after receiving a complaint from workers. When a legal system cannot protect civilians, violations may be intensified.

3.1.2 Enterprises

Enterprises play the main role in disputes; their negative responses towards workers’ requests and protests will lead to uncontrolled conflicts. Negative responses may result from the disrespect of the rule of law, insufficient communications and cultural differences. The Chinese culture of hard-working is not easy for local workers to accept; Chinese employers cannot easily accept leisure lifestyle vice versa.

Tackling problems is not the only task for enterprises. The key of reducing or eliminating risks is implementing effective preventive measures. But Chinese companies who cause human rights abuses usually pay little attention to complaints about safety issues; besides, an effective monitor system is absent in some companies. Those irresponsible behaviours seriously threatens employees’ right to life, right to health and right to work, and can directly trigger conflicts.

Companies’ misbehaviors exist after it as well. The avoidance of confrontation leads to a Chinese typical way of problem solving method: seeking help from someone

153 Condon (2012)
154 Emerging economic giants show high levels of corporate bribery overseas”, Transparency International (2008)
156 ibid
who has relation (guan xi) with. Usually “someone” serves as government officials, such as the police. When conflicts happen, for instance, people in charge of a company is caught as suspects, instead of defending in front of a court, they bribe the police and get released.\footnote{Okeowo, Alexis, “China, Zambia, and a Clash in a Coal Mine”, The New Yorker, 9 October 2013, Available from http://www.newyorker.com/business/currency/china-zambia-and-a-clash-in-a-coal-mine (accessed at 27. July, 2015)} If this case is covered by the media, one can imagine how bad effect will be caused in the public.

If things go on like this, neither the conflict can be subsided, nor can the reputation be improved. As a result, companies have to act positively and legally to prevent, negotiate and tackle with problems.

3.1.3 Workers

In African culture, it may be normal to not being too busy, which should be respected as a custom instead of being mistreated as an excuse of Chinese companies. Without effective protections, workers are vulnerable. They may have occupational diseases if they work in mining sector without protective equipment, which make them exposed in a dangerous working condition. They may resort to violence and get hurt if their requirements are neglected by Chinese employers. Because when two parties both undertake violent mean to solving problems, compared to well-equipped employers, workers are more easily get injured during conflicts.

On the other hand, when workers take a leave without proper reasons and delay the working process, employer’s interest will be affected. In this respect, the company should not be the only one to blame. Although in many cases, workers seem to be the victims. In some cases, Chinese staff members complain workers to sell their protective equipment for money, and when they are stopped by foremen in mining sector, they request for a new set of equipment which should be changed every six months.\footnote{Okeowo, (2013)}
Therefore, employers are afraid to sign regular contracts that are under the protection of labour laws. Instead, they hire temporary workers and pay them by day. But this behaviour has harmed the right to work of workers who are willing to fully enjoy contracted benefits. Besides, when temporary workers suffer from unfair treatments, and they cannot seek help in a legal and effective way, such as collective bargaining, they are very likely to resort to violence.

3.1.4 NGOs and International Organization

NGOs and international organizations are actively engaged in doing researches, releasing reports, participating decision-making process and increasing mutual understanding. But when it comes to Chinese situation, their effects are very limited. Many NGOs and international organizations are still regarded as anti-China forces. This situation results from the propaganda of Chinese government, and it is also affected by the working approach of NGOs as well as international organizations. Those organizations undertake investigations in order to reveal the truth behind problems, and then propose recommendations to stakeholders. NGOs and international organizations tend to contact with related companies directly, in a purpose of digging stories. However, this kind of behaviours seems aggressive to companies, because they may regard those organizations as an enemy who comes to criticize and harm their reputations in public. What is even worse, when companies show their antipathy to answer any questions related to disputes, employers lost their chance to defend. The repulsive attitudes can lead to a further misunderstanding.

Chinese NGOs also step forward to learn from problematic cases and mitigate misunderstandings. But Chinese NGOs face an embarrassment, because they are unfamiliar with local laws and lack of professional skills. NGOs are still a new concept
for Chinese. The development of Chinese civil society endures restrictions and insufficient funds, thus the progress represents more on an increasing number of NGOs instead of the practical skills and capacity. Staff members who work in NGOs have not got prepared while the market is pushing them to an international stage. The connection between Chinese NGOs is strengthening, but many Chinese NGOs are doing repetitive work, which reduces the efficiency. Chinese NGOs need a more effective and broader platform. Presently, international NGOs and organizations are expecting Chinese cooperation, Chinese NGOs can become the bridge to enhance a mutual understanding. Nevertheless, the present situation is complex and challengeable.

3.1.5 Media

Reports from media can impact the public opinion to a great extent. Exaggerate expression and unrealistic information based on some political reasons can instigate a radical emotion within the society. Grounded on a complex political context, media is used as a tool to express information in some purposes. In South Africa, the western ideology permeates into media. Reports may be influenced by a western point of view. Besides, reports that are not based on thorough investigations can sharpen the contradictions between Chinese engagement and the local people. Though it is impossible to request the media to hold a complete neutral position, a more objective stance should be held.

