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# Beyond China's Human Rights *Exceptionalism* in Africa: Leveraging Science, Technology and Engineering for Long-Term Growth

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# Beyond China's Human Rights *Exceptionalism* in Africa: Leveraging Science, Technology and Engineering for Long-Term Growth

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*This brief response to Timothy Webster's article, "China's Human Rights Footprint in Africa," critically appraises China's disavowal of human rights, the rule of law and democracy in its African relations. China has argued that its African relations are based on the principles of political equality and reciprocity, mutual trust and benefit, common prosperity, sincerity and friendship. I critically evaluate this effort to redraw the boundaries between political and economic interventionism. In so doing, I make two major claims. First, viewing China's involvement in Africa as purely or primarily economic, and not interventionist, imperial or political, is inaccurate. Second, to address Africa's development and human rights challenges, African countries must capitalize on the trade and investment opportunities China and other countries provide by taking concerted measures to transform their dependency on primary products by developing a productive base upon which competitive industries could emerge to promote the kind of growth that would inure positively for human rights. African governments must develop relations with Chinese firms and government that transfer skills and technology to African firms so that Africa can benefit from Chinese expertise and knowledge as a positive strategy for moving away from dependency on raw-material production without value-addition.*

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## INTRODUCTION

Timothy Webster valiantly argues that China's engagement with Africa has "actually improved the human rights conditions of millions of Africans," particularly in the educational, agricultural, infrastructural and medical fields.[1] Webster criticizes "Western analysts" who, he suggests, overstate the adverse consequences of China's presence in Africa.[2] These analysts, he asserts, have overlooked the way China has positively contributed towards meeting Africa's contemporary concerns and dire development needs.[3] He argues against those who claim China is "simply draining Africa of natural resources while buttressing its dictators."[4] Webster claims that his paper introduces Chinese perspectives as well as terms familiar to the Global South into the discussion of Sino-African relations.[5] To blunt "Western analysts'" pessimistic views of China's African imprint, Webster contends that a "nuanced assessment" must include "the hundreds of infrastructure projects, agricultural experiments, educational facilities, pilot projects and other components of Beijing's Africa policy."[6]

Webster over-estimates China's contributions to human rights

1. Timothy Webster, *China's Human Rights Footprint in Africa*, 51 COLUM. J. TRANSNAT'L L. 626, 626 (2013).

2. *Id.* at 628.

3. *Id.* at 629.

4. *Id.*

5. *Id.* at 631.

6. *Id.* at 630.

in Africa because he focuses largely on short-term improvements in social conditions whose long-term sustainability is unclear. In order to establish the claim that the human rights situation has improved in the long-term, China's African imprint has to be examined against a different baseline than the one Webster provides.

He assumes that as currently structured, Chinese investments in Africa are optimally designed to have long-term growth, and as such, will continue to improve human rights conditions in Africa.

Webster's reliance on short-term improvements in the infrastructural, agricultural, as well as educational and medical fields, rather than on their long-term economic consequences, leads him to over-estimate the value of these short-term improvements. This is especially so in countries that suffer from the resource curse or the borrowing privilege. Studies on similar assistance to African countries have suggested that apparent improvements won through development programs are short-lived.[7] Such programs seldom result in improving long-term growth prospects for African countries. In this response, I argue that there are ways of capitalizing on the opportunities created by the presence of foreign investors in Africa to improve long-term economic growth and respect for human rights in both the short and the long-term.

To reach the conclusion that China's massive involvement in Africa results in positive human rights outcomes, Webster must assume that any improvement, no matter how small, in social or economic circumstances necessarily improves the human rights situation. This assumption is problematic for two reasons. First, a large percentage of China's investment in Africa is in natural resource extraction, which is overwhelmingly correlated with hindering, rather than promoting economic growth. Further, Webster's analysis is predicated on the unstated view that given Africa's dire needs in areas such as infrastructure, medical care and agriculture, any investment in these areas is necessarily good.[8] Such an analysis would invariably lead to a predictable conclusion: that China's African presence is a win-win for Africa. This is an extremely low baseline

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7. *See, e.g.*, William Easterly, *The Big Push Déjà Vu: A Review of Jeffrey Sach's* The End of Poverty: Economic Possibilities for Our Time, 44 J. ECON. LITERATURE 96 (2006); William Easterly, Ross Levine & David Roodman, *Aid, Policies, and Growth: Comment*, 94 AM. ECON. REV. 774 (2004); *see also* DAMBISA MOYO, DEAD AID: WHY AID IS NOT WORKING AND HOW THERE IS ANOTHER WAY FOR AFRICA (2009); RASNAH WARAH, MISSIONARIES, MERCENARIES AND MISFITS: AN ANTHOLOGY (2008); JAMES C. SCOTT, SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED (1998).

8. *See generally*, Webster, *supra* note 1.

to establish whether China's presence in Africa has a positive effect. It is hard to find investments that would not meet the low threshold of making some improvement or difference. In essence, establishing if China's presence in Africa is more than merely ephemeral is important. This is particularly important in light of research showing that although African countries have been the highest recipients of foreign aid, they have also experienced the lowest economic growth rates.[9]

Second, China's involvement must be examined in the context of Africa's leadership. For the most part, the interests of Africa's leadership are not consistent with the majority of African people.[10] The deals these leaders have entered into with China must therefore be examined according to their ability to help African economies attain long-term, self-sustaining growth. Politicians have short time frames because they want to stay in office. They have short time horizons because they want to show that they have done something for their constituents within the electoral cycle rather than in the long-term. For these politicians, voters make their decisions in the short term. Thus, deals with China discount the long-term effects of their actions because their time-horizon is limited to the electoral cycle. In fact, Africa's economic challenges are closely associated with decisions taken for short-term political reasons to guarantee electoral vindication or selfish gain.[11] By only examining short-term gains from China's investments in Africa, Webster's argument suffers from a similar lack of imagination. He fails to see the way the relationship between Africa and China could work differently than at the present. Even assuming Webster was right, he still does not see the broad range of possibilities for re-characterizing the relationship between China and Africa. Webster fails to appreciate how improved instruments that provide for transfer of technology and training might better protect human rights concerns in the long-term.

This response, therefore, joins a growing chorus that calls for a more cautious, tentative approach to evaluating China's presence in Africa.[12] In particular, I argue a big-picture analysis may not effec-

9. *See* Easterly, *supra* note 7, at 100.

10. *See, e.g.*, GEORGE B.N. AYITTEY, AFRICA BETRAYED (1993).

11. A classic statement of this view is ROBERT H. BATES, ESSAYS ON THE POLITICAL ECONOMY OF RURAL AFRICA 146–47 (1983) ("Politicians want power. And they use the instruments of the state to secure and retain it by manipulating the economy to political advantage. In Africa . . . political elites have rendered economic markets instruments of political organization.").

12. *See, e.g.*, Uche Ewulukwa, *Trade, Empires, And Subjects—China-Africa Trade*, 41 VAND. J. TRANSNAT'L L. 505, 506 (2008) (calling for "guarded optimism regarding the

tively capture the human rights effects of China's economic presence in Africa. This response proceeds as follows: Part I examines the consequences of China's redrawing of the boundaries between the economy and human rights. Further, it argues China's disavowal of human rights is an exercise of soft power that reinforces governance problems particularly in resource-rich African countries. Part II proposes a long-term strategy for China-African relations that would impact human rights positively in the long-term.

## I. REDRAWING THE BOUNDARIES BETWEEN THE ECONOMY AND HUMAN RIGHTS

In this part of the essay, I make three claims. First, Chinese investment policies interfere with domestic political choices in African countries, notwithstanding Chinese rhetoric to the contrary. Second, the sheer size of Chinese investment into resource-rich, unstable African countries enables their governments to disregard human rights. Third, Chinese investment policies serve to further destabilize African governments and encourage corruption and disregard for human rights by reinforcing the resource curse and the borrowing privilege, which I define and discuss below at length.[13]

China has argued its relations with African countries will not interfere with their domestic political choices. According to this principle of non-intervention, China will not and does not condition its economic engagement in African countries on any country's human rights, democracy or rule of law record.[14]

The assumption here is that human rights issues occupy a sovereign domestic political sphere that should not be subject to interference since such an intrusion would constitute unwelcome interventions in a sovereign realm. As Webster notes, such interventions

deepening relationship" between China and Africa and noting that "African leaders must push past Beijing's rhetoric of anti-hegemonism and develop clear policies to guide the continent's engagement with China").

13. In brief, the resource curse refers to the inability of resource-rich African countries like the Democratic Republic of Congo to enjoy peaceful extraction of their mineral resources. The borrowing privilege refers to the power African countries have to contract mineral resources without having to be accountable to their people.

14. Webster notes that "[C]hina does not inquire into the domestic political situation of the partner country. If the partner provides what China needs . . . China cares little whether it is democratic or dictatorial." Webster, *supra* note 1, at 641. Further Webster notes that "China firmly believes that it should not, and will not, engage in activities that infringe upon the sovereignty of other nations." *Id.* at 640.

would be regarded as a form of imperialism, precisely the kind of imperialism that China disavows in its solidarity with African countries.[15]

This view of China's involvement in Africa as purely or primarily economic (and therefore non-interventionist and non-imperial) is inaccurate. China's economic involvement in Africa is not apolitical, or any different than that of Western countries which condition certain forms of economic support on respect for human rights, goals such as free and fair elections, or free market reforms. Providing economic support without conditions is a political action because it invariably and implicitly supports the regime in power and the current status quo.

