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## China's Human Rights Footprint in Africa

Timothy Webster

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## China's Human Rights Footprint in Africa

TIMOTHY WEBSTER\*

*A significant amount of recent scholarship and commentary accuses China of plundering the African continent, coddling its dictators and flouting labor and environmental standards. This Article makes the counterintuitive claim that, despite irrefutable cases of abuse, China's engagement with Africa has actually improved the human rights conditions of millions of Africans. First, it places China's abuses in context, showing that they differ little from the abuses and patronage politics of the major Western powers. Second, it examines the evolution of international relations between China and various African countries, from the exportation of political revolution in the 1950s and 1960s, to the promotion of human capital in the 2000s and 2010s. Third, it catalogs the many recent contributions in the educational, agricultural, infrastructural and medical fields that China has made to African development. By challenging the dominant narratives on both theoretical and empirical grounds, I call for a reexamination of a critically important, but often misunderstood, pattern of interactions between China and Africa, a nexus that is shaping world affairs and perceptions in unprecedented ways.*

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\* Director of East Asian Legal Studies, and Assistant Professor of Law, Case Western Reserve University School of Law. I appreciate the comments and feedback from participants at various conferences and seminars, including *The New Scramble for Africa? Contemporary Formations between Asia and Africa*, Yale University, April 23, 2010; Institute for African Development Seminar Series, Cornell University, April 21, 2011; and *Expanding Critical Spaces in International Law*, Whittier Law School, March 23, 2012. I owe a special debt of gratitude to Professor James Gathii for his insightful comments and critiques of this Article. Finally, I would like to thank Dean Lawrence Mitchell of Case Western Reserve University School of Law for generous summer research support.

2013] CHINA'S HUMAN RIGHTS FOOTPRINT IN AFRICA 627

INTRODUCTION .....	627
I. CHINA'S VIEW OF HUMAN RIGHTS .....	633
II. CHINESE VIEWS OF FOREIGN POLICY .....	638
III. CHINA'S ENGAGEMENT IN AFRICA.....	642
IV. SOCIOECONOMIC RIGHTS IN AFRICA.....	649
A. Infrastructure.....	652
B. Medicine.....	655
C. Education.....	657
D. Food and Water.....	658
E. Response to Professor James Thuo Gathii .....	660
CONCLUSION .....	662

## INTRODUCTION

China's recent engagement with Africa has elicited copious commentary from the West, much of it negative. International media,<sup>1</sup> think tanks,<sup>2</sup> NGOs,<sup>3</sup> bloggers,<sup>4</sup> academics,<sup>5</sup> government officials (elected and appointed),<sup>6</sup> international financial institutions<sup>7</sup> and

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1. Howard W. French, *The Next Empire*, THE ATLANTIC (Apr. 13, 2010, 9:00 AM), <http://www.theatlantic.com/magazine/archive/2010/05/the-next-empire/8018/>. French's account is relatively even-handed, but he too insists on likening China's strategy to former European colonial powers, in this case Germany. See *id.* More typical is *The Economist*, which states "China is coddling dictators, despoiling poor countries and undermining Western efforts to spread democracy and prosperity." See *The New Colonialists: China's Hunger for Natural Resources is Causing More Problems at Home than Abroad*, ECONOMIST (Mar. 13, 2008), <http://www.economist.com/node/10853534>.

2. Princeton N. Lyman, *China's Rising Role in Africa: Presentation to the US-China Commission July 21, 2005*, COUNCIL ON FOREIGN RELATIONS (Jul. 21, 2005), <http://www.cfr.org/china/chinas-rising-role-africa/p8436> (noting China's new ties with "unstable" and "political[ly] controvers[ial]" states such as the DRC, Sierra Leone and Zimbabwe).

3. HUMAN RIGHTS FIRST, INVESTING IN TRAGEDY: CHINA'S MONEY, ARMS, AND POLITICS IN SUDAN (Mar. 2008), available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/080311-cah-investing-in-tragedy-report.pdf>.

4. Bloggers deploy a bit more nuance. See Andrew Leonard, *China in Africa: Not Playing Fair? Western Mining Companies Complain to Mommy About China's Bad Behavior*, SALON (Jan. 29, 2007, 12:20 PM), [http://www.salon.com/2007/01/29/china\\_mining/](http://www.salon.com/2007/01/29/china_mining/).

5. The proximate cause of this article was a 2010 address delivered by Robert Rotberg of Harvard University in which he cataloged China's actions in Africa.

6. Secretary of State Hillary Clinton warned of a creeping "new colonialism" in

others have assailed China's range of initiatives to invest, trade, arm, train, loan, extract, sell, experiment or otherwise interact with Africa. In the dominant discourse, China's objectives in Africa are essentially exploitative, extracting the continent's natural resources to feed China's edacious growth. Second, Chinese support for Sudan, Zimbabwe, Angola, Guinea and other unsavory regimes abets poor governance.<sup>8</sup> Third, by degrading the people, land and water of Africa through predatory labor practices, environmental destruction and violent suppressions, China is exporting its own worst practices to Africa.<sup>9</sup>

Western analysts frequently maintain that China is *colonizing* Africa. This overstates the case, I argue, and misapprehends both the nature of China's multifaceted relationships with fifty African countries, and the underlying meaning of its presence. It is not merely the irony of London,<sup>10</sup> Paris,<sup>11</sup> Brussels or other former imperial powers

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Africa from foreign investors, which was widely interpreted to refer to China. Matthew Lee, *Hillary Clinton Warns Africa of 'New Colonialism'*, HUFFINGTON POST (June 11, 2011, 12:21 PM), [http://www.huffingtonpost.com/2011/06/11/hillary-clinton-africa-new-colonialism\\_n\\_875318.html](http://www.huffingtonpost.com/2011/06/11/hillary-clinton-africa-new-colonialism_n_875318.html). According to leaked diplomatic cables, Assistant Secretary of State Johnnie Carson wrote that China is a "pernicious economic competitor with no morals" and "is not in Africa for altruistic reasons." Susan Stumme, *Leaked US Cable Says China has 'no morals' in Africa*, AFP (Dec. 8, 2010), available at <http://news.theage.com.au/breaking-news-world/leaked-us-cable-says-china-has-no-morals-20101209-18r9a.html>. Former UK Foreign Secretary Jack Straw listed China among the ten biggest challenges facing Africa, next to poverty, terrorism and regional conflict. CANRONG JIN, *BIG POWER'S RESPONSIBILITY: CHINA'S PERSPECTIVE* 118 (Tu Xiliang, trans., 2011).

7. World Bank President, and architect of the Iraq War in the Second Bush Administration, Paul Wolfowitz expressed concerns to the French media about China's ignoring human rights abuses and environmental degradation in Gabon, among other places. See Paul Wolfowitz, *'Il ne faut pas que la Chine commette les erreurs passées de la France et des Etats-Unis,'* [China does not need to commit the past errors of France and the United States] LES ECHOS (Oct. 24, 2006), <http://www.lesechos.fr/24/10/2006/LesEchos/19779-41-ECH--il-ne-faut-pas-que-la-chine-commette-en-afrique-les-erreurs-passees-de-la-france-et-des-etats-unis--.htm>; *World Bank President Attacks China over African Lending Practices*, IHS GLOBAL INSIGHT (Oct. 25, 2006), [http://www.ihs.com/products/global-insight/industry-economic-report.aspx?ID=106598789&pu=1&rd=globalinsight\\_com#](http://www.ihs.com/products/global-insight/industry-economic-report.aspx?ID=106598789&pu=1&rd=globalinsight_com#).

8. Peter Godwin defines "politicide" as "the practice of wiping out an entire political movement . . . . The murders here [in Zimbabwe] are accompanied by torture and rape on an industrial scale, committed on a catch-and-release basis. When those who survive, terribly injured, limp home . . . they act like human billboards, advertising the appalling consequences of opposition to the tyranny." Michiko Kakutani, *Where Dissidents Are the Prey, and Horror is a Weapon*, N.Y. TIMES, May 23, 2011, at C1. See also PETER GODWIN, *THE FEAR: ROBERT MUGABE & THE MARTYRDOM OF ZIMBABWE* 43 (2010).

9. JOSHUA KURLANTZICK, *CHARM OFFENSIVE: HOW CHINA'S SOFT POWER IS TRANSFORMING THE WORLD* 163, 170–71 (2007).

10. See, e.g., Damian Grammaticas, *Chinese Colonialism?*, BBC NEWS (July 19,

accusing Beijing of colonialism.<sup>12</sup> The PRC actively supported anti-colonial movements in many African countries during the 1960s and 1970s.<sup>13</sup> Instead, such criticisms overlook both the historical dimension of Sino-African relations and the current emphases of the Sino-African nexus. China's developmental assistance, military support and terms of engagement hark back to the 1950s, but address Africa's contemporary concerns and needs in ways that the West has largely overlooked.

The larger point, however, is that we simplify Sino-African relations at our own risk. If we think China is simply draining Africa of natural resources while buttressing its dictators, we ignore most of China's activity in Africa, including direly needed contributions towards Africa's economic development. At the same time that Western countries and financial institutions dial back aid to Africa, China is actually increasing its financial, agricultural and technical assistance.<sup>14</sup> In so doing, China has won plaudits from African dictators

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2012), <http://www.bbc.co.uk/news/world-asia-18901656>; David Blair, *Why China is Trying to Colonise Africa*, TELEGRAPH, Aug. 31, 2007, <http://www.telegraph.co.uk/comment/personal-view/3642345/Why-China-is-trying-to-colonise-Africa.html>; Conal Walsh, *Is China the New Colonial Power in Africa?*, GUARDIAN, Oct. 28, 2006, <http://www.guardian.co.uk/business/2006/oct/29/china.theobserver>.

11. The French, perhaps more in touch with their own colonial past, prefer the term neocolonialism (néo-colonialisme) to describe Sino-African relations. See, e.g., PHILLIPPE RICHER, L'OFFENSIVE CHINOISE EN AFRIQUE [THE CHINESE OFFENSIVE IN AFRICA] 135, 148 (2008); Emmanuel Guérin, *Baillleurs Emergents: Ou en Est La Chine en Afrique?* [Emerging donors: Where in Africa is China?], 228 AFRIQUE CONTEMPORAINE [CONTEMPORARY AFRICA] 105, 107 (2008).

12. It is problematic for Western powers to accuse China of "colonialism," given American, Belgian, French, British, Italian, German, Portuguese, Spanish and Dutch colonialisms from the mid-seventeenth century to the late twentieth century. China, by contrast, has not colonized any part of Africa. Unlike former colonial powers, China actually pays for the resources it extracts, through infrastructure projects, cash, preferential loans or other forms of payment. Indeed, it is tempting to make the counterfactual argument that *had* the colonial powers actually invested in developing Africa's infrastructure during their centuries of colonization, China would have a much smaller presence in Africa right now.

13. For example, China armed groups in Namibia, Zaire (the present D.R.C) and Rwanda during the 1960s, and set up a guerilla training camp in Burundi. Warren Weinstein, *Chinese Aid and Policy in Central Africa*, in SOVIET AND CHINESE AID TO AFRICAN NATIONS 145, 146–61 (Warren Weinstein & Thomas H. Henriksen eds., 1980). In the 1970s, China armed a young guerrilla fighter named Robert Mugabe, and provided assistance to UNITA in Angola. See Elias Isaac, *The West's Retreat and China's Advance in Angola*, in CHINESE & AFRICAN PERSPECTIVES ON CHINA IN AFRICA 163, 163 (Axel Harneit-Sievers et al. eds., 2010).

14. See Chen Jun, Xiong Zhengyi & Liu Hongpeng, *Zhongguo Bujian Fanzeng Dui Fei Yuanzhu Tisheng qi Fan Jingji Weiji Nengli* [China Does Not Decrease, But Rather

and democrats alike, from countries like resource-rich Sudan, but also countries without significant natural endowments like Mauritius and Mali.<sup>15</sup> It is not just Robert Mugabe and Omar Al Bashir who like the Chinese, but a host of democratically elected leaders, such as former Prime Minister Meles Zenawi of Ethiopia,<sup>16</sup> President Paul Kagame of Rwanda,<sup>17</sup> former President Abdoulayeh Wade of Senegal,<sup>18</sup> President Jacob Zuma of South Africa<sup>19</sup> and former President Bingu wa Mutharika of Malawi.<sup>20</sup>

China's support for despotic regimes must surely enter into the discussion of its human rights footprint. But a more nuanced assessment of China's presence in Africa must also include the hundreds of infrastructure projects, agricultural experiments, educational facilities, pilot projects and other components of Beijing's Africa policy.<sup>21</sup> Due attention to other areas illuminates the breadth of China's

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*Increases, Its Assistance to Africa, Raising Its Ability to Weather the Economic Crisis*], XINHUA (Feb. 20, 2009), <http://www.qhnews.com/index/system/2009/02/20/0029692116.shtml>.

