CHINESE INVESTMENTS IN AFRICA AND THE POLITICS OF UNSUSTAINABILITY: A CASE STUDY OF THE KENYA'S STANDARD GAUGE RAILWAY

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ABSTRACT: *Chinese FDIs into Africa have been on an upward trend for the better part of 21st Century and are ubiquitously spread all over the continent. Certainly, the investments have not been devoid of both the positive and negative impacts but most importantly, debate on the sustainability [or otherwise] of these investments rages. In fact, there is an emerging but inimitable view that the claim that the investments are unsustainable is skewed in favor of the westerners, who are also keen on locking in investment opportunities in Africa. This, therefore, does not rule out the fact that global or at least local politics do on occasion, play a role in shaping debates meant to depict Sino- Afro FDIs as habitually unsustainable. Notably, bad politics, especially in Africa, hold the potentiality of suppressing development. To prop up this hypothesis, the paper delves into the Chinese built Kenya's SGR- a mega project that was on the brink of collapse after a politically instigated civil case seeking to stop it was filed. Ultimately, the court's ruling on the matter, Parliamentary Committee Report on the project and a host of existing literature has ably debunked a politically initiated myth that Chinese investments in Africa customarily thrive on inaptness.*

KEYWORDS: Sino- Afro FDIs, Sustainable Development, Standard Gauge Railway, Bilateral Investment Treaty

INTRODUCTION

Unquestionably, China has become home to largest corporations in the world.[1]This position is however exquisitely in tandem with an upsurge of the economic growth that has been experienced in China for the better part of the last decade.[2]The growth has outsmarted and baffled even the leading economies in the world[3] with some scholars labeling it a 'myth' and craving to unravel it.[4] Conceivably, this quandary emanates from the fact China is habitually 'reprimanded' for the lack of functioning judicial system, weaker property rights protection

[1]Tsang King Fung, 'Listing Destination of Chinese Companies: New York or Hong Kong' (2010) 23 Columbia Journal of Asian Law 357.
[2] David Brown, 'Private Equity in China: Reflections on 2012 and Outlook' (PWC 2012).
[3]D.C. K. Chow, 'Why China Wants a Bilateral Investment Treaty With the United States' (2015) 33 Boston University International Law Journal 421. The author suggests that in 2013, the US purchased $440.4 billion in imported goods from China while it exported $122 billion in goods to China, a $ 318.4 billion deficit in favour of China.
[4]Wei Shen, 'Face Off: Is China a Preferred Regime for International Private Equity Investments? Decoding A 'China Myth' From the Chinese Company Law Perspective' (2010) 26 Connecticut Journal of International Law.

and less vigorous contract enforcement mechanisms[5] although still [and against the odds] has managed to be one of the "G-2" in the world, especially in terms of private equity investments.[6]

While authors and analysts alike persist in the mission of 'unshackling the gimmicks' behind the Chinese success story in magnetizing foreign direct investments at home,[7] the Chinese have, on the other hand, not become complacent. Instead they have unremittingly portrayed an insatiable appetite for more economic gains and advancement by heeding the over decade old 'Go Global'[8] initiative first announced in 1999. The initiative has sought to internationalize Chinese enterprises and also help the companies become more competitive at home and abroad and most importantly, to project China's soft power and ultimately build economic and diplomatic relationships around the world.[9] The 'Go Global' initiative has borne fruits as exhibited by a steady proliferation of Chinese investments abroad.[10] For example, Chinese FDI inflows into Africa surged from US $ 75 million in the year 2000 to US $ 3.2 billion in the year 2014[11]and are expected to rise to over US $ 100 billion by 2020[12] while in 2012, China accounted for $4 billion inbound FDIs in the USA.[13]The trend persists in Europe whereby the Chinese investments went up from US $ 6 billion in 2010 to US $ 55 billion in 2014[14] and similarly in other parts of Asia[15] and South America.[16]

Chinese investments in Africa are of diverse manner and nature;[17] ranging from extractive sector investments [including oils and minerals] at 29.2%, manufacturing at 22%, construction at 15.8%, financing at 13.9%, commercial services at 5.4%, wholesale and retail at 4.0%, scientific research, technological services and geological prospecting at 3.2%, agriculture

[5] *Ibid*, 2. See also, Benjamin L. Liebman, 'Assessing China's Legal Reforms' (2009) 23 Columbia Journal of Asian Law' 17. Author suggests; '…It is common to see very different outcomes in cases that at least on paper look similar including in some case decisions issued from the same court...'
[6] Hui Huang, 'The Regulation of Foreign Investment in Post –WTO China: A Political Economy Analysis (2009) 23 Columbia Journal of Asian Law 187.
[7]John E. Lange, Paul, Weiss, Rifkind, Wharton and Garrisson LLP, 'Private Equity in China- Bringing it Home' (Hong Kong October 2007). He appears to hypothesize that the success is attributable to the offshore structure of the trading institutions.
[8] Xiuli Han, 'Environmental Regulation of Chinese Overseas Investments from the Perspective of China' (2010) 11 Journal of World Investment and Trade 375.
[9]Enright, Scott and Associates, 'One Belt One Road: Insights for Finland' (Team Finland Future Watch Report, January 2016) 7.
[10] Guiguo Wang, *International Investment Law: A Chinese Perspective* (London: Routledge, 2015) 5-6.See also, Lutz Christian Wolff, 'Chinese Investments Overseas: Onshore Rules and Offshore Risks' (2011) 45 The International Lawyer 1029.
[11]Yu Zheng, 'China's Aid and Investment in Africa: A Viable Solution to International Development?' (Fudan University 2016) 2.
[12]Tais Ludwig, 'Recommendations for Addressing Environmental Impacts of African Development Projects Funded by Chinese Banks' (2015) 15 Sustainable Development Law and Policy 11.See also Tang Xiaoyang and Irene Yuan Sun, 'Social Responsibility or Development Responsibility? What is The Environmental Impact of Chinese Investments in Africa: What are the Drivers and what are the Possibilities for Action' (2016) 49 Cornell International Law Journal 69.
[13] Chow (note 3) 3.
[14] Phillipe Le Corre and Alain Sepulchre, 'Why China is Investing Heavily in Europe' (South China Morning Post, 15 May 2016) < http://www.scmp.com/comment/insight-opinion/article/1944491/why-china-investing-heavily-europe > Accessed 7 July 2017.
[15] See Alicia Garcia Herrero 'China Outward Foreign Direct Investment' The Blog Post, 28 June 2015. Available at < http://bruegel.org/2015/06/chinas-outward-foreign-direct-investment/> Accessed 7 July 2017.The author posits that according to MOFCOM (2013), the Chinese FDIs into other Asian Countries stood at US $ 76 Billion while FDIs into South America stood at US $ 14.4 Billion.
[16] *Ibid.*
[17] Mulonda Manalula and Kaliba Matilda, 'Chinese Foreign Direct Investment in Africa Natural Resources and the Impact on Local Communities (A Focus on Extractive Industries): Review of Literature' (2016) World Journal of Social Sciences and Humanities 102.

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forestry, animal husbandry and fishery at 3.1% and others at 3.4%.[18] Patently, investments in the extractive sector take the lion's share[19] and consequently, the concentration of the Chinese investments appears to tower in the resource rich African countries.[20]

This paper, therefore**,** pores over these investments and seeks to *inter alia* interrogate the thrust behind the tremendous upsurge of the Chinese investments into Africa and the tactical approach adopted by China in wooing Africa**.** Given that divergent views[21] regarding the sustainability of these investments abound, the paper also delves into the impact of these investments to establish whether or not they are sustainable development affable**.** The paper also seeks to unravel the question whether the [un]sustainability debate on these investments is sometimes influenced by politics. To contextualize the study, focus is placed on the Chinese built, Kenya's Standard Gauge Railway [SGR].

The Rise of Sino – Afro FDIs: The Catalytic Factors

It is principally opined that the Sino- Afro engagements largely thrive on the extant symbiotic benefits[22] accruing to both sides, although questions are copious as to whether these benefits are fairly balanced. Nevertheless, no single motive may be ascribed to the China's growing interest in Africa[23]but the Chinese shift towards Sub-Saharan Africa is driven by the following four catalytic- economic, political and ideological- factors.

Budding Economy and the Avid Appetite for Oil and Natural Resources

Enviable double- digit growth in the past two decades[24] and automotive revolution, growing industrial production and a rising standard of living for Chinese middle class all combine to fuel China's demand for oil and strategic minerals. [25]China became a net importer of oil for the first time in November 1993[26] and in 2005, it overtook Japan to become the second largest importer of [African] oil after the United States.[27] According to the International Energy Agency [IEA], China is currently the world's largest energy consumer.[28] Furthermore, the brisk growth of the Chinese manufacturing sector has created an unprecedented domestic demand for precious metals including copper, nickel, aluminum and iron ore – natural resources that many African countries have in profusion[29] and as the Chinese economic expands, Africa

[18] H. Edinger and C. Pistorious , 'Aspects of Chinese Investments in the African Resource Sector' (2011) 111 Journal of the Southern African Institute of Mining and Metallurgy 501.
[19]Kinfu Adisu, Thomas Sharkey and Sam C. Okoroafo, 'Impact of Chinese Investments in Africa' (2010) 5 International Journal of Business Management 1.
[20]Christopher Tung, 'The Influence of Chinese Climate Policy and Law in Africa' (2010) 4 Carbon and Climate Law Review 334.
[21]Jian Junbo and Donata Frasheri, 'Neo-colonialism or De-colonialism? China's Economic Engagement in Africa and Implications for World Order' (2014) 8 African Journal of Political Science and International Relations 185.See also, Timothy Webster, 'China Human rights Footprint in Africa' (2013) 51 Columbia Journal of Transnational Law 626.
[22]David Haroz, 'China in Africa: Symbiosis or Exploitation?' (2011) 35 The Fletcher Forum of World Affairs 65.
[23]J. C Strauss, 'The Past in the Present: Historical and Rhetorical Lineages in China's Relations with Africa' (2009) 199 China Quarterly 777. See also, Chris Alden, 'China in Africa' (2005) 47Survival 147.
[24]Uche Ofodile, 'Trade, Aid and Human Rights: China's Africa Policy in Perspective' (2009) 4 Journal of International Commercial Law and Technology 86.
[25] Alden (note 23) 148.
[26] Richard J. Payne and Cassandra R. Veney, 'China's Post -Cold War African Policy' (1998) 38 Asian Survey 867.
[27] Uche Ewelukwa Ofodile, 'Trade, Empires and Subjects- China- Africa Trade: A New Fair Trade Arrangement or the Third Scramble For Africa? (2008) 41 Vanderbilt Journal of Transnational Law 505.
[28]OECD/ EIA, (World Energy outlook 2010) 77 < http://www.worldenergyoutlook.org/2010.asp > Accessed 5 February 2018.
[29]Stephanie Hanson, 'China, Africa and Oil' (The Council on Foreign Relations, 6 June 2008) 3<http://www.cfr.org/china/china-africaoil/p9557 > Accessed 5 February 2018.

becomes a supply target. Obviously, the acquisition of resources- oil and other raw materials – from Africa is designed to help sustain and expand the Chinese economic development.[30]

