

Zimbabwe's 'look East' policy: A socio-legal perspective

*Caiphas B Soyapi**

Abstract

The studies of the relations between China and Zimbabwe, as with other studies of Chinese relations with African states, have focused largely on the socio-economic and political aspects thereof. There has not been a discussion on the socio-legal perspectives of the relationship. The point of departure is that any relations between China and Zimbabwe must be legally sustainable. The socio-economic consequences of the relations are identified and analysed from a legal perspective, which leads to the conclusion that the 'look East' policy adopted by the Zimbabwean government as a way to counter sanctions imposed by the West is an intermestic policy. Based on national and international laws or standards of conduct expected of states, the Zimbabwean government's failure to protect industries, the environment, labour rights and the trade in armaments at critical moments indicates an abdication of its duties.

1 Introduction

Studies of the China-Zimbabwe relations have been socio-economic, with differing views prevalent on their impact. These relations have increased since the adoption of the 'look East' policy by the Zimbabwean government. However, there is no research that has been done to explore a socio-legal perspective on the relations. Because of the outlook of these relations, the consequences of this relationship have affected the socio-economic conditions and fundamental rights/laws in Zimbabwe. In view of that, this note will consider relevant international law and statutes of Zimbabwe insofar as they relate to some of the consequences of China-Zimbabwe relations. Essentially, the findings are that there are potential violations of international law, national laws and also a disregard of state obligations that flow from the implementation of the 'look East' policy; the policy is an intermestic policy because it directly affects domestic conditions within the country and China's idealistic rhetoric of non-intervention is

*LLB, LLM (NWU). LLD Candidate (NWU Potchefstroom) Email: cbsoyapi@gmail.com.

regressive as at times it perpetuates the violation of rights in states where the rule of law is weak.

It should be kept in mind that the intention here is not to 'bash' China, and the substantial benefits that have accrued to Africa from its relationship with China are acknowledged. Neither is this an illegitimate condemnation of Zimbabwe's engagement with China, but rather a critical review based on recorded events. Accordingly, I challenge the efficacy and legitimacy of the 'look East' policy in light of its consequences. To achieve this, apart from this introduction, the second part deals with the general and various perceptions held on Chinese influence in Africa. The third part examines the 'look East' policy in an effort to determine if it qualifies at all as a policy. Thereafter, its consequences in Zimbabwe are discussed, with the specific objective of juxtaposing the consequences and the state's legal obligations respectively. Subsequently, the note critiques the policy in light of its consequences to indicate that it has not been efficient and needs to be readjusted.

2 China's influence in Africa

Scholars have delivered varied descriptions of China's *modus operandi* on the international scene – China's methods of interaction have been facilitated through the use of soft power and exceptionalism; which descriptions reveal China's normative philosophy in its engagements with Africa.¹ The benefits accruing from this engagement range from the offering of investment and infrastructure loans, sometimes at zero per cent interest rates, to the elimination of tariffs on a number of products and the cancellation of debts for many countries.² Further, China's efforts have contributed to the eradication of poverty in Africa better than many other aid organisations. Campbell argues that organisations like the US Agency for International Development (USAID), the European Union and the World Bank have failed after two decades of delivering on their claim of seeking to eradicate poverty.³ This, he argues, has potentially tilted the scale in favour of China which usually presents large loans and embarks on infrastructure developments. A good example is China's US\$ 2 billion credit to Angola towards the rebuilding of the country's infrastructure.⁴ Although Campbell's contentions could be true, it must

¹Fijalkowski 'China's "soft power" in Africa?' (2011) *J of Contemporary Africa Studies* 223 at 224; Alden and Dan 'China's exceptionalism and the challenges of delivering difference in Africa' (2011) *J of Contemporary China* 21 at 26.

²Adisu, Sharkey and Okoroafo 'The impact of Chinese investment in Africa' (2010) *International Journal of Business and Management* 3 at 4; The Rockefeller Foundation 'China's engagement in African countries: A Rockefeller Foundation exploration' (2009) The Rockefeller Foundation 1 at 3.

³Campbell 'China in Africa: Challenging US global hegemony' (2007) *Third World Quarterly* 89 at 99.

⁴McCormick 'China and India as Africa's new donors: The impact of aid on development' (2008) *Review of African Political Economy* 73 at 85.

be noted that China's tendency to produce immediate benefits for African states does not make it immune to criticism.

Much of the criticism levelled at China flows from its foreign policy agenda, such as its insistence on non-intervention or non-interference in the affairs of other nations.⁵ This idealistic rhetoric has not been acceptable for many, even in Africa. For instance, as early as 2006, in what could be a stark and stern warning by a sitting head of state (at the time), former President of South Africa Thabo Mbeki said that Africans must guard against falling into a 'colonial relationship' with China otherwise they risk being condemned to underdevelopment.⁶ More recently in Zambia there have been regular protests for fear that colonialism is returning.⁷ That notwithstanding, China is unrelenting in its quest to access the vast markets in Africa. Even when there has been a call for the international isolation of a specific state in order to try and compel it to adhere to internationally recognised laws (like human rights laws), China has at times refused to heed the call.⁸ Unfortunately, most African states have not been able to resist China and even states perceived to be undemocratic or that violate human rights have had support from China.

