

**UNIVERSITY OF CAPE TOWN
SCHOOL OF ADVANCED LEGAL STUDIES**



**CHINESE INVESTMENTS IN AFRICA: ADDRESSING AND ANALYSING LABOUR,
SKILLS AND TECHNOLOGY TRANSFER CHALLENGES.**

By

Takudzwa Mazire (MZRTAK001)

Supervisor: **A/Prof. Ada Ordor**

Co-Supervisor: **Tebogo Lefifi**

Research dissertation presented for the approval of the Senate in partial fulfilment of the requirements for the Master of Laws degree in Commercial Law in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

10 February 2020

Word count: 25650

I hereby declare that I have read and understood the regulations governing the submission of LLM in Commercial Law dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation/ research paper conforms to those regulations.

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

DECLARATION

I, Takudzwa Mazire, declare that **‘Chinese Investments in Africa: Addressing and Analysing labour, skills and technological transfer challenges’** is my own work and that it has not been submitted before for any degree or examination in any other university, and that all sources I have used or quoted have been indicated and acknowledged as complete references.

Signature:

Signed by candidate

Date: February 2020

ACKNOWLEDGEMENTS

I would like to express my sincere gratitude and appreciation to my supervisors Tebogo Lefifi and Prof. Ada Ordor for their positive attitude and guidance. I am humbled to have worked under your leadership and guidance.

I would like to acknowledge and appreciate the University of Cape Town for the International scholarship funding assistance.

ABSTRACT

This research paper provides an address and analysis of the challenges commonly faced under Chinese investments in Africa and seeks to address the question on what regulatory mechanism can be used to maximise the benefits of Chinese Investments in Africa. In doing so, this study seeks to clarify the nature activities that transpire under Chinese investment, this is because over the past decades there have been serious accusations of human rights violations, illegal practices and lack of technology and skills transfers amongst many other problems. In conducting this examination, this study, I consider the dynamic legal and policy framework that regulates the Chinese investments. This provides a vehicle through which the legality of Chinese investments actors can be tested.

Secondly, an outline and discussion of two selected challenges namely, Labour relations and employment practices; lack of skill and technology transfers. These issues are analysed in depth from different perspectives and potential solutions will be provided. In addressing the challenges, I draw from the experience of South Africa in terms of employment practices and Huawei in Zimbabwe and South Africa case studies.

The research ultimately concludes that the challenges faced under Chinese investments are not as described by critics but rather they are complex and differ from business to business. Therefore, the best solution may be to ensure effective enforcement and implementation of local laws to ensure compliance with the law. The study recommends that there is a need for Africa to have a uniform China policy and to take advantage of the FOCAC process to prioritise the areas critical to their national and continental development goals.

LIST OF ABBREVIATIONS

TRIMs Trade-Related Investment Measures

TRIPs Trade-Related Intellectual Property Rights

BITs Bilateral Investment Treaties

SADC FIP Southern African Development Community Protocol on Finance and Investment

FDI Foreign Direct Investment

SADC Southern African development community

SOEs State-owned Enterprises

Table of Contents

ABSTRACT	3
1.1 Background to the study	1
1.2 Statements of the Research Problem	5
1.2 Research Aims and Objectives	6
1.4 Research Questions	7
1.5 Research Methodology	7
1.6 Significance of the study	8
1.7 Preview of Chapters	9
1.7.1 Chapter One:	9
1.7.2 Chapter Two:	9
1.7.3 Chapter Three:	9
1.7.5 Chapter Four:	9
2.1 INTRODUCTION	10
2.2 LITERATURE REVIEW	10
2.3 THE SCOPE OF FOREIGN INVESTMENT	15
2.3.1 Theories on Foreign Investment	16
2.3.2 The classical theory on foreign investment	17
2.3.3 The dependency theory	18
2.3.4 The middle path	18
2.4 AN OVERVIEW OF CHINESE INVESTMENTS IN AFRICA	19
2.4.1 The nature of China's investments in Africa	20
2.4.2 Actors in the field China Investments in Africa	21
A. State-Owned companies	22
2.5 CHINESE MOTIVATIONS FOR INVESTING IN AFRICA	23
2.5.1 Natural Resources as the primary motivation for Chinese FDI	23
2.5.2 Market Access as the second motivation for Chinese FDI	25

2.5.2 The importance of Chinese investment for SADC and Africa.	27
2.6 Legal and Policy Frameworks	31
2.6.1 Regulation of Chinese outbound investment	31
2.6.2 THE ROLE OF AFRICA-CHINA MULTILATERAL BODIES AND TREATIES	34
2.6.3 The History of the Forum on China-Africa Cooperation	34
2.6.4 SADC AND CHINA RELATIONS	36
2.6.5 CHINA'S AFRICA POLICY	36
2.6.6 THE LEGAL FRAMEWORK	39
A. Bilateral investment treaties	39
b. Other applicable Legislation	40
C. Chinese Labour Laws	41
2.7 CONCLUSION	42
3.1 INTRODUCTION	44
3.2 LABOUR RELATIONS AND WORKING CONDITIONS UNDER CHINESE COMPANIES IN AFRICA	44
3.2.1 GENERAL WORKING CONDITIONS	45
3.2.2 EMPLOYMENT OF CHINESE LABOURERS OVER THE AFRICAN WORKER	47
3.2.3 LOW WAGES	50
3.2.4 TRADE UNIONS, BARGAINING AND LABOUR CONFLICTS	53
3.2.5 DISCUSSION FROM A LEGAL PERSPECTIVE	55
4. Employment, labour relations and working conditions at Chinese companies: South Africa country Case Study	56
4.1 Applicable South African labour laws	57
4.2 Employment and Labour relations	58
4.2.1 Working conditions	59
4.2.2 Relationships with trade unions	60

5. TECHNOLOGY AND SKILLS TRANSFER IN CHINESE INVESTMENTS IN AFRICA.	62
3.3.1 UNDERSTANDING TECHNOLOGY AND SKILLS TRANSFER	62
3.3.2 TECHNOLOGY AND SKILLS TRANSFERS UNDER CHINESE INVESTMENT	65
3.3.3 OBSTACLES TO SKILLS AND TECHNOLOGY TRANSFERS	67
3.3.4 A LEGAL PERSPECTIVE	69
3.4 CASE STUDY: HUAWEI IN ZIMBABWE AND SOUTH AFRICA	71
3.5 Huawei in Zimbabwe	72
4.2 Huawei in South Africa	72
5. CONCLUSION	74
4.1 INTRODUCTION	75
4.1.1. CHAPTER SUMMARY	75
a) Chapter 1: Introduction	75
b) Chapter 2: Literature review and legal-policy framework for Chinese investments in Africa	76
c) Chapter 3: Challenges and prospects of Chinese investments in Africa	77
4.2 RECOMMENDATIONS	78
4.3 FINAL CONCLUSION	80
David Smith ‘Workers claim abuse as China adds Zimbabwe to its scramble for Africa’ available at https://www.theguardian.com/world/2012/jan/02/china-zimbabwe-workers-abuse accessed on 20 January 2020.	84

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Background to the study

Chinese investments in Africa have grown rapidly in recent years.¹ This has contributed immensely to the development of infrastructure on the African continent which is still largely undeveloped.² The areas lacking developments encompass different important economic sectors such as utilities, telecommunications, port construction and transportation.³ Hence, foreign investment is extremely needed in Africa.⁴ This is because, while Africa has the fastest-growing population it receives the least Foreign Direct Investment (hereafter 'FDI') in the world.⁵ Furthermore, while China's investments in Africa are growing, most of Africa's investment inflow still comes from traditional investors like the United States, Europe and Japan.^{6 7}

The relationship between Africa and China dates back to ancient times when the Chinese navigator Zheng He, visited the shores of East Africa.⁸ In recent history, the Chinese built Tanzania-Zambia railway stands as a great symbol of what China and Africa can achieve through working together.⁹ Under their friendship, in 2000 the Forum on China-Africa Cooperation (FOCAC) was established, providing a platform and multilateral mechanism to conduct collective consultations and practical

¹ Wenjie Chen, David Dollar & Heiwai Tang 'Why Is China Investing in Africa? Evidence from the Firm Level' (2018) 32 *The World Bank Economic Review* 32 <https://doi.org/10.1093/wber/lhw049> at 610.

² J.B. Maverick 'The 3 Reasons Why Chinese Invest in Africa' available at <https://www.investopedia.com/articles/active-trading/081315/3-reasons-why-chinese-invest-africa.asp> accessed on 29 August 2019.

³ Ibid.

⁴ Alicia Garcia-Herreror and Jianwei Xu 'China's investment in Africa: What the data says, and the implications for Europe' available at <https://bruegel.org/2019/07/chinas-investment-in-africa-what-the-data-really-says-and-the-implications-for-europe/> accessed on 29 August 2019.

⁵ Ibid.

⁶ Ibid.

⁷ Catherine Elkemann & Oliver C. Ruppel 'Chinese Foreign Direct Investment into Africa in the Context of BRICS and Sino-African Bilateral Investment Treaties' (2015) 13 *Rich. J. Global L. & Bus* at 593.

⁸ Yi Fan 'True story of China-Africa Cooperation' available at <http://www.chinadaily.com.cn/a/201808/31/WS5b8873b0a310add14f388bd1.html> accessed on 29 August 2019.

⁹ Ibid.

cooperation.¹⁰ Africa-China cooperation is guided by distinct principles which emphasise on strategic partnership, mutual benefit, respect for sovereignty and political non-interference.¹¹ This relationship is regulated by different strategies, documents, policies and initiatives. The Chinese side is regulated by Outbound Foreign Investment regulations and policies. This includes initiatives such as ‘China 2025 (Made in China)’ and the One Belt One Road Initiative. On the other hand, the African side is regulated by the individual country's investment legislation. There is no single document detailing a China strategy. Collectively, the FOCAC body stands as the main body that manages the relationship between China and Africa.

There is a nexus between the increase of Chinese investments in Africa and the ‘Going-Out’ policy which sought to use China’s large trillion American dollar reserves to help Chinese companies become global firms.¹² This expansion allowed state-owned enterprises (SOEs) such as CNPC, Sinopec, CNOOC and Chinalco, to acquire foreign technologies and natural resources.¹³ It is, therefore, important before describing the complex nature of Chinese investments in Africa, to describe the nature of the Chinese companies that are investing in Africa.

Originally, Chinese SOEs entered into joint ventures with other African state-owned counterparts.¹⁴ However, Chinese private companies have also joined in and its participation has phenomenally increased by 50 per cent per year.¹⁵ These two types of entities co-exist and operate at different scales, the SOEs are under pressure to operate solely on a commercial basis.¹⁶ Since they are state-owned and elements of State control are present. This distinction is important since local companies are likely to be disadvantaged when it comes to the procurement of contracts whereby SOEs are automatically granted contracts without due process by the host state. It is equally important to describe the nature of Chinese investments in Africa. As they have been constantly criticised for their lack of transparency, corruption and human rights abuses.

¹⁰ Zeng Aiping & Shu Zhan ‘Origin, Achievements, and the Prospects of the Forum on China-Africa Cooperation’ (2018)72 *China Int’l Stud* at 88.

¹¹ Fantu Cheru & Cyril Obi ‘The Rise of China and India in Africa’ (2010) 61.

¹² Joseph Onjala ‘Chinese Direct Investments in Africa: Motivations and Environmental Implications’ *Georgetown Journal of International Affairs* vol. 17 no. 1(2016) 91.

¹³ Ben Yunmo Wang ‘China ‘Going Out’ 2.0: Dawn of a New Era for Chinese Investment Abroad’ available at https://www.huffpost.com/entry/china-going-out-20-dawn-o_b_7046790?guccounter=1 accessed on 29 August 2019.

¹⁴ Joseph Onjala op cit note 12.

¹⁵ Ibid.

¹⁶ Cotula L, Weng X, Ma Q et al *China-Africa Investment Treaties: do they work?* (2016) 17.

Furthermore, lack of diversity as they are primarily concentrated in the mining and construction sectors.¹⁷

These investments are complex, Antonio Martuscelli submits that they are commonly backed up by government bilateral agreements in a package that bundles aid and financial support, investments, access to natural resources and trade facilitation.¹⁸ China has also extensively used the concept of infrastructure-for-resources loans to finance mostly infrastructure projects in several resource-rich countries such as Angola, Nigeria and Sudan.¹⁹ This has drawn lots of criticism from the media and some commentators.

While China is Africa's biggest investor in infrastructure projects. There has been a lot of criticism towards Chinese investments in Africa, some issues are mere propaganda, and some are genuine concerns. These issues include labour and environmental violations by Chinese owned businesses and inhumane working conditions.²⁰ Secondly, not employing local managers and only using locals for low paying jobs including lack skills development and technology transfer.²¹ Thirdly, China excessively increasing Africa's debt by giving loans to countries that cannot pay it back, in order to have political control over African natural resources.

In any commercial relationship, there are advantages and disadvantages. The relationship between Africa and China is not an exception. Therefore, central to this research is the assessment of Africa's prospects and challenges in connection with Chinese investments. It will further investigate the direct and indirect impact of these investments on labour relations, skills development and technology transfer concerns. While assessing its contribution towards Africa's Agenda 2063. The Agenda 2063: Africa We Want initiative, is 'Africa's blueprint and master plan for transforming Africa into the global powerhouse of the future.'²² It contains Africa's aspirations such as, for the purpose of this study 'A Prosperous Africa, based on Inclusive Growth and Sustainable Development' and goals like 'Environmentally sustainable and climate-resilient

¹⁷ Antonio Martuscelli 'The Economics of China's Engagement with Africa: What is the Empirical Evidence?' *Dev Policy Rev* (2019) DOI:10.1111/dpr.12456 at 13.

¹⁸ *Ibid* at 14.

¹⁹ *Ibid*.

²⁰ Irene Yuan Sun, Kartik Jayaram & Omid Kassiri 'Dance of the Lions and Dragons: How are Africa and China engaging, and how Will the Partnership Evolve?' (2017) 17.

²¹ *Ibid*.

²² 'Agenda 2063: The Africa We Want' available at <https://au.int/agenda2063/sdgs> accessed on 23 August 2019.

economies and communities.’²³ There is also a push to have Africa take the responsibility of financing her own development.²⁴ This point is critical since, a realisation of thereof, would result in a more powerful Africa on the world arena. Another important goal is the drive to have an educated Africa citizenry underpinned by Science, Technology and Innovation.²⁵ The significance of this goal is in its potential impact on making Africa an important investment destination. Thereby, resulting in a skilled labour force that will allow for fast-tracked and effective skills and technological transfer in the area of human resources development. The document also includes Priority Areas such as jobs, poverty, economic diversification and resilience, Sustainable and inclusive economic growth amongst other things.²⁶

Chinese investment in Africa area is relatively new, and literature on the legal aspects of it is thin.²⁷ This area has not been researched as studies seem to have dealt with these investments from an economic or international relations perspective. The interconnection between Chinese Investments in Africa and Agenda 2063 has received insufficient attention in research.

In the light of above factors, this research sets out to examine the impact of Chinese investments on sustainable development and how Africa can work on reducing the risks of these investments in order to fulfil the goals pledged in the agenda 2063 including the national development goals of its respective countries. This research will draw from the experiences of Chinese investment projects in the Southern African Development Community (SADC) region. These factors will be analysed by considering the legal culture in China and that of the hosting country. Since of Chinese investments in Africa are mostly based on bilateral agreements.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Margaret McMillan ‘Chinese Investment in Africa’ available at <https://www.theigc.org/blog/chinese-investment-africa/> accessed on 29 August 2019.

1.2 Statements of the Research Problem

The problem this research seeks to address is how African States can better regulate the impact of Chinese investments in order to reach the goals of Agenda 2063 on human resources development. The Africa-China commercial relationship has found itself in a complicated position. It has been under scrutiny from powerful media houses and other commentators. Also, the ongoing trade war between the United States of America and China could potentially have an impact, both positive and negative on the African continent.²⁸ This puts Africa in a rather complex position since it might have to choose sides or allies depending on how Africa leverages this event, it could have an impact on Chinese investments as a whole. Therefore, it is important to assess the challenges and prospects of Chinese investments in Africa. This allows the African side to make the best of the Africa-China relationship by developing a multilateral cohesive framework in order to make it truly win-win cooperation with mutual benefits.

The relationship between Africa and China is of great importance especially in this globalisation era, as it brings about enormous economic benefits to the whole continent and the hosting African country. These economic benefits are advantageous to the world at large since it reduces the influx of African migrants to Europe and the United States and contributes positively to international security through poverty reduction and employment creation. However, despite these positive contributions, African domestic industries, in the past, such as textile has notably suffered due to competition from the Chinese companies in Africa. In South Africa for example, the burden was carried by local factories that faced closure which increased unemployment rates, with garment industry jobs falling from 220,000 in 2002 to 100,000 in 2011.²⁹

While not directly caused by Chinese companies' operations, recently Southern Africa was hit by Cyclones Idai and Kenneth, damaging cities, killing hundreds of people while displacing millions in Mozambique, Zimbabwe, Malawi and some parts of South Africa.³⁰ It becomes a point of paramount significance for the SADC region and the African States to protect its national industries and environment where there are negative impacts of Chinese investments. This is done

²⁸ Mehari Teddele Maru 'A new cold war in Africa' <https://www.aljazeera.com/indepth/opinion/cold-war-africa-190630102044847.html> accessed on 29 August 2019.

²⁹ Tansy Hoskins 'Ethical fashion: saving South Africa's clothing industry' available at <https://www.theguardian.com/sustainable-business/sustainable-fashion-blog/2015/feb/02/ethical-fashion-rebuild-south-africa-garment-industry> accessed on 30 August 2019.

³⁰ See, 'Cyclones Idai and Kenneth' available at <https://www.unocha.org/southern-and-eastern-africa-rosea/cyclones-idai-and-kenneth> accessed on 30 August 2019.

to ensure sustainable development. The African States are faced with a mammoth task of finding solutions to these challenges which ranges from labour, environmental, technological and skills transfer concerns, as they are needed to increase economic benefits. Furthermore, it ensures the growth of local industries, national economies and the African economy. The focus should, however, not only be on the negative aspects of these investments. There should be a strong focus of the positive aspects from thereof, this allows Africa and China to improve on, and maintain these successes.

1.2 Research Aims and Objectives

This research aims to investigate which legal and policy framework African countries can put in place to regulate the impacts of Chinese investments in their respective countries in order to maximise economic benefits through sustainable development. Therefore, meeting national development goals of the respective African States and ensuring the continent meets the goals of Agenda 2063. The research will also make recommendations on how African countries can address identified challenges impacts of Chinese investments therefore, ensuring mutual benefit of win-win cooperation between Africa and China.

1.4 Research Questions

The main research question is ‘How best can the African States maximise economic benefits and manage the impact of Chinese Investments in Africa?’

These two key sub-questions that are also important in finding the answer.

I. What mechanisms, if any, has the African States put in place in trying to minimise the risk involved with Chinese investments in Africa, including at a National, Regional and Continental level?

II. II. What are the challenges encountered under Chinese Investments in African in addressing development goals in SADC?

1.5 Research Methodology

To answer the above research questions, I will analyse relevant and related literature on Chinese Investments in Africa. The research is a desktop-based project. It will make use of primary resources of law that includes Investment legislation from China and the host African State, SADC and Africa Union documents and FOCAC Action plans. Secondary resources of law will include journal articles, documents, electronic resources and databases, books written by experts, reports, online newspaper articles, working papers and organisations within the field of study. The research will give an in-depth analysis of the prospects and challenges faced by the African side in different projects, while critically assessing the legal background and cultures of the investing Chinese entity and the African counterpart. This will give a factual understanding of the challenges that African countries face as a result of the Chinese investments. This research will also use current news and developments in the area of study.

This research will use a qualitative descriptive approach. The primary concern of this method includes prioritisation of methodological issues linked to interpretation, context, meaning,

culture and narrative.³¹ To obtain a broader understanding of the legal aspects of the challenges and successes facing investments in Africa, a comparative study will be applied. This comparison is limited to the United Kingdom since it has colonial ties with most countries in the SADC region.

In terms of the law, this research includes multi-disciplines, mainly Investment law and Labour law. Furthermore, this research study will be positioned within the theoretical framework of development and policy theory. Key theoretical principles include social, institutional, economic and political factors affect African people's position in the global society. The development theory is appropriate to this study since it involves institutional and social-economic transformation.³² Chinese investments in Africa have the potential to positively impact Africa's economic growth through increased urbanization, industrialization and increased and appropriate use of technology in all sectors of the economy.³³

1.6 Significance of the study

This paper will provide a useful evaluation to the SADC secretariat and countries on whether a regional investment regulatory framework is a viable means of dealing with issues of sustainable development in SADC. These issues deal with fair labour practices and skills and technological transfers in the region. Furthermore, the study will consider the frameworks for regulating Chinese Investments within SADC. Secondly, what lessons can be taken from the region's experience for developing a sound investment and legal framework regulating Chinese Investments. Thirdly, the role of RECs in the engagement between China and Africa will be evaluated. In addition, the study will contribute towards the existing literature on the prospective benefits and challenges of developing a legally binding regional investment regulatory framework in SADC.

Foreign investments, in general, play a key role in the economic development of Africa countries. This research paper focuses on Chinese investments in Africa because it is growing fast and therefore should be able to contribute to the discussion and debate on the contents of the

³¹ Qualitative Methods for Law and Society Research—An EUI Research Guide available at <https://www.eui.eu/Documents/Research/Library/ResearchGuides/Law/EUI-Law-and-Society-Qualitative-Methods-Reading-List-April-15.pdf> accessed on 25 September 2019

³² Akampurira Abraham '*Development Theory, Policy and Planning*' (published Diploma thesis, Munich University, 2011) see at <https://www.grin.com/document/207232>.

³³ Ibid.

investments. Consequently, this paper will be useful to law students, policymakers, practitioners, advisors and consultants operating in the area of Chinese investments in Africa.

