

Multinational Corporations CSR and Human Rights Practices

**Corporate Social Responsibility (CSR) of two International Oil companies in
South Sudan**

China National Petroleum Corporation and Lundin Energy of Sweden

Master thesis

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Chapter One



In this chapter, I introduce my thesis, and briefly describe the geography and history of Sudan and South Sudan in order to give the reader the minimal background he or she requires to appreciate the complexity of greater Sudan.

I also state the objective of this study and the questions that guided my research, and why I chose China National Petroleum Corporation (CNPC) and Lundin Energy of Sweden as subjects for my case studies. Finally I describe the structure of the thesis and my research methodology and the limitations I was under in gathering research data.

1.1 Introduction to the thesis

Since its independence of Britain and separation from Egypt in 1956, Sudan has enjoyed only 11 years of relative stability and peace out of 64! The oil discoveries in Sudan, in the late 1970s, have additionally aggravated the political and economic situation in Sudan. The oil discoveries played a pivotal role in igniting the second civil war in 1983 and complicated the possibilities for peace between the south and the north as oil became the central objective for the fighting parties.

This paper investigates the impact of oil on the internal situation in South Sudan as well as its impact on international relations. The paper will focus on the role of the two companies in South Sudan, China National Petroleum Corporation and Lundin, a Swedish oil company that operated in South Sudan. The policies of these two foreign actors were and still are very influential, in particular the policies of the China National Petroleum Corporation. This paper argues that oil has had a catastrophic impact on Sudan. It played a key role in igniting the second civil war in 1983 and complicated the possibilities for peace between the south and the north as control over oil became the central issue in resolving the conflict. The civil war made Sudan vulnerable. Internally it depleted the economy and any prospect for development. In addition it rendered Sudan vulnerable to external imperialist aggressive policies. The civil war, as well as

the aim of the United States and China to control the natural resources (mainly oil) of Sudan and South Sudan, in fact put the countries on the verge of collapse as a viable state.

Although the focus of the paper is on the impact of the oil, it should be mentioned that Sudan has many more valuable natural resources besides oil. Its mineral wealth includes significant reserves of uranium, copper, diamond, gold, iron ore, mica, silver, talc, tungsten, uranium, and zinc. About half of Sudan's total land surface area is cultivable, but only 170,000sq km, a very small portion, is actually being used for agriculture. Sudan also has a strategic position on the Red Sea and has borders with nine countries. Thus the Sudanese potential for development is vast if its political situation could only be changed so its resources could be fully used for the benefit of the Sudanese people and the general development of the country. This fact is perceived as a threat to the interests of the United States and China, as well as its regional allies, as it implies that a strong and independent Sudan could emerge.

This dissertation is about the growing role played by the People's Republic of China (PRC) in Sudan and South Sudan. This will be framed in the broader context of China's involvement in Sudan or in the African continent in general which, though far from being a new topic, has only recently caught the attention of academics. This may be attributed, firstly, to a revived attention on Sudan, triggered by the richness of its soil in terms of land and natural resources which led in turn to the rise of Sudan in just over a decade and, secondly, to China's unprecedented appetite for natural resources to fuel its booming economy which required a more comprehensive engagement in resource-rich African countries. (14)

This paper aims to explore the geopolitical strategic consequences of this growing involvement, bearing in mind that, according to this research, no economic engagement may be devoid of deeper geostrategic implications. This conceptual caveat could provide the US with an

interesting theoretical framework to be employed as we analyse the interaction of global powers on the international stage. This would help, for instance, to understand the rationale driving the Peoples Republic China (PRC) to exert a considerable degree of diplomatic pressure in order for the government of Sudan (GoS) to finally accept the African Union (AU) and United Nations (UN) hybrid mission in 2007.

From an overview of contemporary international relations, it is a clear fact that the PRC is emerging as a global economic power. Its geostrategic interests are increasingly expanding at the expense of traditional powers such as Europe and the US. Hence in light of this transition, the present research will try to understand what sort of challenges China is facing with respect to both its traditional foreign policy principles and its growing role in Africa, with specific reference to Sudan and South Sudan.

Not surprisingly, in the wake of its rise on the global scenario, most western writers have been critically analysing the features, scope and consequences of China's presence, and warning about its threatening implications for the West. In fact China's developmental model, which officially relies on a *no political strings attached* policy, is increasingly gaining devotees among the leaders of Sudan, South Sudan and other countries in Africa. However this model is also threatening to worsen human rights and democratic records of these countries, as it dangerously insulates authoritarian and repressive regimes from external pressure to comply with international norms.

During the research period for this thesis, I consulted specialised review articles, newspaper articles, research papers and online sources to analyse contemporary events. To this concern, the more reliable sources as well as the voices of the most prominent scholars and organizations were chosen in order to avoid the risks of bias. Renowned non-governmental

organization reports and publications were also used, the references of which are fully shown in notes and are freely downloadable.

1.2 Sudan and South Sudan

A comparison of Sudan and South Sudan:

Sudan – geography

Sudan is located in Northeast Africa. It has a total area 1.8611 million sq km and a population of 45.6m. It is bordered by Egypt to the north, the Red Sea to the northeast, Eritrea and Ethiopia to the east, South Sudan to the south, the Central African Republic to the southwest, Chad to the west and Libya to the northwest. Sudan was the largest country in Africa until South Sudan gained independence in 2011.

South Sudan - geography

South Sudan has a total area of 644,329sq km and a population of 10.5 million. Bordered by Sudan to the north, Ethiopia to the east, Kenya, Uganda, and the Democratic Republic of Congo to the south and the Central African Republic to the west, South Sudan is totally landlocked.

The **CIA's World Factbook** summarises the basic facts about Sudan and South Sudan very succinctly (1):

SUDAN AND SOUTH SUDAN COMPARED

	SUDAN	SOUTH SUDEN
Total Area	1,861,484sqkm	644,329sqkm
Climate	hot and dry; arid desert; rainy season varies by region (April to November)	hot with seasonal rainfall; rainfall heaviest in upland areas of the south and diminishes to the north
Natural Resources	petroleum; small reserves of iron ore, copper, chromium ore, zinc, tungsten, mica, silver, gold, some hydropower	hydropower, fertile agricultural land, gold, diamonds, petroleum, mica, hardwoods, limestone, iron ore, copper, chromium ore, zinc, silver and tungsten
Population	45.6 million (July 2020 est'd)	10.5 million (July 2020 est'd)

Popul'n Growth	2.69% (2020 est'd)	2.7% (2020 est'd)
Ethnicity	Sudanese Arab (approximately 70%), Fur, Beja, Nuba, Fallata	Dinka (Jieng) 35.8%, Nuer (Naath) 15.6%, Shilluk(Chollo), Azande, Bari, Kakwa, Kuku, Murle, Mandari, Didinga, Ndogo, Bviri, Lndi, Anuak, Bongo, Lango, Dungotona, Acholi, Baka, Fertit (2011 est'd)
Languages	Arabic (official), English (official), Nubian, Ta Bedawie, Fur	English (official), Arabic (includes Juba and Sudanese variants), regional languages include Dinka, Nuer, Bari, Zande, Shilluk
Religion	Sunni Muslim, small Christian minority	animist, Christian, Muslim
Urbanization	urban population: 35.3% of total population (2020)	urban population: 20.2% of total population (2020)
Literacy	60.7% (2018)	34.5% (2018)
Economic Overview	suffering from protracted social conflict and the loss of three quarters of its oil production due to the secession of South Sudan; struggling to stabilize its economy and make up for loss of foreign exchange earnings; world's largest exporter of gum Arabic, producing 75-80% of world's total output; agriculture employs 80% of work force	industry and infrastructure severely underdeveloped and poverty widespread following several decades of conflict; instability disrupting what remains of economy; vast majority of population dependent on subsistence agriculture and humanitarian assistance; markets not well-organized

1.3 The Historical Background of Greater Sudan

The name Sudan derives from the Arabic expression *bilād al-sūdān* (“land of the black people”). What is now northern Sudan was, in ancient times, the kingdom of Nubia. Missionaries converted the region to Christianity in the 6th century, but an influx of Muslim Arabs eventually controlled the area and replaced Christianity with Islam. During the 1500s the Funj conquered much of Sudan, and several other black African groups settled in the south, including the Dinka, Shilluk, Nuer, and Azande. (2)

Egyptians conquered Sudan in 1874. Britain occupied Egypt in 1882 and took over Sudan

in 1892, ruling it in conjunction with Egypt. From 1898 to 1955 the country was known as Anglo-Egyptian Sudan. The 20th century saw the growth of Sudanese nationalism, and in 1953 Egypt and Britain granted Sudan self-government. Independence was proclaimed on Jan 1, 1956, after a civil war had erupted in 1955 between the north and the south.

The civil war was due to differences in language, religion, ethnicity, and political power. It was strongly influenced by the National Islamic Front (NIF) and the southern rebels, whose most influential faction was the Sudan People's Liberation Army (SPLA). Human rights violations, religious persecution and claims that Sudan had been a safe haven for terrorists isolated the country from most of the international community. In 1995, the UN imposed sanctions against it.

Since independence, Sudan has been ruled by a series of unstable governments and military regimes. In 1983, under Maj Gen Gaafar Mohamed Nimeiri, Sudan instituted fundamentalist Islamic law. This made the rift between the Arab north, the seat of government, and the black African animists and Christians in the south much worse.

On Aug. 20, 1998, the USA used cruise missiles to destroy a pharmaceutical factory in Khartoum, Sudan's capital, which the Americans claimed had been financed by Osama bin Laden, an Islamic militant, and was being used to manufacture chemical weapons. Evidence has been emerging since 1999 that slavery is rampant throughout Sudan. Sources state that Arab raiders from the north have enslaved thousands of southerners, who are black. The Dinka have been hardest-hit. The raids intensified in the 1980s in step with the civil war between north and south.

Lt Gen Omar Bashir's carried out a military coup in 1989 and began making overtures to the West. In September 2001, the UN lifted its sanctions. But the US still considered Sudan a

terrorist state. A cease-fire was declared between the Sudanese government and the Sudan People's Liberation Army (SPLA) in July 2002. During peace talks, which continued through 2003, the government agreed to a power-sharing government for six years, to be followed by a referendum on self-determination for the south. Fighting on both sides continued throughout the peace negotiations. (3)

1.4 The Historical Background of South Sudan

The fundamental issues that led to the outbreak of the first civil war in southern Sudan in 1955 were much more than differences in language, religion, ethnicity, and political power between the north and the south. (4) The south's superior resources (see above) were a key motivator for independence.

When Turco-Egyptian forces first established control over northern Sudan in the 1820s they were looking for natural resources and economic expansion. This left southern Sudan isolated. (5) In 1841 this isolation was broken when an Egyptian steamer on the River Nile managed to penetrate the interior of the south. Thus began the exploitation of the animal and human resources of that region. The Turco-Egyptian and northern Sudanese Arabs first exploited the region for its ivory. Later they began using it as a source of slaves, which was very profitable. After 1898, the British administration created a boundary between northern and southern Sudan at the 10th parallel for administrative reasons. (6)

Throughout much of the 20th century, the southern region of Sudan was inhabited by ethnic Africans with a diverse range of traditional values, customs, and belief systems. These people suffered from centuries of inferior ethnic and religious relations with the north. Sudan's first civil war, which ran from 1955 to 1972, was ignited by a mutiny in the south as a result of the British decision to grant Sudan's independence to a newly created Northern elite. This

stroked the pre-existing fears of many southern tribes who united to resist political dominance by the north. (7)

The Anya-Nya were a southern Sudanese separatist rebel army formed by 64 ethnic African tribes in the south to wage the first civil war in Sudan. These tribes included Moru, Nuer, Lotuko, Madi, Bari, Acholi, Zande, Dinka, and other peoples from the entire southern region. In 1972, following the internationalization of the civil war and pressure from external parties, such as the African Union, the government of Sudan and the Anya-Nya signed a peace agreement in Addis Abba that gave the south a degree of independence.

The second Sudanese civil war between the government in Khartoum and the Sudan People's Liberation Army (SPLA) in the south began in 1983, when the military regime tried to impose Islamic Sharia law throughout Sudan. This was resented by the Animist and Christian tribes of the south. This civil war lasted for 22 years. (8)

Peace talks began in early 2000 with support and pressure from regional and western governments and were led by IGAD, the Intergovernmental Authority for Development, and the government of the United States of America. In 2005, after 23 years, a comprehensive peace agreement was signed, effectively ending the civil war. In January 2011, following a plebiscite in which 99% of the population voted for in favour, the people of Southern Sudan celebrated their independence and South Sudan became the world's newest country.

Since then the new country, like Sudan itself, has struggled with corruption and poor governance. (9)

1.5 The History of Oil in Sudan

Oil exploration in Sudan first started in 1959 when AGIP, an Italian oil company, began exploring for oil in the Red Sea area in the eastern part of the country. Several oil companies

followed AGIP in searching for oil in the Red Sea but none of these companies were successful in their exploration efforts. (12) After the first civil war ended in 1972 it became possible to extend oil exploration to southern Sudan. In 1975 the American oil company Chevron was granted a concession in Sudan west of the Bentiu, a city now in South Sudan and the capital of Unity State. The first discovery of oil in Sudan was made by Chevron in southern Sudan, in 1979, in the Muglad basin. Chevron continued its successful exploration and made more discoveries in Unity State west of Bentiu and in the Heglig fields. (10)

In 1983, Chevron, Royal Dutch Shell, the Sudanese government, and the Arab Petroleum Investment Corporation (APICORP) formed the White Nile Petroleum Company in order to build a pipeline from the Sudanese oil fields to Port Sudan on the Red Sea. But Chevron's plans could not be implemented when the second civil war erupted in 1983. Chevron suspended its operations in 1984 and entirely ended its 17-year long involvement in Sudan by selling its interests to the Sudanese company CONCORP in 1992. (11)

CONCORP sold these concessions on to the Canadian Oil Corporation. In 1994 Arakis Energy Corporation bought these rights and began operating in Sudan. But Arakis faced difficulties in securing the financing it needed to fulfil its exploration and production agreement with the Sudanese government. In 1996 it sold 75% of its shares to China National Petroleum (CNPC), Petronas (Malaysia), Sudanpet (Sudan) with which it jointly formed the Greater Nile Petroleum Operating Company (GNPOC). Arakis subsequently sold its 25% share in the GNPOC to the Canadian company Talisman in 1998.

The GNPOC made considerable discoveries, increasing the amount of proven reserves in Sudan. It also succeeded in constructing a pipeline from Heglig and Unity field to Port Sudan on the Red Sea. In 1999 the pipeline became operational and Sudan's first oil exports went through

Port Sudan. This led to a considerable increase in oil production. Since then output had been increasing steadily. In this period and as a result of international public pressure of accusations of being complicit in human rights violations through its operations in Sudan, Talisman sold its shares in the GNPOC to the Indian company Oil and Natural Gas Corporation Limited (ONAC).

A consortium consisting of the French company Total, the American company Marathons, Kuwait Foreign Petroleum Company and the Sudanese company Sudanpet was granted a concession in South Sudan eastern Sudan (block B) in 1980. The consortium suspended its operations in 1985 as a result of the civil war. Unlike Chevron, Total and its partners did not relinquish concessions as a result of the civil war and they signed an agreement with the Sudanese government to update their contract in December 2004. As a result of this there is now a dispute between Total, a French company and White Nile Petroleum Operating Company, a UK company, who claims that it signed an agreement with the future government of South Sudan for oil exploration in part of the land believed to be within block B and part of the concession of Total and its partners.