African Market Access and Expansion

Chinese are largely interested in the untapped consumer market for the Chinese manufactured goods.[31] As Africa boasts of over a billion inhabitants and while Chinese economic growth relies heavily on the success of its manufacturing sector, Africa provides an ideal match for new consumer markets needed by the China to sustain its developmental trajectory.[32] Additionally, China is desirous of facilitating its companies' entry into new international markets and Africa provides fertile ground for such expansion and as it is estimated that Sub-Saharan Africa requires at least USD 20 billion in annual infrastructure investment in order to spur its development,[33] Chinese firms have sought to claim their piece of action. Additionally, the privatization of publicly owned enterprises in China[34] has necessitated the need to scout for new investment opportunities outside China to complete their transition from the state-owned enterprises. To do this, the privatized enterprises need to step up entry into international market such as Africa.[35]

Political Power and Diplomatic Ties

By establishing its presence in Africa, China wants to project the image of a global super-power.[36] Moving out of its region, China wants to demonstrate that it could also compete on the world stage with the United States and countries in Europe. This reason seems to have gained currency, given the investment portfolio of Chinese state-owned and private firms across Africa and elsewhere in the world. By implication, the US has been forced to recognize China's immense economic power and political influence in the world. China is also keen on maintaining 'one China Policy' and is ardent on ensuring that African states develop and maintain a 'one China policy'[37] and for the African countries' co-operation with China to flourish; the countries must cut their ties with Taiwan.[38] Indeed, in November 2006, China pledged 'to increase from 190 to over 440 the number of export items to China eligible for zero- tariff treatment from the least developed countries in Africa having diplomatic relations with China'.[39]

China also seeks to obtain political support from African countries on International affairs.[40] As a matter of fact, Africa accounts for almost half of the non-aligned nations and a third of

[30] He Wenping, 'The Balancing Act of China's Africa Policy' (2007) 3 China Security 23.
[31] George Klay Keith, JR and Edward Lama Wonkeryor, 'China's Development Aid to Africa' (2011) 7 International Studies Journal 131.
[32] *Ibid,* 143.
[33] South African Institute of International Affairs, 'The China in Africa Toolkit: A Resource for African Policy Makers' (China in Africa Project Working Paper 2009) 44.
[34] Clarke Donald, 'Corporatization, Not Privatization' (2003) 7 China Economic Quarterly.
[35] Thompson Ayodele and Olesegun Sotola, 'China in Africa: An Evaluation of Chinese Investments' (IPPA Working Paper Series 2014 Lagos, Nigeria) 6.
[36] *Ibid.*
[37] Drew Thompson, 'Economic Growth and Soft Power: China's Africa Strategy' in Arthur Waldron (ed.), *China in Africa* (Washington DC: Jamestown Foundation 2008) 11. See also, Robert I. Rotberg , 'Chinas Quest For Resources, Opportunities, and Influence in Africa' in Robert I. Rotberg (ed.), in *China Into Africa: Trade, Aid and Influence* (Washington DC: Brooking Institution Press, 2008) 2.
[38] Ofodile (note 27) 534.
[39] *Ibid.*
[40] Qingtao Xie, 'The Protection of China's Investment in Africa under the International Investment Law' (2014) 22 Currents International Trade Law Journal 28.

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United Nations membership and china needs the support of these countries to maintain its international status and the opposition to the United States.[41]Imperatively, relations with Africa guarantee china more than fifty allies in key multilateral organizations such as the WTO and as significant player in multilateral organizations, China recognizes that it needs to court votes to protect and promote its interests.[42] Irrefutably, African states have the largest single bloc of votes in multilateral settings.[43]

Additionally, China is also investing in Africa in view of its historical world view that it is the middle kingdom [Zhongguo] and therefore wants to be perceived and respected as a global power.[44]Correspondingly, Tull[45] opines that the Chinese foray into Africa has also been fueled by the desire to contain the western hegemony and its own desire to bolster its own position in the international system. By doling out aid and investment across Africa, China has sought to curry favor with African governments and to bolster its credibility as a benevolent breed of superpower.[46]

Ideological Overtures

Ideologically, the Sino –Afro relationship is based on 'South to South' Co-operation[47] which arguably heralds the position that China is in unique position to understand African needs and to assist in addressing them at the global level. It depicts itself as a developing country which has only recently become more developed and with ability to recognize the needs of African Nations [48]thus portrays itself as 'exceptionally' humanitarian and keenly interested in the welfare of African states. [49] Most importantly, China is desirous of 'inducting' and persuading Africa to adopt the Chinese development model[50] that has propelled it from paucity to opulence in a short while.

According to Haroz,[51] the Chinese rendezvous with Africa is swayed by China's own growth experience. Between 1981 and 2005, China managed to reduce the proportion of its citizens living in abject poverty [those living under USD 1.25 per day)] from 84% to 15.9%[52] and having productively managed to have such a thespian economic transformation, China sees its development model as offering the unsurpassed blueprint for Africa's own economic emergence.

Thus, China's engagement in Africa emulates Japan's relationship with China during the post –Mao years[53] whereby in 1978, China and Japan inked a long-term trade agreement under

[41] E. Obuah, 'China's Investments in Africa: A Catalyst For Growth and Development or a 'Trojan Horse' For Exploitation?' (Paper Presented at the Annual Meeting of the ISA's 50th Annual Convention 'Exploring The Past, Anticipating the Future' New York Marriot Marquis USA 2009) 5. <http://www.allacademic.com/metap31!109_index.html > Accessed 6 February 2018.
[42] Elizabeth Sidiropoulos, 'Options for the Lion in the Age of the Dragon' (2006) 13 South African Journal of International Affairs 97.
[43]Alden (note 23)153.
[44]Keith and Wonkeryor (note 31)144.
[45]Dennis M. Tull, 'China's Engagement in Africa: Scope, Significance and Consequences' (2006) 44 Journal of Modern African studies 459.
[46] Haroz (note 22)72.
[47]Ofodile (note 27) 516.
[48] Salvatore Mancuso, 'China in Africa and the Law' (2012) 18 Annual Survey of International and Comparative Law 243.
[49]Deborah Brautigam, *The Dragon's Gift: The Real Story of China in Africa* (Oxford: Oxford University Press 2008) 9.
[50]Calestous Juma, 'Lessons Africa Must Learn From Chinese Expansion' Business Daily, Africa 13 July 2007 1-2 < https://www.belfercenter.org/publication/lessons-africa-must-learn-chinese-expansion > Accessed 13 March 2018.
[51] Haroz (note 22)68.
[52]Jennifer Cooke, *China's Soft Power in Africa* (Washington, DC: The Center for Strategic International Studies 2009) 29.
[53]Haroz (note 22) 68.

which Japan pledged low interest loans to finance export of USD 10 billion in industrial technology and materials to China in exchange for Chinese oil and coal.[54]The Chinese used this financing to hire Japanese firms to build China's main transport corridors, coal mines and power grids. By the end of 1978, the Chinese officials had signed over seventy four contracts with Japan to finance projects that would ultimately form the anchor for the Chinese modernization.[55]Correspondingly, China has deployed analogous agreements to engage with Africa. This is partly fuelled by the recognition that in order for African consumers to afford Chinese exports and for the African markets to produce prime investment opportunities for Chinese firms, Africa must get richer.[56]

Turning Leverage to China: The Chinese Tactical Approach in Wooing Africa

Essentially, China has, enigmatically and within a short while, thrived to outmaneuver her western counterparts in locking in Africa's investment opportunities.[57]Pundits have however posited that the success has not come on a silver platter but is an upshot of well laid and politically motivated strategies and tactics disparate from those of the western foreign capital.[58]

The Go Global Initiative – *'Zuo Chu Qu'*

China proclaimed the 'Go Global' strategy in 2000[59] as a plan to develop markets for Chinese export products;[60] mitigate pressure from the accumulation of foreign currency[61] as well as developing new-fangled sources of energy and raw materials.[62] This initiative has increasingly encouraged Chinese enterprises to establish offshore operations[63] in designated Chinese special economic zones.[64] The zones are in themselves valuable as they promote the Chinese foreign commercial interests, create safe-havens for Chinese capital and offset the increased protectionist trade practices against Chinese Companies.[65] To fortify the 'go global initiative', the Chinese multinational companies take part in strategies whereby the government often keeps undeviating or even circuitous control over their activities and are used to gain access to natural resources considered to be in their national interest.[66]

[54]Brautigam (note 49) 46.
[55] *Ibid*, 47.
[56] Haroz (note 22) 68.
[57] David Zweig and Bi Jianhai, 'China's Global Hunt for Energy' (2005) 84 Foreign Affairs 25.See also, Kevin J Kelley, 'Donald Trump To Rival China's Investment in Africa' (Daily Nation 7 October 2018) <https://www.nation.co.ke/news/US-plans-to-increase-investment-in-Africa/1056-4795902-xu0qml/index.html> Accessed 8 October 2018.
[58] Dan Haglund, 'In it for The Long Term? Governance and Learning among Chinese Investors in Zambia's Copper Sector' (2009) 199 China Quarterly 627.
[59] Fernanda Ilheu, 'The Role of China in Portuguese Speaking African Countries: The case of Mozambique (Part II)' (2011) 26 Global Economics and Management Review 41.
[60]Peter J. Buckley, L Jeremy *et.al*, 'The Determinants of Chinese Outward Foreign Direct Investment' (2008) 39 Journal of International Business Studies 499.
[61]Fernanda Ilheu and Susana Pereira, 'The Chinese 'Go Global' Policy and the Portuguese Kinship' (Centre of African and Development Studies, Working Paper No. 110 of 2012) 3. See also, Ernst & Young, 'China Going Global: The Experiences of Chinese Enterprises in Netherlands' 3 <http://personal.vu.nl/p.j.peverelli/ErnstYoungReport.pdf > Accessed 13 March 2018
[62]Wenran Jiang, 'Fuelling the Dragon: China's Rise and Its Energy and Resource Extraction in Africa' (2009) 199 China Quarterly 585.
[63]O.Timokhina, 'Chinese Foreign Direct Investment in Africa in Corporate social Responsibility Context' <http://web2.msm.nl/RePEc/msm/wpaper/MSM-WP2014-29.pdf > Accessed 14 March 2018.
[64]Jeremy Kelley, 'China in Africa: Curing the Resource Curse with Infrastructure and Modernization' (2011) 12 Sustainable Development Law and Policy 35.
[65] *Ibid.*
[66]Keith and Wonkeryor (note 31)150.

