Chinese Investments in Zimbabwe and Namibia
A Comparative Legal Analysis

Clever Mapaure

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Executive summary

The rapid expansion of Chinese investments in Africa has generated considerable interest among analysts of law, politics and economics. The said investments have sparked both hope and uncertainty about the true intentions of China on African soil and the implications they have on the development of African economies. Without sufficient official data available in most African countries, let alone less transparent Namibia and Zimbabwe, especially with regards to data related to Chinese investments, it is rather complicated to determine with certainty the actual negative or positive contribution of Chinese investments to the said economies. In trying to decode the controversies that are attached to Chinese investments in Africa, one is left to question the laws binding the two countries and the regulatory framework within which Chinese investors conduct their business.

This Report is a critical legal analysis of the law and practice with regards to Chinese investments in Namibia and Zimbabwe. The analysis is hinged mainly on compliance - the question being the extent to which Chinese investors are complying with the given laws; the causes for lack of compliance and the implications of that extent of compliance or lack thereof. The report moves from the general to the particular i.e. from a general look at Africa, the perceptions that the people in Africa have about Chinese investors to specific considerations of the happenings in Namibia and Zimbabwe through the lenses of the concept of compliance. The report presents a short literature review about/on this and moves on to look at specific areas in Namibian and Zimbabwean economy such as labour and criminal law.

One unbroken thread that runs across this Report is that the presence of Chinese corporations in the Namibian economy has received mixed feelings from both government officials and the general public. Although China is playing a vital role in bringing the much needed Foreign Direct Investment to both Namibia and Zimbabwe, a number of valid and controversial questions have been asked about the conduct of Chinese investors. In decoding these questions, it is imperative to also consider the laws that bind these corporations and the way the concerned governments point out that the Namibian government is generally not strict or harsh in how it deals with Chinese investments in the country.

Analyzing the China-Africa relationship from a legal perspective is not an easy task. The law in this context is about identifying what is fair and what is not; what is legal and what is not; and also seeing to it that what is unfair or illegal is sanctioned. This is a complex web of analysis and the area of regulation on its own is not easy to decode especially where there are international actors such as Chinese public and private companies. The Report thus shows that the complexities that abound regulations of Chinese investments just like many other FDIs to Africa are further compounded by lack of strict, or at least systematic and concerted enforcement of African laws as well. Zimbabwe has very good laws to deal with many issues covered in this Report. However, the application and/or enforcement of laws seem to be selective and somehow lax. Namibia’s legal system is also affected by weak institutional frameworks and loopholes in the laws. These are issues that need serious attention, not to mention that African states such as Namibia and Zimbabwe, which have been covered in this report, need to set their priorities straight.

The Report highlights the shortcomings of Chinese investors and also of African governments and their laws in dealing with Chinese investors. There are obviously arguments on both sides...
of the analysis; however developing countries are typically used as the excuse for these arguments. In China, for example, it is noted that the excuses of it being a developing country do not serve the hosts of its investments abroad. Chinese regulations in regards to investments have to be made legally binding but further research on this is needed in regards to whether a legally binding system will be workable and how. In all, will it be in line with international standards?

This Report suggests that African countries also need to be transparent about the deals that they sign with China. Lack of transparency raises unnecessary suspicions and unfounded conclusions about Chinese investments in Africa. It is quite hard to get detailed information about Chinese investments in Zimbabwe or Namibia and many other countries across Africa. It is also difficult to research among Chinese investors themselves. These shortcomings call for uncalled-for stereotypes and labels which evidence cultural and attitudinal differences. To this end a pluralist analysis of the cultural conflicts offers the potential to drag us out of the mud of this messy battlefield. We should have no illusions about the realities of some labels that have been attached to Chinese investments and have provoked some irritations, given the stubborn and all-too-easy tendency to simply rubbish ‘the other’, reflecting often an underlying refusal to acknowledge difference and diversity, coupled with remarkable unwillingness or to inability to engage in plurality-conscious debate in today’s global contexts especially Chinese investments in Africa.
Preface

This research report is the result of a scholarship at the Centre for Chinese Studies in our programme Phandulwazi nge China (Xhosa for Knowledge about China). The scholarships offer opportunities for African researchers to spend research time at the Centre for Chinese Studies (CCS) in order to advance mutual learning and a better exchange on interpretations of political, economic or environmental impact of Chinese engagement in Africa.

The Phandulwazi nge China scholarship targets citizens of African states from academia or the broader civil society with a proven research interest in China-Africa relations. The programme particularly addresses African scholars who are preparing for a stay in China or are returning from a longer stay in China. With the scholarship, African citizens are supported to continue working on China and China-Africa relations and to deepen their analytical work.

This study does not necessarily reflect the views of Open Society Foundation or the Centre for Chinese Studies, but is solely an expression of the author’s view.

Author’s acknowledgements

It is generic truism that no research succeeds without the help of others. I do hereby express my gratitude to the Open Society Foundations for extending a grant to me through the Phandulwazi nge China Scholarship at the Centre for Chinese Studies (CCS) at Stellenbosch University. I also extend my gratitude specifically to the Centre for Chinese Studies itself for granting me this Scholarship, hosting me and providing all the support that was necessary for me to proceed smoothly with my research. Dr Sven Grim and his team at CCS were very supportive and need some heartfelt extension of thankfulness.

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Finally, I extend my gratitude to some of the members of staff at the University of Namibia Faculty of Law and some of my family members who encouraged me to leave my job as a lecturer and push aside my PhD studies to take up this memorable and beneficial Research Fellowship at Stellenbosch University Centre for Chinese Studies. All said, but most importantly, God Almighty made it all possible and the biggest words of appreciation goes to Him.
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1. Methodology and literature review

1.1 Methodology

The research was based on library as well as informant interviews. It involved reviewing and analysing both primary and secondary literature, as well as interviews with stakeholders involved in Chinese investments. This research used a mixed-method approach, i.e. involving both the elements of qualitative and quantitative research. It is evident that in practice no research method is entirely qualitative or quantitative (Yin, 1994). This method choice is reinforced by the position that all qualitative data can be coded quantitatively, and all quantitative data is based on qualitative judgment.

A “mixed-method” approach is more appropriate when studying complex and dynamic phenomena such as China-Africa investment relations. It can elucidate both the objective and subjective realities in which Chinese investments take place and what their implications, looked at from a legal perspective, are to development in the selected countries.

Regarding the analysis of empirical data, a qualitative, interpretivist approach was adopted. The post-positivistic paradigm was used because it entails critical realism assuming that there may be ‘a real world’ out there apart from the intended investment laws, policy imperatives and legislative plans. Since it is impossible for humans to truly know what occurs on the ground, empirical research was used. The researcher went to China to talk to the people relevant to the research questions. This approach will assist in unravelling the position of China’s policy makers and other stakeholders and will have a direct bearing on analysing the practical implications of Chinese investments in Zimbabwe and Namibia as presented below.

The researcher embarked on the research without an explicit pre-defined conceptual framework. The lack of a hypothesis in legal research such as this one proves the usefulness of this strategy. The researcher used the general issues related to Chinese investments, as briefly shown in the abstract above, to guide the research. This approach further explains why the interviews in China were semi-structured. Once the data had been generated, the researcher attempted to discover relationships or patterns by means of close scrutiny of the empirical and desk data so gathered. The data was analysed and interpreted by means of inductive abstraction and generalisation.

A systematic explanation and realistic recommendations obtained through such an approach can inform policy makers. The perceptions of Chinese investors or corporations in Namibia vis-à-vis their employees and or their customers were subject to explanatory analysis. Data obtained from desk research was also subject to analysis and weighed against field data. In all, the selected methodology was used to develop context-based, process orientated descriptions and explanations of this phenomenon of Chinese investment in Africa and generally the dynamics of Chinese FDI in Zimbabwe and Namibia from a legal perspective.

1.2 Literature review

China’s involvement in Africa is a relatively emerging field of academic research from all over the world and the views are generally balanced with books including both Chinese and African perspectives (Harneit-Sievers et.al., 2010) and others compiling Chinese perspectives (Liu & Young, 2009). The subject has attracted much research and media attention at both a national and an international level and the list of media authorities cannot be exhausted. The sub-topic on “dichotomous views” below will show these various conclusions made about China–Africa
relations. The literature review below will show the findings which have been made with regard to Chinese investment in Namibia and Zimbabwe, as well as highlight some of the gaps that exist in the knowledge.

Sino-African relations have attracted reactions from almost all angles of academic research but most of the literature is from media-based political and economic analysis, of which very little is directly related to this research. The media is full of controversial statements, for example, Trevor Ncube, a Zimbabwean newspaper publisher, commented: “They [the Chinese] are all over the place. If the British were our masters yesterday, the Chinese have come and taken their place” (Timberg, 2006: 14). The minister of Trade and Industry in Namibia is reported to have said “crack down on foreign SMEs” (Small and Medium Enterprises) because foreign corporations, especially Chinese corporations, are seen as not adhering to Namibian tax, labour, investment, and various other laws (Duddy, 2010; Amadilha, 2012). On the other side of the coin, the presidents of the two countries have been positive about Chinese investments, with the Namibian president saying: “We will always be grateful to China for the support extended to our struggle and for standing firmly with us in our current efforts towards economic and social development” (Weidlich, 2007: 4). Countless other media reports can be found across print and electronic media forums and some are used in this report.

Long lists of studies have focused on China’s investment and commercial activities in Africa, rather than its development aid, with a few exceptions such as Brautigam (2009). Some texts look at specific aspects, such as labour standards, including the book edited by Baah and Jauch (2009) which contains a number of useful papers covering various countries.¹ This book is a useful tool for it exposes activities in Chinese enterprises operating in Africa.

With regard to the views of the people, there is substantial literature, both media and academic research. Recent studies show that China’s involvement in Africa should give pause for thought. Lammers (2007) says that although China is an outspoken supporter of the Millennium Development Goals, its support for the African Union and the New Partnership for Africa’s Development (NEPAD) has so far proven to be little more than rhetorical. Among those who analyse China’s presence in Africa critically is Tull (2006); he is not alone in his observation that “sizeable benefits of China’s return will accrue to state elites thus compromising human rights and the rule of law in the continent.” Taking a middle line is Broadman (2007), who primarily avers that “greenfield” investment,² which creates new jobs; investors are mainly branches of parent firms with headquarters in China’s provinces, and many of the firms are more vertically integrated than other companies operating in Africa, a finding that may make skill and

¹ One book (Baah and Jauch, 2009) has been written with a compilation of articles on specific investments in Ghana (Baah, 2009), Botswana (Kalusopa, 2009), Zambia (Jauch and Sakaria, 2009), Zimbabwe (Chakanya and Muchichwa, 2009) Malawi (Chinguo, 2009) South Africa (Guliwe and Mkhonta, 2009), Nigeria (Atomre et al., 2009), Angola (Emmanuel, 2009), and Kenya (Masta, 2009). This book is a useful tool for it exposes activities in Chinese enterprises operating in Africa. A lot is contained therein about what is happening in SADC countries. It is also very recent having been published in 2009 but most of the research happened in 2008. However the book is limited in that it takes a labour perspective on the topic as its title indicates. Therefore, although it is useful, it cannot cover the scope of this intended study.

² Greenfield investment refers to a form of foreign direct investment where a parent company such as in this context a Chinese company starts a new venture in a foreign country by constructing new operational facilities from the ground up. In addition to building new facilities, most parent companies also create new long-term jobs in the foreign country by hiring new employees hence job creation.
technology transfer more difficult. Broadman's work is thus very relevant to Namibia which generally has a low quality human resources base needing technology transfers. Whereas in Zimbabwe the population is generally highly educated and skilled.

But why do we have continuous and seemingly endless doubts about Africa-China relations? A general reading of the literature consulted indicates that initial criticism often comes from North America and Europe and some responses later came from China; African authors seem to be rather divided on the topic. Kragelund (2008) writes that industrialised countries ('the West') fear they will lose leverage in Africa and simultaneously that Chinese presence will postpone development in Africa. Paradoxically, literature also shows that the advance of Chinese enterprises in Africa is not only the result of deliberate Chinese economic laws and policies to gain access to resources and markets, but also the consequence of liberal African investment laws and policies, some of which were strongly demanded by Western donors in the past couple of decades. Furthermore, the so called "western retreat" (Ibid.: 164 – 165) promoted "Chinese advance" (Isaac, 2010: 165-169). The above articles by Kragelund (2008) and Isaak (2009) coupled with Brautigam (2009) are very insightful especially insofar as they specifically seek to further our understanding of how Chinese companies have been able to acquire a strong foothold in African countries. Thus, Brookes and Shinn write:

America and its allies ... are finding that their vision of a prosperous Africa governed by democracies that respect human rights and the rule of law and that embrace free markets is being challenged by the escalating Chinese influence in Africa. ... China rewards its African friends with diplomatic attention and financial and military assistance, exacerbating existing forced dislocations of populations and abetting massive human rights abuses in troubled countries such as Sudan and Zimbabwe. As a consequence, Chinese support for political and economic repression in Africa counters the liberalizing influences of Africa’s traditional European and American partners (Brookes & Shinn, 2006).