My point here is that economic interventionism is no less objectionable than human rights interventionism.[16] It would be inaccurate to think of the private realm of economics as apolitical or neutral. This discredited view has been invoked to put brakes on the goals of social justice in the economy,[17] and to support dubious presumptions, such as the idea that the non-intervention norm does not apply to economic measures.[18]

These artificial distinctions, between a so-called political and a so-called economic realm, are not reflected in reality or even in international law. In fact, the *United Nations Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance With the Charter of the United Nations*, provided that all forms of interference "against the personality of the State or against its political, *economic* and cultural elements, [in addition to armed intervention] are in violation of international law."[19] Similarly, the unanimously adopted *United Nations*

15. Webster seems to limit his definition of imperialism to the political sphere while in fact imperialism has also been understood to apply in economic relations between the countries that own vast amounts of capital and the destination countries of such capital—often poor countries. *See id.* at 641–49. *But see* James T. Gathii, *Imperialism, Colonialism and International Law*, 54 BUFF. L. REV. 1013, 1016 (2007) (arguing that there are a variety of imperialisms which converge on external and internal actors acting to dominate and have control over colonial peoples).

16. *See also* James T. Gathii, *Neo-Liberalism, Colonialism and International Governance: Decentering the International Law of Governmental Legitimacy*, 98 MICH. L. REV. 1996, 2025 (2000) (arguing that separating the economic and political sphere is to make a "spurious distinction" that assumes that the "public sphere is a controversial and political arena" while the private arena is a de-politicized regime based on consent).

17. *Id.* at 2027.

18. *Id.* at 2030.

19. Declaration on Principles of International Law concerning Friendly Relations and

*Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty of 1961*[20] referred to both direct and indirect forms of intervention, as well as the "inalienable right" of every State to choose its economic system without interference "in any form by another state."[21] The point here is that conceptually, the distinction between politics and economics is artificial, and it is deployed to foreclose critical interrogations of economic relations between states. Merely because African leaders have embraced economic relations with China does not immunize these agreements from international legal scrutiny when they result in massive violations of human rights in the resource extraction sector.[22]

China's claims that its economic engagement with Africa is unproblematic because it is non-political are belied by international legal principles that recognize that economic intervention is as objectionable as political interventions. China did not oppose the *Declaration on Friendly Relations* or the *United Nations Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty*, or, in fact any international legal instrument that declares sovereignty over the economic affairs of a country. In fact, China has argued strongly in favor of its sovereignty over its natural resources to defend itself against charges of violating its World Trade Organization obligations.[23]

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Co-operation among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), Annex, 25 U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/5217, at 121 (1970), *available at* http://www1.umn.edu/humanrts/instree/principles1970.html. The declaration was adopted with a voice vote and China did not object or vote against it.

20. Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, G.A. Res. 2131 (XX), U.N. Doc. A/RES/20/2131 (Dec. 21, 1965). The declaration was adopted by a vote of 109 votes with one abstention from the United Kingdom. China voted in favor.

21. *Id.* ¶ 5.

22. For more on this point, see JAMES T. GATHII, WAR, COMMERCE AND INTERNATIONAL LAW (2010).

23. Panel Report, *China—Measures Related to the Exportation of Various Raw Materials*, WT/DS394/AB/R, WT/DS395/AB/R393, WT/DS398/AB/R398/R (July 5, 2011) (showing China's argument that it had the sovereign right to "adopt a comprehensive and sustainable mineral conservation policy, taking into account China's social and economic development needs" and further that "Article XX(g) [of the General Agreement on Trade and Tariffs] must be interpreted in a manner that recognizes a WTO Member's sovereign rights over their own natural resources"). China claims that these rights must be exercised in the interests of a Member's own social and economic development, as well as in light of the objective of sustainable development as stated in the Preamble to the WTO Agreement.

One legitimate response to my claim here is that African states have voluntarily consented to China's increasing economic presence in Africa. That is true. However, that is a beginning of China-Africa relations and it cannot be the benchmark for assessing China's contributions and Africa's gain. China understands the deep ideological commitment of African leaders to the values of autonomy, sovereignty and independence. These values have particularly strong resonances in light of the colonial history of many African countries, and in light of the post-colonial continuation of this legacy through Western conditionality, that is, the practice of conditioning loans or other forms of development aid on the satisfaction of certain conditions, often including human rights or rule of law demands. China's approach to Africa demonstrates its understanding that 'revolutionary ideologies' such as non-intervention and sovereignty continue to be, for African leaders, "a source of independent strength and resistance"[24] against the policies of Western countries. These ideologies shape and create realities in the way African leaders undertake their foreign policies.[25]

Second, China's massive economic involvement in Africa cannot simply be re-conceptualized or re-characterized as falling outside the realm of human rights, democracy or the rule of law. This redrawing of the boundary between the public and private spheres to exclude the economic realm from the political realm, or vice versa, has widely been recognized as one of the ways in which international financial institutions sought to insulate their problematic economic programs imposed on developing countries from criticism based on

China posits that sustainable development requires that economic development and conservation be aligned through the effective management of scarce resources, as the term "conservation" refers to the management of a limited supply of exhaustible natural resources over time. China considers that its export restraints "relate to conservation" because they are part and parcel of China's measures that manage the "limited supply of refractory-grade bauxite and fluorspar, which are exhaustible natural resources." *Id.* ¶ 7.364.

24. PETER M. BLAU, EXCHANGE AND POWER IN SOCIAL LIFE 120–21 (1964).

25. Indeed as Condoleezza Rice argues, while ideology "is clearly not a sole determinant of foreign policy preferences, [it] continues to play an important part in coloring political leaders' perceptions of their environment. It is not that ideology is a blueprint. Rather, it is a constraint upon the imagination of political leaders. It limits alternatives because some are judged to be out of the realm of the possible. Unlike capabilities, which can be acquired through effort and devotion of resources, ideology can be difficult to alter." Condoleezza Rice, *The Military as an Instrument of Influence and Control*, *in* DOMINANT POWERS AND SUBORDINATE STATES: THE UNITED STATES IN LATIN AMERICA AND THE SOVIET UNION IN EASTERN EUROPE 242 (Jan E. Triska, ed. 1986). *See also* BLAU, *supra* note 24, at 122–23.

values arising from concern for human rights, the rule of law or democracy.[26]

These institutions argued that these economic programs were technocratic and neutral since they were predicated on rationally made choices. Such thinking has since been debunked, and economic relations between countries and with international financial institutions are no longer regarded as providing a safe harbor from human rights scrutiny.[27] Such a safe harbor would ignore the progress made in dissolving and overcoming distinctions between economic and political spheres, especially in light of the imposition of neo-liberal economic reform over the last several decades.[28] In the international trade context, the Director General of the World Trade Organization (WTO), Pascal Lamy, has argued that "trade and human rights go hand in hand," and gone are the days when trade was thought of without reference to human rights norms.[29] For this reason, the World Bank would, in the first quarter of the twenty-first century, be hard pressed to argue as it did in 1969 that lending money to apartheid South Africa was consistent with its non-political mandate.[30]

Similarly, it would be simplistic to argue that China's economic investments in Africa are invariably good for human rights. Indeed, economic investment can be harmful to human rights as the history of investments in resource-rich unstable African countries demonstrates.[31] As such, arguing that foreign investment is always

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26. Anne Orford, *Locating the International: Military and Monetary Interventions After the Cold War*, 38 HARV. INT'L L.J. 443, 476 (1997).

27. Kerry Rittich, *The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social, in* THE NEW LAW AND DEVELOPMENT: A CRITICAL APPRAISAL (David M. Trubek & Alvaro Santos eds., 2006). Rittich, however, notes that notwithstanding the inclusion of goals to achieve social justice and democratic objectives within the World Bank's agenda, the "recognition of human rights has not paved the way toward a smooth incorporation of social issues into the larger economic project." *Id.* at 244.

28. *See, e.g.*, Sub-Comm. on the Promotion and Protection of Human Rights, *The Realization of Social, Economic and Cultural Rights: Globalization and Its Impact on the Full Enjoyment of Human Rights, Preliminary Report Submitted by Joe Oloka Onyango & Depeeka Udagama in accordance with Sub-Commission Resolution 1999/8*, U.N. Doc. E/CN.4/Sub.2/2000/13 (June 15, 2000), *available at* http://www1.umn.edu/humanrts/demo/Globalization_Oloka-Onyango,Udagama.pdf.

29. Pascal Lamy, Director-General, WTO, Trade and Human Rights Go Hand in Hand, Speech to UNITAR, (Sept. 26, 2010), *available at* http://www.wto.org/english/news_e/sppl_e/sppl172_e.htm.