2.1 *China and sanctions*

Sanctions have been used in international relations to persuade aberrant states to observe international law.⁹ An often cited example is that of South Africa where sanctions are believed to have contributed to the end of apartheid.¹⁰ Internationally, the United Nations Security Council would be the most appropriate body to impose sanctions pursuant to Article 41 of the Charter of the United Nations.¹¹ Regrettably, because of the 'veto powers' of the permanent members in the UN Security Council, decisions regarding the imposition of sanctions are

⁵Zweig and Jianhai 'China's global hunt for energy' (2005) *Foreign Affairs* 25 at 38.

⁶Mohan and Power 'New African choices? The politics of Chinese engagement' (2008) *Review of African Political Economy* 23 at 23.

⁷Okeowo 'China, Zambia, and a clash in a coal mine' *The New Yorker* (2013-10-09) available at <http://www.newyorker.com/online/blogs/currency/2013/10/china-zambia-and-a-clash-in-a-copper-mine.html> (accessed 2014-03-07).

⁸Rourke *International politics on the world stage* (2008) 81.

⁹Henderson *Understanding international law* (2010) 385. See also Kaczorowska *Public international law* (2010) 757. The author also observes that sanctions are generally accepted by public opinion.

¹⁰Kaczorowska (n 9) 757. See also US Department of State 'The end of apartheid' available at <http://2001-2009.state.gov/r/pa/ho/time/pcw/98678.htm> (accessed 2014-05-12).

¹¹The Security Council can decide what measures are to be employed in order to effect its decisions. See Article 41 of the United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

difficult to pass.¹² Consequently, even if a specific state or supranational body goes on to impose sanctions on a particular country, not all states will respect that decision.¹³ The end result is that sanctions imposed by other states or bodies do not have much of an effect because the targeted nations will find alternative partners to frustrate the effects of the sanctions.

Although not a Chinese problem, the fact that actors on the international scene are self-interested and concerned only with the pursuit of their own interests is self-evident; more so when it is apparent that aid, although stated in altruistic terms, is usually tied to the interests of the aid giver.¹⁴ Arguably, the Chinese example is more reprehensible because of its ideological rhetoric of non-intervention. In view of that, and taking Zimbabwe into consideration, China has actively blocked UN sanctions on the country.¹⁵ Sanctions imposed by other countries or organisations have thus not had much success because with the 'look East' policy Zimbabwe has been able to turn comfortably to the East, mainly China, to find alternatives to its erstwhile trading partners in the United States of America (USA) and the European Union (EU). In 2005, for example, after Zimbabwe's flawed elections, the USA and the EU imposed sanctions and an arms embargo against the Zimbabwean government. Without missing a beat, China signed various agreements that had the estimated value of US \$1.6 billion and was the only state outside Africa to endorse Zimbabwe's elections.¹⁶ Conversely, where its interests are at stake and despite its non-intervention policy, China became a *primus inter pares* between 2004 and 2007 in relation to its activities in Darfur.¹⁷ In other words, China was able to steer away from some controversy and distanced itself from the political elite of Sudan so that it could maintain its interests both in the West and in Sudan; thereby appearing to echo the same sentiments as the West. As conspiratorial as this might have been, it

¹²UN Charter requires decisions to be made based on the 'concurring votes of the permanent members'. See art 27(3) of the United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

¹³For example, despite a US and EU arms embargo, China sold to Zimbabwe fighter aircraft and military gear worth \$200 million. See Chigora and Chisi 'The eight years of interaction: Lessons from Zimbabwe's look East policy and the future of African countries and Asia-Pacific region' (2009) 10(4) *J of Sustainable Development in Africa* 147 at 157.

¹⁴Burchill *et al Theories on international relations* (2009) 216; Tull 'China's engagement in Africa: Scope, significance and consequences' (2006) *The Journal of Modern African Studies* 459 at 466; McCormick (n 4) 79.

¹⁵Macfarquhar '2 Vetoes quash U.N. sanctions on Zimbabwe' *The New York Times* (2008-07-12) available at <http://www.nytimes.com/2008/07/12/world/africa/12zimbabwe.html?pagewanted=all> (accessed 2014-03-12).

¹⁶Thompson *Assessing the Chinese influence in Ghana, Angola, and Zimbabwe: The impact of politics partners* Master's thesis (Stanford University) (2012) 105.

¹⁷Holslag 'China's diplomatic manoeuvring on the question of Darfur' (2008) *J of Contemporary China* 71 at 83.

is believed that the Chinese strategy succeeded in taming those who were vying for military expeditions to quell the Sudanese conflict.

Given the above, could it be said that China violates international law? If some parts of the world condemn certain actions in country A and consequently impose sanctions on her, and if country A then approaches China, can China be in breach or can it be acting illegally if it engages in relations with this country? It could be morally wrong for China to start engaging in relations with the country, but that does not make it illegal.¹⁸

The consequences of Chinese advancement in Africa are twofold: on the one hand there are infrastructural developments, favourable loan agreements and debt cancellations that stand as evidence of how the Chinese try to balance their activities in Africa; on the other hand, there are corrupt and war-torn countries that are having their lifelines extended by Chinese assistance.¹⁹

3 Understanding the 'look East' policy

The extent of relations between China and Zimbabwe increased significantly as a result of the 'look East' policy. The policy was first announced in 2003 as the Zimbabwean government's response to the sanctions imposed on it by the USA and the EU.²⁰ Nonetheless, there are some who have argued that the 'look East' policy is not a foreign policy, but rather a government slogan.²¹ As such, it is apposite to describe what a foreign policy comprises.

