

DISSERTATION

THE RIGHT TO DEVELOPMENT: A COLLECTIVE AFRICAN RESPONSE TO CHINA'S MODUS OPERANDI IN AFRICA?

submitted in partial fulfilment of the requirements of the degree LLM
(Human Rights and Democratisation in Africa)

by

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29 October 2010

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Dedication

I dedicate this work to my father, Dr. Cleopas Mandlakayise Khumalo.

You would have been proud of me.

Abbreviations and Acronyms

ACHPR African Charter on Human and Peoples' Rights

AfCHPR African Court on Human and Peoples' Rights

APRM African Peer Review Mechanism

AUC African Union Commission

DRD Declaration on the RTD

EU European Union

ICCPR International Convention on Civil and Political Rights

ICESCR International Convention on Economic Social and Cultural Rights

OAU Organisation of African Union

NEPAD New Partnership for Africa's Development

SAP Structural Adjustment Programme

RTD Right to Development

The Commission African Commission on Human and Peoples' Rights

The Court African Court on Human and Peoples' Rights

UN United Nations

WTO World Trade Organisation

VCLT Vienna Convention on the Law of Treaties

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THE RIGHT TO DEVELOPMENT: A COLLECTIVE AFRICAN RESPONSE TO CHINA'S *MODUS OPERANDI* IN AFRICA?

Chapter I: Introduction

I.1 Background

In the 1960's, following independence, the pan-african vision for developing the continent was envisioned to be possible through the instrumentality of the developmental state.¹ Development became the passion of African leaders and the expectation of the people.² After independence, in the 1980's, the post-independence nation state bolstered its apparatus, both structurally and ideologically³ to enable it to deliver on this mandate.⁴ Hardly two decades after independence, the African developmental state was heavily burdened with debt, failing in its developmental objectives. Once again African states found themselves at the mercy of its former colonial powers begging for financial aid.⁵ The Bretton Woods Institutions came to the rescue of Africa with aid. The aid was accompanied by political and structural conditionalities.⁶ Chief amongst

¹ A developmental state is defined as "a state that possesses the leadership capacity to bring about positive transformation in a society within a condensed period of time." F. Deyo *Political Economy of the New Asian Industrialism* (1987) Ithaca, New York: Cornell University Press cited in *Developmental Policy Review*, (2007) Vol 25. No.5 (ed. Verena Fritz and Alina Rocha Menocal 531-552, 533.

² I Shivji 'The changing development discourse in Africa' *Pambazuka Issue* 224 | 06 October 2005 accessed 8 September 2010 at <http://www.pambazuka.org/en/category/features/29728>.

³ T Mkandawire 'Thinking about developmental states in Africa' accessed on 12 October 2010 at http://www.unu.edu/ha/academic/pg_area.Mkandawire.html Mkandawire (n 2 above) 2, describes the ideological underpinning of the developmental state as "developmentalist". Such a state establishes its legitimacy on its ability to promote sustained development.

⁴ Development theorists refer to this era as "the age of developmentalism".

⁵ Shivji (n 2 above) 1.

⁶ The rationale for the Structural Adjustment Programme (SAP) is set out in a World Bank report "Accelerated development for Africa: an agenda for Africa" (1981).

these conditionalities was the restructuring of the developmental state.⁷ The nation state was compelled to undertake Structural Adjustment Programmes (SAPs) aimed at limiting state spending, reducing the size of the public service, cutting down on social benefits, liberalising its markets and privatising its state-owned entities.⁸ The SAP was premised on a minimalist view of the state. It also was predicated on a liberalised market economy model.⁹ The consequence of this was compulsory shift from the ideological and structural design of the developmental state, to that of a liberal, market-driven democracy. It is now well documented how the SAP was an ill-fitting design for the development of Africa. Available literature indicates that the results of SAP in Africa was a decline in education, health, rates of literacy, life expectancy; in effect, a decline of social indicators.¹⁰

To-date, forty years after independence, African countries are still recovering from the weakening of the capacity of nation states to deliver public and social goods directly to their citizens. The African state is weak and incapacitated to meet the demands of 21st Century contemporary challenges. Consequently, one of the major challenges that Africa faces today is how to achieve development and upliftment of their people. The current focus of efforts is on how can the state enhance its capacity to support development rather than what the “right role” of the state should be.¹¹

With this background in mind, China is presenting herself as an answer to the development predicaments of Africa. China shares a common history of subjugation with Africa.¹² At a time when China was not as economically strong as it is today, China invested heavily in relationship-

⁷ Shivji (n 1 above) describes this period as the ‘age of globalization.’ This era was characterized by a decline of “developmentalism” and the “rise of neo-liberalism.”

⁸ Economists refer to this period as “the lost decade” which marked the decline of developmentalism and the commencement of the era of neo-liberalism.

⁹ Mkandawire (n 2 above) 3.

¹⁰ Shivji (n 1 above) 3.

¹¹ *Developmental Policy Review* Vol 25 No 5 September 2007 (ed. Verena Fritz and Alina Rocha Menocal) Theme issue: Developmental states in the new millenium: concepts and challenges for a new aid agenda, *Introduction* 531.

¹² B Sautman and Y Hairong Friends and interests: China’s distinctive links with Africa in Dorothy-Grace Guerrero and Firoze Manji (eds.) *China’s new Role in Africa and the South: a search for a new perspective* (2008) Fahamu: Nairobi.

building with Africa.¹³ With an overall credit in terms of good relations, China has slowly gained presence within Africa. China presents a foreign policy that is couched in language that Africa can relate to.¹⁴ Backed by an impressive economic success record, China is able to assert itself as a vector of development for Africa. China is increasingly become a source of political and financial support for many African governments.¹⁵

However, it is difficult to ignore the fact that the concentration of China's interest in Africa appears to be countries that are rich in natural resources. Chinese stated-owned companies, and private companies, financed by the Chinese government, are aggressively making inroads into African construction and infrastructure sectors. The Chinese government is also providing development aid to African governments. On the one hand, China's inroads into Africa is seen as having the potential to be a force for change and social and economic upliftment in the continent. On the other hand, by opening Africa to China, there are fears that this may have undermine development of local populations in Africa. If China is in Africa ostensibly to further the developmental interests in Africa, the nation state has a duty to ensure that the Right to Development (RTD) is respected, protected and fulfilled within that context.

In the light of all these developments, the focus of this research is to understand nature of China's involvement with Africa; to analyse China's increasing engagement with Africa within the paradigm of the RTD; and to learn how African states are individually and particularly as a region, addressing implications of Chinese activities for the populations in Africa.

¹³ Sauttman and Hairong (n 12 above).

¹⁴ X Weizhong, Sino-African relations: new transformations and challenges in Dorothy-Grace Guerrero and Firoze Manji (eds) *China's new role in Africa and the South: a search for a new perspective* (2008) Fahamu : Nairobi.

¹⁵ Weizhong (n 14 above).

1.2 Statement of the Problem

China is an emerging superpower with a tremendous appetite for economic dominance, cultural influence, energy and mineral resources, diplomatic alliances and export markets.¹⁶ With depleting sources of raw materials at home, China is looking for natural resources to feed the demands of its domestic economy. On the other hand, Africa is a resource rich continent. China's interest in Africa is growing and spreading rapidly.

Whilst the relationships between China and Africa are negotiated bilaterally, it may be in the best interests of Africa as a continent to craft a "common position on issues of interest to the continent."¹⁷ In addition, Africa shares the common objective of accelerating "the political and socio-economic integration of the continent."¹⁸ Article 22 of the African Charter directs that States may act collectively in ensuring the exercise of the RTD in Africa.

The problem that this study addresses is therefore two-fold; first, whether the nature of activities that China is engaged in in Africa pose obstacles in the way of the enjoyment of RTD by African populations; and, second, what Africa, through the agency of the African Union (AU), is doing to ensure the exercise of the RTD within respective member states.

1.3 Research Questions

The research undertaken focused on 3 (three) main research questions:

- What is the nature of China's involvement in Africa?

¹⁶ X Weizhong, *Sino-African Relations: New transformations and challenges* in Dorothy-Grace Guerrero and Firoze Manji *China's new role in Africa and the South: A search for a new perspective* (2008) Fahamu: Cape Town, discusses a wide range of spheres of cooperation between China and Africa.

¹⁷ J Rocha in *A new frontier in the exploitation of Africa's natural resources: the emergence of China in African perspectives on China in Africa* ed. Firoze Manji and Stephen Marks Oxford : Fahamu.

¹⁸ Article 3(c) and (d) of the Constitutive Act of the African Union (2000/2001).

- What are the implications of China’s activities on the exercise of the RTD in Africa?
- How are African states and governments responding to the implications of Chinese activities in Africa at the national level, but particularly at the regional level?

I.4 Significance of Study

The subject of China in Africa has been receiving unprecedented attention in recent years. China has a long term interest in Africa because as it grows economically it will continue to need resources from Africa.¹⁹ There are not many African authors who have critically examined the implications of Chinese activities in Africa.²⁰ Non-African writers are inclined to assess how western interests will be affected by China or on castigating China for practices that have been the norm even for western capital operating in Africa.²¹

There is therefore justification for African scholars to give some thought to the implications of China in Africa from the perspectives of a diverse number of disciplines. In particular, there is need for legal scholars to begin the exercise of applying international law principles and frameworks to the practices of China in Africa and to slowly develop nuanced jurisprudence around this theme.

¹⁹ D Large As the beginning ends: China’s return to Africa *Pambazuka* Issue 282 14 December 2006 accessed at <http://pambazuka.org/en/category/comment/38852>.

²⁰ G Mohan *China in Africa: a review essay, review of African political economy* (2008) 155-1734 observes that the majority of African authors on China tend to provide a “unilateral acceptance of China’s presence” in Africa. A few notable exceptions are Ndubisi Obiorah and Ali Askouri. Also, J Rocha in *A new frontier in the exploitation of Africa’s natural resources: the emergence of China in African perspectives on China in Africa* ed. Firoze Manji and Stephen Marks Oxford Fahamu 15 says “China’s involvement in Africa is welcomed by many African states.”

²¹ Preface, Firoze Manji in *African perspectives on China in Africa* eds. Firoze Manji and Stephen Marks Oxford Fahamu.