3.2 Reasons behind Violations

3.2.1 Cultural Misunderstanding

Cultural differences impact the employment relationship. China is known for its hard-working culture. It is very normal for a construction worker to work till evening. Sometimes if it is necessary, workers have to work in weekends. Employers take a dominant place in an employment relationship. Domestic labour disputes result from unfair termination of a contract, low payment, and intense work. Unfortunately, without effective protective mechanisms, Chinese workers are suffering from those problems while their employers have no interest to improve workers’ benefits. Although frequent labor disputes have led to some legal modifications, many Chinese companies still pay little attention to labor disputes. The gap between local workers and entrepreneurs will be widened, when there is no effective communication mechanism.

Chinese employers are used to Chinese cheap labour cost. They bear in mind that workers should work hard, otherwise they can be replaced. However, when Chinese employers enter African market, the situation is not the same. Many countries in Africa have regulated labour systems to protect employees’ rights, such as South Africa. African employees are not familiar with Chinese hard-working culture. When many workers perform unsatisfactorily, Chinese employers will think about firing those workers; however, according to the law, this cannot be a reason to terminate a contract.

3.2.2 Absence of Risk Evaluation

Chinese companies are lack of risk profile capacity. The risk profile capacity

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160 But according to the Labour Contract Law of the People’s Republic of China the working time should not be longer than eight hours. Thus even in China, many companies especially factories and construction companies refuse to follow the law.
literally means capacity that can predict potential accidents, which may influence the project. Taking the Sinopec as an example,\textsuperscript{161} if the company can evaluate the local environmental law, and wait for the authorization, the pollution could have been avoided. Also, during a project, the risk management capacity is essential as well. The definition of risk management can be understood as “a process, effected by an entity’s board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.”\textsuperscript{162} It includes the previous assessment of risk, preparations from the workers to the executive side, the implementation of due diligence and the capacity to tackle problems. Many cases have shown that Chinese enterprises do not expect risk enough, and avoid a positive attitude to negotiate with the local when disputes happen. The improper negotiate method is another possible reason to exacerbate conflicts and cause further harms; this will be discussed in the following subchapter.

3.2.3 Chinese Negotiations

The managers or executive officials of Chinese companies often have an attitude of arrogance or carelessness, even when they are in the middle of disputes. On one side, this is due to the influence of Chinese culture. On the other side, this is related to a political perspective cultivated within the Chinese system. Dr. Liang Xiaojun classifies four types of Chinese negotiators in terms of their negotiating mindsets and practices including avoiding negotiators, accommodative negotiators, persuading negotiators and

\textsuperscript{161} Taylor (2007)
problem solving negotiators. According to Liang, avoiding negotiators are confrontational and underestimate the value of negotiation, while accommodative negotiators are more cooperative but often tend to undervalue the importance of a negotiation. It is likely that many Chinese companies have a combination of these types of negotiators, whilst local negotiators and professional Chinese negotiators should be excluded from those two categories.

Negotiators who have a Chinese background will easily acquire bad habits prevalent in Chinese bargaining, so to some extent Chinese cultures cultivate those unhealthy customs. One way is to seek pleasant outcomes through providing favorable conditions (here it means to use unfair or illegal methods such as bribing). Another way, the “honour culture” which is called “mian zi” in Chinese influences the Chinese negotiation style as well. In Chinese culture, people may be admired, if they refuse some benefits in order to keep a strong faith or a good reputation. This can be seen as an honour. But this honour culture is somehow misinterpreted by the current society. The “mian zi” can be seen as a reputation. Chinese people think reputation can be bought. As a result, when they want to keep their reputation, they pay limited attention on how much they may pay. Some Chinese companies think they have enough funds, and at the negotiation table, they are often not fully prepared. Many of them may not have any thoughts about the importance of a negotiation, which may cause a careless attitude when Chinese employers attend negotiations between workers and the local government. If the problems can be solved by paying money, then it should not count as a problem. At the same time, the “mian zi” of a company is preserved because they do not regard themselves as being at the same level as their workers.

Chinese negotiations can also be different when different companies undertake them. SOEs hold enormous resources and funds, which can be seen as a support from

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163 Liang (2012)
164 Ibid
the government. At the same time, they are under supervision of the government.\textsuperscript{165} To some extent, persons in charge of those kinds of companies represent the government. Another kind of companies is the private enterprises. They are more independent, and they can select projects they want to invest. Therefore, they care more about their interests. The last kind is the self-employed entrepreneurs. They can be shopkeepers, owners of small restaurants or even members of illegal mining groups. These kinds of companies have less power but can directly influence the local impression of Chinese people. The system of each kind of company determines specific ways to negotiate.

During the early stage of Chinese investment in Africa, SOEs had more power than others.\textsuperscript{166} The officials of these companies partly stay inside of the government. Therefore, when they are picked as negotiators to solve problems, they care more about “political correctness” or the reputation of the government.\textsuperscript{167} “Political correctness” results from a bureaucratic culture.\textsuperscript{168} It means that the loyalty to the Communist Party or China should be more important than a solution to a problem. Thus, when facing accusations of human rights abuses, these negotiators tend to avoid a positive attitude, and they will firstly defend the company. This attitude is not helpful to ease the conflict. Also, local NGOs, international organizations and NGOs find it difficult to communicate with SOEs.\textsuperscript{169} Because the state-owned company has connections with the government, every action or word needs to be carefully presented. Recently, this situation has had some subtle changes. After many fail cases, these giant companies start to have a more positive role during negotiations. They gradually employ local and professional negotiators for arbitration cases, which is similar to what private companies did.