In 1997, the Sudanese government granted another concession in the so-called block 5A to the Swedish company Lundin with partners Petronas, OMV (an Austrian oil and gas company) and Sudanpet. In 2001 the same consortium was granted a concession over block 5B. In 2003 Lundin sold to Petronas and OMV sold its interests in block 5A and 5B to the Indian company Oil and Natural Gas Corporation Limited (ONGC). (13)

The oil discoveries made by Chevron in the late 1970s and early '80s bolstered relations between Sudan and America and the United States began providing military and economic assistance to Sudan. By the early 1980s Sudan was sixth largest recipient of US military aid in the world. US support for president Numeiri's regime provided it with the confidence it needed

to provoke southern Sudan by changing the internal boundaries between the north and the south regions in violation of the Addis Ababa peace agreement that ended the first civil war. The American company Chevron favoured the central government in the disputes over oil between the north and south. Chevron signed a private contract with president Numeiri's government to explore areas in the south. This contract contained clauses limiting production sharing with only the central government. Consequently Chevron's relations with the southern Sudanese government worsened. The civil war forced Chevron to suspend its operations after it had invested more than one billion US dollars. In addition, the war further weakened president Numeiri's regime which was eventually overthrown in 1985 by the army after a popular uprising. One year later parliamentary elections were held and Sadiq Almahdi became prime minister.

The new government's foreign policy was naturally not welcomed by the United States. As a result the United States started reducing its economic and military support to Sudan and in January 1989 it was totally suspended. (15) This had a catastrophic effect on the development and future of the country. Sudan's first civil war ended in 1972 with the signing of the Addis Ababa peace agreement on basis of which the South become an autonomous region. The second civil war broken out 1983 as a consequence of a collapse of the Addis Ababa agreement. The second civil war ended officially 2005.

The oil discoveries made by Chevron in Sudan complicated the relations between the south and north and played a major role in reigniting the Sudanese civil war in 1983. Oil-related disputes started in 1980 when the Sudanese president Numeiri announced a plan to change the borders between the southern and northern provinces. This plan divided the southern region into three states creating Unity State around Bentiu where the oil rich areas are located. Under the plan to change the borders, Unity State became part of the north. The leaders of southern Sudan

refused to accept this. They saw the plan as an attempt by the central government to control the oil areas and deprive the south of its oil revenues. It should be noted that, under the Addis Ababa agreement of 1972 to end the first civil war, the southern regional government had the right to all profits on exports from their region.

Another issue was a dispute over the pipelines connecting the southern oil fields to Port Sudan. The south preferred a route that would not pass through the north and proposed a route that passed through Kenya to the Indian Ocean. In addition there was a dispute over the building of a refinery. The south demanded that the refinery should be located in its region. This demand was rejected by the northern government and the refinery was instead built in the north. These disputes all related to control over Sudan's oil wealth. The end result was an increasing lack of confidence between the two parties. The central government's clear intention to seize full control of the oil wealth was a clear violation of the 1972 Addis Ababa agreement. In 1983, increasing anger and fear in the south erupted into Sudan's second civil war. The rebel Sudan People's Liberation Army (SPLA) was founded as a southern army commanded by John Garang.

The eruption of civil war and the deterioration of their security made it impossible for foreign companies to continue operating in Sudan. To prevent the Sudanese government from exploiting the oil resources, the SPLA targeted the oil fields. In 1984 the SPLA attacked the oil fields in the south, abducting and killing three Chevron workers. This incident forced the consortium led by Chevron to suspend its operations in Sudan. Another consortium led by Total also suspended its operations in 1984.

After the overthrow of the Mengistu regime in Ethiopia in 1991, which was a main ally of the SPLA, the SPLA lost considerable ground to the government forces over the following three years. As a result, most of the oil fields once again came under the control of the Sudanese

government and relative security prevailed. This new situation attracted new foreign investments and led to the resumption of oil exploration and development operations. The oil revenues, especially after 1999, altered the balance of power within Sudan as the government gained the financial resources to modernise the army and make it more efficient in fighting the SPLA. This shift in the military balance of power did however not bring an end to the civil war. The SPLA continued to receive the support of the United States and its regional allies and continued to attack the Sudanese army and some oil fields.

The civil war only ended officially in January 2005 with the signing of a peace agreement in Nairobi, on the basis of which the south was granted the right to self-determination after a six-year long transitional period, in 2011. An important element in the agreement was the sharing of Sudan's oil wealth between the two parties.

1.6 Objective and research questions

My motivation for examining Sudan and South Sudan for this thesis was simple. I was born and grew up there, the daughter of parents from both parts of greater Sudan, and have first-hand knowledge and experience of the endemic corruption and abuse of human rights in these countries. I have long wondered why these things happen and whether oil was one of the underlying causative factors. I have noticed that corruption and the abuse of human rights is rampant in African countries that are oil-rich but that in other countries with oil resources, such as the Arabian Gulf states and Iran, the bounty of oil has been used to further the economic and social development of those countries.

My primary objective in researching this thesis was to find out if the corporate social responsibility (CSR) policies of major oil companies operating in greater Sudan has had any

effect on their behaviour on the ground and whether these CSR policies effective in preventing human rights abuses.

To achieve my objectives, I chose to examine two of the main international oil companies operating in Sudan and South Sudan: China National Petroleum Corporation (CNPC) and Lundin Energy of Sweden.

To achieve my objectives, I chose five research questions:

- 1) What is the CSR policies of these two companies and how do they differ?
- 2) To what extent do the CSR practices of these two companies correspond with their stated CSR policies?
- 3) How is civil society in the communities in which these companies operate responding to their CSR practices?
- 4) How are the governments of Sudan and South Sudan dealing with the CSR practices of these two international oil companies?
- 5) What influence has the UN's *Guiding Principles on Business and Human Rights* had on the CSR practices of these two companies and their effect on civil society and the governments of greater Sudan?

1.7 Why I chose CNPC and Lundin Energy as case studies

There are several reasons why I chose to examine China National Petroleum Corporation and Lundin Energy as research objects for this study:

- 1] Both companies operate or were operating as major players in the oil industry in Sudan and South Sudan.
- 2] Their operations in both parts of the country have not contributed to the socio-economic development of these countries to any meaningful extent.

3] Received opinion internationally by governments and NGOs alike is that both companies have been connected, in one way or another, with human rights abuses.

4] The concepts of CSR and human rights in their home countries (China and Sweden) are fundamentally different.

1.8 Research Methodology

Quantitative data is information about quantities, ie numbers. By contrast, *qualitative data* is descriptive, and is concerned with phenomenon that can be observed but not measured. *Qualitative research* is the process of collecting, analysing, and interpreting non-numerical data. The data and information that forms the basis of this thesis was collected using qualitative research, of which there are several types. These include first-hand observation, interviews, questionnaires, focus groups, participant-observation, recordings made in natural settings, documents, and artifacts.

Due to the restrictions imposed on movement by Covid-19, I was unable to travel to South Sudan where I would have been in a position to interview participants in the recent history of the South Sudan. In addition, the ongoing conflict between the Dinka and Nuer tribes means that travel in South Sudan is extremely dangerous. Thus the only qualitative methods I could use in my research were reading documents, ie reports from governments and non-government organisations (NGOs), newspaper articles, and other media stories. These have all been referenced in Appendix 2 References of this thesis.

1.9 Structure of the Thesis

The outline of this paper is as follows:

In Chapter One, information is provided on Sudan's and South Sudan's oil wealth as well as the historical background to both countries.

Subsequently, in Chapter Two, I'll outline the growing relationships between China, Sudan and South Sudan.

In Chapter Three, I'll examine the CSR policies and practices of CNPC and Lundin.

In Chapter Four, I'll explain the theory underlying the Chinese concept of CSR. In the next chapter, I'll discuss the concession holders in the oil fields of Sudan and South Sudan and how they operate.

In Chapter Six, I'll consider the relations of the international oil companies with civil society in the local communities in which the companies operate.

Chapter Seven concentrates on Lundin and its interactions with the communities of the localities in which it operated.

Chapter Eight, the concluding chapter, will study the UN's *Guiding Principles on Business and Human Rights* and its effectiveness in protecting the human rights of those living in countries that are being exploited for their oil resources.

In the conclusion I will provide a brief overview and interpretation of the development, as well as a personal perspective on the possible future, of South Sudan.

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Chapter Two

In this chapter, I examine the relationship between China and both parts of greater Sudan, Sudan and South Sudan. This information is needed in order to understand CNPC's approach to corporate social responsibility in the region.

2.1 Oil and the Relations Between Sudan and China

Oil is China's main interest in Sudan. Since 1959, when relations between the two countries began, China has viewed Sudan as a source of oil. The state-owned China National Petroleum Corporation (CNPC), China's arm in securing oil from overseas, was first granted a concession in 1995. However it only started operating in Sudan in 1997 as a member of the Greater Nile Petroleum Operating Company (GNPOC). Since then CNPC has acquired further concessions and expanded its operations in the country.

CNPC holds a 40% interest in GNPOC which owns 92% of the Heglig and Unity oil fields. The Chinese corporation provided Sudan with the investment it needed to build a pipeline from the oil fields to a terminal (Port Sudan) in the Red Sea. Due to China's largesse, Sudan became an oil exporting country in 1999.

Among the countries in which CNPC operates, Sudan accounted for 16 million of the 30.1 million tons of overseas oil the firm pumped in 2004. This share increased as production in Sudan increased and CNPC expanded its exploration and development operations into unexplored areas. China is now Sudan's main trading partner. In 2003, China was the destination of 24% of Sudanese exports and the origin of 19.2% of Sudanese imports.

China has also expanded its economic activity in Sudan by investing in banking, light and heavy industry, agriculture, fisheries and pharmaceuticals. Military cooperation between the two

countries began in 1985 and was stimulated by China's increasing interests in Sudan.

The Chinese role in developing the oil industry in Sudan was substantial. Without China's investments, it is highly likely that Sudan would have been unable to exploit its oil resources. In fact, Chinese involvement in Sudan was instrumental in the partial failure of US sanctions against Sudan and this eventually led to a change in how the USA treated Sudan.

China's investments in Sudan's oil industry showed that the country's reserves were a great deal larger than estimated in the past. As a result the American oil companies blamed the policies of the US government for depriving them of access to this oil bonanza and they began pressurising the American administration to change its policies so US oil companies could also operate in Sudan.

Another factor that compelled the US to change its attitude towards Sudan was the realisation that China's increasing interest in that country and its control of a majority of the oil fields was a strategic threat to American interests in the region. One of the main aspects of America's new approach was to put the vast undiscovered areas of oil rich southern Sudan under its indirect control, thereby preventing China from controlling more areas in that part of Sudan.

The political support China provided Sudan in the United Nations clearly reflected its interests in Sudan. Indeed, these interests were the main reason the United States was prevented from obtaining international resolutions that would have imposed economic sanctions, including arms and oil embargos, on Sudan. (18)

In 1996, for example, when the United States was pushing for the adoption of a Security Council resolution that would have imposed economic sanctions, including an arms embargo on Sudan, Chinese opposition ensured that the US resolution failed. Instead, the Chinese managed to get it watered down to a resolution that only imposed diplomatic sanctions, which China did

not honour. China also supported Sudan during the Darfur crisis and prevented the adoption of Security Council resolutions that included economic sanctions.

China's position over the Darfur issue shifted from being rather passive, to a mediatory role that was proactive in resolving the conflict; (23) this latter role was a challenging exercise for Chinese diplomatic agility. During the conflict, China allowed massive arms sales to Sudan by its munitions and arms factories despite the UN weapons embargo and found it very difficult to free its official rhetoric from accusations of complicity with Khartoum's genocidal policy. The conflict caused the deaths of at least 200,000 civilians and about 2.5 million were displaced, and as a result the international criminal court indicted Sudanese President Al-Bashir for genocide and crimes against humanity.

China defended its decision to veto several UN security council proposals for sanctions and intervention by relying on its stated principles of non-interference and sovereignty. But it was eventually obliged to change its policy for two reasons: [1] a threat to boycott the Beijing Olympics in 2008 orchestrated by political activists in Western countries and [2] to its fear that the continuing the violence would undermine its long-term strategic interests in the region.

In recent times, the Darfur issue has not seriously affected China's investment in Sudan. CNPC started drilling for oil in Darfur and tendered successfully for many commercial projects. For business reasons, (24) large Chinese corporations lobbied for a resolution of the Darfur issue, urging their government to actively participate in settling the problem. China used its influence in the UN Security Council to settle the Darfur issue with the solution it wanted.

China's participation in resolving the Darfur issue required it to set up relations and cooperate with regional organizations such as the African Union and Arab Union which were to stand it in good stead in later years.

China found that consultation and negotiation were the most effective ways to remove the political barriers to resolving the Darfur issue. (22) In fact, disputes over sanctions and the dispatch of peacekeeping forces could only be resolved through bilateral negotiations, a crucial lesson for China.

China encouraged the Sudanese government to reach peace agreements brokered by the United States with southern Sudan and in Darfur, though eventually these agreements would not be in the interests of Sudan as they threaten its unity. China also participated in the UN Mission in Sudan, set up in 2005 as a peacekeeping force to support the peace agreement in southern Sudan. China's motivation was very obviously an attempt to create good relations with southern Sudan in order to protect its oil interests in that region should it separate itself from Sudan.

Chinese relations with Sudan never reached the level of an alliance. (1) Their relations could be called 'especially friendly' at most. China's economic interests with the United States led it to adopt a balanced policy that would not jeopardise its interests in both countries. In fact, the US's policy towards Sudan was not really contested by China for the simple reason that China did not want the added problems more instability in Sudan would cause Chinese firms operating there, which is what would happen if the Sudanese government did not comply with the US's demands.

For China, political stability is crucial for its continuing operations in Sudan. This is why China induced the Sudanese government to comply with the policies of the United States, thus playing a major role in bringing the peace negotiations to a successful conclusion. (2)

2.2 China's Relationship with Sudan Before South Sudan's Independence

After the Comprehensive Peace Agreement (CPA) was signed in 2005, China adopted a policy of *one country-two systems*, an acknowledgement that, despite the fact that the north and

south of Sudan were still united, in practice China was now dealing with two different political regimes. This meant that China had to concentrate on dispute resolution and the implementation of the signed CPA between northern and southern parts of Sudan.

After South Sudan seceded in 2011, (15) China changed its policy to one of *two countries-one system*. This new policy articulates the fact that, while China is now dealing with two separate sovereign states, its policy towards each of them is the same, hence 'one system'. The goals of this policy are to respect the independent sovereignty of both states and to help the economic development of both nations.

Throughout this time, China's policies have been generally consistent as it has always viewed the resolution of disputes as a necessary precondition for economic development.

The bitter relationship between the north and south of Sudan has, both before and after the independence of the south, been blighted by an atmosphere of deep distrust, full of disputes, conflicts, and the threat of war, which has created great difficulties for China's foreign policy goals. Despite this, China was able to play a constructive role in the signing and implementation of the CPA, and in mediating conflicts between Sudan and South Sudan after the latter seceded in 2011.

In summary, while China's foreign policy towards Sudan had an element of continuity before and after the secession of South Sudan, there was an important difference. While Sudan was united, China followed a policy of *one country-two systems*, but after South Sudan became independent this changed to a policy of *two countries-one system*.

2.3 China's Involvement After the CPA Was Signed

China and the government of South Sudan (GoSS) established formal relations in 2005 after the CPA was signed. Since then China has been closely involved in the implementation of

the agreement. In its dealings with the GoSS, which was led by the SPLA, China followed the *one country, two systems* framework that was created by the CPA.

China's relationship with the new country became visibly close. In 2007, President Salva Kiir of South Sudan met President Hu Jintao of China twice. China opened a consulate in Juba, the capital of South Sudan, in 2008, after which several Chinese companies established branches there.