15. *Id.*

16. Prime Minister Zenawi has long criticized Western aid practices in Africa. But when he paired criticism of the West with praise for China, it certainly captured the Chinese media's attention. According to China's official news agency, the Prime Minister stated, "We are very comfortable to see China's increasing influence in Africa. So for Africa, the influence of China is not a source of concern or danger. African countries are happy to see the rise of China." See Xiong Sihao, *Ethiopian PM: China not looting Africa*, XINHUA (Oct. 16, 2008, 6:18 PM), [http://news.xinhuanet.com/english/2006-10/16/content\\_5210162.htm](http://news.xinhuanet.com/english/2006-10/16/content_5210162.htm).

17. President Kagame repeated Zenawi's opprobrium for the West, and praise for China. In an interview with a German newspaper, he said that "[t]he Chinese bring what Africa needs: investment and money for governments and companies," whereas Western aid "has not brought Africa forward." See *China praised for African links*, BBC NEWS (Oct. 11, 2009, 8:54 PM), <http://news.bbc.co.uk/2/hi/africa/8301826.stm>.

18. See *Communique: Hu Jintao Talks with President of Senegal Wade*, MINISTRY OF FOREIGN AFFAIRS OF THE PEOPLE'S REPUBLIC OF CHINA (June 23, 2006), <http://www.fmprc.gov.cn/eng/wjdt/2649/t259893.htm>.

19. See Cheng Guangjin & Wu Jiao, *Zuma praises China's Africa role*, CHINA DAILY (Aug. 26, 2010, 8:00 AM), [http://www.chinadaily.com.cn/world/2010-08/26/content\\_11203802.htm](http://www.chinadaily.com.cn/world/2010-08/26/content_11203802.htm). President Zuma likewise played China off of the West: "China is there discussing with the brothers and sisters in Africa to create a mutually beneficial kind of relationship . . . different from former Western colonialists (simply) taking things by force." *Id.*

20. *Malawian president meets senior CPC official on relations*, PEOPLE'S DAILY (Mar. 5, 2011, 9:57 AM), <http://english.peopledaily.com.cn/90001/90776/90883/7308973.html>. Many on this list have also been characterized as "strong men," not exactly steadfast supporters of democratic institutions such as free and fair elections or independent courts. But they did assume the reins of power through democratic elections.

21. China is, of course, a disaggregated entity, and thus the "Chinese presence" in Africa actually refers to representatives of national ministries (Commerce, Foreign Affairs,

engagement with Africa, generates insights into China's "developmental diplomacy," and elucidates the human rights implications of China's foreign policy. This Article attempts to move beyond mutual recrimination by introducing Chinese perspectives into the discussion of Sino-African affairs.

The goal is not to justify China's presence in Africa—not that such justification is necessary—but to reorient the discussion by using terminology and historical understandings familiar to China, and the Global South more generally. It is misguided to assume all foreign countries approach Africa in the same way. Former colonial powers like France, Britain, Italy and Portugal relate to African countries in ways that reflect their unique histories. For example, on the eve of the Arab Spring, France offered to dispatch security forces to prop up then-troubled Tunisian dictator Zine El Abidine Ben Ali,<sup>22</sup> revealing a paternalism deeply embedded in the former colonial relationship between the two countries. French airstrikes in Mali, conducted in response to a request from Malian President Traore, likewise indicated that the colonial past is less distant than perhaps once thought.<sup>23</sup> Moreover, Italy hesitated to join the NATO bombing of Libya, ostensibly because of its colonial ties,<sup>24</sup> more specifically to protect both countries' bilateral investments.<sup>25</sup>

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Education, Health, Agriculture), national banks (Exim bank), provincial-level infrastructure companies, private entrepreneurs, laborers and a host of others. Unfortunately, the dominant discourse still speaks of "China's presence in Africa." By and large, similarly expansive language is not used to describe U.S. interactions with Africa. Discussions of the U.S. presence in Africa tend to avoid ExxonMobil, McDonald's or Starbucks, though each operates in various African states.

22. French Foreign Minister Michèle Alliot-Marie offered to send French security forces to quell protests in Tunisia. She boasted of France's "savoir-faire, recognized throughout the world, of [French] security forces to settle security situations of this type." See Roula Khalaf & Scheherazade Daneshkhu, *France Regrets Misjudgment Over Ben Ali*, FIN. TIMES (Jan. 18, 2011), <http://www.ft.com/cms/s/0/68bef0c2-232a-11e0-b6a3-00144feab49a.html#axzz2Lrp8L9T2>. One can only imagine the uproar that would greet a Chinese offer to send security forces, even more famous than the French, to quell African riots.

23. The French airstrikes came significantly in advance of a UN-backed military intervention, originally planned for September, 2013. Both the United States and United Kingdom have supported the French military efforts. See Angelique Chrisafis et al., *France Launches Air Strikes on Mali*, GUARDIAN (Jan. 11, 2013, 4:39 AM), <http://www.guardian.co.uk/world/2013/jan/11/france-launches-airstrikes-on-mali> (noting British support for France's "assistance to [the] Government of Mali"); *France Pushes on with Mali Air Strikes*, GUARDIAN (Jan. 15, 2013, 2:37 PM), <http://www.guardian.co.uk/world/2013/jan/15/mali-french-air-strikes> (describing U.S. support for French forces).

24. *Italy to Take Part in Bombing Raids over Libya*, FOX NEWS (Apr. 25, 2011), <http://www.foxnews.com/world/2011/04/25/italy-bombing-raids-libya/>.

25. Libya's sovereign wealth fund owns single-digit ownership interests in several

China has no former colonies in Africa, but its current approach to fifty African countries reflects historical interactions, as well as its own developmental needs. Injecting Chinese and Southern perspectives into the debate leavens the discussion, destabilizes Western assumptions about Africa and highlights the ways that China is exporting—and could do more to export<sup>26</sup>—its own developmental model to compete with Western ones. The emphasis on infrastructure, creation of special economic zones, interest-free loans and other features characterize China's own economic rise. At a time of heightened fiscal tightness in the developed world,<sup>27</sup> China keeps pouring investment, people and equipment into Africa. Perhaps it is time to see if China can teach the West about working with Africa. At the very least, we need to grapple seriously with the proposition that China provides a meaningful, and increasingly popular, alternative to western sources of aid, expertise and developmental assistance.

This Article proceeds in four parts. The first part examines

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large Italian corporations, such as Banca Roma, Fiat Motor Company and the Juventus Football Club. Contrariwise, ENI—Italy's largest oil company—has invested billions in Libyan oil interests. *Factbox: Italy and Libya Share Close Investment Ties*, REUTERS (Feb. 20, 2011), <http://www.reuters.com/article/2011/02/20/us-italy-libya-factbox-idUSTRE71J1N N20110220>.

26. Professor Gathii points out that African countries could obtain additional benefits from China's presence if China engaged in technology transfer and skills training, and opened its internal market to Africa exports. See James Thuo Gathii, *Beyond China's Human Rights Exceptionalism in Africa: Leveraging Science, Technology and Engineering for Long-Term Growth*, 51 COLUM. J. TRANSNAT'L L. 664 (2013). While I agree with this, I believe the initiative for seeking such advantages must be taken by the African leaders and entrepreneurs who negotiate the contracts, or by African legislators who draft its foreign investment laws. China promulgated its own laws and regulations in the 1980s to induce transfer of advanced technology. See generally Paul B. Birden, Jr., *Technology Transfer to China: An Outline of Chinese Law*, 16 LOY. L.A. INT'L & COMP. L.J. 413, 438–440 (1994). Western countries did not hand over patent rights or production formulae out of beneficence, but because Chinese law obliged them to do so.

27. Italy and France failed to make payments to a fund devised at the 2005 Gleneagles Summit to target extreme poverty. By 2009, Italy had made only 3% of the necessary payments, while France had lowered its aid during 2007 and 2008. Richard Lapper, *Italy and France draw fire for aid shortfall*, FIN. TIMES (Jun. 11, 2009), <http://www.ft.com/intl/cms/s/0/24db0e82-5620-11de-ab7e-00144feabdc0.html>. In January 2011, the U.S. House of Representatives passed a budget overhaul that cut \$10 billion of funding for the State Department and foreign aid, one-sixth of the total savings deducted from President Obama's latest request. David Rogers, *House passes \$60 billion in spending cuts*, POLITICO (Feb. 19, 2011, 5:23 AM), <http://dyn.politico.com/printstory.cfm?uuid=3D71F3B9-DD63-6416-88C6D047B8123F18>.



Chinese and Southern perspectives on human rights.<sup>28</sup> The second part briefly surveys Chinese foreign policy objectives. The third part examines China's historical presence in Africa, and draws parallels and contrasts with various types of Western engagement. The fourth part examines the various ways that China promotes the human rights and developmental needs of various African states. The methodology is thus mixed, coupling theoretical and historical approaches in the first three parts with empirical observations in the final part. The goal is to challenge the dominant theoretical discourse of Sino-African relations as developed in the West, based on a sound empirical footing.

## I. CHINA'S VIEW OF HUMAN RIGHTS

To grasp the human rights implications of China's engagement with Africa, we must first understand how China views human rights. Though a dynamic concept that has modulated slightly over the past two decades, China's human rights platform has maintained a basic consistency over time.<sup>29</sup> Two key concepts include emphasizing collective rights over individual ones, and privileging social and economic rights over civil and political ones.

First, China emphasizes collective rights over individual ones. This runs counter to core Western assumptions about human rights, and the liberal democratic framework of international human rights law (IHRL) more generally.<sup>30</sup> International human rights law, as created after World War II, endows the individual with rights that he may then deploy against national governments. This endowment stems from the natural rights idea that humans enjoy certain entitlements simply by virtue of being people.<sup>31</sup> In other words, IHRL serves to check governmental authority over the individual, ideally ensuring a sphere of personal autonomy into which the state may not

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28. The South here refers to less developed countries, or the "nations of Africa, Central and Latin American, and most of Asia." For a brief explanation, see *Center for the Global South*, AM. UNIV., [www1.american.edu/academic.depts/acainst/cgs/about.html](http://www1.american.edu/academic.depts/acainst/cgs/about.html) (last visited Mar. 10, 2013). It is an oversimplification to group three-quarters of the world's countries under a single heading. But for present purposes, the South is a placeholder for the viewpoints and values of these disparate nations.

29. See generally ANN KENT, *BETWEEN FREEDOM AND SUBSISTENCE: CHINA AND HUMAN RIGHTS* (1993).

30. Randall Peerenboom, *Assessing Human Rights in China: Why the Double Standard?*, 38 CORNELL INT'L L.J. 71, 81 (2005).

31. Jack Donnelly, *Human Rights as Natural Rights*, 4 HUM. RTS. Q. 391, 391 (1982).

intrude.<sup>32</sup>

But the individual does not lie at the heart of Chinese society, either presently or in traditional China. Like other Asian countries, China stresses communitarian values, the importance of groups within society and the state's interests over those of the individual. From a rights perspective, China would prefer to buttress the rights of the entire community, rather than permit an individual to assert rights against the state or community.<sup>33</sup> This tendency is surely changing as greater individual autonomy bubbles up in contemporary China, with important ramifications for asserting human rights.<sup>34</sup> But the official Chinese view privileges the group at the expense of the individual, with important implications for foreign policy and the disbursement of foreign aid. Whereas Western donors may elect to fund a project to promote democracy, entrench human rights, support civil society or enhance governance,<sup>35</sup> China would prefer to furnish the basic subsistence needs of large groups of people.<sup>36</sup> Both Western and Chinese sets of projects legitimately advance human rights, but the divergent goals and methods of attaining those rights leads to confusion and recrimination between China and the West.

Second, as a developing country run by a putatively communist state, the Chinese government and the majority of Chinese scholars prioritize social and economic rights over civil and political ones.<sup>37</sup> What does that mean? Social and economic rights include

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32. See MALCOLM N. SHAW, *INTERNATIONAL LAW* 268 (6th ed. 2008) ("The view adopted by the Western world with regard to international human rights law in general terms has tended to emphasise the basic civil and political rights of individuals, that is to say those rights that take the form of claims limiting the power of government over the governed."); Guyora Binder, *Cultural Relativism & Cultural Imperialism in Human Rights Law*, 5 *BUFF. HUM. RTS. L. REV.* 211, 213 (1999) (international human rights treaties "reflect a liberal individualism prevalent in the West, and ignore the importance of group membership, of duties, and of respect for nature prevalent in many non-western cultures").