As Yonghong (2010: 82-90) argues, the only weakness in this relationship is lack of enough or at least coordinated legal cooperation between Africa and China. Yonghong the Director of the Centre for African Laws and Society at Xiangtan University writes about trade investment and legal cooperation between China and Africa in general. Most of his publications (Yonghong, 2000; 2005; 2006), however, focus on the general laws of Africa; hence a presumption by the author of this study that there is knowledge of African law by some sections or individuals in China. However, little is known about investors’ knowledge of African investment laws and other laws regarding commerce in African countries (Yonghong, 2010: 86-87).

Given the above positions of various authors, one is left to ask at this juncture: is the controversy of Africa-China relations generated from lack of knowledge of the law, or willful regard on the part of the Chinese? Are African governments compromising because they are in need of what China offers? Is it that the Chinese style of international investment goes through legal loopholes of the international setting? Or is it a combination of all the above? The answer – also from a legal perspective – is likely to be found only in an analytical combination of economics and politics. It is thus imperative for this research to endeavour to fill this gap of knowledge which has not yet been well researched.

In order to decode the contents of these controversies, it is important to consider the literature which has been generated on the two countries, Namibia and Zimbabwe, which constitutes a challenge for this study. There is indeed literature which points to the fact that Chinese entrepreneurs are not complying with the laws of the countries where they are investing. With
regard to Zimbabwe, there is an abundance of literature about mining companies which do not have regard for local labour laws, health and safety regulations as well as competition laws (Chakanya & Muchichwa, 2009; The Equal Times, 2012; Smith, 2012). Violation of environmental laws is also reported in Zimbabwe. Around April 2012, for instance, media sources reported that a Chinese company did not follow a proper procedure in undertaking an environmental impact assessment and the project it proposed was declined (The Financial Gazette, 2012).

There are also useful media and official reports detailing cooperation between Chinese companies and the military and how obscure development aid raises the specter of violation of the rule of law (Dubosse, 2010; Eisenman, 2005). However on the economic front, some positive developments with regard to the Zimbabwean economy have been recorded. Additionally, certain Chinese investors themselves have responded to some of the reports saying that they complied with the law and that there was no negative impact on the economy of Zimbabwe. In fact it is argued that they were improving it through their co-operation (VOA, 2012).

In Namibia, literature which documents the relationships between the countries and the nature of Chinese investments also exists. There are various media reports on both the successes and shortcomings of Chinese investments in the country. Academic research has also recorded the way Chinese enterprises are violating or complying with labour and employment laws in the country, (Jauch & Ipumbu, 2009) and which jeopardizes the government’s efforts to implement “a policy of labour relations conducive to economic growth, stability and productivity” (Act &Preamble, 2011). In this light, there are reports of low labour standards in Chinese investment outlets, as well and the major concern that small and medium Chinese enterprises are ‘killing’ the local operators by ‘flooding’ the market with low quality cheap goods (Jauch & Sakaria, 2009: 212-215).

Furthermore, there are authors who say that complaints about undesirable Chinese actions should not be about Chinese actions but about the weak legal and economic regulatory systems of the concerned countries. On the other hand, we should also look into the contracts that are signed by the governments in question. In Zimbabwe for example there are reports that the large Chinese State owned Enterprises (SOEs) are exempted from the application of the Indigenisation and Empowerment Act (Chapter 14:33). To this end, the degree to which China helps to develop rather than to exploit the region depends more on African institutions (such as legislators and executives and even judiciaries) coupled with actions of their citizens than it does on the attitudes and strategies of Chinese investors.

2. Perspectives and perceptions

2.1 Introduction

The rapid expansion of Chinese investments in Africa has generated considerable interest among analysts of law, politics and economics as well as questions arising regarding Chinese foreign policy, legality of deals with Chinese Transnational Corporations (TNCs) and the corporate social responsibility of these companies. The said investments have also sparked scepticism about the true intentions of Chinese economic and state actors in African economies and the implications they have regarding the development of African economies. Most of the analyses have been from an economic and political perspective, with little attention on the legal
perspective. This report takes a legal standpoint, without ignoring the already existing literature, and focuses on Namibia and Zimbabwe.

2.2 Perspectives and perceptions

Various authors and analysts have expressed different ideas about China-Africa relations. Two major views exist so far as Chinese investments in Africa are concerned – one that is skeptical about the developmental effects of China’s presence in Africa and another which is upbeat about the new or additional opportunities that come with China-Africa relations. Debates are often more nuanced than the dichotomous lens might suspect, but there are few authors with no position on the question of whether China’s engagement is beneficial for African economies or not. While there is a certain degree of generalization in the perspective presented below, one can also argue that the question about ‘the bottom line’ of arguments is the key aspect looked at in this report. These views are shown and dealt with below.

Scepticism and suspicion

There is a mound of views which expresses concern about Chinese investments in Africa. The views support the sentiments often expressed by Western governments and international organizations that China’s policies of unconditional aid and relations with pariah states undermine current efforts by bi-lateral donors organised in the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD), the United Nations (UN), the International Monetary Fund (IMF), or the World Bank to improve governance and human rights issues in African countries through conditionality. Criticism from these groups, as well as from individuals and non-governmental organizations (NGOs), characterises China as a breaker of local labour laws, (Baah & Jauch, 2009; Timberg, 2006: 14; Lammers, 2007: 1; Duddy, 2010: 3-4; Sasman, 2010: 2-3) investment and other mercantile laws and international trade law, as well as being implicated in the violation of human rights in general in Africa (French, 2006; Gill & Reilly, 2007; Goldsmith, 2001). The question which thus arises here is whether China is really a violator of law or does the problem lie with the governments and the laws and policies in Africa?

Sceptics go further, arguing that Western aid efforts have harmed Africa by enforcing a relationship with the West based on dependency and subordination (Moyo, 2009; Spears, 2009). According to Zambian president Michael Sata, (2006) (who, after becoming the president of Zambia, softened his stance towards China) China has done more harm than good to local industries, especially small companies in the manufacturing and construction industries in Africa. He, like many other authors to date (Ghazvinian, 2007), holds the view that China is not complying with competition laws and that its trade patterns are against World Trade Organization (WTO) rules to which it is a signatory. After this presentation, the Washington Post published an anti-Sata narrative saying Sata “Stirs Resentment at Asian Power’s Growing Influence in Africa”. Several other newspaper headlines have also featured off-putting reports about China-Africa relations as they focus on the costs and benefits of China’s investment in Africa’s extractive industries, contribution to the arms trade and the supply of low-cost consumer goods which offer unfair competition for African manufacturers (Brautigam, 2007; Schatz, 2006; Ching, 2006). The debate is at times heated, to say the very least. On this note, Ayittey (2012) says:

The claim that China’s intentions in Africa are noble is fatuous. Its real intentions are well known: to elbow out all foreign companies and gain access to Africa's resources at cheap prices;
canvas for African votes at the UN in its quest for global hegemony; isolate Taiwan; and seek new markets for Chinese manufactures as European markets become saturated with Chinese goods.

This paragraph is worrying in that it oversimplifies and presents African actors as mere victims of outside powers (here China) and does not provide any evidence for its claims. While the numbers might reflect estimates by other authors, the context is twisted and the statement comes as a blanket suspicion towards all members of one group that they are (allegedly) following one master plan or are – in de-humanising terms – ‘dumped’ in Africa. This can only be called racist and will thus have to be clearly refuted in tone and in substance. It does, however, illustrate the at times vicious resentment amongst some Africans towards the approach of Chinese actors in African markets. Refuting these reactions, however, does not come as a blanket excuse for all activities by Chinese economic actors, either. The problem is more profound and is often rooted in national politics and the lack of clear policy and/or its implementation.

In Namibia, Chinese investments have received negative reactions from both government officials and the general public. Research by Jauch and Ipumbu (2009) reached the conclusion that Chinese corporations are contravening Namibian laws more than any other foreign corporation in Namibia. In February 2010, the Minister of Trade and Industry in Namibia announced that his Ministry is going to “crack down on foreign SMEs” (Small and Medium Enterprises), because foreign corporations, especially Chinese corporations, are not adhering to Namibian tax, labour, investment, and various other laws (Duddy, 2010). Furthermore, the Namibian High Court is currently handling a case where a Chinese corporation is involved in an alleged corrupt deal worth N$42 million (about US$ 5.6 Million). The representative of the Chinese company, who was arrested by the Namibian Anti-Corruption Commission, is related to President Hu Jintao and does direct business with the President Hu’s son. The unspoken suspicion thus is that there is political backing behind these deals.¹

In Zimbabwe, Chinese small scale investors are required to register their enterprises, after which very little, if anything, is known about them, as there are no official updates on the register. If business activities shift to other, more lucrative endeavours, this will be unknown to the authorities. These small businesses have been occupying much of Harare’s small scale business centres and halls during the time of the economic crises. This has led to the influx of cheap low quality goods nicknamed “zing-zhong”² (Smith, 2011). One well-known journalist is reported to have said: “China is just taking advantage of a basket case. If you’re a donor’s burden, you have all kinds of thieves and crooks and people bringing you all kinds of trinkets” (Sharara, 2012). This statement illustrates one of the extreme ends of the debate, and reflects badly on the political culture of the environment in which Chinese investments operate.

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¹As much as this political link might be case, the opposite can also be true. The reader might remember the involvement of Mark Thatcher in a coup plot in Equatorial-Guinea. Suspicion in this case did NOT involve the British government, despite Thatcher’s prominent mother, former UK Prime Minister Margaret Thatcher.

²This word has been extended beyond Chinese products to cover any low quality product and even people who are of low productivity or unfit for their position. In all the term is very much condescending.
**Hopefulness and trust**

At the other end of the spectrum is a growing body of literature proclaiming China's activities in the region as Africa's last chance for development after decades of failed policies (Broadman, 2007; Rotberg, 2008). It is quite clear that although there are complaints, Chinese engagement has improved infrastructure across Africa. In Namibia in particular, China Guangdong Nuclear Power holding Corporation made a US$ 1.23 billion offer in 2011 for Kalahari Minerals in a bid to secure a stake in the country's uranium sector (Melber, 2007: 87). Chinese investment in Zimbabwe, for its part, has focused on agriculture and mining, with more emphasis being placed on mining since 2009. The Sino-Zimbabwe diamond mining joint venture firm, Anjin Investments has injected close to US$ 400 million into operations in the Marange diamond mining and has boasted to be the biggest diamond mining company in the world surpassing the previous leader De Beers.

There are positive indicators of the success of Chinese investments in Namibia. Trade volumes between the two countries increased rapidly and bilateral cooperation in such areas as economy, trade, jurisdiction, education and health, amongst others, have been on the rise. Since 2005, bilateral trade has been growing rapidly. It is not clear how much China has invested up to date but in 2009 the Chinese ambassador to Namibia said:

*When I just took up my post in 2003, China-Namibia trade volume of that whole year was US$ 74.57 million, which jumped to US$ 255.5 million in 2006. In the first seven months of this year (2007), our bilateral trade volume has already reached nearly US$ 200 million. It is expected that the annual trade figure this year would be re-doubled compared to 2003* (Jauch and Ipumbu, 2009).

By the end of 2007, the value of trade between Namibia and China had reached US$ 400 million. It is expected to have constituted steep increases in (formerly strenuous) state revenues. The current President of Namibia is reported to have said:

*We will always be grateful to China for the support extended to our struggle and for standing firmly with us in our current efforts towards economic and social development* (Weidlich, 2007: 4).

Chinese investment in Zimbabwe has been growing steadily over the last decade, even though when compared to other African countries it can be said to be lagging behind. Chinese investments in Zimbabwe are in the sectors of mining (Zimbabwe holds the world's second biggest platinum reserves), agriculture and infrastructure development. With regard to the latter, it is a mixture of hard infrastructure and prestige projects. China has helped in the construction of the Harare Sports Stadium, hospitals, dams, school dormitories, wells and clothing factories, etc. With the support of the buyer’s credit by the Export Import Bank of China, the China Capital Iron and Steel Corporation took part in the reconstruction of No.4 blast furnace of Zimbabwean Iron and Steel Corporation. The project was completed in June 1999 (Eisenman, 2005: 10) and is currently still up and running.

The trade volume between China and Zimbabwe in 2002 was US$ 191 million. By 2010 the trade volume had reached US$ 560 million with China’s investment covering agriculture, tourism and mining. The export of China to Zimbabwe totalled US 32 million and the import US$ 159 million (Embassy of the Republic of Zimbabwe in Beijing, 2012). China also gives development aid to Zimbabwe in exchange for commodities. In 2009 China paid US$ 3 billion for exclusive access to Zimbabwe’s extensive platinum rights, a contract estimated to be worth US$ 40 billion (*Ibid*). A
military compound was constructed in Harare, built by Chinese firms and with a Chinese loan of US$ 98 million (Smith, 2012), against what is believed to be barter with diamonds in the Marange Diamond mines where a Chinese company is extracting huge amounts of Diamonds and reporting that it is now the biggest diamond miner in the world (Bullion Street, 2011).