1.7 Preview of Chapters

This research paper comprises four chapters

1.7.1 Chapter One:

Chapter one provides an introduction and background to this research. Furthermore, it contextualises the nature of the research to the extent that it identifies the problem and outlines the methodology and approach used.

1.7.2 Chapter Two:

Chapter two provides in general terms a conceptual and theoretical framework for this paper, by discussing a brief history of China's relationship and economic engagement with Africa. It will discuss the nature of Chinese investments in Africa and the parties involved. In particular, it will focus on the advantages and disadvantages of these investments within the context of globalisation and regionalism.

1.7.3 Chapter Three:

This chapter will give an overview of the challenges and prospects of Chinese Investments faced by African countries; this will be discussed in the SADC context. The chapter will discuss the challenges faced by SADC countries, concerning labour and technological skills transfers in the context of suitable development. The Chapter will also include case studies of Huawei's operations in South Africa and Zimbabwe in an attempt to contextualise skills development and technology transfers.

1.7.5 Chapter Four:

Lastly, chapter five concludes the research and makes recommendations that the Africa States should consider when negotiating and managing Chinese investments. Including, when they develop a strategic regional investment framework.

LITERATURE REVIEW AND LEGAL-POLICY FRAMEWORK OF CHINESE INVESTMENTS IN AFRICA.

2.1 INTRODUCTION

It is widely agreed that Chinese Investments in Africa contributes significantly to African development.³⁴ Inevitably, this growing economic relationship requires adequate legal and policy mechanisms in order to make it feasible and beneficial on a long-term basis. As such, an in-depth understanding of the characteristics and elements of Chinese investments is necessary.

This chapter discusses the current literature and frameworks for Chinese investments in Africa. First, this chapter begins by providing a review of literature that already exists in relation to labour practices, and skills and technological transfers. Secondly, it provides the definitions and scope of foreign investments, in addition, it lays down theories of foreign investments. Thirdly, it provides a brief overview of Chinese investments in Africa. Fourthly, it outlines the different legal and policies that regulate Chinese investments in Africa and finally, it discusses the role of Africa-China multilateral bodies.

2.2 LITERATURE REVIEW

Africa-China's economic engagement is increasingly being academically researched.³⁵ There are many scholars, commentators and spectators from Africa, China and West offering different and diverse perspectives. Perhaps, more interestingly, several books and journal articles and even some major media houses have recorded a change in attitude towards Chinese investments on the African continent. This systematic literature review will show the findings which have been made with regards to certain core aspects of Chinese investments in Africa; in particular, problems concerning labour practices and, skills and technology transfer.

³⁴ Yuan Sun 'China's Changing approach to Africa' available at <https://www.brookings.edu/blog/africa-in-focus/2019/02/04/chinas-changing-approach-to-africa/> accessed on 20 January 2020.

³⁵ Clever Mapure 'Chinese Investments in Zimbabwe and Namibia: A Comparative Legal Analysis' (2014) Centre for Chinese Studies, Stellenbosch University at 7.

Over the years Chinese companies' operations have been severely criticised in the media. Headlines such as reported in the Guardian newspaper describes a rather scary picture of the Chinese behaviour in most African countries.³⁶ The report included accusations by workers who allegedly claimed to have suffered 'regular beatings and miserable pay and conditions. This manifestly makes it illegal in any civilised society and under international law. These concerns are mostly reported in the period between 2006 and 2012. This is the period in which the Chinese investment started increasing in Africa. Yaw and Jauch in a book title 'Chinese investments in Africa: A labour Perspective' offers a comprehensive field study on the labour aspects in ten African countries mostly in Southern Africa. This book highlighted similarities to the accusations in the media, however, it also showed that Chinese companies have different behaviours and management styles. Tang Xiaoyan (2016)³⁷ in examining the benefits accrued by Africans from Chinese employment. Studied experiences in Angola, Ethiopia, Zambia and Egypt. Therefore, covering different experiences across environments with different economic conditions, political and legal cultures. He studied the nature of Chinese employment practices by evaluating Low wages, poor conditions, and lack of training.

He dismissed the criticism of employment practices by Chinese companies employing their own workers to work on projects in Africa as not being supported by data.³⁸ In some instances, for example in Angola reports showed that the Chinese workers made up 59.7 per cent. The explanation offered for this is that there were pressing deadlines and lack of local skilled labour in post-war Angola. In addition to that, the results showed that Chinese workers cost double the amount of employing Africans since they also provided additional costs, such as food, trips home and accommodation. Lastly, the companies emphasised that they required experienced Chinese workers in order to get the project up and running quickly since the workers already know how the systems and the Chinese business model. This justification is however inadequate as it assumes Africans are inexperienced workers with no capacity whatsoever as to their default position.

In response to the critics of low wages, based on interviews conducted in Ethiopia, mostly in manufacturing sectors. The author showed that people earned different salaries at different

³⁶ David Smith 'Workers claim abuse as China adds Zimbabwe to its scramble for Africa' available at <https://www.theguardian.com/world/2012/jan/02/china-zimbabwe-workers-abuse> accessed on 20 January 2020.

³⁷ Tang Xiaoyan 'Does Chinese Employment Benefit Africans? Investigating Chinese Enterprises and their Operations in Africa' *African Studies Quarterly* (2016) 16 available <http://www.africa.ufl.edu/asq/v16/v16i3-4a8.pdf> at 107.

³⁸ Ibid at 109.

levels, such as 600 dollars to floor managers, 40 dollars to assembly lines, and 100 dollars to technicians. The author did not link it to any minimum wage or living standards of Ethiopian society.³⁹ China's work ethic as influenced by its own history, cannot be used to justify low wages. Many texts recorded Chinese managers making comments such as 'Chinese were also poor thirty years ago and it took time and hard work to become successful.'⁴⁰

It is not surprising that some African workers never return after the first payment. African perspective, will remain negative, should such practise persist. Using low wages in order to see a return to an investment without offering shares to the workers cannot be justified. Host countries should set minimum standards of employment. The Author, in his approach, focuses on Chinese cultural aspects without doing research on the African employment culture.

The author argues that problems of working conditions are partly related to the issue of labour costs. Companies attempt to save labour costs by reducing expenditures on health care and other facilities. The author suggests that this cannot be since as exploitation or cruel treatment of African workers since the Chinese workers are also under the same conditions. This reasoning is socially and legally improper. Inhumane treatment in a workplace cannot be justified even in pursuant to the reduction of labour costs. Furthermore, the relationship between the Chinese company in Africa and all its workers, African or Chinese should be regulated by the host country's labour laws.

Lastly, the author discovered that most Chinese companies make use of onsite training. Some companies send a small group of workers to get training in China. However, the impact of this is not always beneficial since some African workers prefer to change their jobs after having acquired skills. Commonly so, many companies lack financial mobility or ability to retain skilled workers. Factors such as language barrier also contribute towards impediments to effective learning, this can be equated skills and to a lesser extent technological transfer.

Clever Mapure in a comparative legal analysis of Chinese investments in Zimbabwe and Namibia⁴¹. Examined the extent to which Chinese companies comply with the host African law and the extent to which African governments enforce their laws. This research focused on whether

³⁹ Ibid at 112.

⁴⁰ Ibid.

⁴¹ Mapure op cit note 35 at 3.

China is really a violator of the law or does the problem lie the African governments and the laws and policies in Africa? In doing so, the research looks at labour activities and skills and technological transfers in both countries.

This research noted that Zimbabwe like many other African countries have comprehensive laws to deal with the performance requirements of foreign investors. However, African countries lack institutional and implementation capacity to enforce those laws. For example, Chakanya and Muchichwa, after field observation in the country alluded that Chinese companies 'appear to have their own workplace rules which they follow.' In an attempt to find justification for this behaviour, well-respected scholar Brautigam, argued malpractice partially to China's historic lack of domestic and labour regulations. This view is correct in that, there appears to be no political will to enforce these laws. This could be partially attributed to the scarcity of FDI in Africa. Perhaps, African governments fear that the companies risk exiting the country should they strictly enforce the law.

The characterisation of Africa-China relations is filled with romanticised rhetoric of friendship. The African side appears stuck on political consideration when dealing with China, while its counterpart is now operating purely on a commercial basis. It is evidently clear that there is a lack of strict and systemic enforcement of African laws. The same applies to Namibia, he found that Chinese companies seemingly do not have to adhere to some legal provisions due to political favouritism. As Clever Mapura concluded 'What is necessary is to effectively enforce these laws and avoid unnecessary existence of the blame syndrome about Chinese investments in Africa'. This is important for the purpose of research since the objective is to find solutions to Africa's china problem.

There have also been accusations of lack of skills and technology transfer. In Namibia, Mapura discovered that there is no legal obligation requiring investors to ensure skills transfers, it is left to business negotiations. There is a significant gap in African law in so far as technology transfer is concerned. This paper will investigate ways that Africans state can acquire skills and technology through Chinese investments in Africa.

Caution must be advised, though; both Tang Xiaoyan (2016) and Clever Mapura (2014) were based on mixed methodology including comprising of field interviews, data from government sources which is incomplete and sometimes does not reflect the reality on the ground. Both pieces

of research did not set a criterion that the Chinese use to employ workers in Africa and from China. There is a gap in that regard and further research is needed. While Clever Mapura (2016)'s research is library-based, the approach of testing case studies against the law and studying Chinese investments in Africa from a legal perspective is important. It is the approach that will be utilised by this research.

To sum up, there are different arguments and justifications offered for the various practices of Chinese businesses in Africa. Despite a growing body of literature on Chinese investments, currently, findings suggest, to the best of our knowledge there is a gap in relation to the effectiveness of law in the Africa-China relation. In addition to that, a more in-depth study is required to understand the impact of Chinese investment on the development in Africa. This research aims to fill the gap by studying the behaviour of Chinese companies and in relation to the current African laws.

2.3 THE SCOPE OF FOREIGN INVESTMENT

There is no uniform and standard definition of foreign investment. According to Sornarajah, Foreign investment involves ‘the transfer of tangible or intangible assets from one country to another for the purpose of their use in that country to generate wealth under the total or partial control of the owner of the assets.’⁴² He submitted that foreign direct investment ‘FDI’ is constituted in situations where there is a transfer, purchase or construction of physical property such as equipment, manufacturing plans or equipment.⁴³

The International Monetary Fund ‘IMF’ defines FDI as a “cross border investment” in which an investor that is “resident in one economy [has] control or a significant degree of influence on the management of an enterprise that is resident in another economy.”⁴⁴

The Organization for Economic Cooperation and Development (“OECD”) Development Assistance Committee, also provides a standardised definition of FDI the OECD Benchmark Definition:

‘Foreign direct investment (FDI) is a category of investment that reflects the objective of establishing a lasting interest by a resident enterprise in one economy (direct investor) with an enterprise (direct investment enterprise) that is resident in an economy other than that of the direct investor. The lasting interest implies the existence of a long-term relationship between the direct investor and the direct investment enterprise and a significant degree of influence on the management of the enterprise. The direct or indirect ownership of 10% or more of the voting power of an enterprise resident in one economy by an investor resident in another economy is evidence of such a relationship’.⁴⁵

This definition, while only agreed by OECD members, has been adopted by major international institutions dealing with trade and investments.⁴⁶ This research will use the OECD definition when referring to FDI.

⁴² M Sornarajah ‘*The International Law on Foreign Investment*’ 3rd ed (2010) 8.

⁴³ Ibid.

⁴⁴ Cornell law School ‘Foreign Direct Investment’ https://www.law.cornell.edu/wex/foreign_direct_investment accessed on 12 December 2019.

⁴⁵ Catherine Elkemann ‘Chinese Foreign Direct investment into Africa in the Context of BRICS and Sino-African Bilateral Investment Treaties’ (2015) *Richmond Journal of Global Law & Business* at 597.

⁴⁶ Ibid.

The category of foreign investment considered in this paper is FDI. It is therefore important to distinguish it from portfolio management.⁴⁷ Somarajah alludes that portfolio investment involves the ‘movement of money for the purpose of buying shares in a company formed or functioning in another country.’⁴⁸ He further submits that what specifically distinguishes it is that in portfolio investment, there is a separation between management and control of the company, conversely the share of ownership in it.⁴⁹

According to the IMF, the direct investor’s managerial role distinguishes FDI, which is an active form of investment, from portfolio investment, which is a passive form.⁵⁰ This is because FDI by its nature is established on a long-term basis, it is, therefore, natural for the investor to control the management and the company.

Lastly, Sornarajah concludes that the nature of foreign investment is defined in investment treaties. Therefore, definitions differ according to the purpose for which they envisioned.⁵¹

2.3.1 Theories on Foreign Investment

There are different conflicting theories that legally shaped the attitudes towards foreign investment. These theories are mainly concerned with the economic development of developing countries.⁵² One theory argues that foreign investment is wholly beneficial to the hosting state and, conversely the other theory maintains that the dependence of foreign investment suppresses development.⁵³ A reality of this conflict can be found in Chinese investments in Africa, questions are raised on whether African countries are benefiting from economic engagement. And also, cases of countries that are now depended on Chinese investments. These theories, therefore, offers a context through which we can assess the impact of Chinese investments.

⁴⁷ Under international law only FDI is subject to the protection of customary international law, but portfolio investment is not. *See* Sornarajah op cit 42 at 9.

⁴⁸ Sornarajah op cit 42 at 8.

⁴⁹ *Ibid.*

⁵⁰ Cornell law School op cit 44.

⁵¹ Sornarajah op cit 42 at 8.

⁵² *Ibid* at 47.

⁵³ *Ibid.*

2.3.2 The classical theory on foreign investment

According to the classical theory of foreign investment, foreign investment is entirely beneficial to the host country's economy.⁵⁴ The reasons given for this position is that the capital brought into the host country increases the availability of capital which can be diverted to other essential sectors of the economy.⁵⁵ An example of this is the 'Angola model'.⁵⁶ Furthermore, the foreign investor brings new technology, jobs, management and advanced marketing skills to the host country's economy and workforce.⁵⁷ Sornarajah submitted that the theory has limitations since it fails to answer why despite increasing foreign investments, there is still no economic development and resource-rich countries remain poor.⁵⁸ This is especially relevant to Africa, a continent endowed with natural resources but is still poor. This theory is, however, widely accepted.

The theory is not without limitations, as the reasons advanced to back this theory can be criticised for their shortcomings. For example, Sornarajah explains that the new technology brought in by the new investor is sometimes obsolete.⁵⁹ In this case, the possibility of harmfulness outweighs the economic benefits more so to the environment of the host country. In addition to that, the belief that multinational corporations integrate their operations through various activities brings about employment benefits, this is not always the case, especially if the motivating factors are simply to exploit natural resources and cheaper labour.⁶⁰ This theory resulted in economies reducing the regulatory market mechanism. While this supposedly attracts foreign investment in limits the host state's control over the investment. This theory will be important for assessing the Africa-China investments by investigating the extent to which Africa is benefiting.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ "China offered a colossal 2 billion US dollars' line of credit to Angola to finance infrastructure projects as part of a historic deal that is now commonly known as the 'Angola model' See Zongwe & Dunia, *On the Road to Post Conflict Reconstruction by Contract: The Angola Model* (2010) available at SSRN: <https://ssrn.com/abstract=1730442>

⁵⁷ Sornarajah op cit 42 at 47.

⁵⁸ Ibid at 49.

⁵⁹ Ibid at 50.

⁶⁰ Ibid.

2.3.3 The dependency theory

The dependency theory is opposed to the classical theory, it is of the view that foreign investment will not bring about meaningful economic development.⁶¹ This was as a result of Multinational Corporation serving only the interests of developed countries instead of substantially benefiting the host country.⁶² In addition to that, it seemed as only benefiting the political elites who collaborated with the foreign investor to overcome legal regulations such as those promoting human rights, indigenisation measures, amongst other things.⁶³ Perhaps, this view is prominent amongst many Africa-China commentators and observers. For example, in South Africa, they have an affirmative action called the Black Economic empowerment which seeks to redress the injustices of its apartheid past.⁶⁴ And many beneficiaries of this program, are potentially elites who sometimes serve as Black Economic Empowerment ‘BEE’ for hire. And in Zimbabwe, the Indigenisation and Economic Empowerment Act⁶⁵ which required that every business should have 51 percent ownership of black Zimbabweans was also weakened through systematic manoeuvring by multinational corporations and host government elites, therefore rendering its purpose, less beneficial to the public. Sornarajah concludes that the dependency theory symbolises a mechanism in which local interests can be protected as it sought to integrate noneconomic factors such as human rights, labour rights and the environment.⁶⁶ For the purpose of this paper, it will provide a lens through which we can assess the impact of Chinese investments in Africa from a general societal perspective rather than a general economic overview.

2.3.4 The middle path

The hostility towards multinational corporations evidenced by the dependence theory has largely dwindled because of balanced research of the positive-negative impact of foreign investment on an economy.⁶⁷ Particularly, the studies of the United Nations Commission on

⁶¹ Ibid at 53.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ See Bowmans ‘Foreign companies and BEE’ available at <https://www.bowmanslaw.com/insights/foreign-companies-and-bee/> accessed on 5 November 2019.

⁶⁵ Many provisions of this Act have been repealed for some industries, post Robert Mugabe’s presidency. See <https://www.fin24.com/Economy/zim-changes-empowerment-laws-opens-up-economic-participation-20180319> accessed on 5 November 2011.

⁶⁶ Sornarajah op cit 42 at 55.

⁶⁷ Ibid.

Transnational Corporations (UNCTC) showed that despite the potential harm, properly harnessed multinational corporations could fast track the growth of developing countries economy.⁶⁸ The implications that the Africa-China face is that, the investment partner is sometimes a State-Owned Enterprise (SOE) which is a government-controlled. There cannot be a separation thereof on the governments' policy and that of the SOE. However, host countries should ensure that they regulate foreign investment in order to maximise full investment benefits and protection to the investor.

2.4 AN OVERVIEW OF CHINESE INVESTMENTS IN AFRICA

Generally, Foreign investment is an interesting, broad and dynamic area which requires a thorough study. However, such a study, while beneficial to the Africa-China economic relationship would go beyond the scope of this current study. This paper, therefore, focuses exclusively on Chinese Investments in Africa. In particular, this refers to Chinese Outward direct investment into Africa. It should be noted that under this relationship several African countries and businesses are investing in China.

‘The transition of the global economy from an industrial focus to one based on knowledge and information presents numerous opportunities and challenges to many countries, especially those in the developing world’.⁶⁹ Chinese investment has immensely contributed to these possibilities, ever since adopting the policy of made in China 2025.⁷⁰ This policy involves China moving from being a labour driven economy to a knowledge-based economy in its efforts to become a ‘moderately prosperous society. For example, in the manufacturing sector, Chinese companies are offshoring millions of jobs to different regions and Africa is set to greatly benefit from this process.’⁷¹

The sectors of these investments are also important because they require different labour standards, and different technological or skills transfer requirements.

⁶⁸ Ibid.

⁶⁹ Tinashe Kondo ‘Legal and Economic Uncertainties Clouding Digital Taxation: Unpacking and Addressing the Issues’ (unpublished LLM thesis, University of Western Cape,2015) 17.

⁷⁰ See ‘Made In China’ available at <https://isdpc.eu/publication/made-china-2025/> accessed on 05 January 2020.

⁷¹ Irene Yuan, Kartik jayaram & Omid Kassiri ‘*Dance of the lions and dragons*’ (2017) 63.

2.4.1 The nature of China's investments in Africa

Chinese investments have grown enormously over the past two decades, that is between 2000 to present day. In 2018, at the FOCAC meeting in Beijing President Xi Jinping pledged 60 billion USD.⁷² Signalling a forever growing commitment towards financing development in Africa. As briefly discussed in the previous chapter, the nature of Chinese investments are very complex and often misunderstood as a result of a lack of transparency or the accessibility of the bilateral investment agreements.

A distinction should be drawn between investments, aid and trade. This is because they are regulated by different policies and laws therefore subject to different rights and obligations.⁷³ Pippa Morgans described Chinese Aid, as a method of financing that is coming from the Chinese government to the hosting African government it involves concessional elements or that of the grant with political or developmental objectives.⁷⁴ By virtue of its developmental history, China sees Aid as a 'win-win' arrangement. This process of mutual gain entails that if a country receives aid or a grant from the Chinese government, conditions are commonly set, that a Chinese company gets other contracts and sometimes permission to use its Chinese labour on the projects.⁷⁵ This differs totally from the OECD countries that offer untangled aid and investment. Western donors attach conditions such as governance, human rights and democracy possibly as a mechanism of influencing African leaders to develop based on their values. There is also an apparent difference in sector preference, the west mostly prefers social sectors such as hospitals, health care while China focuses more on economically productive sectors such as infrastructure.⁷⁶

Investments in this context refer to FDI. This is purely commercial in nature, the intention is to make a profit, either immediately or in a long-term arrangement.⁷⁷ The complexity of these investment packages stems from the fact that they are tied and interlinked. This method has

⁷² Benabdallah & Winslow Robertson 'Xi Jinping pledged \$60 billion for Africa. Where will the money go?' available at <https://www.washingtonpost.com/news/monkey-cage/wp/2018/09/17/xi-jinping-pledged-60-billion-for-africa-where-will-the-money-go/> accessed on 2 February 2020.

⁷³ See discussion of FDI under chapter 2.3.

⁷⁴ Pippa Morgans 'The blurry lines Between Chinese Aid and Investment in Africa' available at <https://chinaafrica-podcast.com/the-blurry-lines-between-chinese-aid-and-investment-in-africa> accessed on 5 November 2019.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

advantages and disadvantages, firstly it allows the Chinese investor to get assurance that they will get more contracts in the country. Conversely, the disadvantages are that it undermines procurement laws and results in the unfair treatment of other foreign investors, furthermore, local companies are also denied access to those contracts as a result of this seemingly political favouritism.⁷⁸

There are also loans that might be included in these Chinese investments in Africa packages. The so-called concessional loans while counted within aid, it could be associated with commercial investments.⁷⁹ Lastly, closer attention should also be paid to the fact that China is also involved in contracting. This is done by building infrastructures such as air and seaports, railways lines and buildings funded by the Chinese bank, international institutions such as the world bank or even the recipient government.⁸⁰ Comprehensive data of a particular project is essential for the characterisation of Chinese aid and investment.⁸¹ For example, if it is a concessional loan, it is classified as aid, and if it is a non-concessional loan it is characterised as a form of financing.