3.1 *The 'look East' policy as a foreign economic policy*

Foreign policy is described by Hill as the sum of official external relations conducted by a state in international affairs and consists of statements, actions and values related to how a state behaves on the international scene.²² Further, the author argues that for state actions to qualify as policy, there has to be a form of 'conscious intentions and coordination' in the manner in which they are made.²³ Likewise, Hermann describes foreign policy as a plan designed to address some

¹⁸Tull (n 18) 468. It should be noted however that China is not the only country amongst the permanent members of the Security Council that engages in such 'hypocritical' measures.

¹⁹Mawdsley 'China and Africa: Emerging challenges to the geographies of power (2007) *Geography Compass* 405 at 406.

²⁰Zimbabwe, The Ministry of Foreign Affairs 'Zimbabwe's foreign policy' available at <http://www.zimfa.gov.zw/foreign-policy> (accessed 2014-04-11).

²¹Friedrich-Ebert-Stiftung 'The "look East" policy of Zimbabwe now focuses on China' 2 available at <http://library.fes.de/pdf-files/iez/50063.pdf> (accessed 2014-04-12).

²²Hill *The changing politics of foreign policy* (2003) 3.

²³*Id* 4.

problem or pursue some goal that entails action towards some foreign entities.²⁴ Insofar as a foreign policy is economic, some have argued that states use economic diplomacy, which is when a state formulates an economic policy to be used in relations with another state.²⁵

Further, in international theory all states are assumed to be sovereign and as subjects of international law, they qualify as actors.²⁶ Consequently, all states have some form of foreign policy regardless of how small they might be. However, because of geographical location, size, influence and interests, the extent, objectives and nature of the foreign policy will always be different. Doeser notes that a large body of literature on international relations considers the foreign policy of smaller states as the response to constraints and opportunities of the international system.²⁷ Although he later challenges this assertion, it remains true insofar as it relates to the 'look East' paradigm. The West shunned Zimbabwe because of its alleged policies which could be regarded as a constraint, while the open-arms approach of China could be considered the opportunity. In other words, both constraint and opportunity were at play and this resulted in the formulation of the 'look East' policy. It thus qualifies as a policy because the above-mentioned 'look East' policy is a foreign economic policy designed to address a problem; it comprises both statements and actions and it is addressed to the East. Arguably, it is not a Chinese-focused policy but one aimed at looking to a number of countries in the East including Malaysia, Pakistan, Indonesia and India.²⁸

3.2 *Is the 'look East' policy a pure or an intermestic foreign policy?*

The line between domestic and foreign policy can at times become blurred with the result that one could influence the other.²⁹ According to Rourke, the nature of issues determines what kind of foreign policy a government will take and results in one of two kinds of foreign policies: pure foreign policy and intermestic policies.³⁰

²⁴Hermann 'Changing course: When governments choose to redirect foreign policy' (1990) *International Studies Quarterly* 3 at 5.

²⁵Grimm *et al* *South African relations with China and Taiwan: Economic realism and the 'One-China' doctrine* (2014) Research Report for the Centre for Chinese Studies, Stellenbosch University 6.

²⁶Weber *International relations theory: A critical introduction* (2005) 14.

²⁷Doeser 'International constraints, domestic politics and foreign policy change in small states: The fall of the Danish "footnote policy"' 1 available at <http://www.eisa-net.org/be-bruga/eisa/files/events/stockholm/Doeser.pdf> (accessed 2014-06-02).

²⁸Matahwa 'China and Zimbabwe: Is there a future?' 1 available at http://www.kubatana.net/docs/econ/matahwa_china_zimbabwe_future_071101om.pdf (accessed 2014-05-12).

²⁹Lindsay 'Congress and foreign policy: Why the Hill matters' (1993) *Political Science Quarterly* 607 at 627. See also Li *Domestic politics and the international community: A case study of China's SARS policy in 2003* MA thesis Virginia Polytechnic Institute (Virginia) (2004) 2.

³⁰Rourke (n 8) 80; Hill (n 22) 230.

Pure foreign policy usually relates to foreign policy that does not have immediate impacts on citizens. Rourke gives a United States of America (USA) example where the former president Bush consented to the adding of more countries to the North Atlantic Treaty Organisation (NATO), which had the effect of increasing USA defence commitments outside America.³¹ The scholar observes that this did not create any opposition within the USA nor did it become a huge media issue. In contrast, intermestic foreign policy is a foreign policy that can have immediate and obvious domestic impacts on the state implementing it.³² The term seems to have originated from the US and it is considered to be a fusion or contraction of international and domestic, representing a way of 'thinking and understanding the work of foreign policy in dealing with domestic issues or the reverse'.³³ Such intermestic policies (which include issues like trade policies) can generate opposition from interest/pressure groups, businesses, labour and consumer groups and they usually attract huge media coverage because of their domestic impact.³⁴

With this in mind, where would the 'look East' policy belong? In order to determine whether it could be designated as a pure foreign policy or an intermestic policy, the consequences of the policy and the obligations of the state in relating to such consequences have to be determined first.