33. See ANN KENT, *CHINA, THE UNITED NATIONS AND HUMAN RIGHTS: THE LIMITS OF COMPLIANCE* 29–30 (1999) (exploring the traditional Chinese, socialist and Maoist roots of China's emphasis on collective and individual rights).

34. See generally Timothy Webster, *Ambivalence and Activism: Employment Discrimination in China*, 44 *VAND. J. TRANSNAT'L L.* 643 (2011) (arguing that recent employment discrimination lawsuits augur an important shift in rights consciousness, and the use of litigation as a tool of social change, in contemporary China).

35. These are among the many projects supported by the United States Agency for International Development. See *Democracy, Human Rights and Governance*, USAID, <http://www.usaid.gov/what-we-do/democracy-human-rights-and-governance> (last visited Mar. 10, 2013).

36. See *infra*, Part IV.

37. ROBERT WEATHERLEY, *THE DISCOURSE OF HUMAN RIGHTS IN CHINA: HISTORICAL*

the rights to work, education, employment, social security and basic subsistence; food, clothing, water and housing attract significant attention and abundant resources under this rubric.<sup>38</sup> Like most communist countries, past and present, China posits the provision of its citizenry's material needs as a central function of government. For a country of 1.3 billion people, that has proven no small feat.<sup>39</sup>

Civil and political rights, on the other hand, refer to the rights to vote, run for office, assemble, free speech, practice a religion of one's own choosing, receive a fair trial and so on. In the Chinese conception, and in the Marxist tradition more generally, socioeconomic rights are the foundational human rights upon which civil and political rights become possible.<sup>40</sup> Consequently, in the Chinese conception, so long as China is still constructing its socioeconomic foundation, discussion of civil and political rights is premature. Scholars point out that these two sets of rights are not mutually exclusive; prioritizing one set over another is a Cold War anachronism arising out of ideological differences between Western and Soviet states.<sup>41</sup> That is true as an empirical matter, yet nations—including the United States—continue to prioritize one set at the expense of the other.<sup>42</sup> Yet many countries, including China and several African

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& IDEOLOGICAL PERSPECTIVES 25 (1999); JIN, *supra* note 6, at 127.

38. WEATHERLEY, *supra* note 37, at 24.

39. It is important to recognize that even "Western" financial institutions, such as the World Bank, swoon over China's poverty reduction statistics. According to the World Bank, China lifted some 600 million people out of poverty from 1981 to 2004, accounting for some 75% of the poverty reduction in the developing world. See *Results Profile: China Poverty Reduction*, THE WORLD BANK (Mar. 19, 2010), <http://www.worldbank.org/en/news/2010/03/19/results-profile-china-poverty-reduction>.

40. As China's First White Paper on Human Rights put it, in its first sentence, "the right to subsistence is the most important of all human rights, without which the other rights are out of the question." *I. The Right to Subsistence—The Foremost Human Right The Chinese People Long Fight for*, CHINA.ORG.CN, <http://www.china.org.cn/e-white/7/7-1.htm> (last visited Mar. 10, 2013).

41. See MATTHEW C.R. CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* 9–11 (1995) (describing the Western preferences for civil and political rights and Soviet states' preferences for economic, social and cultural rights).

42. One way to appreciate the difference between American and Chinese emphases on rights is by comparing the poverty rates of the two countries. From 1980 to 2005, China reduced the number of Chinese people in poverty by 80 to 90%. I have seen different figures to describe this redistribution of wealth, but China lifted somewhere between 200 and 300 million people out of poverty in a generation. See, e.g., Anup Shah, *Poverty Facts and Stats*, GLOBAL ISSUES (Jan. 7, 2013), <http://www.globalissues.org/article/26/poverty-facts-and-stats> (discussing World Bank Development Indicators for China). In the United States, by contrast, the poverty rate has hovered between 12 and 13% during this period,

states, stress social and economic over civil and political rights.<sup>43</sup>

More broadly, the South has promoted the “right to development,” a core of indivisible rights needed to assure the basic necessities of life. The 1986 Declaration on the Right to Development charges states with ensuring that their people enjoy “access to basic resources, education, health services, food, housing, employment and the fair distribution of income.”<sup>44</sup> Scholars focus on three rights in particular—to food, to primary education and to health—as the bedrock upon which all other rights depend.<sup>45</sup> Once a person has acquired an education and achieved a level of health, the state can concern itself with providing employment, income, shelter and other basic resources.

Fundamental though the right to development may seem, its status as international law is far from assured. Developed countries have long sought to neutralize or deny the existence of the right. The United States voted against passing the Declaration in the UN General Assembly, while many other Western states abstained.<sup>46</sup> Nevertheless, the Declaration enjoys wide support among the developing world, even as it lacks the broad international backing needed to crystallize as a binding legal obligation.

One key disagreement involves against *whom* the right may be claimed. The Declaration tasks states with providing for nationals within their jurisdiction, as well as “the duty to *co-operate with each other* in ensuring development and eliminating obstacles to develop-

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while the absolute number has increased from twenty-eight to thirty-six million people. See, e.g., National Poverty Center, *Poverty in the United States: Frequently Asked Questions*, U. MICH., <http://www.npc.umich.edu/poverty/#3> (last visited Apr. 12, 2013). In other words, the United States has made little progress ensuring the socioeconomic rights of its populace, while China has made progress the likes of which the world has never seen. On the other hand, China has done little to safeguard the civil and political rights of its citizens, who do not have free and open elections, the right to practice religion freely, the right to assemble freely and so on.

43. See J. Oloka-Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 CAL. W. INT’L L.J. 1, 15 (1995) (“[G]overnments in both countries have deemphasized the place of civil and political rights and focused on the need for ‘development.’”).

44. Declaration on the Right to Development, art. 8, G.A. Res. 41/128, U.N. Doc. A/RES/41/128 (Dec. 4, 1986).

45. See JOHN CHARVET & ELISA KACZYNSKA-NAY, *THE LIBERAL PROJECT & HUMAN RIGHTS: THE THEORY AND PRACTICE OF A NEW WORLD ORDER* 145 (2008); Arjun Sengupta, *Right to Development as a Human Right*, 36 ECON. & POL. WKLY. 2527, 2530 (1999), available at [http://www.harvardfxbcenter.org/resources/working-papers/FXBC\\_WP7](http://www.harvardfxbcenter.org/resources/working-papers/FXBC_WP7).

46. CHARVET & KACZYNSKA-NAY, *supra* note 45, at 139.

ment.”<sup>47</sup> Moreover, states also have the “duty . . . individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.”<sup>48</sup> At least as a textual matter, then, a state may have obligations to those beyond its immediate borders. Given most developed countries’ hostility to this claim, they are unlikely to cooperate, promote a new international economy or collectively formulate development policies for other states.

Where are developed countries to turn? One response would be to *each other*. It is surely significant that the only international instrument enshrining the right to development is the 1981 African Charter on Human and Peoples’ Rights, making the right applicable against African states.<sup>49</sup> And when those states are incapable of providing the core elements of the right to development, presumably other inclined states should step in to provide assistance. China, then, can play a critical role in ensuring the right to development is guaranteed in the Global South.

Western states’ disinclination to enshrine the right to development is not simply a matter of international law; it also shapes the international financial institutions they oversee. As Anne Orford has argued, the World Bank and the International Monetary Fund—the heart of the Washington Consensus—have long implemented policies that actively thwart the right to development. Since 1986, the World Bank has attached conditions to structural adjustment loans to require the privatization of basic industries, and the liberalization of trade and investment.<sup>50</sup> Other structural adjustment loans force governments to cut spending on health and education, lower the minimum wage, produce goods for export (instead of satisfying domestic needs) and deregulate the labor market.<sup>51</sup> These prescriptions arguably succeeded in certain developed countries, such as the United States and United Kingdom, during the heyday of Reaganism and Thatcherism.

But the neoliberal paradigm has not facilitated growth in

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47. Declaration on the Right to Development, *supra* note 44, art. 3(3) (emphasis added). See also African Charter on Human and Peoples’ Rights art. 22, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

48. *Id.*, art. 4(1).

49. *Id.*

50. Anne Orford, *Globalization and the Right to Development*, in *PEOPLES’ RIGHTS* 127, 149 (Philip Alston ed., 2001).

51. *Id.* at 151.

many countries in Eastern Europe, Latin America and Africa.<sup>52</sup> While its record in East Asia, Southeast Asia and South Asia is, on the whole, more positive, that may be attributable to features of Asian societies, rather than neoliberalism itself.<sup>53</sup> And of course, the 2008 financial crisis has punctured many myths about the desirability of unregulated economic activity, and leaving the “invisible hand” to correct errors and bottlenecks in the market.

In addition, China’s own rise has led many to reconsider the conventional wisdom traditionally ascribed to neoliberal economics and deregulation. The state has played the central role in China’s economic rise, overseeing dramatic economic growth without precedent in human history.<sup>54</sup> The Chinese example provides an alternative narrative to how states and societies develop in the contemporary period. Little wonder, then, that African leaders increasingly turn their attention towards China in reevaluating the proper balance of state intervention and private initiatives.

## II. CHINESE VIEWS OF FOREIGN POLICY

To understand China’s current engagement with Africa, we must also absorb the key features of China’s foreign policy. For half a century, China’s diplomacy has abided by the “Five Principles,” a platform first agreed upon by Chinese Premier Zhou Enlai and Indian Prime Minister Jawaharlal Nehru in 1954.<sup>55</sup> They are:

1. mutual respect for the other country’s sovereignty;
2. mutual non-aggression;
3. mutual non-interference in each other’s internal affairs;
4. equality and mutual benefit;
5. peaceful coexistence.<sup>56</sup>

In addition, during his 1964 visit to several African countries, Premier Zhou Enlai articulated the “Eight Principles for Economic Aid and Technical Assistance to Other Countries”, which include:

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52. DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 154 (2005).

53. RANDALL PEERENBOOM, CHINA MODERNIZES: THREAT TO THE WEST OR MODEL FOR THE REST 26–31 (2005).

54. C. FRED BERGSTEN ET AL., CHINA’S RISE: CHALLENGES AND OPPORTUNITIES 9 (2008) (China’s economic growth “has averaged 10 percent for the past 30 years, the most stunning record in history”).

55. Agreement on Trade and Intercourse between the Tibet Region of China and India, Apr. 29, 1954, 299 U.N.T.S. 4307.

56. *See id.*

1. equality and mutual benefit in providing aid;
2. no conditions for any privileges;
3. imposing the lightest possible burden on recipients;
4. help the country gradually achieve self-reliance;
5. aid projects require little investment but quick results;
6. provide best-quality equipment of its own manufacture;
7. ensure the recipient country masters new techniques;
8. Chinese experts cannot enjoy special amenities.<sup>57</sup>

Principles two (non-conditionality) and five (quick results after small investment) are particularly important to the present discussion. Before examining these principles, however, it is important to note their *consistency* over the past several decades. Since its founding sixty-plus years ago, China's domestic situation has undergone wild vicissitudes. From the Great Leap Forward (1959–61), where tens of millions starved to death, to the Cultural Revolution (1966–76), which terrorized generations of Chinese, to the reform period's pursuit of a semi-market economy (1978–present), the PRC has endured some of the most extreme and violent ideological, political, economic and cultural swings of the twentieth century. Nevertheless, the basic parameters of its foreign policy have remained intact for most of the PRC's history.<sup>58</sup> Its foreign policy has thus hewed to the

57. See *Zhou Enlai Announces Eight Principles of Foreign Aid*, CHINA DAILY (Aug. 13, 2010), [http://www.chinadaily.com.cn/china/2010-08/13/content\\_11149131.htm](http://www.chinadaily.com.cn/china/2010-08/13/content_11149131.htm); State Council Information Office, Apr. 21, 2011, White Paper on China's Foreign Aid, Appendix I, <http://www.eu-china.net/web/cms/upload/pdf/nachrichten/2011-04-21Chinas-ForeignAid-WhitePaper.pdf>.