\textsuperscript{165} Chen, Jianmin. “A Discussion of Chinese SOEs, Management of State Owned Property”, 2003
\textsuperscript{167} Liang (2012)
\textsuperscript{168} ibid
Private companies have engaged more with the locals in Africa. Previously, these inexperienced employers had done little research on local legal systems, which caused fierce disputes especially in the labour aspect. Negotiators understated the seriousness of incidents and chronically put themselves as superior to the locals. A manager from a Chinese private company, who did not want to give his name, complained in a meeting held by the CCCMC. “We are here to help them develop their economy, but they blame us for mistreatment and pollution. We have difficulties as well in hiring the local workers because many of them are lazy. Our project is delayed and we have to ask them to work more and harder!” This is a typical negative way of solving problems. Perhaps workers were lazy and broke the rules. But respect for the rule of law is more important and should be put at the forefront of their consideration. Otherwise, the situation turns more heated and volatile.

Like the SOEs, though private enterprises still feel confused and thorny when facing labor disputes, they have more effective way to settle problems and prevent contradictions at the first beginning.

The last kind of negotiators can be also from the individual groups. Many of them know little of the regulations and pay insufficient attention to the law. Negotiators usually do not get prepared for the arbitration, they sometimes even do not present. They can be clarified as the accommodative negotiators, but unlikely to the SOEs and private companies, they are vulnerable to some extent.

3.2.4 Indifference of Local Community’s Culture

Africa breeds various ethnic groups, and it is influenced by western ideology. Africa also shares a close tie in culture with the west. China proposes policies that are based on a Sino-African relation. However, there are 53 countries and six regions in Africa. Countries and regions are diverse in customs, languages, religions and ethnic
groups, the political contexts are different as well. It is likely to assume that China does not distinguish each state’s need. For companies who intend to enter African market, a study of local cultural is necessary. The fact is, unfortunately, many small-scale private companies only get to know some plain information, such as geographic features, official languages and local currency. The absence of an understanding of host country’s culture may cause contradictions between Chinese companies and local community.

The isolation of Chinese employees also leads to misunderstandings. Chinese staff members usually live separately with the local community. Local people barely have chances to communicate with them. There was rumor saying that Chinese workers were prisoners once upon a time. In addition, China’s hard-working culture makes Chinese member staff enjoy relative less leisure time compared to the local. Many Chinese workers who are transported from China normally gain a low level of education. English is a major barrier for them to communicate with local workers, misunderstanding thereby accumulates. Employers treat local workers based on stereotypes, they pay little effort to understand local culture, and employment relationship can be distant in a long term. On the contrary, Chinese companies make efforts to build friendly relation with central government, while following local customs is more effective. Misunderstanding buries hidden dangers which can cause contradictions.

3.2.5 Lack of Professional Approach of CSR

Chinese companies have been accused of not implementing CSR. In order to encourage enterprises to implement CSR, recently, Chinese government released guidelines on CSR for Chinese international contractors and environmental protections of investment. In 2014, the *Guidelines for Social Responsibility in Outbound Mining*
Investment was released by the CCCMC. All of them are not legally binding, and precise guidance is missing in guidelines. Companies with little experience in this aspect have to seek their own ways to implement the CSR, whereas the methods that they undertake might be inappropriate. Reasons are various. First, enterprises fail to identify the need of local community, the project of CSR is unpractical; second, many companies have a wrong concept of CSR. Instead of creating good for the local community, they perform CSR mainly in a purpose to build a good reputation. And because companies are driven by business interests, it is hard to request them implement CSR in a positive attitude. Third, many projects are facing problems with insufficient maintenance; qualified member staff are too few to provide support. Holding a careless attitude to implement the CSR may lead to an opposite outcome. What is even worse, it can lead to unexpected human rights abuses.

3.2.6 Lack of a Common Platform to Tackle with Disputes

Chinese companies suffer from a lack of a positive attitude towards criticism. They may pay a lot of money to advertise companies but not realize the importance of communications. If companies lack the necessary information and knowledge to speak with locals, why don’t they seek help from a local NGO or an international NGO? This may result from their misconceptions of NGOs. The Chinese government strictly monitors local NGOs in China, especially those who receive foreign funds and are actively engaged with human rights issues. Also, international NGOs and organizations can be easily tagged as "anti-China" forces. This propaganda makes enterprises respond negatively when NGOs are willing to help. The negative attitude of many Chinese companies results in a refusal to amend when disputes happen. Besides, Chinese

171 Huang (2015)
employers tend to keep silence when disputes occur. They are conservative to express their opinions through media. This is also a reason why the media coverage of conflicts often shows overwhelming oppositions from victims.

Meanwhile, some SOEs care about the “political correctness” because they are under governmental supervision. For some small scale companies, international standards such as the Extractive Industries Transparency Initiatives (EITI) stay out of their consideration,\textsuperscript{172} and an international communicative platform sounds meaningless to them. Their concentration is earning money, even when contradictions occur.