It is important to untangle the tied and packaged investment deals to ensure a deeper understanding of the implications of Chinese investments in Africa. The challenges considered in this paper, are as a result of FDI and not aid or loans, however, given their interlinked nature, it will possibly encroach in the areas linked to it.

2.4.2 Actors in the field China Investments in Africa

There are different actors who are recognised under international investment law. Some developing countries insist on joint ventures between the host state entities and multilateral corporations.⁸² Perhaps, as a method to encourage technology transfer and training local professionals on the management of international firms.⁸³ An investor is usually defined in BITs

⁷⁸ 'Why did R70bn Chinese contracts bypass tender laws, asks DA' available at <https://www.fin24.com/Economy/South-Africa/why-did-r70bn-chinese-contracts-bypass-tender-laws-asks-da-20170910> accessed on 30 January 2020.

⁷⁹ Pippa Morgans op cit at 74.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Sornarajah op cit 42 at 69.

⁸³ Said El-Naggaer 'Foreign Direct Investment : The Role of joint Ventures and Investment Authorities' available at <https://www.elibrary.imf.org/view/IMF071/03807-9781557751409/03807-9781557751409/ch04.xml?rskey=TY8vr8&result=10&redirect=true> accessed on 6 February 2020.

between the investing and the recipient country. For example, the China-Zimbabwe bit defines an investor as:

In respect of the People's Republic of China:

(a) natural persons who have the nationality of the People's Republic of China in accordance with its laws; and

(b) economic entities established in accordance with the laws of the People's Republic of China and domiciled in the territory of the People's Republic of China.⁸⁴

The definition is broad and wide to cover both, Chinese SOEs and Private Owned companies. For the purposes of this paper, the term 'Chinese' loosely is used to refer to both the State and persons of that country. A study of these actors will be done and the roles they play in Chinese investments in Africa.

A. State-Owned companies

Chinese's state-owned businesses have a commercial agenda of their own, however, they have ties with the Communist Party of China, and the government.⁸⁵ These include China National Petroleum Corporation, China Petroleum and Chemical Corporation CPCC and the China National Offshore Oil Corporation which has a considerable impact on both Beijing and Africa.⁸⁶ They are involved in many of Africa's largest deals in key sectors such as mining, infrastructure and telecommunications.⁸⁷ Chinese investment has been criticised because of SOEs' apparent focus on the extractive and construction industries.

B) Privately-owned Companies

Private Chinese investment is also on the rise and even surpassing in terms of numbers those of the SOE. These companies are also in diverse sectors but in particular, it's the manufacturing industry.

⁸⁴ See Article 1 (2) of Zimbabwe China BIT.

⁸⁵ Sarah Raine *China's Africa problems* 1st ed (2009) 77.

⁸⁶ Ibid.

⁸⁷ Antonio Martuscelli op cit 17 at 4.

According to field research by McKinsey, out of the estimated 10 000 Chinese businesses operating in Africa, 90 percent of them are privately owned.⁸⁸ The large number can be explained examining China's motivations for promoting private Chinese investment in Africa. China encourages mature industries like textiles to move offshore in order to set up factories in lower-income regions such as Africa.⁸⁹

The other actors in this relationship are the entities in the host countries, including public and private entities they might enter into a joint venture with.

2.5 CHINESE MOTIVATIONS FOR INVESTING IN AFRICA

It is important to consider the rationale behind China's Go Out policy before delving into the motivations and determinants of Chinese investments in Africa.⁹⁰ According to Klaver and Trebilcock, China aims to move up the manufacturing value chain, perhaps this is in line with a move from a labour-intensive economy to the knowledge-driven economy.⁹¹ China, therefore, encourages offshoring of matured factories to lower-income regions such as Africa.⁹² Secondly, it aims to turn its companies into global corporations.⁹³ The primary motivations for Chinese investments in Africa, while there are more such as political support for the one-China policy, is natural resources and market access.

2.5.1 Natural Resources as the primary motivation for Chinese FDI

Deborah Brautigam alluded that Beijing's engagement with Africa was a well thought out strategy.⁹⁴ This deliberate approach was a reaction to China's rapid growth which was outpacing its natural resource base, for example in 1993 China became the net importer of oil.⁹⁵ It is not a surprise that Africa's vast natural resources became an attraction to China.⁹⁶ The US Energy

⁸⁸ Sun, Jayaram & Kassiri op cit 20 at 30.

⁸⁹ Klaver and Trebilcock 'Chinese Investment in Africa' (2011) 4 *The Law and Development Review* at 176.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Deborah Brautigam *The Dragons' Gift: The Real Story of China in Africa* (2011) 78.

⁹⁵ Ibid.

⁹⁶ Ibid.

Information Administration predicts an increase in China's oil demand to 12.8 million barrels per day by 2025.

China needs oil to maintain and support its growth and meet its increase in consumer demands.⁹⁷ While the middle east is the largest exporter of oil in the world, China only imports 38 per cent from that region and the sub-Saharan African region is the second-largest producer after the middle east, China gets 30 percent of its oil from this region.⁹⁸ This need for oil and other natural resources is used by some observers to argue that China is only after plundering African resources without necessarily developing the countries, furthermore, that Chinese investments are not diverse enough as they are mostly concentrated in the high resource countries.

Many Chinese investments in Africa are aimed at securing access to oil. Klaver and Trebilcock noted that:

In 2002, Sinopec signed a \$525 million deal to develop the Zaraitine oil field in Algeria. In 2003, CNPC purchased Algerian oil refineries for \$350 million. In 2004, Sinopec signed a contract with Total Gabon to sell Gabonese crude oil to China. In 2005, PetroChina signed an \$800 million crude oil deal with the Nigerian National Petroleum Company to supply 30,000 barrels of crude oil per day to China. In 2006, CNOOC signed an offshore exploration deal with Kenya to explore 44,500 square miles in the country. Chinese oil companies are reported to have signed offshore oil exploration contracts in Congo and Namibia. In 2006, China's Zhongyuan Petroleum Company began exploration drilling in Ethiopia.⁹⁹

This is not an exhaustive list of oil deals, but they do provide China's preferred industries when investing. Rhys Owen Jenkins indicates that while oil and minerals are strategically important to China, the trade pattern between China is not a simple reflection of the Chinese State requirement.¹⁰⁰ This is perhaps true given the complex nature of the economic engagement and the multiplicity of China objectives in Africa.

Furthermore, Chinese investments in Africa are not limited to oil. Since China is also the world largest consumer of steel, copper, coal, platinum, and cement.¹⁰¹

⁹⁷ Klaver and Trebilcock op cit 88 at 177.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Rhys Jenkins 'How China is Re-shaping the Global Economy' (2019) 136.

¹⁰¹ Klaver and Trebilcock op cit 88 at 177.

SOEs in mining and other companies from different sectors such as construction and steel have invested in mines in Africa with the objective of increasing reserves and diversifying their activities.¹⁰² The investment in African resources are not limited to oil and mining but also includes agriculture, timber and fishing.¹⁰³

It is evident that the main motivation to invest in Africa is to acquire natural resources to supply its rapidly growing economy. It is, however, important to that it is mostly SOEs that are investing in these extractive sectors even though there is a significant number of small-scale Chinese operating in Africa.¹⁰⁴ While SOEs investment in Africa is a reflection of both the strategic objectives of the Chinese state and commercial objectives of the SOEs themselves, private companies' investment is purely commercially driven.¹⁰⁵

2.5.2 Market Access as the second motivation for Chinese FDI

The second motivation for Chinese companies to invest in Africa to gain market access within Africa and the West.¹⁰⁶ Numerous surveys have shown the importance of commercial considerations such as access to local markets, the advantage of African trade agreements, low production costs, and the availability of raw materials in private Chinese firm's investment decisions.¹⁰⁷ The African consumer market is attractive to companies that manufacture low-cost goods, some private companies relocate their business to Africa to reduce transportation costs.¹⁰⁸ Chinese investments in manufacturing are largely in the textile sector, though recent studies show that they are diversifying into different sectors.¹⁰⁹ Chinese companies have a significant presence in the textile sectors of many SADC countries such as South Africa, Lesotho, eSwatini, Botswana, and Mozambique.¹¹⁰

¹⁰² Rhys Jenkins op cit 99 at 136.

¹⁰³ Ibid at 179.

¹⁰⁴ Ibid at 136.

¹⁰⁵ Ibid.

¹⁰⁶ Klaver and Trebilcock op cit 88 at 179.

¹⁰⁷ Rhys Jenkins op cit 99 at 136.

¹⁰⁸ Klaver and Trebilcock op cit 88 at 179.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

The private companies are not limited to the manufacturing sector, for example in 2007, Hisense Group who previously exported electronic appliances and televisions to South Africa, built the Hisense Industrial Park in South Africa to expand production of refrigerators, washing machines, and televisions for the South African market and has since been successful in terms of access to the market, employment creation and technological and skills transfer.¹¹¹

The Chinese investment in the African manufacturing sector is not limitedly tailored for the African market. Chinese companies set up manufacturing operations in Africa to avoid trade barriers in wealthy countries by taking advantage of the preferential market access granted to African states by western nations.¹¹² In 2000, the US government introduced The African Growth Opportunities Act (AGOA) which has most countries in Africa preferential access to the US markets.¹¹³ Leading to a sharp rise in textile and garments exports to the US by African countries such as Lesotho, Madagascar, and eSwatini between 2000 and 2004.¹¹⁴ African countries also enjoy privileged access to developed markets under the world trade organisation(WTO) rules which remove rules of origin for least developed African countries (LDCs).¹¹⁵ In addition, the Multifibre Arrangement (MFA) also provided quota-based preferential access to LDCs.¹¹⁶

Also, Europe has Everything but Arms (EBA) initiative that grants duty-free and quota-free access to all imports from LDCs and only excludes military weapons.¹¹⁷ Deborah Brautigam correctly submits that AGOA was intended to boost African exports to the US while simultaneously, boosting US investment in Africa.¹¹⁸ She further notes that these programmes have had significant impacts on participating countries both positive and negative.¹¹⁹ The problems resulted from complex rules of

¹¹¹ Ibid 180.

¹¹² Ibid.

¹¹³ Rhys Jenkins op cit 99 at 162.

¹¹⁴ Ibid.

¹¹⁵ Klaver and Trebilcock op cit 88 at 180.

¹¹⁶ Many Chinese clothing companies left Africa after the removal of the MFA quotas, implying that that is one of the reasons for investing in Africa. *See* Ibid.

¹¹⁷ Ibid 80.

¹¹⁸ Deborah Brautigam op cit 93 at 92.

¹¹⁹ Ibid.

origin which often limited duty-free access to products made from inputs that came from the African region.¹²⁰ Her criticism, however, ignores the fact that it might have been a mitigating factor implemented to control the flooding of Chinese products in the US market under the African cover. Rhys Owen Jenkins correctly noted that a combination of AGOA preferences, lack of rules of origin for LDCs African countries and US quotas on Chinese imports created an indirect channel through which firms could use participating countries as pathways for transshipment of Chinese garments and textile to the US markets.¹²¹ This arrangement negatively impacts on the nature and quality of Chinese investments in Africa since in many cases there was very minimal processing in the hosting African country as it was merely a country used to avoid US quota restrictions.¹²²

Africa should thus, leverage on its market access and insist on joint ventures with local companies since competition from Chinese companies can overwhelm domestic industries. It is clear that access to African markets and Africa's preferential market access to the west is a major motivation to Chinese investments in the African manufacturing sector.

2.5.2 The importance of Chinese investment for SADC and Africa.

There are many debates in Chinese investments in Africa, perhaps, one of the common questions is, how does Africa benefit? The answer to this question is not straightforward however, there has been significant research on the impact of Chinese investments. Any enquiry should, therefore, not blindly focus on China's role players, prospective benefits since that approach risk clouding the contribution of the African agency and indeed the benefits these investments have on the African side.¹²³ As briefly stated above, McKinsey estimates that aggressive sectorial expansion by

¹²⁰ Ibid.

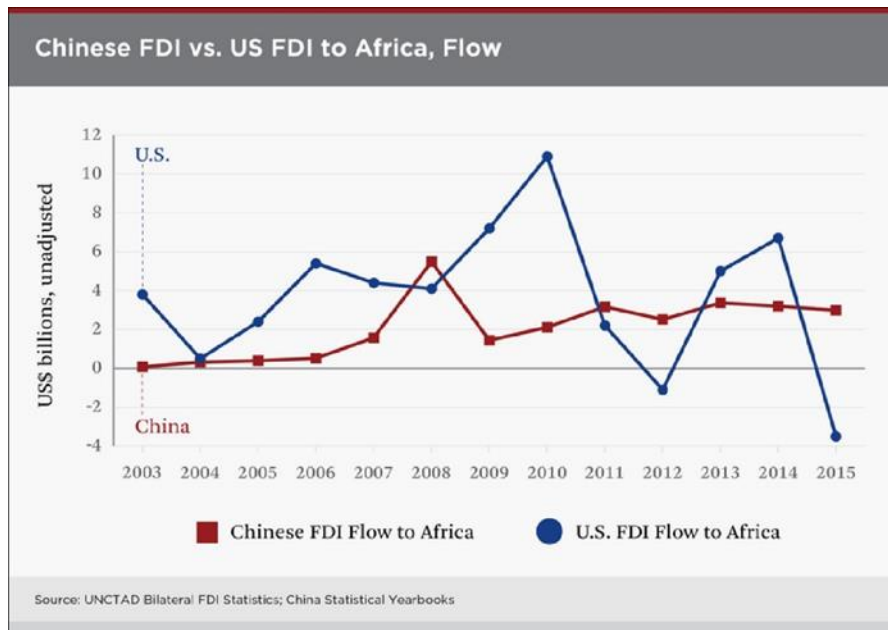
¹²¹ Ibid.

¹²² Ibid.

¹²³ Rhys Jenkins op cit 99 at 138.

Chinese businesses in Africa could unlock the potential of \$440 billion in revenues by 2025.¹²⁴ This inevitably presents enormous economic growth for African countries.

FIGURE 1: CHINESE FDI VS US FDI FLOW INTO AFRICA



Source: 2. CARI FDI DATA COMPILATION

Figure 1 provides the statistics of FDI inflow Africa between China and the US. This comparison provides a position from which to compare the significance of Chinese FDI into Africa. This is because the West including the USA has been for a long time Africa’s only source of FDI since independence.

Since the beginning of the 21st century, Chinese FDI into African has grown greatly from what appears to be less than a billion in comparison to the US. An explanation for this could be that the relations between African and China were more political than commercial as a result there was more aid than FDI, plus aid was not adequately recorded pre 2000.¹²⁵

While the Chinese FDI into Africa is growing, the only year it exceeded the US was in 2008 when it was at US\$5.5 billion.¹²⁶ This is surprisingly low given the large figures that the Chinese government commit itself to such as the US\$60 at the Johannesburg FOCAC Summit.¹²⁷

¹²⁴ Sun, Jayaram & Kassiri op cit 20 at 13.

¹²⁵ China Africa Research Initiative ‘Data: Chinese investments in Africa’ available at <http://www.sais-cari.org/chinese-investment-in-africa> accessed 07 February 2020.

¹²⁶ Ibid.

¹²⁷ F Benabdallah & Winslow Robertson op cit 72.

Nevertheless, these figures show that Chinese FDI is increasing at a sustainable rate and possibly contributing to the Gross Domestic Product (GDP) of African countries and the region. In 2014, the top 5 destinations FDI in 2014 were Algeria, Zambia, Kenya, Republic of Congo, and Nigeria.¹²⁸

Narrowing the focus of the analysis to other factors that can be used to explain the significance of Chinese FDI. Commodity prices increased by China's demand for resources results in an increase in revenue.¹²⁹ Most African countries are in a position to benefit from China's hunger for resources, for example, Mozambique benefits from aluminium, South Africa from platinum and Zambia from Copper.¹³⁰

Secondly, a margin of African countries, while blessed with natural resources, lacks the technical capacity to extract resources on their own.¹³¹ Big Chinese SOEs such as Sinopec investments in African extractive industries boosting African natural resources output, therefore, resulting in increased revenues from which the individual country can effectively tax and channel the income to other areas of development.

Thirdly, perhaps one of China's visible contributions to African development is infrastructural building.¹³² This significantly contributes towards filling Africa's infrastructure gap which currently estimated to be at \$1 Billion. In 2015, Africa's spending on infrastructure was around \$80billion in nominal terms, however, as a share of GDP, it remained around 3,5 percent.¹³³ Infrastructural development is accelerated by China's 'resources for infrastructure' which in essence consists of China providing financial assistance for construction projects in exchange of access to resources such as oil.¹³⁴ Perhaps the most famous example is the Sicomin case. In 2007, China gave Congo access to a \$6.5 billion concessional loan to finance infrastructure.¹³⁵ Chinese companies had to build or rehabilitate 3,500 km of tarred roads and 3,200 km of railways, and build 32 hospitals, 145 health centres, 2 universities, and 5,000 houses all in exchange for

¹²⁸ China Africa Research Initiative op cit 124.

¹²⁹ Klaver and Trebilcock op cit 88 at 182.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Sun, Jayaram & Kassiri op cit 20 at 63.

¹³⁴ Ibid.

¹³⁵ Ibid.

resources.¹³⁶ Even though this deal was subsequently renegotiated after outrage from the international community, it shows how a country which lacks money can use its natural resources to finance its own development, this is arguably a form of barter trading. Africa's inadequate roads, lack of constant electricity supply and water supplies amongst other things, are addressed in this regard. This leads to African development.

Fourthly, African countries benefit from Chinese investments in manufacturing, in that, it leads to industrialisation.¹³⁷ The impact of Chinese investments on Africa's industrialisation is limited, this can be attributed to competition from the Chinese businesses which African businesses cannot beat. However, there are significant contributions, such as construction companies opening factories that produce cement, glass, brick and other building materials which drastically reduce or even eradicate imports costs.¹³⁸ They further, contribute through training and transferring technological skills to the workers.¹³⁹

Lastly, Chinese investments create employment as Chinese businesses hire Africans to work on their businesses. Mckinsey research found that 89 per of employees were African.¹⁴⁰ For example, in Zimbabwe, Baosteel, a Chinese company created 2000 jobs through a 300-million-dollar investment.¹⁴¹ Chinese investments can improve employment (this will be discussed in great detail chapter 3), they can also contribute to market access for African companies.

All these factors reinforce that position that Chinese investments in Africa provide an economic relationship where Africa can use it as a catalyst for accelerated sustainable development and an avenue through which many firms, African, Chinese and other international firms can earn considerable revenues.

¹³⁶ Ibid.

¹³⁷ Ibid at 184.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid at 11.

¹⁴¹ Klaver and Trebilcock op cit 88 at 187.

2.6 Legal and Policy Frameworks

The legal framework for foreign investment is complex and Chinese Investments in Africa are not an exception. Foreign investments are governed by international law and domestic laws of both the investing and the recipient jurisdiction.¹⁴² The host state has a right to control the entry of foreign investment in its jurisdiction, a right which stems from sovereign it.¹⁴³ Therefore, typically domestic investment codes include provisions that attract FDI thereby improving their investment environment, in addition to that, they include provisions that safe guide FDI such as 'national treatment, most-favoured-nation treatment, tax incentives, security measures, and/or dispute resolution fora'.¹⁴⁴ These laws determine the processes of how investments may be made in a specific country, the nature of rights and obligations of the host country's government and the foreign investor.¹⁴⁵ This section will examine the processes a Chinese entity is required to follow when investing overseas, and domestic legal regimes in SADC that governs foreign investment, a study of South Africa, and Zimbabwe will be used, this will reflect on the activities and processes in the rest of SADC countries.¹⁴⁶ This study will focus on provisions relating to labour relations and transfer of skills and technology.

2.6.1 Regulation of Chinese outbound investment

Chinese regulators play an active role when it comes to controlling and monitoring overseas investments. In order to invest abroad, 'Chinese companies must go through administrative and approval procedures from the Ministry of Commerce MOFCOM, the National Development and Reform Commission NDRC, China Customs, and the State Administration of Foreign Exchange ("SAFE") at various levels.'¹⁴⁷

¹⁴² Cornell law School op cit 44.

¹⁴³ Sornarajah op cit 42 at 88.

¹⁴⁴ Ibid.

¹⁴⁵ Shirley Ayangbah, Liu Sun & John Chamberlain 'Comparative study of foreign investment laws: The case of China and Ghana' available at <https://www.tandfonline.com/doi/full/10.1080/23311886.2017.1355631> accessed on 12 December 2019.

¹⁴⁶ The region consists of 16 countries namely, Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe. See SADC Member States booklet 2019 https://www.sadc.int/files/3415/5713/1324/SADC_Member_States_booklet_2019.pdf.

¹⁴⁷ Elkemann & Ruppel op cit 7 at 601.

In this process, The NDRC plays an important role in relation to major foreign and domestic investments within China and investment in certain significant industries, it is also responsible for verifying and approving outbound investments by Chinese entities.¹⁴⁸ The factors it considers are amongst other things, if the project will endanger China's state sovereignty, breaches of international law and if it meets other State requirements such as exporting of domestic technology equipment, labour and attracting foreign technology.¹⁴⁹ Entities are, however, allowed to make investments decisions without its influence, they also carry the risk.