This work is innovative attempt to consider the application of international law principles on the RTD to Chinese activities in Africa. The paper utilises the normative content of Article 22 of the African Charter, as illuminated by the African Commission on Human and People's Rights, as a framework examine the extent to which African states are ensuring the RTD in their engagements with China. In this sense, this work seeks to apply the jurisprudence on RTD to the arena of international relations. Beyond this, this study hopes to shed light on how regionalisation and international cooperation can be used as a tool to foster a regional position that will enhance the exercise of the RTD in China-Africa dealings.

1.5 Research approach and methods

In carrying out this research, the author has utilised both *positivist international law*²² and *expansive international law research approaches*.²³ The use of traditional positivist *international law approach* has been used in the examination of legal documents and treaties, the analysis of law-based issues, and in the design of *law or treaty-type solutions*. International law is a science that allows the researcher to carry out logical and rigorous approach to analysing and solving legal questions.²⁴

The use of *expansive international law approach* has been made necessary by the international dimensions that arise from the China-Africa international partnerships. A purely traditional positivist approach would limit the ability of the researcher in this study to construct practical, *policy-type solutions* to the obvious international relations challenges that arise.²⁵ Recent international law scholarship suggests that where the area of study is geared at recommendations that have an impact on international relations, the use of expansive

²² P Allot *Language, Method and nature of International Law* (1971) 45 BRIT. YB. Int'l 79.

²³ These include New Haven School, International law and International Relations (IL-IR), feminist jurisprudence and law and economics. These are international law theories considered suitable for application to international law questions in appropriate research areas.

²⁴ Allot (n 13 above) 84.

²⁵ M Finnemore et al 'Alternatives to legalisation: richer views of law and politics' (2001) 55 *International Organisation* 743 at 750.

international law approaches should be encouraged.²⁶ The complexity of the issues under examination in this study, particularly the interaction of human rights with development discourse also call for interdisciplinary approaches to be applied.²⁷

The research carried out in this study is qualitative.²⁸ Document review was carried out on secondary data derived from library and website sources, as well as African Union Commission (AUC) archives.²⁹ In addition, interviews were conducted with key respondents³⁰ The interviews³¹ were unstructured³² and were constructed around general themes relevant to the area under research and adapted in a flexible manner throughout the research period. Further, the physical presence of the researcher within the African Union enabled the use of participant observation³³ as a method of research. For a period of three (3) months³⁴ the researcher interacted and engaged with stakeholder in China-Africa relations through a process of

²⁶ A Slaughter et al *International law and international relations theory: A new generation of interdisciplinary scholarship* (1998) 92 AMJ International Law 367.

²⁷ Responses 'cannot be created and delivered in a political or historical vacuum.' Stephen K Cummings Facing Africa's Development Challenges in *Africa's development challenges and the World Bank: Hard questions, costly choices* (ed), Boulder Colombia Lynne Reinner (1988). Also, A Adedeji Development and economic growth in Africa to the year 2000: Alternative projections and policies in *Alternative future for Africa* (ed) TM Shaw Boulder Columbia Westview Press 1982 295: "Development is a complex process that has mutually reinforcing interrelations with economic factors on one hand and political, social, cultural and institutional factors on the other."

²⁸ Qualitative research produces findings not arrived at by means of statistical procedures of other means of quantification. MQ Patton *Qualitative evaluation and research methods* (3rd ed.) (2002) Thousand Oaks, CA: Sage Publication, Inc.

³⁰ Chinese and African diplomats, AU officials and civil society activists.

³¹ Interviewees were given undertakings that their identity would be kept confidential as the majority of them were either employees of the African Union or diplomats in Embassies who did not want their views to reflect on the organizations that they represent.

³³ Participant observation is a research strategy whose aim is to gain a close and intimate familiarity with a given group of individuals and their practices through an intensive involvement with people in their natural environment over an extended period of time.

³⁴ The researcher was an intern in the Political Affairs Department of the African Union for the period August 2010 to date of compiling of this Dissertation.

convenience sampling. Sampling was possible because the target population was frequently on the premises of the AU to attend various AU meetings. The researcher was therefore able to gain deeper insight, than would have been obtained from a purely desk-top study.

All the documents reviewed during this study were analysed applying *treaty interpretation and analysis* methods and canons of interpretation.³⁵ Data gained from the unstructured interviews with stakeholders was analysed by means of thematic analysis³⁶ methods.

1.6 Thesis Statement

This study is premised on the thesis is that there are aspects of Chinese activities in various African countries that have implications for the exercise of the RTD of citizens of host countries; that current regional responses to these implications are inadequate; and that there is need for a comprehensive African regional response to be formulated and/or enhanced.

1.7 Delineations and Limitation of Scope

The sources of literature on China's involvement in Africa tend to be derived from secondary sources and are largely anecdotal and lacking in empirical data.³⁷ This poses a serious constraint on the ability of this paper to engage in detailed analysis of any one aspect. The selection of China as the focus of this study is based solely on the researcher's personal choice and interest. This focus should not be construed to suggest that a similar evaluation of the engagements of the West in Africa is, by exclusion, unnecessary. To the contrary, the researcher holds the view that Africa as a region needs to evaluate the actions of *all* global players engaged in Africa, from

³⁵ The rules of treaty interpretation are mainly contained in Articles 31-33 of the *Vienna Convention on the Law of Treaties* (VCLT). The principal methods of interpretation include textual, contextual, systematic, teleological interpretation. *Travaux preparatoires* may also be used as supplementary means of interpretation.

³⁶ Thematic analysis focuses on identifying and classifying data into themes, and sub-themes, in order to form a comprehensive picture of their collective meaning. SJ Taylor et al *Introduction to qualitative research methods: The search for meanings (1984)* New York: John Wiley and Sons.

³⁷ Mohan (n 20 above) notes that the official sources from which most of the publications on China -Africa relations are derived are either outdated or flawed.

both the west and the east, without exception. It is purely on the basis of limitations of space and time that this study does not evaluate other major global actors and their impact on development in Africa. In any event, there is an abundance of literature that focuses on evaluating the involvement of western actors in Africa. This paper focuses more on *solutions* to resolve African challenges in China-Africa relations.³⁸ The writer invites readers of this research paper to view this study as a small contribution, amongst many others, to the area of law under review. Further, the case studies reported on in Chapter III, are not exhaustive of all the locations of China's operations in Africa, nor are they exhaustive of all the possible implications China has had on the development of African populations.³⁹ They however provide an indication of the *types* of challenges that exist in field and provide some background *illustration* for the readers of this paper of the nature of the RTD opportunities and challenges that are posed by China's *modus operandi* in host countries.

1.8 Literature Review

Research into the area of China in Africa is a relatively new field of research.⁴⁰ There are not more than a handful of African publications on this subject. These handbooks contain a collection of various articles with diverse perspectives on this topic.⁴¹ This study has consulted with texts authored by Guerrero and Manji (2008), Shelton and Paruk (2008) and a series of AU publications, *Bulletins of the Fridays of the Commission*.

³⁸ K Prah Africa and China: then and now *Pambazuka* Issue 282 14 December 2006 <http://pambazuka.org/en/category/comment/38854>

³⁹ Mohan (n 20 above) 12 in his review essay points out that existing literature on case studies of Chinese projects and activities in Africa is lacking in detail. He observes 'there are a few insightful studies Which [at most] describe the broad brush dynamics [of China's involvement in Africa].... '

⁴⁰ Mohan (n 20 above) .

⁴¹ G Mohan (n 40 above) 3 applauds the diversity presented by these kinds of works, but decries the absence of a coherent and sustainable thesis that a single, well-researched publication would provide. These collection of essays include *China in Africa: Mercantilist Predator, or partner in development* by Garth Le pere (ed) (2007), Vorna Valley: Institute for Global Dialogue and Johannesburg: The Sough African Institute of International Affairs; *African Perspectives on China in Africa* by Firoze Manji & S Marks (eds) (2007), Cape Town: Fahamu/Pambazuka; *China in Africa* by Margaret C. Lee, Henning Melber, Sanusha Naidu & Ian Taylor (2007), *Current African Issues* No. 33, Uppsala: Nordiska Afikainstitute

With regard to discourse on the changing discourse on the role of the state in development, the writings of Shivji (2005)⁴² and Mamdani (1996) and Mkandawire (2005)⁴³ have been instructive with respect to the nature of the developmental state. Two major works of Marks (2008) and Sengupta (2004) provided a very sound theoretical understanding of the RTD within the international context. Within the African context the writings of Udombana (1999) were detailed and insightful.⁴⁴ With regard to understanding what china's interests and modus operandi has been in Africa, and impact on human rights in Africa, the writer has been persuaded by Uche Ofodile (2009).⁴⁵ There were numerous articles by Pambazuka which provided critical journalistic writings on China's activities in Africa.

On the aspect of the role and future of the AU, the work of Murithi(2008)⁴⁶ was insightful. Added to this one, the writings of Maserumule & Gutto (2008)⁴⁷ provide a synthesised account of the context of scholarship on governance in Africa and concludes that development in the 21st century requires responsible leadership as defined by the core values of the AU. All of these texts are used to inform the body of this work and are referenced repeatedly throughout this work.

There is also a pool of literature by African scholars that encouraged the approach of this paper to look at the need for african states to reconstruct a common policy on China in Africa on a pan-african scale; "an organised force with a vision and an operational programme" for the region".⁴⁸ These included Bibal (2005) and Mohan (2008, from which there appears to be a

⁴² Shivji (n 2 above).

⁴³ Mkandawire (n 3 above).

⁴⁴ N.J. Udombana The third world and the right to development : agenda for the next Millennium Human Rights Quarterly Vol 22 3 753

⁴⁵ U Ofodile, *Trade, Aid and Human Rights: China's Africa policy in perspective*, *Journal of International Commercial Law and Technology* (2009) Vol. 4, Issue 2.

⁴⁶ T Murithi (ed) *Towards a union government for Africa: challenges and opportunities for Africa* 2008 ISS Monograph Series No. 140.

⁴⁷ MH Maserumule et & and SBO Gutto, 'A critical understanding of good governance and leadership concepts written in the context of the New Partnership for Africa's Development (NEPAD) and the challenges to contextual discourse on Africa's development paradigms' *International Journal of African Renaissance Studies*, Vol. 3 (2) 2008, p. 63-101

⁴⁸ I Shivji, "The changing development discourse in Africa" *Pambazuka Issue 224 06 October 2005*, accessed at <http://www.pambazuka.org/en/category/features/29728>

common outcry that there is a ‘lack of coordinated African policy in Africa to begin to capture the benefits of China’s presence’ (p.11) and that there is an urgent need for African states to put together a common position on how to leverage China’s presence in Africa. Finally, there are various propositions in literature on how Africa should integrate and cooperate. Most of these authorities refer to the European Union as a model or at least a benchmark for regional integration processes in Africa.⁴⁹ Okumu Wafula’s publication on “*The African Union: Pitfalls and Prospects for Uniting Africa*”⁵⁰, provides a number of recommendations on how the AU can achieve its integration and regional cooperation mandate.