On the textile side, although there are complaints about Chinese cheap goods, as mentioned above, people with low income are actually finding these products a blessing rather than a problem. Chinese cheap shops have become popular with people who cannot afford to buy at the upmarket departmental stores because many items, especially clothing, are often sold at only a fraction of the price. For example in 2005, a modest television set was sold at around Z$ 8 million (US$ 450) at established shops yet at a Chinese shop it cost as little as US$ 56 (Christopher & Corkin, 2012).

2.3 The legal perspective

The knowledge of the applicable national laws is one crucial step towards finding solutions to many problems in the field of commerce. One should thus ask oneself a question regarding the knowledge of law by the concerned Chinese investors. As Hong puts it:

To begin with, academic research is the forerunner of legal cooperation. Chinese people know very little about African law, especially African States' investment law. Many of them do not know how to open a company or to do business in Africa. Informed Chinese scholars can raise awareness of African law among Chinese people, or holding training courses on African commercial law.

Although African commercial laws differ from country to country and the above statement seems to (erroneously) treat them as homogeneous, the point raised in it remains valid: The problems that exist in Africa as the researchers at the Institute for West Asian and African Studies (IWAAS) said, in so far as Chinese investments are concerned, are largely because of a lack of knowledge of the law by the investors. If there is knowledge of the law on the part of the Chinese investors then a conclusion can be made that they are wilfully disregarding the law.

On a similar note, it is possible that the Chinese investors are not to blame but rather the African governments who are treating the Chinese with favour. In this case, it is the African governments that are actually violating their own laws as well as international laws that bind them. At least there is collusion between the two sides to by-pass the local laws, but what would cause this? It might be that the governments in Africa are so much in need of investments or at least infrastructural development that by-passing such laws and policies is deemed desirable. In this case, however, an amendment of the legislation would be required. If state authorities are deliberately circumventing the law, they are violating the principles of the rule of law and – deliberately or not – undermining the state legitimacy.

Looked at from a different angle, African laws may be too poor to deal with an investor country with the size (and implicit power) of China. We should not confuse a rule of law as colonial heritage; the laws in Africa were designed by the former colonial masters with an intention to manipulate African economies, often on questionable legal basis. To this end Africa suffers from a colonial legal hangover. China surely sees that and, consequently, in its rhetoric, offers itself as a non-colonial master (arguably forgetting about internal conflicts in China with a similar quality, e.g. Tibet or Xinjiang)
External to China is the understanding that the joining of the WTO by China brought with it new challenges to the WTO and other related or associated international trade organisations in general. There have been many challenges for the WTO members ahead of the Doha Round to truly earn the title of the “Development Round” and those challenges were never absolutely solved or dealt with. Until today, difficult questions are still being asked about Chinese investments in Africa and other developing continents such as South America, South Asia and Africa, including Zimbabwe and Namibia as independent countries on the African continent. This position becomes more apparent when one considers especially the Special and Differential (S&D) provisions in international economic law which China has managed to conclude with developing nations in Africa, including Zimbabwe and Namibia.

Special and differential (S&D) provisions are stipulations in WTO agreements which give developing countries special rights and which give developed countries the possibility to treat developing countries more favourably than other WTO Members. These special provisions include, for example, longer time periods for implementing Agreements and commitments or measures to increase trading opportunities for developing countries (WTO, 2012). One of the S&D provisions include Article XXXVII:3 of GATT 1947 which states that developed countries “shall give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties (…)”5. The article goes on to stipulate that developed countries shall “have special regard to the trade interests of developing contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems (…)”. These provisions are obviously not legally binding. It seems they largely depend on political will and the conveniences that are involved in the trade between or among the contracting parties.

The non-binding character is shown in paragraph 12(i) of the Doha Decision on Implementation-Related Decisions and Concerns. This provision enjoins Contracting Members "to identify those special and differential treatment provisions that are (…) non-binding in character, to consider the legal and practical implications (…) of converting [them] into mandatory provisions, [and] to identify those that Members consider should be made mandatory (…)". The matter therefore is left in the hands of the Members to convert their endeavours to mandatory provisions. When it comes to Namibia and Zimbabwe as they trade with China it seems no country has ever converted these endeavours into mandatory provisions. The reason may be that the countries are developing, albeit at different levels and with different characteristics.

As noted under the exposé on perceptions above, while there is consensus that S&D is critical to help developing countries and LDCs integrate into the multilateral trading system, there is no consensus on how to make them more precise, effective and operational. Therefore, as the recommendations below will make clearer, there is need for more probing into the involvement of China in Africa and a micro-level assessment of Zimbabwe or Namibia as a case study will give some clue about Chinese compliance with international trade/economic law.

5 Article XXXVII: 3(b), GATT 1947. The reference to "other measures" is intended to cover such actions as promoting domestic structural changes, encouraging consumption of particular products, or introducing measures of trade promotion.

6 Article XXXVII: 3(c), GATT 1947.
One difficulty is that status as a developing country is determined through self-declaration. Other than the category of least-developed countries (LDCs), developing countries are all lumped together without regard to their different stages of development. Therefore, all S&D provisions are ‘best endeavours’ commitments, i.e. the developing countries must do their best to reach a stage of development and integration where S&D would no longer be applicable to them. However, there is a clear lack of incentive for developing countries to do so. Also, those developing countries that truly need the most assistance have great difficulty getting the assistance (whether legal or financial) from developed countries because the principle of non-discrimination as enshrined in the GATT provisions means that all developing countries would be eligible for such aid. The difficulty with this rule is exacerbated by a sentiment that an unfair advantage is given to very large, self-declared, developing countries like China and India, for example. Difficult questions as posed above continue to exist in this regard and need further decoding. The analyses below consider this aspect in light of Zimbabwe and Namibia.

3 Chinese investments in Zimbabwe and Namibia

As long as you are clever as a nation, you should be able to extract and unlock value from the relationship with China....Most of the criticisms of the Chinese in Africa are initiated by their competitors from Europe and America. Africans are being used to do the bidding for them, Arthur Mutambara - Deputy Prime Minister of Zimbabwe.

3.1 Chinese investments in Zimbabwe

Background

China-Zimbabwe relations date back to the 1970s but then, the relationship was more of a military and political one than one characterized by trade and investment, as China supported Robert Mugabe's ZANU PF in struggle for independence and black popular rule. Just ahead of independence, Robert Mugabe met with Chinese officials in January 1979 in Mozambique and both sides expressed their intent to reinforce ties after independence. After independence the then Minister of Foreign Affairs, Simon Muzenda, and Prime Minister Mugabe correspondingly, visited Beijing to thank them for their support (Eisenman, 2005: 15).

From 1980 onwards, China strengthened relations with ZANU which had won elections by a landslide over other parties, including Joshua Nkomo's ZAPU which was supported by the Soviet Union. After 2000, President Mugabe declared the so called “Look East Policy” after the EU, USA, Canada and Australia imposed sanctions on Mugabe and his inner circle and after the Brendon Woods institutions stopped financing development projects. This ‘declaration’ was regarded as a big turn and invited more Chinese investments into Zimbabwe. China was growing fast and was attracted to the resources in Zimbabwe (Platinum and others), making Zimbabwe one of the countries where the so-called “win-win” partnership was of immediate benefit to the Chinese government. Agreements ranging from cultural exchange, economic and technical co-operation, trade and investment promotion were entered into by the two nations to boost their relationship. On trade and investment, a Joint Economic and Trade Commission has been set up (Ibid.: 9).

The Embassy of Zimbabwe in Beijing asserts that trade volume between the two countries in 2002 was US$ 191 million and by the end of 2010 it had reached US$ 810 million. The figure is expected to reach billions as Zimbabwe has now emphasized the significance of value addition
to the raw materials it exports to China. One such area is timber production, where Zimbabwe has put a ban on the exportation of raw timber from Zimbabwe (similar to steps in other countries such as Gabon). The timber has to be value added i.e. processed into paper, and furniture and other wood products before it can be exported to China. There is also an agreement that 10 per cent of the diamonds should be polished locally before being exported and the Chinese government has pledged to help Zimbabwe in building a large diamond polishing plant near the largest mine (Embassy of Zimbabwe in Beijing, 2012).

Chinese investments are found mainly in the mining of platinum, gold, diamonds, iron ore and coal. In 2009 China paid US$ 3 billion for exclusive access to Zimbabwe's extensive platinum rights, a contract estimated to be worth US$ 40 billion (Smith, 2011). China has also made significant investments in agriculture especially the farm mechanization programme which China supported soon after the land reform programme started, and also in the tobacco industry. Chinese investors till the land under contract farming. This means that they manage the land, but do not have freehold ownership of Zimbabwean land, as the Embassy of Zimbabwe in Beijing emphasized (Interview with the Embassy of Zimbabwe in Beijing, 2012). China has also invested in the energy industry where its corporations have entered into joint ventures with Zimbabwean SOEs in extracting coal to generate power for the country. In addition, Chinese owned companies have been involved in ethanol production which has now suspended plans for bio-fuel production from *jatropha curcas*. The jatropha plans included Chinese investments which were shelved. However, afterwards a feasibility study proved that ethanol production was more viable than the processing of bio-fuel from *jatropha curcas* (*Ibid.*). The overall financial volume of these projects is hard to establish.

Infrastructure development, being the building of roads, schools and hospitals, has also been a visible part of Chinese investments. With the support of the buyer's credit by the Export Import Bank of China, the China Capital Iron and Steel Corporation took part in the reconstruction of No.4 blast furnace of Zimbabwean Iron and Steel Corporation. The project was completed in June 1999. China also built The Zimbabwe Defence College to the tune of US$ 9 million released by the Exim Bank (*Ibid.*). There is no telling what Zimbabwe promised in exchange for the military complex and it seems both countries' governments keep this as a secret, resulting in speculations that the aid was tied to concessions in mining where China had most of its big investors in operation. Telecommunications have seen companies such Huawei doing a lot of information technology work for government institutions and other private business operators and more investments are expected in that area (*Ibid.*).

These investments have implications for labour practice, appliance of criminal justice, and the involvement with the military. Below is a consideration of specific topics in regards to China-Zimbabwe relations.

**Labour practices**

The labour issues in China-Africa relations in general are well reflected in China-Zimbabwe relations. In general, China-Africa relations, looked at from a legal perspective, deserves the consideration of African legal culture as well as China's legal culture. This aspect will be made understandable in the conclusions below. It is safe to say at this juncture, that under this sub-topic the relation between Zimbabwe and China in labour issues can be generalised to many other issues which are also considered below. Hence, under this sub-topic, significant detailed analysis will be given.
Chinese influence in Zimbabwe is felt by workers, and often in a negative way (Fisher, 2011). Among the many investors is Anhui Foreign Economic Construction Company (AFECC) which is involved mainly in construction. In June 2010, construction workers at a Military College which AFECC was building, went on strike over low pay (US$ 4 per day), alleging regular beatings by their managers. As a cook at Harare’s popular China Garden restaurant complained to the Zimbabwe Mail & Guardian, “Working for these men from the East is hell on earth” (Alden and Davies 2007). The issue of assault will be dealt with in the next section below where criminal law is briefly covered.

Another investor is Anjin Investments (Pvt) Ltd which is owned by AFECC and the Zimbabwe Mining Development Corporation (ZMDC). Anjin Investment dismissed a total of 1500 workers in a day after the workers engaged in a legal strike for higher pay and better working conditions in its Diamond mine. The dismissal shocked the workers and other interested groups and made many headlines (Guma, 2012). In the textile industry, Revival Fabrics, a Chinese firm in Harare which had an EPZ status, also retrenched a total of 600 employees by 2004. The rest were employed on contract, substantially lowering the price of labour. This might not be uncommon in the Chinese labour system where individual Chinese citizens can work for a company, especially a government owned company, at nominal wages, as the CAD Fund and the Exim Bank confirmed; the same was asserted by the Embassy of Zimbabwe in Beijing.

Zimbabwe generally has comprehensive and detailed labour laws. However, the problem lies in institutional capacities and the way the laws are implemented. The Labour Act of Zimbabwe provides that employees should have 12 days of leave for reasons such as sickness, bereavement and issues such as the attendance of training workshops or even conferences. In terms of the Act, there should be a one day weekly rest; one month vacation leave and an extension of paid sick leave from one month to six months. An estimated three quarters of Chinese companies researched in Zimbabwe do not abide by these rules. They appear to have their own workplace rules which they follow (Chakanya & Muchichwa, 2009: 261).

These cases are just some of the many that might not have been captured by the media or by researchers. However, one of the most disturbing developments is that certain Chinese employers openly boast that they have government protection and so nothing can be done to them (Moyo, 2011). This clearly indicates that the issue has more serious political connotations than we can imagine (Alden & Davies, 2007). Some academics, such as Brautigam (2009), attribute malpractice partially to China’s historic lack of domestic and labour regulations. On the other side, Alden (2007) comments that European and American comments on Chinese firms “smacks of double standards” as “China exports the capitalism it knows”:

*The attraction of setting up or relocating manufacturing to [China] for Western investors is precisely the shockingly low wages of Chinese workers and the absence (or lack of enforcement) of labour standards or environmental regulation that impose higher production costs at home. No serious or sustained concern was expressed by Western corporations, nor was there much fuss made by Western governments, as to these conditions* (Alden, 2007: 131).