The MOFCOM is a central entity through which all overseas investments are directed. Its approval is only required for large and sensitive investments projects, such as in a country in which the country has no business relationship or special purpose vehicles.¹⁵⁰ This organisation is responsible for formulating' development strategies, guidelines and policies of domestic and foreign trade and international economic cooperation; to draft laws and regulations governing domestic and foreign trade, economic cooperation and foreign investment; and to devise implementation rules and regulations.¹⁵¹

MOFCOM and SAFE conduct joint annual inspection of the required reporting, the compliance of Chinese local laws and regulations by Chinese enterprises abroad.¹⁵² This continuous supervision along with SAFE rules strengthens the ability of enterprises to provide loans to overseas investment businesses in addition to that, also saves as a pillar of the funding system for example, of loans from Chinese banks such as China Eximbank.¹⁵³ This supervision is relevant for our purpose because it also gives a clear picture of the extent to which Chinese companies comply with local law and regulations. This requirement applies to all businesses registered in China, both state and central SOEs are subject to the supervision and regulation of State-owned Assets Supervision and Administration Commission of the State Council (SASAC).

¹⁴⁸ Carlos Esplugues *Foreign Investment and Investment Arbitration in Asia* (2019) 74.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ Sanne van der Lugt & Victoria Hamblin 'Assessing China's Role in Foreign Direct Investment in Southern Africa' (2011) *Centre for Chinese Studies* at 38.

¹⁵² Carlos Esplugues op cit 148 at 74.

¹⁵³ *Ibid.*

While this system of monitoring is impressive and promising, it has been criticised for having a limited scope.¹⁵⁴ The focus is most likely to be centred from the perspective of Chinese legal compliance requirements. Whereas if the scope was extended to cover the whole CIA, the negative impacts of the investments could be reduced, this includes negativism from global media houses, scepticism from the African countries they operate. In 2006, the State Council, however, issued *The Opinion on Encouraging and Normalizing Our Enterprises' Investment Cooperation*, which contained nine principles relating to the behaviour of outbound investments and the operations of Chinese companies abroad, this includes Africa. This opinion reiterated the importance of compliance with 'local laws and regulation, local laws and regulations, exercising social responsibility to protect local employees and awareness of environmental protection.'¹⁵⁵ The purpose is seeming to protect the image and reputation of China since any illegal actions, such as corruption, abuse of labour and human rights would be an impact of China's *Mianzi*¹⁵⁶ (saving face). In addition to that, in 2010 MOFCOM issued the *Opinion of the Ministry of Commerce on the Work Regarding the Nationwide Work in Overseas Investment and Cooperation* which emphasised the importance of creating a good image through respecting local laws and social responsibilities.¹⁵⁷ It is clear from the issuing of these opinions that China recognises that there is a problem with regards to the behaviour of Chinese businesses in Africa. These guidelines while positive, they are not directives, law or strictly applied policy and for that reason creates no positive obligation of the businesses to comply. Put differently they are likely to be ignored. This is evidenced in the fact that post-2010 there are still claims of unfair labour practices.

¹⁵⁴ Ibid at 75.

¹⁵⁵ Ibid.

¹⁵⁶ *Mianzi* is closely related to dignity or prestige See <https://www.internations.org/china-expats/guide/29464-culture-shopping-recreation/understanding-the-chinese-culture-17526>

¹⁵⁷ Carlos Esplugues op cit 148 at 75.

2.6.2 THE ROLE OF AFRICA-CHINA MULTILATERAL BODIES AND TREATIES

The legal framework between Africa and China mostly consists of bilateral agreements as opposed to multilateral treaties. The main multilateral mechanism that provides an institutional platform to both Africa and China is FOCAC. It does not only deal with matters of politics but also investments and development. The discussion of this organisation is not exhaustive as such, only a brief overview is provided. This section will examine the Role of FOCAC, SADC MODEL FIC, the continental policies of the AU namely Agenda 2063 as a way of outlining Africa's policy towards China.

2.6.3 The History of the Forum on China-Africa Cooperation

The FOCAC was established in 2000.¹⁵⁸ It is a shared platform and a multilateral mechanism for African countries and China to hold collective consultations and practical cooperation.¹⁵⁹ Since its establishment, six ministerial conferences have been held so far, these conferences are held every three years interchangeably between cities of Africa and China.¹⁶⁰ Two of these conferences, the one held in Beijing 2009 and the one held in Johannesburg 2015, were upgraded to summits.¹⁶¹

In an effort to establish an institutional framework for joint development some Africa leaders put forward a proposal to establish a for Africa-China multilateral cooperation mechanism.¹⁶² To which China agreed and the forum was born. The FOCAC process, therefore, provides a unique mechanism to promote multilateral dialogue between Africa and China.¹⁶³ Secondly, it facilitates the development of common political and economic objectives and thirdly it serves as a platform through which Sino-African cooperation can be developed.¹⁶⁴

¹⁵⁸ Zeng Aiping & Shu Zhan op cit at 10 at 88.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Tracy Hon, Johanna Jansson, Garth Shelton *et al* 'Evaluating China's FOCAC commitments to Africa and mapping the way ahead' (2010) *Centre for Chinese Studies* 4.

¹⁶⁴ Ibid.

African debt clearance opened doors for expanded market access and provided a wide range of new opportunities for positive engagement. The characteristics of FOCAC are pragmatic cooperation, equality and mutual benefit.¹⁶⁵ These attributes aim to strengthen consultation, cooperation, promote dialogue amongst other things, with the aim of achieving mutual reinforcement and common development between Africa and China.¹⁶⁶

The results of these FOCAC meetings are outlined in Action Plans setting commitments towards development, trade and investment.¹⁶⁷ These include Economic Cooperation, Investment and Economic Cooperation, Cultural and People-to-People Exchanges, peace and security and Consultation and Cooperation Mechanisms. It is also through this platform that president Xi Jinping made a commitment of 60 billion US dollars financing to Africa.¹⁶⁸

Inevitably, there have been narratives of neo-colonialism against Chinese activities in Africa. These can be neutralised by an active role of African agency of the engagement. Mary Chan, advanced that Sino-African relations are complex and multi-layered, and a cautious approach is required when debating China as a neo-colonial power.

The scope of FOCAC is broad and covers different focused Actions Plans, for the purpose of this paper, we will only look at the role it plays at facilitating Investment, provides for labour relations and the transfer of technology between China and the African states. It must, however, be noted that the disadvantage of these action plans is that they are not legally binding but only commitments that are promissory in nature. This does not make them valueless since judging from the previous studies of different FOCAC plans has resulted in an increase in the investments and development projects.

¹⁶⁵ See <https://www.fmprc.gov.cn/zflt/eng/gylt/ljtt/t157576.htm> accessed 1 January 2020.

¹⁶⁶ Ibid.

¹⁶⁷ Elkemann & Ruppel op cit 7 at 601

¹⁶⁸ Li Xia 'Xi announces 60 billion USD of financing to Africa' available at http://www.xinhuanet.com/english/2018-09/03/c_137441596.htm accessed 12 December 2019.

2.6.4 SADC AND CHINA RELATIONS

All SADC member states, excluding eSwatini, have diplomatic relations with China.¹⁶⁹ However, this has had no significant impact on Chinese engagement with the SADC secretariat.¹⁷⁰ Should there be stronger engagement with China, it is also possible for eSwatini to benefit indirectly under SADC projects since it can't be excluded from the programmes of SADC on the basis of the one-China policy.

According to research by the Centre for Chinese Studies, several officials from the SADC secretariat were not familiar with FOCAC commitments.¹⁷¹ One respondent, however, submitted that there was a limited engagement between China and Africa while there were very active bilateral relations with SADC member states.¹⁷²

The Beijing 2018 Action Plan: political Cooperation, shows significant progress in terms of the inclusion of the agency African union and its regional bodies. For example, it notes that China appreciates the 'positive role of the African Union Commission since it became a member of the FOCAC and will continue to strengthen cooperation with and support for the New Partnership for Africa's Development (NEPAD).¹⁷³ This signals a potential vehicle to strategically integrate African development goals, at the national, regional and continental level. Furthermore, there is a commitment by China to support capacity building in the African Union and sub-regional organisations.

2.6.5 CHINA'S AFRICA POLICY

In 2006, the Chinese government, for the first time issued a paper detailing its policy towards Africa.¹⁷⁴ It contains, in six parts, 'Africa's position and role, China's relations with

¹⁶⁹ Hon, Jansson, Shelton *et al* op cit 163 at 10.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ 2.4.4 of the Johannesburg Action Plan (2015) available at https://www.focac.org/eng/zywx_1/zywj/t1327961.htm.

¹⁷⁴ See 'Chinese Government Issues Africa Policy Paper' available at <http://gh.china-embassy.org/eng/xwdt/t231007.htm> accessed on 12 December 2019.

Africa, China's African policy, and enhancing all-round cooperation between China and Africa'.

¹⁷⁵ The characteristics of this text, in terms of the body, language and structure, strongly resembles the FOCAC. It appears as if FOCAC action plans are vehicles through which China's Africa policy is implemented. China's policy towards Africa is underpinned by values such as 'Solidarity and cooperation', 'mutual benefit, reciprocity and common prosperity, and the one-China policy.'¹⁷⁶ Under part IV (which deals with the economic field) of this text, China reiterated that it encourages and supports Chinese enterprises and investments in Africa.¹⁷⁷ While putting attention to the need for creating a favourable environment and the protection of legitimate rights and interests of both Chinese and African investors.¹⁷⁸

Under the title 'Education, science, culture, health and social aspects' under science and technology cooperation, the text says that China will promote cooperation Africa in the fields of applied research, technological development and transfer.¹⁷⁹ This signals the intention and willingness to transfer technology to the Africans, however, special attention must be paid to the nature of the language used. For example, words such as 'promote', 'encourage' or, and 'commit' significantly impact the weight of China's duties and Accountability to the African side.

In 2015, under President Xi Jinping, released a second Africa policy document with the objectives of further clarifying China's determination to develop relations with Africa and 'expound the new vision, approach and measures of China's Africa policy under the new circumstances with the aim of guiding the multi-faceted exchanges and cooperation between China and Africa in the years to come.'¹⁸⁰ The very fact that the new document speaks of 'China's Africa policy under the new circumstances' denotes that China re-strategised its approach to Africa.¹⁸¹ It is clear that China's policies serve to make it reach its national development as opposed to China developing Africa. The significance of this understanding is that the African side should be able to see beyond the glamorous rhetoric language used in its interaction with Africa.

¹⁷⁵ Ibid.

¹⁷⁶ See <https://www.fmprc.gov.cn/zflt/eng/gylt/ljij/t157576.htm> accessed 1 January 2020

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ See 'China's Second Africa policy paper' available at http://www.china.org.cn/world/2015-12/05/content_37241677.htm accessed on 1 January 2020.

¹⁸¹ Ibid.

China also aims to achieve its “two centenary goals” and the ‘Chinese dream’ which in essence is about making China a ‘moderately prosperous society ‘by 2021.¹⁸² In addition to that, there is a signal of intensifying reforms and advancing law-based governance.¹⁸³ The new policy, however, refers to Africa's Agenda 2063 which implies that Chinese policymakers have taken note of Africa's long-term development goals.¹⁸⁴The ‘Agenda: 2063¹⁸⁵ is a continental development agenda that constitute various goals and priorities for Africa such as for our purposes, the need for self-financing for African development projects, having capable institutions and transformative leadership in peace, improved infrastructure across African countries and areas such as decent job creation, education and knowledge-driven revolution, sustainable economic growth.¹⁸⁶

This Agenda is also linked with the United Nations Sustainable Development Goals (SDGs), SGD Goal 1 refers to 'ending poverty in all forms' and goal 8 refers to the promotion of sustainable economic growth with full employment and decent work for all.¹⁸⁷ The most standard definition of sustainable development, according to the Brundtland Report: "Sustainable development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs."¹⁸⁸ This also serves as a framework for Chinese investments in Africa since both parties are members of the UN. While Agenda 2063 and NEPAD are Africa’s only documents that could be classified as a policy. They are broad and long term based. Despite evidence that there is a growing strong African agency in the FOCAC action plans of what the African wants from China. It is almost two decades after the first FOCAC, despite the growing investments and trade between Africa and China. There is still no Africa's China policy detailing at least a structure or its interests in the China-Africa discourse.¹⁸⁹ While it may be argued that individual countries may have developed strategic policies towards China, the evidence to support this argument is scarce.¹⁹⁰ While China benefits both multilaterally and bilaterally, the African side risk only benefiting only through bilateral engagements. A detailed African China’s

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Bob Wekese ‘China’s Africa Policy 2015: New policy for new circumstances’ available at <https://africachinareporting.co.za/2015/12/chinas-africa-policy-2015-new-policy-for-new-circumstances/> accessed on 20 November 2019.

¹⁸⁵ List of goals and aspiration Available at <https://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf>. Accessed 9 February 2020.

¹⁸⁶ See <https://au.int/agenda2063/goals>.

¹⁸⁷ See <https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>.

¹⁸⁸ See IISD <https://www.iisd.org/topic/sustainable-development>.

¹⁸⁹ Bob Weseka op cit 185.

¹⁹⁰ Ibid.

policy would aid individual African countries in terms of having leverage during investment and trade negotiations with China and it would prioritise and accelerate both their national and regional goals as it would form a framework for the relations instead of its interests merely a consideration.

2.6.6 THE LEGAL FRAMEWORK

A. Bilateral investment treaties

The law that governs Chinese investments in Africa is primarily domestic codes of China and the hosting African states. There are no international treaties regulating both sides rather, investments are done mostly through bilateral relations.¹⁹¹ Therefore, the primary legal framework for Chinese investments is bilateral treaties (BITs) between China and the individual African country. To date, China has over 31 BITs with African countries including SADC countries such as South Africa, Zambia and Zimbabwe.¹⁹² BITs establishes the terms of conditions for private investments made by a business from one jurisdiction to another.¹⁹³ They commonly grant investors from a contracting State certain guarantees that include ‘fair and equitable treatment,’¹⁹⁴ protection against expropriation of property without compensations and often provision of arbitration in case of disputes between the investor or state and the host state.¹⁹⁵ The effectiveness of BITs as a method of attracting foreign investments has been called into question since a significant number of host countries and investors avoid concluding BIT.¹⁹⁶ Africa and China have, however, shown serious commitment and encouragement of mutual investment and implementation of BITs.¹⁹⁷

In 2015, The Legal Forum for China-Africa Cooperation officially established the China-Africa Joint Arbitration Centre (CAJAC) which serves as a Dispute Resolution Mechanism for

¹⁹¹ See footnote 193.

¹⁹² Uche Ewelukwa Ofodile ‘Africa-China Bilateral Investment Treaties: A Critique’ (2013) *Michigan Journal of International Law* at 132.

¹⁹³ Georgetown Law Library ‘Bilateral Investment Treaties (BITs)’ available at <http://guides.ll.georgetown.edu/c.php?g=371540&p=4187393> accessed on 21 november 2019.

¹⁹⁴ The definition of ‘fair and equitable treatment’ differs because it is treaty specific, its meaning may be influenced by the wording used in the BIT.. See OECD (2004), “Fair and Equitable Treatment Standard in International Investment Law” OECD Working Papers on International Investment 2.

¹⁹⁵ Georgetown Law Library op cit 194.

¹⁹⁶ Elkemann & Ruppel op cit 7 at 11.

¹⁹⁷ Ibid.

trade and investment disputes between African and Chinese investors and business people.¹⁹⁸ To date, there are three CAJAC centres in Johannesburg, Nairobi and Shanghai.¹⁹⁹

The SADC region drafted a Model bilateral investment treaty which was completed in 2012.²⁰⁰ The significance of the SADC BIT is that links FDI with sustainable development. Its preamble reads the ‘Main objective of this Agreement is to encourage and increase investments ... that support the sustainable development of each Party, and in particular the Host State where investment is to be located.’²⁰¹ It further attempts to balance the rights and obligations of investors and State parties. The China-Africa BITs are typically silent on the matter on labour and rights of employees and the environment. The SADC BIT has clear provisions aided by commentary on issues for example under Article 22 highlights that it is inappropriate to encourage investment by relaxing domestic environmental and labour legislation.²⁰² The limitation of this template is that it is not legally binding on the SADC members, and it is used only as a negotiation tool, but its weight and importance cannot be underestimated. Consequently, this paper will utilise this model, as the current Sino-Africa BITs lack provisions on the investor’s obligation and as such, silent on the problems under discussion.

b. Other applicable Legislation

The domestic laws of the investing country and that of the host country also forms part of the international investment legal framework. Hence, different countries in SADC have different laws. The relevant African laws relating to investments, and labour, technological transfers as unilateral frameworks will be discussed in the following chapter.

In addition to the referred to domestic laws, there are also international standards and regulations that legally bind China and African countries. Thus far, China has ratified 25 pieces of International Labour Organisation (ILO) convention.²⁰³ In terms of the core labour standards of

¹⁹⁸ Hogan Lovells ‘CAJAC update’ available at <https://www.hoganlovells.com/en/publications/cajac-update> accessed on 30 November 2019.

¹⁹⁹ Ibid.

²⁰⁰ See ‘The SADC MODEL BIT Template: Investment for Sustainable Development’ available at https://www.iisd.org/itn/2012/10/30/the-sadc-model-bit-template-investment-for-sustainable-development/#_ftnref3 accessed on 30 November 2019.

²⁰¹ Ibid. See p.5 of the SADC Model BIT.

²⁰² Art. 22 of the SADC Model BIT.

²⁰³ Anthony Yaw Baah and Herbert Jauch ‘Chinese investments in Africa. A labour perspective’ *African Labour Research Network (ALRN)* 59.

the ILO China has notably failed to ratify conventions related to forced labour, Yaw Baah and Jauch argue this is because the prison labour and re-education system still exists in China.²⁰⁴ Perhaps, this contributes to the narratives that China uses prison labour even in Africa.²⁰⁵ Other examples included Convention 100 and Convention 111 on the elimination of discrimination in respect of employment and occupation and no.138 (Minimum Age Convention), no. 182 (Worst Forms of Child Labour),²⁰⁶ freedom of association and the right to organize (no. 87 and no. 98).²⁰⁷

Furthermore, China and African countries have ratified a significant number of international human rights, namely the Universal Declaration of Human Rights (UDHR) and they are all members of the United Nations.²⁰⁸ Under the UDHR there are provisions related to labour rights, for example, art. 23, meaning that there is a positive obligation on both parties to respect and fulfil these labour rights.²⁰⁹ Both sides have also ratified the International Economic, Social and Cultural Rights Covenant (ICESCR 1966) which has specific labour rights clauses.²¹⁰ China signed this convention with a reservation of Article 8 on freedom of association.²¹¹ Meaning that even if Chinese companies are operating in very weak legal environments there are international regulations through which they could be held accountable.

C. Chinese Labour Laws

In Africa, Chinese domestic laws do not apply however, they form part of the standard through which we need to assess the behaviour of Chinese business entities in Africa.²¹² Guan notes that it took China 40 years to enact its first comprehensive labour law.²¹³ While China has a poor record there is a significant improvement. According to China Labour Bulletin, the most

²⁰⁴ Ibid.

²⁰⁵ Deborah Brautigam op cit 93 at 3.

²⁰⁶ Samentha Goethals 'Chinese *'Mining Operations in Katanga in the Democratic Republic of the Congo'* (2009) RAID at 5.

²⁰⁷ Baah & Jauch op cit 204.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Samentha Goethals op cit 207 at 7.

²¹³ Anthony Yaw Baah and Herbert Jauch op cit 221 at 57.

important laws governing labour relations in China are 5 Labour Law, 1992 Trade Union Law (amended 2001), 2008 Labour Contract Law (amended 2013), and the 2008 Labour Dispute Mediation and Arbitration Law.²¹⁴ These laws provide a legal framework which gives a work various rights and protection against exploitation by the employer, this includes right to be paid in full and on time, a formal employment contract, unemployment, work injuries and maternity leave, severance pay in the event of contract termination, equal pay for equal work, and protection against workplace discrimination.²¹⁵

In China workers are provided with reputable institutions of mediation and arbitration and the court systems, this means that should the local government show unwillingness to enforce the law, the affected worker can still utilise these institutions.²¹⁶ This dispute mechanism is important as it allows problems to be solved in a reasonable time. Many African countries do not have ADR mechanism for labour disputes, the disputes end up at the courts which negatively impact the image and reputation of Chinese investments in Africa. On paper the Chinese Labour law looks excellent, however, businesses and employers in China still disregard the law, withholding wages and social security payments, refusing to pay work-related injury and illness compensation, and firing employees with almost no consequences.²¹⁷

Evidently, the labour problems in China and Africa are the same, these labour laws serve a benchmark through which we can understand the attitude of the Chinese authorities and the business entities operating in Africa.

2.7 CONCLUSION

This chapter has established that there are both positives and negatives under Chinese investments in Africa. Despite the many debates surrounding these investments, it seems that many concerns are as a result of a misunderstanding of the often complex and non-traditional approach to investments. While China has an Africa policy document that is constantly updated in

²¹⁴ China Labour Bulletin 'Labour relations in China: Some frequently asked questions' available via <https://clb.org.hk/content/labour-relations-china-some-frequently-asked-questions> accessed on 2 January 2020.

²¹⁵ Ibid.

²¹⁶ Samentha Goethals op cit 207 at 7.

²¹⁷ Ibid.

response to its development objectives, Africa lacks a regional uniform document detailing its policy towards China. Therefore, this chapter reveals that there is a need for Africa under AU and as individual countries to draft an authoritative China policy document that will allow them to strategically benefit from Chinese investments in Africa. In addition to that, there is also a need to have a legally binding regional uniform investment framework to regulate these investments as this will ensure consistency and accountability from all the role players.

In the view of the above conceptual and theoretical analysis, this paper maintains that Chinese investments are of great significance for African development. Unfortunately, Africa does not have a China policy and a multilateral investment treaty as such, there is an inadequate systemic regulation, which in turn, disadvantage African countries from maximising their benefits. On that basis, the following chapter will discuss the central challenges faced by Chinese investments in Africa.