1.9 Structure of the Paper

The structure of the paper follows the chronological sequence of the research questions. Following Chapter I, the paper delivers its findings in five substantive chapters (Chapters II-V). Chapter II is conceptual, and presents a synthesis of the theoretical discourse on the RTD in Africa; Chapter III proposes an application of the RTD framework to Africa-China relations; it is analytical. Chapter IV is expository and seeks to describe the various interests and forms of China’s engagement in a selected number of Africa. This chapter also analyses the RTD impacts that these forms of engagement are having on host countries. In effect it outlines the *modus operandi* of China in Africa. Chapter V considers the African response to the implications of China in Africa. this chapter is evaluative and constructive; it explores nuanced options on how African states and government can collectively, through the instrumentality of the AU, enhance the RTD in China-Africa engagements. This chapter also addresses the question why a regional response would be more effective than a bilateral one. The last chapter, Chapter VI ends the study with a brief conclusion.

⁴⁹ Baldwin et al, (1999); Panagariya (1999); Slazar-Xirinachs (2002); Bilal, Sanousii *Can the EU be a Model of Regional Integration? Risks and challenges for developing states*, European Centre for Development Policy Management, a paper presented at CODERIA-Global Studies Network (GSN), Second International Conference on *Globalisation: overcoming exclusion, strengthening inclusion*, Dakar, Senegal, 29-31 August 2005.

⁵⁰ *Journal of International Affairs*, Spring 2009.

Chapter II: Conceptual framework for the Right to Development in Africa

2.1 Introduction

The purpose of this section is to consider the RTD can be used as a framework for analysis of international relations, and in particular China-Africa relations.

Conceptually, there is a link between human rights and development. The first link can be described as an enabling one; human rights standards and practices can be used to help achieve development.⁵¹ The second link is one of causation; the existence of human rights creates an enabling environment for development to take place. The third linkage is one of similarity of objective; development refers in principle to the human being; it seeks the fulfilment of individual “mental, emotional and physical wellbeing” and “the development of man and his society”.⁵² Human rights also seeks the upliftment of the human being and his society⁵³ in essence.

The term “*human rights*” is not a fluid concept; it has a specific content. It requires a duty bearer to respect, protect and fulfill certain obligations towards the right holder. In law, the express mention of a right, supposes that there is a corresponding duty. Within the sphere of human rights, generally speaking, the duty bearer is *the state* who must respect human rights by refraining from interfering with the access or enjoyment of *citizens to their rights*; and must *protect* by ensuring that private actors do not interfere with citizen ability to exercise their rights; and must *fulfil* by adopting certain measures to ensure the enjoyment of the rights.

⁵¹ Office of United Nations Commissioner on Human Rights, Claiming the *Millennium Development Goals: A human rights approach*, OFI NY & Geneva, 2008 21.

⁵² A Adedeji *Putting the people first* Opening statement delivered at the international conference on popular participation in the recovery and development processes in Africa, Arusha, Tanzania 12 February 1990. Also, M Gandhi defined development as the “realisation of the human potential” in *An autobiography, the story of my experiments with truth* 8 edition Boston: Beacon Press 1968.

⁵³ The human rights discourse already accepts the concept of ‘peoples’ as an object of human rights.

On the other hand, “*development*” is a term that is capable of more than one definition.⁵⁴ With respect to the individual citizen, it implies increased skill and capacity... greater freedom, creativity, self-discipline, responsibility, and material well-being. At the level of the society, it implies a society’s “increasing capacity to to regulate both internal and external relations.”⁵⁵ Put differently, development rights belong to the “third generation of solidarity of rights”. They encompass the right to development, the right to peace, the right to environment, the right to ownership of the common heritage of mankind and so on.⁵⁶

This is the broad sense in which the word “*development*” is used in this study.

2.2 Brief history of the Right to Development in Africa

The earliest mention of the term “The Right to Development” is traced to, and attributed in writings, to Keba M’baye in 1972.⁵⁷ Since then, the term has been conceptualised and debated in numerous ways and debated at countless fora. Thirty years of debate have finally produced a certain degree of consensus. The Right to Development (RTD) has found place within international human rights law., although not without controversy as to its exact meaning, it’s justifiability and its justiciability.⁵⁸

The very first post-independence reference to development in a document developed by African heads of state and government, is to be found in the OAU’s Lagos Plan of Action (1980). Subsequently, the African Alternative Framework to Structural Adjustment Programme for Socio-Economic Recovery (1989) and the African Charter for Popular Participation and Development (1990) were crafted. All these instruments have a common theme. They call for a

⁵⁴ ‘Development’ is no longer considered a purely economic phenomenon.

⁵⁵ N.J. Udombana ‘The Third World and the Right to Development: Agenda for the Next Millennium’ *Human Rights Quarterly* Vol. 22 3 753.

⁵⁶ Cees Flinterman, ‘Three Generations of Human Rights’, in *Human Rights in a Pluralist World* 76 Jan Berting et al. eds 1990.

⁵⁷ K M’Baye Le droit au développement comme un droit de l’homme in *Revue internationale des droits de l’homme* vol. V 1972, cited in R.L. Barsh (1991) “The RTD as a human right: results of global consultation” 13 *Human Rights Quarterly* 322.

⁵⁸ The Declaration on the RTD was adopted by 146 yes votes, 1 no vote (United States of America) and 8 abstentions (Australia, Austria, Federal Republic of Germany, Belgium, Ireland, Japan, Norway and the United Kingdom). J Donnelly, ‘In search of the unicorn: The jurisprudence and politics of the RTD’ (1985) 15 *California West International Law Journal* 473 - 509 sets out comprehensive arguments against the legal existence of the RTD in international law.

wholistic and coherent approach by Africa to development; a collective programme of regional integration and collective self-reliance.

In 1981, as a sequel to the Lagos Plan of Action, African heads of state and government meeting in Banjul adopted the African Charter on Human and Peoples' Rights. One of the central drivers for the adoption of the African Charter was the need to “*co-ordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa...*”. For the very first time in the world, development was framed in a treaty as a human right. This represented a major normative shift from the dominant paradigm existing over the years that measured development narrowly and solely in terms of economic growth, to a multi-dimensional definition of development linked specifically to the fulfillment of human rights. Article 22 of the Charter stated that all African member states had a duty to ensure the exercise of the RTD for all peoples of Africa. Consistent with the expressed need for coordination and co-operation. *This article read together with the underlying principles of co-operation and collective self-reliance that are a common thread in all declarations and legal instruments of the AU suggest that the task of ensuring RTD is a task that all African states must attempt to execute collectively through regional integration and co-operation.*

More recently, the New Partnership for Africa's Development (NEPAD)⁵⁹ has sought to add dimension to the RTD. It introduces democracy and good governance as preconditions for development. One of the key principles on which NEPAD is founded is the importance of “accelerating and deepening regional and economic integration”.

2.3 The normative content of the Right to Development

Within the African human rights system, RTD is uncontroversial and settled as a human right. All African member states of the AU agree that RTD is an unalienable human human right.⁶⁰ Within African discourse, the RTD has two dimensions to its meaning and application. The first dimension of this right is a *vertical* one. It places an obligation upon all African States members of

⁵⁹ NEPAD Declaration (2001).

⁶⁰ Article 22, African Charter on Human and Peoples' Rights adopted June 27, 1981, OAU Doc. Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21. I.L.M. 58 (1982), entered into force October 21, 1986.

the African Union to ensure the exercise of the RTD of their citizens.⁶¹ Despite the fact that this right has not been domesticated into the the Bills of Right of their national Constitutions, many member states have acknowledged this right as *State* principles in the texts of their national constitutions.⁶² Even if this were not so, all signatories to the African Charter are obliged in any event in terms of international law not to act in a manner that undermines the RTD as a consequence of the *pacta sunt servanda* principle.⁶³

The second dimension of the RTD, is a *horizontal* one. It places a duty upon states to cooperate, as between and amongst themselves, to fulfill their obligations within the international context.⁶⁴ Whilst discourse has discussed this horizontal dimension within the context of North-South relations, it is argued that there is no reason why the horizontal dimension should not apply between states at a continental level.

2.4 Normative content of Article 22: A treaty analysis

The RTD identifies the individual as being at the centre of development. At the primary level, the human being, the individual, is both a *participant* and a *beneficiary* of this right. But also, at a secondary level, the citizenry or the populace at large, *collectively* are also to be *participants* and *beneficiaries* of this right. This being the case, the RTD gives rise to a series of norms, rights and processes.⁶⁵ The norms here will refer to conditions and environments necessary for development; the “rights” would in the national context be typified by the delivery of socio-economic rights; and the “processes”, be consisted by entry points into public policy and decision-making that allows the people⁶⁶ to be active agents in the development process.

⁶¹ Article 22(1), The African Charter.

⁶² For example, Swaziland Constitution Act, 2005 and the Constitution of the Republic of South Africa, 2006.

⁶³ Article 2(2), UNCHR.

⁶⁴ This paper proposes that the duty of states to cooperate also has application as between any two or more states in an international or bilateral context.

⁶⁵ *Claiming the Millennium Development Goals: A human rights approach* OFI NY, Geneva UNOCHR, 2008.

⁶⁶ With respect to public participation, the role of both organized and unorganized civil society should be recognized as having the right to participate.