Liu Guijin, China's Special Representative for African Affairs, attached great importance to the implementation of the CPA. China showed the international community that it supported the full implementation of the CPA by collaborating with the United States to this end. Liu Guijin met with Princeton Lyman, the US Special Envoy to Sudan, at least five times in the six months prior to the referendum in January 2011. According to Lyman, China was delivering the right message to both parties in Sudan. (16)

China always attaches great importance to economic development, but during this time peace and stability were the more urgent issues at hand as without them economic and social development would not be possible. This meant that, in both parts of Sudan, China had to be involved in the implementation of the CPA.

2.4 After South Sudan Gained Independence

Though secession was peaceful in the main, many disputes remained unsettled. These required China and other external parties such as the USA and the EU to modify their policies in light of the new reality.

With South Sudan's independence, China's policy changed from *one country-two systems* to *two countries-one system*. Note that the term 'system' has a different meaning after South Sudan's independence. *One country-two systems* refers to systems in the political sense of

the word.

However, the term ‘system’ in *two countries-one system*, refers to China’s policy *vis-a-vis* the two countries. *One system* in this sense shows that China’s basic policy goals towards the two countries are the same, ie helping both states to resolve their disputes as a prerequisite for their economic and social development.

In the eyes of the Chinese, resolving disputes was a necessary precondition for economic development. Thus China’s core policy objectives remained consistent both before and after the independence of South Sudan. To the Chinese, whether southern Sudan gained independence or not, dispute resolution had to come before economic development. The advent of South Sudan’s independence meant that the time to shift from reconciliation to development had come. But to make this shift, both sides had to abandon the zero-sum games through which they were trying to weaken each other.

Accepting the loss of South Sudan was very difficult for Sudan. In return for doing so, the country expected concessions from South Sudan but South Sudan refused to grant any as concessions were not included in the CPA. (19) As a result relations deteriorated badly. In 2012, South Sudan unilaterally decided to stop producing oil in order to avoid using the Sudanese oil export pipeline to the Red Sea and other infrastructure. In response, Sudan closed its border with South Sudan and announced a shoot-to-kill policy towards anyone seen smuggling goods into South Sudan. Things went from bad to worse. In April 2012 troops from South Sudan attacked oil rigs in Heglig/Panthou which were in Sudan proper. For the next five months, similar stories indicated that their bilateral relationship that was in deep crisis.

China tried to get the two governments to establish positive relations. Ambassador Zhong Jianhua, China’s Special Envoy, used shuttle diplomacy to advise both sides that they should

fulfil the expectations of their citizens, urging them to talk to find solutions to their problems and ameliorate their poor relations. He warned them that the economic costs of continuous feuding were unsustainable and that their ongoing strife had already badly affected the economies of both countries.

South Sudan's temporary suspension of oil production cost it a loss of oil revenues that constituted 98% of its national income, while Sudan lost the oil-related fees it imposed on South Sudan which amounted to more than 30% of its revenues. It also lost about 80% of its foreign exchange earnings. Both countries also suffered more serious long-term economic impacts.

For example, in the first six months of 2012, the monthly inflation rate, which had been less than 10% in 2011, increased to more than 30% in Sudan and about 25% in South Sudan. In addition, the exchange rate against the dollar fell from three to six Sudanese pounds and from three to five South Sudanese pounds in the black market. (4)

China used its weight to urge both countries to use policies of joint cooperation to rebuild their economies. While Sudan had a better understanding of how to do this, the GoSS was still politically immature. In the first half of 2012, for example, the GoSS was absolutely convinced that the proposed mega port and oil refinery projects along the Lamu–Juba corridor, once built, would be the main outlet for its oil exports and a substitute for the export pipeline to Port Sudan in Sudanese territory.

It was obvious to the Chinese that South Sudan was taking a zero-sum stance, attempting to entirely cut itself off from Sudan economically. This was not a viable policy option for China, as it would create a lose–lose scenario.

2.5 China's Respect for Sovereignty

Throughout the post-CPA and post-independence periods and despite its change in policy

from *one country-two systems* to *two countries-one system*, China's diplomatic policy objective has been fairly consistent. This policy comprises respect for the sovereignty of both countries and the promotion of their economic development. This is also the policy that underpins China's successful policy for all the other countries in Africa in which it has a presence.

Bearing in mind signs of reconciliation between Sudan and South Sudan, China's policy towards both countries includes features that were already part of its policy: (21)

1] Assisting the common development of the two countries is a basic goal for China. To help Sudan rebuild its weakened economy, China is encouraging Sudan's transition from simple dependence on oil to sustainable development. It is advising Sudan on how to develop a broader and more complex economy by modernising its extractive industries and agriculture sectors and developing its agri-food and manufacturing industries.

Trying to mould a variety of ethnic groups into a nation and simultaneously developing that nation's economy is fraught with difficulties. To help, China is sharing its experiences of nation-building, especially the governing of multiple nationalities and ethnicities, with the GoSS. It is also helping South Sudan build a broad-based and productive economic system that will reduce the country's dependence on revenues from oil.

2] China is promoting political reconciliation between the two neighbouring countries. It knows that Sudan and South Sudan cannot achieve sustainable development unless their efforts are combined. But before they can combine their efforts additional reconciliation between them is required. External support is still necessary for this to happen.

China is providing this support through, for example, the China Executive Leadership Academy in Pudong, Shanghai, where China brings government officials from the two capital cities together to discuss their experiences in nation-building.

3] China's approach is still one of constructive mediation and it will not interfere in the domestic affairs of either country. Although, in the case of Sudan, its policy of non-interference policy has been severely challenged, it has not abandoned its traditional policy of minding-its-own-business.

But this policy of non-intervention is not absolute. In fact, there are three preconditions it requires for intervention: (1) ethical considerations (not necessarily the same as those in the West), (2) China's core national interests, and (3) collective authorisation (eg, intervention authorised by the UN Security Council).

4] China uses bilateral and multilateral means to help both nations. When bilateral means only are used, considerations relating to transparency and legitimacy arise, so multilateral ways are the most important means for China to engage with both countries.

2.6 China as Mediator Between South Sudan and Sudan

On its secession in July 2011, South Sudan acquired the majority of greater Sudan's oil production assets. (14) Since then, China been trying to maintain good relations with South Sudan without upsetting Sudan, its long-time ally. According to *Al Jazeera*, problems have arisen as China talks of friendship with the GoSS while it continues supplying Sudan with money and arms.

Despite this, the South Sudanese acting Chargé d'Affairs in Beijing called China a "significant coordinator" between South Sudan and Sudan, according to *China Daily*, a news agency, which quoted the official as saying "China, an old friend of Sudan and a new strategic friend of South Sudan, is playing a significant role mediating between the two countries."

According to a video released *Al Jazeera* in April 2012, (7) tensions along the border

between the two countries has threatened China's relations with both countries. The GoSS's efforts to pull China away from the GoS, it has been thwarted by the conduct of Chinese companies in the oil sector and by China's continued support for Sudan through arms sales.

According to a report from the International Crisis Group in April 2012, China has been "drawn into a high-stakes oil crisis" (5) between South Sudan and Sudan. But the report stated that the GoSS had made it clear that, if the Chinese were the first to offer to partner in developing the new nation, they would be welcomed with open arms despite China's relationship with Sudan.

2.7 China invests massively in Sudan but little in South Sudan

Activists in South Sudan contend that Chinese sponsored projects in their country were puny compared to the large-scale Chinese-backed development projects in the north. One activist in Unity State said, (10) according to Saferworld, an NGO in the UK, "in the South, China has done almost nothing compared to what it has done in the North – in terms of roads, infrastructure and agriculture." Another Unity state activist echoed these claims: "[China] say they have built things – hospitals and schools – but this is in the North, not in the South. They have built a computer laboratory at the University of Juba – it is a start, but more is needed."

Some of China's projects in South Sudan, such as a \$760,000 investment in a hospital in Bentiu, Unity State, have been disparaged because they cater for the elite. Persons interviewed by Saferworld in Unity State in August 2011 pointed out that the hospital was a business, not a gift, as it would provide medical services for fees local people could not pay.

2.8 Chinese Investment in South Sudan Takes Off After 2011

According to the *Sudan Tribune* in June 2011, Chinese officials had announced China's intention to increase investment in physical infrastructure, hydroelectric energy, agriculture,

health, education and other sectors in South Sudan. (11) Pan-China Construction Group, a Chinese entity, was awarded a lucrative contract in October 2011 to design Ramciel, South Sudan's new capital, 105 kilometres north of Juba, the country's current capital. According to Saferworld, other Chinese projects to develop state capitals in South Sudan have been planned, along with projects to construct hospitals, schools and processing facilities for locally produced meat and rice.

In March 2011, the Chinese construction firm Beijing International signed an agreement with the Ministry of Agriculture and Forestry in South Sudan to enhance agricultural technologies and techniques in that country. In October 2011, China granted South Sudan US\$31.5 million for development projects. (8)

China Daily is a newspaper that has been described as 'an instrument of China's public diplomacy'. It offers insights into Chinese government policy and stances taken by the Chinese Communist Party. In June 2011, the *China Daily* reckoned that Chinese investment in southern Sudan over the previous six years had totalled between \$60 and \$100 million, mostly in projects to build schools and hospitals and to dig wells. (9)

2.9 Sharing Oil Revenues After the Comprehensive Peace Agreement

Sharing oil revenue was the key to concluding the Comprehensive Peace Agreement that brought Sudan's civil war to an end in 2005. (12) The wording in the CPA stated that it was "not intended to address the ownership of [natural] resources". Article 5.4 stated that "An Oil Revenue Stabilization Account shall be established from government oil net revenues derived from actual export sales above an agreed benchmark price." The signatories also agreed that at least 2% of oil revenues were to be allocated to the oil producing states or regions in proportion to the output of oil in those states or regions.

Article 5.6, stated that “After the payments to the Oil Revenue Stabilization Account and to the oil producing states or regions, 50% of net oil revenues derived from oil producing wells in Southern Sudan shall be allocated to the Government of Southern Sudan... and the remaining 50% to the National Government and States in Northern Sudan.”

According to Global Witness, an international NGO, the agreement changed the role of oil from a driver of conflict to an incentive for peaceful cooperation. (13) Indeed, the GoS transferred more than \$10 billion to the GoSS over a five-year period, which was crucial in sustaining the fragile peace. According to *The Guardian*, a British newspaper, between the time that the CPA was signed until the independence of South Sudan (which was the end of the agreement), the North transferred \$10bn in revenue to the South.

But a persistent lack of transparency as well as a lack of independent verification of the division of the revenues fuelled mistrust between north and south.

2.9.1 Wealth Sharing Problems

Investigations by Global Witness into the administration of the sharing of revenues exposed major discrepancies (up to 26%) between the production figures published by the GoS and those reported by CNPC, the main oil major operating in Sudan. Being able to verify these production figures was crucial as they were the basis upon which the oil revenues were divided.

The wealth-sharing system specified in the CPA did not come into effect fully until 2008. According to the Carnegie Endowment for International Peace, its implementation after 2008 was still hindered by political tensions and weak administration. This highlights the fact that a lack of transparency in Sudan’s oil sector undermined the progress of implementation. There was a lack of publicly available information on the contracts between the GoS and its investors. In addition, no data on the country’s total production of oil (in barrels) and the actual revenues

received for that production made it virtually impossible to verify the amount of oil produced and related revenues.

2.10 Oil After South Sudan Became Independent

On independence, South Sudan acquired about 75% of the total oil output of old Sudan. But, to export its oil, it had to use pipelines running north through Sudan to Port Sudan on the Red Sea. This gave Sudan a stranglehold on South Sudan's oil exports.

According to a report issued by the International Development Committee of the House of Commons in the UK Parliament, the division of oil revenues had been one of the key sticking points in negotiations between the two countries. (17) It was agreed that South Sudan would pay Sudan a fee for using the pipelines rather than a share of revenues but the writer of the report heard that the two parties had very different views of what the fee should be.

In December 2011, Sudan announced that it would take payment of transit fees in kind, ie it would siphon off part of South Sudan's share, as compensation for unpaid fees it claimed it was owed. In January 2012, South Sudan decided to shut down oil production, which generated 98% of the government's revenue, after Sudan seized South Sudanese oil shipments in a row over transit fees. The north was asking the south to pay \$36 (£23) per barrel to transit oil through the pipeline, ie more than 10 times the international average. At this price, the south would have had to pay the north \$2.6 billion ... almost exactly what the north would have earned had South Sudan not gained independence. (6)

2.10.1 April 2012

After months of border skirmishes the crisis came to a head in April 2012. South Sudan seized an oil field at Heglig, which is accepted to be part of Sudan. In fact, Heglig was one of Sudan's remaining oil fields. South Sudan, however, contended that Sudan was using the area as

a base for attacks on its territory. In May 2012, the two sides were discussing a seven-point security “road map” that involved pulling back from contested border areas, setting up a joint monitoring mechanism and ending covert support for proxy militias.

The Security Council had given negotiators two more months to tackle the really delicate issues, such as oil, but there was still a huge gap between the two. The north wanted more than \$30 a barrel in transit fees and the south was offering about a dollar. (3)

According to the New York Times, most analysts were predicting that an oil compromise would be reached, but the more complicated territorial disputes would have to go to international arbitration, which would take years. While all this was grinding on, analysts were expecting more breakdowns, more attempts to patch things up, more violence and more hastily arranged cease-fires. (20)

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Chapter Three

In Chapter three, I examine the nature of corporate social responsibility (CSR) and the CSR policies of Lundin and CNPC in both theory and practice. This should shed some light on the first two of my research questions concerning the CSR policies of the two companies and the relationship between their policies and their CSR practices.

In addition, I look into the causes of pipeline disasters in South Sudan.

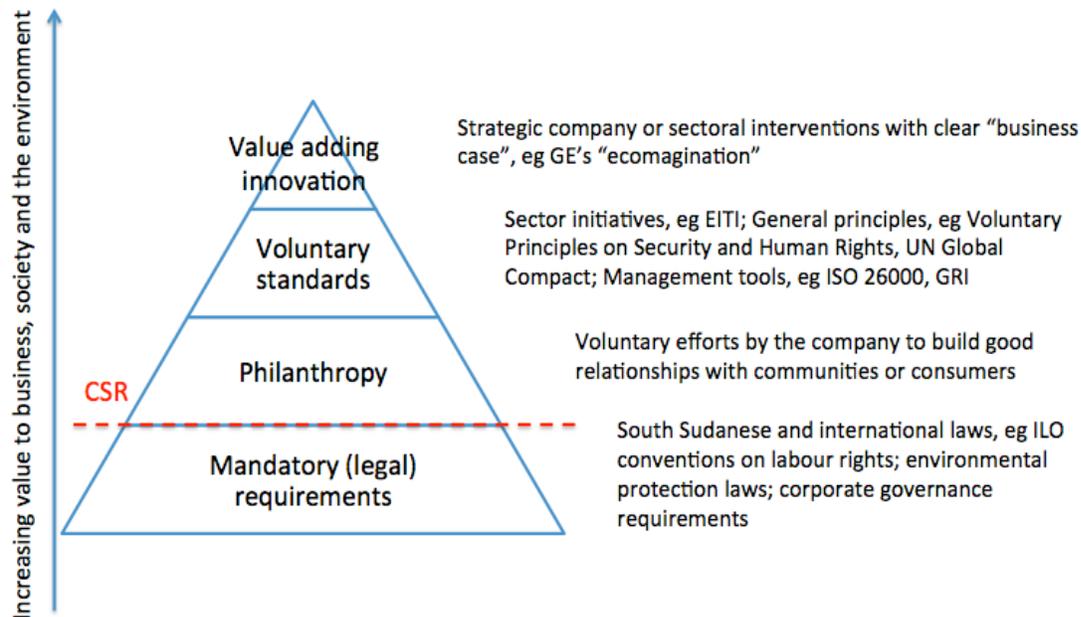
3.1 Definition of CSR

The concept and practice of *Corporate Social Responsibility* (CSR) has been developed over the last thirty years, and is now frequently used by many companies around the world.