30. James T. Gathii, *Good Governance as a Counter Insurgency Agenda to Oppositional and Transformative Social Projects in International Law*, 5 BUFF. HUM. RTS. L. REV. 107, 157 n. 98 (1999).

31. *See* sources cited *supra* note 7.

good would be eerily similar to the claims made by international financial institutions in the 1990s. At first, these institutions asserted that governmental austerity and reductions in spending were an essential part of structural adjustment and that their effects, though painful at first, were invariably good. As this assertion proved false, the institutions changed their demands.[32] Unlike in the early 1990s, economic austerity was no longer regarded as invariably good for the countries upon which it was imposed. As a result, poverty alleviation strategies became part of the World Bank's programs for poor countries.

African and other developing countries have made important claims in seeking to reshape international economic institutions, rules and practices so that they can be more beneficial to those countries.[33] It would be great if China were a collaborator in these efforts, rather than merely replacing or adding to the contemporary set of international economic governance structures under, and within, which African states operate. China can offer an economic model to African and other non-Western countries that differs from the Western neoliberal model.[34]

Chinese investment policies interfere with domestic political choices. For this reason, they have political effects in African countries that China pretends to ignore in a variety of ways. First, China's economic investments have been welcomed by African leaders as a way of limiting the political influence of Western states that comes with Western investment.[35] Clearly, political choices to welcome

32. Dani Rodrik, *Goodbye Washington Consensus, Hello Washington Confusion? A Review of the World Bank's Economic Growth in the 1990s: Learning from a Decade of Reform*, 44 J. ECON. LIT. 973 (2006).

33. James T. Gathii, *Third World Approaches to International Economic Governance*, *in* INTERNATIONAL LAW AND THE THIRD WORLD: RESHAPING JUSTICE, 255 (Richard Falk et al. eds., 2008).

34. *See* Carmen Gonzalez, *China's Engagement with Latin America: Partnership or Plunder?*, *in* NATURAL RESOURCES AND THE GREEN ECONOMY: RE-DEFINING THE CHALLENGES FOR PEOPLE, STATES AND CORPORATIONS (Elena Merino-Blanco & Jona Razzaque eds., 2012). Gonzalez notes that rather than providing an alternative economic model to Latin America, China threatens to reinforce the region's "economically disadvantageous and ecologically unsustainable specialization in the production of primary commodities . . . and to retard the evolution of more dynamic economic sectors that promise higher wages and revenues." *Id.* at 4.

35. Allan Odhiambo, *Nairobi deepens China Ties in Bid to Drive Key Sectors' Growth*, BUS. DAILY, Mar. 21, 2012, *available at* http://www.trademarksa.org/news/nairobi-deepens-china-ties-bid-drive-key-sectors-growth (noting that since 2004, the Kenyan government has increasingly turned to the East rather than the West for foreign direct investment, infrastructure development and other forms of economic cooperation). *See also* Uché U.

and promote Chinese investments at the expense of Western investments cannot simply be seen as neutral or apolitical. Second, China's investments in Africa have political effects, the most obvious being protraction of the resource curse in unstable African states. Third, I have argued that Chinese investments in Africa must be understood in the context of the non-intervention norm, which incorporates limits on interference in the economic affairs of a state.[36] To do otherwise would be to draw an unwarranted conceptual boundary of the complex and fluid relationship between politics, on the one hand, and economics, on the other. Ultimately, there is little evidence that China is offering Africa an alternative to the economic orthodoxy of neo-liberalism. The bilateral investment treaties that China is signing with African countries are copies of those used by Western countries.[37] Most importantly, as I note in Part II, China's investment strategy in Africa is not premised on promoting Africa's long-term economic growth. This investment does not offer the prospects for long-term sustained growth that China itself pursued successfully.

### *A. Disavowal of Human Rights as Chinese Soft Power*

There is a danger that China's massive economic influence vis-à-vis African countries could be masked by China's soft power—its disavowal of human rights and the restrictive and patronizing conditions that characterize access to development financing and other economic benefits from the United States and Western countries.

In contrast to Western countries, China does not condition access to concessional financing and other economic benefits on conformity with human rights norms or on a set of economically or politically restrictive demands. China argues that its Africa relations are based on the principles of political equality and reciprocity, mutual trust and benefit, common prosperity, sincerity and friendship.[38]

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Ewelukwa, *South-South Trade and Investment: The Good, The Bad and The Ugly—African Perspectives*, 20 MINN. J. INT'L L. 513, 515 (2011) (noting the "steady but gradual shift in power away from the United States and Europe").

36. *See supra* notes 15–25 and accompanying text.

37. Ewelukwa, *supra* note 35, at 571.

38. *China's African Policy*, MINISTRY OF FOREIGN AFF. OF THE PEOPLE'S REPUBLIC OF CHINA (Jan. 12, 2006), http://www.fmprc.gov.cn/eng/zxxx/t230615.htm. *See also Beijing Declaration of the Fifth Ministerial Conference of the Forum on China-Africa Cooperation*, ¶¶ 16–17, (July 20, 2012), *available at* http://www.nepad.org/nepad/knowledge/doc/2775/beijing-declaration-fifth-ministerial-conference-forum-china-africa-coopera; *China Vows Never to Change Friendship Policy Towards Africa*, FORUM ON CHINA-AFRICA COOPERATION (FOCAC) (Nov. 23, 2011), http://www.focac.org/eng/zfgx/dfzc/t880445.htm.

This approach allows China to appear to be a neutral party that, unlike its Western competitors, does not interfere in the domestic affairs of African countries. These policy positions, including China's stated commitment to non-intervention, have resulted in many African governments increasingly turning to China and other non-European, non-Western countries that have adopted similar policy stances for further economic cooperation.[39]

The African leaders who have increasingly turned towards China have expressed frustration with Western countries that explicitly exercise reward-based power in Africa. These leaders are critical of the use of conditions such as cutting off access to economic resources to punish countries that do not meet prescribed conditions, while rewarding those that meet them. Such African leaders regard China favorably because in order to trade with China they need not live under the threat of withdrawal of access to resources. By disavowing such conditions and adopting a more attractive set of principles for its African foreign policy, China has charmed its way into Africa. In effect it has adopted a soft-power approach.[40]

Under this soft-power approach, China realized the importance of values such as equality, non-interference, prestige and sovereignty among African leaders as well as their often-extreme aversion to ostracism and attacks on legitimacy. China's soft power therefore lies in strategically recognizing and appropriating a different lexicon for its Africa relations that is geared towards conferring prestige while avoiding ostracism of African governments.

Western conditionality has often enabled African governments to appropriate readily the legacy or remnants of anti-colonial nationalism to criticize Western powers. The persistence of anti-colonial nationalism within African States, even as they have rapidly embraced neo-liberalism, is both a function of the continuities of Western dominance in new forms and guises, but also a cover or sub-

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The head of Chinese delegation visiting Namibia told reporters that "sincerity, equality and mutual benefit, solidarity and common development are the principles guiding the China-Africa exchange and cooperation and the driving force behind lasting China-Africa relations." *Id. See also Forum on China-Africa Cooperation Beijing Action Plan, 2007–2009*, FOCAC (Nov. 16, 2006), http://www.focac.org/eng/ltda/dscbzjhy/DOC32009/t280369.htm; *The Fifth Ministerial Conference of The Forum on China-Africa Cooperation Beijing Action Plan, 2013–2015*, FOCAC (July 23, 2012), http://www.focac.org/eng/ltda/dwjbzjjhys/t954620.htm.

39. *See supra* note 35.

40. Joanne Wagner, *"Going Out:" Is China's Skillful Use of Soft Power in Sub-Saharan Africa a Threat to U.S. Interests?*, 64 JOINT FORCE Q. 99 (2012), *available at* http://www.ndu.edu/press/chinas-use-of-soft-power.html.

terfuge for the excesses of African governance. The continuing use of anti-colonial nationalism to critique untoward external interference, whether real or perceived, functions to raise the political costs for Western countries when they criticize African countries. China's Africa policy means that it is for the moment unlikely to be branded as a colonial overlord by African leaders.[41]

In the end, African countries are not completely switching economic, political, ideological or military patrons from the West to the East. Rather, many African countries are exploiting the arrival of China on the global scene as yet another patron to advance their own short-term interests. That is why, while the African Union has accepted the Chinese gift of a brand new Headquarters Building in Addis Ababa, it is still engaged with the West through programs such as the New Economic Partnership for African Development.[42]

The de-coupling of Chinese investment in Africa from human rights concerns enables African governments to disregard human rights in a way that reliance solely on Western investment would not permit. This de-coupling is very convenient for African politicians who are primarily concerned with demonstrating short-term gains to justify staying in office, rather than taking the trouble to create long-term growth. The time horizon for politicians to demonstrate they have done something for their citizens is within the electoral cycle rather than in the long-term. Because voters make their decisions in the short term, politicians making deals with China discount the long-term effects of their actions. In fact, Africa's economic challenges are closely associated with decisions taken for short-term political reasons to guarantee electoral vindication.