Obtaining a great amount of funds and resources, major companies can afford to invite professional negotiators to mediate between stakeholders, whilst small scale companies need support in a cheaper but still effective way. Organizations that fight for the public good can be a good choice for them, such as NGOs.

\textsuperscript{172} EITI is “a global Standard to promote open and accountable management of natural resources.” “What is the EITI?”, EITI Available from https://eiti.org/eiti (accessed 18 July 2015)
IV. Case Study

This chapter is about to provide a case study, in order to better demonstrate the relation between Chinese OFDI and human rights violations. This case was selected because it represents common characteristics of many Chinese companies, especially the typical responses taken, when locals show discontent. It also shows the outcome when a company disregards the laws pertaining to human rights, but instead relies on the underhanded relationship with the local government.

This chapter contains an introduction about the Collum Coal Mine riots, and the reasons behind the contradiction. This section will also contain opinions on what should have been done during the conflict; and will conclude with a review of subsequent developments within the mine sector.

4.1 Introduction about the Case

In August 2012, twelve thousand Zambian workers gathered outside of the Collum Coal Mine. They protested for better treatment in the work place. Angry workers voiced their discontent over their low pay and unsafe working conditions and marched into the mine shaft. Unable to effectively communicate, they took out their grievances by beating up a Chinese foreman, and continued to the top of a steep hill, which was connected to a tunnel. After unlocking a one-ton trolley, they pushed it down the mountain, which resulted in one death and two injuries. None of the top officials of the Collum Coal Mine showed up at the scene. The local police took several suspects into custody but no one faced a trial. The mine was subsequently closed and taken over by the Zambian government. Although Chinese investors asked for compensation to cover the loss, the government remained unresponsive.

4.1.1 Information of the Yangtze Jiang Enterprise Limited and Previous Disputes

The Collum Coal Mine was run by five Chinese brothers, and located in Sinazongwe, a rural province in southern Zambia. The local workers were normally uneducated and not disciplined, but under the influence of a strong labor union, they became familiar with protests for higher salaries and better conditions. The local community in Sinazongwe overall held a negative attitude towards the former government. In 2003, the Zambian government opened their markets to coal mining. Previous investors seldom saw any benefits, attributing it to a strong union of workers, the risky geographical conditions and the conspicuous problems of social security. Unlike the previous investors, the founder of the Yangtze Jiang Enterprise Limited, Xu Jianxue was used to taking on challenges that others steer clear of. He was able to obtain authorization for mining in this district. He believed a highly disciplined management team could ensure smooth operations for the company, which could help alleviate tensions with the local workers.

The Yangtze Jiang Enterprise Ltd contracted with the Zambian government to build many major government projects. In return, the Zambian government was generously compensated, establishing a close relationship between the company and top Zambian government officials. The Yangtze Jiang Enterprise had a track record of mistreatment of their workers and multiple environmental violations. The Mine Workers Union of Zambia had urged the company to address their unsafe working conditions, inadequate wages, in addition to the violent mistreatment of their workers. However, the Yangtze Jiang Enterprise, avoided meetings with union leaders and refused to invest in eco-friendly equipment, leaving a negative impression of the company. The company appeared to be driven by self-interest, with no consideration for its impact to the

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174 Okewo, 2013
175 Huang, Shan “Zambian Collum Coal”, Available from [http://3y.uu456.com/bp_2sqho24qwd4i6jo0x0ji_1.html](http://3y.uu456.com/bp_2sqho24qwd4i6jo0x0ji_1.html) (accessed 29 July 2015)
176 ibid
environment or any concerns for the exploitation of its workers. Beatings by Chinese supervisors on their workers were not uncommon, and while the supervisors got detained by the police, they were released without charges after bribing officials. This conflict between the company and its workers was only further intensified by those types of unfair "solutions." The company should be made accountable for their actions.

In 2010, eleven workers were injured by their Chinese supervisors when they shot them. Collum Mine paid the injured workers between five to eleven thousand dollars, and the charges by the government were subsequently dropped. The accumulated tension from unresolved problems resulted in this tragedy which may have been avoided if each side had a chance to peacefully communicate.

4.1.2 Chinese Response

There's a deep rooted belief held by many Chinese that African countries including Zambia rely on Chinese investment. They believe riots will harm the image of those countries and hinder them from receiving foreign assistance. This belief has impaired the relationship between Chinese investors and host countries. Consequently, many of these companies do not respect the law in their host country as they do in China, and they often refuse to participate in multilateral conversations that can be beneficial to addressing ongoing issues. Furthermore, many of these companies believe they are the victims and blame workers of being “lazy and disorderly.” According to Okeowo’s extensive report on this case, a Chinese staff member claimed “management gave workers new uniforms and helmets every six months, but miners sold their clothing to make extra cash when bosses didn’t allow them inside the mine because they were not wearing protective gear, their friends went on strike in solidarity.” Other

177 Okeowo, 2013
178 ibid
179 ibid
insubordinate behavior by the local workers included not working their entire shifts and only showing up on weekends when they could earn double their usual pay.