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In Africa, the companies are able to obtain work orders by offering conditions that are possible only because such work orders are considered strategic by the Chinese government, who subsidizes the companies with state capital. The companies are then able to offer conditions that are impractical for western companies because they must take their balance requirements into consideration.[67]Chinese avoidance of conditional business relations,[68] coupled with state control over these strategic economic ganglions allows China to offer a 'one stop shop' approach whereby China receives access to natural resources which are combined with soft loans,[69] infrastructure and other cooperation projects such as training, scholarships, medical aid and rural development.[70] China differs significantly from the West with respect to its willingness to leverage aid to create business opportunities for Chinese firms. Chinese loan and aid packages often come with specific requirements that recipient nations contract with Chinese companies. As a result, Chinese multinationals operating in Africa enjoy competitive advantages versus their Western counterparts.[71]The western companies have not been able to keep up the pace of this organized approach towards African countries like China.[72] The Western companies, which are normally not under public control and are sustained only by their economic strength, clearly do not possess the instruments which would allow them to have sustainable African business relationships.[73]

The Forum on China –Africa Cooperation [FOCAC]

The FOCAC- which is a multifaceted intergovernmental mechanism to promote development and strengthen ties between China and those African countries that recognize China- was also established in the 2000[74] to promote Sino-African Economic Trade Cooperation.[75] Since its inception, triennial ministerial meetings in Beijing and various African capitals, coupled with annual and biannual meetings between lower level officials, has enhanced Sino-African trade, investment and mutual comprehension.[76] Consequently, bilateral trade between China and Africa has grown eighty-fold in over a decade;[77] from two billion dollars in 1999, to $160 billion in 2012, suggesting the large increases in economic activity between China and Africa in the recent past.[78] The forum has evolved into the official forum where discussions between China and Africa are held[79]and since its creation, there has been a nearly direct correlation between Chinese and African economic growth rates.[80] In 2009, at the Fourth FOCAC meeting

[67]Chris Alden and Martyn Davies, 'A Profile on the Operation of Chinese Companies in Africa' (2006) 13 South African Journal of International Affairs 83.
[68]James Thuo Gathii, 'Beyond China's Human Rights Exceptionalism in Africa: Leveraging, Science, Technology and Engineering for Long Term Growth' (2013) 51Columbia Journal of Transnational Law 664.
[69]Deborah Brautingam, 'Close Encounters: Chinese Business Networks as Industrial Catalysts in Sub-Saharan Africa' (2003) 102 African Affairs 447-467.
[70]Webster (note 21).
[71]Brook Sutton, 'A Bad Good Deal: The Challenges of Chinese Foreign Direct Investments in Africa' (2010) African Law and Development 1.
[72]Harry G. Broadman, *Africa's Silk Road: China and India's New Economic Frontier* (Washington DC: World Bank Publications 2007) 305.
[73]Salvatore Mancuso, 'China in Africa and the Law' (2012) 18 Annual Survey of International and Comparative Law 243, 254. See also, Keith and Wonkeryor (note 31) 150.
[74]Weldon Zhu, Creating a Favorable Legal Environment for Sustainable Development of China- Africa Business Relations' (2014) 2 Journal of South African Law 306.
[75]Christopher Tung, 'The Influence of Chinese Climate Change and Law on Africa' (2010) 4 Carbon and Climate Law Review 334.
[76]Webster (note 21) 648.
[77]See generally, Weidong Zhu, 'China- African Trade & Investment and the Exchange of Law' in Salvatore Mancuso, (ed.), *The Harmonization of Commercial Law in Africa and Its Advantages For Chinese Investments in Africa* (Macau 2008).
[78] *Ibid.*
[79]Mancuso (note 73) 245.
[80] *Ibid*, 246.

in Sharmel-Shekih, Egypt, [attended by foreign affairs ministers and ministers who regulate economic cooperation between China and forty-nine African Countries] China announced eight new measures to encourage commitment to Africa over the 2010-2012 period.[81] In the 2012-2015 FOCAC's action plan, the partners committed to encourage mutual investments and push forth negotiations and implementation of bilateral agreements on promoting and protecting investments.[82] The 7th FOCAC summit was held in Beijing on 3rd to 4th September 2018[83] whereby President Xi Jinping announced $ 60 billion in new financing for Africa and highlighted major initiatives for future China- Africa Co-operation; industrial promotion, infrastructure connectivity, trade facilitation, green development, capacity building, health care, people to people, peace and security.[84] China also pledged to help boost agricultural productivity, increase of non-resource products imports from Africa and provide vocational training through Luban workshops, government scholarships and exchange programs.[85] Besides, China and Africa have formed other partnerships in numerous areas to assist in economic development and cooperation including the China-Africa Business Council (2005),[86] the China-Africa Development Fund (2007),[87] and the China-Africa Agricultural Cooperation Forum (2010).[88] Such initiatives have endeared Beijing to Africa, resulting into China's Influence becoming greater than that of western countries and international financial institutions, which have traditionally held major control.[89]Moreover, the Chinese investors have also ramped up their engagement by fishing out prized assets that have habitually been deemed too risky or financially too expensive by the western investors.[90]

China's Africa Policy – 2006

China's Africa policy was promulgated in 2006[91] and sought to explicate more on the Beijing's relationship with Africa and therefore provided thus; [92]

> ….China is devoted; as are African nations, to making United Nations play a greater role, defending the purposes and principles of the United Nations Charter, establishing a new international political and economic order featuring justice, rationality, equality and mutual benefit, promoting more democratic international relationships and the rule of

[81]United Nations Conference on Trade and Development, 'Economic Development in Africa Report 2010: South-South Cooperation: Africa and the New Forms of Development Partnership' <www.unctad.org/templates/webflyer.asp?docid=13329&intltemlD=1397&lang=1 &mode=downloads > Accessed 14 March 2018.
[82]Catherine Elekemann and Oliver C. Ruppel, 'Chinese Foreign Direct Investment into Africa in the Context of BRICS and Sino- African Bilateral Investment Treaties' (2015) 13 Richmond Journal of Global Law and Business 593.
[83]Linda Calebrese, 'FOCAC 2018: What to Expect From Next Week's China- Africa Summit' (Insight, 28 August 2018) <https://www.odi.org/comment/10674-focac-2018-what-expect-next-weeks-china-africa-summit > Accessed 25 September 2018.
[84]Shanon Tiezi, 'FOCAC 2018: Rebranding China in Africa' (The Diplomat, 5 September 2018) <https://thediplomat.com/2018/09/focac-2018-rebranding-china-in-africa > Accessed 25 September 2018.
[85]*Ibid.*
[86]China-Africa Business Council, 'Brief Introduction to China-Africa Business Council' www.cabc.org.cn/english/introduce.asp > Accessed 14 March 2018.
[87]China-Africa Development Fund, 'China-Africa Development Fund: about us' < www.cadfund.com/en/Column.asp?Columnld=51 > Accessed 14 March2018.
[88]The China-Africa Agricultural Cooperation Forum is coordinated under the framework of the FOCAC, focuses on tackling food safety issues and developing sustainable agriculture.
[89]Mancuso (note 73) 245.
[90] Edinger and Pistorious (note 18).
[91]Ministry of Foreign Affairs of the People's Republic of china, 'China's Africa Policy', 12 January 2006 <http://www.fmprc.gov.cn/eng/zxxx/t230615.htm > Accessed 14 march 2018.
[92] *Ibid.*

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> law in international affairs and safeguarding the legitimate rights and interests of developing countries….

Through the policy, Beijing essentially wished 'to present to the world the objectives of China's policy towards Africa and measures to achieve them, and its proposals for cooperation in various fields in the coming years, with a view to promoting the steady growth of China- Africa relations in the long term and bringing the mutually beneficial cooperation to a new stage'.[93]The policy promises an enhanced cooperation in a broad range of fields including the political field, the economic field, field of education, science, technology, culture, health and in the field of peace and security.[94]In the economic field, Beijing avows enhanced cooperation in the areas of trade, investment, finance, agriculture, infrastructural development, tourism, debt relief and debt reduction and resource cooperation.[95]

Imperatively, the policy is anchored upon five key principles of Chinese foreign policy first agreed upon by Chinese Premier Zhou Enlai and Indian Prime Minister Jawaharlal Nehru in 1954.[96]The principles include mutual respect for the other country's sovereignty, mutual non-aggression, mutual non-interference in each other's internal affairs, equality and mutual benefit and peaceful coexistence.[97] Incontestably, the existence of such a policy, insistent emphasis on cooperation and respect rather than subordination in its pursuit of relations with Africa has prompted African leaders to extend a warm reception to Beijing. [98] Moreover, China's identification of itself as a developing nation and being not a former colonial power, has prompted many African leaders to perceive the Chinese model of development as one that could be replicated successfully in Africa and recognize the possibility that economic ties with China could expand the market for Africa's raw materials and natural resources.[99]

The Chinese Soft Power Approach

China also utilizes 'the soft power approach' in cultivating closer ties with Africa and does this by giving preeminence to two major principles; 'non-interference' and 'win-win'.[100] The non-interference is essentially ideological neutrality and is premised on the Chinese belief that matters occurring within the territorial confines of an African state are within the purview of that country's domestic jurisdiction.[101] Essentially, it is not the Chinese business to try and dictate to an African state on the way to address domestic matters.[102]On the other hand, the 'win-win principle' propounds the notion that China and the respective African states benefit from their interactions. China, therefore, does not inquire into domestic political situation of partner countries in its dealings[103] and cares little whether the partner states' governments are democratic or dictatorial. Unlike the west and international financial institutions such as the

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[93] Ofodile (note 24) 87.
[94] Ministry of Foreign Affairs of the People's Republic of china (note 91).
[95] *Ibid.*
[96]Webster (note 21) 637.
[97] Keith and Wonkeryor (note 31)139.
[98] John K. Cooley, *East Wind over Africa: Red China's African Offensive* (New York: Walker Publishers 1965) 224-225.
[99]Sidiropoulos (note 42) 100.
[100] Keith and Wonkeryor (note 31) 142.
[101] Li Anshan, 'Transformation of China's Policy towards Africa' (CTR Working Paper No. 20, Beijing: Center on China's Transnational Relations, Beijing University 2006) 2.
[102]Anita Spring, 'Chinese Development Aid and Agribusiness Entrepreneurs in Africa' Proceedings of the Conference of the International Academy of African Business and Development 2009) 23-34.
[103] *Ibid.*

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IMF and 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.[104] Moreover, the Chinese approach is a stark contrast with the western approach especially the United States where each new administration brings new set of values, policies, diplomatic techniques and personnel to conduct foreign affairs.[105] Notably, the US has in the past employed aggressive unilateralism and measured multilateralism and compared with the Chinese consistency, African leaders have chosen to stick with the latter. Moreover, African leaders are not amenable to constant criticism, western conditions and are tired of being ignored or neglected by the west. China provides an alternative axis of investment.[106]

The Sino – Afro Memorandum of Understanding [2015]

In late January 2015, China entered into an ambitious MOU with the African Union [AU] to enhance and develop road, rail and air transportation lines in Africa.[107] Observably, the full ramifications are anticipated to unravel in a context of significant Chinese investment and activity across an expansive range of African infrastructure projects.[108] Indeed, China's investment in infrastructure is undeniably a key element in the future African Economic growth and productivity. Infrastructure projects are booming in Africa, thanks to China being the largest bilateral investor in Africa infrastructure with loans of over USD 13.4 billion in 2013.[109] Debatably, the 2015 MOU reflects the prototypes of China's engagement with infrastructure projects in Africa. China has indeed financed large scale infrastructure projects throughout Africa and financing is primarily provided through Chinese EXIM bank even on terms that are marginally concessional and significantly less than those associated with traditional overseas development aid.[110] Such deals are perceptibly magnetic to African leaders and are currently unmatched by the western overtures thereby playing a major role in courting Beijing into Africa.

Nevertheless, not every commentator, author or academician gives these approaches a clean bill of health, thereby separately expressing reservations[111] on the contended lopsidedness of the tactics and consequently forming an opinion that China is poised to benefit more from these engagements.

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[104]Webster (note 21) 641, 650-51.
[105] *Ibid,* 640.
[106] Ofodile (note 27) 538.
[107]AFP, 'AU, China Agree Big Infrastructure Deal' (News 24 27 January 2015) <http://www.news24.com/Africa/News/African-Union-China-agree-big-infrastructure-deal-201501> Accessed 16 March 2018.
[108]'China to Cooperate with Africa on Building Infrastructure Networks' (Shanghai Daily 21 September 2015) <http://www.shanghaidaily.com/article/article-xinhua.aspx?id=302861 > Accessed 16 March 2018.
[109]Olufunmilayo B. Arewa, 'Constructing Africa: Chinese Investment, Infrastructure Deficits and Development' (2016) 49 Cornell International Law Journal 101.
[110] *Ibid,* 111.
[111] For example, David H. Shinn, 'The Environmental Impact of China's Investment in Africa' (2016) 49 Cornell International Law Journal 25, Mancuso (note 73) 248, Kelley (note 64) 39, Ofodile (note 24) 89, Arewa (note 111)109-110 and Ofodile (note 27) 538, 553.