### *B. Democracy in International Economic Relations but Not Within African Countries*

While China disavows intervening politically within African countries, it nevertheless supports "democracy in international relations"[43] and claims to work towards upholding the purposes and

41. Civil society groups and opposition politicians in Africa are generally more willing to criticize the downsides of China's presence in Africa.

42. James T. Gathii, *A Critical Appraisal of the NEPAD Agenda in Light of Africa's Place in the World Trade Regime in an Era of Market Centered Development*, 13 TRANSNAT'L L. & CONTEMP. PROBS. 179 (2003).

43. *See* SOUTH AFRICAN FOREIGN POLICY INITIATIVE, OUTCOMES OF THE FIFTH MINISTERIAL CONFERENCE OF THE FORUM ON CHINA-AFRICA COOPERATION 5 ¶ 3.2 (2012), *available at* http://www.safpi.org/sites/default/files/publications/SAFPI_Compilation_01-

principles of the United Nations.[44] China's relations with Africa are based on a statist model. China negotiates with African States rather than with civil society groups or other non-State actors. While China and African countries argue that China's interests in Africa are for the benefit of African people, the assumption here that African States are invariably acting in the interest of African peoples is not always accurate.[45] Dealing directly with African States enables China to benefit from contractual and other deals negotiated without much transparency or accountability.[46]

Given that human rights fall within the purposes and principles of the United Nations, it is plausible to argue that China's disavowal of human rights in its relations with African countries may in certain cases result in acquiescing to massive violations of human rights by African governments. China's choice not to make human rights part of its engagement with Africa makes it a very attractive partner to African governments who are very wary of foreign countries pointing out their human rights violations.

Perhaps for this reason, China re-evaluated its stance in Sudan where it initially claimed that its investment in the oil industry there was simply economic.[47] Subsequently, China appointed an emissary to address the genocide going on in Darfur.[48] The Darfur case does

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44. *Id.* at 5 ¶ 3.1.

45. *See* Ewelukwa, *supra* note 35, at 568 ("In part because of China's state-centric approach to African diplomacy, much secrecy surrounds China's day to day activities in the region from negotiations for important contracts to their eventual execution. Secrecy is especially damaging in the South-South context because presently most of the activities implicate natural resources where human rights and environmental pollution are rife and where long-term development goals could be compromised with the stroke of a pen.").

46. *Bribe Payers Index 2011: When China Goes Shopping Abroad*, TRANSPARENCY INT'L (Oct. 31, 2011), *available at* http://blog.transparency.org/2011/10/31/when-china-goes-shopping-abroad-new-pressure-for-corporate-integrity (detailing details of corruption involving Chinese companies in Africa). *See also* PETER ROSENBLUM & SUSAN MAPLES, CONTRACTS CONFIDENTIAL: ENDING SECRET DEALS IN THE EXTRACTIVE INDUSTRIES 15 (2009) (noting that "contract transparency is essential for the responsible management of natural resources and the potential for growth and economic development that those resources can provide"). By contrast, the report notes that "without contract transparency, fears of the worst flourish, and mistrust and conflict are magnified among stakeholders." *Id.* at 16.

47. Gaafar Karrar Ahmed, *The Chinese Stance on the Darfur Conflict* (South African Inst. of Int'l Aff., Occasional Paper No. 67: China in Africa Project, 2010), *available at* www.humansecuritygateway.com/documents/SAIIA_TheChineseStanceontheDarfurConflict.pdf.

48. *Id.* (describing China's shift in policy from unconditional support for Sudan to a

not, however, represent a shift in China's adamant position not to engage in human rights diplomacy or conditionality in its African relations.[49]

### *C. Reinforcing the Resource and Borrowing Privileges*

By delinking its economic involvement from concern for human rights, China effectively reinforces the ability of undemocratic leaders in Africa to contract away African resources with little or no accountability while borrowing unlimited amounts of money, in essence further mortgaging Africa's future. The importance of accountability is underlined by the fact that for the most part African countries earn only one percent of their GDP from the extraction of minerals from their countries even though minerals account for seventy percent of their total exports.[50] In 2007, China imported thirty percent of its oil from African countries.[51] Since China is the leading importer of mineral resources from Africa, the benefits of these increased flows will only go to the small sub-set of African countries that have large mineral and oil deposits.[52]

One of the dangers to human rights posed by China's massive interest in African natural resources in countries with very poor governance is what is referred to as the resource curse.[53] Countries expe-

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more nuanced position starting in mid-2004 reflected in part by the appointment of a Special envoy for African affairs who would be responsible for Darfur affairs). *See also* Explanatory Statement by Chinese Ambassador Wang Guangya on the Vote on Security Council Resolution on Darfur, Sudan (Mar. 8, 2006), *available at* http://www.china-un.org/eng/chinaandun/securitycouncil/regionalhotspots/africa/darfur/t269767.htm ("China continues to support firmly the peace process in Sudan and the relevant decisions of the African Union in this regard. We call upon all major parties to act in a good faith, show mutual respect and understanding, continue to conduct frank dialogue, increase mutual trust and reinforce cooperation, so as to create good political conditions for the final settlement of the Darfur issue.").

49. Notably, I do not presume that human rights conditionality as undertaken by Western countries is the path that China-African relations should take to promote human rights. I outline my proposed approach in Part II below.

50. Avantika Chilkoti, *Africa's Extractive Industries: Dividing the Spoils*, FIN. TIMES (Oct. 17, 2012, 8:51 AM), http://blogs.ft.com/beyond-brics/2012/10/17/africas-extractive-industry-dividing-the-spoils/.

51. IFEOMA EZEOKAFOR ET AL., HUNTING OVERSEAS: CHINA'S ENERGY NEEDS AND EFFECTS ON OTHER DEVELOPING COUNTRIES 7 (2007).

52. Uche Ewelukwa Ofodile, *Trade, Empires, and Subjects—China-Africa Trade: A New Fair Trade Arrangement, or The Third Scramble for Africa?*, 41 VANDERBILT J. TRANSNAT'L L. 505, 536 (2008).

53. PAUL COLLIER & BENEDIKT GODREIS, COMMODITY PRICES, GROWTH, AND THE

riencing the resource curse have high foreign investment in their extractive sectors and weak governance structures. Poor governance, in turn, allows for corruption or rent-seeking behavior on the part of mineral extraction firms. In essence, poor governance allows companies to get a sweet deal on mineral extraction by bribing officials or avoiding government regulation. This allows for the sellers to maintain a high margin while maintaining a low market price on the world market.

The ability of a government, regardless of how it came to power, to borrow on behalf of the entire country, and, in turn, give international legal validity to the debt has been referred to as the "international borrowing privilege."[54] According to Thomas Pogge, the international borrowing privilege hinders the development of democracy in developing countries in three ways. First, it allows an undemocratically elected government to remain in power even where there is opposition with popular support. This is because such governments can acquire funds from outside the country at low rates. In such cases, leaders have no need to rely on taxable income to sustain the national income base. Second, since there is no global way to ensure that the current government came to power democratically, it increases the risk of a coup or revolution as an incentive is created to grab power and inherit the borrowing privilege. Finally, it hinders the ability of any democratically elected government to govern effectively, as they will be saddled with debt acquired from the previous regime resulting in reduced ability to enact legal reforms necessary for running a country.[55]

This borrowing privilege also means that rulers do not have to rely on taxation to run the country. For this reason, continuously low wages and low wage growth are not as much of a concern as in democratic countries. In essence, the borrowing privilege allows corrupt, non-democratic governments to indebt their countries and future governments even though much of the borrowed money may very well end up lining the pockets of corrupt leaders.

The international borrowing privilege gives unaccountable leaders "the power to effect legally valid transfers of ownership rights" in natural resources.[56] A government that comes to power through a coup, junta or any other illegal means is able to sell the

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RESOURCE CURSE: RECONCILING A CONUNDRUM 2 (2009), *available at* http://users.ox.ac.uk/~econpco/research/pdfs/CommodityPricesGrowthV1-1.pdf.

54. THOMAS POGGE, WORLD POVERTY AND HUMAN RIGHTS 120 (2d ed. 2008).

55. *Id.*

56. *Id.* at 119.

country's natural resources to third parties. These third parties inherit all of the legal rights to the resources and are protected under international law from anyone challenging their rights to the possession of such resources.[57]

Another danger with nontransparent Chinese investments in Africa is that they are likely to provide a platform for opposition politics and the accompanying prospect of mass protests that may trigger political crises, as in certain resource-rich Latin American countries. There are already opposition politicians who employ such tactics in countries such as Zambia and Namibia.[58] The challenge here is that, given the massive demand for African resources, particularly from China, mass protests could become a normalized form of political voice which comes with the increased propensity to create instability and trigger descent into political disarray.[59]

In short, countries rich in mineral resources without strong institutions have high levels of corruption and conflict, low levels of economic growth and weak development of human resources.[60] That is why having China commit to important principles of extractive industry governance remains crucial. There are many options China could look to, including the Extractive Industries Transparency Initiative (EITI). The EITI is a multi-stakeholder initiative of governments, companies and civil society groups that promotes transparency in the taxes and royalties paid for extractive resources.[61] Under

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57. *Id.*

58. *The Chinese in Africa: Trying to Pull Together*, ECONOMIST, Apr. 20, 2011, http://www.economist.com/node/18586448. *See also* Alex Thurston, *Zambia's Sata Has African Incumbents, and China on Edge*, WORLD POL. REV., Oct. 3 2011, http://www.worldpoliticsreview.com/articles/10200/zambias-sata-has-african-incumbents-and-china-on-edge (analyzing how the opposition leader, Michael Sata, electorally defeated the incumbent president in Zambia by running on a popular anti-China platform, coming in the wake of the mine riots). In Lesotho, the opposition All Bathoso Convention (ABC), a populist political party, has gained popular support as Chinese traders begin displacing African traders. *See Lesotho: Anti-Chinese Resentment Flares*, IRINNEWS.ORG, Jan. 24, 2008, http://www.irinnews.org/Report/76405/LESOTHO-Anti-Chinese-resentment-flares.