On October 21, 2012, the speaker of Ministry of Foreign Affairs Ma Zhaoxu stated that a Chinese manager was killed accidentally. The Chinese government continued to cooperate with the Zambian government to resolve this problem together.

4.2 Analysis

4.2.1 Violated Human Rights
The Collum Mine and local workers violated various human rights before the disputes as well as during the disputes. For the purposes of this thesis, the focus will be on human rights violations performed by Chinese investment firms.

*Right to life*

According to Article 3 of the Universal Declaration of Human Rights, “everyone has the right to life, liberty and security of person.” In 2010, Chinese supervisors of Collum Coal Mine shot and injured at least eleven workers. This was a huge threat to the workers’ life. Moreover, miners complained about the unsafe conditions in the mines. Although workers were provided with poor protective equipment, Chinese managers continuously demanded they work harder, which puts their lives in more peril. It should be noted that a number of Chinese staff members had been injured or killed during the course of frequent disputes. Their right to life has also been threatened by local workers.

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180 Article 3, The Universal Declaration of Human Rights (UDHR)
• **Right to health**

The right to health means a wide range of factors that can help us lead a healthy life. These factors are described as “underlying determinants of health”, which include “healthy working condition and housing.”\(^{181}\)

Yangtze Jiang Enterprise Limited has a long history of polluting the environment. It received several citations from the Zambia Environmental Management Agency for severe air pollution and for contaminating water sources that served nearby communities. The business operations breached the local people’s right to health by polluting the environment. In addition, workers worried about the dangerous working conditions in the mine shaft, which was the company’s responsibility.

• **Right to work**

“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”\(^{182}\) As mentioned above, workers often complained about the bad conditions of the mines run by the Yangtze Jiang Enterprise Ltd, their right to work had been breached in this respect.

“Everyone, without any discrimination, has the right to equal pay for equal work.”\(^{183}\) As the focal point of problems, Collum Mine failed to comply with Zambian labor laws to ensure workers minimum wage. According to Zambian Labour Law, the Collum Coal Mine paid its workers below the minimum wage, which was enacted in 2012. Workers should be paid at minimum 700,000 kwacha per month, and their hours should not exceed 48 hours a week. Conversely, Collum gave its workers 20,000 kwacha per day, which equates to 400,000 kwacha a month. Because of the high absent

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\(^{182}\) Article 23 (1), UDHR

\(^{183}\) Article 23 (2), UDHR
ratio among their employees, the company paid their workers daily; even so, their wages are still lower than the standard.

4.2.2 Reasons behind Tragedies

• Disrespect to the Rule of Law and Human Rights

Regardless of local regulations, Chinese enterprises especially the private companies prefer to build relationships with government officials. They believe in the importance of maintaining this relationship by providing favours, including bribes. Every time a human rights violation occurs, employees pursue their rights; while the company ignores them, and oftentimes tries to subdue these disputes through violence, which only further aggravates the situation. As pressure from employees and the local community threatens the companies’ interest, employers will seek help from government officials who they have established a relationship with. While this method highlights these companies disregard for the law and human rights, it also further intensifies an already dangerous situation.

In the Collum case, workers’ rights were oppressed and the local government was relied upon when the company faced charges of mistreatment to its workers. The company failed to follow the Zambian Labour Law to regulate reasonable working hours, safe working conditions, as well as provide a minimum wage. Notwithstanding, the protestors should not have resort to violence. According to Collum, they had attempted to assuage the situation with a promise to increase wages. The labor union was informed, who in turn informed the workers. However, the workers did not believe Collum's promise. All of these accumulated unresolved issues escalated to a large scale protest which led to a tragedy that should have been avoided.
• *Lack of Experience on Management*

The owners of Collum Mine were five Chinese brothers; the whole company was monopolized by a family and its associates. Most of the foremen were unskilled workers from China. Many of them were uneducated and had no management skills. On top of all this, there was the language barrier, which made it very difficult to communicate. At the same time, they were also using outdated methods of management, which they believed was an effective way to treat workers, regardless of the laws and worker's rights. At their own discretion, supervisors could beat up their workers when they deemed them to be disorderly. This abuse may also be a sign of the management's underlining fear towards their disgruntled employees. Protective equipments and eco-friendly investments were considered a waste of money. The driving force for the management of Collum in this venture was monetary.

• *Negative Attitude towards Request*

  Collum Administration had deficiency of experience and skills in managing a company, and they were not familiar with multilateral communications. Normally, when disputes occur, representatives from the labor union, the company and the government should meet to discuss possible solutions and acceptable outcomes for each issue. While Collum Mine did attend meetings and promised to increase workers’ wages, they did so passively. This not only further damaged company, but also created distrust among the workers. They did not believe Collum's promise to increase wages.

• *Isolation from the Local Community*

  It is a commonplace that Chinese companies place domestic staff members in areas that are protected by security, which is reasonable because in some areas, personal security is a major concern. But within the local community, this may be viewed as disrespectful and it only furthers the estrangement. Misunderstanding is a consequence of this disassociation. The language barrier only exacerbates the situation and over-reliance on the company's relationship with central government officials creates a hostile tone with the locals.
The mining districts were seen as a supporter of the former President Michael Sata; he held a critical view on Chinese investments in Zambia and had launched an anti-China campaign in public. He was elected in 2011 partly because of his opposition towards Chinese engagement. It is assumed that the Collum Case was affected by the local communities’ discontent of the central government’s welcome towards Chinese investment. Regulations within local communities play more of an important role in remote areas. However, Chinese isolation from the local culture sets itself at a disadvantage.