CHALLENGES AND PROSPECTS OF CHINESE INVESTMENTS IN AFRICA

3.1 INTRODUCTION

‘The productive employment of labour presupposes an increase of the general level of education and the acquisition of technical skills, and, the formation of a body of capable administrators and entrepreneurs.’²¹⁸ Chinese investments in Africa offer a good avenue through which all these benefits can be enjoyed by both Africa and China. However, the rapid growth of Chinese Investments in Africa inevitably, perhaps, as expected, resulted in an experience of various commercial problems.

Whilst the challenges faced under this Africa-China discourse are many, the following two challenges have been identified as particularly threatening to the sustainable development of Chinese investments in Africa. Also, these two problems were selected because of their centrality in Africa- China commercial relations. These challenges are Chinese businesses labour relations in Africa and the lack of technology and skills transfers in Chinese projects in Africa. This chapter discusses the above-mentioned challenges from a legal perspective, and it will also provide a case study for each challenge.

3.2 LABOUR RELATIONS AND WORKING CONDITIONS UNDER CHINESE COMPANIES IN AFRICA

This is arguably the most controversial aspect of Chinese investment in Africa.²¹⁹ Any discussion on China’s engagement with Africa brings about the question of Chinese business’ labour practices on the continent. Perhaps other arguments are factual, others are misunderstood

²¹⁸ Muna Ndulo ‘Chinese investments in Africa’ available at http://saipar.org/wp-content/uploads/2013/09/Ndulo_Chinese-Investments-in-Zambia.pdf at 3.

²¹⁹Anthony Yaw Baah and Herbert Jauch *Chinese investments in Africa : a labour perspective* (2009) at 66.

myths peddled by the media and hearsay. The book ‘Chinese investments in Africa: a labour perspective’²²⁰ which undertook extensive research on the labour practices in southern Africa showed that the practices were not the same in all countries.²²¹ Given that, there is a difference between countries, sectors, and individual countries.²²² However, this research showed that there were some common trends in terms of the labour practices by Chinese enterprises in Africa; these included serious charges such as tense labour relations, hostile attitudes towards trade unions, various violations and abuse of workers’ rights, poor working conditions and several instances of discrimination and unfair labour practices.²²³ These incidents are discussed below from a legal perspective.

3.2.1 GENERAL WORKING CONDITIONS

The state and nature of labour relations between African workers and Chinese businesses can be illuminated by the study of working conditions under their employment arrangements. One of the common features of Chinese hiring system is the absence of employment contracts and the unclear determination of wages and employment benefits.²²⁴ This is classified as the casualization of employment. The issue of casualization of employment is of great significance in the Africa-China debate because, for example, a permanent job in a factory or mine means that an African worker secures a fairly high income, access to medicine and a contract which could be used as collateral for personal bank loans.²²⁵ Deborah Brautigam alludes that, Chinese companies in Africa typically apply the same low standards employed in especially small towns and villages of China.²²⁶ Consequently, this would result in the transplant of Chinese unfair practices into the African labour market.

²²⁰ This paper uses this book as a primary source of Chinese labour practice in Africa because it did extensive research which is centred in Southern Africa. Even though it is almost 10 years, it provides sheds with a light on the background of the topic under discussion in this section.

²²¹ Ibid.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Muffuh Mildred Veunyah ‘Precarious Working Conditions: African Workers of Chinese Companies in Africa’ (2018) 23 *IOSR Journal of Humanities And Social Science* 10 at 63.

²²⁶ Deborah Brautigam op cit at 93 at 300.

A lack of employment contracts which results in the ‘casual workers’ deprives employees of legal protection and weakens the African authority’s power of labour regulation. The same research observes that even in some countries such as Angola that requires the classification of workers as permanent staff after a few months, some Chinese companies still classified them as casual workers thereby depriving them of the benefits that they are legally entitled to.²²⁷ This practice is a clear disregard or avoidance of the law. Many academics and commentators have argued that the problem of Chinese businesses not abiding by the law is because of Chinese ignorance of local African labour regulations.²²⁸ This justification is baseless in law since ignorance of the law cannot be an excuse. There is a positive obligation on all and not only Chinese enterprises to observe and familiarise themselves with the labour laws of the hosting country before doing business. In response to this problem, Mozambique translated its labour laws from Portuguese into Chinese.²²⁹

Deborah Brautigam further argues it is not only African workers that encountered unfair working practices but Chinese workers too.²³⁰ She used an example of 200 Chinese construction workers in Equatorial Guinea who allegedly went on strike in the frontier town of Mongomo, leading to a violent clash with local security forces in which two Chinese workers were killed.²³¹ She also noted that these low standards are not limited to Chinese businesses since her research showed that in Namibia 80 per cent of the small businesses owned by Namibia failed to follow local labour laws.²³² This is potentially true since in Africa there is a large informal sector, which is largely unregulated by the local labour laws. However, this should not be used to justify or normalise the abuse of labour laws and bad working conditions under Chinese investments in Africa.

Research also showed that despite comprehensive stipulations in national labour legislation, a large number of Chinese employers disregarded the provisions for a break, thereby forcing workers to work with long hours without rest.²³³ Muna Ndulo, concur with Deborah Brautigam, in that these are problems associated with foreign investment from the Chinese and the

²²⁷ Anthony Yaw Baah and Herbert Jauch op cit 221 at 66.

²²⁸ Deborah Brautigam op cit at 93 at 300.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Ibid.

²³² Ibid.

²³³ Anthony Yaw Baah and Herbert Jauch op cit 221 at 66.

western world.²³⁴ This includes exploitation of workers through the payment of low wages; unsatisfactory working conditions such as those relating to the health and safety of workers.²³⁵ Acknowledging that these problems regardless of the race or the origin of the investor.²³⁶ Irene Yuan Sun also reflects this position, when she said, ‘If I had my way, we’d talk about firms by sector, not by nationality.’²³⁷ This would perhaps, result in a better and honest study of Chinese investments in Africa.

3.2.2 EMPLOYMENT OF CHINESE LABOURERS OVER THE AFRICAN WORKER

There is a strong belief that Chinese businesses hire Chinese workers instead of local African people.²³⁸ This claim, however, isn't supported by any data.²³⁹ However, this accusation has to be considered since this is the view that is occupied by many Europeans and Americans, including Africans.²⁴⁰ This damages the reputation of Chinese investments in Africa and it also fuels Xenophobic attitudes towards Chinese businesses.

Tang Xiaoyang observed that the increased migration of Chinese people working into African who is estimated to be two million, to be a contributing factor to the wrong perceptions of Chinese hiring practices.²⁴¹ He further contended that the employment of local workers is encouraged by governments and is an economic consideration by Chinese businesses.²⁴² Africa has a growing youthful population entering the labour market yearly which puts some political pressures on Governments to ensure that there is the localization of employment at the Chinese firms. Many African governments strictly regulate the employment of locals and issuing of work permits to foreign workers.²⁴³ For example, there is a policy in Angola that requires 70 per cent

²³⁴ Muna Ndulo op cit 219 at 1.

²³⁵ Ibid at 6.

²³⁶ Ibid at 6.

²³⁷ David Pilling ‘It is wrong to demonise Chinese labour practices in Africa’ available at <https://www.ft.com/content/6326dc9a-9cb8-11e9-9c06-a4640c9feebb> accessed on 30 November 2020.

²³⁸ Tang Xiaoyang op cit 37 at 109.

²³⁹ Ibid.

²⁴⁰ David Pilling op cit 238.

²⁴¹ Tang Xiaoyang op cit 37 at 110.

²⁴² Ibid.

²⁴³ Ibid.

of the company's workers to be Angolans.²⁴⁴ However, it appears as if this policy can be relaxed for certain urgent public projects.²⁴⁵ Perhaps, a significant aspect of legislative enforcement in many African countries, this exceptionalism allows investors to negotiate the application of certain legal provisions to a particular project which renders the whole law ineffective despite the benefits of the project being built.

According to McKinsey Research Chinese businesses greatly provide locals with jobs, but not many manager positions.²⁴⁶ In more than 1000 companies which were surveyed. 89 percent of the employees were locals, creating more than 300 000 jobs for African workers.²⁴⁷ This research estimates that Chinese firms, estimated to be over 10 000, employs over a million African workers.²⁴⁸

Despite the high costs from importing Chinese labour, businesses are forced to bring Chinese workers to Africa at the beginning of their operations.²⁴⁹ Tang Xiaoyang indicates the reasons to include, the fact that Chinese workers are familiar with the companies organization and process, therefore, because of their experience, they will be able to get the project running quicker and lastly, the experienced workers can also provide on the job training to local workers.²⁵⁰ Therefore, from a Chinese perspective, it may be necessary to use Chinese technical workforce to realise their projects. But there are lots of benefits from using local works for both Chinese enterprises and local communities.²⁵¹

It has now been uncovered that Chinese businesses significantly hire local workers, but research shows that workers at management level are largely Chinese. McKinsey Research shows that out of the Chinese owned companies they surveyed only 44 percent of the managers were locals.²⁵² A small number of Chinese firms also had 80 percent consisting of local management.

²⁴⁴ Ibid.

²⁴⁵ Ibid.

²⁴⁶ Yuan, Jayaram & Kassiri op cit 71 at 40.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Tang Xiaoyang op cit 37 at 110.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Yuan, Jayaram & Kassiri op cit 71 at 13.

²⁵³ This is expected of many companies that are formed under FDI or foreign-owned. Carlos Oya in his research on the employment patterns and conditions in Angola observed a trend in which firms including Chinese businesses of relying on experienced managers with international experience and a stronger knowledge of the company systems and corporate culture. In this survey, only two foreign firms out of thirty had Angolan managers together with Portuguese and the rest relied on ex-pat managers.²⁵⁴

It further shows that even Angolan companies employ a substantial number of ex-pat managers who are largely Brazilian and Portuguese.²⁵⁵ This significance of this practice lies in the fact that there is perhaps a lack of qualified workers to fill managerial positions in some African countries. Some Chinese firms reported economic constraints and growing difficulties in retaining Chinese ex-pat labour for longer periods of time.²⁵⁶ Consequently, this encouraged some firms to train African workers to become managers. The advantages are plenty, for example, an increase of integration with the community in which the firm operates, the mitigation of language barriers that exist between Chinese business and African workers.

It is necessary to also consider factors hindering management localisation beyond personal preference of Chinese firms. African governments should ensure that their workers are adequately and practically trained thereby enlarging the semi-skilled and skilled pool.²⁵⁷ Conversely, Chinese companies should nurture their image, as their bad reputation of demanding long hours, or lower wages discourages African well trained and experienced workers.²⁵⁸

Finally, it may be difficult to legislate laws that require the appointment of Africans as that would cloud the investment environment in that country. Art. 7 of the SADC BIT discourages a country from imposing the appointment of senior management and employees.²⁵⁹ This should, however, be balanced with the underlying benefits of FDI such as skills transfer.²⁶⁰

²⁵³ Ibid.

²⁵⁴ Carlos Oya 'SOAS research challenges perceptions of Chinese firms' labour practices in Africa' available at <https://www.soas.ac.uk/news/newsitem141431.html> accessed on 29 November 2019.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ See Article 7 of the SADC BIT Template.

²⁶⁰ Ibid. See commentary under Art. 7.

3.2.3 LOW WAGES

It is beyond a reasonable doubt that Chinese investments in Africa provide jobs and employment for local workers. This positive development has been clouded by perceptions that workers at Chinese businesses are paid low wages. Xiaoyang argued that according to various studies the finding has not been unanimous.²⁶¹ In Ethiopia, a worker at a Chinese factory said, "I get paid 1,200 Birrs (\$ 44) a month with overtime," she says. "After rent and food, there is nothing left. My cousin has to support me."²⁶² Andrew Brooks discovered a similar situation at Mulungushi textile in Zambia, where the wage described as not being sufficient to cover the basic needs of a family.²⁶³ These statements are worrisome since it would mean that Africa is not sufficiently benefiting from the Chinese investment in Africa. And perhaps it would feed credence to the rhetoric of some critics of the Africa-China economic engagement.

Deborah Brautigam argued that China's perspective on the issue of low wages in Africa was reflected in the advice given to Namibia but its economic and commercial counsellor, Liu Kungyuan.²⁶⁴ "If you sacrifice on labour costs now for future generations, then Namibia will develop. Let people be paid lower wages now and attract more FDI and set up manufacturing so that the future generation will reap the benefits of the sacrifices."²⁶⁵ This advice reflected on China's own development model that resulted in millions of people getting jobs in China.²⁶⁶ However, while low wages drastically increase revenues of a firm by reducing expenses, it does not by itself result in the increase of jobs of employment of local workers. A similar perception is shared by some Chinese managers at least in practice. In a comparison of labour standards between NFCA's Chambishi mine and Swiss-owned Mopani and Indian owned KCM mine, Li Pengtao discovered that while NFCA's had bought a defunct mine for USD 160 million other mines bought already functioning mines.²⁶⁷ Because it had to recruit new workers and train them as opposed to other firms who already had experienced workers in place it paid considerably lower salaries in order to

²⁶¹ Tang Xiaoyang op cit 37 at 110.

²⁶² Jenni Marsh "Employed by China" available at <https://edition.cnn.com/interactive/2018/08/world/china-africa-ethiopia-manufacturing-jobs-intl/> accessed on 26 December 2019.

²⁶³ Tang Xiaoyang op cit 37 at 110.

²⁶⁴ Deborah Brautigam op cit 93 at 301.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Tang Xiaoyang op cit 37 at 113.

recoup the huge investment.²⁶⁸ This business logic can be found among Chinese companies in other African countries such as Ethiopia.²⁶⁹ This logic works well in a country such as China with a controlled economy, where labourers genuinely believe that they are working for their countries' future development as opposed to a worker, who works primarily for taking care of his family. Perhaps, this is the reason why Africans have not accepted such arguments, for example, labourers in China-Africa Overseas Tannery often left the company immediately after they received their wage.²⁷⁰ This further deprives the companies off committed, skilled and experienced workforce.

Xiaoyang argued that even though there are complaints about Chinese companies that pay less, these companies may, in the long run, be beneficial to the local communities since they heavily invest in machinery and infrastructure.²⁷¹ This is potentially correct since the investment can create linkages with the national economy and create an environment for potential direct and indirect employment and entrepreneurial opportunities. The limitation of this argument, however, is that he is silent of the communities or the workers getting a form of shares in the Chinese business' firms. This would greatly contribute to the African workers' willingness to low pay if in the end, they are likely to benefit.

Generally, FDI investors including Chinese investors consider cheap labour as a motivation for investing in a particular region or country, especially in areas such as manufacturing and construction sectors. Africa is largely a developing continent and provides a large pool for cheap labour. It is then significant to study the aforementioned wages from a legal perspective, and perhaps test it against the minimum wages legislated by the respective African countries.

According to a study on minimum wages in Sub-Saharan Africa by The Institute for the Study of Labour (IZA), many countries in the region have adopted minimum wage regulations.²⁷² It distinguished between the typically 'formal, wage-earning sector and usually large informal, a non-wage-earning sector in most African countries.²⁷³ However, only a small fraction of the continent's workforce is covered under the wage-earning sector, given the low rates of

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid at 114.

²⁷² Bhorat, Haroon *et al.* Minimum Wages in Sub-Saharan Africa: A Primer (2017) 32 *The World Bank Research Observer* at 27.

²⁷³ Ibid.

urbanisation and formality in Africa.²⁷⁴ This research further discovered that non-compliance with minimum wage is widespread.²⁷⁵ It estimated on average that 58 per cent of workers earn below the legislated minimum wage.²⁷⁶

This study provides a perspective through which to understand the practices of Chinese businesses on the ground. Minimum wage systems are usually classified in three broad categories national, sectoral (Occupational), and Hybrid (which may be a combination of the first two).²⁷⁷ A report by ILO (2013) revealed that the majority of countries in Africa use the sectorial or occupational minimum wage as opposed to one national wage covering all sectors.²⁷⁸ For example, in a Chinese road rehabilitation project in Angola, salaries were always above the sector minimum wage even though they were very close to the minimum.²⁷⁹ Whilst this is perfectly legal, a fair income should be high enough to ensure that workers are not living in poverty.²⁸⁰ Indeed, wages are always sufficient to help a worker meet the basic needs of life and their families.²⁸¹

Often ignored is the recruitment presences of Chinese firms, Carlos Oya alluded that they target workers with lower-wage reservations.²⁸² He indicated that the intention is not to benefit from low wages but rather more in labour control and discipline.²⁸³ He termed this a ‘dormitory labour regime’ noting that while the employer may take advantage of the workers low bargaining power, these businesses are however creating lots of jobs and employing people who would otherwise not find employment in their communities.²⁸⁴

The wages are also different amongst Chinese firms and workers. In this context, while wages paid by Chinese firms are usually lower in some categories. There are subjective

²⁷⁴ Ibid.

²⁷⁵ Ibid at 24.

²⁷⁶ Ibid.

²⁷⁷ Ibid at 8.

²⁷⁸ Ibid.

²⁷⁹ Oya and Wanda ‘Employment patterns and conditions in Angola. A comparative analysis of the infrastructure construction sector and building materials industry’ (2019) *IDCEA Research Report*, SOAS, University of London at 43.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Ibid.

²⁸⁴ Ibid.

characteristics and elements of workers that determines wages including their job tenure, work experience, education and socio-economic status, combined with the sector, skill-level of jobs.²⁸⁵

Recent research has also shown that some firms are using the "reward system" to attract local worker's hard work.²⁸⁶ This reward system includes 'career development for assiduous workers, promotion to management posts, bonuses financial support to worker's personal issues.'²⁸⁷ This shows that some Chinese firms have greatly improved or at least responded to the criticism. Perhaps, Zambia's ex-Minister of Commerce, Félix Mutati, was right when he insisted that with over 200 different companies acting differently.²⁸⁸ It is only fair to have practical examples instead of a generalised view.²⁸⁹ Therefore, in summary, Chinese firms are creating many jobs for local workers, however, the firms should be regulated in terms of remuneration. A stable workforce would help increase production and while employment creation buys authorities political life during elections, the temptation to sacrifice workers' rights over statistics should be avoided, since it would taint the positive impact of Chinese investments in Africa.

3.2.4 TRADE UNIONS, BARGAINING AND LABOUR CONFLICTS

The management of employment in Chinese investments in Africa is equally an important issue. Given the labour-related conflicts and concerns such as victimisation, discrimination and violation of workers' rights, an effective mechanism of conflict resolution is necessary. There is a wide belief that Chinese business operators are strongly hostile towards trade unions. Some managers see these organisations as troublemakers, instead, they opt to unilaterally determine wages, salaries and working conditions of their workers.²⁹⁰ This position is similar to that of the Urafiki textile, Chinese general manager Huang Lian whom in response to striking workers felt that workers unions were inconsiderate towards the economic stability of the company.²⁹¹ Inevitably, Chinese firms business practice presents unique challenges for organizing workers in

²⁸⁵ Oya and Wanda op cit 281 at 42.

²⁸⁶ Mildred Veunyeh op cit 227 at 66.

²⁸⁷ Ibid.

²⁸⁸ Juan Pablo Cardenal & Catherine Mansfield *China Silent Army* (2013) 204.

²⁸⁹ Ibid.

²⁹⁰ Anthony Yaw Baah and Herbert Jauch op cit 221 at 68

²⁹¹ Tang Xiaoyang op cit 37 at 112.

Africa mainly in the construction and mining industries.²⁹² The reason for this challenge is the casualisation of workers is seemingly preferred by Chinese employers. In some African countries only, permanent workers can join a trade union. Furthermore, Africa has a large informal sector which is not presented by trade unions. The behaviour of Chinese business is, however, not homogenous, they differ according to the company and industry. The study by the African Labour Research Network (ALRN) also found that some Chinese firms in countries with strong organisational cultures behaved more friendly towards trade unions and industrial resolution mechanism.²⁹³ This signals the capability of the firms to comply with the law.

Labour issues are problems that Chinese companies must face during their operations in Africa. The causes of conflicts are different. In Kenya, some Chinese employers complained of local workers' laziness and unreliability, they claimed that local workers often skipped work and only returned upon the depletion of their wages.²⁹⁴ Therefore, left with no choice but to pay them on a daily basis. Similar sentiments were expressed by Chinese managers in Angola including accusations of theft.²⁹⁵ Perhaps, these are the effects of casualization of employment, it has advantages and disadvantages for both employer and employee. For example, while the employer gains from not according to employee benefits accorded by law such as medical aid, paid leave. The business is also deprived of hard-working, experienced and reliable workers. In relation to the victimisation and violation of workers' rights, the SOAS research workers did not report verbal and physical abuse.²⁹⁶ However, interviews suggested the occurrence of abuse even though this was not unique to Chinese firms.²⁹⁷ Most commonly there is also a problem of communication barriers between Chinese employers and the low skilled workers which often results in conflicts.²⁹⁸ It explains why locals in Angola speak of Chinese 'management style' concerning how some Chinese firms behave in terms of labour relations. The ALRN reported that even when some Chinese managers pretend that they can't communicate in English during collective bargaining

²⁹² Anthony Yaw Baah and Herbert Jauch op cit 221 at 66.

²⁹³ Thulani Guliwe and Skhumbuzo Mkhonta 'Chinese investments in South Africa' in Anthony Yaw Baah and Herbert Jauch *Chinese Investments in Africa: A Labour Perspective* (2009) 360.

²⁹⁴ Zhicong Deng 'Chinese Companies' Labor Dilemma in Kenya' available at <https://chinaafricaproject.com/2014/06/19/chinese-companies-labor-dilemma-kenya/> accessed on 15 January 2020.

²⁹⁵ Oya and Wanda op cit 281 at 48.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

thereby rendering the process ineffective.²⁹⁹ And more shockingly, the unions claimed the collective bargaining process was purposefully made slow and tedious with some managers arguing that they receive mandates from their bosses back in China.³⁰⁰ The statement, if true, would infringe on the sovereignty of the host African country and potentially break international law.