Companies are now experiencing direct pressure to manage the social and environmental externalities of their businesses. Some have realized the commercial benefits of mitigating risk, increasing operating efficiencies, treating their labour force well, managing relations with their local communities, respecting the environment, encouraging innovation, and building a better image for their brand.

Corporate social responsibility is typically understood, in most parts of the world, to refer to the policies and practices of companies that go beyond minimum legal requirements. (6) This is illustrated by the dotted red line in the figure on the next page below. Underneath this line is national or international law, and above the red line can be considered CSR. There are, however, multiple ways in which companies understand what CSR entails in practice. There is also a clear scale showing how CSR is interpreted and applied by companies. At the lower end of the scale – which is the most common – are companies that consider CSR to be acts of

philanthropy that help build positive brand awareness and smooth consumer or community relations.



Higher up the scale are a few companies that have gone further to become signatories of global principles, or CSR initiatives that relate specifically to their industrial sector. The CSR standards these companies practice are entirely voluntary. At the highest level of the scale, there are a tiny number of companies that have integrated principles of CSR responsibility fully into their business strategy, in order to build their brands and market values.

The issues that fall under the term of ‘corporate social responsibility’ have expanded greatly since the phrase became a popular buzz-word in the 1990s. Initially, CSR was associated only with the largest and most negative environmental impacts or abuses of labour rights, and could be dealt with by a single corporate department. Increasingly, CSR is filling in the gaps where mandatory regulations are lacking (or are poor) in a wide range of economic, social, environmental and governance-related issues. CSR now covers a very wide range of business practices. The latest guidance from the *Global Reporting Initiative* (GRI) – the industry standard

on CSR reporting – contains over one hundred indicators across seven categories. This means that the dotted red line in the above figure is being lowered, so companies are expected to address issues such as the payment of tax, or corporate lobbying practices, or the impact of their operations on conflicts, as part of their general responsibility. (5)

3.2 CSR Policy of Lundin Energy

Lundin Energy (formerly Lundin Petroleum) is an independent oil and gas exploration and production company. It is based in Sweden and its focus of operations is on Norway. It is listed on the Stockholm Stock Exchange. Though it is very profitable, its commercial success is overshadowed by a Swedish war crimes investigation into its previous operations in Sudan. (1)

Lundin Energy's corporate social responsibility policy has five main headings:

- Protection of the Environment
- Operational Safety
- People & Society
- Sustainability
- Governance

3.2.1 Protection of The Environment

According to its website, Lundin Energy is committed to minimising the impact its activities have on the natural environment in the areas where it operates. They claim to have made environmental protection an essential element of the planning and execution of their operations. The corporation's environmental policy sets out the objectives and expectations that apply to their operations on the Norwegian Continental Shelf. They have strategies and target for managing and monitoring emissions to air, discharges at sea and waste handling. They met all their environmental targets in 2019.

3.2.2 Operational Safety

Lundin states that its objective under this heading is to provide all its employees and contractors with a safe and healthy working environment, and that health and safety come first in their operations. The company's policy states that the well-being of its employees is a key factor for Lundin's business success. In the oil and gas industry accidents can happen anywhere and at any time. The company minimises the risk of accidents by identifying and mitigating potential hazards to provide its employees and contractors with a safe and healthy working environment. The company states that it lays down specific policies, processes, procedures and work practices to ensure that risks are minimised through its Health, Safety, Environment and Quality (HSEQ) culture. The 'Lundin Calling' initiative is a pro-active measure to support further continuous improvement of that culture. This initiative seeks to raise the awareness, attitude and contribution of individuals to the company's HSEQ objectives and thereby complement its established systems and best practices.

3.2.3 People and Society

In its CSR policy Lundin claims that, by promoting a diverse and engaged workforce, respecting human rights and having a positive impact on society, it not only creates value for its shareholders but also for wider society. It claims that it provides high quality jobs, has positive social impacts across its entire value chain, and contribute significant tax revenue to the Norwegian Government. At the same time, it says, it delivers the best barrel to meet society's current and future energy needs.

3.2.4 Sustainability

Lundin's Code of Conduct sets out the core principles governing the conduct of its activities in a transparent, ethical, responsible and sustainable manner. These are:

- upholding ethical business practices across its entire value chain
- minimising its impact on the environment

- providing a safe working environment
- respecting and engaging with owners of the resources it exploits
- sustaining a good return on investment for shareholders

3.2.5 Governance

The Environmental Social Governance/Health and Safety Committee (ESG/H&S Committee) assists the board of directors in monitoring the performance and key risks that the company faces in relation to environmental, social, governance and health and safety matters. (2)

The ESG/H&S Committee's responsibility is, on behalf of the board, to:

- oversee the company's conduct and performance on ESG/H&S matters
- inform the board and make recommendations on where action on sustainability may be needed
- review and monitor ESG/H&S policies and the effectiveness of compliance

3.3 CSR Policy of China National Petroleum Corporation

The China National Petroleum Corporation (CNPC) is a major national oil and gas corporation of China and one of the largest integrated energy groups in the world. CNPC was ranked fourth in 2020 Fortune Global 500, a global ranking of the largest corporations by revenue. (3) Like Lundin, CNPC's corporate social responsibility policy also has five main headings:

- Human Resources
- The Environment
- Safety
- Health
- Public Welfare

3.3.1 Human resources

CNPC claims that it values and safeguards the lawful rights and interests of its employees. It complies strictly with the *Labour Law of the People's Republic of China*, the *Labour Contract Law of the People's Republic of China* and the *Trade Union Law of the People's Republic of China*, international conventions approved by the Chinese Government, and the laws and regulations of countries in which it operates. CNPC states that its employment policies promote equality and non-discrimination, provide equal opportunities and fair treatment to all employees regardless of nationality, race, gender, religion or cultural background, prohibit child labour and forced labour, and always aim to promote the employment of women and ethnic minorities. CNPC implements regulations on pregnancy, maternity and parental leave, and guarantees that female employees enjoy equal compensation and benefits and career development opportunities. Overseas, CNPC says it attaches great importance to the development and management of human resources to meet increasing demand for talent in its international operations. It promotes local hiring and workplace diversity to create a communicative, coordinated and harmonious workplace.

3.3.2 The Environment

CNPC considers protection of the environment an integral part of corporate social responsibility. It strictly follows environmental protection laws and regulations, attaches great importance to climate change and ecological protection, and promotes energy conservation and the reduction of emissions. CNPC also promotes technologies that operate cleanly. It researches clean operating technologies and develops new technologies that facilitate environmental protection, energy conservation, and reduction of emissions, especially in oilfield production, refining, chemicals, and natural gas desulfurization.

3.3.3 Safety

CNPC sees safety as a basic requirement to ensure the rapid development of its business and the health of its staff.

Operational safety ... CNPC has developed more than 10 management systems such as Safety, Management of Operational Safety Accidents and Management of Rewards for Reporting Risks. Five standards have been issued including *Grading Rules for Major Sources of Danger*. It has also strengthened supervision and management of safety and environmental protection at major oil fields. To emphasize the responsibility of management for safety, the company has implemented a series of regulations, such as *Management Procedures of Operational Safety and Environment Accountability*. They also train and evaluate managers and employees in operational safety to ensure compliance.

CNPC investigates potential risks to safety, and strengthens the control of risks at their source, using a risk control mechanism. It pays attention to the supervision of safety at key units and operations, such as marine operations. CNPC strictly implements offshore petroleum operation licensing requirements to protect offshore operations from typhoons and storms and prevent major hidden risks. It also funds the identification and correction of hidden safety risks related to intersecting pipelines and other facilities subject to corrosion and aging. The company has effective accident and incident reporting. It has a pipeline safety supervision platform that enables tracking of pipeline information, hazard data, corrective measures and follow-up actions.

Emergency Response ... CNPC's emergency response (ER) system is based on forecasting, early warning, and rapid response. Though it has many functions, the system is controlled by a single leadership with cross-functional responsibility and coordination. To improve its ER system, CNPC regularly revises its ER plan for pipeline operations and carries

out on-site reviews of the ER plans of its affiliates. CNPC's ER system is supported by five bases specialized in firefighting, hazardous chemicals, long-distance oil/gas pipelines, well control, and offshore emergency rescue. CNPC's well control emergency response centre is the Guanghan Base for oil/gas field rescue nationwide. The company has established an integrated emergency response mechanism with Sinopec and CNOOC for resource sharing and joint response in spill emergency and fire prevention, and the development and promotion of spill response technology. CNPC has also agreed with three maritime authorities in China to implement an offshore emergency rescue coordination system.

Management of Hazardous Chemicals ... CNPC has implemented a unified management system over the production, operation, packaging, storage, transportation, use and disposal of hazardous chemicals. The company conducts work safety inspection and targeted rectification of hazardous chemicals and inflammables and explosives, in order to rectify and screen out problems and hidden risks in a timely manner. It exercises full process management on hazardous chemicals.

Overseas Security ... personnel safety has always been an overriding priority in CNPC's overseas operations. It promotes social security management systems, continuously enhances emergency response capabilities, and eliminates security-related fatal incidents. CNPC places a high premium on the HSE management of overseas projects and the building of overseas emergency rescue and anti-terror systems. It has strengthened its risk assessment of production safety, and established an improved early warning mechanism. In 2019, there were no fatalities in CNPC's overseas projects concerning social security.

3.3.4 Health

According to its CSR policy, CNPC has taken effective measures to improve its health

care system in order to offer employees a salutary and pleasant working environment.

Occupational health ... CNPC ensures the occupational health of its employees through an integrated, prevention-oriented approach encompassing infrastructure development, occupational health checks, and improved health management and services in line with the *Law of the People's Republic of China on Prevention and Control of Occupational Diseases*. The company provides the same health and labour protection for temporary employees, contract employees and contractor's employees. CNPC has carried out research on the management of occupational health, consolidated the health management of its production frontlines, and enhanced the risk prevention and control of occupational disease hazards and health monitoring. The company identifies job-related occupational hazards in its operational environment, maintains strict controls on sites with hazardous operations, monitors occupational health and occupational disease hazards, improves the environment of construction operations, and delivers health training to corporate executives, project managers and key technicians.

Psychological health ... CNPC includes employees' mental health management in its daily management package. It employs psychologists to alleviate employees' psychological pressure and teach them coping methods. In addition, it employs counsellors to deliver lectures on cultivating a healthy mind and other psychological knowledge for frontline employees working in saline wastelands, deserts and other harsh natural environments, to help them release stress and live a healthy and happy life. It sends experts to its projects in host countries, to provide mental health counselling and alleviate psychological pressures.

Overseas employees' health ... a complete employee healthcare network has been established in most of the host countries where CNPC operates. The company has also issued a *Guide to Occupational Health Management for Overseas Employees*.

To improve the health of its (Chinese) employees at its overseas projects, CNPC establishes healthcare facilities and takes action to prevent and control diseases in line with the local environment and availability of medical facilities. Based on the climate and healthcare conditions in host countries, it provides healthcare services such as disease prevention, dietary hygiene and psychological counselling.

As overseas employees usually work in remote areas with limited medical facilities and tough living conditions, CNPC has developed a shift system for them and, to ensure their physical and mental health, arranges it so they can take their vacations back in China. It implements mental health service projects overseas to improve employees' mental health, assigning psychologists to deliver mental health consultation services.

Personnel safety has always been an overriding priority in CNPC's operations. It constantly reinforces the operation of its security management system, strengthens its security risk prevention and control, and continuously enhances its emergency response capabilities. In 2019, there were no fatalities in its overseas projects due to breaches of security.

3.3.5 Public Welfare

CNPC considers participating in public welfare undertakings as key elements in fulfilling its social responsibilities. It actively participates in disaster relief, cultural and sports events, and donates to educational projects. (4)

3.4 CSR Policies in South Sudan

As regards their corporate social responsibilities (CSR), the international oil companies operating in South Sudan have similar but somewhat different CSR policies. Despite the differences between them, all of them share common purposes such as obtaining secure supplies of energy, protection of the environment, health and safety, and community development.

Indeed, in their CSR policies as stated in their annual reports, they all say that their primary social responsibility is obtaining secure supplies of energy for their host country, ie South Sudan. CNPC states this explicitly: *Securing national energy resources is PetroChina's long-term and foremost social responsibility*, suggesting that this is the most important part of its CSR policy. PetroChina is a subsidiary of CNPC. Taken together, all the international oil companies operating in South Sudan have sophisticated policies covering all the levels of Carroll's CSR pyramid. Despite the differences in their CSR policies, this suggests that these oil companies have a common understanding of corporate social responsibilities.

The main differences between them concern legal and ethical responsibilities. CNPC, Sinopec and ONGC (Oil and Natural Gas Corporation Limited) focus more on legal compliance regarding protection of the environment and transparency. In comparison, Total and Petronas place more emphasis on ethical responsibility by focusing on their corporate behavioural standards rather than legal compliance with laws and regulation. (7)

3.5 Joint Operating Companies (JOCs)

JOCs to develop and extract oil from particular concession blocks are used extensively in South Sudan as a way of sharing risks. Block B is the exception. Total is the operating company and a JOC has not been formed. However, Total has developed a local CSR policy and ethics charter which reflects the CSR policy of its head office, except that it has a stronger emphasis on security and human rights. But production in other blocks is handled by joint operating companies, each of which has its own CSR policy.

CNPC (at 41%) is the largest shareholder in two JOCs, Petrodar and GPOC, while PETRONAS (with 40%) is the second largest shareholder in both consortia. With more than four-fifths between them, CNPC and PETRONAS naturally have the greatest influence on the

CSR policies of these two JOCs. But strangely, their policies are much less sophisticated and contain fewer CSR dimensions compared to their own policies.

In South Sudan none of the JOCs publish CSR reports. Petrodar, owned by CNPC 41%, Petronas 40%, Sudapet 8%, Sinopec 6%, and Tri-Ocean 5%, only has information on its CSR on its website. Here it stresses the economic responsibilities of the companies in the JOC. On its website Petrodar mentions several strategies that correspond to the economic responsibilities of Carroll's pyramid and expresses belief that the companies and society enjoy mutual benefits by using expressions such as: "*Achieve nation building through adding value to the economy and society*" and "*Recognize valuable link between business and society*". (8)

The focus on nation building and the link between business and society shows that Petrodar sees their profit-making as beneficial to society. This suggests that Petrodar feel they have a social responsibility to be profitable. Petrodar makes no clear reference to any political responsibilities it might have. This is consistent with CNPC's CSR policy which focuses on its political responsibility towards China, not CNPC's host states.

Overall, the CSR policies of the JOCs are mainly influenced by their major shareholders. Though the JOCs are usually composed of many of the same international oil companies, there is little consistency in what aspects of CSR they focus on. Some focus on economic and political responsibilities (as per CNPC) while others focus on ethics and philanthropy (a la Petronas). What is clear is that minor shareholders have little say in what the CSR policy of their JOCs contain. As none of the JOCs publish CSR reports, it is hard to know what standards the JOCs apply.

3.6 CSR In Practice

The international oil companies (IOCs) and the JOCs in which they participate have

separate CSR policies. This separation is not always visible as some IOCs report on activities that are actually carried out by the JOCs. It may be noted also that CSR activities carried out by the IOCs independently of the JOCs have been limited to charitable donations away from the oil fields in which they are active. There is relatively little variation in how the IOCs in South Sudan understand CSR. Most of these companies agree on the issues that relate to corporate social responsibility, with some exceptions. Issues such as sensitivity to conflicts and risk management, mediation and mechanisms for resolving community grievances are not considered part of CSR. This suggests that IOCs and consortia will not take on ownership of, and manage, these issues. However these issues are very important in the context of South Sudan.