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Sino- Afro FDIs Prototypes and Impacts: A *Précis*

China – Africa FDIs: Archetypes

Nigeria, South Africa, Zambia, Ethiopia and Ghana are the top five recipient countries of Chinese investments in Africa [112] although they have permeated over 50 African countries[113] in terms of extractive industries at 29.2%, manufacturing at 22%, construction at 15.8%, financing at 13.9%, commercial services at 5.4%, wholesale and retail at 4.0%, scientific research, technological services and geological prospecting at 3.2%, agriculture forestry, animal husbandry and fishery at 3.1% and others at 3.4%.[114]In Kenya, Chinese investments have towered in the construction sector, [115] while Tanzania has obtained more than 100 cooperation projects and program totaling over USD 2 billion since early 1960 with focus being on railway construction, textile industries, agriculture and health sectors. [116] In Uganda, Chinese companies are profoundly but ubiquitously engrossed in four sectors namely, wholesale trade at 26%, construction at 21%, retailing at 21%, manufacturing at 21% while the remaining sectors each account for less than 10%.[117] In Ethiopia, China is by far the first foreign direct investor in the country [118] and as at July 2016, the Ethiopian Investment Commission had registered over 1000 Chinese projects with the bulk of the investments going to manufacturing and construction at 70%, real estate, renting and business standing at 22% and 5% respectively.[119]Additionally, the investors have been involved in the construction of special economic zones, industrial parks, roads, hydroelectric projects, Addis-Djibouti railway line and the expansion of the Bole International Airport.[120]

The Chinese have also invested in Zambia[121] and in 2012 alone, it received inflows totaling to USD 212 million. [122] The Chinese have invested in Agriculture, mining and construction although much preeminence has been accorded to the latter compared to the former.[123] Notably, Zambia being amid the top 5 copper producers in the world is a target for minerals required for the Chinese manufacturing industries and as such, the investors having invested more than USD 9.3 billion in the country, the mining sector takes a share of 76% of the entire investment while manufacturing takes 20%.[124] In Cameroon, China is currently active oil, infrastructure,

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[112]Xiafang Shen, 'Private Chinese Investments in Africa: Myths and Realities' (The World Bank Policy Research Working Paper 6311, January 2013)8.
[113]Anthony Yaw Baah and Herbert Jauch, 'Chinese Investments in Africa' in Anthony Yaw Baah and Herbert Jauch (eds.), *Chinese Investments in Africa: A Labor Perspective* (African Labour Research Network, 2009) 35.
[114]Edinger and Pistorious (note 18) 504.
[115]Rosemary Mwanza, 'Chinese Foreign Direct Investment and Human Rights in Kenya: A mutually- Affirming Relationship? ' (2016) 2 Strathmore Law Journal 133.
[116]Johanna Jansson, Christopher Burke and Tracy Hon, 'Patterns of Chinese Investment, Aid and Trade in Tanzania' (Centre for Chinese studies, A Brief Prepared for World Wide Fund Nature, 2009) 2. See also, Anthony Yaw Baah and Herbert Jauch (note 113) 39.
[117]Ward Warmerdam and Meine Pieter Van Dijk, 'Chinese State Owned Enterprises Investments in Uganda: Findings from a Recent Survey of Chinese Firms in Kampala' (2013) Journal of Political Sciences 1.
[118] Francoise Nicolas, 'Chinese Investors in Ethiopia: Perfect Match?' (Notes de L' ifri, Ifri March 2017) 17.
[119] *Ibid* 18.
[120] Nicolas (note 118) 19, 21, 24 and 26.
[121]Louise Granath and Marika Larsson, 'Chinese Foreign Direct Investments in the Zambian Mining Sector' (University of Gothenburg, School of Business, Economics and Law 2012) 9.
[122]Nadia Abdelghaffar, Karli Bryant, Chuin Siang Bu Megan Campbell, Brandon Lewis, Roger Low, Kabira Namit, Diana Paredes, Aya Silva and Chex Yu, 'Leveraging Chinese FDI for Diversified Growth in Zambia' (Woodrow Wilson School of Public and International Affairs, April 2016) 9.
[123]Solange Guo ChaleLard and Jessica M. Chu, 'Chinese Agricultural Engagements in Zambia: A Grass root Analysis' (China- Africa Research Initiative, Policy Brief No. 4 of 2015) 2.
[124]Muchemwa Sinkala and Weidi Zhou, 'Chinese FDI and Employment Creation in Zambia' (2014) 5 Journal of Economics and Sustainable Development 39.

forestry and agriculture[125] and being a consumer of the Sudanese oil, it has also become a leading developer of Sudan's oil industry.[126] Still, the Chinese have also invested in the Sudanese agriculture, mining, medicine and education sectors.[127]

Likewise, the Chinese have invested heavily in Angola's Oil sector[128] and in the telecommunications, infrastructure and construction sectors as well.[129]In Gabon, the investors have invested in the mining,[130] forestry[131] and oil sectors[132] while in South Africa, the investments are distributed across assorted sectors of the economy with infrastructure and construction investments accounting for 25% of the total Chinese investments, followed by machinery at 14%, mining at 13%, finance and business service, electrical machinery and material processing each at 9%, automobiles at 8%, consumer services at 5%, consumer at 5%, I.T medical at 1%, while 3% is unknown.[133] In the financial sector, the Industrial and Commercial bank of China- the world's largest bank- prides itself for buying 20% of the Standard Bank of South Africa at USD 5.5 billion in cash and remains the largest ever financial acquisition[134] In the DRC, Chinese investors have also permeated but a large portion of these investments has been channeled to the extractive sector.[135] A barter deal, popularly dubbed as 'SICOMINES', was inked in 2008[136] whereby China would invest USD 3 billion in mining and another USD 3 billion in infrastructure development, construction of roads, railways, hospitals, dams and mine development.[137] In exchange, Chinese companies would get admittance into the Congolese high grade copper and cobalt reserves.[138]

Moreover, the Chinese have also invested in Nigeria, a country, which is arguably Africa's largest recipient of Chinese FDIs.[139]Perceptibly, Sino- Nigeria FDIs have been growing a great deal over the course of the last decade, from USD 3 billion in 2003 to over USD 10 billion in 2013, though the oil and gas sector has been receiving about 75% of the FDIs.[140]Nevertheless, other sectors including manufacturing[141] have also reaped from the investments. In 2013 for

[125]Johanna Jansson, 'Patterns of Chinese Investment, Aid and Trade in Central Africa (Cameroon, the DRC & Gabon)' (Centre for Chinese Studies, A Briefing Paper prepared for World Wide Fund for Nature, August 2009) 8-9.
[126]Save Darfur, 'China in Sudan: Having it Both Ways' (Briefing Paper 18 October 2007) 3.See also, Shinn (note 111) 54.
[127] *Ibid.*
[128]Ana Cristina Alves, 'The Oil Factor in Sino-Angola Relations at the Start of 21st Century' (South African Institute of International Affairs, Occasional Paper No. 55, February 2010) 23.
[129] Regan Thompson, 'Assessing the Chinese Influence in Ghana, Angola and Zimbabwe: The Impact of Politics, Partners and Petro' (Stanford University Center for International Security and Cooperation, 21 May 2012) 76-77.
[130]Jansson (note 125) 24.
[131] *Ibid*, 25.
[132] Meine Pieter Van Dijk, 'How are Chinese Companies Dealing with Human, Labor and Environmental Rights in Africa' (2013) 22 Human Rights Defender 8.
[133]Stephen Gelb, 'Foreign Direct Investments Links Between South Africa and China' (The Edge Institute Johannesburg 2010) 12.
[134]ICBC News, 'ICBC Buys up to 20 PC of Standard Bank (South Africa)' (29 October 2007) <http://www.icbc.com.cn/icbc/icbc%20news/icbc%20buys%20up%2020pc%20of%20standard%20bank%20(south%20africa).htm > Accessed26 March 2017.
[135]Baah and Jauch (note 113)39-40.
[136]Janssonn (note 125)15.
[137]Marysse Stefaan and Sara Geenen, 'Win-Win or Unequal Exchange? The Case of Sino-Congolese Cooperation Agreements' (2009) 47 Journal of Modern African Studies 371.
[138]Claude Kabemba, 'China DRC Relations: From a Beneficial to a Developmental Cooperation' (2016) 16 African Studies Quarterly 73.
[139] Mary Francoise Renard, 'China Trade and FDI in Africa' (African Development Bank Group, Working Paper No 126 May 2011) 19.
[140]Oji- Okoro Izichukwu and Daniel Ofori, 'Why South- South FDI is Booming: A case Study of China FDI in Nigeria' (2014) 4 Asian Economic and Financial Review 361.
[141]Yunnan Chen, Irene Yuan Sun, Rex Uzona Ukaejiofo, Tang Xiaoyang and Deborah Brautigam, 'Learning From China? Manufacturing, Investment and Technology Transfer in Nigeria' (China –Africa Research Initiative, Working Paper No. 2 January 2016) 6-13.

example, china invested USD 1.1 billion in Nigeria's infrastructure in form of low interest loans destined for constructing four airport terminals in the country, with an additional USD 1.7billion contract that Chinese companies won to construct roads in the country.[142]

The trend persists in Ghana wherein China has been said to be the leading source of investments in terms of project numbers especially from January to September 2017.[143] Chinese FDIs in Ghana are principally focused on trade and manufacturing and some of key projects that the Chinese have invested in include Bui dam worth USD 622 million[144] Essipong Stadium, Ghana Telecom and Teshie Hospital.[145] In 2009, China Development Bank [CDB] approved USD 3 billion loan for the Ghana National Petrol Company to develop its oil and gas infrastructure followed [in 2010] by another CDB's USD 3 billion loan deal for the Western Corridor Gas Commercialization, a further USD 9 billion from the China EXIM Bank for road, railway and dam projects and another sum of USD 250 million for rehabilitating Kpong waterworks.[146]In 2013, the Ghana Investment Promotion Council recorded 53 new Chinese investments with a net value of USD 165 million while in 2014, Huasheng Jiangquan group, a construction company proffered to invest more than USD 2 billion in the construction of an industrial park in western Ghana.

In Chad, Chinese FDI stocks stood at USD 423 million, this being 1.2% of the total Chinese investments in Africa by 2015. Moreover, Chad has since 2007 used loans acquired from the Chinese government to bankroll projects including Balore cement factory, fiber optic networks and several road projects.[147] The most conspicuous investment is the USD 339 million joint venture engagement between the China Petroleum Corporation and the Chadian National Oil Company that led to the springing up of the Ronier's oil refinery in 2007.[148] Different from Exxon and other Western companies that habitually exported oil from Chad, Ronier initiative was the first refinery in the country thereby creating a value added process in the Chadian resource sector.[149]

China – Africa Foreign Direct Investments: Impacts

Given that Chinese investments have penetrated almost every country in the Sub-Saharan Africa, it is also undeniable they have had both the positive and negative impacts. In this context, the Africa Progress Panel[150] has asserted that

> '….while the implementation of all these promises is difficult to monitor, it is clear that China's commercial involvement in Africa has a substantial development impact as it boosts exports, economic growth

[142] Izichukwu and Ofori (note 140) 366.
[143] Joseph Appiah- Dolphyne 'China Leads in Project Investments in Ghana' (GIPC Report, 16 November 2017).
[144]Baah and Jauch (note 113) 39.
[145]Oxford Business Group, 'Chinese Investors Continue to View Ghana as a Hub for Expanding Exports into West Africa' < https://oxfordbusinessgroup.com/analysis/chinese-investors-continue-view-ghana-hub-expanding-exports-west-africa > Accessed 27 March 2018.
[146] *Ibid.*
[147]China- Africa Initiative, 'China in West and Central Africa: Railways and Refineries' 8 March 2018 <https://static1.squarespace.com/static/5652847de4b033f56d2bdc29/t/5aa2d154f9619a302151bac4/1520619860909/China+in+West+and+Central+Africa.pdf > Accessed 28 March 2018.
[148]Shinn (note 111) 57.
[149] China- Africa Initiative (note 147).
[150]Africa Progress Panel, 'China's Growing Engagement in Africa: Context-Trends- Potential ' Information Note, December 2009, 8.