58. Because of China's relatively constant foreign policy, African leaders call China, with perhaps exaggerated optimism, its "all-weather friend." See, e.g., Mission of the People's Republic of China to the European Union, *Vice Foreign Minister Zhai Jun Talks about Vice President Xi Jinping's Visit to Four Asian and African Countries* (Nov. 24, 2010), <http://www.fmprc.gov.cn/ce/cebe/eng/zgwj/t772355.htm> (noting that leaders of Botswana called China an all-weather friend); *China, Zambia's all-weather friend: Zambian former PM*, PEOPLE'S DAILY (Aug. 30, 2006), [http://english.peopledaily.com.cn/200608/30/eng20060830\\_298013.html](http://english.peopledaily.com.cn/200608/30/eng20060830_298013.html) (noting Zambian former Prime Minister Malimba Masheke, after reciting China's help in building roads, and a mass media complex called China Zambia's all-weather friend); *Interview: COMESA Eyes Agricultural Cooperation With China*, PEOPLE'S DAILY (Oct. 3, 2000), [http://english.peopledaily.com.cn/english/200010/03/eng20001003\\_51778.html](http://english.peopledaily.com.cn/english/200010/03/eng20001003_51778.html) (noting former Secretary General of the Common Market for Eastern and Southern Africa, Erasmus Mwencha, said that China has been an "all-weather friend" to Africa from decolonization to the present. Mwencha repeated the comment as Deputy Chairperson of the African Union Commission in 2010); Wei Tong, *Feimeng Weiyuanhui Fuzhuxi Muwenzha Shengzan Zhongguo Shi Feizhou Quantianhou Pengyou* [Deputy Chairperson of the African Union Commission Mwencha Praises China As Africa's All Weather Friend], GUOJI ZAIXIAN ZHUANGAO [INTERNATIONAL

same principles, more or less, since the 1950s. During his 1999 visit to Africa, then-Vice President Hu Jintao stated “China will, as always, adhere to the Five Principles of Peaceful Coexistence.”<sup>59</sup> After becoming president, Hu Jintao has repeatedly referenced individual principles in speeches presented at Sino-African summits.<sup>60</sup>

Compare this with the United States, where each new administration brings a new set of values, policies, diplomatic techniques and personnel to conduct foreign affairs. In the past decade (2002–2012) the outside world has seen two very different approaches to foreign policy in the United States: the aggressive unilateralism of the George W. Bush administration (2000–2008), followed by the measured multilateralism of President Barack Obama (2008–present).<sup>61</sup> Of course, other policy shifts can be seen by reviewing past administrations’ approaches to foreign affairs.

To be sure, espousing principles and enacting them differ, sometimes vastly. China has maintained a rhetorical stance that its actions have not always mirrored. Take mutual non-interference. China firmly believes that it should not, and will not, engage in activities that infringe upon the sovereignty of other nations. In return, it does not permit other countries to interfere in its own internal affairs. But throughout the 1960s and 1970s, China supported a wide array of guerrilla movements in Africa. China actively supported guerrillas, providing financial and materiel support to rebel groups in Zaire (present-day D.R.C.), Malawi, Zimbabwe, Angola, Rwanda and Burundi.<sup>62</sup> It would be silly to assert that such activities did not “interfere” in the internal affairs of these states. China tried to justify its conduct by claiming to support anticolonial movements, and thus to help African countries win their independence from various European states. Still, it is undeniable that, during its early history, the PRC actively meddled in the internal affairs of African states.

More recently, China has scaled back the revolutionary rhetoric, but it continues its arms sales. The concern with inciting communist revolt has been eclipsed by finding new markets to export its manufactures obtaining natural resources, and testing new technolo-

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ONLINE PROFILES] (Feb. 2, 2010), <http://gb.cri.cn/27824/2010/02/02/3245s2748783.htm>.

59. See *Chinese Leaders on Sino-African Relations*, CHINA.ORG.CN (Dec. 10, 2003), <http://www.china.org.cn/english/features/China-Africa/82054.htm>.

60. *FOCAC summit issues declaration*, XINHUA (Nov. 16, 2006), [http://news.xinhuanet.com/english/2006-11/06/content\\_5295615.htm](http://news.xinhuanet.com/english/2006-11/06/content_5295615.htm).

61. For example, President Bush invaded Iraq without receiving authorization from the UN Security Council, whereas President Obama hesitated to invade Libya, preferring instead for Britain and France to take the lead.

62. See Weinstein, *supra* note 13, at 147–48.



gies. Pragmatism has prevailed over politics. Of course, as the western media and NGOs have amply documented, China continues to arm groups engaged in conflicts in Sudan, and to sell weapons to Zimbabwe.<sup>63</sup> When Africans use guns, ammunition, tanks and jet fighters manufactured in China, to wage battles against rebel forces, or government armies, China indirectly interferes in other states' internal affairs.<sup>64</sup> China may not have sold weapons directly to the groups using them.<sup>65</sup> But that is the quandary of selling weapons to places in unstable regions; arms change hands with astonishing frequency.

While China's non-interference policy may not withstand critical scrutiny, it does have important ramifications for international trade and investment. Among other things, China does not inquire into the domestic political situation of the partner country. If the partner provides what China needs—oil, bauxite, copper, timber—China cares little whether its government is democratic or dictatorial. Unlike international financial institutions such as the World Bank, China does not condition its aid, investment or trade packages on pledges to improve governance, extirpate corruption or end human rights abuses. This policy of *realeconomik* has led to denunciations of Chinese support for some of Africa's most notorious leaders, including Robert Mugabe of Zimbabwe, Omar Al-Bashir of Sudan and a handful of minor players—such as Moussa Didis Camara (former dictator of Guinea) and Jose Eduardo dos Santos (president of Angola since 1979).<sup>66</sup>

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63. See, e.g., HUMAN RIGHTS FIRST, *supra* note 3 (cataloguing China's arms sales to Sudan).

64. See, e.g., Celia W. Dugger, *Zimbabwe Arms Shipped by China Spark an Uproar*, N.Y. TIMES, Apr. 19, 2008, <http://www.nytimes.com/2008/04/19/world/africa/19zimbabwe.html> (Even in the context of an arms sale to Robert Mugabe, one of Africa's most brutal dictators, the Chinese foreign minister stated, "[o]ne of the most important principles is not to interfere in the internal affairs of other countries").

65. The discovery of Chinese arms in areas such as the DRC, Somalia and Sudan does not prove that China sold arms in violation of UN sanctions levied against these states. But China has refused to cooperate with UN arms experts, perhaps shielding its own domestic arms industry. See Colum Lynch, *China's Arms Exports Flooding Sub-Saharan Africa*, WASH. POST, Aug. 25, 2012, [http://articles.washingtonpost.com/2012-08-25/world/35491659\\_1\\_arms-exports-chinese-diplomats-chinese-weapons](http://articles.washingtonpost.com/2012-08-25/world/35491659_1_arms-exports-chinese-diplomats-chinese-weapons).

66. The BBC cited President Dos Santos, who has ruled Angola since 1979, in its list of richest corrupt rulers. While his net worth is unknown, President Dos Santos ranked alongside Teodoro Obiang of Equatorial Guinea (a close United States ally), and Nursultan Nazarbayev of Kazakhstan (another close United States ally) as the top three current leaders most enriched by graft. See *Suharto tops corruption rankings*, BBC NEWS (Mar. 25, 2004), <http://news.bbc.co.uk/2/hi/3567745.stm>.

I will return to these countries later in the discussion,<sup>67</sup> but here simply note that China's support for unsavory African leaders cannot be divorced from its broader network of relationships in Africa. Every African state that recognizes and maintains diplomatic relations with China (and not Taiwan) receives some kind of aid.<sup>68</sup> Thus, unlike France and Britain, which channel the vast majority of their aid and assistance programs almost exclusively on former colonies, China works with everybody.<sup>69</sup> And while many criticize China's collaboration with "the worst of the worst," the United States also provides assistance to such countries as Angola, Sudan and Zimbabwe, in addition to forty-six other African states.<sup>70</sup>

### III. CHINA'S ENGAGEMENT IN AFRICA

China's engagement with Africa dates back to 1417, when Chinese admiral Zheng He visited various African ports in the early Ming Dynasty. Between 1405 and 1433, Zheng He led a total of seven voyages, some including as many as 312 ships to Southeast Asia, South Asia and eventually East Africa.<sup>71</sup> On the fifth voyage (1417–1419), the fleet landed in Mogadishu, Mombassa, Zanzibar, Madagascar and probably Egypt. Zheng He brought back interesting souvenirs from his trip, including a giraffe, as a token of his travels.

But with Zheng's death in Calcutta on the seventh voyage, the era of Chinese maritime expedition ground suddenly to a halt. Speculation abounds as to why China—having set forth the largest overseas expedition in human history—abandoned this endeavor. Perhaps China had met its goals of extending its influence to distant lands, proving its military capabilities, expanding Chinese knowledge

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67. See *infra*, Part III.

68. DEBORAH BRAUTIGAM, *THE DRAGON'S GIFT: THE REAL STORY OF CHINA IN AFRICA* 278 (2009). As of December 2012, five African states recognize the Republic of China on Taiwan: Burkina Faso, Lesotho, Gambia, Swaziland, Sao Tome and Principe.

69. The United Kingdom devotes 89% of its African aid to sixteen countries, twelve of which are former colonies. See Alan Hudson, *UK Aid to Africa: A Report for the UFJ Institute*, OVERSEAS DEVELOPMENT INSTITUTE (Jan. 20, 2006), 16–18, <http://www.odi.org.uk/resources/docs/3693.pdf>. In addition, Britain provides smaller amounts of aid to former colonies such as Somalia, Eritrea, Namibia and Gambia.

70. USAID, *Bureau for Africa*, <http://www.usaid.gov/who-we-are/organization/bureaus/bureau-africa> (last updated June 7, 2012).

71. Barbara Bennett Peterson, *The Ming Voyages of Cheng Ho (Zheng He), 1371–1433*, 16 GREAT CIRCLE 43, 44 (1994).

of the world and incorporating more states into its tribute system.<sup>72</sup> Or perhaps threats closer to home occupied the Ming Dynasty's attention.<sup>73</sup> Whatever the explanation, China turned its back on Africa for the succeeding five centuries.

China's neglect contrasts sharply with the more active involvement of early Europeans. The Portuguese conquered their first African city in 1415 (Ceuta), captured their first slaves in 1441 (Cabo Branco, Mauritani) and established Europe's first slave-trading company in 1444 (Lagos, Nigeria).<sup>74</sup> The consequences of European exploitation, enslavement and extraction are well known at this point, and do not require additional explication. Yet these historical origins matter for contemporary relations between China and Africa on the one hand, and the West and Africa on the other.

After the founding of the PRC in 1949, China maintained more regular contact with Africa. Between 1956 and 1977—amidst the internal chaos of the Great Leap Forward (1957) and Cultural Revolution (1966–76)—the PRC provided an estimated \$2.668 billion in economic assistance to African countries, approximately fifty-seven percent of its total foreign aid.<sup>75</sup> China supported not only its ideological brethren experimenting with socialism, but states of all political stripes: monarchies, dictatorships and democracies. China provided aid to thirty-six African nations during this period, a broad swath of the continent.

At this time, the largest recipients of Chinese aid were Tanzania and Zambia, most of which was spent constructing a 2000-km railway discussed below. Other large recipients included Egypt, the first African state to recognize the PRC, Somalia and Zaire, all of which received over \$100 million during these two decades.<sup>76</sup> While not large by global standards, these sums are nonetheless impressive in light of the fact that China was itself a developing country, unable to feed its own population for several of these years.<sup>77</sup> China laid the

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72. *Id.* at 46.

73. *Id.* at 44.

74. Claudia Rei, *The Organization of Eastern Merchant Empires*, 48 *EXPLORATIONS IN ECON. HIST.* 116, 119, 123 (2011).

75. These figures come from a 1978 CIA Report, recently unclassified. See United States Central Intelligence Agency National Foreign Assessment Center, *Communist Aid Activities in Non-Communist Less Developed Countries 1978: A Research Paper*, at 7, available at [http://www.foia.cia.gov/sites/default/files/document\\_conversions/89801/DOC\\_0000499889.pdf](http://www.foia.cia.gov/sites/default/files/document_conversions/89801/DOC_0000499889.pdf) [hereinafter CIA Report].

76. *Id.* at 8, 10.

77. FRANK DIKOTTER, *MAO'S GREAT FAMINE: THE HISTORY OF CHINA'S MOST DEVASTATING CATASTROPHE: 1958–1962* (2010) (estimating that 45 million Chinese died

foundations for many of its current relationships in the 1960s, providing small amounts of military and financial aid to newly independent states and guerrilla movements.