It must be understood as well that China has itself put in place some regulations, especially for those State-owned companies (or “Central Enterprises” as the Ministry of Commerce, MOFCOM, commonly calls them) that operate abroad. MOFCOM issued the “Guidelines for Strengthening Human Safety and Protection of Workers for Chinese Enterprises and Organizations Overseas” (2006). The Ministry also issued the “Regulations on Further Regulating the Development of Contracting Foreign Projects” (2007). The Central government’s State-owned Supervision and
Administration Commission (SASAC) was created in 2003 to ensure that those enterprises considered strategic (known as Central Enterprises) became globally competitive businesses. In carrying out its mandate, SASAC issued the "Notice on Strengthening Administration of the Foreign Investment Activities of Central Enterprises" in 2008.

The Ministry of Foreign Affairs and its Embassies are also involved, and in 2008 the Ministry of Foreign Affairs together with SASAC and MOFCOM issued the “Notice on Further Regulating the Foreign Investment Cooperation of Chinese Enterprises” which stipulated that Chinese enterprises would provide employees with a salary and good working conditions, in accordance with the requirements of applicable laws and the employment contracts, strengthen communication with employees and important local personages such as religious and trade union leaders, and promote the localization of operations and local employment through local sub-contracting (Anon & Oxfam, 2012: 32-33). This was to be facilitated through Chinese employees receiving relevant language and cultural training before being sent abroad according to the "Notice on Issuing the Guidelines for the Management of Employees of Overseas Chinese-funded Enterprises" (MOFCOM, Ministry of Foreign Affairs, SASAC, and All-China Federation of Industry and Commerce, 2011; Management Guidelines, 2011).

In addition, under the Management Guidelines 2011, Section III Chinese embassies are encouraged to invite host state government representatives to explain local labour policies to Chinese enterprises. It seems this hardly happens – or at least it is not happening in Zimbabwe and Namibia. The Africa Development Bank and the China/Africa Development Fund (CADFund) also advises those external investors about the laws of the countries in which they would like to invest. The CADFund goes to the extent of outsourcing lawyers to do the work. Within China, the Institute for West Asia and African Studies (IWAAS) at the Chinese Academy of Social Sciences (CASS) are also approached to give advice on various issues which might affect a Chinese investor.

However, despite all of these laws in place and all the institutions placed to supervise the implementation, it seems there is still a lot of work to be done. While being knowledgeable on many areas of relevance to the China-Africa relation, IWAAS is not well equipped with legal experts to offer advice on laws. The CADFund has to outsource, as mentioned. It is clear that it is not all investors who are advised; it seems only big investors get that privilege. Even in these cases, there is no systematic or effective implementation. Exim Bank projects leave implementation, including compliance with the laws, to the respective fund receiver. When EXIM funded AFECC to build a Military College for Zimbabwe, AFECC was left with a wide discretion to do what they thought was viable for their investments. When conflicts started, both the government of Zimbabwe and China were seen not to want to interfere, by default leaving all decision to AFECC.

The above points of conflict are further compounded lack of strict or at least systematic and concerted enforcement of African laws as well. Zimbabwe has very comprehensive laws to deal with labour issues; the quality of the legislation does not seem to be an issue. However the application seems to be selective and somehow lax. On the side of the Chinese investors, IWAAS researchers in a personal communication (14 November 2012) said that these laws are viewed as of too high a standard to be met by Chinese investors who often point out that their own country does not have laws requiring such high standards. This perception might explain why Chinese enterprises are often accused of bringing their own people to work in companies in Africa. It does, however, in turn, fuel more complaints from African workers. Most of the laws in
Africa are designed on western standards, given the colonial history which informs the African legal culture in most instances. The situation is thus more complex than what might appear on the surface or statements in the media reporting on ‘abuse of the law’.

Furthermore, there are also certain laws of the host country Zimbabwe itself which are repressive to flexible exercise or enforcement of rights. The colonial law called Law and Order Maintenance Act ((LOMA) 53/1960) suppressed legitimate industrial action in Zimbabwe. Later in the year 2000, the Public Order and Security Act (POSA) was passed and it also, to a great extent, limited the rights of the populace in general to demonstrate, let alone workers to strike. These are the kinds of laws that can be used by investors. In these cases of violation of workers’ rights, according to Zimbabwean law, who is to blame for abuses? It should not be an issue of blame but rather a solution seeking endeavour. The situation is very complex and wider or deeper research is needed to entangle the complexities of this phenomenon.

Treatment by the national justice system

Whereas there are courts of law and the judiciary system, which are meant to deal with issues regarding the abuse of human rights, it seems that the law and its institutions are very weak and cannot deal with certain issues such as Chinese investments in Zimbabwe. Whereas there are reports that Chinese business operators are abusing workers, reports of such abuses such as assault, both physical and verbal, often seem to meet a blind Zimbabwean eye. These kinds of incidents which go unpunished call for comments such as "The Chinese seem to have immunity to prosecution and arrest" (NewsDzeZimbabwe, 2012). It is important to note that this statement was recorded by the Brussels-based Equal Times and is a good reflection of the first part of the statement by the Deputy prime Minister cited above, at the beginning of this section.

The Criminal procedure Act of Zimbabwe provides for punishment to anybody who unlawfully assaults the other. It allows the common law definition of assault as unlawfully and intentionally applying force to another person or inspiring a belief in the other person that force is immediately to be applied to him. This definition includes threats which some Chinese business operators use against their workers. The same is seen in Namibia where the same definition of assault applies as we shall see below. Further, the definition includes conditional threats such as: “if you rest during lunch I will fire you.” As Chakanya and Muchichwa (2009) observed in their research, threats of this type have been happening in some Chinese companies in Zimbabwe; they have also been reported in various media outputs both in Africa and in China itself but it appears that there has been no prosecutions, let alone arrests of those Chinese business operators who are reported to be doing this. Further, it is not known whether there is any Chinese national in Zimbabwean jails; one would find other foreign nationals – whether from Europe or elsewhere.

On the other hand, however, it must be noted that there has been some arrests of Chinese nationals for committing various crimes such as the eating of endangered species, such as tortoises, in the areas where they work (Huffpost Green, 2012). This seems to be rather a cultural issue coupled with ignorance of national laws on conservation. Chinese construction workers have been seen catching or buying snakes, bullfrogs and dogs. While these animals are not accepted as food in Zimbabwe and their purchase might thus seems awkward, there are no laws to stop catching of ordinary snakes, tortoises and frogs except those which are endangered species.
Joint ventures and doing business with the military

The Zimbabwe Investment Authority Act (Chapter 14:30) encourages investments in the country by both local and foreign companies and also encourages joint ventures between foreign and national investors in areas which the Investment Authority has seen it fit for the investments to be undertaken. As mentioned in the introductory remarks above, one of the currently most lucrative areas for investment in Zimbabwe is mining. The Embassy of Zimbabwe in Beijing confirmed the point that more and more minerals are being discovered in Zimbabwe and China is becoming one of the leading investors in that area, with Anjin Investments (Pvt) Ltd being the largest mining corporation in the country by output. Anjin has invested in the diamond sector in the Marange Diamond Fields in the South-East of Zimbabwe and claims to be the biggest diamond producing company in the world, surpassing traditional miners such as De Beers (Bullion Street, 2011). This has been made possible by a joint venture between the government owned Zimbabwe Mining Development Corporation (ZMDC) and AFECC which created Anjin as a joint venture company.

The above joint venture arrangement has raised many criticisms, especially from the Kimberly Process (KP), which has questioned the structures of the companies involved, the role of the army and the backgrounds of the people who are involved in the management of the companies. There are also some critics from American, European and Australian claim that the Zimbabwean military, in conjunction with the Chinese military, are the actual players in diamond mining in Zimbabwe. Yet, the only evidence to this accusation is names of military personnel found on company documents. The Embassy of Zimbabwe in Beijing has asserted that joint ventures are encouraged and it does not matter who is involved as long as it is a legal (Interview with the Embassy of Zimbabwe in Beijing, November 2012). The Zimbabwe Defence Force itself has a company called Zimbabwe Defence Industries (Ltd) which has legal personality and has the capacity to enter into joint ventures in terms of the Companies Act (Chapter 24:03). Other schemes of joint ventures are encouraged under the Collective Investment Schemes Act (Chapter 24:19). Both Zimbabwean and Chinese officials say that if indeed there was breach of international laws, then the relevant organisations should take action rather than prosecuting China and Zimbabwe in the media and other inappropriate international forums (Interview with Exim Bank official, November 2012).

There are allegations that Chinese SOEs received bids to venture into diamond mining with Zimbabwean military controlled companies through corruption and kickbacks. Evidence of corruption is, however, hard to present in these cases, making them easy to be rebutted by the government under accusation. The fact that China built a US$ 98 million defence college does not necessarily mean that it bribed the Zimbabwean government into this task (Interview with Exim Bank official, November 2012). The Zimbabwean Embassy in Beijing asserts that it is Zimbabwe itself which requested help from China for that project, the terms of which, it states, were not dictated by China (Interview with the Embassy of Zimbabwe in Beijing, November 2012). Zimbabwe has an Anti-Corruption Commission which was established under the Prevention of Corruption Act (Chapter 9.6), legally putting strict guidelines on the combating of corruption committed by any person, including government officials and institutions. As we shall see below, this Zimbabwean Act actually inspired many Namibian provisions. It is the Zimbabwean Commission, however, that is suffering from logistical and financial constraints, rather than its Namibian counterpart.
There may indeed be valid cases of corruption. Transparency International Bribe Payers Index (2006) criticised Chinese SOEs for corrupt practices and for entering into secret deals with African governments, potentially including the Zimbabwean and Namibian governments. That may indeed be happening as one Chinese diplomat is reported to have said, “Chinese businesses are going out into the world and they lack knowledge about the world. They have demonstrated bad behaviour. They ignore the local conditions. People have criticised their behaviour as representative of the Chinese government’s behaviour” (Glaser 2007, Gu 2009). In order to safeguard its national reputation and image of responsible investor, the Chinese state, as the Exim Bank and MOFCOM officials assert, may thus continue its regime of voluntary regulation and flexible enforcement (Interview with the Exim Bank official, November 2012; Interview with the Exim MOFCOM official, November 2012). This gives it some control over investment behaviour of Chinese companies abroad, and at the same time shows internationally that China is taking steps to address concerns of bad investment practices. These investment practices will be explored more below.

In order to combat corruption on the part of Chinese corporations, MOFCOM issued the “Notice on Further Developing the Regulation of Overseas Contracting” which notes that enterprises are ordered to carry out business operations in good faith and are prohibited from acquiring projects by commercial bribery or other illegal means, and from defrauding domestic enterprises of commissions in the names of projects that do not exist or are unfeasible by colluding with foreign intermediaries (Article 11). China has taken an active role on corruption issues internationally, including consulting with the OECD on their anti-bribery guidelines (Gurria, 2012). Corruption is an international issue, not exclusively a Chinese or Zimbabwean issue; efforts and political will are needed on both sides to combat it and strengthen institutions and laws which seek to uproot it.

**Investment practices**

**Competition:** China is unlikely to succeed in buying goodwill by providing aid to African nations, including Zimbabwe and Namibia, when Zimbabweans regard Chinese investments as destructive to the formal and informal economy of Zimbabwe. Chinese small shops selling cheap goods have become popular with people who cannot afford to buy at the up market department stores; at “China-Shops” many items, especially clothing, are often only a quarter of the price.

The poor quality of goods is however a concern for customers. This complaint has been heard across the rest of Africa; in Namibia cheap Chinese goods are nicknamed “ching chong” and in Zimbabwe they are nicknamed “zing zhong”. The perception and anticipation of many local traders is that Chinese goods are not complementing established local traders, but are rather destroying them and destroying local people’s livelihoods, which, if true, would consequently mean that they are entrenched poverty in the concerned country. A study by Alden (2007) anticipated more poverty in Africa’s small business operators if the growing number of small traders continues to spiral (Alden 2007). The Zimbabwean government, for its part, is registering operators, however very little is done after registration. This lack of close scrutiny and monitoring of the trend of investment by these small operators remains a concern for African small business operators.

Market access by Chinese operators should be looked at from the Zimbabwean policy orientation. Zimbabwe implemented the Economic and Structural Adjustment Programmes
(ESAP) in the 1990s and this opened the market to foreign investors. At that time, Indian entrepreneurs were the main investors in Zimbabwe and after 2000, Chinese small business operators surpassed the Indian operators in number. The influx of the Chinese textile sellers came with an increase in counterfeit goods from China. CADFund and MOFCOM state that these small business operators can only be left to the regulation of local authorities; it is not up to the government of China to control its citizen's business operations in other countries. Zimbabwe used to be a producer of textile material but after the near collapse of the economy, Chinese goods replaced the Zimbabwean ones; but this is not so much the fault of China insofar as any other fast investor could have done the same. First and foremost, it remains the responsibility of the legislature to provide an economic framework in which Zimbabweans can thrive.