59. *See* Mason Moseley et al., *The Normalization of Protest in Latin America*, 42 AM. BAROMETER INSIGHTS 1, 5 (2010), *available at* http://www.vanderbilt.edu/lapop/insights/I0842en.pdf.

60. Barbara Hogenboom & Alex E. Fernández Jilberto, *The New Left and Mineral Politics: What's New?*, 87 EUR. REV. LATIN AM. & CARIBBEAN STUD. 93, 99 (2009), *available at* http://www.cedla.uva.nl/50_publications/pdf/revista/87RevistaEuropea/87-HOGENBOOM&FERNANDEZJILBERTO-ISSN-0924-0608.pdf.

61. *See Extractive Industry Transparency Initiative ("EITI")*, http://www.re-assurance.co.uk/resource-centre/sector-specific-initiatives/the-extractive-industries-transparency-initiative-%28eiti%29/ (last visited Apr. 9, 2013). *See also The EITI*

this initiative, Chinese companies would publish what they pay for all oil, gas and mining activities. This "publish what you pay" approach is intended to ensure that citizens of resource-rich countries benefit from their natural wealth.

My claim in this sub-part of the essay has been that Chinese investment policies, particularly in resource-rich African countries, have a propensity to destabilize fragile states and to encourage corruption and disregard for human rights. In my view, this would further reinforce the resource curse and resource privilege already prevalent in these countries.

## II. STRUCTURAL TRANSFORMATION AS THE BEST GUARANTEE FOR HUMAN RIGHTS IN THE LONG-TERM

In this Part of my response, I argue that Webster's essay suffers from a lack of imagination regarding the broad range of possibilities for re-characterizing the relationship between China and Africa. Altering the terms according to which China invests in Africa with a view to promoting long-term economic growth could lift millions from poverty and definitively improve human rights conditions. Webster does not tell us how Africa can take advantage of its economic relations with China to improve human rights in a sustainable way over the long-term. To improve human rights conditions in Africa requires doing there what China has done over the last several decades at home: structurally transforming from an agrarian to an industrial economy that produces manufactured goods and services.[62] China has accomplished this transition by embracing foreign investment as a conduit for "learning by doing."[63] As part of their investments in China foreign enterprises transferred managerial and export marketing technology. China is well poised to do the same for Africa, particularly in science, engineering and technology and thus greatly aid in this process.[64]

While China has certainly contributed to some economic

*Principles and Criteria*, http://eiti.org/eiti/principles (last visited Apr. 9, 2013).

62. Oyejide Titiloye Ademola et al., *China-Africa Relations: Insights from AERC Scoping Studies*, 21 EUR. J. DEV. RES. 485, 488 (2009).

63. Chung Chen et al., *The Role of Foreign Direct Investment in China's Post-1978 Economic Development*, 23 WORLD DEV. 691, 700 (1995).

64. Calestous Juma, *The China-Africa Bond: Science, Technology and Engineering Diplomacy*, CAIJING ANN. EDITION: FORECASTS & STRATEGIES 171 (2012), *available at* http://belfercenter.hks.harvard.edu/files/caijing-2012-juma-china-africa-eng.pdf.

growth in countries that have oil and minerals, this contribution will only increase Africa's dependency on exporting low-cost raw materials.[65] Oil and mineral exports should not take the place of the industrialization of African economies. In addition, resource-induced growth in a number of African countries is hardly shared equitably because of the kind of governance problems described in Part I. This does not augur well for human rights in Africa in the long haul. Not only is demand for extractive resources such as oil and minerals highly volatile, but these resources are also finite and exports to fulfill China's huge demand are concentrated in only a handful of African countries.[66] Further, commodity booms will not last into the future, and China well understands this as evidenced by export restrictions on its own natural resources and rare earth minerals.[67] Africa will have to create self-sustaining growth to best guarantee the enjoyment of human rights.

To do so, African countries must move away from resource dependency towards exporting high-value products and services. African countries must pursue innovation-seeking investments and not remain content with resource- and market-seeking investments from China and elsewhere.[68] There must also be productivity-enhancing technology transfers[69] in the manufacturing and services sectors with a view to laying a long-term economic and social foundation on which human rights can thrive. As the United Nations Development Program noted in its 2001 Human Development Report, *Making New Technologies Work for Human Development*, policy rather than char-

65. Jacob Zuma, the current South African President, has also declared that China's current economic relations with Africa are not sustainable in the long-term. *See* Leslie Hook, *Zuma Warns on Africa's Ties to China*, FIN. TIMES (July 18, 2012), http://www.ft.com/intl/cms/s/0/33686fc4-d171-11e1-bbbc-00144feabdc0.html#axzz2AiOJONlA.

66. These countries are Sudan, Congo, Angola, Zambia and South Africa. *See* Ademola et al., *supra* note 62, at 491.

67. *See* Julia Ya Qin, *Reforming WTO Discipline on Export Duties: Sovereignty Over Natural Resources, Economic Development and Environmental Protection*, 46 J. WORLD TRADE 1147, 1175–76 (2012).

68. Simon Zadek et al., *Business in Africa: Chinese Business Leaders' Perspectives on Performance & Enhancement Opportunities* 46 (Corporate Social Responsibility Initiative, Working Paper No. 54, 2009), *available at* http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_54_zadeketal.pdf.

69. The World Intellectual Property Organization (WIPO) defines technology transfers as "a series of processes for sharing ideas, knowledge, technology and skills with another individual or institutions . . . and of acquisition by the other of such ideas, knowledge, technologies and skills." WIPO Standing Committee on the Law of Patents, Transfer of Technology, No. SCP/14/4/REV (Apr. 13, 2009), *available at* http://www.wipo.int/edocs/mdocs/scp/en/scp_16/scp_14_4_rev.pdf.

ity will be more significant in determining whether new technologies become a tool for human development.[70]

There is no evidence that African countries are systematically negotiating joint ventures in infrastructure and other technology-intensive projects being undertaken by Chinese firms in Africa with the purpose of enhancing human development and in effect reducing poverty and increasing respect for human rights. Instead, some African governments are negotiating resources for infrastructure projects under which African governments exchange resources in return for infrastructure built by the Chinese.[71] These countries are missing out on the significant opportunity that China, and indeed other foreign investors, offer to developing domestic technological and other capacities that African countries do not currently have.[72] China's involvement gives African countries a significant opportunity to aim systematically for technological change and to support the innovative capacity of African firms by learning from Chinese firms. This will require African governments to take advantage of China's massive needs for African resources and markets to accumulate domestic technological capabilities through joint ventures that present opportunities for borrowing, learning and imitation. The idea here is that these relationships will help African countries build new production structures that would have high-value addition.[73]

In 2008, a variety of Chinese entities in Africa completed over 3,000 engineering contracts funded by African governments and

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70. U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT: MAKING NEW TECHNOLOGIES WORK FOR HUMAN DEVELOPMENT (2001), *available at* http://hdr.undp.org/en/reports/global/hdr2001/.

71. Vivian Foster et al., *Building Bridges: China's Growing Role as Infrastructure Financier for Sub-Saharan Africa: Executive Summary*, http://siteresources.worldbank.org/INTAFRICA/Resources/BB_Final_Exec_summary_English_July08_Wo-Embg.pdf. For criticism of resources for infrastructure deals see Nathan W. Meyers, *China's Dangerous Game: Resource Investment and the Future of Africa*, INT'L POLICY DIGEST, Oct. 29, 2012, *available at* http://www.internationalpolicydigest.org/2012/10/09/chinas-dangerous-game-resource-investment-and-the-future-of-africa/.

72. I do not presume that African countries will necessarily follow China or other countries on a linear path towards industrialization. However, I do believe China has much to offer African countries to meet their long-term needs based on China's experience and expertise that African governments have done little to capitalize on effectively. On the variety of paths available to technology proficiency, see U.N. INDUSTRIAL DEVELOPMENT ORGANIZATION, INDUSTRIAL DEVELOPMENT REPORT 2002–2003: COMPETING THROUGH INNOVATION AND LEARNING (2003).