*Exaggerate Media Reports*

The massive reports covering the mistreatment of workers in Collum Mine made the local people have hostile attitudes towards Chinese investors and Chinese engagements. Those oppositions of Chinese OFDI supported the former candidate Michael Sata into the presidency where he subsequently enacted a reform within the mining industry.184 The Chinese embassy’s commercial counselor Chai Zhijing blamed the local media's negative coverage, which did not highlight any of the infrastructure projects by Chinese investors, such as hospitals and roads, that everyone in Zambia have benefited from. Indeed the media should take a more objective stance, but abuses which covered by the media happened undoubtedly. Chinese companies may have to reconsider the way that they operate business in Zambia, if they want to erase their negative impacts.

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4.3 Subsequence of the Incident

After the conflict, the Zambian government seized Collum Coal Mine and closed it in 2013 citing safety lapses, and all licenses were revoked.\textsuperscript{185} Suspects were released without trials. President Sata announced a new minimum wage structure to ensure workers’ rights. The previous elected president from the Patriotic Front party had flouted Chinese investment, and expressed his passion on adjusting labor laws; although he was criticized for not going far enough to change regulations.

In this year, Collum assured it would enact essential measures to improve treatment of workers. The company is about to invest USD 40 million to renovate facilities. Zambian President Edgar Lungu stated that the mine could be closed again if no improvements are enforced.

4.4 A Lesson

Zambia is a resource-rich country with a large amount of copper mine, more than 500 Chinese companies invest in this country in 2013.\textsuperscript{186} A standardized management guideline is needed after various conflicts between Chinese administrative personnel and workers. Since Chinese private companies enter the market in rapid succession, how they are regulated is the key. In 2009, the Ministry of Commerce established Guidelines of Outward Investment, but to what extent the small scale companies can follow it is doubtful, since it is not legally binding and provides no form of accountability. Small-scale private companies that are lack of experience and funds face more difficulties than the SOEs.

In this case, the Yangtze Jiang Enterprise Ltd. differs from other domestic private enterprises. It was founded in Africa, in other words, it is a “local” Chinese private company. Interestingly, this company does not have any practical experience communicating with the local people, and it tackles issues with government’s assistance. However, this assistance was unable to prevent ongoing conflicts.

Monopoly is never a smart choice for sustainable development, especially in an unfamiliar market. Collum Coal Mine is owned and run by one family who placed uneducated individuals from China in positions of responsibilities that they are not qualified for. The direct result of this arrangement was the frequent mistreatments to the workers which eventually led to a large-scale protest. Recruitment of qualified candidates can bring new ideas and skills to the company; at the same time, keeping hires local will leave the host country with more skilled workers that can only make benefits in the long run.
V. Recommendations

This part aims to raise possible solutions for each factor which is mentioned in supra part 4.1. In order to exam the feasibility, several examples will be attached and given a brief analysis. Some examples have been successfully operated, whilst some remain the ideas to be practiced.

5.1 Government

The government here includes both Chinese and the host countries. Oppositions of Chinese aid including Chinese investment attack the no-string attached policy foremost. This policy is deeply connected with the Five Principles of Peaceful Coexistence, and it takes place at the core of the Eight Principles, which is the basis of Chinese assistance including investment. In addition, the diplomatic situation remain less changeable, China still needs African support to balance western power. As a result, China will stick to the “non-interference” policy, although under the global pressure, China has provided support and sent forces to peace keeping mission. It is too further to discuss whether the “non-interference” policy should be remained, it rooted in Chinese historical background and its own political interest, and this policy is more related to the ideology instead of an one-fold appeal. Considering that, to initiate Chinese government being more actively regarding peace keeping missions and positive towards criticisms may be one solution to ease the unfriendly emotion. Additionally, China should pose as a mediator to establish a multilateral platform for concerned countries. Though at this phase, it is hard to be achieved.

The more strength needs to be put in the domestic market. The crucial point is to authorize executive body more power regarding to labor law and environmental law, together with cracking down corruption exists in the officials. To establish the respect to
the rule of law is essential to a country, a shift from “the rule of man” to “the rule of law” needs time but very urgent. In order to improve the environment and speed up an industry transformation, Chinese environmental law has revised in 2014. At the same time, civil society’s strength has been involved into the monitoring system, which means any individual or group can supervise impacts on environment with a right to sue. In addition, the CCCMC established a guideline in the mineral industry; it received support from the OECD and other organizations including NGOs. Though the guidelines are not legally binding, the publication will enhance companies’ realization of social responsibility and human rights.

By admitting the engagement of civil society and strengthen the power of law, some positive changes may occur. Thus Chinese government should encourage civil society to actively perform in order to accelerate the social transformation, which will further bring benefits to host countries.