Chinese aid frequently took the form of small loans, spread out over a period of up to ten years, to dozens of African countries.<sup>78</sup> China gave more foreign aid to Africa than Eastern European countries; indeed China outspent even the Soviet Union in many sub-Saharan states,<sup>79</sup> maximizing its influence by providing aid to a large number of newly independent states, whatever their political ideology. A handful of former colonies shared China's revolutionary fervor, and this revolutionary suffused a number of political pronouncements from this early period.<sup>80</sup> But China was no ideological purist, providing aid to countries of vastly disparate political inclinations. During its first decades, the PRC spent the bulk of its foreign aid in Africa, more or less ceding Latin America, the Middle East and South Asia to the Soviet Union and Eastern Europe.<sup>81</sup>

In the immediate post-revolutionary period, China's primary political purpose in Africa was securing diplomatic recognition. A young country born into the world with an ideologically opposed twin brother on the island of Taiwan, China needed allies in a world eager to contain it. The United States firmly opposed Chinese involvement in various international organizations, including the United Nations.<sup>82</sup> The isolation was exacerbated by the Sino-Soviet rift in the early 1960s, leaving China more vulnerable to international pressure. Since it was not a member of the United Nations until 1971, and not recognized by most countries during the 1950s and 1960s, China courted African countries to secure recognition of its international status. In April 1955, Premier Zhou Enlai and Vice Premier Chen Yi attended the Summit on Afro-Asian Solidarity in Bandung, Indonesia, holding talks with leaders from various North and Sub-Saharan African States: Egypt, Sudan, Libya, Liberia and Ethiopia.<sup>83</sup> One year later, Egypt became the first country to enter

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during the Great Leap Forward).

78. CIA Report, *supra* note 75, Table 5.

79. Czechoslovakia, East Germany and Yugoslavia topped the list of Eastern European donors. *Id.*

80. BRUCE D. LARKIN, CHINA & AFRICA 1949–1970: THE FOREIGN POLICY OF THE PEOPLE'S REPUBLIC OF CHINA 175 (1971).

81. *Id.*

82. ANN KENT, BEYOND COMPLIANCE: CHINA, INTERNATIONAL ORGANIZATIONS AND GLOBAL SECURITY 33 (2007).

83. LIU HONGWU & LUO JIANBO, ZHONGFEI FA ZHAN HE ZUO: LI LUN, ZHAN LUE YU ZHENG CE YAN JIU [SINO-AFRICAN DEVELOPMENT COOPERATION: STUDIES ON THE THEORIES,

into diplomatic relations with the newly founded People's Republic,<sup>84</sup> followed by Sudan (1958), Morocco (1958) and Guinea (1959).<sup>85</sup> By 1965, China had secured diplomatic recognition from eighteen African states. This number dipped to thirteen by 1970, as Taiwan launched a diplomatic counter-offensive.<sup>86</sup> But by 1979, on the eve of China's reform, some forty-four African states recognized China.<sup>87</sup>

Zhou Enlai again visited Africa in 1964–65,<sup>88</sup> committing \$190 million in aid to seven African countries, including Algeria, Egypt, Sudan and Tanzania.<sup>89</sup> To be sure, this is not a lot of aid by comparison with Western powers. But as a developing country itself, China was hardly positioned to offer more generous terms. Instead, China made its aid count by providing acutely needed developmental assistance in what I call the “five pillars” of China's development diplomacy: agricultural support (state farms, rice cultivation, chicken breeding); light industry (factories, mills, industrial plants); power plants (hydroelectric, coal); infrastructure (roads, highways, railways); medical support (doctors, nurses and medicines); and technical assistance (training, education).<sup>90</sup> These five pillars have been a relatively stable strain of Sino-African relations for half a century.

From technical and public relations perspectives, the greatest achievement of China's Africa policy was the Tanzam Railway, stretching 1,156 miles from landlocked Zambia to coastal Tanzania. At a cost of just under half a billion dollars, China supplied much of the labor, and an interest-free loan payable over thirty years, to the governments of Tanzania and Zambia. At the time, the World Bank, the United States and the United Kingdom had denied requests to fund the project.<sup>91</sup> So, too, did the United Nations, the U.S.S.R. and Canada.<sup>92</sup> Tanzania, born in 1964 from the conjunction of a former

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STRATEGIES AND POLICIES] 175 (2011).

84. *Id.*

85. George T. Yu, *Peking's African Diplomacy*, in CHINA: NEW FORCE IN WORLD AFFAIRS 148, 150–51 (Irwin Isenberg ed., 1972).

86. *Id.* at 150.

87. LIU & LUO, *supra* note 83, at 175.

88. Egypt, Morocco, Algeria, Sudan, Guinea, Ghana, Mali, Somalia, Zaire, Tanzania and Uganda.

89. Yu, *supra* note 85, at 150.

90. *Id.* at 154–58.

91. RICHARD HALL & HUGH PEYMAN, THE GREAT UHURU RAILWAY: CHINA'S SHOWPIECE IN AFRICA 90 (1976).

92. George T. Yu, *The Tanzania-Zambia Railway: A Case Study in Chinese Economic Aid to Africa*, in SOVIET AND CHINESE AID TO AFRICAN NATIONS 117, 122–23 (Warren

British colony and an Arab island, had few allies among the more powerful states. China stepped in to fill the void, generating goodwill among two newly liberated African states, while also gaining access to Zambia's rich copper belt. This is part of the "mutual benefit" or win-win results that China has long touted as central to its foreign policy.

Despite the impressive scale of the Tanzam railway, most of China's aid to Africa was spent on less grandiose projects.<sup>93</sup> China spent the remaining two-plus billion dollars on smaller projects with more localized influence. According to the CIA, China "had become the African countries' favorite donor in the early 1970s," by funding a wide assortment of infrastructure projects.<sup>94</sup> Projects included, but were not limited to, (1) building a nuclear power plant and deep-water port in the Mauritanian capital of Nouakchott, and supporting medical and agricultural projects in the country;<sup>95</sup> (2) constructing a hydroelectric dam in Congo, and building related electrical capacity;<sup>96</sup> (3) resurfacing a road in Madagascar;<sup>97</sup> (4) building a hospital, sports stadium, flour mill and ceramics plant in Rwanda.<sup>98</sup> In July, 1966, two months into the chaos of the Great Proletarian Cultural Revolution, China laid the foundation stone of the Friendship Textile Mill in Dar Es Salaam, Tanzania, the largest fully-integrated textile mill in East Africa at the time.<sup>99</sup> The mill presently operates through a Sino-Tanzanian joint venture company, employing over one thousand Tanzanians.<sup>100</sup>

Further afield—and China has made a point of sending experts, aid and equipment into the more remote regions of Africa—China built dams, factories, a pharmaceutical plant in Tanzania and other basic infrastructure to help provide basic subsistence for one of

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Weinstein & Thomas H. Henriksen eds., 1980).

93. See CIA Report, *supra* note 75, at 19–27 (describing aid projects, funded by various communist countries, in individual African countries).

94. *Id.* at 21.

95. *Id.* at 20.

96. *Id.* at 25.

97. *Id.* at 26.

98. *Id.*

99. Gail A. Eadie & Denise M. Grizzell, *China's Foreign Aid, 1975–1978*, 77 CHINA Q. 217, 219–20 (1979).

100. See Ching Kwan Lee, *Raw Encounters: Chinese Managers, African Workers and the Politics of Casualization in Africa's Chinese Enclaves*, 199 CHINA Q. 647, 652 (2009) (noting the number of casual workers, at 869, had exceeded the number of full-time workers, at 818).

Africa's least developed countries.<sup>101</sup> By 1970, China had provided Tanzania with \$250 million in aid, and by 1971, China *did* surpass Britain in one respect, becoming Tanzania's largest source of foreign aid.<sup>102</sup> China made similar inroads throughout Guinea, building a hydroelectric plant in Pita, a dam in Tinkisso, a refinery in Madiounoula, in addition to railway construction and repair.<sup>103</sup> China also assisted in agricultural development of an unspecified nature.

While this section has emphasized various types of subsistence projects, it is also important to recognize the breadth of Chinese military support. For certain states, this support amounted to direct meddling in internal affairs, again presenting a challenge to China's long-held self-conception as a state that does not interfere in other nations' business. Apart from the generation of goodwill, the Tan-zam railroad and larger emphasis on critical infrastructure to politically isolated states presaged key aspects of China's Africa policy: providing basic necessities on relatively generous financial terms to countries when no other institution or government will offer assistance. This preference has continued relevance in the present day. Many contemporary commentators censure China's support for rogue states,<sup>104</sup> overlooking the fact that China occupied a similarly degraded position for decades.

Since the late 1990s, China has redoubled its activities in Africa across a wide spectrum of sectors. Many efforts have been reported in the Western media: arming the Sudanese military,<sup>105</sup> vetoing UN Security Resolutions against Zimbabwean President Robert Mugabe,<sup>106</sup> shooting miners in Zambia,<sup>107</sup> or supporting kleptocra-

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101. LARKIN, *supra* note 80, at 97–98.

102. Yu, *supra* note 85, at 154.

103. LARKIN, *supra* note 80, at 98.

104. See *supra* notes 1–11 and accompanying text.

105. See *China defends arms sales to Sudan*, BBC NEWS (Feb. 22, 2008), <http://news.bbc.co.uk/2/hi/asia-pacific/7258059.stm> (describing remarks by China's special envoy on Darfur that China accounts for 8% of Sudan's arm imports, and that the United States, United Kingdom and Russia also export arms to Sudan).

106. See Maggie Farley, *Russia, China veto move to sanction Zimbabwe regime*, L.A. TIMES (July 12, 2008), <http://articles.latimes.com/2008/jul/12/world/fg-zimbabwe12>.

107. See Barry Bearak, *Zambia Uneasily Balances Chinese Investment and Workers' Resentment*, N.Y. TIMES, Nov. 20, 2010, <http://www.nytimes.com/2010/11/21/world/africa/21zambia.html?pagewanted=all> (noting that two Chinese mine managers wounded thirteen Zambian miners after hundreds of angry coal miners rushed a locked gate); Barry Bearak, *Zambia Drops Case of Shooting by Chinese Mine Bosses*, N.Y. TIMES, Apr. 4, 2011, <http://www.nytimes.com/2011/04/05/world/africa/05zambia.html> (noting that Zambian prosecutors had dropped the case against the two Chinese supervisors). Of course, this

cies in Angola.<sup>108</sup> But China's presence in Africa extends far beyond the conflict-ridden regions of Zimbabwe and Sudan, and the resource-rich areas of Zambia and Angola.

In 2000, China initiated the Forum on China-Africa Cooperation (FOCAC), a multifaceted intergovernmental mechanism to promote development and strengthen ties between China and those African states that recognize the PRC. Since that time, triennial ministerial meetings in Beijing and various African capitals (Addis Ababa, Cairo), coupled with annual and biannual meetings between lower level officials, has enhanced Sino-African trade, investment and mutual comprehension.<sup>109</sup> Bilateral trade between China and Africa has grown eighty-fold in over a decade, from two billion dollars in 1999, to \$160 billion in 2012.<sup>110</sup> Chinese foreign direct investment into Africa, though notoriously difficult to track, also appears to have skyrocketed. Between 1996 and 2007, the amount of FDI also increased eighty-fold, from fifty-six million dollars to \$4.46 billion.<sup>111</sup> While these are not vast sums—either in terms of China's total outward investment, or Africa's inward investment—they do suggest the large increases in economic activity between China and Africa in the recent past.

Sino-African relations have evolved over the past six decades. Early ties between the continent and China grew out of China's linked desires to win diplomatic recognition from members of the international community, and to support nascent anti-colonial movements. Small independent states, while not significant political actors on the global stage, cast votes at the UN General Assembly, and

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echoes a 2005 incident, when an explosion at the Chinese-owned and -operated Chambishi mine killed forty-eight Zambian miners.

108. See generally Elias Isaac, *The West's Retreat and China's Advance in Angola*, in CHINESE AND AFRICAN PERSPECTIVES ON CHINA IN AFRICA 163, 165–66 (Axel Harneit-Sievers et al. eds., 2010) (“For the majority of Angolan citizens the Chinese presence is very problematic. It is seen as neocolonialism in which the ruling political elite sold the country to Chinese capital without any consideration of the need to protect national interests. But the ruling political elite sees it differently. They see it as an opportunity to obtain hard cash for the reconstruction of the devastated infrastructure for which payments are made with raw materials such as oil and fish.”).