Based on the literature, it is safe to conclude that Chinese businesses generally prefer no interaction with trade unions. However, they cannot forbid workers from joining the trade unions since they have a positive obligation under core ILO regulations, many constitutions also provide for freedom of assembly. The Chinese business logic should, however, not be dismissed without a careful study since not all issues should be resolved by law, sometimes consultation and negotiation within the workplace is more beneficial to all relevant parties.

3.2.5 DISCUSSION FROM A LEGAL PERSPECTIVE

The discussion above has set out the state of Chinese investments in Africa concerning labour. From the basic working conditions, the issue of localisation and employment of Chinese workers over local workers, wages and the relations with African trade unions. These problems are not unique to Chinese investments in Africa but are common in other employment avenues. Unique, to our study, is perhaps techniques of dispute resolution.

Zhicong Deng in the article 'Chinese companies labour Dilemma in Kenya' presents a typical problem relating to protesting workers with a trade union. The Chinese retail company which builds and sells houses employs local construction workers and salespersons.³⁰¹ All management staff are Chinese including the chief engineer, project manager and the foreman.³⁰² Ten local workers protested against the delay of wage payment which the company paid, however, the same workers brought in trade unions claiming unfair dismissal.³⁰³ The company responded by hiring a lawyer to help them solve the issue. They dismissed this claim by saying there was no dismissal either in a verbal or written form.³⁰⁴ Secondly, the workers were required to prove that

²⁹⁹ Anthony Yaw Baah and Herbert Jauch op cit 221 at 68.

³⁰⁰ Ibid.

³⁰¹ Zhicong Deng op cit at 296.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid.

they were continuously employed by that company for several years, but they couldn't prove this since the company had no employment contracts with the workers.³⁰⁵ In this case, these workers were casual workers and paid daily they could, therefore, not proved that they worked for many years at that company. And as a result, their claims dropped.³⁰⁶

These conflicts are common under Chinese investments in Africa. Many countries have standard procedures for disgruntled employees to lodge the complaints. In Kenya, an employee must first communicate directly with the employer, and there is still a misunderstanding the worker should complain to the labour department.³⁰⁷ Thirdly, two primary steps fail the worker can sue the employer in the industrial court.³⁰⁸

The legal framework is therefore available, for the protection of local workers in many African countries. Corruption and bribery is another major obstacle for the implementation of labour laws in Africa. Many local workers, mentioned that in response to labour disputes, Chinese companies simply settle the disputes by 'giving the labour officers, policemen or even the members of the trade union some tips.'³⁰⁹ So, it is evident corruption constitutes significantly to the exploitation of workers through not effectively monitoring violations in the workplace or preventing reform.³¹⁰

4. Employment, labour relations and working conditions at Chinese companies: South Africa country Case Study

This section considers Chinese investments in South Africa. These investments are diverse and can be found in various sectors which include 'energy, technology, mining and metallurgy, electronics, telecommunication, textiles, commercial banking, transportation, manufacturing, construction and automobiles.' Chinese FDI into South Africa reached USD 15.2 bn in 2017,

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ Ibid. *see* 'National labour law: Kenya' available at https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158910/lang--en/index.htm accessed 5 February 2019.

³⁰⁹ Ibid.

³¹⁰ Labour perspective 66

making them the largest receiver of Chinese investments after Nigeria.³¹¹ Beijing is also South Africa's largest trading partner.³¹² There are, however, challenges for Chinese firms investing in South Africa, mainly the dominance and strength of local industries on its domestic market and increased investment regulations and labour laws.³¹³ This has not deterred investments as South Africa also offers a gateway into (southern) Africa.³¹⁴

More interestingly South Africa is one of a few African countries significantly FDI into China.³¹⁵ For example, SABMiller, a South African company entered into a joint venture with China's largest brewer serving over thirty-three breweries across the country.³¹⁶ The significance of the reciprocity in investments is that perhaps, the gap of imbalance is reduced since both parties are likely to prioritise mutual benefit on both ends.

The dynamics of the South African legal, financial and labour systems offer great case studies that can be reflected on other African countries and perhaps serve as a model towards managing investments. This case study, therefore, to bring into context the understanding of legal implications of Chinese businesses' behaviours in relation to Employment, labour relations and working conditions at Chinese companies.

4.1 Applicable South African labour laws

South Africa has a compressive and strong labour regulatory regime. These include the Labour Relations Act (1995) (the LRA), Basic Conditions of Employment Act (1997) (the BCEA), Equity Employment Act (1998) and Skill Development Empowerment Act (1998).³¹⁷ In addition, labour market institutions such as the Bargaining Councils and Wage boards that set sectoral

³¹¹ Chris Torrens 'Chinese investment IN South Africa : set for success, if common mistakes are avoided' available at <https://www.controlrisks.com/our-thinking/insights/chinese-investment-in-south-africa> accessed on 05 January 2020.

³¹² Anthony Yaw Baah and Herbert Jauch op cit 221 at 35.

³¹³ Huang, Meibo et al 'A study on the employment effect of Chinese investment in south Africa' Centre for Chinese Studies 9.

³¹⁴ Anthony Yaw Baah and Herbert Jauch op cit 221 at 35.

³¹⁵ Ibid at 35.

³¹⁶ Ibid at 35.

³¹⁷ Huang, Meibo et al op cit 315 at 33.

minimum wages and controls working workings in respect of many industries.³¹⁸ For many years South Africa had occupation minimum wage but recently it has promulgated the National Minimum Wage regulations Act, 2018. Which is currently set at R20 per hour.³¹⁹ Interestingly, firms in financial difficulties can apply for exemptions to it.³²⁰

South African workers' rights are provided in the country's supreme Constitution.³²¹ These rights include a Right to fair labour practices, form and participate in trade unions.³²² This right is also extended to employers and trade unions under the same provision. The LRA Act further seeks to protect rights of employees, employers and trade unions by way of giving effect to the RSA Constitution and Convention 87 of the ILO, which protects the freedom of association for workers and the right to organise within the workplace.³²³ In South Africa companies must also comply with Broad-Based Black Economic Empowerment (B-BBEE) legislation. Perhaps, one most challenging regulatory requirement faced by Chinese companies in the country.³²⁴ This act seeks to protect the rights of previously disadvantaged communities by setting targets of ownership, management control and skills development amongst other things.³²⁵ Despite this, there have been reports that some Chinese companies disregard "almost all provisions enacted in the LRA, convention 87 of the ILO and the BCEA."³²⁶ This, however, requires more study to avoid Chinese exceptionalism.

4.2 Employment and Labour relations

Like in other African countries, international observers have been suspicious about the quality of Chinese investment in South African impact on employment.³²⁷ However, field Research by Meibo and Peiqiang that assessed the employment of Chinese businesses in South

³¹⁸ Ibid.

³¹⁹ Sarah Smit Minimum wage: Over 360 employers want out' available at <https://mg.co.za/article/2019-06-24-minimum-wage-over-360-employers-want-out/> accessed on 05 January 2020.

³²⁰ See Schedule 2 of the Minimum Wage Act 9 of 2018.

³²¹ S23 of the Constitution of the Republic of South Africa, 1996.

³²² Ibid at S23(2).

³²³ Thulani Guliwe and Skhumbuzo Mkhonta op cit 295 at 319.

³²⁴ Chris Torrens op cit 313.

³²⁵ Huang, Meibo et al op cit 315 at 34.

³²⁶ Thulani Guliwe and Skhumbuzo Mkhonta op cit 295 at 319.

³²⁷ Meibo and Peiqiang 'A Study on the employment effect of Chinese investment in South Africa' (2013) Centre for Chinese Studies at 1.

Africa discovered that Chinese investment contributed towards an increment of employment for both the skilled and unskilled local population.³²⁸ The country hosts big Chinese companies such as Sinosteel, Hisense, Sinoprime Investment which contributes thousands of job creation.³²⁹ This means that Chinese investment, in addition to its current contribution can contribute more employment in various sectors.³³⁰

There is also high localization of labour rates in South Africa, this could possibly be contributed to government immigration strict rules on the employment of foreigners.³³¹ For example, if there is a skilled and competent South African citizen for a particular vacancy, he or she should get first preference and should not be disadvantaged by a foreigner.³³² In addition, section 38(2) of the Immigration Act prohibits an employer from employing an illegal immigrant.³³³ This provision puts a positive obligation on an employer to ascertain the immigration status of a worker before the employment.³³⁴ It also carries severe fine and punishment should an employer be caught in contravention of the Act. Therefore, Chinese businesses are careful not to be caught in violation of the South African law thereby increasing their contribution towards employment and skills development.

4.2.1 Working conditions

Any discussion of Chinese investment in South African should include a deeper consideration of the South African labour market itself, so as to avoid bias. While the county has been substantially developing since apartheid the unemployment rate is always estimated to be around 25 per cent.³³⁵ Second, there is a large African immigrant community in the labour pool in South Africa and there have been reports of Chinese and other businesses preferring them at the expense of the locals. For example, recently seven Chinese nationals were raided for operating a factory in Johannesburg which involved allegedly trafficking of illegal immigrants and forced

³²⁸ Ibid.

³²⁹ Ibid at 16.

³³⁰ Ibid.

³³¹ Ibid.

³³² s 8 (2) of the Employment Services Act 4 of 2014.

³³³ S 38(2) the Immigration Act 13 of 2002.

³³⁴ Ibid.

³³⁵ Meibo and Peiqiang op cit 329 at 32.

labour.³³⁶ A total number of 91 Malawian nationals were found 37 of which were children.³³⁷ This behaviour contravened many South African laws and international law. These include National Minimum Wage (NMW), Occupational Health and Safety (OHS) Act, the Basic Conditions of Employment Act (BCEA), the Compensation for Occupational Injuries and Diseases Act (Coida), the Unemployment Insurance Act (UI Act) and Unemployment Insurance Contributions Act (UICA).³³⁸ Including the Children's Act of 2005 and the Immigration Act. Indeed some firms might opt to take the illegal route by employing illegal workers, perhaps as a means of saving costs.

The position in South Africa is foreign employees enjoy the same protection under the LRA Act, regardless of their immigration or legal status.³³⁹ This was decided in *Discovery Health Limited v CCMA & Others* and it means that even if the employer wants to terminate employment it could be done in a procedurally fair manner. The case is still ongoing at the time of this research, this case shows why despite having laws, implementation and constant monitoring remains important.

4.2.2 Relationships with trade unions

South Africa has labour regulations and powerful trade unions that greatly influence and improve the quality of salary increment, improvement of working conditions among other things.³⁴⁰ The combination of these two elements makes Salaries and wages are extremely difficult to adjust even in response to an economic situation.³⁴¹ Furthermore, it is difficult to dismiss workers even if they are incompetent or unskilled the employer should provide training. The South African legislation also clearly set out rules for fair dismissal and if the employer does not follow the correct procedure the employer can be sued through CCMA.³⁴²

³³⁶ Depart of Employment and Labour ' Bail application of seven Chinese nationals busted for alleged human trafficking and violation of labour laws begins ' available at www.labour.gov.za/bail-application-of-seven-chinese-nationals-busted-for-alleged-human-trafficking-and-violation-of-labour-laws-begins accessed on 30 January 2020.

³³⁷ Ibid.

³³⁸ Ibid.

³³⁹ Shahnaaz Bismilla and Neil Coetzer 'Work permits, foreign employees and legal incapacity' available at <https://www.chmlegal.co.za/work-permits-foreign-employees-and-legal-incapacity/> accessed on 20 January 2020.

³⁴⁰ Meibo and Peiqiang op cit 329 at 35.

³⁴¹ Meibo and Peiqiang op cit 329 at 36.

³⁴² Ibid.

The relationship between trade unions and Chinese business firms in South Africa appears to be dynamic. For example, the ALRN research covered six Chinese companies in the Newcastle area, KwaZulu Natal in the chemicals, clothing and textile; and construction sector.³⁴³ Concluded that while unions were able to organise workers, the majority of companies were adopting ways of frustrating unions such as offering casual jobs instead of full-time jobs.³⁴⁴ limited collective bargaining, discrimination against local workers and lack of training programmes.³⁴⁵ This outcome can be as a result of the human rights lens applied by the authors as it failed to contextualise the behaviour in relation to the South African labour market. In more recent research, Huang Ren noted that there is a rapid development of non-traditional employment in South Africa,³⁴⁶ which is characterised by temporary or informal employment, making it difficult for trade unions to attract those workers which significantly decrease collective bargaining.

To sum up, Chinese investments in South Africa are very important to the national economy. There is a certain degree of mistrust between the business managers, workers and trade unions. There is a need for more research on the factual impact of Chinese FDI on employment and the extent to which the owners contravenes labour laws.

³⁴³ Thulani Guliwe and Skhumbuzo Mkhonta op cit 295 at 320.

³⁴⁴ Ibid at 330.

³⁴⁵ Ibid.

³⁴⁶ Meibo and Peiqiang op cit 329 at 34.

5. TECHNOLOGY AND SKILLS TRANSFER IN CHINESE INVESTMENTS IN AFRICA.

The second key concern is the issue of the lack of technology and skills transfer at Chinese firms in Africa. Perhaps, this criticism stems from the employment practices discussed above, since under FDI technology and skills are transferred through employment. Therefore, practices such as importation of labour from China, casualisation of employment amongst others undermines the potential for skills and human resource development.³⁴⁷

3.3.1 UNDERSTANDING TECHNOLOGY AND SKILLS TRANSFER

In general, there is a lack of a common definition of what constitutes technology transfer.³⁴⁸ As a result, there are various definitions³⁴⁹ thereof, however, this paper utilises New Zealand's definition as it is broader and wider enough to include some practices in the Africa-China engagement. This definition interprets it broadly :

‘to include training, education and "know-how", along with any capital component. Four key modes of technology transfer are mentioned: (i) physical objects or equipment; (ii) skills and human aspects of technology management and learning; (iii) designs and blueprints which constitute the document-embodied knowledge on information and technology; and (iv) production arrangement linkages within which technology is operated.’³⁵⁰

The difference defining what comprises the transfer of knowledge and technology can lead to a misunderstanding, possibly between developed countries and developing countries. Since under Art. 66 of the TRIPS agreement developed countries have a positive legal obligation to incentives to enterprises in order to promote and encourage transfer to LCDs.³⁵¹ The significance of this provision is that out of the UN listed who are also WTO members 26 countries are African

³⁴⁷ Anthony Yaw Baah and Herbert Jauch op cit 221 at 24.

³⁴⁸ Jayashree Watal and Leticia Caminero op cit 354 at 23.

³⁴⁹ WIPO defines technology transfer as “a series of processes for sharing ideas, knowledge, technology and skills with another individual or institution and of acquisition by the other of such ideas, knowledge, technologies and skills”. *see* UNCTAD ‘Studies in Technology Transfer: Selected cases from Argentina, China, South Africa and Taiwan Province of China’ *UNCTAD/DTL/STICT/2013/7* at 1.

³⁵⁰ Jayashree Watal and Leticia Caminero op cit 354 at 23.

³⁵¹ Art. 66 of the TRIPS Agreement. *See* https://www.wto.org/english/docs_e/legal_e/27-trips_08_e.htm

countries.³⁵² This includes eight SADC countries namely, Angola, the Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mozambique, Tanzania, and Zambia.³⁵³

This obligation is, however, only applicable to developed countries.³⁵⁴ It then becomes necessary to establish whether China is a developed or a developing country. The legal framework of the WTO has no specific definition of what a developing or a developed country is.³⁵⁵ According to Investopedia, China is not a developed country despite having the world's second-largest economy because its GDP remains below the 'accepted standards of developed country status'.³⁵⁶ However, this does not automatically drop China's obligation or LCDs countries benefits under Art. 66, because member States could challenge the decision of a member to make use of provisions available to developing countries. It, therefore, provides the African side with a strong case against Beijing. This is likely to provide a positive outcome given that in recent times China has affirmed its willingness to increase its contribution towards African building capacity, which includes human resources development and technological transfers.³⁵⁷

Skills and technology transfers have received significant prioritisation in the FOCAC process. The Beijing Action plan (2013-2015) China reiterated its commitment and encouragement to knowledge sharing and transfer of what they referred to as 'advanced and applicable technologies to African countries.'³⁵⁸ This highlights the desire to transfer both high-tech and low-tech technology depending on the mode and channel of transfers. Therefore, it is likely that both private Chinese investments and SOEs investment will be required to ensure the substantive transfer of technology to the African countries in which they operate.

Meaningful achievements have been attained to date, in terms of African human development. For example, to date, acting on the Johannesburg Action Plan (2016-2018) China has trained over 40 000 professionals from various industries.³⁵⁹ In addition, scholarships awarded

³⁵² Jayashree Watal and Leticia Caminero 'Least-developed countries, transfer of technology and the TRIPS Agreement' (2018) *ERSD-2018-01 World Trade Organization* at 4.

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Ibid at 3.

³⁵⁶ Investopedia 'Top 25 developed and developing countries' available at <https://www.investopedia.com/updates/top-developing-countries/> accessed on 17 January 2020.

³⁵⁷ Abegunrin Olayiwola, Manyeruke, Charity *China's Power in Africa* Palgrave Macmillan (2020) 113.

³⁵⁸ 5.3.4 Of the Beijing Action plan (2013-2015) available at https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1323159.shtml

³⁵⁹ Zeng Aiping & Shu Zhan op cit 10 at 93.

to African students to study in China increase from 2,000 annually in 2006 to 10000 in 2018.³⁶⁰ This also includes the establishment of ‘China-Africa friendship schools, vocational education and training centres and capacity institutions.’³⁶¹ Showing that indeed these Action Plans despite commonly using less authoritative language they are actually acted upon recently the FOCAC mechanism also involve follow up meetings that ensure the implementation of the Action Plans during the three-year period. President Xi Jinping has recently applauded both Africa and China sides for implementing the Beijing Action Plan’s achievements which have brought benefits to both the people of Africa and China.³⁶² This includes the commitment towards development such as the Belt and Road and Africa Agenda 2063.³⁶³ These initiatives offer an opportunity for more development for both sides since the Belt and Road initiative will result in employment creation and increased skills and technology transfer.

From an institutional perspective, considerable progress is being done. However, there is an unclear picture of the actual impact on the ground. There is no African or Chinese database that captures the whereabouts of the beneficiaries of the education initiatives. It becomes fruitless for the Africa-China relationship if the beneficiaries and the graduates of education, skills and training initiatives are not available for recruitment by firms operating under the Chinese investments in Africa.

However, research by Henry Tugendhat on Chinese courses for African officials which is primarily aimed at facilitating the transfer of technology, increase in trade opportunities and build a stronger political relationship.³⁶⁴ Discovered that the success rate was inconclusive, out of 29 interviewees, 9 offered examples of how they applied the acquired knowledge in their work, 2 were still in the testing phase, 18 failed to apply the knowledge directly while five were able to share knowledge informally to their colleagues.³⁶⁵ Lack of funding and resources or support by

³⁶⁰ Ibid.

³⁶¹ Ibid.

³⁶² Li Xia ‘ Xi sends congratulatory letter to coordinators' meeting on implementation of follow-up actions of FOCAC Beijing summit’ available at http://www.xinhuanet.com/english/2019-06/25/c_138172285_2.htm accessed on 20 January 2020.

³⁶³ Ibid.

³⁶⁴ H. Tugendhat ‘Chinese training courses for African officials: a “win-win” engagement?’ (2014) SAIS-CARI available at <https://saiscari.files.wordpress.com/2014/10/sais-cari-brief-3-2014-tugendhat.pdf>.

³⁶⁵ Ibid.

the candidate's host country likely contributed to the failure of these mostly, agriculture courses to have an impact on the broader society.

3.3.2 TECHNOLOGY AND SKILLS TRANSFERS UNDER CHINESE INVESTMENT

Pat Utomi submitted that in order to achieve growth and suitable development a strong investment must be made towards human capital development.³⁶⁶ This key area is greatly influenced by empowering the local human capital through, but not limited to, skill and technology transfer. Chinese enterprises operating in Africa have often been criticised for the lack of technology and skills transfers.³⁶⁷ Thereby, significantly impacting on the value creation and employment or continuity after the Chinese firms or projects have ended or closed down.³⁶⁸

Literature and media reports have in the past recorded some of the negative reports against Chinese investments, for example:

*'China's so-called investments in Namibia bring very little, if any, skill and technology transfers, neither do such investments play a significant role in developing the country's value addition and manufacturing base'*³⁶⁹

Similar sentiments are common in other African countries. In Zimbabwe, field research revealed that Chinese companies employed mostly unskilled or semi-skilled workers.³⁷⁰ Consequently, there is hardly any skill or technological transfer, perhaps this can be contributed to the nature of the jobs that do not require much training.³⁷¹ Given this wider perspective of the lack of skill and technology transfers, it is necessary to study if local workers receive any training, and also any obstacles towards the effective transfer of thereof.

³⁶⁶ Thulani Guliwe and Skhumbuzo Mkhonta op cit 295 at 349.

³⁶⁷ David N. Abdulai *Chinese Investment in Africa: How African Countries Can Position Themselves to Benefit from China's Foray into Africa* 1st ed (2017) 87.

³⁶⁸ Ibid.

³⁶⁹ Mapure op cit note 35 at 31.

³⁷⁰ Naome Chakanya and Nyasha Muchichwa 'Chinese Investments in Zimbabwe' in Anthony Yaw Baah and Herbert Jauch *Chinese Investments in Africa: A Labour Perspective* (2009) 257.

³⁷¹ Ibid.