African local governments in another way show a tougher attitude than before towards Chinese assistance including investment. There are political reasons behind, but problems brought by Chinese investment to a great extent influence the local governments’ opinion. This should be seen as a positive change because a unilateral acceptance at the end will harm African countries; the people have rights to decide their developmental way. At the same time, refusals and criticisms can improve the quality of projects; the final beneficiary will be both countries and their people. Participating actively in African intergovernmental platform such as NEPAD or African Union is new method to realize development. The increase of power will balance China, and the outcome will be beneficiary to both sides.

5.2 Enterprises

Enterprises are the direct entities that can bring opportunities but also harm. It is
extremely important for them to have a full preparation which includes knowing the local laws, being adapted to and respectful of the local cultures, embedding the importance of human rights, and planning and implementing social responsibility. Companies can invite consultants to analyze the regulations in a local country and to evaluate the potential of a project. Doing this can reduce disputes. Many companies have practiced this idea, to a great extent, to reduce the potential risks. Additionally, implementation of pre-employment training within companies can make sure Chinese managers will not assault local workers and will gain enough preparation in case of problems.

Since Chinese investment comes with the idea of assistance, the final object is to benefit the local people. Moreover, a qualified socially responsible project should keep up its maintenance as China signs multiple contracts on building infrastructures. However, many of them lack guidance and qualified people to keep projects maintained in a good condition, especially hospitals. A responsible and successful project can cultivate talents as well as provide working places for the local people, which are the desirable ramifications. To communicate with the community in a positive attitude will build up a friendly atmosphere, which is helpful to gain a mutual understanding. Also, companies can cooperate with NGOs to search for innovative ways for sustainable development. One successful case illustrates the feasibility of cooperation.\textsuperscript{187} Last year, a newly established NGO called the China House helped an aviation company, AVIC International to start its first major CSR (cooperation social responsibility) project in Kenya, aiming at reducing African youth’s unemployment problem and giving technical training to young people. A Good CSR does more than making donations with a portion of the profit.

If a company can (a) respect the law and follow it, (b) keep the importance of human rights in mind, and (c) break the barrier with the local community, human rights

\textsuperscript{187} Huang (2015)
violations seem to be faded out. But a problem-solving system is necessary, because risks come with every project. It is time for Chinese companies to hold a positive stance during negotiations, and rationally communicate with complainants. Blindly caring only about interest and bad compromises cannot solve disputes from the bottom.

Finally, it would be helpful if enterprises are more open when responding to media interviews. Otherwise, negative attitudes can be assumed, like that companies are careless about abuses, which could deepen the misunderstandings.

5.3 Workers

Workers are often vulnerable victims as analyzed previously. It’s hard for them to individually negotiate with a company, thus in many cases, workers get united or get in contact with the labor union. If a country, like Zambia, has a strong labor union system, or like South Africa, possesses effective and strict labor laws, then workers can regain their loss of interest. But there are some cases where workers cannot negotiate with the company in a peaceful way, and cause further conflicts. When facing unfair treatment, getting united with other workers who have suffered from the same situation and retaining a lawyer can be the options. Consulting with local organizations which can help negotiate is another choice. Contacting with the local media can also be a solution. In any case, using violations is never a considerate way to uphold one’s rights.

From a preventive aspect, if workers have the opportunity to understand Chinese culture, misunderstandings can be gradually eliminated.

5.4 NGOs and International Organization

Chinese NGOs sometimes face an embarrassment when an enterprise seeks help from them, and asks a question related to the legal process or standards in the host
country. These NGOs cannot answer it properly. In order to solve this problem, NGOs should build a qualified and professional image to companies. NGOs then can gain trust from companies, and they also have a chance to promote their abilities. Chinese OFDI might be reported in a way they do not expect. Those reports might be based on a misunderstanding of the purpose of Chinese OFDI, and can cause disapproval in the public. Chinese NGOs can communicate with enterprises, and provide information to the local media, ensure that opinions from each side can be heard. Furthermore, NGOs can build a platform to establish conversations between different stakeholders. Those methods can help to ease the intense situation.

International organizations have experience in specific fields, having periodic meetings and communications with them can promote the skills of Chinese NGOs to a more professional level. The information of Chinese OFDI brought from Chinese NGOs will help international organizations understand more about what the reality is. International standards can be better understood for Chinese enterprises if they can get involved in a conversational platform, this can help companies to amend their behaviours.

A multilateral cooperation with different stakeholders can be a great opportunity, which provides help to Chinese enterprises and the local workers. Chinese NGOs can become more skillful when they participate into the cooperation. For instance, it is feasible to set a hotline for employees to complain, necessary information can be obtained. Information can serve as a tool to discuss the labor situation with different stakeholders. It includes information from sides, employers and workers. By collecting information, Chinese employers know what the employees’ request, employees will better understand employers’ requirement as well. This whole process can reduce the labor disputes.

Chinese NGOs are pushed to the globe without a thorough preparation. However, the fast changing markets will not wait for them. Only if they understand what
responsibilities they shoulder, and try to cooperate with stakeholders, then can the change be seen. Chinese NGOs need to get knowledge of what the locals really need for development and link it with Chinese companies’ development.