2.4.1 Treaty analysis

To resolve the question of the fundamental philosophy underlying Article 22, a positivist international law analytical approach is used here. The Vienna Convention on 25 23 May 1969, 1155 UNTS 331 [hereinafter VCLT]. The text of Article 31 provides:

General rule of interpretation

1. *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
2. *The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) *any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;*
 - (b) *any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.**
3. *There shall be taken into account, together with the context:
 - (a) *any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*
 - (b) *any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;*
 - (c) *any relevant rules of international law applicable in the relations between the parties.**
4. *A special meaning shall be given to a term if it is established that the parties so intended.*

A careful analysis of the wording of Article 22 suggests that the RTD within the meaning of the Charter and in its application and practice within the African continent, subscribes to the following underlying philosophy-

- (a) the normative content of the RTD has multi-dimensional flavour. It is not purely limited to economic development. It extends to social and cultural aspects of human development. Consequently, the wording used in Article 2(2) of the Charter is, “... peoples shall have the right to their economic, social and cultural development.....;”

- (b) The use of the words “... with due regard to their freedom and enjoyment...”⁶⁷ is suggestive of the interpretation that the content of the RTD is underpinned by a philosophy of *participatory development*. This philosophy is suggestive of the central right of the broadest representation of the public to participate in all forms, and at all levels, of policy formulation and implementation;⁶⁸
- (c) That development should be implemented using a rights based approach. The phrase: “...equal enjoyment and common heritage...”⁶⁹ connotes the philosophy of equality that resonates with a rights-based approach to development.;⁷⁰
- (d) that the RTD in Africa understands development as conferring a duty on States to foster equity in all its forms, including gender equity, within and among states.⁷¹ The reference to equality is would be understood to include gender equality.
- (e) That the execution of the RTD is both a duty that rests on individual states in Africa as well as on the collective of African states. Article 22(2) states that “States shall have the duty, *individually or collectively* to ensure the exercise of the right to development.”

2.4.2 Decisions of the African Commission

Another source of exposition of the normative content of Article 22 comes from the African Commission on Human & People’s Rights (the Commission).⁷² Unfortunately, there is not a very

⁶⁷ Article 22(2), ACHPR.

⁶⁹ Article 22(2), African Charter.

⁷⁰ See K Quashigah, “*Human rights and African economic integration*” Proceedings of the African Society of International and Comparative Law, vol. 8 (1996), p.218. See also A Cornwall & C Nyamu-Musembi, ‘Putting the ‘rights-based approach’ to development in perspective’ *Third World Quarterly*, vol. 25 (2004), p.1415.

⁷¹ N Udombana, “*The third world and the right to development: An agenda for the next millennium*” *Human Rights Quarterly*, vol. 22 (2000), p.767.

⁷² The jurisprudence of the African Commission on the RTD has also been enriched by the UN Working Group on the Right to Development that stressed that “[s]tates have the primary responsibility to ensure the conditions necessary for the enjoyment of the right to development, as both an individual and a collective right. Udombana (n 71 above) 727.

comprehensive volume of decisions by the Commission on the RTD. However, from a consideration of the Ogoni case⁷³, it appears that the Commission is of the view that the African community, as a whole, through the agency of their government, is possessed of a right to the *means*, *process*, and *outcomes* of development. In this view, the Commission expressed its displeasure at the failure of the government of Nigeria in failing to “involve the Ogoni communities in the decisions that affected the development of Ogoniland.” This decision was reasoned and based on Article 21 of the Charter. The same reason can be used to draw persuasive jurisprudence for Article 22 for the reason that first, this judgement can be understood to endorse the imperatives of participatory development; and, second, the case expounds the understanding that there are two right bearers of the RTD – the government, and the people. The participation of people, together with their governments, in their own development is a irreducible minimum.

These imperatives are as applicable to Article 21 on sustainable development as they can, and should be, to Article 22. This study refers to the jurisprudence of this decision with this understanding.

2.3.3 Opinio Juris

Added to this treaty analysis approach, is added the *opinions of distinguished jurists*.⁷⁴ Predominant African discourse suggests that the RTD in Africa can be conceptualised as constituting three sub-rights; namely, the right to the *means* of creating that environment, the right to a *process* of creating that environment, and the right to the *benefits* that flow from the creation of such an environment.

⁷³ Udombana (n 71 above).

⁷⁴ See A Sengupta, ‘The human rights to development’ *Oxford Development Studies*, (2004) vol. 32, pp.183, 192.21.

Chapter III: Applying the RTD framework to China-Africa relations

3.1 Introduction

The purpose of this Chapter seeks to use the legal analysis on the RTD in the preceding chapter to propose a framework for examining Chinese activities in Africa and assessing their implications for the exercise of RTD by citizens of African host countries. The relevance of the RTD legal framework to China lies in the fact that China operates as a third party within national jurisdictions in Africa. African peoples are entitled to call upon their governments to intervene in the event China's activities within national jurisdictions undermine their RTD.⁷⁵ Accordingly, African states have a duty to ensure the Chinese government or any Chinese government-financed multinational, as a third party, does not undermine the RTD of individuals or peoples in host countries. Further, African states have a duty to invite citizens to participate in the development of policies and laws to ensure the exercise of the RTD in bilateral co-operation agreements with China.

Beyond this, this chapter seeks to demonstrate that the duty of nation states to ensure the exercise of the RTD can also be exercised collectively by African states at the regional level.⁷⁶ Udombana argues that the whilst traditional international law lays down the rules for the co-existence of states; namely, to interfere with each other as seldom as possible, this traditional arrangement is too narrow for the creation of framework to analyse international relations.⁷⁷

This element *of the co-operation of African States at the regional level* is particularly significant in this study. The thesis in this paper⁷⁸ is premised on the understanding that with the changing

⁷⁵ Social and Economic Rights Action Centre (SERAC) and another v Nigeria (2001) AHRLR 60 (ACJHPR 2001).

⁷⁶ Article 22(2) of the ACHPR.

⁷⁷ Udombana (n 71) 779.

⁷⁸ See Chapter I, par. 1.6 above on the thesis statement.

dynamics of international relations and the increasing interdependence of states with each other through globalisation, African states may and must exercise their duties collectively through the instrumentality of the AU as an inter-governmental organisation. Even at this regional, it is proposed that there exists a *collective duty of states to co-operate*⁷⁹ to ensure that African states refrain from acts, or from supporting and/or ignoring acts that make it more difficult for people to realise their human rights, to remove obstacles that impede the realisation of human rights,⁸⁰ and to guarantee that decisions, policies and agreements at the international level do not undermine the ability of a state to fulfill human rights domestically.⁸¹

In the words of Udombana-

*“Interdependence amongst states is growing. Interstate relations are becoming more and more a matter of active cooperation. It is no longer a matter of passive co-existence. The ‘international law of cooperation’ has come to stay. Emphasis now is on the general interest of the whole [regional] community. Of course, the individual interests of the states are not left out.”*⁸²

It is in this sense, of a contemporary discourse agitating for the active cooperation of states to deliver development, that the collective duty of states to cooperate is being used in this study.

3.2 The nation state as the primary *duty-bearer* for the implementation of the RTD in Africa

The primary responsibility, within the domestic context, for implementing the RTD rests with the nation state. This responsibility translates, primarily, to a duty on the nation states to

⁷⁹ It is proposed that this can be achieved through a variety of mechanisms, including regional standards, harmonized guidelines and protocols on the management of specific sectors or spheres of activity.

⁸⁰ Paragraph 52 of the *Ogoniland* case, states that the state is under an obligation to respect these rights and this largely entails non-interventionist conduct from the state; or for the state to desist from carrying out, sponsoring or tolerating any practice, policy or legal measure that is violating the right of the individual”.

⁸¹ Para. 45, *Ogoniland* case. Also, the Inter-American case of *Velasquez Rodriguez v Honduras* Judgment of 19 July 1988, Series C, No. 4 and European Court of Human Rights case *X and Y v Netherlands* 91 ECHR (1985) Series A) at 32 – share this jurisprudence.

⁸² Udombana (n 71 above) 779.

ensure development for its citizens. Consistent with the normative content of the RTD discussed above,⁸³ the responsibility of states is both to deliver the *substantive content of development* to their citizens, but also provide *procedural entry-points for citizens to participate* in the designing of their own developmental path. Delivery of the substance of the RTD must be evident from the states respect, protection⁸⁴ and fulfilment of the RTD. Provision of entry point for citizen participation will be apparent from the involvement of citizens in the setting of development agendas, participating in formulating development policies and implementing these policies.

Finally, it is important to note that the language of Article 22 is not “progressive”. It places an *immediate* obligation on African States to take legislative and other measures to ensure the exercise of the RTD. This duty calls for Africa to question each activity, at all times, to assure itself that it serves the overall objective of uplifting their citizens.

3.3 The African Union: making a case for a collective duty of states to implement the RTD in Africa

At a secondary level, the RTD also applies in international contexts. In international law discourse the RTD is constituted by the duty of wealthy states at international level to co-operate with and amongst each other, to enable developing states to fulfill their obligations. The phrase “*co-operate*” in this context would mean exerting joint effort towards the establishment of conditions necessary for development.⁸⁵

What this means in effect is that the state, as the the principal actor that has the agency and legitimacy to assert the RTD from the international community or any single state in the

⁸³ Chapter II above.

⁸⁴ Under Article I of the African Charter, states have the duty to “adopt legislative or other measures to give effect” to the rights protected under that treaty. Read with the understanding of the in consonance with the working definition of the conception of “*development*” that was adopted earlier in this paper, states are therefore required to enact laws that support the creation of an environment in which people can develop their full potential and lead productive, creative lives in accordance with their needs and interests.

⁸⁵ “Co-operation in global partnerships entails increased and more efficient co-ordination between all actors with a view to more participation, accountability, efficient and sustainable access.” Office of the United Nations Commission for Human Rights *Claiming the Millennium Development Goals: a human rights approach* OFI New York & Geneva, 2008.

international community, is the nation state. Only a state can assert and vindicate this right under international law. Technically, when a state asserts the RTD against the international community, or another state, it does so in a secondary capacity acting as agent, on and behalf of, the citizens of the country that it represents, rather than as a holder of the right itself.⁸⁶ Put differently, the state is the “plenipotentiary or international dimension of the people”.⁸⁷

As aforesaid, the context in which this study proposes a discourse that considers that states have a collective duty of states to cooperate at African continental level to ensure the exercise of the RTD in Africa. This position is fortified by the wording of Article 22(2) of the Charter as discussed above.⁸⁸

3.4 The citizens as right-holders and beneficiaries of the the RTD in Africa

The individual is at the centre of human rights. Therefore, primarily human rights are rights that enure to the individual.⁸⁹ However, the term “peoples” is referred to in a number of provisions of the African Charter.⁹⁰ Article 22 refers to the RTD and says that the RTD is to be claimed and enjoyed by “all peoples.” It can therefore be said that in terms of this provision, “peoples” are also the holder of human rights within the African human rights system.⁹¹

⁸⁶ J Crawford *The rights of peoples: some conclusions* in Crawford J (ed) *The Rights of Peoples* (1988) Clarendon Press: Oxford.