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> and provides opportunities otherwise neglected by investors and financiers. Chinese investments are also helping to diversify African economies and increase local processing exports. Chinese finance allows African countries to address infrastructure deficits, lower costs of doing business and facilitating trade. Cheaper goods and services from Chinese firms have also yielded substantial welfare gains for African consumers. Lastly FDI has created a springboard for generating jobs in manufacturing, mining and construction….'

Notably, the unprecedented Africa's economic growth of 5.8% in 2007 was attributable to Chinese investments and the cancellation of debts worth USD 10 billion owed by African countries.[151] As investors put up new plants, a large pool of unskilled labor that remains unutilized in the local communities find its ways into these plants and this is itself an opener to more benefits for these communities.[152] In Uganda, it is estimated that Chinese companies had, by 2012, created about 30,000 jobs[153] while Ethiopia's Hujian International light industry, a 2016 special economic zone, has created jobs for thousands of Ethiopians.[154]The trend persists in other African countries.[155]

After 1949, Chinese companies have built roads, bridges, schools, telecommunication networks, railroads, dams, hospitals and other significant infrastructure across Africa.[156] This comes at a time when Africa is grappling with the general western aversion to invest in the African infrastructure in fear of failure to make sufficient returns to offset their investments.[157] Some of the 'top ten' infrastructure projects springing from the Chinese investments in Africa include; the Lagos –Calabar Coastal Railway [Nigeria], Mombasa-Nairobi Railway [Kenya], Addis Ababa- Djibouti [Ethiopia], the planned mega port and economic zone at Bagamoyo [Tanzania], Algeria East-West Railway [Algeria], Congo-Brazzaville Special Economic Zone [Congo], Lobito- Luau Railway [Angola], Abuja- Kaduna Railway [Nigeria] and the Modderfontein New City in South Africa.[158]

African countries have also benefitted from technological, information and skills transfer from the Chinese investors. For instance, Nnewi traders in Nigeria have used technology imported through ties to Chinese investors to produce automobiles and motorcycles for sale and similarly, through a Special Economic Zone in Mauritius, local enterprises have formed systems with Chinese capitalists for technology and business skills the upshot being the island's ascension into the 3rd largest export of 'wool mark' in knitwear.[159] Chinese technical assistance has also helped African countries to develop 'know how' by the training of their human resources both internally and externally in China.[160]Under the 2004-2006 China-Africa Inter-Governmental Human Resources Plan, China tutored over ten thousand African professionals

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[151]Adisu (note 19) 5.
[152]Manalula and Matilda (note 17) 103.See also, Gail A. Eadie and Denise M. Grizzell, 'China's Foreign Aid: 1975-1978' (1979) China Quarterly 217, 219-20.
[153]Warmerdam and Van Dijk (note 117) 13.
[154] Nicolas (note 118) 29.
[155] Sanne van der Lugt, 'Exploring African Host Countries' Agency to Strengthen Local FDI Regulations: The Case of Chinese Investments in the Infrastructure Sector of DRC' (2016) 49 Cornell International Law Journal 179.See also, 'Good Man in Africa', (China Daily, 11 May 2007).
[156]Webster (note 21) 652-54.
[157]Haroz (note 22) 73.
[158]Evan Pheiffer, 'Top 10: Africa Infrastructure Projects in 2018' (Focus, China Mega Projects Africa, 13 December 2017) < https://www.thebusinessyear.com/top-10-china-infrastructure-projects-in-africa-2018/focus > Accessed 27 March 2018.
[159] Klaver and Trebilcock, 'Chinese Investments in Africa' (2011) 4 Law and Development Review 168, 185-86.
[160] Keith and Wonkeryor (note 31)152.

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in diverse fields[161] and at the 2009 FOCAC China promised to train 20,000 more African specialists in varied sectors from 2010 to 2012.[162]

Moreover, demand for minerals and other extractives prompted by Chinese investments has been associated with the surge of global prices thereby taming the long decline in prices thus providing African governments with much needed revenue and economic boost.[163] Equally, the increased Chinese demand has instigated a surge of global metal prices, the end result being an African economic growth.[164] Chinese FDIs tend to lower market prices and make new products accessible to African consumers especially those from countries with weak manufacturing sectors. Arguably, the cheap manufactured goods are apt to reducing inflationary pressure and add to revenues generated from imports.[165]Moreover, China has embarked on encouraging a wider series of African exports and at July, 2007, 440 African exports were exempted from Chinese tariffs[166] and during the 2009 FOCAC, China undertook to purge tariffs on 95% of exports from less developed countries albeit in phases.[167] Inimitably, from 2006-2008, the value of exports to china surged by a yearly average of 110%.[168]

Sino- Afro FDIs: Sustainable Development Amiable?

The omnipresent tendency of constructive impacts in the Sino-Afro FDIs obviously calls for an inquisition whether they are equally enshrouded in any negativity and more specifically, whether or not they herald sustainable development in the recipient countries. Apparently, it is worth and rational to recall that the notion of sustainable which seeks to achieve a perfect cocktail between economic development, ecological protection and conservation as well as social development[169] has become a ubiquitously entrenched norm. Consequently, FDIs, like any other development initiative, may be termed entirely propitious only if they portend sustainable development.

Question on whether or not the Sino-Afro FDIs have fully achieved this coveted threshold remains contested. Proponents[170] have routinely cited the aforementioned positive impacts to bolster their views while opponents have advanced an avalanche of views to depose views that appear to have found ground. In a nutshell, it has been asserted that the Chinese investors have continuously imported Chinese labor to take up jobs in the Chinese companies operating in Africa.[171] Uneasiness is equally pervasive that where the investors have offered work to the Africans, they nevertheless provide poor working conditions and repeatedly violated the minimum wages regulations.[172]Moreover, the incessant influx of cheap manufactured goods from china does not portend any good news for the African manufacturing sector, which is still

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161 Ofodile (note 27) 561.
162 Haroz (note 22) 75.
163 Piet Konings, 'China and Africa: Building a Strategic partnership' (2007) 23 Journal of Developing States 354.
164 Klaver and Trebilcock (note 159) 181-82.
165 Keith and Wonkeryor (note 31)151.
166Mancuso (note 73) 247.
167Richard Schiere, 'Building Complementarities in Africa Between Different Cooperation Modalities of Traditional Development Partners and China' (2010) 22 Africa Development Review 615.
168Brautigam (note 49) 98.
169 Andrea Ross, 'Modern Interpretations of Sustainable Development' (2009) 36 Journal of Law and Society 32.
170 For example, Webster (note 21).
171 Monina Wong, 'Chinese Workers in Garment Industry in Africa: Implications of Contract Labor Dispatch System on the International Labor Movement' (2006) 39 Labor, Capital and Society 69-111.See also, Yoon Jung Park, 'Chinese Migration in Africa' (China in Africa Project, Occasional Paper No. 24 January 2009)6.
172Human Rights Watch, 'You will Be Fired if You Refuse" Labour Issues in Zambia's Chinese State Owned Copper Mines' USA, November 2011 < https://www.hrw.org/report/2011/11/04/youll-be-fired-if-you-refuse/labor-abuses-zambias-chinese-state-owned-copper-mines >Accessed 17 July 2017.

at its infantry.[173]For example, Mulungushi textile factory in Zambia closed for notwithstanding competition from cheap Chinese imports and led to a loss of over 1,000 jobs[174] while in Nigeria, factories have had a similar agony.[175]Additionally, Chinese investments are associated with a contemptible technology transfer as Chinese investors lack inducements to train low skilled Africans profoundly when undertaking short term projects although generally still, many Chinese investors rarely invest heavily to train African workers.[176] Questions about the rising debt unsustainability emanating from China's unconditional concessional loans extended to the African countries linger.[177] It is contended that Chinese banks acting in tandem with the Beijing's mercantilist philosophy are taking advantage of the western donors' parsimony on debt reduction, thus lending new loans to poor countries and ultimately creating a wave of new debt[178] that is nominally offset by debt cancellation to some African countries.[179] Moreover, the loans lack transparency as it is virtually impossible for outsiders to fathom whether or not they are in consonance with the African borrowers' debt sustainability frameworks put forth by the World Bank and the IMF.[180]

It is also opined that the Chinese heavy investment in extractive industry has the propensity of worsening the resource curse [181] and exacerbates the 'Dutch disease' in Africa.[182]Further, the 'no strings policy' wields potential to prop up authoritarian regimes[183] as it affords dictators means to thrive[184] and forlornly, Chinese are also indicted for allegedly engaging in bribery while doing business abroad.[185]But perhaps the most litigious issue touches on environment, with charges being leveled against the Chinese investors that they are exporting pollution to Africa by relocating steel production industries known for environmental pollution to South Africa, Kenya and Ghana, while simultaneously planning to close steel production industries in Hebei.[186] Indeed, the Hebei provincial authorities hope to relocate offshore production of 20 million tons of steel and 30 million tons of cement by 2023.[187]It is also alleged that the investors customarily carry on with projects without EIAs or the project's environmental management plan as by law required[188] and at times without local communities' participation.[189]

[173] Keith and Wonkeryor (note 31)153.
[174]Raphael Kaplinsky, 'What Does the Rise of China Do for Industrialization in Sub-Saharan Africa?' (Paper Prepared for Review of African Political Economy Special Issue 'Good Friends, Good Partners, Good Brothers: The 'New' Face of Sino-African Cooperation', March 2008) 6.
[175]Adisu (note 19) 7.
[176] Klaver and Trebilcock (note 159) 191.
[177]Moses Michira, 'Chinese Loans Pushing Kenya's Debts to Unsustainable Levels, World Bank Warns' (The Standard Newspaper, 27 March 2016) <https://www.standardmedia.co.ke/business/article/2000196219/chinese-loans-pushing-kenya-s-debt-to-unsustainable-levels-world-bank-warns > Accessed 2 April 2018.
[178]David E. Brown, 'Hidden Dragon, Crouching Lion: How China's Advance in Africa is Under Estimated and Africa's Potential under Appreciated' (Strategic Studies Institute September 2012) 50.
[179]Haroz (note 22) 74. See also, Tull (note 45) 463.
[180] Brown (note 178).
[181] Kelley (note 64)39.
[182] Klaver and Trebilcock (note 159)197.
[183] Sutton (note 71) 2.
[184] Ofodile(note 24) 90.
[185] Annie-Soffie Isaksson and Andreas Kotsadam, 'China Aid and Local Corruption' (Aid Data, Working Paper No. 33 of 2016) 11.
[186]Dexter Roberts, 'China's Plan to Export Pollution' Bloomberg Business Week, 28 November 2014 < https://www.bloomberg.com/news/articles/2014-11-27/chinas-pollution-solution-move-factories-abroad > Accessed 20 July 2017
[187]Sean Silbert, 'Province Near Beijing Aims to Move Factories Overseas' Los Angeles Times 19 November 2014 <http://www.latimes.com/world/asia/la-fg-china-pollution-factories-overseas-20141119-story.html > Accessed 20 July 2017.
[188] Shinn (note 62) 62.
[189]John Obiri, 'Extractive Industries for Sustainable Development in Kenya' (Final Assessment Report for UNDP, Nairobi, Kenya, September 2014) 20.