109. See FOCAC ABC (May 21, 2012), [www.focac.org/eng/lttda/ltjj/t933522.htm](http://www.focac.org/eng/lttda/ltjj/t933522.htm).

110. Center for Chinese Studies, University of Stellenbosch, *Policy Briefing, FOCAC: Trade, investment and aid in China-Africa relations*, at 1 (May 2012), available at [http://www.ccs.org.za/wp-content/uploads/2012/05/FOCAC\\_Policy-Briefing\\_tradeinvest\\_final.pdf](http://www.ccs.org.za/wp-content/uploads/2012/05/FOCAC_Policy-Briefing_tradeinvest_final.pdf).

111. Mary-Francoise Renard, *China's Trade and FDI in Africa*, 18, (African Development Bank Group, Working Paper No. 126, May 2011), available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Working%20126.pdf>.



China was able to wrest the UN seat from Taiwan in 1971 in no small part due to close connections with dozens of African countries. China's relationships with African states of various stripes hark back to this era. And of course China itself struggled to win international recognition among the international community. Its current support for "rogue" states—a term understood best from the eye of the beholder—stems from connections first cultivated decades ago.

#### IV. SOCIOECONOMIC RIGHTS IN AFRICA

The remainder of this Article examines the human rights implications of China's presence in Africa. Given the above articulation of China's human rights concerns, the focus will be on programs to entrench socioeconomic rights of African people. In the past several decades, China has implemented hundreds of projects in nearly every African country: building hydropower plants and railroads, training medical personnel and students, paving roads, building ports and so on. In so doing, China has helped raise the living standards, and entrench the socioeconomic rights, of millions of Africans.

Before turning to these forms of assistance, it is important to note that China would probably not use the language of entrenching human rights to describe its presence in Africa. In surveying Chinese scholarship on Sino-African relations, the issue of human rights rarely comes up. When it does, it often responds to abuses chronicled by Western journalists, scholars and academics.<sup>112</sup> This is in part because "human rights" is still a sensitive term in Chinese diplomacy, given the decades of accusations leveled against China for its own human rights abuses. Prolonged censure has led China to tread carefully on this issue, particularly in the international arena. Generally speaking, China hesitates to call attention to other countries' human rights abuses, unless of course that country has already criticized China's own record.<sup>113</sup>

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112. See, e.g., JIN CANRONG, *BIG POWER'S RESPONSIBILITY: CHINA'S PERSPECTIVE* 115–121 (RENMIN UNIVERSITY PRESS 2010). Professor Jin notes various criticisms from the West, but counters them by noting China's foreign aid, economic cooperation, trade, capacity-building endeavors, infrastructure projects and so on. Notably, he avoids the term "human rights" in this analysis.

113. China is largely reluctant to criticize other countries' domestic situations. But China has responded to the United States Department of State's annual summary of other countries' human rights records by publishing the "U.S. Human Rights Record" every year since 2000. See, e.g., State Council Information Office, *U.S. Human Rights Record in 1999*, <http://www.china-embassy.org/eng/zt/ppflg/t36620.htm>.

During its own three decades of reform and opening up, China—like many other East Asian countries before it—has prioritized economic development over other forms of human development. More concretely, China has privileged feeding, housing, clothing, educating and providing for the basic subsistence of its citizenry, over environmental concerns, workplace safety, food safety and so on. On the one hand, this has led to one of the greatest economic success stories in world history, and the epochal lifting of hundreds of millions of people out of poverty.<sup>114</sup> On the other, China has also achieved more dubious accolades, such as surpassing the United States as the world's leading producer of carbon dioxide,<sup>115</sup> leading the world in deaths attributable to mining accidents<sup>116</sup> and executing more prisoners “than the rest of the world combined.”<sup>117</sup>

China's conduct in Africa reflects the prioritization of socio-economic rights over other types of human development. By targeting trade, investment, infrastructure, education and agriculture, China is trying to replicate in Africa various aspects of its own domestic economic transformation. At the same time, the lax environmental and labor standards by which Chinese companies operate in Africa unfortunately replicate the lax environmental and labor standards practiced at home. In other words, the African implementation of the China model may raise living standards for some, while simultaneously depressing the quality of life for others.

China's conduct in Africa differs from the West in other ways as well. Unlike Western aid projects—whether from G-8 countries or international financial institutions (IFI)—China does not attach strings, or “conditionalities,” to its development packages, whether in the form of improved governance indicators, better economic management, a particular ideology, improved human rights record or otherwise. The refusal to incorporate conditions, frequently criticized in the West, is not exactly a new paradigm for China. Julius Nyerere, Tanzania's first democratically elected president, described China's financial support for the Tanzanian-Zambian railroad in 1974 in the following way: “The Chinese people have not asked us to be-

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114. See *supra* note 39.

115. Richard Black, *China 'Won't Follow US' on Carbon Emissions*, BBC NEWS (Oct. 25, 2011), <http://www.bbc.co.uk/news/science-environment-15444858> (noting China's emissions surpassed the United States, but per capita emissions are still lower).

116. Mark Gregory, *Why Are China's Mines So Dangerous?*, BBC NEWS (Oct. 7, 2010), <http://www.bbc.co.uk/news/business-11497070> (noting that China accounts for 80% of the world's mining deaths).

117. Mark McDonald, *China Said to Execute Thousands in '09*, N.Y. TIMES, Mar. 30, 2010, [http://www.nytimes.com/2010/03/31/world/asia/31execute.html?\\_r=0](http://www.nytimes.com/2010/03/31/world/asia/31execute.html?_r=0).

come communists in order to qualify for this loan . . . . They have never at any point suggested that we should change any of our policies—internal or external.”<sup>118</sup> Indeed, Nyerere would later single out conditionality as one of the primary evils inflicted by IFIs on developing countries.<sup>119</sup>

Decades later, China's ideological agnosticism appeals to many African states, not just those countries that have fallen afoul of Western standards of good governance and human rights, but also those that simply do not want to be preached to. The last point suffuses Chinese scholarship on this issue, namely that China's relationship with Africa is “win-win,” that China is Africa's “all-weather friend” and that its assistance represents South-South cooperation. China ostensibly sidesteps the paternalism of Western financial institutions and donor countries by approaching Africa as a classmate (one hesitates to use the word “equal” given China's enormous economic clout vis-à-vis individual African countries), instead of a taskmaster. While IFIs have dictated the rules of engagement, often without significant input from African stakeholders, China has not unilaterally promulgated one formula to cure Africa's myriad developmental ailments.

China's economic engagement with Africa is a complex topic on which entire books have been written.<sup>120</sup> Four points are especially salient to the discussion of human rights: the emphasis on infrastructure, medical services, education, and food and water. Western aid programs have either overlooked these areas,<sup>121</sup> or retreated in the

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118. Paul Opoku-Mensah, *China and the International Aid System: Transformation or Cooptation?*, in *THE RISE OF CHINA AND THE CAPITALIST WORLD ORDER* 71, 82 (Li Xing ed., 2010).

119. See Julius Nyerere, *An Address*, 17 DEV. AND CHANGE 387, 393 (1986).

120. Probably the most balanced accounts in English are DEBORAH BRAUTIGAN, *THE DRAGON'S GIFT: THE REAL STORY OF CHINA IN AFRICA* (2009) and the collected volume *CHINESE AND AFRICAN PERSPECTIVES ON CHINA IN AFRICA* (Axel Harneit-Sievers et al. eds., 2010). Somewhat less balanced are IAN TAYLOR, *CHINA'S NEW ROLE IN AFRICA* (2009) and PHILIPPE RICHER, *L'OFFENSIVE CHINOISE EN AFRIQUE [THE CHINESE OFFENSIVE IN AFRICA]* (2008). Only a handful of Chinese books have addressed Sino-African relations. The best I have come across is LIU HONGWU & LUO JIANBO, *ZHONG FEI FA ZHAN HE ZUO: LI LUN, ZHAN LUE YU ZHENG CE YAN JIU [SINO-AFRICAN DEVELOPMENT COOPERATION: STUDIES ON THE THEORIES, STRATEGIES AND POLICIES]* (2011). A number of students at such Chinese universities as Yunnan University and Zhejiang Normal University have written Master's theses on the topic in the years 2008 to 2011, suggesting that more Chinese scholarship is probably forthcoming.

121. For example, the World Bank insisted throughout the 1980s and 1990s that African users pay for health and education services, despite the obvious fact that many Africans could not afford them. This led to a decline in access to health services in many countries,

recent past.<sup>122</sup> Yet each facet is essential to the continued development of Africa, and the realization of basic socio-economic human rights.

### *A. Infrastructure*

There is no human right to infrastructure per se. But international human rights law guarantees a number of rights that hinge directly on functional infrastructure and the benefits that flow from the ability to move goods, people and resources around a country. Some 60 years ago, the Universal Declaration of Human Rights recognized “the right to a standard of living adequate for . . . health and well-being . . . including food, clothing, housing and medical care and necessary social services.”<sup>123</sup> The International Covenant of Economic, Social and Cultural Rights (which China has ratified) recognizes “the right of everyone to an adequate standard of living,” to include food, clothing, housing and “the continuous improvement of living conditions.”<sup>124</sup> Likewise, the 1986 Declaration of the Right to Development stresses the “constant improvement of the well-being of the entire population” and the “fair distribution of the benefits resulting therefrom,” to be achieved through international cooperation.<sup>125</sup> To be sure, no covenant mentions power plants, highways, railways and the like. Yet it would be difficult to deliver medical and social services, or to attain the fair distribution of benefits, without a fairly large network of roads, trains and airports.

China has helped build and repair roads, trains, ports, fiber-optic cables and other channels to aid the flow of information, goods and people all across Africa. China has invested in the building of schools, hospitals, offices, health-care centers, malaria prevention centers and other facilities to improve the health and developmental capacity of Africans. In 2007, China provided over 3 billion dollars to construct ten hydropower plants in Nigeria, Sudan and other places.<sup>126</sup> In 2007, China also launched a satellite for the Nigerian gov-

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with concomitant ill effects on health (*e.g.*, rises in infant mortality rates), and significant erosions in government spending on education. See JONATHAN GLENNIE, *THE TROUBLE WITH AID: WHY LESS COULD MEAN MORE FOR AFRICA* 42–44 (2008).

122. See *Results Profile: China Poverty Reduction*, *supra* note 39.

123. Universal Declaration of Human Rights, art. 25(1), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

124. International Covenant on Social, Economic and Cultural Rights, art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

125. Declaration on the Right to Development, *supra* note 44, art. 2(3).

126. Vivien Foster et al., The World Bank, *Building Bridges: China's Growing Role as*

ernment, which will boost broadcasting, phone and internet capabilities throughout the continent.<sup>127</sup>

A significant portion of China's assistance aims to provide basic infrastructure and other public goods: roads, railways, power plants and so on. Such assistance materially improves the lives of ordinary Africans by accelerating the delivery of food, clothing, medicines and other necessary products to remote corners of the continent. At the same time, it eases the flow of goods and natural resources produced in Africa to markets in the continent and around the world. By one estimate, China has engaged in 519 projects in Africa, laying down some 3,000 kilometers of road and 2,000 kilometers of railroads.<sup>128</sup>

The construction of roads may seem distant from the human rights agenda, but it can in fact be considered a pressing human rights concern. Basic infrastructure is critical to human development, and Africa sorely lacks such roads.<sup>129</sup> South Sudan, Africa's newest country occupying a territory roughly equivalent to that of France, contains fewer than 100 kilometers of roads.<sup>130</sup> Many African countries face similar deprivation. In an amusing, if dispiriting, report by *The Economist*, a 370-mile journey from Douala, Cameroon to the interior city of Bertoua took the correspondent four days, instead of

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*Infrastructure Financier for Sub-Saharan Africa, Executive Summary*, 3–4 (2008), [http://siteresources.worldbank.org/INTAFRICA/Resources/BB\\_Final\\_Exec\\_summary\\_English\\_July08\\_Wo-Embg.pdf](http://siteresources.worldbank.org/INTAFRICA/Resources/BB_Final_Exec_summary_English_July08_Wo-Embg.pdf).

127. See *China launches Nigerian satellite*, BBC NEWS (May 14, 2007, 8:31 AM), <http://news.bbc.co.uk/2/hi/6653067.stm>.