4 The consequences of the 'look East' policy

There is a general concern that Chinese products that flow into Africa are cheap and more often than not displace African industries, especially in the textile and apparel sectors.³⁵ Certainly, the imports from China that have found their way into Zimbabwean markets are cheap (low production costs and market prices)³⁶ compared to locally produced goods.³⁷ Although many can afford to buy their products of choice at cheaper prices and with a variety to choose from, local industries struggle to stay afloat.³⁸ The result is that local African industries end up retrenching employees and in some cases even close down. Some of the most heavily affected industries are clothing, textiles and footwear with the result that,

³¹*Id* at 79.

³²*Id* at 80.

³³See Prada 'The intermestic affairs: A theoretical approach' available at <http://perrypada.blogspot.com/2006/04/intermestic-affairs-theoretical.html> (accessed 2015-07-17). See also Lindsay (n 29) 2.

³⁴Rourke (n 8) 80.

³⁵Broadman 'China and India go to Africa: New deals in the developing world' (2008) *Foreign Affairs* 95 at 100.

³⁶Adisu, Sharkey and Okoroafo (n 2) 6.

³⁷Mvutungayi *China in Zimbabwe: Exploring the political and economic impacts of Chinese engagement in the Zimbabwean crises* LLM dissertation University of the Witwatersrand (Johannesburg) (2010) 86.

³⁸Grimm *et al* (n 25) 17.

without government intervention, the industries would fail to stay afloat.³⁹ At the time of writing this note, David Whitehead, a huge employer and wide distributor of textiles had since closed.⁴⁰ Further, Bata, a large shoe company, has downsized and closed many outlets and it has been consistently reported that the failure of the government to intervene and regulate has been the cause of these ongoing industry struggles.⁴¹

Some of the outcry against Chinese influence has come from labour-based groups, particularly trade unions.⁴² Notable in this outcry is neighbouring South Africa's COSATU which views Chinese expansion with scepticism.⁴³ Not long ago, the Minister of Labour in Zimbabwe acknowledged that there are persistent reports of abuse of workers by Chinese employers.⁴⁴ The complaints relate to physical abuse, meagre salaries, long hours of work and unsafe working environments.⁴⁵ So strong are the complaints that a presidential nominee used the issue in his campaign, and declared that once he won he would stop Chinese looting and abuse.⁴⁶ Moreover, a major construction trade union in Zimbabwe, the Zimbabwe Construction and Allied Trades Workers Union went as far as threatening to take action against Chinese companies who abused and fired workers at will because they enjoy the protection of the government.⁴⁷ These events are unfortunate, especially in this time when the calls for the respect of human rights are at an all-time high.

³⁹Chigora and Chisi (n 13) 152.

⁴⁰Business Reporter 'Textile industry on the brink of collapse' *The Herald* (2013-11-28) available at <http://www.herald.co.zw/textile-industry-on-the-brink-of-collapse/> (accessed 2014-05-12); Dube 'Clothing industry to engage Zimra on cheap imports' *The Standard* (2013-11-17) available at <http://www.thestandard.co.zw/2013/11/17/clothing-industry-engage-zimra-cheap-imports/> (accessed 2014-05-12).

⁴¹Shava 'Bata shoe chief visits Zim amid economic concerns' *Voice of America* (2013-10-23) available at <http://www.voazimbabwe.com/content/bata-shoe-chair-visits-gweru/1775452.html> (accessed 2014-04-21).

⁴²Mohan and Power (n 6) 33.

⁴³Wasserman 'China in South Africa: A long affair' (2012) *Rhodes Journalism Review* 33 at 34.

⁴⁴Hammond 'Chinese colonisation in Zimbabwe' available at http://www.frontline.org.za/index.php?option=com_content&view=article&id=1066:chinese-colonialism-in-zimbabwe&catid=39:zim-rep&Itemid=186 (accessed 2014-05-12).

⁴⁵Smith 'Workers claim abuse as China adds Zimbabwe to its scramble for Africa' *The Guardian* (2012-01-02) available at <http://www.theguardian.com/world/2012/jan/02/china-zimbabwe-workers-abuse> (accessed 2014-05-12); Tagwireyi 'Workers petition govt over abuse by Chinese employers' *The Standard* (2013-02-03) available at <http://www.thestandard.co.zw/2013/02/03/workers-petition-govt-over-abuse-by-chinese-employers/> (accessed 2014-05-12).

⁴⁶Mpofu 'Tsvangirai says a victorious MDC "will stop Chinese looting, abuse"' (22 July 2013) available at <http://www.zimbabweelection.com/2013/07/22/ffze-exclusive-tsvangirai-says-a-victorious-mdc-will-stop-chinese-looting-abuse/> (accessed 2014-05-16).

⁴⁷MISA 'Chinese firms abusing workers: Union' *The Zimbabwean* (2011-11-10) available at <http://www.thezimbabwean.co/human-rights/35671/chinese-firms-abusing-workers-union.html> (accessed 2014-05-16).