Zimbabwe has a Competition Act (Chapter 14:28). This act created the Competition Commission under section 4 (Part II) and empowers the commission to encourage and promote competition in all sectors of the economy to reduce barriers to entry into any sector of the economy or to any form of economic activity. In terms of this law, the Commission also has the power to investigate, discourage and prevent restrictive practices; and to study trends towards increased economic concentration; one might argue that this could include the concentration of small Chinese textile traders in the country. These traders, however, are individuals who also fiercely compete with each other. The Commission has the legal mandate to investigate monopoly situations and the prevention of such situations, where they are contrary to the public interest. If Chinese small traders have indeed done something against public interest, as evidenced by the growing complaints, then the Commission has to interfere and take appropriate measures. This provision, as we shall see within Namibia below, is very similar in wording but it lacks important aspects: the Act itself does not define “public interest” and thus leaves it to the courts or administrators of that law. It also does not determine what specific measures can be taken leaving it to the Commission to decide on its discretion what to do with a situation. The complaints procedure is also not convenient for small business operators who are the major victims under the Act; they do, however, not suffer from monopolies but rather from individual “cut-throat competition” as is the case in China itself.

At the level of bigger companies worth millions of dollars, there are complaints regarding how Chinese companies are getting tenders from the government of Zimbabwe. A typical example of the suspicions of favouritism came up as AFECC was awarded a contract to construct the Defence College with some local contractors, saying that local tender procedures were flouted in the process.

No doubt there are problems with tender processes in Zimbabwe and officials in that office have publicly admitted that there is corruption. The Zimbabwean government might, indeed, have breached its own laws, if the allegations were true. There might have been a special arrangement - an administrative agreement by and between the two countries. This would mean exclusion of operations of some common rules as applicable to mainstream tender processes; it might well have been in violation of the norm, meaning exclusion from mainstream tendering. Procurement in this case, however, is shrouded in national defence and security protocol; the secrecy of the deal would be warranted in terms of standards of security and intelligence. The security issue of the building may arise when we understand what the Military gave an order for the building to be constructed and secondly, being a military academy, the structure might have some architectural aspects which need to be protected, hence some veil of secrecy is needed.
In ordinary contracts by Chinese SOEs, the State-owned Supervision and Administration Commission (SASAC) is responsible for supervising and regulating their activities; it was created in 2003 to ensure that Chinese SOEs became globally competitive businesses. Researchers at IWAAS (Interview with the researchers at IWAAS, November 2012) and the officials at MOFCOM confirmed that any outbound investment by such an SOE needs to be approved either by SASAC or its local counterparts. On 1 May 2001 SASAC’s Interim Measures for the Supervision and Management of Overseas Investment of Central Enterprises (the SASAC Measures) came into force and enjoined all Chinese SOEs to formulate annual overseas investment proposals and provide them to the SASAC. The SASAC will now provide an outline of the investments which are potentially viable outside China, including African countries such as Zimbabwe and Namibia.

SASAC is not bound to approve a proposal; it is up to the discretion of SASAC to approve or reject it. If the proposal alludes to indications of corrupt exercises or anti-competitive behaviour, it is bound to be rejected (Article 8). In all, it must be noted that increased domestic competition for Chinese firms is one of the most important factors which encouraged particularly privately owned and smaller firms to venture abroad (Taylor, 2002). Researchers at IWAAS and MOFCOM are of the opinion that African governments should cope with Chinese enterprises in as much as the Chinese government itself is coping with competition among its own enterprises and increased investments from international corporations from America and Europe, now including a few from Africa (Interview with the researchers at IWAAS, November 2012; Interview with MOFCOM official, November 2012). This indeed goes well with the principle of reciprocity under international law.

It must be emphasised that laws and regulations exist on both the Chinese side and Zimbabwean or Namibian side regarding compliance. In terms of Chinese laws on outbound investment, such investments are expected to conform not only with national economic and social development plans and the SASAC’s operation strategy for the company, but notably also with the host state’s local laws and customs (SASAC Measures, Article 5). Central Enterprises are expected to file with the SASAC their overseas investment management plan, which includes the overseas management institutions and their duties and the decision-making and evaluation procedure (SASAC Measures, Article 6). SASAC thus actively supervises not only the business decisions of the Central Enterprises regarding OFDI, but also the Central Enterprise’s whole management process relating to OFDI decisions and supervision. What is necessary is to effectively enforce these laws and avoid unnecessary existence of the blame syndrome about Chinese investments in Africa. The regulation will, however, not address small enterprises and individual entrepreneurs who operate under the threshold of investment regulation.

**Indigenisation:** In 2008, Zimbabwe passed the Indigenization and Empowerment Act (Chapter 14:33) which requires foreign-owned firms with a threshold of more than US$ 500 000 to cede 51 per cent of their shareholding to black Zimbabweans (section 3). Despite its intended outcomes being well spelt, this Act has been very controversial in the country and among potential investors. Within Zimbabwe itself, government officials have differed on its actual implementation and consequences. One interesting aspect among many and relevant to this Report is that Chinese companies, who would have been caught in the net, are exempted from its application. The Minister in charge of its implementation said that companies such as Tianze are exempted from that application of the law because they helped in the government’s farm mechanisation programme. The Minister said:
The Chinese Company Tianze, we gave them 100 percent ownership, why? This is because they have brought in millions of dollars [and] sub-contracted our small-scale farmers in this country (Chibaya, 2012).

Indeed the Embassy of Zimbabwe in Beijing is of the position that China did a lot to support the land reform programme, especially the farm mechanisation programme which was meant to equip new Zimbabwean farmers with farm implements and which saw Zimbabwe’s agricultural output going up again after near total collapse and self-sufficiency as subsistence farmers for some rural families, which used to rely on purchasing food from large commercial farmers, being realized (Interview with the Embassy of the republic of Zimbabwe in Beijing official, November 2012). The understanding by state representatives thus is that it would be “inappropriate” for the government of Zimbabwe to apply the law as it does to the so called western corporations such as Standard Chartered and Barclays, which – as they stated - did nothing to support the land reform programme and allegedly according to the Zimbabwean government tried to “sabotage” it. This selective application of the law raises many questions. Support of the land reform should not be taken as a pretext or as a jurisdictional factor in determining an exemption from the application of the law; any exemption requires general legal provisions. The approach towards the Chinese companies by the Minister as a representative of the Zimbabwean government in this regard may be procedurally unfair as it is constitutionally suspect, especially if looked at in the lines of the right to equality of persons and also in the light of the investment laws of the country.

The rule of law

The argument about the rule of law in Zimbabwe, in so far as China-Zimbabwe relations are concerned, is neither here nor there. It must be understood first that this is a policy matter between China and Zimbabwe: the concept of the rule of law is tied to the issue of internal affairs of a sovereign state viewed at the international level. Zimbabwe under President Robert Mugabe has been, since the land Reform programme from 1999 to 2009 just before the creation of the government of national unity (GNU), described as a dictatorship. Ironically, before 1999, Mugabe was often described as one of the best leaders in Africa, even receiving a knighthood by the Queen of England. In 2002 targeted sanctions were imposed as well as withdrawal of Breton Woods Institution’s developmental aid. Many Western countries suspended trade with Zimbabwe and this along with other mismanagement led to a meltdown of the Zimbabwean economy. Although the sanctions were regarded as “targeted” they never negatively affected the “targeted” instead they negatively affected the general populace who never had anything to do with the bickering between the “targeters” and the “targeted”. Nevertheless, the land reform programme was not commented on by Beijing, for such comments would have been regarded as violating the principle of non-interference, as enshrined in Article 2 of the United Nation’s Charter, which enjoins all member states to honour the principle of mutual respect and sovereign equality of states powerful and weak, small or big likewise. This lack of comment may be because China has its own historical precedent of land appropriation without compensation. Be that as it may, it needs to be noted that China pumped more than US$ 200 million into farm mechanisation following indigenous “black” Zimbabwean’s resettlement under the land reform programme (Interview with the Embassy of the republic of Zimbabwe in Beijing, November 2012).

This is relevant to China-Zimbabwe relations because it is a foundation from which close government-to-government relations started. China’s policy of non-interference into internal
politics of its “African friends” has gained leverage among Africans who are often not comfortable with being told about conditionalities of so-called “Western” aid. This, coupled with China’s soft diplomatic support has helped some African governments when sanctions were imposed. The so called “targeted” sanctions indirectly even benefitted Chinese investments: China continued its investments in the so called “pariah” state of Zimbabwe and western investors dwindled as they closed their investments or were forced into giving up more than half of the ownership of their companies. Ironically at the same time, western humanitarian aid increased and continued being felt as a very able helping hand. The above shows that the Zimbabwe-China relations are politically deeply rooted.

**Final remarks**

China-Zimbabwe relations are a microcosm of the macrocosm of China-Africa relations. Although the perception that Chinese investments have undermined responsible practices is widespread, there is an emerging body of evidence that this portrayal is somewhat one-sided and that the characterisation of Chinese investment as necessarily unethical, unsustainable or absent of Chinese regulatory oversight in terms of legal and social standards may be misleading or short-sighted. This is paralleled by Chinese efforts to engage with international standards, not only to improve Chinese companies’ behaviour domestically, but also abroad in relation to co-ordinating its position on key policy issues affecting outbound investment, such as anti-bribery regulations, as noted in the body of knowledge above.

Research and mere observation coupled with reading other pieces of research has shown the picture of Chinese outbound investment as not easy to understand at times. In all, this is a multi-layered issue which is quite complex to analyse with one pair of lenses and Zimbabwe offers a perfect example of that situation. There are very few legal studies on this topic and this calls for more studies. The dynamics of Zimbabwean politics since independence offers a good example of China-Africa Studies as it offers so many faces of different economic and political development reminiscent in Africa. This Part has been limited by space but provided a general picture and provokes debate and more attention to the issues herein addressed. The next part addresses Namibia, a generally stable economy without much Chinese influence but also educative in the topic as it has some interesting overlaps and comparative aspects to offer.

**3.2 Chinese investments in Namibia**

**Background**

This section considers Chinese investments in Namibia by both state-owned and private enterprises in various sectors. It mulls over the actions of Chinese investors against the laws that are relevant to such actions or business practices. In other words just as has been done under the part of Zimbabwe above, when dealing with the laws relating to labour for example, some case studies or incidences as gathered from the available desk data will be measured against the legal standards at national level. This will provide a close analysis of the extent to which the Chinese investors comply with state laws and implications of that compliance. At the same time this will be an analysis of the strengths and weaknesses of state laws and the implications of such strengths or weaknesses in so far as Chinese investments are concerned.

There are not many large scale investments by the Chinese in Namibia and the number of small investments is not comprehensively accounted for and thus not known to the public. The Chinese Embassy in Windhoek in 2005 announced that there were 100 private Chinese
enterprises in Namibia with a total investment of about US$ 30 million in the areas of construction, manufacturing, food, health and real estate (Sherbourne, 2005:10). This number, in any case, is obviously outdated now by mere observation and especially considering the years that have passed.

In September 2012 the Chinese Ambassador to Namibia said: “Our friendship is characterised by mutual-trust and mutual-benefit” and that “such a good friendship can be continued forever!” (Xin, 2012). From 1990 to 2006, the Chinese Government financed the Namibian Government with many projects. For example the After-School Centre Project, the Low Cost Housing Project, the Pump Station Project, the Irrigation Project and the Projects of the two Assembly Buildings in Rundu and Outapi respectively. Among the financial assistance promised by President Hu Jintao were: a 30 Million RMB Yuan Grant; a 30 Million RMB Yuan interest free loan which will be used on the Green Scheme Programme and Aquaculture Project; and a 1 billion RMB Yuan concessional loan, 70 per cent of which has been put into implementation. In addition, in 2010 China completed constructing two rural schools in Omuthya and Tsumkwe respectively with a total grant of 20 million RMB Yuan. Besides, as a special gift to Namibia, a third rural primary school, which involves another 7 million RMB Yuan, has been granted by the Chinese Government. In 2009, China also constructed a hospital for Namibia with 60 beds. The design study for the new hospital in Omuthya, with a grant of nearly 70 million RMB Yuan, is now completed and waiting for construction. (Xin, 2012).

It is not clear whether these deals were financed by the Exim bank. The official interviewed was unaware of these projects citing that very little has been done in Namibia which was financed by the bank (interview with Exim Bank official, November 2012). The officials at the CAD Fund also could not confirm whether they released any funding for these projects (interview with CAD Fund officials, November 2012), some of the aspects of the relationship, especially investment deals and the actions or practices of Chinese business operators, have been shrouded with secrecy, hence information is scant. This is compounded by the fact that the right to access of information does not exist in Namibian local laws but can be exercised under international instruments.