Most IOCs in South Sudan look on CSR as a form of charity and so they act towards the local community in an ad hoc, unsupervised manner. Also, their executives seem to have little knowledge of the global principles and sector-based programmes of international CSR initiatives. This shows that CSR is far down the list of priorities for IOLs active in South Sudan.

3.7 CSR Committees

Issues relating to accountability and responsibility over the ownership of social and environmental problems can cause difficulties in South Sudan. The executives in most IOCs feel that responsibility for community issues lies with the JOC in which they are participants, not the IOC itself. In a few cases, a JOC has a CSR committee. This is a sensible shared solution to the problem of collective management of social and environmental issues relating to an oilfield in which multiple companies have operations. But the structure of a JOC may reduce the accountability of the individual IOCs to the local communities because issues are dealt with centrally by the JOC. It seems that no research has been done on CSR committees in South Sudan so it is impossible to know whether they are performing a worthwhile role.

3.8 Implementing CSR in South Sudan

International oil companies often have global CSR strategies. But the motivation to develop local strategies is reduced when responsibility for CSR lies with a JOC rather than a member IOC. Inside JOCs (in which the government always has a stake through its state-owned oil company Nilepet) the vice-president (VP) is responsible for CSR. The VP is invariably a government appointee. This suggests that the potential for coordination across companies, consortia, counties and states in South Sudan could be very strong, if only the VPs were connected and had a collective strategy. But it also suggests that CSR might be viewed as a government issue, diminishing the need for IOCs to take ownership of problems they have caused or which have an impact on them.

3.9 Challenges to Implementation

IOCs and JOCs face many challenges in implementing CSR in South Sudan. These include:

- the need to manage community expectations carefully
- reluctance to act on the grounds that doing something in one county could lead to conflict in or with another
- the failure of the government to take a leadership role in identifying community needs so that efforts by individual companies and consortia do not overlap and waste resources
- the failure of civil society to explain community needs to oil companies operating in their area
- the logistic difficulties of operating in a country with limited infrastructure and a need for tight security
- an inability to prioritise needs in a place where so many basic services and infrastructure are

lacking

- mixed messaging and often conflicting requests from the government
- lack of knowledge on where to start in order to tackle community grievances

The oil sector lacks transparency on its activities. This means it is very difficult to assess performance and tailor activities in order to improve the impact of CSR. For civil society this makes advocacy difficult. It also means the IOCs and the JOCs themselves cannot monitor the impact they are having.

3.10 Causes of Pipeline Disasters in South Sudan

The blame for pipeline disasters in South Sudan lies both with the petroleum industry and the government that is supposed to regulate it.

3.10.1 Best Pipeline Practices

When pipelines are built, regulated, controlled and maintained in accordance with international and national legislation, standards and good practices, they can be environmentally safe. If they do not meet these standards and practices they can pose serious dangers to human health and the environment. (11) The most common causes of pipeline accidents in South Sudan are external interference, degradation and ineffective maintenance. Unregulated practices, fires or accidents have resulted in loss of life, water pollution and major environmental disasters. Relations with neighbouring countries are damaged when pipeline failures release hazardous material on a large-scale and cross-border watercourses or foreign lakes are contaminated.

While pipelines in South Sudan are being operated with growing caution, the construction, operation and maintenance of pipelines is not being continually assessed and strengthened as necessary. Nor are the challenges posed by climate change being taken into account, with a risk that an increase in extreme weather events and natural disasters could lead to

industrial accidents. This is especially true in South Sudan where pipelines are being operated beyond their service life. (9)

The benefits of preventing pipeline failures far outweigh the costs of regular maintenance and repair. Disrupting operations is costly while fires and other accidents always give rise to considerable claims for damages, litigation costs, unplanned terminations of operations and so on. These costs always exceed the expenses a business would have incurred by keeping pipelines in good working order. The operation of a pipeline can last for decades. Pipeline design, construction, operation, maintenance and repair are constantly evolving. Regulatory conditions often change, drastically during the lifespan of a pipeline. But most jurisdictions in the region lack up-to-date regulations on pipeline development, operation and maintenance issues.

To properly evaluate the safeguards needed to protect the environment and the civilian population of South Sudan during pipeline explosions and fires, the causes of these accidents need to be identified.

3.11 Causes of Pipeline Fire Incidents

The prevalent culture of dysfunctional safety in the South Sudanese oil industry means that the reporting system for incidents is totally inadequate. This makes it difficult to investigate and discover how incidents occur. Several companies make a show of examining the causes of incidents but then they change the data in order to avoid legal penalties, avoid having to compensate injured persons, pay for physical damages, or be held responsible for cleaning up the environment. This means that the identification and assessment of threats is well-nigh impossible. Petroleum companies need to recognize hazards in their pipeline systems and make use of technology to minimize risks. But comprehensive pipeline integrity management systems are not available. These would include safe operation, routine monitoring, and preventive and

predictive maintenance.

To detect leakages, a pipeline needs constant inspection during operation. Procedures to ensure that repairs, maintenance and upgrades are carried out on a timely schedule need to be established. In addition, emergency protocols and their proper management, including communications with the public, need to be set up and rehearsed. This, it seems, does not happen in South Sudan. Most pipelines in South Sudan are over 10 years old, their expected service life, and are vulnerable to corrosion and leakage. Most of these pipelines are damaged due to ageing, aggressive environmental factors, inadequate design and insufficient protection and maintenance.

Many pipelines were not installed correctly below the surface where they would be shielded from corrosion. Some coastal pipelines are vulnerable to erosion and are exposed to hazardous activities on land. Effective regulatory oversight and compliance need robust legislation that is detailed and consistent and a system of honest enforcement. Enforcement of the law in South Sudan is patchy and inconsistent. Time and again, oil companies have been alerted to leaks in the pipelines but have turned a blind eye. As a result there were over five pipeline fires in 2019 alone. (10) The basic flaws are as follows:

- The oil industry has not provided the leadership and basic administrative framework needed to develop a safe and environmentally sound infrastructure for transporting oil.
- Common sense safety measures to protect the environment and the local populations have not been implemented.
- There is a lack of basic firefighting equipment such as fire-trucks and extinguishers.
- Pipelines that transport hazardous substances are not being designed and operated safely.
- Procedures for identifying leaks and acting upon them are not in place.
- Pipeline operators have not implemented management systems to ensure and maintain the

integrity of pipelines.

- Emergency response plans and protocols to be followed by pipeline operators and competent authorities need to be established, tested and updated regularly but that's not happening.
- Land-use planning when designing new pipelines is not used to limit proximity to populated areas and water catchment areas as far as possible.
- Robust systems to prevent interference by third parties (such as vandalism, theft of oil, terrorist attacks etc), one of the main causes of pipeline accidents, are lacking.
- Information on the safety of pipelines, their geographic position, safety measures, and what needs to be done in the event of an accident is not given to persons likely to be involved in the event of a pipeline accident.
- Local populations have not been educated on the dangers of making charcoal near oil facilities!
- The regular exchange of information between pipeline operators and authorities regarding good practices, the improvement of pipeline safety, and past accidents and near-misses does not happen.

The petroleum industry in South Sudan suffers from a truly negative image as a result of the avoidable disasters and catastrophes it has allowed to happen. Reviews of available data and research show that numerous accidents have replicated the same events and effects, suggesting an inability to learn from past mistakes on the part of the industry and the government that is supposed to be in control of it.

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Chapter Four

Their concepts of CSR and human rights differ widely between Chinese and Western scholars.

In this chapter I explore how the concept of human rights in China is based on Confucianism and how this concept is subordinate to the need to maintain a stable and harmonious society, thus illustrating CNPC's attitude to its CSR policy and practice.

4.1 A Brief History of China National Petroleum Corporation (CNPC)

The Ministry of Petroleum, CNPC's predecessor, was founded in 1955. It discovered several oilfields inside China and, for more than three decades, operated several fields. The ministry was dissolved in 1988 and its activities were taken over by a newly created China National Petroleum Company (CNPC). CNPC found copious oil and gas flows in the Tarim basin in Western China, and its development as a major corporation began. It began working on its first overseas contract in 1993, servicing an oilfield in Peru. By the end of 1997, CNPC was working on four oilfields in Sudan and two oilfields in Venezuela.

In 1998, the Chinese government reorganized the corporation and integrated its upstream and downstream operations. This integration improved overall efficiency and profitability. A subsidiary, PetroChina Company Limited (PetroChina), was set up and listed on the stock exchanges of New York and Hong Kong in 1999. (24) In later years China Petroleum Engineering Company and several other subsidiaries were established. In 2001 and 2002, CNPC concentrated on optimizing the allocation of its resources and strengthening its major operating units. It bought equity in several foreign companies operating in the energy sector. It then began expanding into Ecuador, Kazakhstan, Niger, Mauritania, Uzbekistan, Russia, Canada and the Middle East. It discovered new oilfields with high yields. Within China itself, CNPC created two

long-distance gas pipelines across the country.

But all was not plain sailing. In 2003 and 2005 two accidents at CNPC operations within in China caused many casualties and environmental pollution. These forced CNPC to implement stricter safety policies. Its image and reputation improved significantly when it became the official partner of the 2008 Beijing Olympics. Its image was further enhanced when the China Charity Federation recognised CNPC for its outstanding contribution to Chinese charities. Meanwhile CNPC expansion overseas was continuing. Together with Shell, it acquired Australia's Arrow Energy. CNPC and Shell also signed an agreement for cooperation in the development of Canadian oil sands, unconventional natural gas, and oilfield services.

The corporation is now one of the largest oil and gas groups in the world. It has a presence in most countries with oil and gas resources and, as part of its strategy, is expanding into non-extractive industries, such as refining, manufacturing, distribution of petroleum products and insurance.

4.2 CNPC's Strategy

The corporation's strategy has three main objectives:

- to maximize and diversify resources while maintaining leadership in China
- to maximize profit and use economies of scale to secure dominance
- to enhance international co-operation and trade in oil.

CNPC establishes subsidiaries as a way to best allocate its assets and resources. Farming out activities to subsidiaries with specialised competencies has proved to be an efficient way to exploit its competitive advantages and improve profits. For example, CNPC carries out its international trading activities through PetroChina International. (19) Six specialized equipment manufacturing companies take care of the corporation's fabrication needs. The corporation's

financial service needs, such as asset management, financing, insurance, acquisitions, mergers, and investments are taken care of by its subsidiaries CNPC Asset Management Co and China Petroleum Finance Co Ltd.

Using its subsidiary Exploration & Development Company, CNPC has entered into joint ventures (JVs) with Chinese and foreign companies. These are based on the corporations concept of mutual benefit and “win-win for common development“. For CNPC, these joint ventures have two main goals: (3)

(1) to distribute businesses and competencies among subsidiaries, and

(2) to rapidly expand into new markets and gain access to resources while sharing risks with partners.

JVs have been undertaken with ONGC (Oil and Natural Gas Corporation of India) for the control of Syrian pipelines, with Shell and the State of Qatar for the creation of refineries in various countries, and with the insurance provider Assicurazioni Generali of Italy, among others.

4.3 Corporate Social Responsibility

The concept of Corporate Social Responsibility (CSR) was first enunciated by Oliver Sheldon in the 1920s. According to Sheldon, (5) basic economic needs and social needs are equally important for business. In the early 1980s, CSR began to be seen as a way of improving the image of a company.

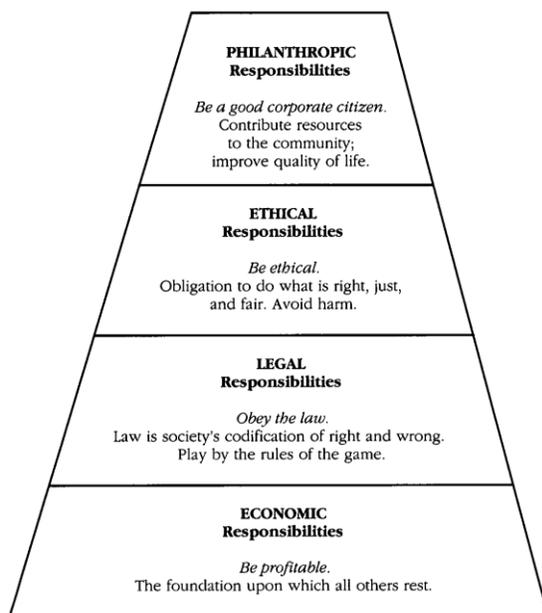
A universal definition of corporate social responsibility has never been stated. According to the World Business Council for Sustainable Development (WBCSD), (17) corporate social responsibility is “continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large.” All definitions up to now have been presented

within Carroll's framework (1979,1991). (8)

Carroll defined CSR as a model with four dimensions (see below) in which:

- (i) economic responsibilities refers to maximizing profits for shareholders,
- (ii) legal responsibilities refers to compliance with the laws of the land,
- (iii) ethical responsibilities refers to standards that society considers fair, and
- (iv) philanthropy which is entirely discretionary.

The Pyramid of Corporate Social Responsibility



Ramasamy et al (2008) have described Carroll's CSR model as a pyramid in which economic and legal responsibilities are the base, while the more discretionary responsibilities, ethics and philanthropy, are the pinnacle. The pyramid form implies that the superior responsibilities are supported by the basic ones.

The responsibilities of CSR are interdependent. This was best expressed in the definition of CSR given in 1971 by the

Committee for Economic Development (CED), which referred to three concentric circles of responsibilities: (7)

- The inner circle includes the clear-cut basic responsibilities for the efficient execution of the economic function and economic growth.
- The intermediate circle encompasses responsibilities to exercise this economic function with a sensitive awareness of changing social values and priorities with respect, for example, to environmental conservation, hiring and relations with employees.

- The outer circle outlines newly emerging and still amorphous responsibilities that business should assume to become more broadly involved in actively improving the social environment.

Society is beginning to turn to corporations for help with major social problems such as poverty and urban blight. Carroll's model has been adopted, in current research, together with Freeman's stakeholder approach (1984), which defines to whom the corporation should be responsible. *Stakeholders* are any group or individual who can be affected by, or can affect, the activities of a company. These include employees, customers, suppliers, shareholders, governments, and competitors, as well as communities.

Consumers are the largest group of stakeholders in most industries. In recent years, they have mustered massive power viz-a-viz firms' decisions and profits. A combination of more consumer choice, wealth, education and brand consciousness, together with the availability of ethical products has given rise to a more socially conscious consumer. Corporations have come to realise that CSR is a route to enhancing profits, not just an ethical obligation.

4.4 The Concept of CSR in China

China has a strong government presence in its markets, businesses, and culture. Chinese CSR is thus implicit rather than explicit and its institutional structure is based on collectivism and solidarity. This means, according to Matten and Moon, (6) that Chinese CSR should be subject to law and regulations, as it is implicit. Thus, in China, CSR is completely controlled through laws and regulations.

Article 5 of the company law issued in 2006 states that a company must comply in its operations with laws and administrative regulations, social morality and business morality. It must act in good faith, accept the supervision of the government and the general public, and bear

social responsibilities. Regulations are found in the Consumer Protection Act, the National Responsible Competitiveness Act, Contract Law, Labour Law and Trade Union Law of the People's Republic of China and many other laws. Principles of CSR are also promulgated among state-owned enterprises (SOEs) through governmental, public, private initiatives, such as the Responsible Supply Chain Association and the joint declarations about CSR Industrial Principles by industrial associations. Since 2009, listed companies have been subject to the CSR guidelines issued by the Shenzhen stock exchange. (14)

In China, CSR is enforced by detailed mandatory regulations. This is the main difference between the Chinese concept of CSR and Western countries in which CSR is explicit and more of a voluntary concept.