More recently, a Chinese mall was built (by the Anhui Foreign Economic Construction Company) on a wetland. It remains unclear how the Chinese firm managed to get permission to build on such an environmentally protected area and even more telling is the fact that the Environmental Management Agency tried to stop the project but failed in its bid due to perceived political pressure.⁴⁸ Apart from this unfortunate event, there has been environmental degradation at two mines in Bulawayo which have since been closed.⁴⁹ The companies have been mining without environmental certification. The problem is due to the fact that there are two ministries involved, both of which give out licences: the Ministry of Mines and Mining Development and the Ministry of Environment, Climate and Water. In some instances, Chinese companies are mining in places that have been declared illegal for mining operations and in areas protected in terms of the EIA and Ecosystems Protection Regulations Statutory Instrument 7, 2007 (in this case the Mazowe River Bank).⁵⁰ Taking all this into consideration, it would appear that Chinese firms appear to have been given *carte blanche* in their actions, to the detriment of the environment and sustainability.

Internationally, China is consistently condemned for its operations in countries that are perceived to violate human rights/facilitate human rights abuses. China's normative stance of not having regard to what happens in one of its partner countries in Africa has been described as 'business is business' and the Chinese contend that they have no right or mandate to interfere in the matters of sovereign states.⁵¹ As such, international condemnation has not deterred China from engaging with some of those states in the way that it has openly engaged with Sudan and Zimbabwe.⁵² For instance, the elections

⁴⁸Kachembere 'First China mall opens in Harare' *The Daily News* (2013-12-07) available at <http://www.dailynews.co.zw/articles/2013/12/17/first-china-mall-opens-in-harare> (accessed 2014-05-20); Mathuthu 'Chinese mall opens despite warnings from environmentalists' *Zimbabwe Situation* (Blog) (2013-12-18) available at http://www.zimbabwesituation.com/news/zimsit_chinese-mall-opens-despite-warnings-from-environmentalists/ (accessed 2014-05-20).

⁴⁹These are Insiza and Umzingwane. There was reported siltation in the rivers, and spillage of oil and chemicals. At that point, the Chinese mining companies, Tanzanite Mining and Yuan Hand Corporation, were operating without environmental accreditation. Ncube 'Chinese leave trail of destruction in Mat South' *Zimbabwe Situation* (Blog) (2013-12-17) available at http://www.zimbabwesituation.com/news/zimsit_chinese-leave-trail-of-destruction-in-mat-south/ (accessed 2014-05-19).

⁵⁰This was actually argued in Parliament with a chief confronting the Mines and Mining Development Minister on why the Chinese were being treated differently by being allowed to mine with impunity along the Mazowe River banks without the required environmental impact assessment first being done. Even more telling is the fact that mining itself was not allowed along the Mazowe River Bank. See Mushava 'Govt cracks whip on Chinese' *News Day* (2013-10-21) available at <https://www.newsday.co.zw/2013/10/21/govt-cracks-whip-chinese/> (accessed 2014-05-12).

⁵¹Mawdsley (n 19) 415.

⁵²Campbell (n 3) 102.

conducted by Zimbabwe in the last decade (with the exception of the July 2013 elections), have been marred by serious allegations of human rights violations.⁵³ Usually before the elections, China either donated or sold military gear to the Zimbabwean government and what usually followed just after such donation or sale were human rights violations (in the form of beatings, evictions and intimidation of the people).⁵⁴ The arrival of military equipment might have been arranged through a genuine trade agreement, but that becomes insignificant beside the fact of the timing. Bringing in military shipments at a moment when there was no military crisis led many to assume that the arms were intended to suppress opposition in the lead up to the elections.⁵⁵ The events leading up to and preceding the elections of 2005 and 2008 made it hard to separate the provision of military gear by China from the violence and intimidation that took place at those critical periods.

Furthermore, there is concern that in general, Africa is not getting value for its resources insofar as value relates to development. The Chinese investments are largely lopsided with a concentration on Chinese interests.⁵⁶ For instance, while there are huge investments in infrastructure, the companies heavily involved in the development or maintenance of infrastructure are Chinese companies.⁵⁷ Beneficial as it is in terms of infrastructure development, there is no transfer of skills. This was also echoed by the Rockefeller Foundation which stated that Chinese businesses have little incentive to train low-skilled Africans because they are accustomed to employing them for construction or the assembly of goods pre-manufactured in China.⁵⁸

Despite the benefits accruing from China-Zimbabwe relations, the above-mentioned socio-economic consequences of the 'look East' policy show that it has had negative impacts within the country. However, these consequences are also indicative of the failure of the government to perform its obligations in various ways. The following discussion indicates the laws which the state has failed to observe and which could be used to counter the negative consequences of the 'look East' policy.

⁵³SIPRI 'Arms transfers to Zimbabwe: Implications for an arms trade treaty' available at <http://books.sipri.org/files/misc/SIPRIBP1103.pdf> (accessed 2014-06-01).

⁵⁴Human Rights First 'China's arms sales to Zimbabwe' available at <http://www.humanrightsfirst.org/ourwork/crimes-against-humanity/stop-arms-to-sudan/never-prudent-not-responsible-chinas-arms-shipments-to-zimbabwe-and-sudan> (accessed 2014-05-14).

⁵⁵Mvutungayi (n 37) 79.

⁵⁶Matahwa (n 28) 7.

⁵⁷Thompson (n 16) 6. He notes that all aid is usually self-focused and so it is not only China that could be singled out and blamed herein.