5.5 Media

As a monitoring tool, the media can guide the public opinion. Freedom of expression is a fundamental human right. However, when the news has been tainted by political reasons or misunderstandings, the public can be misguided. Conflicts can be easily triggered when the irrational reports are spread under the intense situation. Indeed, Chinese investment has deficiencies and has caused human rights violations. But media coverage should still be based on the investigated truth. Some of the widely spread reports are riddled with personal assumptions and political biases, which has already led some people to strongly believe Chinese OFDI in Africa only serves as an exploiter. It is debatable that Chinese OFDI concerns only about Chinese benefits, because it does bring economic increase to Africa. Conversely, exaggerated reports show a deep misunderstanding towards Chinese OFDI.

But changes can be seen on some media platforms. "Western media has alleviated the critical attitude, and holds a more objective or even supportive view towards Chinese investment recently." A representative from China Dialogue expressed her view when this topic was discussed during an interview. China Dialogue is a Chinese NGO who works for providing a bilingual platform of news, reports and features about environmental issues in China and in the rest of the world.\(^\text{188}\) Her opinion seems to be proved in many cases. For instance, in 2013, the Guardian reported a detailed introduction of Chinese investment, by introducing a database about Chinese financial

commitments in AidData.\textsuperscript{189} It expresses an objective view on Chinese OFDI.

When western media starts to rethink about Chinese investment, Chinese media should also inspect Chinese companies in a critical stance, and avoid interpreting all criticisms as a conspiracy theory. Additionally, to close the distance with companies, Chinese media can report innovative cases that implemented by companies and NGOs as the guidance. This can make a contribution to a sustainable development.

Conclusion

This thesis outlines the background of Chinese official aid and Chinese OFDI. The discussion of ideologies and policies behind Chinese official aid in Chapter I, explains the reasons of Chinese aid’s no-conditionality.

Major policy that influences Chinese official aid is the non-interference principle. It indicates that Chinese government should avoid interfering recipients’ internal affairs; and it requires a non-interference of China’s internal affairs in a return, such as the Taiwan issue. The main ideology that has been analyzed is the Chinese view of human rights. Chinese government puts socio-economic rights as a primary concern. Therefore the aid that it provides focuses more on a mutual benefit, which does not interpret human rights as civil and political rights. There is assumption that Chinese unconditional aid undermines human rights of a civil and political dimension, good governance and transparency in African countries. This thesis proves that Chinese unconditional aid increases the state violence against civilians, but a clear link between the no-conditionality and human rights violation is absent. African governments are the ones who decide how to manage the wealth, and they may try several means to maintain their power in a purpose of obtaining wealth. Thus, they have limited interest to enhance human rights, good governance and transparency. Chinese no-conditionality aid increases the risk of human rights abuses, but it is not the main actor that directly violates human rights.

The types and financial forms of Chinese official aid are introduced in the first chapter as well. It demonstrates a connection between Chinese official aid and Chinese OFDI. Chinese OFDI gains political and monetary support from the government, and it serves as an actor that implement Chinese official aid. Besides, Chinese OFDI contains strategic concerns of the government. As a result, Chinese official aid is closely connected with Chinese OFDI.
In the purpose of further answering the first research question, the thesis then goes to clarify human rights violations into two main aspects: labour and environment. And then it specifies the kind of human rights that are violated in those aspects, which includes:

(a) the right to life; (b) the right to health; (c) the right to work; (d) the right to access to information; (e) the right to adequate living standard; and (f) the right to livelihood. The same chapter finalizes with an analysis of China’s domestic legal deficiencies in also labour aspects and environment aspect. It gets to a conclusion that Chinese government has responsibility to human rights violations that mentioned above, because it fails to regulate domestic market. Chinese companies thereby bring negative practices to Africa and cause human rights violations. In the following chapter (Chapter 3), reasons behind human rights violations except for the ineffective legal systems are discussed. Reasons include: (a) cultural misunderstanding; (b) shortages of Chinese negotiations; (c) lack of professional approach of CSR; (d) absence of risk evaluation; (e) indifference of local community’s culture and (f) lack of a common platform to tackle with disputes. These findings answer the first research question.

In Chapter IV, the thesis brings a case study in order to provide a better understanding of the previous analysis. In the final chapter, challenges and recommendations are raised to answer the second research question. The thesis tries to provide solutions in various angels, including governments, enterprises, workers, media, as well as NGOs and international organizations. There are amendments in these years, and cooperation among stakeholders increases. However, to what extent they can practice possible solutions and mitigate human rights abuses remain unclear.
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Working Paper

Abstract

As an emerging power, China actively engages in international trade with 156 countries and regions. Among numerous cooperate partners, Africa stands at a focal point because of the dilemma for receiving foreign aid but remaining undeveloped. The world holds controversial attitudes towards Chinese unconditioned aid including various investments to this resourceful continent; especially from a western view, unconditioned wealth circumvents African countries democratic process and human rights development. Meanwhile, serving as the bridge of cooperation, Chinese enterprises have been blamed on human rights abuses. This thesis will discuss the connection between Chinese investment and human rights abuses, and try to demonstrate a picture of Sino-Africa relationship for readers, in order to bring an objective discussion of advantages and disadvantages brought by Chinese investment.
Abstract Deutsch