Indubitably, subsistence of such circumstances does not reverberate the global call for a delicate balance between economic development, ecological protection and conservation as well as social development and essentially, spells doom for Africa. Taken in this context, the Sino- Afro FDIs appear to have sunk sustainable development into oblivion and therefore, a question then abounds as to whether the allegations are indeed true or it is a case of the usual global or local politics gone too far. Notably, it has previously been asserted that the foregoing views are skewed in favor of the west as China is perceived as a rival for resources and influence in Africa and as a rising power, the tune of the discourse is far more negative than that accorded to the western presence in Africa[190] .Critics therefore are just envious as the path taken by China is nevertheless consistent with the logic of market capitalism-liberal trade and makes it a successful capitalist in Africa and not otherwise.[191]

Grippingly, local African politics have also been creeping in the Sino- Afro FDIs sustainability discourse, initially in Zambia[192] and recently in Kenya, whereby the multi-billion dollar Mombasa- Malaba SGR project currently under construction by the Chinese Road and Bridge Corporation (CRBC) has not managed to disentangle itself from the political arena first before the 2017 general elections, and currently, as Kenyans grapple with the repayment of Chinese government loan advanced during its construction. Consequently, question lingers as whether the pervasive view that Chinese investments in Africa are just unsustainable holds water or the debate is also at times politicized so as to paint a certain picture, however illusory.

Unsustainable or a Victim of Local Politics?: Kenya's SGR

In 2008, tersely after the hotly contested 2007 general elections in Kenya, the resultant grand coalition cabinet led by the retired President Mwai Kibaki and the former Prime Minister Raila Odinga embarked on a path of investing in modern infrastructure hitherto identified as critical in elevating Kenya into middle –income status by 2030.[193] Beforehand, the Africa Development Bank had supposed that unless proper infrastructure is developed, Africa may not be able to unlock its full potential in exploiting its abundant natural resources and wealth.[194]The government thus spotted the Lamu Port, South Sudan and Ethiopia Transport (LAPSSET) Corridor and the Northern corridor for the development of a modern and high capacity SGR to transport freight and passengers.[195]

The Kenyan Standard Gauge Railway (SGR) northern corridor has three main routes namely: the Mombasa to Nairobi (phaseI) which is 472 km; Nairobi to Naivasha (phase 2A) which is 120 km and then Naivasha to Kisumu and Malaba being 369 km and comprising of phases 2B and 2C.[196] It is the first time a SGR has been developed in the country and being one of Africa's most audacious railway projects,[197] it is also the Kenya's biggest and most ambitious

[190]Barry Sautman and Yan Hairong 'The Forest for the Trees: Trade, Investment and the China-in-Africa Discourse' (2008) 81 Pacific Affairs 9.
[191] *Ibid*, 10.
[192] Dan Haglund (note 58) 629, 635.
[193]Government of Kenya, 'Kenya Vision 2030: A Globally Competitive and Prosperous Kenya' (Ministry of Planning and National Development 2006) 12-13 <https://www.researchictafrica.net/countries/kenya/Kenya_Vision_2030_-_2007.pdf> Accessed 4 October 2018.
[194]Peter Kagwanja, 'Kenya's 'Rail Strategy' Will Revolutionalize Development' (Africa Policy Institute, Issue No. 6 July 2017) 1.
[195]Evaristus M. Irandu, 'A Review of the Impact of the Standard Gauge Railway (SGR) on Kenya's National Development' (2017) 23 World Transport Policy and Practice 22.
[196]*Ibid*, 28.
[197] Kagwanja (note 194).

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infrastructure since the country's independence in 1963[198] which upon completion, is expected to snake its way from port of Mombasa to Kigali [Rwanda] through Kampala [Uganda] with a branch line to Juba [Southern Sudan] thus wielding the potentiality of accelerating growth and investments throughout the East Africa.[199]

To effectuate the trance, the cabinet approved the project in the same yea r and on 12th August 2009, the then Ministry of Transport and the CRBC, a state-owned Chinese company signed a Memorandum of Understanding (MOU) for the latter to undertake feasibility study and preliminary designs on phase 1 of the SGR.[200] The feasibility study was supposedly done for 'free' by the Chinese company.[201] The project would later assume the rank of a regional initiative when the governments of Kenya and Uganda signed a MOU on 1st October 2009 for construction of the SGR from Mombasa to Kampala and on 28th August, 2013 Kenya, Uganda and Rwanda governments signed a Tripartite Agreement committing to prod the development of the railway to their respective capital cities. South Sudan has since come on board as an interested stakeholder in the project.[202]

Figure 1- Kenya's SGR

Source: Jamii Forums <https://www.jamiiforums.com/threads/rwanda-watoa-tamko-kuhusu-ufanikishaji-wa-sgr-ya-kenya.1260823 > Accessed 8 October 2018.

[198]Horizon Africa capital Limited, 'Newsletter Feature: Kenya's Standard Gauge Railway Project' (Newsletter Quarter 1 2017)5.
[199]Emmah Kithinji, 'The Importance of the Standard Gauge Railway (SGR) Project to the East Africa Region' (2016) 1 International Journal of Current Business and Social Sciences 15.
[200]Douglas Kaunda, 'Against All Odds: Mega-Railway Project Becomes a Reality' in Ministry of Transport and Infrastructure, *Uchukuzi* (Issue 1, June 2014)6.
[201]Republic of Kenya, Kenya National Assembly, 'Report of the Departmental Commitee on Transport, Public Works and Housing on Statement Sought By Hon. Hezron Awiti, MP on the Construction of Standard Gauge Railway From Mombasa to Malaba (February 2014) 14.
[202] Kaunda (note 200).

The grand coalition government's term came to an end in 2013, thus shifting the task of executing the project- whose first phase's cost was pegged at USD 3.27 billion[203] -to the Jubilee government that took over power on 9th April 2013. To fast-track the venture, the CRBC was named the engineering, procurement and construction (EPC) contractor while Kenya and China inked a financial deal on 11 May 2014, which paved way for the China EXIM Bank to extend a concessionary loan meant to finance 90 % of the cost while the 10 % residue to be settled by the host government.[204]With a subsequent approval that the SGR be extended to Naivasha, the cost escalated by a further USD 1.5 billion and the government secured a further loan from China.[205]The first phase started in late 2014 but is already complete, having been inaugurated on 31 May 2017[206] while work on other phases is ongoing and expected to be complete in 2019.[207]

Though the project is largely symbiotic, it is chiefly strategic for China as it views Kenya as part of its 'Belt and Road initiative'.[208] Geographically, Kenya borders South Sudan, which is a key exporter of oil to China and with violence between the North and South Sudan being far from over, the need for an alternative route to export oil to China is real and Kenya offers this alternative. Kenya also offers the Chinese an avenue to satiate the thirst by serving as a corridor to East and Central Africa – a region known for tantalum, a rare and valuable metal used to make capacitors in smart phones.[209] Moreover, it serves as a gateway to the Democratic Republic of Congo, which is Africa's top producer of copper, the world's largest producer of cobalt and a huge supplier of tin and timber. The Congolese resources have been critical inputs into China's expanding economy whose companies remain hungry for the commodities. For the SGR route from the Kenyan coast to Kisangani, China's top prize is the wealth of minerals in Congo.[210]Further, railway construction and operation contracts are a major international business opening for the state owned Chinese companies affected by oversupply in the Chinese domestic markets.[211]

Mega as it is, the SGR project already found itself enmeshed in the unsustainability politics analogous to Chinese investments in other African countries. In particular, the venture has sparked controversy revolving around its economic viability, corruption, opaque contracting practices, finance arrangements, community and labor issues.[212]The project has also been termed as environmental averse given that it traverses through the pristine Tsavo and Nairobi National Parks.[213]So hot has been the sustainability debate that at one point, the parliamentary departmental committee on transport tabled a report in response to issues raised by an

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[203] *Ibid*, 7.
[204]Rene Voskamp, 'Investing in Transport Infrastructure in Developing Countries'(Bachelor Thesis, Erasmus School of Economics, Erasmus Universitiet Rotterdam 11 July 2017) 24.
[205] Horizon Africa capital Limited (note 198)6.
[206]Edith Mutethya, 'China Built Railway Line in Kenya Marks First Anniversary' (China Daily 1 June 2018) <http://www.chinadaily.com.cn/a/201806/01/WS5b10b681a31001b82571da4f.html > Accessed 8 October 2018.
[207] Huaxia, 'Kenya Says Extended SGR Line to Start Operation Around Mid 2019' (Xinhua 24 June 2018).
[208]Lauren A. Johnson, 'Africa and China's One Belt, One Road Initiative; A critical Analysis' (International Centre For Trade and Sustainable Development, September 2016)3 < http://www.ictsd.org/bridges-news/bridges-africa/news/africa-and-china%E2%80%99s-one-belt-one-road-initiative-why-now-and-what > Accessed 8 October 2018.
[209]Dominic Omondi, 'Why SGR is a Tiny Part in China's Game Plan to Become a Super Power' (The Standard 22 January 2017).
[210]*Ibid*.
[211]Uwe Wissenbach and Yuan Wang, 'African Politics Meets Chinese Engineers: The Chinese –Built Standard Gauge Railway in Kenya and East Africa' (China Africa Research Initiative, School of Advanced International Studies, John Hopkins University, Washington DC Working Paper No. 13 June 2017)5.
[212] *Ibid*, 3.
[213] *Ibid*, 18.

opposition member of parliament regarding its aptness.[214] Both the government and the CRBC were subsequently sued in the High Court of Kenya by members of the civil society[215]- in a case that held the potential of completely upsetting the project- and issues regarding the project's appropriateness also took a centre stage in the run up towards the hotly contested 2017 general elections, with the incumbent extolling it as one of his administration's landmark achievements[216] that seeks to replace the antiquated Mombasa - Kisumu meter gauge railway constructed by the British colonizers from 1896-1905.[217] The opposition politicians on the other hand threatened to stop the project should they capture power, a statement that caught both the Chinese authorities and the CRBC by surprise.[218] Conjecture is also rife that the high cost living currently experienced in Kenya partly emanates from high taxation imposed by the government[219] as it strives to repay the burdensome loans extended by the China EXIM Bank during the construction of phases 1 and 2A of the SGR.

Grand Convergence: Kenya's SGR and the Bedrock of Inaptness Politics

The debate on the sustainability or otherwise of the SGR is compelling as the Constitution of Kenya recognizes sustainable development as one of the national values and principles of governance.[220] Moreover, Kenya's High Court[221] has already underscored the quintessence of the concept in the contemporary life by affirming that 'the government through the relevant ministries is under the law under an obligation to approve sustainable development and no more, which is development that meets the needs of the present generation without compromising the ability of future generations to meet their needs'. Consequently, it is undeniably pragmatic and welcome to debate on the suitability of a project that impinges on people's life.