In the Western countries CSR dimensions have been the subject of research since the 1970s and there are a variety of models. Carroll's model contained economic, legal, ethical, and discretionary responsibilities whereas Gallo, in 2004, divided CSR into four concepts: "providing satisfactory services to society, creating economic wealth, boosting the overall development of internal corporate personnel, and ensuring sustainable corporate development." In 2009, Xu et al (21) summarized all the dimensions derived from previous research with the help of a survey undertaken in 2006 by the World Bank and Peking University based on 1,268 industrial enterprises in China. This research found that Western CSR has eight dimensions and that Chinese CSR has nine dimensions. Some of these dimensions were common and a few were unique. Chinese CSR is different as it does not contain the two major Western dimensions of equality and shareholder interests, but does contain the uniquely Chinese dimensions of good faith, providing employment, social stability and progress.

Comparison of unique CSR dimensions between the West and China

Unique Western CSR Dimensions	Unique Chinese CSR Dimensions
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Economic responsibility	Comply with business ethics
Legal responsibility	Operate in good faith, honour contracts
Environmental protection	Employment ... increase job opportunities / reemploy lay-offs
Consumerism	Ease national employment pressure
Shareholder interests	Provide jobs for the disabled
Employee development	Social stability and progress
Equality ... racial, gender, equal opportunities	Ensure social stability
Social donation/charitable causes	Promote social progress
	Patriotism, promote national prosperity

The Western dimensions of CSR are fairly self-explanatory, as are the Chinese

characteristics that are similar. However the three dimensions unique to Chinese CSR are worthy of a deeper understanding. *Good faith* requires companies to operate in good faith, honouring their obligations and contracts and “provide genuine goods at fair prices.” Good faith is expressed in article 5 of Company Law of 2006. (4) The article’s requirements are similar to Carroll’s ethical responsibility except that “good faith” has never been recognized among western CSR practices. *Employment* is linked to China’s background and the country’s stage of development. Companies are obliged to provide as many jobs as possible to ease unemployment. *Social stability and progress* is probably rooted in the Confucian philosophy of ensuring social stability and harmony and boosting patriotism.

4.5 The influence of Confucianism On Chinese CSR Practices

Confucianism is at the core of traditional Chinese culture. It is a philosophical and ethical system taught by Confucius over 2,000 years ago. Its basis is humanism, the care for other human beings. Confucius believed the roots of social relations lay in individuals, families, peace, the prosperity of the state, and social stability and harmony. According to Yao, (2) Confucianism developed around two theses: “that goodness can be taught and learned, and that society can only be in harmony and at peace under the guidance of wisdom”.

Confucianism preaches the five principles of:

- *ren* which forces the individual to altruism within a community
- *yi* the pursue of justice
- *li* a set of norms for acting properly within a community
- *zhi* learning from others for the betterment of the individual, and
- *xin* integrity and good sense in everyday actions.

Confucianism resemble some aspects of CSR, in particular *ren*, which urges a taking-giving relation between individuals and the whole community. According to Zhu and Yao, “to some extent, the value of Confucian culture has invisibly formed the fundamental sources of modern CSR as an earlier ethical element”. The core concept of CSR, caring about the community’s interests, is also the basis of Confucianism. The harmony between individual and community (enterprise and society) advocated by Confucius is found in the CSR statements of many Chinese enterprises (see CNPC for example).

Zhu and Yao state emphatically that modern Western CSR has been partially developed by researchers who have absorbed aspects of Japanese and Chinese Confucianism and integrated them into Western cultures. (15) They also state that the collective concern or harmonious competition endorsed by the cultural values of Confucianism has a role in compensating and correcting the concern for the individual or fatal competition advocated in some Western cultures.

4.6 Theory of Chinese CSR

The theory underpinning the Chinese concept of CSR contains several concepts that may be alien to Western thinking ... *guanxi*, *mianzi*, high-context, collectivism, and out-group bias.

4.6.1 *Guanxi*

Guanxi, ie “social relations” or “personal relations”, is the centre of Chinese culture and

public relations practices. (22) Thus the concept is also very important in business. Guanxi means "networks" or "connections" that open doors that facilitate deals. A person who has a lot of guanxi will be in a better position to generate business than someone who lacks it. Guanxi is a crucial system of beliefs in Chinese culture. Developing guanxi depends mostly on reciprocal feelings between two parties. These feelings are developed through three key factors ... emotion or feeling, reciprocity, and utilitarian benefit. According to Fang (2010), (11) "the unique guanxi feature of Chinese culture poses challenges for western business". A well-developed guanxi through years of business activity is a precious resource in case of need, as foreign businesses may encounter problems in entering the Chinese market without guanxi. Thus getting a native Chinese with lots of guanxi on board is highly recommended.

4.6.2 Mianzi

Mianzi, literally face, is deeply rooted in Chinese culture. It is the reputation, self-respect, or prestige a person has within a community. Mianzi applies to individuals as well as businesses, societies or the country in general. An old Chinese adage says that "Face is as important to a man as bark is to a tree". Mianzi explains why it is common in China to make lists of top students or top enterprises. It also explains why criticism of the country's behaviour makes the government and people quite irate. (23)

4.6.3 High-Context

The difference between high-context and low-context cultures is how messages are delivered. *Low-context cultures*, such as the USA, are those that communicate information in direct, explicit, and precise ways. In *high-context communication*, by contrast, a great deal of information is implied rather than explicit. An understanding of the cultural context is necessary to understand the message. "Individuals raised in high-context cultures tend to depend on the

context of messages, such as circumstances and settings, a speaker's social status and positions, timing and the way messages are surveyed". Generally speaking, Asian and South American countries are high-context cultures, while Western nations are low-context nations in the main.

Whether a country is high or low context determines how a company communicates with its society. (18)

4.6.4 Collectivism

Collectivism is the practice or principle of giving a group priority over each individual in it. This is another feature of Chinese culture. Collectivistic cultures are the opposite of individualistic ones. Persons in a collectivist culture put greater importance on group goals rather than on individual success, and stress the importance of cohesion and interdependence among social groups. Collectivism, in particular if it is intended as social cohesion among socially equal subjects, has often been associated with socialism. Nevertheless it is founded on Confucianism and is ingrained in Japanese and Chinese culture. (13)

4.6.5 Out-group bias

Out-group bias as another feature of Chinese culture. (12) This phenomenon, aka intergroup bias, "refers to the tendency to evaluate one's own group or group members (the in-group) more favourably than groups to which one does not belong and their members (an out-group)". There is usually more out-group bias in collectivistic societies. Persons raised in collectivist communities tend to be more competitive and less "friendly" when dealing with members of out-groups. But persons raised in individualist societies differentiate less between in- and out-groups and have a similar attitude towards the two different types of groups. In business, negotiators from collectivistic cultures are more likely to use competitive and "ethically questionable strategies towards competitors, in order to protect the interests of in-

group members”. Ma states that “collectivists will change their perceived appropriateness of certain negotiation strategies according to who they are dealing with.” (10)

4.7 Corporate Responsibility Practices and Regulation of SOEs

According to Lin (2010), (25) the Chinese concept of CSR is easily confused with “the idea of state-owned enterprises as social services and benefits providers (*Qiye ban shehui*)”. *Qiye ban shehui* refers to enterprises running social activities. Before the reforms, state-owned enterprises (SOEs) were both business units and providers of social service. They had to deliver a standard level of welfare to their employees and their local communities. SOEs were in fact in charge of education, healthcare, pensions and other services. This was blamed for being one of the causes of the endemic inefficiency in SOEs. There are, however, important differences between CSR and *Qiye ban shehui*, which refers to SOEs running social services, according to Lin (2010):

[1] CSR in China is the result of modern globalization, whereas *Qiye ban shehui* is an old “economic model that operated in traditional Chinese communism”.

[2] Stakeholders vary between the two concepts. Under *Qiye ban shehui*, SOEs were responsible only for employees and their families. But CSR covers suppliers, governments and society as a whole.

The final step of the reforms transferred social services from SOEs to local governments. This changed SOEs into modern enterprises focusing on their core business. But being freed from having to provide social services does not mean that SOEs are exempt from their social responsibilities. CSR practices in China are strictly subject to the regulations found in the Company Law Act of 2006. In 2008 the *Guide Opinion on the Social Responsibility Implementation for Owned Enterprises Controlled by the Central Government* (aka the Guide),

was released by the State-Owned Asset Supervision and Administration Commission of the State Council (SASAC). Currently there are about one hundred fifty SOEs subject to government control and most are large corporations listed on the Shanghai or Shenzhen Stock Exchanges.

The first part of the Guide explains the importance of CSR for SOEs - CSR promotes social harmony. SOEs are the foundation of China's economy. They affect all aspects of the Chinese people's lives. Thus CSR must be implemented by SOEs to meet public expectations and assure harmony and stability. In addition, the Guide considers CSR to be fundamentally important for sustainable development. Lastly, it affirms that CSR is a necessity if SOEs are to participate in international markets.

SOEs are required to integrate CSR practices into their corporate structure, focusing on the majority of the common topics of international CSR standards, that is compliance with laws and honesty, increasing profitability, improving quality, protecting the environment, efficient management of resources, safety, innovation, employees' legal rights and lastly, charitable contributions. To effectively integrate CSR practices into a firm's business model, the Guide suggests a series of vague measures such as educating employees to cultivate a culture of CSR and including CSR in strategies and corporate governance by, for example, establishing a CSR management team. The Guide also requires the issuing of periodic CSR or sustainability reports. It mandates that best CSR practices should be urged by members of the CCP who are actively involved in the corporate governance of enterprises. According to the SASAC, "the CSR principles for Chinese SOEs should be consistent with international trends but also be compatible with the national and organizational reality in China". (20)

4.8 CSR in Practice

China National Petroleum Corporation (CNPC) is one of the largest Chinese SOEs

working internationally. Thus it has to fit in with international practices and needs to follow trends in international CSR practices rather than trends in Chinese practices. As a Chinese state-owned company, CNPC is obliged to adhere to specific laws, such as the Company Law of 2006 and the Guide of 2008. (9) These laws regulate CSR practices by laying down the social duties of companies and suggesting ways they can implement relevant policies. CNPC's efforts to develop itself in harmony with society match the main aim of the Guide, which states that social harmony and sustainable development are the basis of the Chinese economy. Many other parallels can be found between CNPC's CSR statements and the law. These include the use of the same words and expressions.

To boost the Chinese economy at international levels, the Guide lays down that SOEs should actively participate in international markets. It also instructs them to abandon the idea that an SOE is a typical Chinese governmental body. This implies that CNPC must meet international regulations in addition to the regulations it must follow domestically. Today, CNPC has business operations in more than 20 foreign countries. It has managed to quit its role as a supplier of social services in China and has become a successful player on the international scene without dropping its Chinese standards. However, it still maintains some governmental administrative functions, which are never specified in detail.

4.9 CNPC and Chinese CSR

According to Matten and Moon, China is expected to develop an implicit form of CSR, in which practices are set by regulations, and are perceived as a corporate obligation and are not discretionary. Because they mainly operate in collectivistic societies, companies operating within an implicit CSR framework are more likely to implement systemic practices. CNPC partially confirms this trend foreseen by Matten and Moon. As an SOE, CNPC is subject to specific

regulations concerning CSR practices and CSR disclosures, with the aim (as discussed) of maintaining a harmonious relationship with society as a whole. The corporation, however, is actively involved in the international market. For this reason it has started to implement international CSR practices and is getting closer to an explicit form of social responsibility that includes discretionary policies.

However there are still differences between Chinese and Western CSR practices. For example, research conducted by Sun in 2010 (1) highlighted differences in philanthropic practices in response to disasters. Chinese companies concentrate their efforts in the period immediately after a disaster. They consider employee donations to be their most important form of contribution and do not use their response to the disaster to generate free publicity for their company. CNPC shows the same behaviour concerning employees donation and its public relations. But it has, like many other MNCs, become involved in long-term social programmes and has publicized its cooperation with other companies or government bodies. This shows that Chinese SOEs can create a mix of domestic and foreign CSR principles, and thereby get closer to international standards of CSR.

Yet, CNPC also exhibits the typical dimensions of Chinese CSR. Faith is always mentioned as an essential principle of its social involvement. The corporation declares employment (a unique element of Chinese CSR) as one of its main objectives, along with social stability and progress. Like most Chinese companies, however, CNPC does not mention shareholders or equality issues among its CSR practices. Instead, it focuses on the environment, safety, health and public welfare. This reflects the conceptual framework of Chinese CSR practices in accordance with Chinese cultural principles and characteristics, which include collectivism and Confucianism. These cause Chinese CSR practices to differ, sometimes

significantly, from Western ones.

4.10 A Synthesis of Chinese And Western Concepts of CSR

The last three sections of this chapter illustrate that it is possible for the Chinese and Western concepts of CSR to be combined into a hybrid model acceptable to both Chinese and Western commentators.

CNPC adheres to the most typical of Chinese CSR concepts, including the harmonious development of business operations, the attention given to the collective and the pursuit of good faith-driven behaviour in everyday business operations. However, the corporation has adapted to international standards, embracing the typical conduct of MNCs. For example, CNPC's disaster relief efforts after the Sichuan earthquake in 2008 are, in some respects, similar to those of other MNCs. This shows that a Chinese enterprise, even a state-owned one, may choose to follow international CSR practices, combining them with the national model. (16)

This is actually a necessity for companies operating in an international context, as globalization requires MNCs to adapt and standardize their conduct, both to be accepted in the market and at the same level as their competitors. Now that the media play a dominant role in building the image of a company, an adequate CSR policy is a basic tool that must be part of the company's business model. However, as shown by CNPC, it is possible for one company to combine international and domestic CSR principles.

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Chapter Five

Key oil infrastructure in Sudan and South Sudan



Here I take a look at the oil companies operating in Sudan and South Sudan and the consortia they form in order to further their oil exploration and extraction activities.

This background information will put me in a position to answer research questions 3 and 4 in the next chapter.

5.1 The Concession Holders of the Oil Fields in Sudan and South Sudan

The multinational corporations holding hydrocarbon concessions in Sudan and South Sudan represent the cream of international oil corporations.

Blocks 1, 2, and 4: The Greater Nile Petroleum Operating Company (GNPOC) owns the concession to explore and develop these blocks, the 1,540 kilometre pipeline to the Red Sea, and the port at Masra El Bashair. The last two were built and completed by GNPOC in 1999. The owners of GNPOC are ONGC Videsh Ltd (25% since 2002, when it bought its share from Talisman Energy Inc of Canada), CNPC (40% since 1996), Petronas Nasional Berhad of Malaysia (Petronas) (30% since 1996), and Sudan's state-owned Sudapet Limited (5% since 1996). This concession in Western Upper Nile includes the Unity and Heglig oilfields, the oldest producing oilfields in southern Sudan. It also includes El Toor, Toma South, El Nar, Talih, and Munga oil fields, and the more recently explored Timsa and Bamboo oilfields in Block 4.

Civilian displacement started in the mid-1980s.

Block 5A: Lundin Oil AB, a Swedish company, was lead partner in the consortium that owned Block 5A, immediately to the south of Blocks 4 and 1 in Western Upper Nile, until 2003. Lundin (through its subsidiary International Petroleum Corp) owned 40.375%, which it sold to Petronas of Malaysia. Petronas owned 28.5%, which it purchased in 1997, and with the purchase of Lundin's interest now owns 68.875% of Block 5A. ONGC Videsh Ltd owns 26.125% which it bought from OMV of Austria in 1997. Sudapet owns 5 percent of Block 5A, also purchased in

1997. The Block 5A concession is still in the exploratory phase, with very good results from drilling tests. Civilian displacement began in 1998. Because of a rebel attack at their drilling facility in May 1999, the consortium withdrew, citing “the rainy season” and “logistics” as the reasons for not continuing tests. After major displacement, continuing in 2000, the all-weather road to the drilling site was completed in 2001 and exploratory tests resumed, were suspended for more than a year in 2002, and resumed again in 2003 shortly before Lundin sold off its interest.