73. For a comparative experience, see Mario Cimoli & Jorge Katz, *Structural Reforms, Technological Change and Economic Development: A Latin American Perspective*, 12 INDUS. & CORP. CHANGE 387 (2003).

banks.[74] In essence, African countries have enormous opportunities to develop technical expertise that can produce high-value export products and services through these contractual arrangements. An early empirical study in the manufacturing sector has concluded that Africa's trade openness with China is unlikely to raise economic growth and living standards.[75] This is not good news for human rights in Africa.

China's massive involvement in African infrastructural development alone presents important opportunities for developing productive capacity through joint ventures that transfer technology in engineering, construction and related fields. In fact, for Africa to develop productivity-enhancing manufacturing that would compete with enterprises in countries like China, African countries must structure mutually beneficial deals with Chinese firms and firms from developed economies. Such deals could include joint ventures that effectively transfer the technology and skills to African firms. Furthermore, Chinese firms can help African firms add value to African exports and to "position themselves to benefit from world markets, not least the rapidly expanding Chinese market."[76] China and Taiwan have vast experience in getting their enterprises to compete in important global value chains. In Lesotho, for example, Taiwanese firms have successfully exploited the opportunities presented by the African Growth and Opportunity Act to gain access to the U.S. textile market.[77] The challenge for governments like Lesotho is to translate the presence of foreign-owned corporations in their economies into the development of large-scale production capabilities, as well as new capabilities "to produce increasingly sophisticated goods and devices"[78] that have higher profit margins and less elastic demand than the commodities that predominate Africa's exports.

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74. China's Growing Role in Africa: Implications for U.S. Policy: Hearing Before the Subcomm. on African Affairs of the S. Comm. on Foreign Relations, 112th Cong. 13-24 (2011) (testimony of Deborah Brautigam, Professor at American University).

75. Juliet U. Elu & Gregory N. Price, *Does China Transfer Productivity Enhancing Technology to Sub-Saharan Africa? Evidence from Manufacturing Firms*, 22 AFR. DEV. REV. 587, 595 (2010).

76. Jian-Ye Wang & Abdoulaye Bio-Tchané, *Africa's Burgeoning Ties With China: Maximizing the Benefits of China's Increasing Economic Engagement With Africa*, 45 FIN. & DEV., 44, 44 (2008).

77. Lawrence Edwards & Robert Lawrence, *Agoa Rules: The Intended and Unintended Consequences of Special Fabric Provisions* (Nat'l Bureau of Econ. Research, Working Paper No. 16623, 2010), *available at* http://www.hks.harvard.edu/fs/rlawrence/w16623.pdf.

78. *Id.* at 4.

Let us take the road construction industry as an illustration of how heavy outlays of Chinese firms in Africa can help develop new technological and engineering experience and expertise for African firms. In many African countries, in the last several decades, large infrastructural contracts were awarded to locally-owned firms that did not have the technology, experience and expertise to undertake the projects.[79] Locally-owned firms were protected from foreign firm competition through shadowy procurement processes in which government bureaucrats got handsome kickbacks.[80] These locally-owned firms had no incentive to employ qualified engineers or other skilled personnel. These firms rarely invested in high-end road building technology. As a result, many African countries did not take advantage of the opportunities that experience in road building created in earlier decades. In the meantime, engineering and science[81] education in many African countries has lagged far behind nationally set goals to structurally transform African economies, and has failed to keep up-to-date with engineering education for the twenty-first century.[82] For example, Kenya is estimated to have a shortage of 30,000 engineers and 90,000 electricians.[83]

The Chinese presence in Africa therefore offers an excellent opportunity for technology and skills transfers in construction projects. These transfers could go beyond road building to construction

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79. *See* Andrew Teyie, *You will go to jail, "Cowboy" contractors told*, E. AFR. STANDARD, Jan. 30, 2003, at 1; *see also Raila Defends Influx of Chinese Road Workers*, TRADEMARK SOUTH AFRICA (May 27, 2011), http://www.trademarksa.org/news/raila-defends-influx-chinese-road-builders.

80. GLOBAL WITNESS, TRANSPARENCY MATTERS: DISCLOSURE OF PAYMENTS TO GOVERNMENTS BY CHINESE EXTRACTIVE COMPANIES (2013), *available at* http://www.globalwitness.org/sites/default/files/library/transparency_matters_lr.pdf (giving a balanced account of Chinese companies that have been involved in corruption and those that have made extensive disclosures).

81. *See generally* ROBERT PAARLBERG, STARVED FOR SCIENCE: HOW BIOTECHNOLOGY IS BEING KEPT OUT OF AFRICA (1st ed. 2008).

82. F. C. Nyongesa, *Engineering Board Living in a Time-Warp*, DAILY NATION (Oct. 25, 2012) http://www.nation.co.ke/oped/Opinion/Engineering+Board+living+in+a+time+warp/-/440808/1598204/-/op1c9u/-/index.html. There is Chinese-African engineering education cooperation underway. *See Memorandum of Understanding Signed Between China and Africa on Engineering Education Cooperation*, AFR. ENGINEERING EDUC. ASSOC., http://www.aeea.co.za/H/china_aeea.html (last visited Apr. 9, 2013).

83. *AfDB (African Development Bank) and Kenya Sign Multi-Million Dollar Loan Agreement to Finance Hydroelectric Power Project and Enhance Higher Education*, AFR. DEV. BANK (Dec. 6, 2012), http://www.afdb.org/en/news-and-events/article/afdb-and-kenya-sign-multi-million-dollar-loan-agreement-to-finance-hydroelectric-power-project-and-enhance-higher-education-10099/.

of dams, ports and buildings. Indeed, they could extend to such fields as agriculture, information and communications technology and biotechnology.[84] Africa's *Mining Vision* envisages using natural resources as a nucleus for strategic infrastructural development in areas such as energy, water and sanitation.[85] The African Union has encouraged African countries to consider equity participation in mineral agreements with foreign investors as a way of a greater share of benefits for African people.[86] China in part emerged as a leading economy by developing a manufacturing or value-adding capacity through joint ventures with foreign firms while undertaking the types of initiatives contemplated in Africa's *Mining Vision.* To date, entry into the Chinese market for foreign firms is highly conditional: foreign corporations in China must comply with strict Chinese restrictions on what particular entity forms may or may not do.[87] China's investment laws require foreign investments to be mutually beneficial for China.[88] However, this mutual benefit condition that appears in China's domestic joint venture law does not apply to Chinese investments overseas.[89]

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84. Juma, *supra* note 64.

85. *See, e.g.*, AFRICAN UNION, AFRICA MINING VISION 4 (Feb. 2009), *available at* http://www.africaminingvision.org/amv_resources/AMV/Africa%20Mining%20Vision%20english.pdf.

86. Paragraph four of the Addis Ababa Declaration, African Union [AU], *Addis Ababa Declaration on Building a Sustainable Future for Africa's Extractive Industry—From Vision to Action* (Oct. 12–16, 2011), *available at* http://www.africaminingvision.org/amv_resources/AMV/Declaration%20Second_Final.pdf, calls on "Member States to explore equity participation in mineral ventures so as to capture a greater share of the benefits for the people of Africa."

87. *See Starting a Business in China*, DOINGBUSINESS.ORG, http://www.doingbusiness.org/data/exploreeconomies/china/starting-a-business (last visited Apr. 13, 2013); *see also Full Text: Situation and Policies of China's Rare Earth Industry*, CHINAMINING.ORG, http://www.chinamining.org/Policies/2012-06-20/1340183728d57513.html (last visited Apr. 13, 2013) (discussing the Chinese government's policies over the production and export of "rare earths").

88. *See* Law of the People's Republic of China on Foreign-related Economic Contracts (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 21, 1985, effective July 1, 1985), art. 1, *available at* http://www.chinamining.org/Policies/2006-07-18/1153207665d22.html; Law of the People's Republic of China on Chinese-foreign Equity Joint Ventures (promulgated by the Standing Comm. Nat'l People's Cong., July 1, 1979, and revised Apr. 4, 1990 and Mar. 15, 2001), art. 1, *available at* http://www.chinamining.org/Policies/2006-07-18/1153206834d18.html.

89. *See* Law of the People's Republic of China on Chinese-Foreign Joint Ventures (promulgated by the Standing Comm. Nat'l People's Cong., July 1, 1979, revised Apr. 4, 1990 and Mar. 15, 2001), *available at* http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=51032. This law was adopted on July 1, 1979. The law has been

It is therefore paradoxical for China to argue that its investment strategy in Africa is also based on the principle of mutual benefit.[90] Apparently what is good for China in China is not good enough for China's investments in Africa. African governments must be vigilant to make sure China follows through on its mutual benefit promise. One of the best ways for Chinese-African relations to be mutually beneficial is to ensure that Africa receives the technology and skills that build productivity enhancing opportunities. Since China has shown a willingness to disregard promises to ensure mutual benefit, African governments must be vigilant. Enhancing firm-level skills and technology would go a long way towards production for exports. This would in turn help African economies grow on a sustainable basis. Such a strategy would create middle-class jobs and lift many Africans out of poverty. In fact, as Webster argues, China has addressed poverty quite effectively through precisely such a strategy.[91] When African countries fail to take advantage of paths to acquire technology and skills that China's relationship presents, they undermine their ability to address their human rights challenges. African countries should use the leverage of access to their natural resources to structure investment and trade agreements with China and foreign investors. These agreements would help African countries build research and development capacities, acquire new management capabilities for their firms as well as advanced technology and new products with a view to creating competitive advantages and finally increase developing country firm reputation from famous brands.