A major storm has gyrated around the award of the project's EPC contractor tender to CRBC without a competitive bid[222] thus hoisting speculation that the award was an upshot of corruption as politicians allegedly entertained kickbacks to make the award.[223]Exceptionally, CRBC was triumphant in its bid despite debarment of its parent company –China Communications Construction Company- [CCCC] by the World Bank in 2013 for fraudulent practices at a project in the Philippines[224] and in 2016, the CCCC was also awarded a contract to manage the new railway for at least five years, being a reversal of an original plan to tender the operation contract. Doubts over the CRBC's capacity to construct the SGR lingered[225] as

[214] Kenya National Assembly Report (note 201).
[215]*Okiya Omtatah Okoiti & 2 others v Attorney General & 3 others* Petition No. 58 of 2014, eKLR <file:///C:/Users/1/Downloads/Petition_58_of_2014.pdf > Accessed 9 October 2018.
[216]Moses Nyamori, 'Eurobond, SGR 'Heists' to Finance 2017 Election Campaigns, Claims Githongo (Standard Digital News 9 October 2016) <https://www.standardmedia.co.ke/article/2000218960/eurobond-sgr-heists-to-finance-2017-election-campaigns-claims-githongo > Accessed 9 October 2018.
[217]Jeckonia Otieno, 'Kenya's Railway History and Its Indian Roots' (The Standard 12 July 2016) <https://www.standardmedia.co.ke/article/2000208362/kenya-s-railway-history-and-its-indian-roots > Accessed 9 October 2018.
[218] Macharia Gaitho, 'SGR Gives Us Classic Example of Politics Boarding A Train' (Daily Nation 31 May 2017) <https://www.nation.co.ke/oped/opinion/raila-uhuru-sgr-classic-example-politics-boarding-train/440808-3950570-c2f45sz/index.html > Accessed 9 October 2018.
[219]Moses Michira, 'How China is feeding off Poor Africa' (Standard Digital News 13 September 2018) <https://www.standardmedia.co.ke/business/article/2001295448/how-china-is-feeding-off-poor-africa > Accessed 9 October 2018.
[220] Government of Kenya, *Constitution of Kenya* (Government Printers 2010) Article 10 (2) (d).
[221] *Peter K. Waweru V Republic* Misc. Civil Application No.118 of 2004, 32.
[222] *OKiya* (note 215) Par.13.
[223] Wissenbach and Wang (note 211) 12.
[224] *Ibid*, 5.
[225] Kenya National Assembly Report (note 201) 7.

critics fervidly insisted that Chinese contractors are notorious for low quality work.[226]Questions on the high project's costs compared to similar or better quality projects done elsewhere in the region have equally proliferated.[227]

Moreover, the opposition politicians and the like minded have jointly and severally interrogated the viability of the SGR project and termed is as an economical misnomer.[228] The borrowing necessitated by the project will increase the country's foreign debt by about a third of the total debt and as such the government should have, instead of constructing the SGR, rehabilitated the existing meter gauge railway network to allow a phased approach to its development, consistent with current and projected demand.[229]Apparently, these views are not farfetched recalling that the World Bank has previously opined that 'a refurbished meter gauge network would appear to be most appropriate option in economic and financial terms and could easily accommodate forecast traffic up to 2030'.[230]

The government has also been allegedly engaged in an unfair trade practice by favoring the SGR at the expense of other transporters[231] with the potentiality of an adverse economic effect as the alternative transporters' rights to transport remain foreclosed[232] while imports of Chinese supplies and materials required to build the railway are ostensibly making people anxious about Kenya's worsening trade imbalance with China.[233]The next obstinate issue that orbits around the SGR venture is the labor issue in that paroxysm is rife that the CRBC has imported Chinese labor to take up jobs created in the project [234]and for those locals already engaged by the investor, snivel in protest of poor pay and working conditions is ubiquitous.[235]Indeed, on 28 August 2016, a group of Maasai youths staged an allegedly politically instigated attack on the project workers and injured 14 Chinese nationals at Duka Moja railway construction site in Narok County demanding for job opportunities from the contractor although security was eventually beefed up.[236]

The SGR navigates its way through the pristine Tsavo Park and the Nairobi national park which is Kenya's oldest national park and the only wildlife park in the world located in a capital

[226] Rene Voskamp (note 204).
[227]Nancy Kacungira, 'Will Kenya Get Value For Money From Its New Railway?'(BBC Africa, Nairobi 8 June 2017) <https://www.bbc.co.uk/news/world-africa-40171095 > Accessed 9 October 2018.
[228]David Ndii, 'New Railway is not Value for Money' (Daily Nation 14 February 2014)< https://www.nation.co.ke/oped/opinion/New-railway-is-not-value-for-money-/440808-2207034-13re56w/index.html > Accessed 11 October 2018.
[229]Simon Ndonga, 'Economists Warn on Viability of Railway Project' (Capital News 12 March 2014) <https://www.capitalfm.co.ke/news/2014/03/economists-warn-on-viability-of-railway-project > Accessed 11 October 2014.
[230] The World Bank- Africa Transport Unit, 'The Economics of Rail Gauge in East Africa Community' (8 August 2013) 4 <https://africog.org/wp-content/uploads/2017/06/World-bank-Report-on-the-Standard-Gauge-Railway.pdf > Accessed 11 October 2018.
[231]Patrick Beja, 'How SGR Could Be a Bane to Economy of Coast Counties' (The Standard 2 September 2018) <https://www.standardmedia.co.ke/business/article/2001294214/how-sgr-has-hit-city-s-economy > Accessed 11 October 2018.
[232] 'SGR Project Will Have Negative Impact on Lorry Transporters, Says Governor Joho' (Baraka FM Mombasa 2 June 2017) <http://barakafm.org/2017/06/02/sgr-project-will-have-negative-impact-on-lorry-transporters-says-governor-joho > Accessed 11 October 2018.
[233] Kimiko De Freytas- Tamura, 'Kenyans Fear Chinese Backed Railway is Another 'Lunatic Express' ' (Article From The New York Times 9 June 2017) <https://www.unece.org/fileadmin/DAM/ceci/documents/2017/PPP/Activity_ECE-CityU/Tony_Bonnici-English_New_York_Time.pdf >
[234]Joseph Akwiri, 'Kenyans Protesting Over Jobs End Highway Blockade From Mombasa Port' (Reuters World News 3 October 2014).
[235]Jacqueline Mahugu, 'Standard Gauge Railway Contractor Initiates Dialogue With Workers After Strike' (Standard Digital News 31 January 2016).
[236] Edith Mutethya, 'Kenya's Project Next Phase Nears' (China Daily, Asia Weekly 2-8 December 2016) 17.

city.[237]Accordingly, environmental suitability of the project has come into sharp focus in the wake of the dissent by conservationists that the railway threatens the wildlife by hindering and disrupting animals' movement.[238]Indeed, during the hearing of petition no 58,[239] the petitioners requested the court to find that the project was illegal as it had supposedly failed to take into account environmental and cultural considerations and stakeholders such as the Kenya Forestry Service, Kenya Wildlife Service and National Museums were not consulted before it was undertaken. It was also contended that the SGR was irregular and illegitimate having been commenced devoid of a valid assessment report as by law required.[240]Moreover, construction activities like rock blasting, excavation and soil compaction has resulted in ground vibrations, dust and noise has been said to have negative effects on livestock health in addition to crop and pasture losses.[241]Additionally, the SGR project has been associated with the displacement of communities though minimally.

Inapt To Apt: Debunking SGR's Unsustainablity Myth

Though it has previously been intricate to verify the appositeness [or otherwise] of the SGR project, the court's decision in the Okiya's case[242], the parliamentary select committee's report on the Construction of SGR [243] and a host of the extant literature deflate the blanket unsustainability charges usually leveled against the Sino- Afro FDIs . This leaves the SGR as a towering project in the region that is certainly worth of emulation and replication in other countries for Africa to truly emancipate itself from the miasma of infrastructural paucity. Railways are habitually linked to rise of powers given that the building of transcontinental railroad in 1800s changed America and it is only after the completion of 7500 kilometers Tran Siberian railway in 1904 did Russia became a global power. [244] In the premises, anticipation is endemic that the SGR is not just a national but an indubitable regional game changer.

Contrary to the politically charged view that the SGR venture principally thrived on turpitude, the court ruled that the award of tender to the CRBC without a competitive bid was legally sound. The Kenya's Public Procurement and Disposal Act requiring competitive bidding did not apply since the SGR project was an instance of a government to government negotiated loan.[245] The court also cautioned the petitioners that it was not the right forum for investigating the petitioners' alleged corrupt dealings associated with the SGR and instead ought to have reported to the Ethics and Anti-Corruption Commission, a legally established body, for investigations.[246]

Regarding the award of the tender to a company that had allegedly been blacklisted by the World Bank, evidence in support was found to be lacking any probative value.[247] Moreover, the SGR is not a World Bank funded project and in any event, the blacklisting, if at all, is not

[237]Jacob Kushner, 'Controversial Railway Splits Kenya's Parks, Threatens Wildlife' (National Geographic 18 April 2016) < https://news.nationalgeographic.com/2016/04/160412-railway-kenya-parks-wildlife > Accessed 12 October 2018.
[238] *Ibid.*
[239] *OKiya* (note 215) Par.19.
[240] *Ibid.*
[241]Kanui T. Ikusya, Mwobobia R. Murangiri, Caleb Orenge and Nguku A. Susan, 'Impact of Compaction and Blasting Activity on Livestock During Construction of SGR in Makindu- Kiboko Area of Makueni County, Kenya,' (2016) International Journal of Advanced Research 46.
[242]*OKiya* (note 215).
[243]Kenya National Assembly Report (note 201).
[244]Kagwanja (note 194) 2.
[245]*OKiya* (note 215) par. 62-66.
[246] *Ibid*, par. 68-70.
[247] *Ibid*, par. 75-95.