128. Liu He & Qiu Jun, *Zhongguo Qieshi Bangzhu Feizhou Yingdui Weiji, Jiang Jixu Tuidong Feizhou Fazhan* [China Effectively Helps Africa Weather the Crisis: Will Continue to Promote African Development], XINHUA (Mar. 1, 2009), [http://news.xinhuanet.com/fortune/2009-03/02/content\\_10926691.htm](http://news.xinhuanet.com/fortune/2009-03/02/content_10926691.htm). The precise length of roads and railroads that China has helped build in Africa is difficult to measure. During the 2009 FOCAC meeting, Premier Wen Jiabao said China had helped Africa build 2,200 kilometers of roads and 3,300 kilometers of railways. *China Comes to Help Africa with Aid and Whole Heart: Chinese Premier*, XINHUA (Nov. 9, 2009), [http://news.xinhuanet.com/english/2009-11/09/content\\_12413099.htm](http://news.xinhuanet.com/english/2009-11/09/content_12413099.htm).

129. See Michael Fleshman, *Laying Africa's Roads to Prosperity: The Continent Targets Its Infrastructure Gap*, 22 AFRICAN RENEWAL 12, 16 (2009) ("Africa has only about 25 per cent of the paved road per kilometre found in other low-income regions and an eighth of the electricity-generation capacity per person."); Piet Buys et al., Development Research Group, World Bank, *Road Network Upgrading and Overland Trade Expansion in Sub-Saharan Africa*, 44–47 (2006) (noting that poor transport infrastructure, including a lack of functional roads, has contributed to poverty in many Sub-Saharan African countries).

130. *South Sudan's Future: Now for the Hard Part*, ECONOMIST (Feb. 3, 2011), <http://www.economist.com/node/18070450>.

the twenty hours originally planned.<sup>131</sup>

In light of the infrastructural challenges facing Africa, Chinese investment plays an increasingly vital role.<sup>132</sup> One notable state-owned enterprise is the China Road and Bridge Corporation (CRBC), which has been active in twenty African countries since the 1960s.<sup>133</sup> While aggregate statistics are not available, individual sources reveal the scope of CRBC's footprint in Africa. In Kenya, CRBC has constructed over 1,000 kilometers of roads since 1985.<sup>134</sup> Its most famous project in East Africa is a section of road that links Nairobi, Kenya's political and economic capital, to Mombasa, its main port. Known locally as the "China Road," it receives plaudits from Kenyan drivers as the "best road in Kenya and even in East Africa."<sup>135</sup> The CRBC has also built the Addis Ababa Ring Road in Ethiopia. Other Chinese companies include the China Railway Seventh Group, active in half a dozen African nations, including its least developed.<sup>136</sup> It has built, or plans to build, substantial roads in Tanzania, Ethiopia, Zambia and Botswana.<sup>137</sup>

131. *Trucking in Cameroon: The Road to Hell Is Unpaved*, ECONOMIST (Dec. 19, 2002), <http://www.economist.com/node/1487583>.

132. China has signed bilateral investment treaties with twenty-six African countries. While some accuse China of structuring its BIT program to favor outbound investment at the expense of inbound investment, this is not uncommon among developing countries or other capital-exporting states. See Leon Trakman, University of New South Wales Centre for Law, Markets & Regulations, *Enter the Dragon IV: China's Proliferating Investment Treaty Program*, <http://www.clmr.unsw.edu.au/article/deterrence/public-v-private-enforcement/enter-the-dragon-iv-chinas-proliferating-investment-treaty-program>.

133. See *China Road and Bridge Corporation*, CHINA RADIO INT'L (Oct. 14, 2010, 9:00:23 PM), <http://english.cri.cn/7146/2010/10/14/2041s599399.htm>.

134. Michael Chege, *Economic Relations between Kenya and China, 1963–2007*, in U.S. AND CHINESE ENGAGEMENT IN AFRICA: PROSPECTS FOR IMPROVING U.S.-CHINA-AFRICA COOPERATION 12, 26 (J. Stephen Morrison ed., 2008), available at [http://csis.org/files/media/csis/pubs/080711\\_cooke\\_us\\_chineseengagement\\_web.pdf](http://csis.org/files/media/csis/pubs/080711_cooke_us_chineseengagement_web.pdf).

135. *Id.*

136. Ishmael Kindama Dumbuya, *President Koroma Hands Over \$30m Road Project to China Railway Seventh Group*, STANDARD TIMES PRESS, <http://standardtimespress.org/?p=1330> (last visited Apr. 25, 2013). The article lists road projects in Sierra Leone, Mali and Guinea, which are among the world's least developed states. For country-specific statistics on human development, see the United Nations Development Program's International Human Development Indicators, available at <http://hdr.undp.org/en/statistics> (ranking Guinea as 178th, Mali as 182nd and Sierra Leone as 177th out of 187 states).

137. Yang Xuesong, *Zhongguo Canyu Feizhou Gonglu Jianshede Xianzhuang yu Qianjing* [The Current Status and Prospect of China's Participation in African Road Construction], 6 GUOJI SHICHANG [INT'L MARKET] 66, 67 (2010). Yang mentions China Railway's plan to build a 118-km road in Ethiopia, two long roads in Tanzania (sixty kilometers and eighty-five kilometers respectively), a forty-eight kilometer road in

### B. Medicine

International law makes access to health care a fundamental human right. The ICESCR recognizes the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health,”<sup>138</sup> and more specifically, ensures the “creation of conditions which would assure to all medical service and medical attention in the event of sickness.”<sup>139</sup> Many African countries struggle to provide needed medical services to their citizens, and hence secure this human right. To use the language of the Declaration of the Right to Development, by providing decades of medical assistance to various African countries, China is fulfilling its “duty to co-operate with each other in ensuring development and eliminating obstacles to development.”<sup>140</sup>

China has provided medical assistance in various forms to Africa for half a century. In 1963, China dispatched its first team of medical doctors abroad to work in the recently liberated former French colony of Algeria.<sup>141</sup> Since that time, Algeria has benefited tremendously from China's overseas assistance. In December 1978, the Chinese government sent over a specialized team to treat Algerian President Houari Boumedienne.<sup>142</sup> By 1995, a dozen Chinese teams, employing 183 people, had completed one or two-year missions in Algeria.<sup>143</sup> At present, Chinese medical teams can be found in Algiers, Annaba, Setif, Batna, El Kala and other major Algerian cities.<sup>144</sup> The capital also boasts an acupuncture clinic staffed by Chinese doctors.<sup>145</sup>

But Algeria is the tip of the iceberg. Since the 1963 mission, China has dispatched 17,000 medical personnel to forty-eight African nations, treating some 200 million Africans.<sup>146</sup> Presently, over 1,000

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Botswana, as well as various upgrades.

138. ICESCR, *supra* note 124, art. 12.

139. *Id.*, art. 12(d).

140. Declaration on the Right to Development, *supra* note 44, art. 3(3).

141. HU JINSHAN, FEIZHOUE ZHONGGUO XINGXIANG [AFRICAN IMAGES OF CHINA] 197 (2010).

142. *Id.* at 198.

143. *Id.* at 197.

144. *Id.*

145. *Id.*

146. Ronald Ssekandi, *China's Medical Aid Benefits 48 African Countries*, XINHUA (Feb. 22, 2012), [http://news.xinhuanet.com/english/indepth/2012-02/22/c\\_131423681.htm](http://news.xinhuanet.com/english/indepth/2012-02/22/c_131423681.htm); Li Anshan, *Zhongguo Yuanwai Yiliaodui de Lishi, Guimo jiqi Yingxiang* [Chinese Medical Teams Abroad: Their History, Scope and Influence], WAIJIAO PINGLUN [FOREIGN AFFAIRS

Chinese citizens in fifty medical teams serve in forty African nations, including surgeons, internalists, gynecologists, anesthesiologists and practitioners of traditional Chinese medicine.<sup>147</sup> Chinese doctors practice not only in major cities like Algiers and Dakar, but also in some of the most underserved areas of Africa.<sup>148</sup> While many Western doctors stay close to the wealthier or more comfortable urban areas, Chinese doctors serve the poorest regions in Africa, such as Lumina, Democratic Republic of Congo,<sup>149</sup> Labe, Guinea,<sup>150</sup> or Jinja, Uganda.<sup>151</sup> Indeed, many Chinese teams provide the only medical treatment available in many parts of the continent.<sup>152</sup>

In addition to sending medical personnel, China has also spent considerable sums to build permanent physical structures in Africa. China has built or helped build thirty hospitals in various African countries,<sup>153</sup> including the Central African Republic, Guinea-Bissau and Chad.<sup>154</sup> Such facilities further expand local people's access to medicine, an issue that continues to plague millions of Africans. China has also built thirty malaria prevention centers, and pledged 500 million renminbi (roughly eighty million dollars) of anti-malarial drugs and equipment to various African countries.<sup>155</sup>

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REVIEW] (Jan. 2009), at 25, 32.

147. See HU, *supra* note 141, at 198; see also Embassy of the People's Republic of China in the Republic of Botswana, *Implementation of Follow-up Actions of the Beijing Summit of the Forum on China-Africa Cooperation*, <http://bw.china-embassy.org/eng/xwdt/t461546.htm> (last visited Apr. 14, 2013).

148. See CTR. FOR CHINESE STUDIES, UNIVERSITY OF STELLENBOSCH, *EVALUATING CHINA'S FOCAC COMMITMENTS TO AFRICA AND MAPPING THE WAY AHEAD* (Jan. 2010), available at <http://www.ccs.org.za/wp-content/uploads/2010/03/ENGLISH-Evaluating-Chinas-FOCAC-commitments-to-Africa-2010.pdf>. This valuable report attempts to monitor China's progress on meeting its various commitments to African countries announced at the triennial Forum on China-Africa Cooperation (FOCAC).

149. HU, *supra* note 141, at 199.

150. Hu Yongqi & Cui Jia, *Chinese Medical Teams Kindle Hearts in Guinea*, CHINA DAILY (Sept. 22, 2010), [http://www.chinadaily.com.cn/china/2010-09/22/content\\_11337720.htm](http://www.chinadaily.com.cn/china/2010-09/22/content_11337720.htm).

151. HU, *supra* note 141.

152. *Id.* at 198.

153. Lu Hui, *President Hu: Important Progress Made in Realizing China-Africa New Strategic Partnership*, XINHUA (July 19, 2012), [http://news.xinhuanet.com/english/china/2012-07/19/c\\_131725431.htm](http://news.xinhuanet.com/english/china/2012-07/19/c_131725431.htm).

154. State Council Information Office, *White Paper: China's Foreign Aid*, CHINA DAILY, [http://www.chinadaily.com.cn/cndy/2011-04/22/content\\_12373944.htm](http://www.chinadaily.com.cn/cndy/2011-04/22/content_12373944.htm) (last updated Apr. 22, 2011).

155. See *Interview with His Excellency Mr. Gu Xiaojie, Ambassador of China, on Sino-Africa and Sino-Ethiopia Cooperation in Fighting Malaria*, EMBASSY OF THE PEOPLE'S



Support for malaria is especially valuable, as it kills one million African children every year, and infects hundreds of millions of Africans.<sup>156</sup> China also sends teams to educate African medical workers on the prevention and diagnosis of malaria.<sup>157</sup>

### C. Education

Education has been a central plank of the human rights platform for the entirety of the postwar period. The Universal Declaration of Human Rights, though not binding, proclaimed that elementary education should be free and compulsory, and higher education should be “equally accessible to all on the basis of merit.”<sup>158</sup> Later, the ICESCR recognized “the right of everyone to education,” and bound states parties to provide free and compulsory primary education, “generally available” secondary education and higher education that is equally accessible to all.<sup>159</sup> Despite these guarantees, it is unclear how many Africans actually enjoy this right. A lack of qualified teachers, classrooms and learning materials has conspired to make primary school enrollment in African countries “among the lowest in world.”<sup>160</sup>

One of the keys to China's own rise, particularly in the past decade, has been its investment in education. In Africa, too, China stresses the importance of education and training in its assistance programs. Across the continent, China has built over 100 schools, and established twenty-nine Confucius Institutes in twenty-two countries.<sup>161</sup> The latter propagate Chinese culture, but also provide instruction in Mandarin, fast becoming the world's second *lingua franca* after English. Chinese and African universities have also entered into cooperative agreements to facilitate the exchange of ideas and research. China has paid special attention to higher education, providing an eighty million dollar loan on favorable repayment terms, and a significant amount of labor and materials, to Malawi to

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REPUBLIC OF CHINA IN THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA (Mar. 17, 2011), <http://et.china-embassy.org/eng/zagx/t807396.htm>.