This two-pronged strategy—conditioning access to natural resources on skills transfer and permitting foreign ownership of business entities in exchange for skills transfer—is one of the paths available to so-called "late industrializers." In recent decades, late industrializers in Central and South America have allowed foreign investment in manufacturing and other sectors as an opportunity for technological learning and as a conscious mechanism for nurturing productivity and growth.[92] Countries like Mexico, Argentina and Chile developed reciprocity mechanisms to take advantage of such foreign ownership of technology firms to subsidize technology learning and managerial skill formation at firm levels and human capital

amended twice, most recently in October 2000.

90. *See China's Initiation of the Five Principles of Peaceful Co-Existence*, MINISTRY OF FOREIGN AFF. OF THE PEOPLE'S REPUBLIC OF CHINA, (Nov. 17, 2000), *available at* http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18053.htm.

91. Webster, *supra* note 1, at 649–60.

92. ALICE H. AMSDEN, THE RISE OF THE REST 286 (2001).

development. Reciprocity was the link between government support and industrial performance.[93] As interventionist States, these late industrializers restricted this support to firms that achieved quality and performance standards such as deepening local research and development, fostering technology transfers or improving managerial skills. This support was monitored and winners were rewarded with more support, for example, subsidized credit to support technology acquisition. Losers were punished through the withdrawal of such support. A good example to illustrate the success of this strategy is the South Korean High Speed Rail Construction Authority, which entered into a consortium with a Franco-British firm to build high-speed rail. A major purpose of the consortium was to transfer technology skills in aerodynamic, civil, mechanical and automation engineering that could subsequently be applied in other sectors of the Korean economy.[94] In addition, the Korean company took advantage of this multi-billion dollar, forty-six high-speed train, project to emerge as the leader in high-speed rail in Asia.[95]

The importance of developing productive capacities is recognized in the Programme of Action for Least Developed Countries (LDCs) for the Decade 2011–2020, from the Fourth United Nations Conference on the Least Developed Countries (referred to as the Istanbul Plan of Action (IPoA)).[96] Since more than three-quarters of the forty-eight LDCs are African countries, this agenda of improving their productive capacity with a view to improving their human and social development is particularly important to them. IPoA acknowledges that LDCs have the primary responsibility for their own development, while calling on their development partners such as China to

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93. *Id.* at 292–93. Amsden divides late industrializers into two groups—those who industrialized by pursuing an "independent" strategy of technological acquisition such as China, India, Taiwan and Korea which sought to create a national technological base; and those that pursued an "integrationist" strategy that brought in foreign firms to facilitate technological learning like Chile, Argentina and Mexico. *Id.* at 14. An integrationist strategy was followed in countries that did not have experience with technology. In this sense, it would seem African countries, given their lack of experience with technology, are more likely to develop such capacities through an integrationist approach.

94. *See Alstom in Korea*, ALSTOM (May 2012), http://www.alstom.com/Global/Group/Resources/Documents/Factsheets/Korea.pdf (describing the variety of projects in addition to the high speed rail that the consortium has undertaken).

95. *See* Daniel Rouach & David Saperstein, *Alstom Technology Transfer Experience: The Case of the Korean Train Express (KTX)*, 3 INT'L J. TECH. TRANSFER & COMMERCIALISATION 308 (2004).

96. Fourth United Nations Conference on the Least Developed Countries, Istanbul, Turk., May 9–13, 2011, *Programme of Action for the Least Developed Countries for the Decade 2011–2020*, U.N. Doc. A/Conf.219/3/Rev.1 (May 23, 2011).

"renewed and strengthened global partnership."[97] IPoA further notes the importance of strengthening the private sector in LDCs as well as the building of technological capacity as ways of "overcoming their marginalization."[98] IPoA identifies the following goals and targets with respect to improving the productive capacity in LDCs:

- Increase significantly the value addition in natural resource-based industries paying special attention to employment generation;
- diversify local productive and export capability with a focus on dynamic value added sectors in agriculture, manufacturing and services;
- strive to increase total primary energy supply per capita to the same level as other developing countries;
- strive to increase access to telecommunication services and strive to provide 100 per cent internet by 2020;
- significantly increase the share of electricity generation through renewable energy sources by 2020;
- enhance capacities in energy production, trade and distribution with the aim of ensuring access to energy for all by 2030;
- ensure that the least developed countries have significant increase in combined rail and paved road mileage and sea and air networks by 2020.[99]

Virtually all African countries, whether they are an LDC or not, have formulated Vision 2020 or 2030 plans that mirror these goals.[100] These Vision Plans all aim to structurally transform African

97. *Id.* ¶ 10.

98. *Id.* ¶¶ 28(a), 26(g).

99. *Id.* ¶¶ 45(a)–(g).

100. *See, e.g.*, KENYA VISION 2030, http://www.vision2030.go.ke (last visited Mar. 12, 2013); *Vision 2030*, NAT'L PLAN. COMM'N, http://www.npc.gov.na/vision/vision_2030bgd.htm (last visited Mar. 12, 2013); *Ghana: Vision 2020 Minus 2015 Minus Vision 2010*, MODERN GHANA (Mar. 15, 2011), http://www.modernghana.com/news/320465/1/ghana-vision-2020-minus-2015-minus-vision-2010.html; INT'L FOOD POLICY RESEARCH INST., 2020 VISION NETWORK FOR EAST AFRICA, COUNTRY NOTE UGANDA (1998), *available at* www.ifpri.org/sites/default/files/pubs/2020/nw/uganda.pdf. For Uganda, the goal is "to accelerate socio-economic transformation to achieve the National Vision of a transformed Ugandan society from a peasant to a modern and prosperous country within 30 years." NATIONAL PLANNING AUTHORITY OF THE REPUBLIC OF UGANDA, NATIONAL

economies within the next several decades from agrarian economies or economies dependent on mineral or oil extraction to industrial economies. There is also an African Manifesto for Science, Technology and Innovation, a multi-stakeholder initiative that promotes sustainable development in Africa through the use of science, technology and innovation.[101] African leaders must take advantage of China to "strengthen the institutional and managerial capacities and the productivity of small and medium-sized enterprises."[102]

These objectives can be met in a variety of ways. For instance, African firms could participate in joint ventures with Chinese firms that use technology at different levels: in the day-to-day planning and management, in the design of projects and in the implementation and management of projects where Chinese technology and knowledge is actually used. African countries can also work with Chinese firms and the Chinese government to finance acquisition of technologies that would enable African firms to become independent and successful competitors, capable of undertaking the large infrastructural and construction projects currently being completed by Chinese and non-African firms.

In addition, China could enhance its support for scientific, technical and vocational education and training in Africa with a variety of programming. Increased and sustained Chinese financial support for these types of initiatives would be critical to ensuring that African countries acquire the technology to industrialize as China did.[103] Africa's current relations with China are likely to replicate its relations with Western countries and, as such, close off paths to industrialization unless they are re-oriented.

Further, agriculture could also benefit from China's efforts to develop a productive sector in Africa. China achieved food sufficiency in part by integrating its agricultural sector with other sectors as part of its state-led, market-driven farmer-based model. This

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DEVELOPMENT PLAN 1 (2010), *available at* http://npa.ug/docs/NDP2.pdf.

101. AFRICAN TECHNOLOGY STUDIES PROJECT, THE AFRICAN MANIFESTO FOR SCIENCE, TECHNOLOGY AND INNOVATION (2010).

102. *Programme of Action for the Least Developed Countries for the Decade 2011–2020*, *supra* note 96, ¶ 55(2)(b).

103. Since China is now a member of the World Trade Organization, it is also bound by the commitments in the Trade Related Intellectual Property Rights Agreement (TRIPS) which in Article 66.2 provides for technology transfers to LDCs. Article 67 calls for technical assistance. On the initiatives to support technology transfer reporting under Article 66 of TRIPS, see SUERIE MOON, MEANINGFUL TECHNOLOGY TRANSFER TO THE LDCS: A PROPOSAL FOR A MONITORING MECHANISM FOR TRIPS ARTICLE 66.2 (2011).

model combined China's "advanced agricultural science and technology knowledge system."[104] Linking system-wide improvements and reforms in agriculture to the creation of productivity-enhancing technology transfers between China and Africa has the potential to inure to the benefit of agriculture, the largest source of employment in Africa. China's positive experience in "productivity-based staple crop-led agricultural development" could help unlock a huge potential mechanism for sustainably addressing human rights challenges.[105] The African agriculture sector provides a labor-intensive area of the economy that, by following the Chinese model, has a large potential for high-value addition through continual technology innovation.[106] Just as in the mineral sector, this will require moving towards value-added agricultural production techniques through technological learning, entrepreneurship and innovation which African agricultural research centers and universities can bring to farmers.[107] African governments will therefore have to do more than simply reduce the cost of doing business, but also must become active facilitators of technological learning.[108]

Many African governments may not have the capacity to negotiate the complex and innovative contracts, syndications or project valuations involved in resource extraction and other large projects. This lack of capacity may hinder the governments in becoming active facilitators of technological learning. This is not an insurmountable problem. The World Bank has established funds and programs to address this shortcoming.[109] The African Development Bank (AfDB) is doing its part funding projects to support science, technology and innovation.[110] In addition, there is a large pool of African experts in

104. LI XIAOYUN ET AL., AGRICULTURAL DEVELOPMENT IN CHINA AND AFRICA: A COMPARATIVE ANALYSIS 51 (2012).

105. *Id.*

106. *Id.* at 262.