⁸⁷ LA Obiora ‘Beyond the rhetoric of a right to development’ *Law and Policy* Vol. 18 Nos. 3-4 1996 p. 366 at 369.

⁸⁸ Chapter III, Section 3.1 above.

⁸⁹ The RTD might be considered as part of the international Bill of Rights, and therefore is a human right that inures to the *individual*.

⁹⁰ Notably articles 20-24.

⁹¹ The term “peoples” is not specifically defined within the text of the African Charter. One of the key debates in development discourse centres around whether “peoples” in Article 22 can be read to mean the individual citizens in a state to the effect that a citizen might be able to claim a justiciable RTD. A number of scholars posit that the embellishment of economic and social rights in key international and regional human rights instruments has settled this point. It is also clear from Article 22 that “peoples” or the “community” are the right-holders of the RTD.

It is clear that the right-holders and beneficiaries of the RTD are individual citizens or “peoples” or communities . Accordingly, citizens may of course be exercised by the people collectively as a whole, as well as by groups within the national collective.⁹²

3.5 Conclusions

The thesis of this paper proposes that states within Africa should co-operate to deliver the RTD to citizens of Africa.⁹³ Within bilateral relations with China, African states should assert the RTD against China to ensure that China’s actions and activities within the territory of the nation state is consistent with the exercise of the RTD of its citizens.

If this thesis holds logic, then there is a duty by extension that rests on all African heads of state and government to intervene in international affairs, international transactions and in any continental platform on behalf of all African peoples in order to ensure their enjoyment of the RTD. With specific application to China’s activities in Africa, this study posits that African states have the responsibility to intervene in any transaction or project carried out within the China-Africa co-operation framework where the RTD of citizens are being infringed. They may carry out this right individually, within the scope of their bilateral arrangements, or collectively, at the level of the African Union.

⁹² ME Salmon & A Sengupta *The right to development: obligations of states and rights of minorities and indigenous people* (2003) MRG: London.

⁹³ Chapter 1, section 1.6 above *Thesis statement*.

Chapter IV: The *modus operandi* and implications of Chinese activities in Africa

4.1 Introduction

As stated above,⁹⁴ China's involvement in Africa is welcomed by most African commentators.⁹⁵ China's engagement in African countries is seen as being an overall positive one. China does not demand commitment to democracy, good governance and human rights as a pre-condition for co-operation.⁹⁶ Also, China is seen as delivering development services in an extremely visible manner. China helps rebuild infrastructure, undertakes agricultural, water, health and education projects.

This chapter engages in a discursive review of China's way of doing things in Africa. In doing so, it answers the following questions: what are China's interests in Africa? Where in Africa is China focusing its engagement, and why? What sectors is China involved in? What perceptions do African citizens have of Chinese involvement? What are the implications of China's activities in a selected number of countries for the RTD?⁹⁷

4.2 China's interests in Africa

⁹⁴ Chapter I, *literature review*.

⁹⁵ Already, President Robert Mugabe has announced the "Look East Policy" acknowledging the intention of this country to grow their relations with China.

⁹⁶ J Rocha A new frontier in the exploitation of Africa's natural resources: the emergence of China in *African perspectives on China in Africa* Ed. Firoze Manji & Stephen Marks Fahamu (2005).

⁹⁷ To answer these questions, this section looks at three, randomly selected countries in Africa where China has a presence.

China's is swiftly becoming a major player in Africa.⁹⁸ Being a developing country on the verge of becoming a superpower, her interests are primarily economic. The Asian giant is interested in natural resource extraction to bolster Chinese domestic economic growth, particularly because its own petroleum and mineral deposits have diminished.⁹⁹ China's current appetite for oil sources is projected to grow exponentially over the next fifteen (15) years. China's oil demand will reach 14.2% by the end of 2025¹⁰⁰. There have been public pronouncements by China that she intends to build a national strategic petroleum reserve. Africa is of strategic importance to China as a source of this petroleum.¹⁰¹ The concerns that this pronouncement raises for Africa's sustainable resource management is evident.

China is also interested in creating a base for Chinese overseas manufacturing and infrastructure firms and exports. China incentivises its local firms with state subsidies to "go global". This global strategy is geared at creating opportunities for Chinese companies to invest in Africa.¹⁰² The range of activities that these companies engage in ranges from trade, processing, manufacturing, transportation, construction, mining, communication and agriculture.¹⁰³ The Chinese government has published a list of countries and an inventory of resources in which any Chinese company investing in those areas or resources will be eligible for government subsidy.¹⁰⁴ A number of African countries have been designated as one of the key target destinations for government-backed mining ventures. Already in 2005, about 30% of China's

⁹⁸ R. Guettia Kouassi, "Can Chinese pragmatism lead the European Union to reformulate its co-operation policy with Africa" in *The bulletin of the fridays of the Commission*, Vol.3, No. 1, January, 2010 at p.3.

⁹⁹ Testimony of Guy Caruso, Administrator, Energy Information Administration before the Commission on US-China Economic and Security Review, Hearing on China's Energy Needs and Strategy, 30 October 2003 available at http://www.eia.doc.gov/neic/speeches/caruso_china/china_test_103003.htm.

¹⁰⁰ C. Hurst, *China's oil rush in Africa* 3 (2006), Institute for the Analysis of Global Security 2006 43.

¹⁰¹ Caruso (n 64 above).

¹⁰² J Rocha A new frontier in the exploitation of Africa's natural resources *Pambazuka Issue* 282 14 December 2006 p. 1 accessed at <http://pambazuka.org/en/category/comment/38846>.

¹⁰³ J Rocha (n 96 above) 2.

¹⁰⁴ D Zweig & B Jianhai *China's Global Hunt for Energy Foreign Affairs* (2005) Volume 84(5), 25-38 at 27.

total oil import came from Africa.¹⁰⁵ China has mining deals in Nigeria, Sudan, Angola, Chad, Algeria, Gabon, Zambia,¹⁰⁶ Zimbabwe,¹⁰⁷ Equatorial Guinea, and the Republic of Congo. Natural resources are not replaceable once extracted. In Mozambique, China has forestry interests. The question is - what are the implications of this intensive extraction on the RTD of Africa?

There may also be social interests that might be deduced from the aggressive interest of China in Africa. China's demographics indicate that she grapples with a massive population crisis, and has been compelled to take harsh measures to regulate this population explosion. There are scholars who are concerned that China may be exporting its populations to Africa through a subtle migration programme under the guise of empowerment of Chinese entrepreneurs. The impacts on the RTD in this context are not difficult to imagine. According to Huang Zequan, a lecturer in African studies at Peking University, Chinese nationals are the largest immigrant group in Cabinda province, the richest province in Angola. There are expectations that the Chinese community will continue to increase. In the result, the Chinese community may rival the Portuguese population in Angola.¹⁰⁸

Politically, China is on the verge of becoming the second most powerful country in the world, and has ambitions to become a global superpower. It serves China well to achieve geo-strategic strength by securing the political support of all developing states. China seeks to mobilise African support for the position that she takes at the UN on key global issues. Consistent with the Chinese approach of soft diplomacy, China provides diplomatic support to all African countries except the eight countries that still maintain ties with Taiwan.¹⁰⁹ It is interesting to enquire how this political and diplomatic alliance will advance the RTD in Africa.

¹⁰⁵ Zweig (n 67 above)

¹⁰⁶ Copper.

¹⁰⁷ Coal and platinum.

¹⁰⁸ J Reed (2006) 'China on track to win many friends in oil-rich Angola' *Financial Times* 4 March 2006, cited in Lucy Corkin *China's interest in Angola's construction and infrastructure sectors* (2008) Fahamu, Nairobi.

¹⁰⁹ These include Swaziland, Burkina Faso, Niger, Gambia, Sao Tome, and until recently, Malawi.

With respect to peace and security, China has publicly supported African candidates¹¹⁰ for a permanent seat on the UN Security Council. China has demonstrated an interest in dispatching peacekeeping personnel in troubled zones of Africa.¹¹¹ On the other hand, China has exported arms into undemocratic regimes in Africa, namely Zimbabwe, Ethiopia, Eritrea, Sudan and Guinea. China is the largest arms supplier to Sudan. China has also provided military training to a number of other countries including Equatorial Guinea, Ethiopia, Eritrea, Tanzania and Zimbabwe. Some commentators posit that China's sale of arms to these regimes are not motivated by financial gain, but more by "foreign policy considerations, amongst which are a possible interest on the part of China to create allies with ideologically compatible countries in Africa and to consolidate strategic military bases in these countries."¹¹² All this raises questions for the implications of these activities on peace and security and human development in Africa. Africa is already riddled with challenges of conflict and instability, particularly in the specific countries in which China chooses to supply arms.

In conclusion, it must be said that whilst it cannot be denied that some of these implications are positive ones, there are a comparable number of challenges that arise from this international partnership. Africa as a continent needs to become more proactive and devise a collective way of identifying, analysing and managing attendant erosions to development in Africa. The current and future role of the African Union as an inter-governmental organisation in galvanising African states to take a position that ensures the RTD in China-Africa relations is a pertinent one. This study pays particular focus to this aspect.

4.3 The *modus operandi* of China in Africa

There are three main methods through which China engages with Africa. These three vectors are categorised separately in literature but are also interlinked. These are-

¹¹⁰ The three candidates were South Africa, Egypt and Nigeria.

¹¹¹ In 8 UN Peacekeeping operations in Africa particularly in the DR Congo and Liberia.

¹¹² D Byman and R Cliff, *China's arms sale: motivations and implications* (1999) 46.

- Trade;¹¹³
- Foreign direct investment¹¹⁴ and
- Foreign aid.¹¹⁵

While on the face of them, these modes of involvement of China in Africa appear to be economic in nature, each one of them has implications for the national political climate of the countries of operation as well as internal development of local populations.¹¹⁶ Some of the impacts that have been so exhaustively identified by western critics and NGO's across Africa include the following:

- China does not incorporate a human rights practice into its operations in Africa. The Chinese discourse on human rights does not incorporate a component of civil and political rights. To the Chinese, human rights are synonymous with the right to food, clothing, shelter, and economic development. ;¹¹⁷
- China supports countries that are typified as being undemocratic and abusing basic human rights with the supply of arms.¹¹⁸

¹¹³ Referring here simply to import and export of goods and products.