Block 5B: Petronas (41%) and Sudapet (10%) are the lead partners on this concession, with Lundin Oil (24.5%) and OMV (24.5%), as announced on May 3, 2001. The concession, on the southeast border of Block 5A, includes Nyal and Ganyliel in Western Upper Nile. The White Nile cuts through it. OMV sold its interest in Block 5B to ONGC Videsh Ltd in 2003.

Blocks 3 & 7 in Eastern Upper Nile are not the subject of this thesis, but are being developed by the Qatari Gulf Petroleum Company (GPC) with CNPC, Al Hath (private Sudanese company), and Sudapet (5%).

Block 5: this concession, also not covered in this thesis, is by far the largest in the south at 120,000 square kilometres. It is owned by TotalFinaElf, and encompasses Central Upper Nile and beyond. It is not currently being developed.

Block 6: this concession northwest of block 4 in western Sudan is owned by CNPC, but oil explorations have not yet taken place and the block is not covered in this report.

5.2 CNPC in South Sudan

South Sudan’s largest trading partner is China. However, China is not the largest investor South Sudan’s oil industry. Chinese National Petroleum Company invests in oil projects in South Sudan in consortia that are usually operated jointly by CNPC, Petronas of Malaysia, India’s Oil

and Natural Gas Corporation (ONGC), and Nilepet of South Sudan. China and Malaysia have the largest stakes but their shareholdings are almost equal. But, due to the tough living conditions, there are very few Malaysians working in South Sudan.

In December 2013, when the civil war broke out, every foreign government was trying to organise an emergency evacuation of its nationals. All employees in the US Embassy in Juba, the capital of South Sudan, were withdrawn. But CNPC stayed on and kept the larger fields in Upper Nile State working, even though the rebels destroyed some other fields.

According to Chinese diplomat Zhong Jianhua, then special representative of the Chinese government on African Affairs and China's Foreign Policy Experiment in South Sudan, Beijing was driven by "a sense of responsibility" to preserve the economic future of South Sudan. Indeed almost all the GoSS's income comes from its oil business. CNPC supported South Sudan's economy for years after the war ended despite the losses this cost the company. In the first two months of 2016, when crude oil prices fell below \$30 per barrel, CNPC was losing nearly \$2 million a day.

CNPC's financial support helped stabilize the economy and brought "commercial peace" to South Sudan. As a result the GoSS now considers China a vital trade partner. It is notable that 90% of CNPC employees in the oil fields are local citizens. CNPC has also gifted money for a number of non-commercial physical buildings. For example, it helped construct the Protection of Civilians (POC) Site 3 of the United Nations Mission South Sudan (UNMISS), where thousands of internally displaced people now live.

These examples illustrate China's posture on cooperation with Africa. In 1918 President Xi said during the opening ceremony in Beijing of the *Summit of the Forum on China-Africa Cooperation* (FOCAC) in Beijing "China has stood with African countries and always follows

the principle of pursuing the greater good and shared interests.”

5.3 China National Petroleum Corporation (CNPC)

China National Petroleum Corporation (CNPC) is China’s state oil and gas corporation. It was established in 1988 and began working in Sudan in 1995 when it obtained a 92% interest in Block 6. In 1997 it invested in GNPOC where it now owns a 40% stake. In 2004, this stake represented almost half of CNPC’s overseas oil production. It is currently involved in several other projects in Sudan and South Sudan. CNPC has an oil refinery in Sudan. Since 2001, it has also had a retail petrol station in Khartoum. (2)

The Chinese government issued a directive on Corporate Social Responsibility (CSR) for its state-owned enterprises in 2007. The state-owned Asset Supervision and Administration Commission (SASAC), a majority owner of many large Chinese business groups, published a *Notification on Issuance of the Guidelines on Fulfilling Social Responsibility by Central Enterprises*. This notification states that the justifications for CSR activities are, in the main, domestic in nature. These include promoting a harmonious society, protecting the environment, improving quality, protecting employee rights and so on. But the notification also refers to the increasing concern for CSR in the global economy. (7)

Many large Chinese business groups can move activities between subsidiaries and parent companies and only report CSR activities in one of those companies. PetroChina is a subsidiary of CNPC and its operations with CNPC in Sudan should show how a complex group structure can hide actual activity. (6)

In 2000 CNPC created PetroChina as a publicly traded subsidiary, open to international investors. Some major US asset management firms, such as JP Morgan, Templeton Asset Management, and Fidelity, hold billion dollar positions in the company. In 2007, CNPC owned

88.21% of PetroChina's shares with the rest available for outside investors.

Petronas of Malaysia is governed by a board of directors, an executive committee, and a management committee. Like CNPC, Petronas has extensive interests in Sudan. Like Sudan, Malaysia is an Islamic country. Certain Islamic foundations are active in both countries and Petronas obtained its investments in Sudan through these foundations as well as through military and economic relations with the GoS.

Petronas's involvement in Sudan's oil industry began in 1997 when it bought a 30% stake in GNPOC. As well as shares in DPOC (Blocks 3, 7), Petronas also owned a 28.5% interest in Block 5A operated by Lundin Petroleum, which it increased to 67% in 2004 when Lundin sold out and exited the market. Petronas also holds interests in Block 8 and 5B. This IOC is also in retailing petrol, gas oil and fuel oil in Sudan. In 2005, the company signed a contract to build an oil refinery at Port Sudan with a capacity of 100,000 barrels a day (Petronas, 2005).

Petronas had numerous security issues during the civil war. Hostile rebels kidnapped several workers when Petronas began operations in Sudan and its personnel had to be escorted by military forces in all its concessions. Like CNPC, Petronas has ignored negative comments about its operations in Sudan from international human rights NGOs. (3)

Petronas' framework for its corporate responsibility framework is weakly enforced. It covers areas such as shareholder value, use of natural resources (such as promoting efficient use of energy and water), health, safety and environment, product stewardship (ie, ensuring products conform to quality and HSE standards), societal needs, climate change, and biodiversity.

The weak enforcement of its social responsibilities is shown in its reporting on "societal needs". It claims that it follows the guidance of the *Global Reporting Initiative* and of the *Global Oil and Gas Industry Association for Environmental and Social Issues*. Its *Sustainability Report*

2011, however, only mentions development projects in some countries, none of which is South Sudan.

In Sudan, CNPC follows different rules than other multinational corporations. It “has a strategic behaviour that varies remarkably to its publicly traded counterparts. Indeed, CNPC has stated that China’s energy security trumps company interests in decision-making”. Some researchers suggest that the corporation’s real objective is to obtain international oil reserves rather than maximise profits. (9)

Warnings to IOCs from international NGOs against being involved in war crimes did not directly influence CNPC. Although its operations were affected during the civil war, CNPC did not exit Sudan. For example, the SPLA attacked CNPC in Block 4 in 2001. Chinese workers were kidnapped and GoS forces were needed to protect them. International human rights NGOs “influenced CNPC’s strategic behaviour only to the extent that its joint venture partners, susceptible to such criticism, held leverage over the Chinese MNC”.

Some scholars believe that Chinese state-owned companies like CNPC, being new arrivals in the market, are starting from a weak position and this explains their opportunistic behaviour. As such, “Chinese investment, less encumbered by the standard risk analysis operative on Western corporations, pursues a competitive advantage in niche markets otherwise deemed excessively risky or not sufficiently profitable”. (4)

5.4 Corporate Social responsibility and Asian Oil Companies

Corporate social responsibility refers to corporate activities that are voluntary and are not legal obligations. Standards are being developed to define the social responsibilities of multinational companies. The *UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (UN Doc. E/CN.4/Sub.2/2003/38/

Rev.2, 2003) was issued in 2003. In 2008 the *Respect, Protect and Remedy Framework* by Professor John Ruggie, a former UN Special Representative, specified the responsibilities of companies to respect human rights (United Nations, 2008). Various voluntary guidelines for the extractive industries have been developed by individual companies, stakeholder platforms, and NGOs. Regarding South Sudan, the most relevant are guidelines dealing with conflict-sensitive business practices and community development, such as: (8)

- *Guidance for Extractive Industries* by International Alert. This is a very practical guide with adaptable guides for each phase of a project (from exploration to production to close-down). It was developed in conjunction with the *UN Global Compact* and the *International Institute for Sustainable Development* in 2005.

- *Preventing Conflict in Exploration: A Toolkit for Explorers and Developers* gives specific guidance on the exploration phase. It was developed by CEP, World Vision Canada, and the Prospectors and Developers Association of Canada and launched in May 2012.

- The *Voluntary Principles on Security and Human Rights* provides a multi-stakeholder process that shows companies how to ensure that their practices of hiring security personnel do not violate human rights nor fuel conflict.

- *Business Principles for Sudan during the Interim Period*, a set of guidelines on human rights and social responsibility reporting has been developed by the International Petroleum Industry Environmental Conservation Association (IPIECA).

- The European Coalition on Oil in Sudan (ECOS) has gathered together standards that are relevant for the oil sector in Sudan, including legal requirements under the CPA as well as voluntary principles for the transition period (2005-2011) and beyond. (1)

It is said that Chinese oil and mining companies as well as Asian companies in general

are not concerned about the environmental and social impacts of their operations in Africa. Recently, however, these companies and their home governments have started developing CSR policies, spurred by an increasing demand for CSR in international markets. But a recent comparative analysis of the CSR policies and practices of Asian oil companies in South Sudan has shown that Asian oil companies have been unable to develop robust CSR initiatives and deal with community expectations. “Respondents expressed some frustration that they don’t know where to start on tackling community grievances. (...) The lack of usability of global best practices, standards and guidelines from the CSR sector is evident and could be a barrier to learning and development by the oil sector in South Sudan”. (10)

The government of an oil-producing country usually has a stake within the oil consortia operating in the country. Where this is so, the Vice President (a government appointee) is usually responsible for CSR. According to several companies, this mean that it would be possible for the joint operating companies (JOCs) to have a role as strategy coordinators for CSR. In some cases, a JOC sets up a CSR Committee. Many companies “asserted the need for government to take a more dominant role in identifying community needs and ensuring that the JOCs and individual companies do not overlap or misplace their efforts”.

Research by the Centre for Chinese Studies, published in January 2009, suggest that Chinese company representatives in Gabon and the DR Congo were willing to respond quickly to demands from local authorities. (11) The research also found that Chinese companies were amenable to transparency concerning revenues and financial transactions in the extractive sector.

Chinese oil companies listed on US stock exchanges are used to being transparent as US law imposes rules on reporting by multi-national companies. Section 1504 of the Dodd-Frank Act requires companies, listed on US stock exchanges, to report their payments to governments

worldwide. Some CNPC operations are captured through PetroChina, its subsidiary, which is traded on the New York, Hong Kong and Shanghai stock exchanges and files annual reports in accordance with the US Security and Exchange Commission Exchange Act. Some shareholders in Tri-Ocean Energy (consortium partner of PDOC) are also listed on the NYSE

5.5 China's presence in South Sudan

Since its independence, the development of South Sudan has been slow. The country needs advice and help from entities such as the United Nations and commercial organisations if it is to be able to develop the infrastructure and other capacities it so sorely needs.

Political tensions between South Sudan and Sudan as well as arguments over fees for using the pipeline that runs to the export terminal in Port Sudan on the Red Sea still fester. Chinese companies are still the leaders in the country's oil sector. (5) The Chinese in South Sudan are now focusing on the development of infrastructure. This is often financed by loans from the Chinese development banks or the Chinese government itself.

Since Chinese workers were kidnapped in Southern Sudan, Chinese institutions and commercial entities are taking the management of risks more seriously. This includes risks to personnel, reputation, investments, and the broader Chinese interests in Africa.

5.6 Consortiums in the Oil Sector

The most important Chinese investments in South Sudan take place in the oil sector. This sector is crucial to both Chinese entities and the GoSS. But in addition to the Chinese, other foreign entities are invested in this sector. Chinese state-owned corporations such as the CNPC or Sinopec (China Petroleum and Chemical Corporation) operate as partners in international joint ventures that include companies from India, Malaysia, Kuwait, and Europe.

Chinese companies are known to operate in joint ventures led by other oil companies. For

example, CNPC and Sinopec work in consortia with the Indian state-owned enterprise ONGC Videsh Limited (OVL) and the Malaysian state-owned enterprise Petroliam Nasional Berhad (Petronas), both of whom major stakeholders in South Sudan's oil sector. At the same time, the GoSS participates directly in joint ventures through its state-owned enterprise Nilepet.

While several foreign commercial enterprises (almost exclusively state-owned) are engaged in South Sudan's oil sector, it seems that the effects of insecurity and conflict are felt more deeply by Chinese entities. Chinese companies usually rely on their host country to provide security and coordinate the political process between stakeholders in a consortium. Thus it may be that Chinese companies are not investing in the security infrastructure and activities needed to avoid the security problems that bedevil Chinese firms.

Furthermore, the historic links between China, Sudan, and South Sudan weigh heavily on the current relationship between China and South Sudan. This surely has an impact on the safety security of Chinese employees. The people of South Sudan have not forgotten Beijing's political, economic, and military support for the north during the second Sudanese civil war.

5.7 Challenges Faced by Chinese Companies in South Sudan

Chinese employees face quite a few difficulties in South Sudan. (12) These include a lack of Chinese food, poor-quality drinking water, the risk of disease, and inferior medical services. Rough, substandard roads badly hinder the haulage of construction materials which in turn hamper the speed of operations. Procurement difficulties abound as Chinese companies need to source most supplies, tools and accessories from neighbouring countries or from China itself.

Local administrative procedures are very slow and inefficient. This often delays the implementation of projects, especially infrastructure contracts. For example, custom clearance of goods bought in Uganda can take anything from a few days to several weeks, and heavily-loaded

vehicles often have to wait at the border in queues that are several kilometres long.

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Chapter Six

Chapter 6 examines the relationships between the oil companies and the governments that license their activities and the local communities in which they operate.

This examination will show how civil society in the oil communities is responding to the CSR practices of CNPC and Lundin, and how the governments of Sudan and South Sudan deals with these two companies, thus answering research questions 3 and 4.

6.1 Relations between Oil Companies and Local Populations

GPOC, a consortium, is a descendant of the Greater Nile Petroleum Operating Company. CNPC has a 40% stake in GPOC according to Africa Oil & Power, an industry magazine. GPOC carries out community development projects in Unity State in order to promote good relations with its host communities. It pays compensation to locals for disturbances and provides basic assistance to people living near the oilfield. (1) It also seeks to reduce any environments damage its activities cause.

The extraction of oil can be unhealthy for persons living nearby. Thus GPOC believes these area should be out of bound for communities. In addition, it is far easier to work in a place that is uninhabited. According to GPOC, the GoSS shares its view. For these reasons, GPOC's community development projects in Unity State are far away from the oil fields.

For example, GPOC has been installing water pumps at various locations around Unity State, but not close to where it is working. (2) However its operations have an unavoidable 'pull' effect and some families have settled nearby. Though it does not want to attract people, GPOC feels obliged to help persons living close-by so it provides them with water, tents for schools and allows them access to the health facilities it maintains for its staff. But this in turn

acts as a magnet, ‘pulling’ other people into the area just outside the perimeter fence.