107. For another excellent proposal to reform African agriculture through innovation, see CALESTOUS JUMA, THE NEW HARVEST: AGRICULTURAL INNOVATION IN AFRICA (2011).

108. Calestous Juma, *Innovation Key to Unlocking Africa's Horticultural Potential*, FRESHFRUITPORTAL.COM (Aug. 23, 2012), http://www.freshfruitportal.com/opinion-innovation-is-key-to-unlocking-africa%E2%80%99s-horticultural-potential.

109. Press Release, World Bank, World Bank Launches New Fund to Help African Countries Negotiate Best-Possible Deals for their Oil, Gas, and Minerals, (Oct. 5, 2012), *available at* http://www.worldbank.org/en/news/2012/10/05/world-bank-launches-fund-african-countries-negotiate-deals-for-oil-gas-minerals.

110. *AfDB (African Development Bank) and Kenya Sign Multi-Million Dollar Loan Agreement to Finance Hydroelectric Power Project and Enhance Higher Education*, AFRICAN DEV. BANK (Dec. 6, 2012), http://www.afdb.org/en/news-and-events/article/afdb-

the private and inter-governmental sectors as well as agencies such as the United Nations Conference on Trade and Development (UNCTAD) that can provide the requisite expertise to negotiate and seal such deals.

So far, I have argued that there are at least two types of governance issues that intersect with Chinese investment in Africa. First, as discussed in Part I, the resource curse divorces governments from the people they govern and this, in turn, facilitates corruption. This curse inhibits African governments from negotiating deals that would lead to long-term economic growth, and more importantly, to the economic empowerment of Africans citizens. Second, quite frequently, governments lack the technical capacity to negotiate deals that would provide such growth. Where this capacity is available, professionals lack the autonomy to negotiate and structure investment agreements that would help African countries take advantage of the technological skills of foreign investors and turn them into a source of competitive advantage.

To overcome these challenges and to improve human rights in the long-term, China's engagement in Africa has to be retargeted towards increasing economic growth. This retargeting is the best long-term solution to widespread poverty and human rights challenges. At the moment, the primary orientation of China's interest in Africa is extracting resources from the continent and sending its enterprises, professionals and products to Africa. This Chinese investment strategy does not satisfy African desires or needs. Growing African economies through joint ventures and productivity-increasing investments is the best guarantee to improve social and economic conditions. This is exactly what China has done at home. It has invested heavily in acquiring technology and knowledge for production and innovation. This helped China move from primary production with unskilled labor to knowledge-intensive production with skilled labor. China is therefore well-placed to help engineer African economies by investing in productivity-enhancing technology transfers in foundational economic indusrties such as construction.[111] Such investments would help train a high-caliber African workforce and help build a middle class that would otherwise continue living in or near poverty.

and-kenya-sign-multi-million-dollar-loan-agreement-to-finance-hydroelectric-power-project-and-enhance-higher-education-10099.

111. One initiative that could be used for the transfer of skills and technology are special economic zones. Deborah Braütigam, *African Shenzhen: China's Special Economic Zones in Africa*, 49 J. MOD. AFR. STUD. 27 (2011), *available at* http://www.afriquechine.net/en/2011/African-Shenzhen-China-s-special-economic-zones-in-Africa.pdf.

Thus, in addition to the support China is already giving to help develop African capacity in science and technology by creating educational opportunities in China, much more is possible. African countries must take advantage of China's technological proficiency in order to develop their own skills.[112] In short, China should not "kick the ladder"[113] it used to climb to its present level of economic wealth just when Africa needs it most.

## CONCLUSION

China's human rights imprint in Africa is evolving. It is, however, too early to suggest that the record is as positive as Webster suggests. By downplaying human rights issues, China has put its immediate economic interests ahead of Africa's long-term growth challenges. Webster underestimates the importance of this fact. By disavowing human rights, China has ineluctably legitimized the default position of many resource-rich African countries: complacency, due to the fact that resource richness weakens their incentive to diversify their economies. This, in turn, postpones the need to develop higher productivity sectors that would be better for human rights in the long-term. Webster likewise underestimates the importance of this fact.

To address Africa's development and human rights challenges, African countries must capitalize on the trade and investment opportunities China and other countries provide. African countries can do so by taking concerted measures to leave behind their dependency on primary products and to develop a productive base upon which competitive industries could emerge. These actions would promote the kind of growth that inures positively for human rights. In July, 2012, at the last China-Africa forum, Chinese leaders promised that a new chapter in Chinese-African relations was beginning. In this chapter, China would seek to help Africa improve its productive capacity by "scaling up personnel training and technology transfer."[114]

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112. *See* INTER-ACADEMY COUNCIL, INVENTING A BETTER FUTURE: A STRATEGY FOR BUILDING WORLDWIDE CAPACITY IN SCIENCE AND TECHNOLOGY (2004), *available at* http://www.interacademycouncil.net/24026/25995/25996/26142.aspx (arguing that technologically proficient countries like China should help countries without such capabilities to prevent the expansion of the growing gap between rich and poor countries).

113. CHANG H., KICKING THE LADDER: DEVELOPMENT STRATEGY IN HISTORICAL PERSPECTIVE (2002).

114. An Lu, *Chinese Premier Meets South African President on Boosting Ties* (July 19, 2012), http://english.gov.cn/2012-07/19/content_2187505.htm. The Group of 77 and China

This commitment will be crucial to assuring that China's contact with Africa goes towards promoting human rights in the long-term. African governments must work closely with the Chinese government as well as Chinese firms to make this happen. China's human rights policy with respect to Africa must take into account that the same rights China has invoked to defend itself in the global trading system should apply equally in its relations with African countries.[115] Under China's policy of mutual benefit, African countries should make it clear to China that they have the right to freely dispose of their natural resources as a matter of international law.[116] As I have argued, the negotiation, design, planning, implementation, operation and management of infrastructural or other technology projects undertaken by foreign investors present opportunities for technological learning and transfer from foreign investors to African countries. African countries must capitalize on these opportunities to develop their technological capabilities with a view to establishing long-term growth. This would, in turn, help these countries meet their human rights obligations.

Webster notes that the Declaration on the Right to Development is very relevant to the discussion of China's role in Africa. I cannot agree more. However, one must do more than merely catalogue examples in which China has affirmed clauses of the Declaration. The Declaration to the Right to Development gives States the "primary responsibility for the creation of national and international conditions favourable for the realization of the right to development."[117] It allows them to take steps "individually or collectively, to formulate international development policies with a view to facili-

have identified the need to ensure that structural transformation of African economies does not produce adverse effects. *See* U.N. Conference on Trade and Development, Statement of the Group of 77 and China, 59th Session of the Trade and Development Board (Sept. 20, 2012), http://unctad.org/meetings/en/Presentation/tdb59_item_6_G77%20and%20China_en.pdf.

115. *See* Qin, *supra* note 67.

116. *See* International Covenant on Economic, Social and Cultural Rights, art. 1.2, Dec. 16, 1966, 999 U.N.T.S. 171 ("All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation based on the principle of mutual benefit, and international law."). *See also id.* art. 25 (providing that nothing in this Covenant "shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources"). China ratified the ICESCR in March 2001.

117. *See* Declaration on the Right to Development, G.A. Res. 128, GAOR, 41st Sess., Supp. No. 53, U.N. Doc. A/RES/41/128 (1986), art. 3(1).

tating the full realization of the right to development,"[118] as well as to formulate, adopt and implement "policy, legislative and other measures at the national and international levels" in order to realize the "progressive enhancement of the right to development."[119] This response to Webster has suggested that African States and China have yet to begin adopting the kind of long-term policies that facilitate the full realization of the vision embodied in the Right to Development. Ensuring that human beings are the central beneficiaries of the right to development, as contemplated by the Declaration on the Right to Development, requires re-orienting Africa-China relations to engage in the type of poverty-reducing and productivity-increasing long-term strategies and investments proposed in this response. This is particularly important because, although China claims its African relations are mutually beneficial, unlike African countries' relations with the Western countries, the bilateral investment treaties China has signed with African countries are no different from those treaties between African countries and Western countries.[120] African countries therefore stand in the same jeopardy for violating these treaties with China as they do with Western countries. This is yet another reason not to treat too seriously the claims of Chinese human rights exceptionalism in Africa and to begin re-defining the relationship to Africa's long-term benefit.

118. *Id.* at art. 4(1).

119. *Id.* at art. 10.

120. Ewelukwa, *supra* note 35, at 528.