¹¹⁴ "Foreign direct investment" is characterized by an trading entity from one country making a physical investment into another country. It may do so by acquiring an interest or a share in another entity outside its home country through a joint venture, a strategic alliance, a licence or other international business instruments. Jeffrey P Graham and R Barry Spaulding *Understanding FDI, going global* accessed at http://www.going-global.com/articles/understanding_foreing_direct-investment.htm.

¹¹⁵ This will refer to loans to governments for government operations or for government projects.

¹¹⁶ M Stefaan & S Geenen "Win-win or unequal exchange? The case of the Sino-Congolese cooperation agreements, *Journal of Modern African Studies*, 47, 3 (2000) , pp. 371-396, Cambridge University Press: United Kingdom.

¹¹⁷ I Taylor China and Africa: the real barriers to win-win, *FPIF Commentary*, March 9 2007, accessed on the 15 August at <http://www.fp.if.org/fpifxt/4067>

¹¹⁸ U Ofodile Trade, Aid and Human Rights: China's Africa Policy in Perspective *Journal of International Commercial Law and Technology*, Vol. 4 Issue 2 (2009). It is hard to imagine how propping up dictators or arming repressive states with arms to be used to destroy their people can be consistent with the promotion of the RTD in Africa.

- China does not have regard for the protection of the environment in its operations in Africa. In countries where China is involved in extractive operations of wood and timber, there are allegations of unsustainable harvesting of trees. This is at variance with global concerns about climate change and a safe environment.¹¹⁹

- China crafts the terms of its cooperation with Africa in such manner as to use Chinese construction companies to work on large-scale projects and infrastructure development projects in Africa.¹²⁰ This has two diminishing effects on the internal RTD; first, employment creation in Africa is not enhanced by Chinese presence; and, local human capital does not benefit from skills and technology transfer.

- Cheap chinese exports and chinese small and medium enterprises into Africa are creating trade imbalances.¹²¹ This hinders the growth of the African private sector, particularly the small and medium enterprises.

- China does not adhere to World Bank and IMF lending criteria. Not being part of the OECD countries, and having not become signatory to the Paris Declaration

¹¹⁹ D Keet *The Role and Impact of Chinese Economic Operations in Africa* in Dorothy-Grace Guerrero and Firoze Manji (eds) *China's New Role in Africa and the South : A search for a new perspective* 2008 at page 80.

¹²⁰ (Keet n 119 above).

¹²¹ In 2007, China over 700 registered state-owned and private enterprises were supported by Chinese government finance to enter into joint ventures with African governments and corporations. Alden and Davies 2006 A profile of the operations of chinese multinationals in Africa. *South African Journal of International Affairs*, Vol. 13, Issue 1, Summer/Autumn 2006, 83-96.

on Aid Effectiveness.¹²² China insists using its own model with regard to lending to African states.¹²³

- China is over-exploiting Africa's natural resources in a manner that is not sustainable.¹²⁴

4.4 Selected case studies of Chinese *modus operandi* and implications for local populations

4.4.1 The case of the Congo

In 2007, the Government of Congo entered into a co-operation agreement with the Chinese Government.¹²⁵ In 2008, the Government of Congo entered into an infrastructural development agreement for the construction of road and railworks in the Congo.¹²⁶

In addition, Congo, is a major supplier of timber to China, the conduct of industry in the Congo Rain-forest has serious ecological and other implications for the whole continent. There are already indications that “the effects of climate change will be most severe in Africa. Thus,

¹²² Ofodile (n 76 above).

¹²³ The basic forms of Chinese development cooperation include, (i) giving grant aid (non-repayable loans to social projects such as schools, hospitals, housing etc) (ii) interest-free loans to finance infrastructure projects; and (iii) preferential credits or concessionary credits with interests rates below the market level). Kieran E. Uchegara, China-Africa Cooperation in the 21st Century: Analysis of the Obstacles and Challenges to Good Cooperation, *Journal of Global Strategic Management*, 6 2009, December page 7.

¹²⁴ Africa's natural resource base and ecosystems are under continuous threat arising from an increase in exploitation activities, Under these circumstances, some resource rich countries in Africa will soon find themselves under a 'resource curse'. Corkin and Burke (2008) 64.

¹²⁵ *Protocole d'accord entre la République Démocratique du Congo et le groupement des Entreprises Chinoises* September 2007, full text in English available at <http://www.ua.ac.be/main.aspx?c+GRALACE &n+65909>.

¹²⁶ *Convention de collaboration entre la République Démocratique du Congo et le Groupement d'entreprises Chinoises: China Railway Group Limited, SINOHYDRO Corporation relative au développement d'un projet minier et d'un projet d'infrastructures en RDC*, May 2008, available at <http://www.ua.ac.be/main.aspx?+GRALACE&n=65909>.

continued mismanagement, in all its dimensions, of Africa's natural resources, renewable and non-renewable, will have catastrophic consequences for the continent".¹²⁷

Implications for internal trade patterns

Analysts say that the trade flows that arise from the Chinese involvement in the Congo "will have a positive impact on the economy in the short run". This will be because the increased demand for natural resources by China will create a rise in world prices, to the benefit of the African supplier. However, it is projected that as Africa's resources become depleted, demand will intensify, and selling prices of the African supplier will drop.

Analysts raise concerns with respect to the right of citizens to development in the Congo. First, the co-operation agreement allowing the extraction of natural resources in the Congo is long-term. Second, the consideration for the mining concession is not currency, but the barter system. This mainly takes the form of infrastructural development. The simple summary of this narration is that in the long run, the mineral reserves of the Congo will be exhausted and the Congolese government will not have gained any revenue in the form of taxes from this agreement because it is not a money-based transaction.

Implications of infrastructural development on internal development

There are conflicting effects of the infrastructure investments on Congo's internal development. On the face of things, there is an overall positive effect to be derived from the development of infrastructure in Congo. There is no doubt that infrastructural development is important to achieve post-conflict reconstruction and stability in the Congo. The reverse side of this gain, is an unintended loss. The construction works are carried out by Chinese firms as a specific conditionality of the co-operation agreement.¹²⁸ There is no provision compelling the Chinese

¹²⁷ G. Moumouni China's relations with African sub-regions: The case of West Africa Vol. 3 January 2000 25 in *AU Bulletins of the Fridays of the Commission*.

¹²⁸ Article 6 of the Convention says, "The executor [of the infrastructure works] will be the Group of Chinese Enterprises, or its affiliated partners"

to use local labour.¹²⁹ The negative effects on local development are already apparent: Congolese people do not have the guaranteed right to be employed in Chinese infrastructural projects; two, even when they are employed, the remuneration that the conditions of service and remuneration will earn will be no more than those earned by the Chinese. The problem with this is Chinese wages are very low. A wage for an unskilled worker do not exceed \$2 a day. A Chinese executive earns barely a fifth of the remuneration of an African working on an equivalent assignment.¹³⁰

Other oversights in the Congolese state negotiation of the contract, is that there is no provision made for maintenance of this infrastructure. Because this construction has been battered¹³¹ against tax and customs-free mining concession rights, no revenue will remain with the state to absorb costs of maintenance. In the result, the cost of maintenance in years to come will be borne by the Congolese taxpayer.¹³²

4.3.2 The case of Benin

In 2004, China and Benin issued a joint statement in which they announced the signing of a bilateral agreement for development cooperation. They confirmed their reciprocal commitment to strengthen interaction and to broaden their sphere of cooperation in a multiple forms, with a focus on agriculture, basic infrastructure, health and telecommunications.

Trade and investment

¹²⁹ Kuediasala, F 2007 "Avec qui la Chine exécutera-t-elle ses grands projets d'infrastructures? Le Potentiel, Kinshasa, 20 September 2007, laments that local sub-contractors are not being utilised in Chinese infrastructural projects.

¹³⁰ Marysee & Geenen Marysee, S and Geenen, S 'Win-win or unequal exchange? The case of the Sino-Congolese Cooperation Agreements', *Journal of Modern African Studies*, 47, 3 (2000) 396..

¹³¹ The Chinese philosophy justifies the better system as an equitable "win-win" strategy. May see & Geenen (n 131 above) question whether it does not amount to an equal exchange p. 389. At page 390, they calculate the value of mineral resources drawn by China from the Congo to be in the region of \$39.7 and 83.6 billion; as compared to \$6.5 billion being the money invested by the Chinese to finance the road and railway infrastructure. They conclude that it is a 'very unequal exchange'.

¹³² Marysee & Geenen (n 130 above) at p. 390.

China is Benin's second-largest commercial partner in West Africa. Benin exports mainly cotton and cotton sub-products (threads, raw fabrics and basin fabrics).¹³³ Reciprocally, China exports textiles and garments, electrical machinery, light industrial products, consumer goods, home appliances and so on, to Benin.¹³⁴

An analysis of literature on the impact of this relationship on the development of local populations may be summarised as follows:

- Textile imports from China are considered to have the effect of undermining the viability of local factories and retailers.¹³⁵
- Local wholesalers and manufacturers in Benin have reported that the imported Chinese goods feign superiority through the use of unlawful imitation of global brands, such as “Visco”, “Superwax” and Madras” thereby subjecting local operators “unfair Chinese competition”.
- Benin traders also allege that they had previously enjoyed a market share in Nigeria. This market has shrunk due to direct Chinese exports into Nigeria, alternatively due to an increase in the number of Chinese textile traders building base in Nigeria.
- Chinese traders are accused of selling counterfeited textiles.

Infrastructure

¹³³ T. Houeninvou, in Garth le Père, ed, *China in Africa: Mercantilist Predator, or Partner in Development?* (2006) Midrand & Johannesburg: Institute for Global Dialogue and South African Institute of International Affairs.

¹³⁴ MOFCOM: <http://bj.mofcom.gov.cn/aarticle/ddgk/zwrenkou/200211/200021100055116.html>.

¹³⁵ In response to pressure from local entrepreneurs, the Ministry of Commerce in Benin issued a directive limiting Chinese to wholesale operations, and barring them altogether from the retail sector, and holding any Chinese that violated this directive liable to compensate local suppliers if prices fell within a month after a transaction.

The Chinese constructed a major stadium (the Friendship Stadium) for Benin. The Benin government was not able carry out maintenance works on the stadium because no local technicians had been trained to operate the equipment. In 2005, when Benin was preparing to host the African Under 20 Football Cup, the Benin Government had to call in the Chinese to attend to the maintenance. This underscores the challenge of transfer of technology and skill from Chinese engineers to local technicians.