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an axiomatic bar for the CRBC to participate in any other project.[248] Fascinatingly, the parliamentary committee made a comparable finding on the issue of procurement.[249]

Views also converge to defuse the allegory that the SGR's costs were inflated and that by far exceeded those of similar or better projects in the region particularly, the electric run Ethiopia-Djibouti Railway. Kagwanja[250] humorously retorts that railways are costly ventures not for the 'fainted hearted' but for 'the brave hearts'. Idyllically, comparing the SGR's costs with the Ethiopia's line is grossly myopic in that unlike Kenya, Ethiopia neither consulted those affected by its railway nor did it offer compensation for those displaced. Markedly, the Kenya National Land Commission had to double its budget to compensate [251] the displaced after approximately 2,225 hectares of private land were compulsorily acquired to create room for the project. Indeed, over USD 300 million was paid to the affected people thus improving their living standards.[252]

Further, the fact that the project would cost a colossal sum of money did not form an estimable basis that there will be no value for money or the project and indeed the petitioners failed to tender evidence in support of the contention.[253]In the long run, the benefits arising from the venture far outstrip its costs and will lead to provision of a modern and an efficient transport system; creation of new sustainable businesses and jobs and enhancement of local and regional commerce.[254]The CRBC's ability to deliver quality work on the SGR remains unquestionable. Due diligence conducted on the company's capacity to deliver the project revealed that it has technical, financial and legal capacity to undertake the project. Having previously undertaken several railway projects in China[255] and the feasibility study conducted with the involvement of local engineers and experts serves as an exquisite pointer the SGR deal was above board.[256] Furthermore, the National treasury already undertook a debt sustainability analysis to ensure that the project is sustainable and is within the debt policy parameters and for the loan from the EXIM Bank, the treasury explicated that it had put suitable mechanism to meet repayment costs.[257]

Converse to the politically laced arguments that the project is economically impotent,[258] the venture is nevertheless viable. From the outset, the SGR forms part of infrastructure for completion of modern East African railway network and East African integration process and is expected to increase regional trade opportunities, reduce transport and maintenance costs and condense road accidents.[259] Further, just like the way rapid growth of industrialization and trade especially in Europe and North America has been linked to railway networks,[260] the SGR lays down a solid foundation for Kenya's industrialization and is anticipated to have long term positive impacts on the social-economic development of Kenya. It will boost domestic and

[248] *Ibid*, par. 116-117.
[249]Kenya National Assembly Report (note 201) 8.
[250] Kagwanja (note 194) 4.
[251]'Lessons From Kenya's New Chinese Funded Railway' (Chatham House, The Royal Institute of International Affairs 20 June 2017) < https://www.chathamhouse.org/expert/comment/lessons-kenya-s-new-chinese-funded-railway > Accessed 13 October 2018.
[252] Kithinji (note 199) 12.
[253]*OKiya* (note 215) par. 110-112.
[254] Kithinji (note 199) 12.
[255] Kenya National Assembly Report (note 201) 6-7.
[256] *Ibid*, par. 113.
[257] Kenya National Assembly Report (note 201) 9-10.
[258] Ndii (note 228).
[259] Ikusya (note 241) 46.
[260] Irandu (note 195) 22.

international tourism, employment, incomes and value of land and attract new investments in homes, offices and settlements along the railway line. Additionally, the project is poised to have an economic multiplier effect on other East African countries by spiraling investments in infrastructure projects.

During and after the venture, Kenya stands to gain an annual GDP growth of at least 1.5% and benefit from reduced congestion at the Mombasa port**,** thus strategically placing the port as the preferred facility in the region.[261] The cargo trains are designed to carry double stacks of containers and haul 22 million tons of freight per year, up from the current capacity of 8 million tons and coupled with the fact that the cargo movement will also be cheaper from the current $ 0.20 to $ 0.08 per ton per kilometer, Kenya is poised to become a competitive investment destination due to efficiency in transport and lowered costs. Goods sold in the region will become cheaper, making cost of life affordable for many households. The SGR has remodeled passenger movement by cutting travel time from Mombasa to Nairobi from eight to four hours and in the long run, it will reinvigorate existing urban centers situated along as the train stations also wield the potential of attracting economic clusters, especially special economic zones or business parks.[262]

The customary contention that the investor has imported labor to the detriment of the locals is moribund.[263] At its inception, the project was projected to create at least 60 new jobs per kilometer of track during the construction period translating to 40,000 jobs in addition to job training for 15,000 people.[264] On 19 September 2015, the President chaired a cabinet steering committee meeting with the CRBC on the progress of the SGR whereby it emerged that about 25,000 skilled and unskilled local laborers had been employed, 17000 directly, 7000 indirectly and comprising of 2000 Chinese expatriates only.[265] By mid 2016, 38,000 jobs had been created out of which only 2,071 were taken by the Chinese.[266]Additionally, the project has created an avenue for an unrivaled transfer of skills and Technology to the unskilled labor force.[267] Besides, claims of poor pay for the employees are garishly unmeritorious as CRBC has habitually followed the law and agreements with government and labor unions, paid higher than average wages and made overtime compensation.[268] Moreover, at least 30% of the project's costs have been spent locally and manufacturers have benefitted due to the increased demand for steel, cement, cables and other inputs. By September 2015, purchases of local content stood at USD 300 million[269] while by February 2016, CRBC had already paid a cumulative total of USD 500 million for the local supplies.[270]

Evidence also reveals that the politically instigated claim that the venture is ecologically averse is erroneous. In *Okiya's case*,[271] the court determined that contrary to the petitioner's contention that the project was being implemented without environmental and cultural considerations and without consulting the rightful stakeholders, the CRBC had already

[261] Horizon Africa capital Limited (note 198)7.
[262] Irandu (note 195) 30.
[263] Kithinji (note 199) 11.
[264] Kenya National Assembly Report (note 201) 9-10.
[265]Apurva Sanghi and Dylan Johnson, 'Deal or No Deal: Strictly Business for China in Kenya?' (World Bank Group, Policy Research Working Paper 7614, March 2016) 35.
[266]Kenya- China Economic and Trade Association, 'March Towards Development Together For A Shared Future' (Chinese Enterprises in Kenya Social Responsibility Report 2017) 28.
[267]Wissenbach (note 211) 21.
[268] *Ibid*, 20-21.
[269] Sanghi (note 263).
[270] Kithinji (note 199) 11.
[271] *Okiya* (note 211) par. 105-106.

obtained an environmental impact assessment [EIA] license and additionally, the government had conducted an autonomous EIA on the SGR and concluded that it should proceed. In fact, work on each segment starts only on receipt of an EIA report by qualified consultant and certification by Kenyan authorities, including the National Environment Management Authority [NEMA]. [272]To take care of the wild animals in the Tsavo and Nairobi national parks, the investor has adopted an animal friendly design that provides for free movement of animals through the incorporation of viaducts and watering points along the route.[273]

Exultantly, the CRBC's office established an environment management system with policies and objectives that cover project construction management, fauna and flora fortification and water preservation. It attaches importance to water protection, dust prevention and other environmental issues during the construction, making clear its demands for onsite camps, excavation and quarries to obtain environmental evaluation certification.[274] Clearly, the SGR props goal 9 of the sustainable development goals which is to build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation. It will, once operational, provide a reprieve to the environment by significantly lowering emissions compared to the meter gauge railway currently in use. It is predicted that in the future as Kenya attains self-sufficiency in power generation, electric engines will be introduced to replace diesel ones with an expectation that the electric powered trains will make the running of the SGR cheaper.[275]

Unlike in other African countries where Chinese investors have stood indicted for abdicating their corporate social responsibilities,[276] the CRBC has instead fared well in this facet. Thanks to the investor, some marginalized communities can access good roads, schools for their children[277] and can boast of access to clean water as well.[278]In addition, the investor has demonstrated rare penchant for imparting knowledge and skills on the Kenyan youth by offering them scholarships to study abroad.[279]

Current Concerns and Future Engagements: The Way Forward

Although the foregoing discussion highlights a case of a successful Chinese investor in an African country, there are few teething problems that merit a solution. For example, the attack of some Chinese employees by the locals in Narok County in August 2016 demanding for employment opportunities from the investor[280] and vandalism on the SGR by some individuals

[272]Kithinji (note 199) 9.
[273] *Ibid.*
[274] Kenya- China Economic and Trade Association (note 266)46.
[275]Farnandes Barasa, 'Why SGR Should Ditch Diesel for Electric Trains' (Business Daily 5 February 2018) <https://www.businessdailyafrica.com/analysis/ideas/Why-SGR-should-ditch-diesel-for-electric-trains/4259414-4292520-kmwj8tz/index.html >Accessed 16 October 2018
[276] Action Against Impunity for Human Rights, 'Chinese Private and Public Investments in the Mining Sector: Good Governance and Human Rights' (Lubumbashi May 2010) 27 < https://www.oecdwatch.org/publications-en/Publication_3527 > Accessed 16 October 2018.
[277]'Chinese Firm Hands Over Access Road, Upgraded Schools in Kenya's Rural Community' (Xinhua News 2 August 2018) <http://www.xinhuanet.com/english/2018-08/02/c_137364429.htm > Accessed 16 October 2018.
[278]'Chinese SGR Contractor Launches Water Project in a Kenyan County' (Xinhua News 13 September 2018) <http://www.xinhuanet.com/english/2018-09/13/c_137465933.htm > Accessed 16 October 2018.
[279]Edith Mutethya, 'CRBC Sends Third Batch of Kenyans to Study in China' (China Daily 21 April 2018) <http://europe.chinadaily.com.cn/a/201804/21/WS5ada2206a3105cdcf6519a2b.html > Accessed 16 October 2018.
[280] Mutethya (note 236).

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in 2017[281] puts the host's faithfulness to guaranteeing the investor full protection and security into sharp focus. Moreover, the contents of an article titled 'Exclusive: Behind the SGR Walls' published by the Standard Newspaper on 8 July 2018 are disheartening.[282] The article illuminates incidences of racism and discrimination against the locals by their Chinese counterparts. Nevertheless, the issues are currently under investigations but would actually dent the CRBC's image as an 'infallible' investor if proved to be true in due course. It must also be appreciated that in a politically charged society like Kenya, the prospects of local politics permeating and adversely affecting investor-host relationship are relatively high and investors operate in a politically risky environment. It is thus imperative for China and Kenya to negotiate a contemporary BIT and put in place a proper legal framework within which investors and investments may thrive. Conspicuously, the Sino-Kenya BIT signed sometimes in 2001[283] is antiquated and has never been operational. If negotiated and enforced, the BIT would wield the potentiality of guaranteeing protection to the investors their investments and equally address humdrum problems touching on labor, environment and human rights that betide foreign investments in many parts of Africa.

CONCLUSION

Incontrovertibly, Sino-Afro FDIs have been on an upward trend, especially from the beginning of this century and propelled by varied catalytic factors. Markedly, China has also employed properly crafted tactics to lock in African investment opportunities. Chinese investments in Africa have had many positive impacts although some negative impacts emanating from these investments have been cited. Opinion on whether the Sino-Afro investments are sustainable is evenly divided, though some quarters have orated that the views that the investments are unsustainable are skewed in favor of the westerners who are equally competing for these opportunities. Such averments obviously invite an interrogation on whether the sustainability debate revolving around these investments is sometimes influenced by either global or local politics. Such inquest is not usually misplaced. The study herein reveals that local politics have played a chief role in shaping the sustainability debate on the Chinese built Kenya's SGR. With a clear demonstration that the venture has been largely sustainable, a lesson then emerges that the habitual blanket view that Chinese investments in Africa are unsustainable is unwarranted. Moreover, a need exists to divorce progress oriented ventures from politics, as this holds the potentiality of thwarting development. It is also worth concluding that the CRBC's approach to SGR project creates a story of a resilient investor who has been able to wade through the murky waters of local politics to emerge victorious in courting development. The investor's approach is worth emulation by other investors operating not just in Kenya but also in other African countries. Learning from the CRBC's SGR project, China and Kenya should also seriously consider creating a more investor friendly environment by *inter alia* negotiating a contemporary BIT to fortify investors and investments protection and address hackneyed

[281]Bonface Otieno, 'Vandals Leave Standard Gauge Rail Operator with 1.2 Billion Hole' (Business Daily 31 October 2017) < https://www.businessdailyafrica.com/corporate/shipping/Vandals-leave-standard-gauge-rail-operator-with-Sh1-2bn-hole/4003122-4164022-12eax7gz/index.html> Accessed 16 October 2018.
[282]Paul Wafula, 'Exclusive: Behind The SGR Walls' (Standard Digital News 8 July 2018) <https://www.standardmedia.co.ke/article/2001287119/exclusive-behind-the-sgr-walls > Accessed 16 October 2018.
[283]Agreement Between the Government of the People's Republic of China and the Government of the Republic of Kenya on Promotion and Protection of Investments, 16 July 2001 <http://investmentpolicyhub.unctad.org/Download/TreatyFile/5532 > Accessed 16 October 2018.

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problems touching on environment, labor and human rights and which habitually betide foreign investments in Africa.

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