⁵⁸The Rockefeller Foundation (n 2) 4.

5 The Zimbabwean government's legal obligations

Internationally, the right of a country to protect its industries and promote fair competition is well established by the World Trade Organisation (WTO) and as a member, Zimbabwe benefits from the General Agreement on Tariffs and Trade (GATT). Article XIX of GATT (termed the 'escape clause') allows states to adopt means to protect their industries. It states the following:

If as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.⁵⁹

Nationally, Zimbabwe has an Act dealing with issues of competition and protection of industries. Section 5(1)(a) of the Competition Act⁶⁰ notes that the Industry and Trade Competition Commission is tasked with encouraging the promotion of competition in all sectors of the economy. Section 5(e)(i) provides that the Commission is empowered to investigate instances where there is now a monopoly that is contrary to public interest. In addition, the Commission can investigate instances where there is a need for protection of an industry whether established or not.⁶¹ However, despite the multiplicity of these provisions, including international law, the government has not acted. The government has abdicated its duty and obligations as the effects of the cheap imports are common knowledge and well evidenced by the closures of companies. The reprehensibility of the government is more evident if regard is had to precedent from the government itself. In 2011, Zimbabwe banned poultry products from South Africa in order to protect the local industry and because there were reports of unfair competition.⁶² Likewise, Zimbabwe did not liberalise goods like textiles, clothing and footwear in the Economic Partnership Agreement signed with the European Union in 2012.⁶³ Incidentally, the main complaints relating to Chinese products

⁵⁹General Agreement on Tariffs and Trade (GATT 1947) 55 UNTS 194.

⁶⁰Chapter 14:28 (1996).

⁶¹See s 34C(c), (d) and (i).

⁶²'Zimbabwe bans poultry imports from South Africa' *The Poultry Site* (2011-04-15) available at <http://www.thepoultrysite.com/poultrynews/22433/zimbabwe-bans-poultry-imports-from-south-africa> (accessed 2014-05-16).

⁶³Gagare 'Zim, EU in trade pact' *Zimbabwe Independent* (2013-11-08) available at <http://www.theindependent.co.zw/2013/11/08/zim-eu-trade-pact/> (accessed 2014-05-16).

relate to textiles, clothing and also footwear. Accordingly, the government is without excuse for its failure to protect local industries and promote fair competition in relation to Chinese imports.

In relation to labour concerns, the reports of Chinese action with regard to the treatment of employees are deplorable both in terms of international and national law. Internationally, their actions are contrary to article 7 of the International Covenant on Economic Social and Cultural Rights (ICESCR)⁶⁴ which recognises the rights of every individual to favourable working conditions, fair remuneration, safe and healthy working conditions.⁶⁵ Nationally, the Zimbabwean Labour Act⁶⁶ has various provisions regulating labour standards. Some of them include prohibition of discrimination and the right to fair labour practices.⁶⁷ The failure of the government to properly oversee the working conditions of employees, especially when there are consistent complaints, is indicative of the lopsided nature of the relations that have even prompted Chinese employees to assume they have the protection of the government. As a result, the government has failed in its action despite the availability of laws that guarantee the rights of workers.

The building of a mega-structure on a wetland site, the awarding of licences to Chinese mining companies without the necessary environmental certification and the mining undertaken along the Mazowe River all demonstrate that the government (specifically government authorities) are disregarding their legal obligations to ensure sustainable development through proper administrative decisions. The obligations of the government in relation to environmental conservation are provided for in article 6 of the 1992 Convention on Biological Diversity which requires states to create or integrate into existing policies national strategies and plans for the conservation and sustainable use of biological diversity. This Convention has been domesticated in Zimbabwe through the Environmental Management Act.⁶⁸ Section 4(1)(b)(ii) of the Environmental Management Act states that everyone has a right to 'secure ecologically sustainable management and use of natural resources while promoting justifiable economic and social development'. These provisions also compliment the principles which underpin environmental management. Two important principles enunciated in the Act require that development must be socially, environmentally and economically sustainable⁶⁹

⁶⁴UN Doc A/6316 (1966).

⁶⁵See art 7(a)(i).

⁶⁶Chapter 28:01 (1985).

⁶⁷Sections 5 and 6.

⁶⁸Chapter 20:27 (2002). Specifically, s 116(1) reads in part: 'The Minister shall take such measures as may be necessary for the conservation of biological diversity and the implementation of Zimbabwe's obligations under the United Nations Convention on Biological Diversity adopted in 1992'.

⁶⁹Section 4(2)(e).

(sustainable development) and that any anticipated negative impact on the environment and on people's environmental rights must be prevented; where they cannot be prevented, they should be minimised and remedied.⁷⁰ As a result, proper administrative decisions were not performed despite the laws being in place.

According to the International Covenant on Civil and Political Rights (ICCPR),⁷¹ states undertake to respect the civil and political rights contained in the Convention.⁷² For instance, Article 5 states that the state may not restrict or derogate from fundamental human rights. States are also required to take steps including legislative and any other measures to give effect to the rights in the Covenant. Thus, from a legal perspective, the Zimbabwean government could be held in violation of civil and political rights for its facilitation of violence before, during and after the 2005 and 2008 elections. Tentatively, if the Zimbabwe government can be held responsible and complicit in human rights violations, China could be also complicit as an accessory before or after the fact in those human rights violations. It is unfortunate that none of the cases of violence met with closure in the form of prosecutions whether locally or internationally.