Forestry

There are concerns in Benin that China has been carrying out unsustainable logging of trees. The pace of deforestation is alarming. It is suspected that timber is being unlawfully smuggled out of the country into China. There are concerns regarding unsustainable forest management practices by Chinese forestry firms.

4.3.3 The case of Angola

Angola is an oil-rich country. China currently exports over 25% of its oil to China. China has in exchange for oil exports, offered Angola a soft loan of US 2 billion dollars in March 2004, with no political strings attached. The Angolan government considers it an escape from the conditional loans of the World Bank and the IMF which demand structural reforms. China has signed a number of cooperation agreements with China. These include cooperation agreements in the areas of energy, mineral resources and infrastructures; a technical cooperation agreement; an agreement relating to mining and oil supply to China.

Road infrastructure

China has invested heavily in loan infratructure in Luanda and the northern agricultural and mining province. China has constructed and rehabilitated major rail and road infrastructure. Also, China is construction a new international airport, north-east of Luanda. However, chinese contractors have been employing chinese nationals for jobs for which there is an available local

labour market. There have also been complaints that the wages paid by chinese state-owned companies are not in line with the Angolan minimum wage laws.¹³⁶

A further concern raised by local Angolans is that chinese construction firms source materials from China. This impacts on the viability of retailers of local building materials as well as those sub-saharan countries that manufacture similar materials.¹³⁷

4.4 Concluding Observations

There are a number of clear advantages of chinese investments in Africa. One is that China is rebuilding much-needed infrastructure in many African countries. Secondly, the nature of the assistance that China provides to Africa addresses in a very direct sense the developmental needs of the people on the ground. Third, the low prices at which the chinese sell their products in Africa are affordable to the average citizen. Fourth, the nature of China's assistance has typically been agriculture, water, health and education.¹³⁸ A second reason is that Chinese commodities are cheap and affordable to African consumers.¹³⁹ Thirdly, the the mere demand of China on African natural resources has resulted in an upsurge of the prices of these resources with the resultant effect that African states are gaining higher revenue as a result.¹⁴⁰

These positive benefits must be counter-balanced against the negatives of China's *modus operandi*. First, the Chinese way of doing things creates a dependency on China for aid, for products and for revenue. This undermines the principles of self-reliance, ownership and leadership that are set out as fundamental principles of the NEPAD vision for Africa.¹⁴¹ Second,

¹³⁶ L Corkin (2008) China's interest in Angola's construction and infrastructure sector in p. 181.

¹³⁷ Corkin & Burke (n 136 above).

¹³⁸ J Rocha A new frontier in the exploitation of Africa's natural resources Issue 262 *Pambazuka* 14 December 2006 accessed at <http://pambazuka.org/en/category/comment/38846>.

¹³⁹ These three observations are supported by a number of Interviews.

¹⁴⁰ Rocha (n 138 above) 2.

¹⁴¹ Rocha (n 138 above) 25

China's tendency not to utilise local labour is cause for concern.¹⁴² What this means is that unemployment and skills development in Africa is not being resolved in Chinese funded projects. The manufactured products that China exports back into Africa that are undermining Africa's private sector and causing high unemployment levels in the countries of operation.¹⁴³

The concluding observations are that African nation states are not responding adequately to the negative implications of China in Africa. Whether the lapses on the part of the state in the protection of the RTD by design or by default, it is submitted the result is still the same. The duty of African states to ensure the RTD in terms of Article 22 remains faithful in all circumstances. The right of citizens of African states to assert their RTD by compelling their governments through various means to reconsider the terms of China-Africa co-operation agreements is available. This is one mechanism that needs to be undertaken to scale up human rights respect, protection and fulfilment in China-Africa relations.¹⁴⁴ The other mechanism is of course to enhance the role of the AU to bring to the attention of African states some of these developmental losses and present concrete options of how these can be mitigated within the partnership.

¹⁴² Chinese funded projects utilize chinese expatriate labour up to about 70% and only 30% local labour. Rocha (n 139 above) 2.

¹⁴³ Rocha (n 138 above) 2.

¹⁴⁴ This mechanism, civil society participation, is not a focus of this study. The study places concentration on regional cooperation as a mechanism to mitigate developmental risks and threats.

Chapter V: The African response to the implications of China in Africa

5.1 Introduction

The preceding Chapter raised some of the issues that are of concern within the continent and within the specific contexts of a few selected countries. This chapter addresses a pertinent question: Why should the response to China's actions in Africa be addressed at the regional level?

At the outset this study observes that regional integration has always been part of a goal on the agenda of the continent. However, it has been a challenge for Africa ever since the end of colonialism. The underpinnings and motivations for integration have evolved over time. Initially, region integration was promoted as a statement against colonial exploitation. It was a unifying proclamation that placed a call on African states to unite in order to transcend the bondages of colonialism.¹⁴⁵ The second conceptualisation of regional integration came as a sequel to independence of African states.¹⁴⁶ The idea of co-operating at this time was a welcome one because there was need for African states to survive together in post-independent Africa. The third wave of concept of integration developed alongside the movement of "pan african movement."¹⁴⁷ This wave led to the establishment of the Organisation of African Unity. The fourth and current conceptualisation of African regional integration is still one that is in its embryonic stage; it is one that seeks to conceive of a transnational "United States of Africa."¹⁴⁸

¹⁴⁵ Gerrit Olivier *Regional integration in Africa : a political perspective* Centre for African and European Studies, University of Johannesburg, South Africa

¹⁴⁶ Olivier (n 145 above) 6.

¹⁴⁷ Oliver (n 145 above) 6.

¹⁴⁸ Olivier (n 145 above) 6.

Development scholars recognise that regional co-operation and integration is key to any development strategy.¹⁴⁹ This is so because there is consensus that regional integration is one of the main tools that can assist developing countries to overcome dependence.¹⁵⁰ Notwithstanding the logic of this position, the current negotiations between China and Africa are bilateral in nature. To this date, individual African countries have failed to galvanise themselves into a unit, to consolidate their views and to present them as a single collective within China-Africa relations. Consequently, it is China that sets the agenda for China-Africa relations, sets the terms of engagement and satisfies its own interests.¹⁵¹ There is an crucial need for Africa to commence Africa-wide dialogue on China in Africa in order to develop a common framework for responding to the risks and threats to development in countries of engagement in Africa.¹⁵²

5.2 The duty of states to ensure RTD - a possible role for the African Union in China-Africa relations?

This study proposed a thesis that the AU has a role to play in China-Africa relations. This section presents seven key reasons in support of the proposition. The seven reasons are based in part of arguments found in diverse sources of literature on regionalism, international cooperation and governance as well as on interviewees informed predictions of the direction of regionalism in Africa:

The first reason can be found in a progressive trajectory of institutionalisation of governance in Africa away from nationalisation towards regionalism. In support of this assertion, one needs only look at the initial development of pan-African congresses in the late 19th and early 20th centuries, followed by the institutionalisation of pan-Africanism in the form of the Organisation

¹⁴⁹ A Adedeji, *Putting people first* Opening statement delivered at the International conference on popular participation in the recovery and development process in Africa, Arusha, Tanzania 12 February 1990.

¹⁵⁰ A Adedeji *Alternative strategies* SKB Asante Hans Zell Publishers London (1991) 86.

¹⁵¹ Ndubisi Obiorah *Who's afraid of China in Africa? Towards an African civil society perspective on China-Africa relations*. 49.

¹⁵² Obiorah (n 151 above) 49.

of African Union (OAU), followed further by the transformation of the OAU into the African Union (AU).

The second reason lies in various normative statements and commitments that are embellished in the preambles and texts of African regional instruments such as the New Partnership for Africa's Development (NEPAD) that emphasise the acceleration and deepening of regional and economic integration as a core principle on which development in Africa can be achieved, and a comprehensive, holistic and integrated development approach. And the strategic imperative of partnership as a concept that must found Africa's development going forward.¹⁵³

Third, globalisation has created interdependency of needs and interests amongst states. Africa is a part of this globalised community. The exigencies of commerce and political co-operation between states is now no longer a matter of choice; it is an imperative. States must now seriously consider regional integration as a "historical destiny" and place this matter on the agenda of the AU.¹⁵⁴

Fourth, there seems to be a slight shift from the adamant position of states to hold to the principle of sovereignty and non-interference. Pressured by the reality of the common threat to humanity posed by conflict and instability on the region, states have evidenced a willingness to cede their sovereignty to the AU. In circumstances where there is a threat or actual occurrence of genocide, war crimes, crimes against humanity or events that seriously disturb national and regional peace and security, the AU is vested with the "right to intervene in the affairs of any member state".¹⁵⁵ The AU now also has the obligation to suspend any government of a member state that assumes power through unconstitutional means.¹⁵⁶

¹⁵³ S Dogonyaro *Partnerships and NEPAD* paper prepared for presentation at the Forum for Envisioning Africa Nairobi, Kenya 26-29 April 2002. At page 4 he says that the 'concept of partnership [connotes] a relationship of partnership between people who share a common future – both positive and negative.'

¹⁵⁴ Gutto, S.O.B. 2008/9 *Moving towards economic integration, Enterprise* (December/January) 44-47.

¹⁵⁵ Article 4, Constitutive Act of the AU, 2000.

¹⁵⁶ Article 30, AU Constitutive Act.

The basis for the fifth reason is to be found in the formal decision of African leaders to consider the establishment of a formal unified African governance system. In this regard, one points out in 2007, at the conclusion of the 9th Ordinary Session of the AU Assembly of Heads of State and Government held in Accra, Ghana, at the launch of the *Accra Declaration*, the AU Assembly commissioned a study to investigate the prospects of establishing a Union Government for Africa.¹⁵⁷

The sixth reason is a recent one. In 2009, the African Heads of State and Government, a concession was reached between the Chinese and Africa for the Africa to be engaged in negotiations¹⁵⁸ “as one”. The agreement was that the African Union would be a full member of the negotiating team during Africa-China dialogues and that China would negotiate and dialogue directly with the leadership of the African Commission regarding strategic issues that impact on the Africa-China relations.¹⁵⁹ This signifies a tacit softening of African states and governments to the agency of the African Union to represent the regional economic and other interests.¹⁶⁰

A seventh and final reason is that there are already a number of galvanising activities arranged by the member states to try and bring together the divergent views of different African countries on divisive areas of interest. This view is supported by the number of dialogues and platforms taking place at the African Union level, sanctioned by the Assembly of Heads of State and Government, that indicate the shift in thinking towards harmonisation and integration. Notably, the Dialogue on Shared Norms¹⁶¹ which seeks to formulate a single African human rights

¹⁵⁷ Murithi (n 47 above).