**Labour practices**

The labour standards prevailing in most Chinese companies seem not to be well monitored by Namibian authorities. This, as we shall see in more detail below, has led to accusations of the systematic abuse of Namibian workers in Chinese corporations. Research has shown that the abuse is mainly labour related, where Chinese Corporations do not abide by the labour laws of the country (Jauch and Sakaria, 2009: 212-215). This breach of labour laws is reported to happen where workers are denied the basic conditions of employment as embodied in Chapter 3 of the Labour Act 11 of 2007. This Act provides for minimum standards to be applied to every workplace. In terms of section 16 of the said Act, ordinarily, an employer must not require or permit an employee to work more than 45 hours in any week. If the employee works for more than five days in a week, the employer cannot compel the employee to work for longer than nine hours on any day. Overtime should be had through agreement with the employee but it is reported that some workers in some Chinese corporations actually threaten their employees with dismissal should they now work the extra hours. A study done in Windhoek by Niikondo and Coetze (2009) led to the following conclusion:
It appears that 20.0 per cent (N=5) of the respondents in the local small-scale retails indicated that it was their favourite job compared to 0 per cent in the Chinese retail shops. In addition, about 92.0 per cent (N=23) of respondents in the Chinese retail shops compared to 44.0 (N=11) of the local small-scale retails, indicated that they only work to survive and it is not their favourite jobs. This has brought this study to the conclusion that a large number of people working for the Chinese are just hanging in there, either while they are looking for other jobs or because they failed to get jobs elsewhere in the labour market. The problem would be that these people are extremely at risk of being abused because they have very limited hope of finding other jobs if they quit from their Chinese employment (Niikondo and Coetze, 2009, p.33).

The Embassy of the Republic of Namibia in Beijing cannot deny that some named Chinese investors, especially in in the construction industry, do not comply with the Namibian Labour Act. However, the embassy was quick to point out that it is not only the Chinese investors who disregard the law (Interview with the Embassy of the Republic of Namibia in Beijing, November 2012).

Chinese business operators often also compel their workers to work for a greater number of hours without extra pay. Thus Shinn and Eisenman (2012) wrote about Namibia:

While they often work harder with longer hours, they have also been charged with violating Namibian labour laws, paying lower than minimum wage and doing substandard work (Sinn and Eisenman, 2012, p.355).

Workers in Chinese-owned businesses are usually also paid less than by similar western corporations. The complaints of Namibians have reached the Chinese Ambassador to Namibia who urged ’Chinese companies operating in Namibia to respect the country’s labour laws’ (New Era, 2012). These reported problems with Chinese employers seem to be common across the SADC region. Eilard (2010) for example found a similar case in Zambia, where a Chinese copper mine paid its workers 30 per cent less than other copper mines in the country (see also Muneku 2009: 227; Sata 2009: 7-9).

In the mining sector those workers employed by Chinese mining companies are exposed to hazardous environments in violation of Part B of the Labour Act. Workers at a Chinese owned firm went on strike against their employer, New Era Investments (Pty) Ltd, following systematic violations of worker’s rights, especially denial of basic conditions as stipulated in Chapter 3 of the Labour Act. The workers demanded the construction firm's management to comply with their demands for better terms and conditions of employment, as entitled to them by the Labour Act. This dispute is not the only one against a Chinese firm. The secretary general of Metal and Allied Namibian Workers Union (Manwu) is reported to have said:

We are sick and tired, for a long time, since 2007 or 2006, but they do not want to adhere to Namibian law. This is our chance (Smit, 2011: 2).

There is also concern about a common absence of employment contracts, and the Chinese employers unilaterally determining wages and benefits (Insight, 2006, p.19). African workers are often employed as “casual workers”, depriving them of benefits to which they are legally entitled (Niikondo and Coetze, 2009, p.33; Insight, 2006, 19-20).

A substantial presence of Chinese enterprises is felt in the construction sector. Five major Chinese construction companies present in Namibia are: China State Construction; China Nanjing International (Namibia) Pty Ltd; New Era Investment; China Zhengtai and China Jiangxe
Research has shown that the presence of these companies has caused consternation within the local construction industry, which is openly dissatisfied with what is alleged to be preferential treatment accorded to Chinese construction companies (Odada and Kakujaha-Matundu, 2008:24).

The Namibian government appears to be generally soft in how it deals with Chinese investments in the country, as statistics indicate Chinese business operators labour practices are not sufficiently checked by Namibian authorities. This position is echoed by the Chairman of the Namibia Chamber of Commerce and Industry, who is reported to have said:

*We need foreign investment, that's clear cut ... All investors are welcome, but we should blame ourselves for the state of affairs. We do not have an effective control measure in place* (New Era, 2011).

The Namibian government is working with the Chinese government on this aspect, especially where the Chinese investor is State owned (Interview with the Embassy of the Republic of Namibia in Beijing, November 2012).

The researchers at IWAAS are of the opinion that some of these laws are too complex and different from the Chinese experience to be fully understood by the Chinese companies. Standards in African countries lean closer to western standards, hence creating discomfort for Chinese business operators (interview with IWAAS Researchers, November 2012). Indeed, the Labour Act 15 of 2004 has substantially altered the labour law in Namibia but it is obviously not the best piece of legislation to effectively deal with all labour problems, hence manipulation or at least loopholes may exist. At the end of the day, the points made here are not about the Chinese business operators as such, but about all the investors and their labour practices and the need to ensure equal treatment. The Labour Act has focused attention on protection of fundamental labour rights, and significantly altered the framework for resolution of labour disputes but did not create a strong institutional framework to deal with those disputes and the government has not invested enough to equip the labour inspectors.

Fenwick (2005:4), notes that the new dispute resolution procedures and institutions were introduced to address the concern that instability in labour relations can pose a danger to economic growth and, in particular, to the country's ability to attract much-needed foreign investment. In this regard, however, the changes fit within the broader goal expressed in the preamble to the 2004 Act, which is to implement “a policy of labour relations conducive to economic growth, stability and productivity” (2011 Act, Preamble). Whether, and if so: how well, the Labour Act contributes to this goal appears likely to depend on (at least) the following considerations:

- the success of the new dispute resolution machinery;
- the relationship between labour law and the labour market environment in which it is to operate; and
- the extent to which the process of developing the law produced, and was produced by, social consensus around its goals and content.

In its preamble, the Act stipulates that it was enacted “to entrench fundamental labour rights and protections; to regulate basic terms and conditions of employment; to ensure the health, safety and welfare of employees; to protect employees from unfair labour practices” (Preamble to the Labour Act, 11 of 2007). This shows that the Legislature took a stringent position, particularly when compared to the previous Acts. The problem rather seems to be that the
Namibian government appears reluctant to strictly enforce the law against Chinese-owned enterprises.

*Chinese businesses do not have to adhere to the same costly legal provisions as local or South African companies have to, due to political favouritism and alleged corruption benefiting the Chinese. Organised labour (trade unions) seems to be concerned by the frequent non-adherence of Chinese businesses to Namibian labour law and affirmative action legislation. There is also evidence that Chinese companies bring along their own low-skilled labour from China, thereby taking away work from Namibians. Namibian employees of Chinese companies are expected to compare their situation in terms of pay, working conditions (working hours, annual and compassionate leave, management style etc.), fringe benefits (medical aid, pensions) to their counterparts in other (Namibian and foreign) companies (Niikondo and Coetzee 2009, p.1).*

The Labour Act aims at giving effect to the constitutional commitment to promote and maintain the welfare of the people of Namibia in Chapter 11 of the Constitution; and to further a policy of labour relations conducive to economic growth, stability and productivity by setting minimum basic conditions of service for all employees. This means that the provisions in the labour Act regarding the conditions of employment is a minimum requirement, thus an employer can decide to provide better conditions than those in the Act but an employer is not entitled whatsoever to derogate from the basic conditions in the Act.

In light of the above, the state is under an obligation to ensure that non-state actors in the employment sector adhere to the relevant provisions of Chapter 3 of the Namibian Constitution and other relevant laws binding employers and employees including the Affirmative Action (Employment Act) of 2003. On the other side, employees are bound to respect their employers within permissible bounds and to only question the actions and decisions of their employers in cases where they feel their rights have been infringed upon (Insight, 2005).

**Environment**

Environmental concerns are a second point to consider when looking into the legal aspects of investments in Namibia. Chinese corporations are reported to conduct explorations in the desert without rehabilitating the prospection sites. Furthermore, concerns and illegal activities by Chinese-run operations in the coastal waters have been reported (Barnard, 2005:4), which can (and allegedly already does) affect the tourism industry, one of Namibia’s major sources of revenue. In 2003, a Chinese company called Microzone International proposed a controversial shark-fin drying facility at Walvis Bay. This proposal came close to being accepted by the Municipality, but was later dropped after the local and international environmental organisations protested (Serbourne, 2005:4; Barnard, 2004). According to Shark Specialist Group of the World Conservation Union (ICUN), the fining business would lead to a decline in the anglers visiting the Skeleton Coast which is unique in world angling (Barnard, 2004). According to the Namibian government the fact that the project was not carried out is an indication of democracy and strength of the civic society which led to the protection of the environment. After all, the project could have been proposed by anyone else apart from the Chinese (Interview with the Embassy of the Republic of Namibia in Beijing, November 2012).

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7 “Environment” in terms of the Environmental Management Act of 2007 means the complex of natural and anthropogenic factors and elements that are mutually interrelated and affect the ecological equilibrium and the quality of life.
The Municipality of Walvis Bay apparently was willing to approve this development even though it was going to alter marine ecology in a legally questionable way because the regulation touching on this aspect is not clear in provision of sufficient guidance to decision makers. The fining of live sharks is not allowed in Namibian waters. Regulations to the Marine Resources Act No 27 of 2000 prohibit the dumping of any marine resource harvested. The Act remains weak with regard to the proposal, because it is not clear whether there was going to be any dumping (or live fining, for that matter) – so no blame could be placed on the Chinese investor in the context of Namibian law. The line, however, was a fine one. The Environmental Management Act 7 of 2007 now provides for strict rules when it comes to projects which may have a negative impact on the environment, including the risks and consequences of activities and their alternatives and options for mitigation with a view to minimise the effects of activities on the environment and to maximise the benefits and to promote compliance with the principles set out in section 3. The central aim of the Act is to protect biological diversity.

It should be mentioned that the environmental question is not an issue of China alone. Indeed China as a country has been criticised for not taking care of environmental concerns in many of its national projects or in regulating business (interview with IWAAS Researchers, November 2012). In as much as this case cannot be generalised to all Chinese business operators/business proposals, it must be mentioned that the "gullibility" of Namibian officials is of great concern. It is worrying that a municipality chose to break its own laws for the benefit of the Chinese business operators. This raises questions in regards to the bi-lateral agreements between the Chinese and Namibian officials. The concern is even more valid due to the secrecy that shrouds the deals; negative examples that compromise on the relevant laws combined with secrecy on the deals themselves are clearly leading to suspicions.

**Technology sharing and transfer**

Negative reports of Chinese investments have gone to the extent of saying that

*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* (Heita, D. 2009).

This concern is indeed expressed by several actors in the Namibian economy and is often based on Chinese business operators (especially those in the construction industry) importing their own labour (Niikondo & Coetze, 2009; Sinn & Eisenman, 2012). Field researchers on this issue have met respondents who have made comments such as: "We need transfer of technology and expertise, and we can only get these if we are not economic xenophobic" (Niikondo and Coetze, 2009:24).

It is unfair to say that China does not engage in transfer of technology or skills if the laws of Namibia themselves do not provide a good environment for that to happen (Interview with a China Business reporter November 2012). The above comments need rethinking of the statutory framework that applies to this issue. In April 2012, Chinese vice Premier Hui Liangyu and Namibian Deputy Prime Minister Marco Hausiku attended a signing ceremony for the documents on technological and piscatorial cooperation, in Windhoek (Embassy of the People's Republic of China, 2012). This shows that there are official activities taken in that line. The

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8 Section 3 provides for a list of Principles of environmental management.
activities are, however, based on bilateral agreements which are generally not made available to the public.

On the legal side, it is important to mention that there is no law in Namibia which requires investors (Chinese or otherwise) to ensure skills transfers; this is rather a matter of craftiness in business negotiations. The law that comes nearest to enforcing technology transfers is the Affirmative Action (Employment) Act of 1998. Section 5(d) enjoins the Employment Equity Commission which enforces the act to facilitate training programmes, technical or other assistance, expert or specialised advice and information and guidance on implementing affirmative action in the work place. As can be clearly seen here, the obligation does not rest on the Chinese or any other investor but the Commission. In practice, however, the commission is not well equipped to do this. In addition, this only applies to companies who employ 20 or more workers. Small business operators are thus not touched by this act. This means that there cannot be an enforcement of skills transfer in small enterprises; realisation of skills transfer is done at the behest of the Commission.

There remains a gap in Namibian law insofar as technology transfer is concerned, for example with the requirement of majority shares to be held by Namibian nationals (in joint ventures) or similar regulations. This absence of legal requirements means that technology transfer is an issue of the corporate social responsibility (CSR) of the concerned investors. The Companies Act 28 of 2004 does not create an obligation on investors after registration of their companies to engage in CSR. The Investment Act is also silent on technology transfer by investors. Parliament is currently revising the Foreign Investment Act and the Investment Policy and it is hoped that these weaknesses will be addressed in the new laws; debates, however, also emphasise the risk toward the overregulated the business sector. There are clear problems with existing regulations. Even if the regulations were in place, implementation would clearly be a problem. The report by the Labour Resources and Research Institute (LaRRI) found that often Government fails to enforce compliance of statutory laws and regulations, and turn a blind eye on such violations – specifically by Chinese companies.