As stated above, the transposition of skills has not been put forth as a state objective by the government. The result is that development is not being promoted as sufficiently as it should in accordance with the African Charter on Human and Peoples' Rights, 1981. Article 22 thereof obliges states to ensure that the right to development is exercised.⁷³ If the government of Zimbabwe does not introduce policies that ensure skills development, then this state of affairs remains unsustainable, as the country will not develop skills for self-sufficiency if it continually banks on China's skills and never taps into Zimbabwe's own human resources. The government has recently enacted an indigenisation law but to what extent this law will sufficiently facilitate skills development remains to be established.

At this point, the note has attempted to achieve three objectives: to ascertain the manner in which China has been relating with the continent in general; to establish the consequences of the 'look East' policy and to demonstrate how the government has abdicated its duties by indicating which laws the government could have used to mitigate or prevent the above-mentioned consequences. The last part of the note analyses the policy in light of its consequences.

⁷⁰Section 4(2)(f).

⁷¹UN Doc A/6316 (1966).

⁷²Article 2(1).

⁷³Article 22(1) states the following: 'All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind'.

6 Analysis

By and large, the policy has had social impacts on the populace. Even though states are sovereign and retain their right to engage with other actors on the international scene, it has turned out that the 'look East' policy offends against the notion of good governance. To illustrate how wanting the policy has been, a brief critique of the policy from an international relations perspective is undertaken.

To begin with, some international relations theorists use the 'rational actor theory' as a model of analysis of government policy. Hill⁷⁴ describes the rational actor theory on foreign policy analysis as involving the process of making decisions in an attempt to exert rational control over events. Accordingly, the rational actor in foreign policy must be able to assume control on the flexibility of any given policy such that the policy can be changed to meet new circumstances.⁷⁵ In relation to states, it is axiomatic that governments are not charitable institutions but are strategic-minded actors that act in line with their national interests.⁷⁶ However, states as actors in international law are not tied to their policies because leaders can embark on any policy to retain power while knowing that they are at the mercy of the voters. In the event of a foreign policy being incompatible with a domestic concern, policy-makers often change their policy in order to retain domestic support.⁷⁷ Put differently, in line with the rational actor theory, the rational government must be able to see that a policy has become irrational or does not serve the greater good. Applying this theory to the above-mentioned consequences of the China-Zimbabwe relations, I argue that the Zimbabwean government has been acting contrary to the rational actor concept of foreign policy. If indeed the policy was one to empower citizens and improve their way of life, then the policy has failed to achieve that because foreign policy ceases to be effective if it is undertaken as a rigid policy. If this be true, then it must be determined what constitutes an ideal government policy, what would render a policy as legitimate, useful or effective and to whom must it be legitimate, useful and effective. While not asserting a universally acceptable answer, I contend that a policy that has a measure of utilitarianism brings greater good for the populace. In basic terms, utilitarianism is a theory that holds that we are morally required to maximize happiness; in other words, laws and policies must bring greater good to citizens and if they bring suffering and strife, such

⁷⁴Hill (n 22) 97.

⁷⁵*Id* 293.

⁷⁶Thompson (n 16) 11.

⁷⁷Doeser (n 27) 3.

laws and policies must be changed.⁷⁸ Therefore, using this utilitarian critique, it could be argued that the 'look East' policy as it is being implemented is not utilitarian since it is lopsided and damages the economy and social conditions in Zimbabwe. There has not been any maximization of happiness for the greater population because it has served to enrich those at the high end of the spectrum of political clout. Additionally, if regard is had to the consequences of the identified policy, I argue that the policy is regressive to say the least; with the government abdicating its duties to enforce the available legal avenues to mitigate the consequences.

Further, the 'look East' policy could be categorised as an intermestic foreign policy because it has resulted directly and indirectly in domestic concerns being raised because of the manner in which it has been implemented. However, contrary to what would be expected of a state when its foreign policy turns out to be intermestic, the Zimbabwean government has continued with the policy unchanged while claiming that the policy is part of its national interest. Arguably, national interest must be a measuring stick that is either used to judge whether a given policy is genuinely a national, public or collective concern or whether it is merely a private, group or sub-national goal masquerading as the former.⁷⁹ Undoubtedly, domestic concerns and events are very important because they could be used to pressure government into a foreign policy change. Public opinion and media could be used as forums of discourse on the impact of government policy.⁸⁰ Other methods through which domestic concerns could be displayed are through 'populist political movements' and interest or pressure groups.⁸¹ Across the border in South Africa there are various groups that form part of the latter and which have consistently put pressure on government to change its policies, albeit domestically.⁸² In Zimbabwe, the Movement for Democratic Change (MDC) could be described as a populist political movement while other groups like Crisis Coalition Zimbabwe could be described as interest groups. Arguably, in relation to the 'look East' policy there have not been many voices exerting pressure on the government. The only forum through which discontent has been voiced is through the press⁸³ and to some degree by the

⁷⁸Driver 'The history of utilitarianism' (last updated 2009.03.27) in Zalta *et al* (eds) *Stanford Encyclopedia of Philosophy* Summer 2010 ed (2010) available at <http://stanford.library.usyd.edu.au/archives/sum2010/entries/utilitarianism-history/> (accessed 2015-07-17).