¹⁵⁸ This Platform, the China-Africa Cooperation Forum (FOCAC) was first held in 1999, and since then has been held tri-annually.

¹⁵⁹ On 31st October – 1 November 2010, the 3rd Strategic Dialogue between the Commission and China is to be held in Beijing, China. The subject matter of the dialogue includes the reviews of developments in Africa and China, how to improve the situation, as well as the state of collaboration between the Commission and China.

¹⁶⁰ Other examples can be found of a warming up to regional representation; the cession of sovereignty from African states to the African Union which can be evidenced from treaty developments that indicate a slow, but growing endowment of the AU with the right to intervene in the affairs of member states.

¹⁶¹ The Dialogue on Shared Norms seeks to facilitate common values amongst human rights actors, including states across Africa. This will be held in February 2011. The full discussion of this dialogue is set out in the AU 2009-2012 Action Plan available on the official website of the AU.

philosophy, the the African Governance Architecture (AGA)¹⁶² which seeks to integrate fragmented african human rights governance structures into single cohesive one regulated at regional level.

5.3 Stakeholder perspectives on the current role of the African Union in China-Africa relations

Asked to comment on the thesis that there is need for Africa to create a common position on China's involvement in Africa, the overwhelming view from interviewees was indeed that it is critical for Africa to develop a common position regarding China and address the challenges arising from this Co-operation as a collective.¹⁶³ Three key justifications were presented to support why African states should integrate as a continent in order to address China's engagement in Africa.

First, there was a consensus of view that there was a general lack of clarity and articulation of goals and objectives for the China-Africa cooperation. It was observed that China has demonstrated a clear capacity to articulate in very clear terms its policy towards Africa, its intended initiatives and the outcomes, whilst African leaders are unclear and lacking in clarity as to their proposals on how to maximise the benefits out of these Chinese initiatives.¹⁶⁴

Secondly, interviewees highlighted the fact that the assymetry between African states and China in terms of negotiating and bargaining capacity was extremely wide. Whilst it may be relatively

¹⁶² The African Governance Architecture Platform seeks to create a cohesive African governance framework. This platform will convene in November 2010.

¹⁶³ This position is strongly shared by Kwesi Prah "I don't think Africa really has any chance of doing anything in this present world without unity. That is the bottom line. Africans have to unite. Africans divided as they are have no platform for bargaining with anybody. If Africa was united today .. it would be capable of dealing with China on its own terms or with the West on its own terms. Unity is the basic pre-requisite for African advancement and for Africa to be able to bargain with China or anybody else". Kwesi Prah in an interview with *Pambazuka* 14 December 2006 accessed at <http://pambazuka.org/en/category/comment/38854>

¹⁶⁴ R Nivedita *While China Scrambles Africa Builds Hope* IDSA Strategic Comments, November 9, 2006, available at: <http://www.idsa.in/publications/stratcomments/NiveditaRav091196.htm>

easy for economically stronger states to negotiate a sustainable position, weaker states may not have a particularly strong bargaining position. Most highlighted the dangers of leaving negotiations to individual states that lack capacity to bargain with China at a bilateral level.

Thirdly, the threat of depletion of Africa's resources is a common concern that calls for collective efforts to confront the issues. In this respect, the resources of Africa are shared natural resources which must be managed collectively in a sustained manner.¹⁶⁵

5.4 Challenges to the enhanced role of the AU in China-Africa relations

5.4.1 Notions of sovereignty

A development framework does not undermine the notion of sovereignty,¹⁶⁶ because sovereignty is meant to be a principle that works for the benefit of the people, not against them. African leaders should misconstrue the meaning of sovereignty to mean the entrenchment of power or political leaders who regard their subjects to be without rights.¹⁶⁷ At any one stage in the development of Africa's perspectives on regional integration, the key challenges to regional integration have been lack of commitment to true integration and a selfish clinging to short-term interests based on linear national interests, justified in the name of national sovereignty.

¹⁶⁵ Interview with Brilliance Makama, Goldman Award on Environment Winner, 2010. This view is also shared by W Scholtz "Collective environmental security: the yeast for refinement of International law (2008) 19 Oxford Yearbook of International Environmental Law 151.

¹⁶⁶ The principle of sovereign equality of states is derived from the UN Charter, and enjoins the UN and its members to interfere in matters that are essentially within the domestic (national) jurisdiction of any other state.

¹⁶⁷ M Mamdani *Citizen and Subject: Contemporary Africa and the legacy of late colonialism* (1996) Kampala: Fountain Publishers says that this misconception of the meaning of sovereignty is "self-induced".

5.4.2 *Lack of a Pan-Africanist ideology*

However, the case has already been argued above that the African Union is the most likely agent for change in China-African relations. Even within the constraints of its mandate and the Constitutive instruments, there are soft avenues for the African Union to steer debates and discussions of member states in the direction of a greater commitment to protecting and promoting the RTD in Africa.

5.4.3 *Understanding China*

After organising herself, Africa needs to study and understand the chinese *modus operandi*. China is extremely shrewd in its interests and there is need for a nuanced analysis by economists, political scientists, development practitioners and academicians across Africa to examine what is at stake for Africa within this partnership. Much of the studies that have been carried out are anecdotal and obsessed with the East-West dichotomy and comparison debate. As stated elsewhere, this monodimensional approach is unhelpful.¹⁶⁸ What is required is the establishment of a think tank for Africa on China-Africa partnership not in relation to what the West thinks, but in relation to what Africa thinks about Africa and wants for Africa.

5.4.4 *Development of Principles for International Co-operation*

There is need for Africa to develop principles for international co-operation of its own. Africa must also develop industry-specific standards of its own that govern the terms and conditions on which international players engage in Africa within key industries. One of such sectors is the natural resources sector. While it is true that already there are in place a number of efforts have been made by the natural resource sector to foster good governance. These include the Kimberly Process, the Extractive Industries Transparency Initiative (EITI) and various other codes. However, these codes are purely industry-driven. At the level of Heads of State and Government there has been a disheartening lethargy whilst Africa's resources are being plundered by other regions.

¹⁶⁸ K Prah Africa and China : Then and now *Pambazuka Issue 282* 14 December 2006 accessed at <http://pambazuka.org/en/category/comment/38854>

5.4.5 Effective dialogue and bargaining

There is need for the dialogue between Africa and China to be more efficient, effective and constructive. Many of the stakeholders interviewed during this study conceded that the FOCAC agenda and process was a farce. China sets the agenda; China determines the process. There is yet to be a coherent articulation of vision and agenda by the African dialogue partner.

5.4.6 Strengthening the Institutional Capacity of the African Union

An almost recurring theme in many of the interviews that the researcher conducted with stakeholders revolved around the lack of the capacity of the African Union as an institution to engage effectively in international dialogue. The Commission suffers from is under resourced. It lacks the numbers of personnel required to carry out the work in many of the departments; but even in those departments that have personnel, without exception respondents described the effectiveness of the organisation as “ineffective and disorganised”. Certainly, one of critical key areas in which the African Union requires to be capacitated is in the area of negotiation skills. If Africa’s bargaining position is weak, its bargaining skills are even weaker. China comes with well thought out and well articulated proposals and positions to the bargaining table. Africa is extremely weak in this regard.

5.4.7 Broad-based participation

The regional negotiation processes should make room for enhanced civil society co-operation across Africa. There is a wealth of research and knowledge management expertise resident within civil society and academia across Africa.

Chapter VI: Conclusions

This study set out to do three main things: to understand nature of China's involvement with Africa; to analyse China's increasing engagement with Africa within the paradigm of the RTD; and to learn how African states are individually and particularly as a region, addressing implications of Chinese activities for the populations in Africa.

The summary of the findings of this study are that China is well-regarded by African states; and her presence and assistance in Africa is appreciated. Whilst there are many advantages of the Chinese way of doing things for African populations, there are an equal number of disadvantages. The responses of national governments under bilateral cooperation agreements are weak. There is need for cooperative efforts of all African countries to devise mechanisms to address the risks and threats of Chinese activities in Africa on local populations. To this end, there is a role for the AU to play in catalysing dialogues around this area. Indeed, there have been signals and trends that indicate that African states are gradually appreciating the value of regionalism and international cooperation. The AU still faces a number of structural challenges and capacity shortcomings in driving this process. This study has recommended a number of ways in which these may be overcome.¹⁶⁹

The ultimate message that this study concludes with is that Africa should not be caught up in the euphoria of relief from the hegemony of western conditionalities, and the hope of finding a "friend" in China. China is clearly pursuing its own interests and policies. What Africa needs to do is also to trade and pursue its policies in its own interests.¹⁷⁰ As one diplomat said, "*in international relations, there are no friends; only interests*". Africa must reaffirm amongst member states that the RTD is not merely rhetoric but a concrete duty that must be carried out. Within the context of China-Africa relations, Africa through the African Union, needs to

¹⁶⁹ Section 5.4 above and the sub-sections thereunder.

¹⁷⁰ Prah (n 168 above).

urgently rectify the unequal relationship that exists between China and Africa;¹⁷¹ It needs to evaluate very seriously, as it should do all other partnerships, whether China's role in Africa is in the overall interest of the RTD of the African people. To the extent that it is clear that the interests of Africa are not being served, African's need to put their citizens at the center of a well-crafted, cohesive Africa policy on China. Africa must be willing to place demands and conditions that will serve to enhance the RTD of the people of Africa, without fear or favour.

¹⁷¹ Pambazuka conducted a quantitative study of three academic databases, called CNKI, ISI and SCOPUS for published articles with either Africa-China or Afro-Chinese or China-Africa or Sino-African as titles. The results, published by Adam Bodom, in *Africa-China relations: Strengthening symmetry with soft power*, Pambazuka, 2 July 2009, Issue 440 accessed at http://www.pambazuka.org/en/category/africa_china/57385 show an overwhelming use of the nomenclature of China-Africa as compared to Africa-China terminology. Evidently more writers see the relationship as China-Africa, rather than Africa-China.

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