**Investment practices**

**Competition:** This aspect is one of the second most talked about issue after labour standards in so far as Chinese investments in Namibia are concerned. There are mixed concerns about the trade practices of Chinese entrepreneurs, but the issue (again) boils down to the inability the government to put together a strong institutional framework to enforce Namibian Competition laws. Negative perceptions about Chinese business operators, whether large or small, illustrate the sense of threat by local industries towards Chinese businesses. Allegations include that Chinese products (especially textile products) are largely subsidised or produced with (implicitly: unduly) cheap labour, and hence outcompete the local markets in Africa. The allegations of subsidies, if true, would, indeed, be a violation of the WTO laws especially the GATT rules and the TRIMS agreement; difficulty, however, is to prove these allegations – they might much rather be due to cheap labour in China, where labour is much less legally protected than in Namibia, and due to an economy of scale (Interview with a China Business Reporter November 2012). Be that aspect as it is, we should be looking into competition law in Namibia more closely.

Competition in Namibia is regulated by the Competition Act 2 of 2003. The Act aims to prevent anti-competitive acts, to promote fair competition and to protect the consumers. Because of the
fact that the Namibian Competition Commission has not yet ruled on any complaints against Chinese business operators, it is not known how effective this institution will be. As with other regulations, the effectiveness of the Act actually depends on the Commission’s ability to enforce the provisions of the law.

The threat to local economies or specifically industries by outside competition, as was reported in February 2010 by the Minister of Trade and Industry, is a reality and research has shown that the actions of Chinese enterprises have caused the closure of some small and medium enterprises (SMEs) in Namibia (Jauch and Sakaria 2009: 210). Recognising this, in February 2010 the Namibian Minister of Trade and Industry announced that his Ministry is going to “crack down on foreign SMEs”, because foreign corporations, especially Chinese corporations, were not adhering to Namibian tax, labour, investment, banking and various other laws. The government of Namibia seemed to more often than not be turning a blind eye on the predicament of SMEs but if some statement of the Minister is a genuine policy strategy, then maybe the government will address concerns in the future.

Chinese companies are particularly successful in winning Namibian government tenders, especially in the construction sector (Jauch and Sakaria 2009: 210). A research report published after a study by the Polytechnic of Namibia concluded that:

A matter of concern is the awarding of tenders to companies which do not adhere to national laws and regulations. Such practice undermines not only Namibia’s legal foundation but also erodes the country’s social fabric.

The success of Chinese companies comes with the allegations that government tenders are often being given to Chinese companies - especially in the construction sector - without following the Tender Board Of Namibia Act 16 of 1996 (Jauch and Sakaria 2009: 210) and as a result “local business people feel betrayed by Government’s apparent favourable treatment of Chinese business people” (New Era, 2012). However the Act itself faces a very weak institutional system. Furthermore, it allows some tenders to be awarded in a non-transparent way. At the time of writing, Parliament is in the process of reviewing this Act in an attempt to close loopholes. Chinese Corporations are engaging in complex schemes which appear to constitute unfair competition (Duddy, 2010: 3-4). Yet again, not only are the Chinese corporations following this practice. While Chinese business is blamed for the closure of Namibian SMEs - with Chinese cheap goods flooding the local textile market, thus in turn fuelling more unemployment and propelling other negatives which come with unemployment (Sasman, 2010: 2-3) – poor people are happy to be able to consume these affordable goods (Interview with a china Business reporter November 2012).

Chinese enterprises are apparently exploiting legal loopholes and weak institutional settings (presumably not unlike practices in China). To blame the Chinese enterprises alone for shortcomings in competition would not be entirely fair. Namibia has a lot of foreign companies operating in its business environment. It would thus be more precise to say that the law itself and the weak institutions and enforcement mechanisms, are insufficient.

The Competition Commission is a very young institution. It was formed about three years ago and has not really made any big impact in so far as implementation of the Act is concerned. Its voice was loudly heard when it opposed the merger takeover of Game Stores by the American giant Walmart (Namibian Competition Commission and Another v Wal-Mart Stores Incorporated (Unreported case number SA - 4 November 2011). Further, the Act has some flexible provisions
which can be manipulated. Section 27 of the Act makes provision for any undertaking to apply for an exemption from certain restrictive practices. Conditional or unconditional exemptions for agreements or practices may be granted to firms who apply if such an agreement or practice

- promotes export;
- promotes small undertakings owned by previously disadvantaged persons;
- improves the production or distribution of goods; and
- promotes technical or economic progress in any industry designated by the Minister.

Business operators with good connections to government (not least: Chinese large scale investors) are most likely going to get exemptions under this provision. Who is to blame in these cases: the Chinese, the government of Namibia or Namibian law and the relevant institutions? The Argument can be a balanced one here: a report published by the Polytechnic of Namibia (New Era, 2009) exposes murky Chinese investments and more importantly Government’s ineptitude to set strategic priorities on which to negotiate foreign direct investment based on enhancing a real value-addition and manufacturing economy, as often recommended.

The Competition Act also comes with terminological problems. The definition of the relevant market is the starting point in any type of competition analysis and the definition in both its product and geographic dimensions has often had a decisive influence on the assessment of a competition case. Yet, the Competition Act, 2003 of Namibia does not define “relevant market”. The market definition helps to identify competitors involved and makes it possible to calculate market shares that would convey information regarding market power for the purposes of applying the Act, in particularly for assessing dominance. It is important to stress that the concept of relevant market in competition law is different from other concepts of market often used in other contexts. For instance, companies often use the term market to refer to the area where they sell their products or to refer broadly to the industry or sector where they belong. Failure to have the definition in the Act results in stakeholders failing to understand the context in which “relevant market” is used in the Act, and decisions made by the Competition Commission may be unnecessarily challenged on these grounds.  

**Taxation, finance and banking:** Allegations exist in Namibia that Chinese business operators are evading tax, using such money saved from evasion for further investments. This could be linked to reports or speculations that the government of Namibia is giving tax exemptions to Chinese business operators, especially those involved in joint ventures with Namibian SOEs (Weidlich, 2008). The government in Windhoek denies these allegations. The Ministry of Industry and Trade and the Ministry of Finance announced they have started investigating the allegations (Duddy, 2010: 3-4). Two years after, there has not been any announcement of the results of the investigations, if any. Tax evasion might be specifically difficult to detect if dealings are in cash flows only.

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9 Section 3(4) thus provides for an exception to the principle in section 3(1) that foreign nationals may invest and engage in business in Namibia. The scope of the exception contained in section 3(2) relates to those businesses engaged “primarily in the provision of services or the production of goods”. When section 3(4) refers to businesses engaged in “the provision of services or the production of goods.” It does not apply to the retail industry as provided for in section 3(4) of the Foreign Investment Act and as interpreted by the Supreme Court in the case of Namibian Competition Commission and Another v Wal-Mart Stores Incorporated (Unreported case number SA 41/2011) (4 November 2011)
Reports show that few Chinese entrepreneurs bank their money with local banks. The discovery that Chinese business operators keep cash at home has made the Chinese targets of robbers. In May 2004 a Chinese businessman Hanfang Liang was shot by two robbers at the Tal Valley Service Station who reportedly tried to rob him of N$554,000. These reports further substantiate the belief that Chinese business people keep larger amounts of cash. (The Namibian 7 May 2004). There is also persistent targeting of Chinese in Cimbebasia by robbers who believe Chinese construction company owners keep cash at home (personal communication with a Chinese victim of attempted robbery in Cimbebasia location in Windhoek).

Again we can pose here to look into the legal framework of the country. The Banking Act of Namibia does not oblige investors to bank with local banks as compared to Zimbabwean law above. Further, the Immigration Act and many regulations under it do not oblige a person to declare cash when they are getting out of the country. Consequently, a Chinese business operator can keep as much cash as he or she wants and fly out with it. The law that comes closest to stopping this practice is the Financial Regulations which say that when a person is travelling out of the country he or she may be asked to declare such cash by an authorised officer. Therefore if an authorised officer does not ask, the investor or anybody can take cash out. The practice of not declaring cash is not only conferred to Chinese entrepreneurs; many immigrants can be expected to change their money to South African Rand or US dollars and fly out with it (various personal communications with Sisas Namandje – Legal Practitioner – Windhoek). The law allows it; complaints against Chinese nationals in this regard are not legally sound.

**Corruption and the rule of law**

China has opened credit lines and granted loans to African countries to contribute especially to financing infrastructure and other projects that African countries need. In Namibia this has led to great infrastructural development. It is not the lending per se that is problematic, since it seems that China's lending occurs in resource rich countries that can be expected to be able to repay external debts (Huse and Muyakwa, 2008). What makes China a risk to debt sustainability in poor countries is the lack of transparency in loan contraction processes. The lack of transparency makes it difficult to assess how much debt is being contracted and on what terms. It also increases the risk that funds will not be used for intended purposes, and thus might turn out to create cases of illegitimate debt in the future (Huse and Muyakwa, 2008).

At the end of 2009, the President of Namibia suspended the Chief of the Defence Forces from his post after reports that he had been involved in corrupt arms deals with his Chinese counterparts. This case is still under investigation, but the allegation plays towards the impression that Chinese officials are involved in illegal international arms transactions. Reflecting on the complicity between government officials and Chinese counterparts, one commentator in an exaggerated statement expressed his frustrations with government policies by writing:

> They [the Chinese] are always first in line to receive most of the multi-million government tenders and I can't imagine the kind of deals that are struck during some of these transactions. In the building industry they have now virtually replaced Namibians. And it doesn't end there; local corrupt officials are also selling communal land to the Chinese to rake in a quick buck (Kaure, 2011: 12).
The debate is on in the fishing, tourism and the mining sectors where elites are given quotas, licenses and exploration allowances which they then sell to foreign firms (including Chinese) who then end up controlling the country natural resources. Thus the field for corrupt activities is quite open and Chinese entrepreneurs (amongst others) are exploiting these practices. They do thus become a proxy (and easier, populist target) for the wrath against corrupt elites.

At the moment, the Namibian High Court is handling a case of Teko Trading (Pty) Ltd where its principals made headlines after they were arrested on charges of fraud, corruption and bribery in connection with a US$ 55,348 million contract for the supply of Chinese-made X-ray scanning equipment for airports to the Ministry of Finance. As part of the deal, they earned N$ 42 million in what is alleged to be kick-backs by the Chinese company Nuctech (see the case of Prosecutor General V Lameck and Others (Case number POCA 1/2009) decided on 22 January 2010).

It is alleged that the principals of Teko were employed by Namibia Contract Haulage (NCH), while on official company business to China, corruptly bought trucks and through bribery (Mongudhi, 2009: 1-2). NCH is a subsidiary of Kalahari Holdings, wholly owned by SWAPO, the Namibian ruling party. How they obtained the trucks has been put at the heart of the dispute, questions do however also remain as to how the two landed themselves a multimillion-dollar consultancy with Chinese scanner manufacturer Nuctech.

It is alleged that both NCH and Teko entered into an agreement with Nuctech on the same day "to promote Nuctech’s products and lobby Namibian Government to raise the issue with Chinese government for funding of high energy X-ray non-intrusive container/vehicle inspection system under bilateral co-operation agreement". One of the principals of Tecko signed two separate agreements – on behalf of NCH and her company, Teko – on the same day, 3 April 2007 (Mongudhi, 2009: 1-2). The second contract was apparently just a change of names – instead of NCH, Teko was inserted. It is alleged further that a bribe of US$ 5 million was given to Teko and named "commission" for consultancy services to Nuctech for the supply of scanners and X-ray machines to the Ministry of Finance. The Teko principals together with their Chinese employee, Yang Fan, who also doubled as Nuctech Africa representative, is now the subject of a corruption probe and the court case (Ibid). Hu Haifeng, the son of Chinese ex-President Hu Jintao, was the head of Nuctech in 2008 when the Namibian Government signed a contract with the company to deliver X-ray scanners. Since leaving the company, Hu Haifeng has been promoted to the position of party secretary of Tsinghua Holdings, the parent company of Nuctech which is involved in the corruption probe in Namibia (The Namibian, 2009:1-2). Nuctech is also under investigation in South Africa (LaFraniere F, and Grobler J. 2009).

The involvement of family of ex-President Hu Jintao certainly fuelled assumptions of ‘friends in high places’ on both sides. Though Hu Haifeng is not accused of involvement in the case, it has proven so sensitive that Chinese censors scoured the Internet in China of all references to it. Two leading news websites, Sina.com and 163.com, which carried stories on the Nuctech case on their technology channels, without naming Hu, were blocked (Ibid.. The Chinese government has remained quiet on this and it is sensitive to report on such matters in China (Interview with a China Business reporter November 2012). Neither has the Namibian government officially commented on the case, presumably as it fears it may alienate China, a lucrative investor.
Much of China's financing hinges on contracts for infrastructure projects going to Chinese companies. That adds to the disquiet in Namibia over the latest allegations. Some members of the ruling party argue that the (Nuctech) investigation shouldn’t push China too hard, because they see China as an important ally. On the other hand, there are those who say that corruption by powerful foreign companies is a threat to Namibia’s national interests. (The Namibian, 2009:1-2).