Increasingly surveys on Chinese employment indicates an evolving practice in terms of training.³⁷² In addition, literature shows that Chinese firms are increasingly engaging in training.³⁷³ Dispelling the myths that are commonly perpetuated in reference to the topic under discussion. There have been commendable efforts by Chinese companies in terms of providing training. For example, Huawei and ZTE have established a total of 10 training centres across Africa which according to the Chinese government trains over 20 000 African technicians annually.³⁷⁴ A 2017 McKinsey report discovered that almost two-thirds of over a thousand Chinese companies they surveyed provided training to local employees.³⁷⁵ This, however, was predominantly in the construction and manufacturing sectors that require skilled workers.³⁷⁶ In some cases, some big Chinese firms sent workers to China for training. In Angola, SOAS researchers discovered Chinese firms had invested in vocational training centres which involved trips to Beijing to enhance workers' related experience.³⁷⁷ Understanding the heterogeneous nature and the variation among Chinese firms is important in this regard for various reasons.³⁷⁸

Some sectors are skill-intensive and thereby renders it necessary to give workers advanced training, while others require very little special skill.³⁷⁹ This also influences the levels of technological and skill transfers in each scenario, the first case is likely to lead to more advanced skill development as opposed to the latter case which is likely to result in a limited transfer.³⁸⁰ The influencing factors are rather the nature of the particular work, rather than the willingness of the Chinese firms to train local workers.

The next consideration must be the quality and effectiveness of the type of training provided for sustainable skill development. The form of training commonly offered by Chinese firms is on-site training.³⁸¹ It can best be described as learning by doing and by observing.³⁸² It

³⁷² Carlos Oya 'Labour Regimes and Workplace Encounters between China and Africa' in Arkebe Oqubay & Justin Yifu Lin *China-Africa and an Economic Transformation* Oxford University Press at 6.

³⁷³ Ibid.

³⁷⁴ Tang Xiaoyang op cit 37 at 116.

³⁷⁵ Carlos Oya op cit 374 at 6.

³⁷⁶ Ibid.

³⁷⁷ Oya and Wanda op cit 281 at 49.

³⁷⁸ Carlos Oya op cit 374 at 8.

³⁷⁹ Ibid.

³⁸⁰ Ibid.

³⁸¹ Ibid.

³⁸² Oya and Wanda op cit 281 at 49.

appears as if a form of blended learning varying between formal and informal training methods are applied. This, therefore, means in order to maximise effective skills and technology transfers policymakers must deliberately encourage investment in high tech sectors through for example, by providing incentives.

3.3.3 OBSTACLES TO SKILLS AND TECHNOLOGY TRANSFERS

In general, there are numerous classifications of barriers that reduce the effectiveness of skill and technology transfers under FDI.³⁸³ Mock provided twenty-six barriers to technology transfers while putting a strong emphasis on barriers such as financial, competence, communication, and market-related barriers.³⁸⁴ In practice, Chinese investments in Africa are not immune to these barriers either, which in most cases limits the maximisation of capitalising on the technology and skills transfer opportunities presented by these investments.

Tang discovered that despite Chinese firms offering training the outcome is not always satisfying.³⁸⁵ Since most African workers usually leave the company for other foreign companies after acquiring new skills from the training.³⁸⁶ In fact, SOAS research observed that workers were giving basic instructions only which resulted in little or zero skill transfer.³⁸⁷ This remained the case until the workers were considered to be reliable and trustworthy as this brings certainty to the management that the workers won't leave thereafter.³⁸⁸ This appears to be a determinant for additional quality training and promotion into more dynamic job positions that allow for substantive skill and technology transfer.³⁸⁹ The factors that contribute to such a practice are mostly financial constraints on the side of Chinese businesses which results in these firms, especially private companies, paying lower wages.³⁹⁰ This, however, deprives the Chinese

³⁸³ Adam Mazurkiewicz & Beata Poteralska 'Technology Transfer Barriers and Challenges Faced by R&D Organisations' *Procedia Engineering* 182 (2017) 457 – 4 at 458.

³⁸⁴ Ibid.

³⁸⁵ Tang Xiaoyang op cit 37 at 116.

³⁸⁶ Ibid.

³⁸⁷ Oya and Wanda op cit 281 at 49

³⁸⁸ Ibid.

³⁸⁹ Tang Xiaoyang op cit 37 at 116.

³⁹⁰ Ibid.

companies off skilled workers in many African countries that have a limited pool of skilled labourers.

Available research contains different scenarios. In 2006, Changjin, a Chinese firm in Egypt trained ninety local workers in china and immediately after completion, 80 percent of them left the company.³⁹¹ Close to a decade later and in a different part of Africa, Oya noted that trainees often search for stable employment in Angolan civil service.³⁹² This shows that there has been little progress on the issue of job shopping at Chinese firms which makes managers reluctant to invest in training local workers. These negative perceptions about the quality of workers and their behaviour reflected common complaints by factory workers who are operating in the early phases of industrialisation.³⁹³ This trend is not unique to Chinese bosses or African workers.³⁹⁴ Even so, Chinese firms stand to benefit from increasing wages of skilled or trained workers so as to meet their genuine expectations of higher salaries thereby resulting in a more stable and productive workforce.

Secondly, language barriers and communication problems between the Chinese managers and local African workers often results in misunderstandings.³⁹⁵ In various interviews, Chinese managers confirmed that most use informal mechanisms of training.³⁹⁶ This perhaps also relates to the nature of the on the job training commonly utilised by Chinese firms. According to Tang, most Chinese technicians are not fluent in English or any other common languages in Africa such as French, French, Arabic or Swahili.³⁹⁷ In many cases, African workers also can't speak the aforementioned languages. He adds, that instead, they make use of interpreters to transit ideas, commands and instructions to local workers.³⁹⁸ The style of mechanically copying what the trainer does without having an underlying fundamental understating, results in the workers only being able to do what they saw, without stimulating innovation in the workers' expertise. This rather casts doubt on the long-term effects or sustainability of the training and skills acquired.

³⁹¹ Ibid.

³⁹² Oya and Wanda op cit 281 at 49.

³⁹³ Carlos Oya op cit 374 at 17.

³⁹⁴ Ibid.

³⁹⁵ Ibid at 16.

³⁹⁶ Oya and Wanda op cit 281 at 49.

³⁹⁷ Tang Xiaoyang op cit 37 at 117.

³⁹⁸ Ibid.

To reduce the damages caused by these barriers, the utilization of African management is required. Mr Zhang a businessman in Kenya stated “you should hire a local HR manager and avoid direct conflicts with the local employees. The local HR manager is more familiar with local employees and it’s easier for them to communicate to avoid misunderstanding and conflicts.” Even though this was in reference to protests it is applicable to the issue of skills transfers. Perhaps, there is a growing positive trend, Chinese companies are increasingly hiring more African managers however, there is still a room for improvement of local managerial employment.³⁹⁹ Even though there have been reports of discrimination against local managers in terms of status and wages in Zambia and Kenya.⁴⁰⁰ They are issues that can be rectified through dialogue with relevant stakeholders. Lastly, attention should be paid to the relationship between ‘skills’ and ‘technology’ transfer. The two concepts are intricately linked yet there is a possibility of African workers acquiring only one without the other. For example, through the aforesaid mechanical training methods, a worker can learn the skills on how to operate something without any technology being transferred. Conversely, machinery or equipment can be transferred to an African country without the necessary skills to repair and maintain it, as it wears out.

3.3.4 A LEGAL PERSPECTIVE

One of the methods to ensure skills and technology transfer is to use regulatory mechanisms most commonly through legislation. However, many African countries lack laws that render it mandatory for foreign companies to transfer skills and technology to their respective country and local workers.⁴⁰¹ About the Namibia case which perhaps reflects the position of many countries in SADC and African in general, Mapure suggests that the area of skill and technology transfer is rather left to the host country’s ‘business craftiness’.⁴⁰² This means that the African agency plays a major role through negotiations. In this case, any investment deals undertaken by African countries should consist of skills and technology centrality in order to foster development.⁴⁰³

³⁹⁹ Yuan Sun, Jayaram & Kassiri op cit 17 at 17.

⁴⁰⁰ Anthony Yaw Baah and Herbert Jauch op cit 221 at 70.

⁴⁰¹ Clever Mapure op cit 35 at 32.

⁴⁰² Ibid.

⁴⁰³ Herbert Jauch and Iipumbu Sakaria ‘Chinese investments in Namibia’ in Yaw Baah and Herbert Jauch *Chinese Investments in Africa: A Labour Perspective* (2009) 230.

The lack of laws putting obligations on Chinese businesses to transfer skills and technology could be caused by the African government's attempt to improve their investments so as not over-regulate. African governments run the risk of not getting the benefits from the investments as since companies will be under no legal obligation to transfer knowledge and technology. This view was reflected by a Chinese reporter who argued that 'It is unfair to say that China does not engage in the transfer of technology or skills if the laws of Namibia themselves do not provide a good environment for that to happen'.⁴⁰⁴

The position is arguably true since the easier observation of skills and technology requires deliberate and considerable efforts by the recipients. This means that host countries are under obligations to invest in capacity building. Merely encouraging it does not suffice.

South Africa, a country more advanced, appears to have laws and mechanisms to ensure skills and technology transfers. While it does not specifically have provisions establishing obligations for skills transfers it has related legislation and measures aimed at acquiring the same results. For example, the Skills Development Act, 1998 aims to '(a) to develop the skills of the South African workforce by (i) to improve the quality of life of workers, their prospects of work and labour mobility; (ii) to improve productivity in the workplace and the competitiveness of employers; (iii) to promote self-employment; and (iv) to improve the delivery of social services.'

405

This is achieved by an institutional and financial framework which consist of various organisations and bodies such as the National Skills Act, Skills development centres etc.⁴⁰⁶ Perhaps, this puts an obligation on Chinese firms to ensure that there are effective skills and technological transfers. This can be achieved through consistent monitoring to ensure businesses partake in the sectors they applied for. And that skills transfer takes place. Aside from investment laws, governments may also make use of instruments such as tender requirements, work permits, labour laws and investment conditions can be used to achieve the desired outcomes.⁴⁰⁷ For

⁴⁰⁴ Clever Mapure op cit 35 at 31.

⁴⁰⁵ See Chapter 2 of The Skills Development Act 97 OF 1998.

⁴⁰⁶ See 'What is the purpose of the Skills Development Act?' available at <https://palominosa.co.za/training/faq/what-is-the-purpose-of-the-skills-development-act.html> accessed on 2 August 2019.

⁴⁰⁷ Labour perspective 15 Thulani Guliwe 'An introduction to Chinese-African relations' in Anthony Yaw Baah and Herbert Jauch *Chinese Investments in Africa: A Labour Perspective* (2009) 15.

example, if a foreign professional wants to review an intracompany work permit in South Africa, immigration laws require the professional to provide proof of a plan for the transfer of skills to a South African citizen or permanent resident.

Ultimately, it is, therefore, the duty of host African countries to establish effective legal frameworks through which skills and technology can be transferred. Careful strategies must, however, be implemented so that they avoid the curse of an over-regulated investment environment.⁴⁰⁸ This includes making use of the FOCAC platform while it is not legally binding, they provide commitments which are likely to be achieved through political and economic influence.

3.4 CASE STUDY: HUAWEI IN ZIMBABWE AND SOUTH AFRICA

Huawei Technologies (Huawei) is one of China's leading global private telecommunications companies.⁴⁰⁹ The company moved into Africa and opened its first office in 1998 in Kenya.⁴¹⁰ It has expanded across the continent and has operations in forty African countries providing them with technology for smart city projects, research partnerships.⁴¹¹ To date, it has provided over fifty percent of African's 4G network and is likely to receive major contracts to introduce 5G network to African economies.⁴¹²

Huawei operates in the Information and communication technologies (ICT) sector and therefore, presents an interesting case study for Africa-China skills and technology transfer.⁴¹³ This because primarily Chinese investments were said to be mostly in extractive industries, this sector proves that the investment offers diversity and different possibilities.

⁴⁰⁸ Clever Mapure op cit 35 at 32.

⁴⁰⁹ Naome Chakanya and Nyasha Muchichwa op cit 372 at 253.

⁴¹⁰ Dickens Olewe 'Why Huawei's Google woes worry Africa' available at <https://www.bbc.com/news/world-africa-48352011> accessed on 7 January 2020.

⁴¹¹ Ibid.

⁴¹² Ibid.

⁴¹³ June Sun 'Technology Transfer in Telecommunications: Barriers and Opportunities in the Case of Huawei and ZTE in South Africa' (2016) *SAIS CARI* at 1.

3.5 Huawei in Zimbabwe

Huawei started its operation around 1999 and Zimbabwe was one of the first countries in Africa it invested in.⁴¹⁴ The ARLN research notes that Huawei is not registered as a company in Zimbabwe, but rather operates as an investor.⁴¹⁵ In Addition, the report states that it is not obliged to pay taxes to the government, possibly because it does not generate income from its activities.⁴¹⁶ It, however, supplies telecommunication equipment to various service providers. This section is rather limited to the training programmes offered by Huawei to ascertain technology and skills transfer.

In Zimbabwe, when Huawei provides equipment to a local company, they offer the company training assistance on how to use and maintain the equipment.⁴¹⁷ In also follow training methods commonly followed by Chinese companies such as seminars, workshops and on the job training.⁴¹⁸ In 2001, in trained sixty-three engineers and technicians employees of TelOne, Zimbabwean SOEs, on how to operate the equipment while over 438 were trained locally.⁴¹⁹ This shows that Huawei is committed to providing skills transfer through effective training of African workers. To date, thousands have since benefited from its universities in other African countries. The company also significantly contributes to technological advancement.⁴²⁰

4.2 Huawei in South Africa

South Africa, one of the leading economies in Africa, is an important market for Huawei and other Chinese telecommunication companies.⁴²¹ Huawei offers one of the most impressive socio-economic development efforts, through its training programmes.⁴²² Field Research by June Sun of the China-Africa Research initiative discovered that technology transfers in the telecommunications sectors in respect of Huawei and Zhongxing Telecommunications Equipment

⁴¹⁴ Naome Chakanya and Nyasha Muchichwa op cit 372 at 253.

⁴¹⁵ Ibid.

⁴¹⁶ Ibid.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

⁴¹⁹ Ibid.

⁴²⁰ Ibid.

⁴²¹ June Sun op cit 415 at 1.

⁴²² Ibid.

Corporation (ZTE). Three months of field research in South Africa identified increased managed services contracts, contestations for legitimacy, and weaknesses in the institutional framework as three main barriers towards significant technology transfer in the sector.⁴²³

The first barrier identified was in the area of managed services and vendor financing. In this case, technology transfer from vendors to operators are limited with the increase in managed services contracts.⁴²⁴ This is because, under this arrangement equipment sales, maintenance and service are generally outsourced back to vendors thereby limiting the working relationship between engineers from both sides.⁴²⁵ In this case, the vendors would be Huawei and the operators would be companies such as Vodacom, Cell C, Telkom and MTN.⁴²⁶

Secondly, there was an issue of legitimacy fuelled by cultural difference, this had an impact on the transfer of technology transfer from vendors to operators.⁴²⁷ In addition, Interviewees expressed the difference in cultural and language barriers between the two sides, besides Huawei employing approximately 60 percent of local workers.⁴²⁸ Not surprisingly, these concerns are very common among Chinese firms operating in Africa. These barriers damage the brands' reputation, some some assume that Chinese equipment is of poor quality.⁴²⁹ The research observed that Huawei attempted to lessen the damages by employing locals in their training centres.⁴³⁰ Its impact vendor-operator relationship in South African consequently, delayed technology transfer.

Lastly, weakness in South African's institutional framework hindered technology transfer. The research recorded that despite South African's desire to have a commitment to technology transfer from Chinese firms, there is a lack of enforcement of regulations for local content.⁴³¹ While Huawei complies with BBBEE requirements, it was noted that it doesn't necessarily involve transformative change. In addition, the country's education system has been criticised as it does not produce candidates with sufficient capabilities or skill set to absorb necessary skills.⁴³²

⁴²³ Ibid.

⁴²⁴ Ibid at 2.

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Ibid.

⁴²⁸ Ibid.

⁴²⁹ Ibid.

⁴³⁰ Ibid.

⁴³¹ Ibid.

⁴³² Ibid.

This demonstrates that while there has been significant progress in terms of projects and willingness to train and transfer skills and knowledge. There are various barriers that require serious attention by both the host governments and Chinese businesses, and in addition, Perhaps, Beijing itself as it can impact either negatively or positively on its image.

5. CONCLUSION

To sum up, it is beyond media reports, myths or stereotypes that Chinese investments in Africa create important employment for local African workers. However, the management of this employment is not without discrepancies on all levels, that is firm-level, national and regional level. The discussion above noted that while challenges are present, over time, significant progress has been made. Some Chinese enterprises have responded positively to complaints and discrimination on issues of labour relations and skills and technology transfers. Equally African and the Chinese government have made significant institutional, policy and legislative advancement in response to challenges faced by Chinese investment in Africa. However, the impact of these legal mechanisms and the progress made by Chinese firms in Africa is somewhat different. This is because there are different policies and practices on managing Chinese investment in Africa as highlighted by the two case studies. The next chapter provides a conclusion and furnishes recommendations.

4.1 INTRODUCTION

Chinese Investment Africa has drastically increased over the last two decades and it continues to expand. China's economic activities in Africa have somewhat challenged the position of continent's traditional investors such as the UK, USA, France, Canada and many more European countries. China as an alternative source of finance for African development breaks the dependency that Africa had on its former colonial masters. The severance of colonial ties meant Africa had to learn ways of managing foreign investments with Chinese characteristics. In so doing, strong debates arose, with China accused of neo-colonialism, debt trap, mistreating of African workers, lack of skills and technology transfers, importing Chinese labour for projects in Africa, the list is endless. However, literature has shown that many accusations are myths. We must, therefore, distinguish between stereotypes and factual problems.

The main purpose of this chapter is to consolidate the research conducted in the preceding chapters. In assessing the impact of Chinese investment in Africa on labour relations; skills and technology transfers in SADC with the aim of maximising the benefits of Chinese investments in Africa. It was important to identify the challenges detrimental to the success of Chinese investments in Africa while offering pragmatic possible remedies. This section also offers recommendations for the future.

4.1.1. CHAPTER SUMMARY

a) Chapter 1: Introduction

This chapter introduced the research topic of 'Chinese investments in Africa: Addressing and Analysing the challenges.' The chapter further investigated the background of the problem. It further provided for the research methodology. Africa is in dire need of development and industrialisation. For years the continent has been receiving aid from the west however, this has

not been effective in assisting African countries to reach their desired goals. The emergence of China as an alternative source of financial and technical assistance offered optimism amongst African political elites who were constantly pressured by the aid conditions from the west. Equally so, the scepticism amongst some African citizens and the west. The issues encountered were myriad, ranging from unscrupulous labour practices and lack of beneficiation of the host country.

In an attempt to address the problem, research questions were identified under chapter 1.4 with the main research question being, ‘How best can the African States maximise economic benefits and manage the impact of Chinese Investments in Africa?’ succeeded by the sub-questions.

I. What mechanisms, if any, has the African States put in place in trying to minimise the risk involved with Chinese investments in Africa, including at a National, Regional and Continental level?

II. What are the challenges encountered under Chinese Investments in African in addressing development goals in SADC?

b) Chapter 2: Literature review and legal-policy framework for Chinese investments in Africa

This chapter dealt with the first sub-question on what mechanisms has the African States put in place in trying to minimise the risk involved with Chinese investments in Africa. The complexity of the regulatory systems of China coupled with the lack of transparency of African governance meant that it is often difficult to understand institutions and the legal mechanism used to manage these investments.

The objective of this chapter is to demonstrate the current state of current literature on the area of Chinese investments. In addition, economic theories of development were also unpacked and addressed and used to study the beneficiation of Chinese investments. It also illustrated the legal and policy mechanism through which the investment is processed.

This study notes that legal and institutional mechanisms are active, and they should thus make use of them. That is their domestic legal systems effectively enforced can increase compliance and benefits of Chinese FDI. The FOCAC also stands as a primary and most important platform through which African and Chinese governments can reduce risks associated with the investments. Perhaps, maximise the benefits, however, the African voice must be amplified in the action points because presently, this study discovered that it is rather neutral in comparison to the Chinese voice.

c) Chapter 3: Challenges and prospects of Chinese investments in Africa

This chapter dealt with the second ancillary research question where the core challenges faced under Chinese investments are considered. The problems identified are Labour relations and Skills and technological transfers as they are encountered across all sectors of possible investments, furthermore, they are the two most commonly used facts used to argue against the investments as not beneficial.

The main focus of this chapter is to provide evidence for Chinese business practices, predominantly countries in the SADC while considering other countries with robust Chinese activities such as Ethiopia. This research notes that the activities are different in nature, some positive and some negative. Companies have improved their labour relations with the workers, governments and trade unions. Significant progress has been registered by many companies in terms of offering effective training and skills transfer. However, this progress is not sufficient. From the look of things, while there are generally improvements, it would be desirable for African governments to make use of the available legal mechanism. An improvement on the enforcement of national laws, an increase of commitments towards technological transfers in the FOCAC action plans, promulgation of minimum wages would minimise the risk associated with Chinese investments in Africa. And once this corridor of investments rectifies these issues, it means, there is no negative publicity from the world, it means that they attract educated workers, this, in turn, improves not only the development of the African continent but it increases the revenue of the business and opens the door for potential collaboration with other parties in the west.

4.2 RECOMMENDATIONS

As illustrated from the above analysis, Chinese investments in Africa is arguably a significant factor in economic development in Africa. It provides technological advancement, skills development, employment creation, human resources development for Africa. However, there is a need to develop an investment regulatory system, in order to maximise the benefits from this chain of investments. Adequate laws and effective policies and indeed enforcement and implementation of thereof is required to bring about the effectiveness of the said investment regulatory system.⁴³³ So, based on the conclusion reached, legal and businesses practitioners, government officials and other interested parties should consider the following summary of recommendations that can be used as strategies to develop a successful investment regulatory framework for Chinese investments in Africa.

I. It is my humble submission that a ‘China policy’ is not only important but necessary. China has a comprehensive Africa policy which is constantly updated according to its own development goals however, Africa is still to develop one. Africa should develop its own China policy which will detail its strategy and negotiations approaches with the Chinese. This should be centred around the African Union’s Agenda 2063, so as to ensure Chinese investments contribute towards reaching those goals.⁴³⁴

II. The FOCAC platform as a premier platform through which investments are initiated between China and Africa. African countries should have a common position. This is because while the FOCAC commitments are pronounced multi-laterally actual investment are negotiated bilaterally. If there is a lack of common purpose, some African countries must compromise or may have weak leverage when negotiating with China.