156. *Id.*

157. *Id.*

158. UDHR, *supra* note 123, art. 26(1).

159. ICESCR, *supra* note 124, art. 13(1), 13(2)(a)–(c).

160. *African Education Initiative*, USAID, [http://transition.usaid.gov/locations/sub-saharan\\_africa/initiatives/aei.html](http://transition.usaid.gov/locations/sub-saharan_africa/initiatives/aei.html) (last updated Dec. 30, 2011).

161. *See* Lu, *supra* note 153.

build a University of Science and Technology.<sup>162</sup>

China has also contributed to the human development of African people. In its half-century of bilateral relations, China has trained some 40,000 Africans across various sectors, and provided scholarships to 20,000 Africans to study in the PRC.<sup>163</sup> The number of scholarships has increased gradually in the past several years, from 2,000 in 2006, to 5,500 in 2012.<sup>164</sup> China has recently reduced the number of undergraduate scholarships available to African students, and raised the number for master and doctoral studies.<sup>165</sup> These funds help ensure an important sector of the African elite understands, and perhaps feels some gratitude towards, China. That is, such initiatives capture both minds and hearts.

#### *D. Food and Water*

As noted above, the Universal Declaration of Human Rights and the ICESCR both guarantee the right to an adequate standard of living, and specifically provide for the right to food.<sup>166</sup> The right to water has a far more recent provenance, recognized only in 2010,<sup>167</sup> even as water is obviously vital to the creation, sustenance and propagation of life itself. Despite their status as fundamental human rights, however, food and water elude millions of Africans; obtaining sufficient quantities of both has long proven an intractable problem. This condition is frequently exacerbated by drought, war, corruption and the difficulties of coordinating responses by the international community. One million Ethiopians died in 1984, and major famines have recurred in African countries from Angola and Malawi to So-

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162. Clemence Manyukwe, *Malawi: China to Fund New Science University*, UNIVERSITY WORLD NEWS (June 6, 2010), <http://www.universityworldnews.com/article.php?story=20100605065149374>; *Malawi: President Donates Land for Science University*, FACE OF MALAWI (Apr. 24, 2011), <http://www.faceofmalawi.com/2011/04/malawi-president-donates-land-for-science-university>.

163. See Lu, *supra* note 153.

164. Li Wei, *China's Exchanges and Scholarships with Africa: History, Success and Problems*, NORRAG (Apr. 1, 2011), <http://www.norrag.org/en/publications/norrag-news/online-version/the-geopolitics-of-overseas-scholarships-awards-old-and-new-providers-east-west-north-south/detail/chinas-exchanges-and-scholarships-with-africa-history-success-and-problems.html>.

165. *Id.*

166. See UDHR, *supra* note 123, art. 25(1); ICESCR, *supra* note 124, art. 11(1).

167. See The Human Right to Water and Sanitation, G.A. Res. 64/292, U.N. Doc. A/RES/64/292 (Aug. 3, 2010).

mali, Chad and Niger.<sup>168</sup> Agricultural production offers one significant way to lower the likelihood of the next famine, while boosting the health and longevity of this generation of Africans.

To meet some of these demands, China has built twenty agricultural demonstration centers throughout Africa, and regularly dispatches agronomists to advise on raising agricultural productivity.<sup>169</sup> In Senegal, for example, Chinese agronomists have introduced rice cultivation techniques, and new strains of rice through a pilot program with the Senegalese Ministry of Agriculture.<sup>170</sup> According to Chinese sources, three pilots set up along the Senegal River tested two strains of rice and various cultivation techniques, which yielded between two to three times the quantity of rice as local varieties and techniques.<sup>171</sup> The Chinese then train local farmers in the new cultivation techniques, and will probably sell them seeds, perhaps at a discounted price. China's presence could very well double or triple rice productions for Senegalese, but China will eventually be paid for its efforts. But it is also important to note that this will ultimately be a *commercial* enterprise. China is not doing charity work in Africa; this is no *mission civilisatrice*. Rather, China hopes to develop new markets for products it is developing; these demonstration stations allow local scientists, farmers and officials to taste, and test, the wares before deciding to purchase.

Access to clean drinking water likewise plagues many on the continent. With the Sahara Desert covering nearly one-quarter of its land, Africa is among the driest continents. Periodic droughts—Ethiopia in the 1980s, Niger and Mali in the 2000s—have exacerbated this aridity, and led to the starvation and deaths of millions of Africans. Even in sub-Saharan Africa, clean water remains a scarce natural resource.

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168. Henry Foy, *Millions Face Starvation in West Africa*, *Warn Aid Agencies*, GUARDIAN (June 21, 2010, 7:26 AM), <http://www.guardian.co.uk/world/2010/jun/21/millions-face-starvation-west-africa> (noting 10 million people faced starvation in Niger, Chad and other countries); Michael Fleshman, *Millions Threatened with Starvation: UN Appeals for Emergency Relief for Southern Africa*, AFRICA RECOVERY, Sept. 2002, at 3 (noting that nearly sixteen million in seven countries were at risk in 2002); *Africa Starvation Warning*, BBC NEWS (Apr. 21, 1999, 10:42 PM), <http://news.bbc.co.uk/2/hi/africa/325543.stm> (describing the risk of starvation in Somalia, Ethiopia, Eritrea, Sierra Leone, Angola and the Great Lakes region in 1999).

169. See Liu & Qiu, *supra* note 128.

170. See *Zhongguo Yuanzhu Saineijiaer Zhuanjia "Pao" Chu Shuidao Gaochan* [China Aids Senegalese Experts to Throw a High Rice Yield], ALIBABA NEWS (Nov. 23, 2009), <http://info.china.alibaba.com/detail/1007813934.html>.

171. The Chinese strains produced an average of ten tons per hectare, while local strains produced three to five tons.

Since the first team was sent to Tanzania in 1965, Chinese engineers have drilled some 4,000 water-wells in twenty African countries.<sup>172</sup> Not every well leads inexorably to a stable water supply, yet many African villagers can thank China for relatively secure access to water. In the early 1970s, for instance, Mauritania requested Chinese assistance in building wells. The Chinese built eighteen wells, as well as a fifty-six kilometer piping system, to bring water to the 800,000 inhabitants of Nouakchott.<sup>173</sup> Later in the 1970s, after signing a bilateral agreement with Nigeria, China sent twenty-seven engineers to dig dozens of wells in the northwest part of the country, near the basin of Lake Chad.<sup>174</sup> Even now, Nigeria continues to welcome Chinese engineers, who have built 220 hand-drawn wells, and seven electric wells, since 2005.<sup>175</sup> Under a 2004 bilateral agreement, China will build 598 wells in Nigeria, for 180 local governments spread out across all eighteen provinces, as well as in its four administrative capitals.<sup>176</sup> Even in Darfur, where temperatures regularly exceed 100-degrees, Chinese peacekeepers have drilled a well to provide water for members of the joint African Union/United Nations peacekeeping mission.<sup>177</sup> Finding water in such an environment is, of course, both a humanitarian and human rights concern.

#### *E. Response to Professor James Thuo Gathii*

During President Nixon's 1971 visit to China, Nixon asked Chinese Premier Zhou Enlai about the impact of the 1789 French Revolution. "Too early to tell," Zhou reputedly answered, outlining a historical horizon far longer than most Westerners would probably accept.<sup>178</sup> Professor Gathii, in his response to my article, makes a similar assessment about the human rights impact of China's pres-

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172. HU, *supra* note 141, at 194.

173. *Id.* at 195.

174. *Id.*

175. *Id.* at 196.

176. *Id.*

177. *Sudan, Darfur: Chinese Peacekeepers' Well Drilling Team*, WASH NEWS AFRICA (July 25, 2012), <http://washafrika.wordpress.com/2012/07/25/sudan-darfur-chinese-peace-keepers-well-drilling-team>.

178. Richard McGregor, *Zhou's Cryptic Caution Lost in Translation*, FIN. TIMES (June 10, 2011, 8:03 PM), <http://www.ft.com/intl/cms/s/0/74916db6-938d-11e0-922e-00144feab49a.html>. Zhou's response has long been interpreted in the West to "buttress China's reputation as a far-thinking, patient civilization." *Id.* Recently, however, the historical record has been clarified. Zhou was evidently referring to the 1968 Paris Riots, events that unfolded just three years prior to President Nixon's visit. *Id.*

ence in Africa.<sup>179</sup> It is simply too soon to conclude whether China is actually advancing the cause of human rights in Africa. While I appreciate his penetrating critique, and concur with much of what he writes, I would like to offer three clarifications in response.

First, Professor Gathii expresses concern about the “long-term sustainability” of China’s contributions to human rights in Africa, suggesting that my analysis focuses solely on short-term improvements. But as I showed in Parts III and IV, China has worked on African infrastructure projects for over four decades. The Tanzam railroad suggests that projects can be at once monumental, revolutionary in their day and still functional some thirty-five years later. True, the longevity of current projects is unknowable at the present moment. But I would argue that the responsibility for the long-term effects of a road, power plant, well, school or other structure cannot be pinned solely on the Chinese side. Africans too must accept responsibility for ensuring the continued operability of these tools. While China must train African personnel on the use and maintenance of these various projects, the onus for the long-term sustainability of these projects ultimately falls on Africa, not China. Again, comparison with China’s recent history is helpful. China has moved very quickly up the value chain in its manufactures over the past three decades, not because Western companies voluntarily handed over valuable technology and trade secrets, but because China’s laws and regulations required transfer technology. African countries should follow suit.

Second, Professor Gathii writes that I deploy an “extremely low baseline to establish the effect of China’s presence in Africa.”<sup>180</sup> I do not disagree. Indeed, the discursive space in which I write pays virtually no attention to the *benefits* of China’s presence in Africa. By describing some of these benefits, and placing them within a wider human rights framework, I seek to challenge widely accepted verities that China is a colonizer and drain on Africa’s natural resources. In pushing the needle ever so slightly, I hope that future treatments of the Sino-African issues can avoid the self-serving dualism that China is a reckless exploiter, and the West offers Africa its best hope of development. The baseline is low primarily because I am writing in a discursive vacuum.

Third, Professor Gathii rightly points out that China’s interstate relations are statist, ignoring or overlooking civil society groups

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179. See Gathii, *supra* note 26, at 666.

180. *Id.* at 667.

and other non-state actors.<sup>181</sup> Since, as Gathii states, Africa's leadership does not often act with the interests of most Africans in mind, there is the distinct possibility that Chinese support will benefit elites, but not the overwhelming majority of Africans. I share this concern, and have elsewhere written about the important work that Chinese lawyers, activists and other civil society actors do in challenging Chinese authorities on human rights matters.<sup>182</sup> Yet it is undeniable that civil society remains weak and fragmented in China. The little influence it wields is unlikely to be felt on distant shores; authoritarian states such as China discourage challenges on their own soil, and are unlikely to cede their monopoly on power in the foreign context. In sum, Africans will need to ensure that China's developmental assistance is well deployed by selecting leaders to represent their interests. Yet since few African states are fully democratic, this is an unlikely prospect.<sup>183</sup>

## CONCLUSION

China's engagement with fifty African countries extends far beyond aiding and abetting the least savory regimes. In the 1950s, China first gained a foothold in the continent through small aid projects in thirty-six countries. In the past ten years, China has played an increasingly visible role throughout the continent, across a wide range of fields, from building schools and malaria centers to constructing roads and hydroelectric power plants. While China does not use the banner of human rights to trumpet its rice experimentation centers, medical teams or water wells, these projects have helped raise the living standards, and secure the fundamental human rights, of millions of Africans. Just as China's unique, state-centric model of development has brought hundreds of millions of its own citizens out of poverty, its projects in Africa promise to do the same for Africans. To be sure, China's support for a small number of "rogue states" has thwarted international sanctions, and Western plans to isolate these regimes. While unfortunate, such support is largely unrepresentative of China's Africa footprint, which covers a much

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181. *Id.* at 677.

182. See Timothy Webster, *Ambivalence and Activism: Employment Discrimination in China*, 44 VAND. J. TRANSNAT'L L. 643 (2011).

183. See *Freedom in the World 2012: The Arab Uprisings and Their Global Repercussions*, FREEDOM HOUSE, <http://www.freedomhouse.org/report/freedom-world/freedom-world-2012> (last visited Mar. 25, 2013) (classifying six African states as "free," twenty-two as "partly free," and twenty-two as "not free").

2013]                      *CHINA'S HUMAN RIGHTS FOOTPRINT IN AFRICA*                      663

broader area than these conflict-ridden regimes. Perhaps it is now time to consider whether China's models, activities and counterexamples can teach the West something that our own decades of developmental experience, following centuries of colonialism, have failed to illuminate.