The Parliament of Namibia passed the Anti-Corruption Act No. 8 of 2003 which created the Anti-Corruption Commission (ACC) to deal with these kinds of cases. In the process of this ongoing case, this year, Tecklar Lameck challenged some of the provisions of the Act as unconstitutional and succeeded (see the case of Lameck and Another v President of Republic of Namibia and Others Case number (A 54/2011) decided on 20 February 2012). This shows the inherent weaknesses of the law as made by parliament. Research done by Namibia’s Institute for Public Policy Research (IPPR) concluded that there is corruption in the extractive industry, especially the mining sector, and now corruption is taking root in the new oil exploration licensing process and the IPPR fears that the entrance of foreign companies with political links in Namibia (including China) may fuel more corruption and take Namibia’s development on a “slippery slope” (Links 2012, p.8).

The ACC is yet to net any big fish in the country’s corruption underworld network. It would need the passing of strong laws and the involvement of public scrutiny to hold to account those who divert public money to private ends. The government of Namibia declared zero tolerance on corruption and is determined to catch anybody that is violating the law, irrespective of nationality (Interview with the Embassy of the Republic of Namibia in Beijing, November 2012).

**Final remarks**

The manner in which Chinese deal with their workers has been met with mixed opinions. Some people advocate the view that Chinese business operators are violating the laws, whereas others are of the opinion that the Chinese business operators are not (solely) to blame as they use loopholes provided by (ineffective) regulation. Policing of policies is clearly a weak point. A study carried out in 2006 concluded:

*Although an in-depth analysis is needed to determine both direct and indirect impacts of the Chinese presence in Namibia, a cursory look at the direct costs shows that there are benefits to be realized from this interaction. It is, therefore, important to carry out a more detailed analysis to establish ways in which Namibian businesses can benefit more meaningfully from increased Chinese involvement/operations in Namibia* (Odada, JE, Kakujaha-Matundu, O. 2008).

Namibia has benefited from Chinese investments and the statements of Chinese embassy officials as recorded above also show positive sentiments about the benefits their country has also gained from such investments in Namibia. On this note, it would be more encouraging if the investment deals were made more transparent so as to dispel unfounded fears, suspicions and perceptions – and in order to identify illegal practice where necessary. In all, the Chinese investors have to abide by the laws of Namibia, this will allow space for the realisation of the often talked about “mutual respect and mutual benefit”.
4. Conclusions and recommendations

The growth of the Chinese economy saw an increase of Chinese investments in Africa and the strengthening of China-Africa relations. Although Africa has benefited to a great extent from China’s investments, the same investments have been met with questions about Chinese foreign policy and the corporate social responsibility of Chinese transnational corporations (TNCs). The investments have also sparked scepticism about the true intentions of China on African soil and the implications they have on the development of African economies. On the other hand however, in trying to decode the controversies that are attached to Chinese investments in Africa one should guard against one sided analysis of the complex relationship between different African states and China.

Although China has been investing in Africa even before the Chinese revolution, it is notable that most of the investments have been made since the Former Chinese Prime Minister Zhou Enlai’s speeches on the struggle of African nations for independence at the First Asia-Africa Conference in April 1955. The investments then skyrocketed at the beginning of the 21st Century. Indeed, the first decade of the 21st Century saw high level delegates from China visiting different African nations. A multiplicity of investment deals have been struck between African nations and Chinese governmental institutions and individual Chinese business entities leading to the blossoming of Chinese investments Africa which pose challenges to institutional and regulatory mechanisms.

Generally the involvement of China in Africa has produced two dichotomous views, firstly the prevailing sentiment among many Western governments and international organisations that China’s policies of unconditional aid and relations with pariah states undermine current efforts by groups such as the United Nations (UN), International Monetary Fund (IMF), World Bank, and Organization for Economic Cooperation and Development (OECD) to improve governance and human rights issues in African countries through conditionalities (Chan, 2010). At the other end of the spectrum, there is a nascent but growing body of literature proclaiming China's activities in the region as Africa’s last chance for development after decades of failed aid policies by the West. Certain authors go further to argue that Western aid efforts have harmed Africa by enforcing a relationship with the West based on dependency and sub-ordination (see Moyo, 2009; Spears, 2009).

This Report has not concentrated much on the politics of China-Africa relations, but has taken a legal perspective to the relation decoding how the investment regulatory framework works against the practices of Chinese investors. It has been shown herein that Chinese Investors’ failure to abide by local laws complicates China's diplomatic relationships with host states and leads to negative publicity, as tensions over labour laws. The Chinese government is well aware of this negative publicity and is working hard to remove barriers to good investment practices by putting regulations within its own legal system to control and monitor Chinese investors, not only in Africa but across the world. MOFCOM's 2008 Notice on Further Regulating the Foreign Investment Cooperation of Chinese Enterprises provides a procedure for the sanctioning of wayward investors. It is one thing to have it on paper but actualisation is patently a problem: failure to abide by OFDI regulations and laws can result in “serious consequences” and can be dealt with in the following way:

The Ministry of Commerce shall render disposition or impose punishment in such ways as circulating criticism, giving a warning, denying an enterprise’s pass of annual inspection, and
suspending and cancelling the qualification for business operation according to relevant provisions. The Ministry of Foreign Affairs shall impose punishments in such respects as the relevant enterprise’s or competent authority’s right to approve foreign affairs, right to apply for passport and right to apply for visa on its own or in proxy. SASAC shall impose corresponding punishments on the enterprises and relevant liable persons causing adverse effects (Article 5).

It seems there is neither strict enforcement of these rules nor systematic or consistent application of their procedure. There is no telling as to whether the Ministry has ever done what this provision envisages. The law exists on the ground but its application remains a problem, according to statements in the many speeches by diplomats and other officials. The Chinese Ambassador to Namibia urged “Chinese companies operating in Namibia to respect the country’s labour laws” (New Era, 2012). However African laws remain a challenge and a problem to most Chinese investors. It can be said that Chinese regulatory standards are lower than some African standards and when Chinese investors fail to comply, they face opposition and often ridicule. This is a question of the legal culture and Chinese government officials have accepted this negative reality. In this light, Zhao Baoshen, the vice general manager of the Zambia-China Economic and Trade Cooperation Zone criticised Zambia’s regulatory structure:

[The laws are] really “too sound”—the standard of the legal system is a little too ahead of its time... Almost 50 percent of the people are unemployed and yet they still want to have so many housing allowances, education allowances and transportation allowances (Human Rights Watch 2011).

Some academics such as Brautigam (2009) attribute this partially to China’s historic lack of domestic labour regulations. This would mean that the aim for China’s engagements should be to nurtured ongoing discussions within global governance institutions to establish legally binding standards. The development of China’s legal regulations on overseas foreign direct investment (OFDI) reflects its shift over the last thirty years from being an isolated, state-run economy to a market-oriented global economic player. Accompanying this shift has been a gradual liberalisation of OFDI regulations that reflect two typically Chinese approaches to regulating investment. The first is an experimental method of “testing the stones before crossing the water” as Deng Xiaoping famously proclaimed, namely liberalising cautiously to avoid negative economic impacts. The second is the continued active engagement of the state in the market, thus reflecting China’s status as a “socialist market economy” rather than a pure liberal market economy.

As noted in the conclusion to the part that covers Zimbabwe, China’s engagement with one country such as Zimbabwe or Namibia are a microcosm of the macrocosm of China-Africa relations and as such embody a lot of what many writers have concentrated on and reflects on the conventional arguments for and against China’s engagement with the various states in Africa. It must again be emphasised that although the there is a widespread perception that Chinese investment has undermined responsible practices, there is an emerging body of evidence that this portrayal is somewhat one-sided and that the characterisation of Chinese investment as necessarily unethical or unsustainable in terms of legal and social standards may be misleading or short-sighted. This is paralleled by Chinese efforts to engage with international standards, not only to improve Chinese companies’ behaviour domestically, but also abroad in relation to co-ordinating its position on key policy issues affecting outbound investment such as anti-bribery regulations as noted in the body of knowledge above.
The complexities that abound in the regulation of Chinese investments, just like many other FDIs to Africa, are further compounded by lack of strict, or at least systematic and concerted enforcement of African laws as well. Zimbabwe has very good laws to deal with many issues covered in this report just like in many other sectors as we have seen above. However the application and/or enforcement of laws seem to be selective and lax at times. Namibia’s legal system is also affected by weak institutional frameworks and loop holes in the laws. These are issues that need serious attention – law makers should look into these gaps and other areas that complicate FDI. This position is echoed by the Chairman of the Namibia Chamber of Commerce and Industry who is reported to have said:

*We need foreign investment, that’s clear cut ... All investors are welcome, but we should blame ourselves for the state of affairs. We do not have an effective control measure in place* (New Era, 2011)

As noted above (Part 3.1), it must be noted that increased domestic competition for Chinese firms is one of the most important factors which encouraged particularly privately owned and smaller firms to venture abroad (Taylor 2002). The Researchers at IWAAS and MOFCOM are of the opinion that African governments should cope with Chinese enterprises in as much as the Chinese government itself is coping with competition among its own enterprises and increased investments from international corporations such as North America and Europe and a few now from Africa. This indeed goes well with the principle of reciprocity under international law.

While Chinese companies, mainly in the extractive industries, have introduced international environmental standards, there is still need for co-ordination and synchronisation of institutional tasks so as to make regulatory frameworks functional and effective. From an environmental perspective this requires identification of the principal environmental impacts of a company, a systematic improvement of environmental performance, and certification by an independent third party (Shankleman, 2009: 56). Collaboration is always pledged by China, and perhaps in order to limit fears that China may export its polluting enterprises to Africa, China has expressed an intention to increase co-operation with African countries on environmental issues. Li Ganjie, vice Minister for Environmental Protection, has stated:

*China and African countries are both developing nations, facing the same issues like population and resources pressure, unbalanced and unsustainable development. Therefore, environmental and economic development are our common goals. We are determined to achieve a deeper and wider cooperation under an effective mechanism of China-African dialogue and promote green development and innovation model* (China.org.cn 2012).

Thus at least on a policy level, a greater environmental focus is anticipated. However, China is again following the international trend of not unduly burdening its companies through excess environmental requirements when operating abroad, leaving it instead to the company in question to adopt its own standards.

African states such as Namibia and Zimbabwe which have been covered in this report need to identify key priorities. A report published by the Polytechnic of Namibia (New Era, 2009) lays bare questionable Chinese investments and more importantly the government’s ineptitude to set strategic priorities on which to negotiate foreign direct investment based on enhancing a real value-addition and manufacturing economy. This should be a priority not only for Namibia and Zimbabwe but for other African countries with similar problems when it comes to FDI. Value addition is a plan of the government of Zimbabwe but the plan remains little more than a
reality on paper, as institutional and technological issues are hampering the implementation. The Embassy of Zimbabwe in Beijing is liaising with Chinese investors and government officials to realise this plan, especially value addition to mineral resources such as diamond polishing within Zimbabwe itself.

Research at IWAAS has shown that although there is scope for China to strengthen its regulatory regime, there may be little momentum domestically for legal reforms to occur. China also needs to reform its laws to meet the standards globally. The excuses of China being a developing country do not serve the hosts of its investments abroad. Chinese regulations in regards to investments have to be made legally binding but further research on this is needed in regards to whether a legally binding system will be workable and in which manner this will be realised. Having rules without enforcing them is counterproductive and only exist to prove white washing. At the same time, as highlighted above, the Chinese government needs to set out expected standards of behaviour but not burden itself unduly through legal enforcement procedures – a balance should be struck between regulation and administratively overburdening when considering this issue.

African countries also need to be transparent about the deals that they sign with China. Lack of transparency raises unnecessary suspicions and unfounded conclusions about Chinese investments in Africa. It is quite hard to get detailed information about Chinese investments in Zimbabwe or Namibia and many other countries across Africa. It is also difficult to conduct research among Chinese investors themselves. This calls for two major suggestions, the governments have to open up to researchers when it comes to this issue and, secondly, both sides should create a culture of tolerance and cultural exchanges at grassroots level. Embracing diversity is needed and a pluralistic approach will be a better way to understand each other, hence as noted above, institutions should encourage a pluralist methodology that will try to counter unproductive shadow boxing, applying what may be called "civic reason" to remove the dark shadows of mutual accusations. A pluralist analysis of the cultural conflicts offers the potential to create clarity, though “legal pluralism” itself remains an obstacle, especially from the view of human rights lawyers. There must be engagement in a plurality-conscious debate keeping in mind today’s global contexts, especially Chinese investments in Africa.
5. Bibliography


Chinese Investments in Zimbabwe and Namibia: A Comparative Legal Analysis

Clever Mapaure