⁴³³ Talkmore Chidede *The Legal Protection of Foreign Direct Investment in the New Millennium: A Critical Assessment with a focus on South Africa and Zimbabwe* (unpublished LLM thesis, University of Fort Hare, 2015) at 184.

⁴³⁴ TRAFFIC International and WWF ‘Regional Awareness and Capacity Building Workshop Towards FOCAC 2018’ available at <https://www.traffic.org/site/assets/files/10599/focac-recommendations-english.pdf> accessed 7 February 2020.

III. Skills development and skills and technological transfers are important. Although the findings above indicate that Chinese companies employ local workers, they offer training. Complaints are constantly being heard by workers across the continent and some civil society groups. In order to reduce the dependence on the ignorance of the law, the Mozambique government translated the country's labour laws into mandarin and the results were positive in terms of compliance.⁴³⁵ This pragmatic and cost-effective approach can be imitated by other African countries.

IV. The language barrier is a problem across the continent in Africa-China relations. Indeed, an impediment towards effective skills development, skills and technological transfers. To address this matter, there should be more language training centres for both African and Chinese officials. Furthermore, African graduates with Chinese qualifications and the beneficiaries of the FOCAC cultural exchange education programmes should be lured to work in government and businesses under the Chinese investments in African.

V. Developing leniency policies at the national level so as to incentivise companies that complies with the countries respective national laws. Africa should consider copying China's social credit system.

VI. A multi-layered Monitoring and Evaluation plan jointly coordinated by Africa and China that provides for stakeholder input with periodic reporting and relatively unrestricted public access to the reports.⁴³⁶

VII. Strengthen policy, legal and institutional oversight for effective management of social-economic impacts associated Chinese investments in Africa across all sectors.

VIII. African states could also consider harmonising their investments laws. This can take a piecemeal approach. For example, members could start off by harmonising performance requirements and certain aspects of labour relations, to the extent that it does not interfere with their sovereignty.

IX. African monitoring departments should be sufficiently staffed with educated and trained personnel, the leaders and staff should not be corrupt and appropriate channels should be provided.

⁴³⁵ Hon, Jansson, Shelton et al op cit 163 at 187.

⁴³⁶ TRAFFIC International and WWF op cit 436.

X. African countries should consider adopting China's forced transfer of skills and technology transfer and encourage more joint ventures to stimulate Africa's entrepreneurial drive.

4.3 FINAL CONCLUSION

Selected Africa-China investment challenges were addressed and analysed in this research paper. That is, labour relations matters such as low wages, relations with trade unions and employment of local labour as well as skills development and technology transfers are not unique to Africa and are experience in other developing countries.

As regards to labour relations, broadly translated our findings indicate that Chinese companies employ more Africans than Chinese ex-pat levels, however, the majority still make use of Chinese management in this area there is a room for improvement. Secondly, businesses generally have good relations with trade unions, especially in countries with stronger unions, our findings, however, indicated that they generally prefer internal consultations as opposed to having trade unions nevertheless there is a promising trend of cooperation. Thirdly, there is an indication that most Chinese firms generally have lower wages than other foreign investors, however, they differ on a firm-level and according to the job positions.

As regards to skills and technology transfer, our findings indicated that Chinese companies generally offer training, and skills, since it is desirable to have skilled workers in order to increase production. However, there are significant barriers that limit these efforts. In addition, there is a lack of legislation in many African countries requiring the transfer of technology and where there are policies authorities are reluctant to enforce the provisions, there appears to be a lack of political will if not fear. It must be noted that Africa needs Chinese investments in order to reduce the infrastructural gap, industrialisation as well as employment creation and technological transfer. Considering the progress made under Chinese investments in Africa it is imperative that this field is given more attention. It does, however, have limitations and Africa cannot exclusively rely on one partner. Traditional western investors play an important role. Therefore, there is a need to attract investments from all global powers. On the basis of this reality, there is, therefore, a need for future studies that can develop a uniform investment framework that can attract investment while reducing the impact caused by the challenges discussed above.

BIBLIOGRAPHY

Primary Sources

Cases

Statutes

South African Jurisdiction

Minimum Wage Act 9 of 2018.

Constitution of the Republic of South Africa, 1996.

Employment Services Act 4 of 2014.

Immigration Act 13 of 2002.

Skills Development Act 97 OF 1998.

International Legal Instruments

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

China- Zimbabwe BIT, 1996.

SADC Model Bilateral Investment Treaty Template.

Institutional Documents

Agenda 2063: Africa We Want' available at <https://au.int/agenda2063/sdgs> accessed on 23 August 2019.

Johannesburg Action Plan (2015) available at https://www.focac.org/eng/zywx_1/zywj/t1327961.htm.

Secondary Sources

Books

Fantu Cheru & Cyril Obi *The Rise of China and India in Africa* (2010) Zed Books.

M Sornarajah *The International Law on Foreign Investment* 3rd ed (2010) Cambridge University Press.

Sarah Raine *China's Africa problems* 1st ed (2009) Routledge.

Deborah Brautigam *The Dragons' Gift: The Real Story of China in Africa* (2011) Oxford University Press, USA.

Rhys Jenkins *How China is Re-shaping the Global Economy* (2019) Oxford University Press.

Carlos Esplugues *Foreign Investment and Investment Arbitration in Asia* (2019) Intersentia.

Thulani Guliwe and Skhumbuzo Mkhonta 'Chinese investments in South Africa' in Anthony Yaw Baah and Herbert Jauch *Chinese Investments in Africa: A Labour Perspective* (2009).

David N. Abdulai *Chinese Investment in Africa: How African Countries Can Position Themselves to Benefit from China's Foray into Africa* 1st ed (2017).

Abegunrin Olayiwola, Manyeruke, Charity *China's Power in Africa* (2020) Palgrave Macmillan.

Juan Pablo Cardenal & Catherine Mansfield *China Silent Army* (2013) Routledge.

Anthony Yaw Baah and Herbert Jauch 'Chinese investments in Africa. A labour perspective' (2009) *African Labour Research Network (ALRN)*.

Herbert Jauch and Iipumbu Sakaria 'Chinese investments in Namibia' in Yaw Baah and Herbert Jauch *Chinese Investments in Africa: A Labour Perspective* (2009).

Chakanya and Nyasha Muchichwa 'Chinese Investments in Zimbabwe' in Anthony Yaw Baah and Herbert Jauch *Chinese Investments in Africa: A Labour Perspective* (2009).

Thulani Guliwe 'An introduction to Chinese-African relations' in Anthony Yaw Baah and Herbert Jauch *Chinese Investments in Africa: A Labour Perspective* (2009).

Talkmore Chidede *The Legal Protection of Foreign Direct Investment in the New Millennium: A Critical Assessment with a focus on South Africa and Zimbabwe* (unpublished LLM thesis, University of Fort Hare, 2015).

Tinashe Kondo *Legal and Economic Uncertainties Clouding Digital Taxation: Unpacking and Addressing The Issues* (unpublished LLM thesis. University of Western Cape, 2015)

Journals and Internet Sources

Wenjie Chen, David Dollar & Heiwai Tang ‘Why Is China Investing in Africa? Evidence from the Firm Level’ (2018) 32 *The World Bank Economic Review* 32 <https://doi.org/10.1093/wber/lhw049>

J.B. Maverick ‘The 3 Reasons Why Chinese Invest in Africa’ available at <https://www.investopedia.com/articles/active-trading/081315/3-reasons-why-chinese-invest-africa.asp> accessed on 29 August 2019.

Alicia Garcia-Herreror and Jianwei Xu ‘China's investment in Africa: What the data says, and the implications for Europe’ available at <https://bruegel.org/2019/07/chinas-investment-in-africa-what-the-data-really-says-and-the-implications-for-europe/> accessed on 29 August 2019.

Catherine Elkemann & Oliver C. Ruppel ‘Chinese Foreign Direct Investment into Africa in the Context of BRICS and Sino-African Bilateral Investment Treaties’ (2015) 13 *Rich. J. Global L. & Bus* at 593.

Yi Fan ‘True story of China-Africa Cooperation’ available at <http://www.chinadaily.com.cn/a/201808/31/WS5b8873b0a310add14f388bd1.html> accessed on 29 August 2019.

Zeng Aiping & Shu Zhan ‘Origin, Achievements, and the Prospects of the Forum on China-Africa Cooperation’ (2018)72 *China Int'l Stud*

Joseph Onjala ‘Chinese Direct Investments in Africa: Motivations and Environmental Implications’ *Georgetown Journal of International Affairs* vol. 17 no. 1(2016)

Ben Yunmo Wang ‘China ‘Going Out’ 2.0: Dawn of a New Era for Chinese Investment Abroad’ available at <https://www.huffpost.com/entry/china-going-out-20-dawn-o-b-7046790?guccounter=1> accessed on 29 August 2019.

Cotula L, Weng X, Ma Q et al *China-Africa Investment Treaties: do they work?* (2016)

Antonio Martuscelli ‘The Economics of China's Engagement with Africa: What is the Empirical Evidence?’ *Dev Policy Rev* (2019) DOI:10.1111/dpr.12456.

Irene Yuan Sun, Kartik Jayaram & Omid Kassiri ‘Dance of the Lions and Dragons: How are Africa and China engaging, and how Will the Partnership Evolve?’ (2017).

Margaret McMillan ‘Chinese Investment in Africa’ available at <https://www.theigc.org/blog/chinese-investment-africa/> accessed on 29 August 2019.

Mehari Teddele Maru ‘A new cold war in Africa’ <https://www.aljazeera.com/indepth/opinion/cold-war-africa-190630102044847.html> accessed on 29 August 2019.

Tansy Hoskins ‘Ethical fashion: saving South Africa’s clothing industry’ available at <https://www.theguardian.com/sustainable-business/sustainable-fashion-blog/2015/feb/02/ethical-fashion-rebuild-south-africa-garment-industry> accessed on 30 August 2019.

‘Cyclones Idai and Kenneth’ available at <https://www.unocha.org/southern-and-eastern-africa-rosea/cyclones-idai-and-kenneth> accessed on 30 August 2019.

Qualitative Methods for Law and Society Research—An EUI Research Guide available at <https://www.eui.eu/Documents/Research/Library/ResearchGuides/Law/EUI-Law-and-Society-Qualitative-Methods-Reading-List-April-15.pdf> accessed on 25 September 2019.

Akampurira Abraham ‘*Development Theory, Policy and Planning*’ (published Diploma thesis, Munich University, 2011) see at <https://www.grin.com/document/207232>.

Yuan Sun ‘China’s Changing approach to Africa’ available at <https://www.brookings.edu/blog/africa-in-focus/2019/02/04/chinas-changing-approach-to-africa/> accessed on 20 January 2020.

Clever Mapure ‘Chinese Investments in Zimbabwe and Namibia: A Comparative Legal Analysis’ (2014) Centre for Chinese Studies, Stellenbosch University.

David Smith ‘Workers claim abuse as China adds Zimbabwe to its scramble for Africa’ available at <https://www.theguardian.com/world/2012/jan/02/china-zimbabwe-workers-abuse> accessed on 20 January 2020.

Tang Xiaoyang 'Does Chinese Employment Benefit Africans? Investigating Chinese Enterprises and their Operations in Africa' *African Studies Quarterly* (2016) 16. Available at <http://www.africa.ufl.edu/asq/v16/v16i3-4a8.pdf>

Cornell law School 'Foreign Direct Investment' https://www.law.cornell.edu/wex/foreign_direct_investment accessed on 12 December 2019.

Catherine Elkemann 'Chinese Foreign Direct Investment into Africa in the Context of BRICS and Sino-African Bilateral Investment Treaties' (2015) *Richmond Journal of Global Law & Business*

Zongwe & Dunia, On the Road to Post Conflict Reconstruction by Contract: The Angola Model (2010) available at SSRN: <https://ssrn.com/abstract=1730442>

Bowmans 'Foreign companies and BEE' available at <https://www.bowmanslaw.com/insights/foreign-companies-and-bee/> accessed on 5 November 2019.

<https://www.fin24.com/Economy/zim-changes-empowerment-laws-opens-up-economic-participation-20180319> accessed on 5 November 2011.

'Mande In China' available at <https://isdpc.eu/publication/made-china-2025/> accessed on 05 January 2020.

Irene Yuan, Kartik Jayaram & Omid Kassiri '*Dance of the lions and dragons*' (2017)

Benabdallah & Winslow Robertson 'Xi Jinping pledged \$60 billion for Africa. Where will the money go?' available at <https://www.washingtonpost.com/news/monkey-cage/wp/2018/09/17/xi-jinping-pledged-60-billion-for-africa-where-will-the-money-go/> accessed on 2 February 2020.

Pippa Morgans 'The blurry lines Between Chinese Aid and Investment in Africa' available at <https://chinaafrica-podcast.com/the-blurry-lines-between-chinese-aid-and-investment-in-africa> accessed on 5 November 2019.

'Why did R70bn Chinese contracts bypass tender laws, asks DA' available at <https://www.fin24.com/Economy/South-Africa/why-did-r70bn-chinese-contracts-bypass-tender-laws-asks-da-20170910> accessed on 30 January 2020.

Said El-Naggaer 'Foreign Direct Investment: The Role of Joint Ventures and Investment Authorities' available at <https://www.elibrary.imf.org/view/IMF071/03807-9781557751409/03807-9781557751409/ch04.xml?rskey=TY8vr8&result=10&redirect=true> accessed on 6 February 2020.

Klaver and Trebilcock 'Chinese Investment in Africa' (2011) 4 *The Law and Development Review*.

China Africa Research Initiative 'Data: Chinese investments in Africa' available at <http://www.sais-cari.org/chinese-investment-in-africa> accessed 07 February 2020.

Shirley Ayangbah, Liu Sun & John Chamberlain 'Comparative study of foreign investment laws: The case of China and Ghana' available at <https://www.tandfonline.com/doi/full/10.1080/23311886.2017.1355631> accessed on 12 December 2019.

SADC Member States booklet 2019
https://www.sadc.int/files/3415/5713/1324/SADC_Member_States_booklet_2019.pdf.

Sanne van der Lugt & Victoria Hamblin 'Assessing China's Role in Foreign Direct Investment in Southern Africa' (2011) *Centre for Chinese Studies* at 38.

The concept of face (mianzi) in Chinese culture is a complex one. It can perhaps be most closely defined as "dignity" or "prestige." See <https://www.internations.org/china-expats/guide/29464-culture-shopping-recreation/understanding-the-chinese-culture-17526>

Tracy Hon, Johanna Jansson, Garth Shelton *et al* 'Evaluating China's FOCAC commitments to Africa and mapping the way ahead' (2010) *Centre for Chinese Studies, Stellenbosch University*.

Li Xia 'Xi announces 60 billion USD of financing to Africa' available at http://www.xinhuanet.com/english/2018-09/03/c_137441596.htm accessed 12 December 2019.

'Chinese Government Issues Africa Policy Paper' available at <http://gh.china-embassy.org/eng/xwdt/t231007.htm> accessed on 12 December 2019.

<https://www.fmprc.gov.cn/zflt/eng/gylt/ltjj/t157576.htm> accessed 1 January 2020

'China's Second Africa policy paper' available at http://www.china.org.cn/world/2015-12/05/content_37241677.htm accessed on 1 January 2020.

Bob Wekese 'China's Africa Policy 2015: New policy for new circumstances' available at <https://africachinareporting.co.za/2015/12/chinas-africa-policy-2015-new-policy-for-new-circumstances/> accessed on 20 November 2019.

'OUR ASPIRATIONS FOR THE AFRICA WE WANT Available at <https://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf>.

Agenda 2063 Document. Available at <https://au.int/agenda2063/goals>.

‘Sustainable development goals’ available at <https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>.

IISD <https://www.iisd.org/topic/sustainable-development>.

Uche Ewelukwa Ofodile ‘Africa-China Bilateral Investment Treaties: A Critique’ (2013) *Michigan Journal of International Law*.

Georgetown Law Library ‘Bilateral Investment Treaties (BITs)’ available at <http://guides.ll.georgetown.edu/c.php?g=371540&p=4187393> accessed on 21 November 2019.

Hogan Lovells ‘CAJAC update’ available at <https://www.hoganlovells.com/en/publications/cajac-update> accessed on 30 November 2019.

‘The SADC MODEL BIT Template: Investment for Sustainable Development’ available at https://www.iisd.org/itn/2012/10/30/the-sadc-model-bit-template-investment-for-sustainable-development/#_ftnref3 accessed on 30 November 2019.

Samentha Goethals ‘Chinese ‘Mining Operations in Katanga in the Democratic Republic of the Congo’ (2009) *RAID*

China Labour Bulletin ‘Labour relations in China: Some frequently asked questions’ available via <https://clb.org.hk/content/labour-relations-china-some-frequently-asked-questions> accessed on 2 January 2020.

Muna Ndulo ‘Chinese investments in Africa’ available at http://saipar.org/wp-content/uploads/2013/09/Ndulo_Chinese-Investments-in-Zambia.pdf

Muffuh Mildred Veunyah ‘Precarious Working Conditions: African Workers of Chinese Companies in Africa’ (2018) 23 *IOSR Journal of Humanities And Social Science* 10.

David Pilling ‘It is wrong to demonise Chinese labour practices in Africa’ available at <https://www.ft.com/content/6326dc9a-9cb8-11e9-9c06-a4640c9feebb> accessed on 30 November 2020.

Carlos Oya ‘SOAS research challenges perceptions of Chinese firms’ labour practices in Africa’ available at <https://www.soas.ac.uk/news/newsitem141431.html> accessed on 29 November 2019.

Jenni Marsh ‘Employed by China’ available at <https://edition.cnn.com/interactive/2018/08/world/china-africa-ethiopia-manufacturing-jobs-intl/> accessed on 26 December 2019.

Bhorat, Haroon *et al.* Minimum Wages in Sub-Saharan Africa: A Primer (2017) 32 *The World Bank Research Observer*.

Oya and Wanda 'Employment patterns and conditions in Angola. A comparative analysis of the infrastructure construction sector and building materials industry' (2019) *IDCEA Research Report*, SOAS, University of London.

Zhicong Deng 'Chinese Companies' Labor Dilemma in Kenya' available at <https://chinaafricaproject.com/2014/06/19/chinese-companies-labor-dilemma-kenya/> accessed on 15 January 2020.

'National labour law: Kenya' available at https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158910/lang--en/index.htm accessed 5 February 2019.

Chris Torrens 'Chinese investment IN South Africa: set for success, if common mistakes are avoided' available at <https://www.controlrisks.com/our-thinking/insights/chinese-investment-in-south-africa> accessed on 05 January 2020.

Huang, Meibo *et al* 'A study on the employment effect of Chinese investment in South Africa' *Centre for Chinese Studies, Stellenbosch University*.

Sarah Smit Minimum wage: Over 360 employers want out' available at <https://mg.co.za/article/2019-06-24-minimum-wage-over-360-employers-want-out/> accessed on 05 January 2020.

Meibo and Peiqiang 'A Study on the employment effect of Chinese investment in South Africa' (2013) *Centre for Chinese Studies, Stellenbosch University*.

Dept of Employment and Labour ' Bail application of seven Chinese nationals busted for alleged human trafficking and violation of labour laws begins ' available at www.labour.gov.za/bail-application-of-seven-chinese-nationals-busted-for-alleged-human-trafficking-and-violation-of-labour-laws-begins accessed on 30 January 2020.

Shahnaaz Bismilla and Neil Coetzer 'Work permits, foreign employees and legal incapacity' available at <https://www.chmlegal.co.za/work-permits-foreign-employees-and-legal-incapacity/> accessed on 20 January 2020.

UNCTAD 'Studies in Technology Transfer: Selected cases from Argentina, China, South Africa and Taiwan Province of China' *UNCTAD/DTL/STICT/2013/7*.

Jayashree Watal and Leticia Caminero 'Least-developed countries, transfer of technology and the TRIPS Agreement' (2018) *ERSD-2018-01 World Trade Organization*.

Investopedia 'Top 25 developed and developing countries' available at <https://www.investopedia.com/updates/top-developing-countries/> accessed on 17 January 2020.

Li Xia 'Xi sends congratulatory letter to coordinators' meeting on implementation of follow-up actions of FOCAC Beijing summit' available at http://www.xinhuanet.com/english/2019-06/25/c_138172285_2.htm accessed on 20 January 2020.

H. Tugendhat 'Chinese training courses for African officials: a "win-win" engagement?' (2014) SAIS-CARI available at <https://saiscari.files.wordpress.com/2014/10/sais-cari-brief-3-2014-tugendhat.pdf>.

Carlos Oya 'Labour Regimes and Workplace Encounters between China and Africa' in Arkebe Oqubay & Justin Yifu Lin *China-Africa and an Economic Transformation* Oxford University Press.

Adam Mazurkiewicz & Beata Poteralska 'Technology Transfer Barriers and Challenges Faced by R&D Organisations' *Procedia Engineering* 182 (2017) 457 – 4.

#

'What is the purpose of the Skills Development Act?' available at <https://palominosa.co.za/training/faq/what-is-the-purpose-of-the-skills-development-act.html> accessed on 2 August 2019.

Dickens Olewe 'Why Huawei's Google woes worry Africa' available at <https://www.bbc.com/news/world-africa-48352011> accessed on 7 January 2020.

June Sun 'Technology Transfer in Telecommunications: Barriers and Opportunities in the Case of Huawei and ZTE in South Africa' (2016) *SAIS CARI*.

TRAFFIC International and WWF 'Regional Awareness and Capacity Building Workshop Towards FOCAC 2018' available at <https://www.traffic.org/site/assets/files/10599/focac-recommendations-english.pdf> accessed 7 February 2020.

The TRIPS Agreement. Available at https://www.wto.org/english/docs_e/legal_e/27-trips_08_e.htm accessed on December 2019.