⁷⁹Hill (n 22) 119.

⁸⁰Eidenfalk 'Towards a new model of foreign policy change' (2006) 3 available at <http://ro.uow.edu.au/artsnotes/1628/> (accessed 2014-05-12).

⁸¹Hill (n 22) 268. Pressure groups exert pressure on government policy while interest groups wish to influence policy and are therefore pressure groups.

⁸²These include the Section 27 and the Legal Resource Centre.

⁸³Eidenfalk (n 80) 4. However, the importance of the media is meaningless in states where a government does not respect the rule of law or where the government ignores public opinion.

Zimbabwe Environmental Law Association (ZELA). This interest group has demonstrated the damaging effects of mining companies.⁸⁴ In one of its latest reports, ZELA echoed that there has not been material benefit for the people in Zimbabwe and that Chinese companies are the most worrying as they 'trample upon the rights of communities from areas where they are mining and have very terrible working conditions for workers'.⁸⁵ However, this analysis is merely made as an observation

Certainly, the voices of the populist movements and pressure groups could be useful in exerting pressure on the government to adjust its policies.⁸⁶

7 Concluding remarks

It would seem that Africa has become something of a battle ground between the West on one side and China on the other. Along the way mixed perceptions regarding the benefits or pitfalls of Chinese influence have been displayed, with the risk of bias as high as ever. Regardless of who is conceived to be on the moral high ground underpinning either of their actions, Africa must be wary. The influence which China now assumes in Africa is immense and must never be underestimated. It has, in many respects, brought good to many states especially in the form of infrastructure development and cheaper goods and materials.⁸⁷ It would be a grave injustice not to acknowledge the many benefits that have accrued to Africa in the short while that China has been heavily engaging with Africa. Yet, in our appreciation, we have to be open-minded and the negative aspects of their influence must not be ignored.

The sanctions imposed on Zimbabwe resulted in the Zimbabwean government turning to the East to find alternative trading partners. However, the ties with the East have been largely centred on China and those who have benefitted most are the political elite. The Chinese themselves, as expressed in their idealistic rhetoric, seem to not be concerned with what happens in Zimbabwe

⁸⁴Their reports have been largely on Chinese mining sites where, incidentally, there have also been concerns of mining operations without environmental certifications. See for instance Zimbabwe Environmental Law Association (ZELA) 'Zimbabwe alternative mining indaba 2014' (2014) available at <http://www.zela.org/images/zami.pdf> (accessed 2015-08-04) and Zimbabwe Environmental Law Association (ZELA) 'Community voices [on mining impacts]' (2014) available at <http://www.zela.org/images/zcv.pdf> (accessed 2015-07-17).

⁸⁵Zimbabwe Environmental Law Association (ZELA) 'Our thinking: Strategic interventions and focus issues in Zimbabwe's extractive and mining sector: The next five years: 2014-2018' (2014) 34 available at <http://www.zela.org/images/pdf/StrategicInterventions.pdf> (accessed 2015-07-17).

⁸⁶Doeser (n 27) 4. It is stated that the intensity of opposition to a particular policy could be very influential in forcing the government to change its policies.

⁸⁷Broadman (n 35) 100.

as long as a greater good of Zimbabwe is served.⁸⁸ Thus, until such time as the government of Zimbabwe re-evaluates its policies on engagement with China, the current *status quo* will continue unabated, to the detriment of the economy.⁸⁹

Should Zimbabwe then shun China just as it has the West? While it is clear that the government will certainly not do so in the near future, I argue that the government has enough leverage and bargaining power to engage in constructive and beneficial policies for its people. The future of the Zimbabwean economic recovery lies not in a policy of shunning the West and embracing the East. The leaders of the country must act rationally in making policy decisions rather than mortgage the future of the country.⁹⁰ Surely, the idea of the policy is not bad, but its implementation is unstructured; as the consequences of the 'look East' policy suggest, governance seems to be the major problem that is affecting the policy. A look at some of the consequences reveals that there are governance gaps. For instance, bureaucratic and legislative fragmentation and the overlap between the Ministry of Mines and Minerals Development and the Ministry of Environment, Climate and Water create loopholes. A governance intervention would require the alignment of permit procedures so that the ministries could not award mining licences to companies before environmental certifications have been provided. Good governance is thus required on a general level to ensure that there is accountability across all sectors. Where there is good governance, it is possible to have the rule of law respected, to address corruption and to attend to the effects of a policy that negatively affects the citizens.

⁸⁸See a statement issued by He Wenping, then director of the African Studies Section at the Chinese Academy of Social Sciences in Beijing, who said that: 'We don't believe that human rights should stand above sovereignty ... We have a different view on this and African countries share our view'. Mooney 'China's African safari' *YaleGlobal Online* (2005-01-03) available at <http://yaleglobal.yale.edu/content/chinas-african-safari> (accessed 2014-06-16).

⁸⁹Broadman (n 35) 107. The following is also stated: '... it is essential to increase the institutional capacity of African states to develop and enforce social, environmental, and product-safety standards that conform to international norms and apply to all investors, domestic or foreign'.

⁹⁰Matahwa (n 28) 3.