6.2 The Chinese Keep their Distance in South Sudan

Chinese oil companies find that engaging with local communities is not easy:

- When they first began operating in southern Sudan, these companies followed China’s ‘non-interference’ policy strictly and kept the local communities in which they operated at arms’ length. (9)
- Nowadays Chinese companies realise that their overseas activities need to be offset by community engagement because this lessens the political, economic, and environmental effects they cause. Thus they are beginning to pay more attention to CSR.
- Compared to previous decades, the overseas investment practices of Chinese companies have improved somewhat. Yet, there is still much room for improvement.

All over the world, resources are extracted in order to generate profits. A culture of collective responsibility needs to be cultivated internationally. Chinese oil companies need to be a part of this culture.

6.3 What the Public in South Sudan Thinks

In April 2013, Saferworld held an event at the University of Juba in South Sudan, in which two Chinese researchers gave a lecture on China’s engagement in that country. The lecture was attended by more than 60 members of the public, all ordinary people, persons with experience of the ‘situation on the ground’. In the lively debate that followed China’s presence in South Sudan was criticised severely. All attendees complained about China’s support for Sudan which was then at war with the SPLA in South Sudan. (11)

More exposure to local public sentiment concerning China’s involvement in South Sudan gives Chinese companies (and their Government) information they can use to devise strategies

for effective engagement. If the Chinese don't listen, they risk alienating local communities. They also risk de-legitimising instances in which their presence is beneficial for the places in which they work. If this happens, it could sabotage long-term, sustainable relationships with African countries. As Chinese corporations, especially those in the oil sector, become more and more visible in South Sudan, they need to understand the benefits of strong, positive public engagement with local activists and influencers. (4)

When it was first investing in Sudan in the mid-1990s, CNPC tried to isolate itself from local political matters. But in 1999, as part of the GNPCO consortium, it began developing Block 1 in what is now Unity State in South Sudan. CNPC's reputation was severely damaged by land clearances that were enforced through violence. Sudanese military forces and armed militias backed by the Sudanese government, attacked ethnic Dinka and burned their food, crop-seeds and houses to drive them from their ancestral lands. (13) Other multinational oil companies, such as Lundin of Sweden and the Austrian corporation OMV, were implicated in more brutal forms of land clearance in Block 5a. Despite this, China's reputation was destroyed in the opinion of many southern Sudanese.

To matters worse, many southern Sudanese were embittered by China's historically close relationship with the regime in northern Sudan, the weapons it sold to that regime during the civil war, and what they saw as CNPC's lack of action concerning Darfur. (5) For these reasons, in recent years CNPC has been trying to pay greater attention to CSR within the region.

While it is true that in the past most Chinese aid was distributed to the northern parts of Sudan, more recently South Sudan has been receiving copious amounts of Chinese development aid. According to CNPC itself, it has increased technology transfers to locals, is committed to using local labour and is developing vocational training programmes. As examples, the company

has sponsored South Sudanese students studying in Beijing at the University of Petroleum, gifted US\$700,000 for a computer laboratory to the University of Juba, developed medical facilities, contributed US\$1.6 million for a sewage treatment plant, and helped in the reconstruction of Juba's airport. (3) The corporation also states that, taking all its global activities in account, the proportion of local employees working on CNPC's oil projects is more than 95%.

6.4 Not Just a Charm Offensive

Some say that these developments are just a charm offensive beamed on South Sudan. But it's more likely that they reflect a growing awareness of risk among Chinese companies due to experiences in Libya, Myanmar, Sudan, and other unstable regions. (25)

Negative perceptions of CNPC were initially generated by strict observation of China's 'non-interference' policy when the company first began operating in Sudan. Allowing the state to make the oil fields secure resulted in serious human rights abuses. (6) While these abuses were not carried out by the Chinese themselves, sympathisers for the cause southern Sudan were quick to sense that the North's political aggression was linked to Chinese commercial interests. As a result, Chinese assets were sabotaged and Chinese operating staff were kidnapped and some were killed. This in turn caused deep upset within China itself, where the government was increasingly obliged by segments of its own population to step in and help fellow citizens.

The realisation that profitable overseas projects need to be counterbalanced by local community engagement means that more attention is now being paid to CSR. (30) This lessens the political, economic, and environmental difficulties that may be incurred and helps create a more stable environment for long-term investments. IOCs know now that the more they manage to develop trusting relationships at national and local levels, the more secure their investments will be.

Within China, there have been significant shifts in governments policies concerning overseas corporate investments, including the 2006 ‘Corporation Law’ which provides a legal foundation for CSR and the *Guidelines for Corporate Social Responsibility Compliance for Foreign-Invested Enterprises* issued in 2008 by the Chinese Academy of International Trade and Economic Co-operation. (31)

6.4.1 Oil Task Forces

The South Sudanese complain of a persistent lack of sustained contact between Chinese representatives and local communities. To resolve this problem, several communities in the oil regions of Upper Nile and Unity State have set up ‘Oil Task Forces’. The County Commissioner organises a seven-member task force made up of chiefs, elders (retired government officials), women, and youth. The basic idea is to encourage dialogue between the local communities, the oil companies and the government. (7) But involvement in these community meetings by Chinese companies has been limited. It seems the Chinese do not appreciate the benefits of these channels of communication that have been designed to help both the communities and the companies.

‘Expectations management’ is facilitated by face-to-face engagement. Locals believe that once oil companies arrive, they will immediately benefit from jobs, schools, hospitals, wells, and roads. The strong lines of communications afforded by oil talk forces could be used to let locals know what the oil companies can realistically offer and how they will implement these offers. This would help squash rumours that either the oil companies or government officials or both are deliberately depriving locals of what they see as their rightful entitlements.

Oil companies need to understand how they can stir up local conflicts. (14) For example, in oil-producing states increased revenues create ideal conditions for increased prosperity in local

communities. But unfortunately in real life the advent of oil creates political rivalry for access to these revenues. Patronage politics and high levels of corruption mean that competition for the treasure of oil quickly degenerate into armed conflict. (12)

6.5 Oil Production by its Very Nature Creates Enmity

In the 1990s, the Chinese were of the view that local militias used to protect oil assets in Block 1 were the responsibility of the Sudanese Government and not that of the oil companies. Though this view may have changed, currently they feel that issues such as the correct allocation of oil revenues are the sole business of the state.

But local political instability due to oil production can directly impact the security of the oil assets and foreign workers. If Chinese companies made themselves more familiar with the impact their operations have on local communities, they might be better placed to advocate for a more equitable distribution of oil revenues. Greater community engagement would provide a better long-term sustainable environment within which these companies could operate. (15)

The nature of oil production itself creates a major obstacle to community engagement. In South Sudan, oil-wells are fenced off and guarded by the military and/or by private security firms. Companies in a joint ventures may hire their own security staff for extra protection within the fenced-off installations. Several oil fields have their own airports so that personnel flying in and out don't even have to pass through regional towns. The roads leading to these compounds are blocked by military checkpoints. With such hyper-security in place, there is no incentive to engage with communities shut out from these places.

Put simply, these security measures make what occurs outside increasingly irrelevant. Some analysts have stated that effective governance is conducted only within these fenced off spaces ... and that what lies beyond as 'unusable Africa'. (8)

6.6 Summary

In South Sudan, China is still viewed as a long-time ally of the North and this makes things pretty difficult for the Chinese in South Sudan. Oil extraction, the country's dominant export and China's fundamental interest in the country, takes place within hyper-secure facilities and is rife with corruption and secrecy.

Sustained interactions between the Chinese and local South Sudanese is vital for China's long-term presence in the country. The Chinese companies need to take the initiative and this should be strongly encouraged by the Chinese Government which can apply pressure to do so through its shareholdings in these companies.

Chinese companies are not the only ones facing the challenges of interacting with local communities. The extraction of natural resources for profit is a global activity. Chinese companies are not the only ones who need to engage more in community engagement. A sense of collective responsibility, in which Chinese companies must play a part, needs to be cultivated at the international level.

6.7 Problems with Local Labour

The GoSS requires foreign firms to employ local labour. But Chinese companies find hiring locals with professional skills such as managers and translators almost impossible. They don't have the facilities or time to provide the required training. (16) Their solution is to hire skilled employees from neighbouring states such as Kenya, Ethiopia, and Uganda.

Labour disputes are another serious concern for foreign enterprises. The labour law in South Sudan ensures that dismissing local employees is very difficult.

There have also been cases where local employees have demanded large indemnities following work-related accidents.

Local bias ensures that Chinese enterprises are in a very weak position when trying to resolve labour disputes.

6.8 Impediments to Peace

The civil war seriously damaged how China is perceived by many South Sudanese, and their memories of the help it supposedly gave to the North during that time are not softened by negative portrayals of China in the media. Some find the name Juba China Friendship Hospital, for instance, to be offensive on the grounds that China cannot be a ‘friend’ of both Sudan and South Sudan at the same time. (18)

The fact is the Chinese Government did not favour the North over the South during the civil war. China’s cooperation with Khartoum was based on adherence to its principle of non-interference which means it only engages with legitimate governments. It had neither the will nor desire nor experience to get involved in a civil war. In recent times, the Chinese have been trying to promote peace and mutual understanding between the two states.

The Chinese do make a significant contribution to peace, stability and the development of South Sudan by doing business there despite the risks. But some actions by Chinese firms and their Chinese employees have a serious negative impact on how local people view the Chinese. What are these actions? (19)

[1] Chinese companies, most notably construction companies, seldom provide local employees with holiday pay or other welfare benefits, and they impose long daily working hours. As a result they are accused of pursuing efficiency at the cost of human rights.

[2] When labour disputes arise, some corporate managers use pay-offs to settle matters instead of using legal avenues to settle these disputes and this gives the local population a negative view of the Chinese.

[3] Some Chinese employees are rude and dishonest with local workers, and fail to respect local customs.

[4] Some products sold by Chinese traders are fake. This too has a negative effect on the general perception many South Sudanese have of the Chinese people and Chinese products.

6.8.1 Relations with Local Populations

The biggest challenges Chinese enterprises face come from within. Chinese employees usually cannot speak the local language, do not understand the economic and political milieu in which they are working, and have no appreciation whatsoever of local culture, religious beliefs, and customs. They do not integrate into the local communities in which they work nor do their companies actively fulfil their CSR. (20)

The GoSS has set higher standards for CSR. In January 2012, for example, it signed five-year transition contracts with foreign oil companies, which amended their original contracts to include more binding environmental standards, minimum percentages of local employees, additional social protection norms, and enhanced transparency.

Chinese enterprises face at least two problems in fulfilling their social responsibilities and improving their image: (29)

[1] They feel overburdened in fulfilling their CSR obligations. While projects should benefit local people, they are only enterprises after all. They feel that it is their job to focus on development or construction, while land acquisition and domestic relocation should be managed by the local government. Chinese companies also feel, as they sign contracts with the GoSS and pay various types of expenses, including compensation, it is up to the government to decide how and to what extent local communities are to benefit from the projects they will undertake.

[2] Chinese enterprises do not manage their public relations. They do not publicise

positive news and when they are criticised, they don't bother to publicly defend themselves.

6.8.2 Managing Chinese security concerns

Over the years Chinese nationals and companies in South Sudan have been the victims of numerous small-scale security incidents. These range from petty theft to armed robberies. In addition many local communities consider Chinese enterprises, both state-owned and private, to be extensions of the Chinese Government. (21) This exacerbates the sense of insecurity felt by Chinese personnel in South Sudan, since historical grievances often shape local opinion.

The security of Chinese enterprises in the country is affected by small-scale incidents, the ease with which they can get caught up in sudden violent conflicts between South Sudanese tribes, and the limited reach of national security forces and their ability to come to the rescue.

The main security risks affecting Chinese personnel in South Sudan are theft, armed robbery, attacks from private militias, and the risks in rural areas due to a lack of emergency services and poor cell phone reception. (22)

One response has been to employ private security firms to protect company and housing compounds in Juba, the capital city, and in the oil fields. This, however, is a limited solution.

Chinese companies have expressed a variety of views on how the general insecurity that plagues them and what their role in helping to mitigate conflict in South Sudan should be. Some believe that their government should send more Chinese peacekeepers as part of the UN Mission to South Sudan. Others would like the Chinese Embassy to take a more proactive role and discuss their security concerns with the South Sudanese authorities.

To improve security cooperation, the GoSS has stated that it is open to assistance from Chinese companies in South Sudan in the provision of security equipment and related training for security personnel. There seems to be general willingness in the GoSS to involve Chinese

companies to a greater extent in the development of security and peace.

Some Chinese businesses in South Sudan hope that private security companies will be more involved in providing physical security, while others would like to see more participation by their government in the training and equipping of South Sudan's security forces.

Interviews with Chinese personnel in South Sudan suggest that cooperation between their businesses and the Chinese Embassy in Juba lacks a clear, formalised system that can add to the security of Chinese nationals in South Sudan. (24)

As well as using private security firms in a limited way, Chinese companies have begun addressing their insecurity concerns by developing stronger compliance management systems. They are also conducting more widespread and more thorough risk analysis as well as upgrading their emergency response systems.

6.8.3 Chinese Corporations and the Government of South Sudan

The majority of Chinese corporations in South Sudan are working under with the GoSS and the government is usually contractually responsible for the security of the Chinese entity. This is particularly true for private Chinese enterprises working on infrastructure projects.

Complaints by the Chinese about a lack of security makes it appear that either the GoSS is not able to address security issues or is not willing to fulfil its contractual obligations. (26) In fact, several private Chinese businesses operating in South Sudan believe that the GoSS prefers to deal with state-owned enterprises rather than private Chinese companies. The GoSS, they say, seems to believe that dealing with enterprises with close ties to the Chinese government (that owns them) gives the GoSS an extra level of financial security vis-à-vis a given project.

6.8.4 Managing Expectations

A major factor causing the insecurity of Chinese companies in South Sudan is poor

expectations management among these companies, the GoSS and local communities.

The conditions for Chinese businesses in South Sudan seems to have improved a bit since independence. Local communities now appear to accept the Chinese presence more than they did in previous years. Yet, despite the fact that the Chinese and the South Sudanese both realise that economic and political cooperation best serves their mutual interests, tensions and historical grievances remain. (27) Major differences in expectations among the GoSS, the Chinese, and local communities contribute to conflict and insecurity for all three. In both the oil and infrastructure sectors, for example, the three constituencies have differing expectations regarding the employment prospects Chinese companies can offer locals.

In the oil sector, local communities near oil fields provide casual, unskilled labour. In a recent development, local communities have begun to expect that better paid, higher-status jobs should be filled by local elites, even though they lack experience and training. Companies (both Chinese and others) are unable to meet this expectation, and may cause local communities to turn against oil companies, adding to their insecurity. (17)

Chinese companies operating under contracts with the GoSS expect that the government will take care of their physical security. Where they are in joint ventures (JVs) they also expect that government relations will be handled through the organisational structures of the JVs will have a government representative on the board of directors.

In some cases the GoSS expects local communities to accept the presence of the Chinese without further demands, as these would have been met by the Constituency Development Fund or the Oil Task Force. But both these GoSS organisations have failed to deal with community needs in a comprehensive manner.

6.8.5 Unresolved Issues between South Sudan and China

China remains a critically important partner for South Sudan. But at the centre of their relations several very important matters that need to be address are festering quietly. These relate to the spread of light arms within South Sudan, engagement in the oil sector, Chinese loans, rows over infrastructure projects and historical grievances.

These concerns are made much worse by a lack of communication between Chinese businesses, the Chinese government and their South Sudanese counterparts.

It will only be when expectations are managed effectively and thus better met can security and the prospects for development improve.

6.8.6 Challenges and Opportunities for Chinese Enterprises in South Sudan

According to Jiang Hengkun, Associate Professor, Institute of African Studies, Zhejiang Normal University, Chinese enterprises in South Sudan face a variety of challenges, including:

(33)

- an unstable local investment and operating environment, and their own limited capacities,
- a need to develop mechanisms to prevent conflicts, to enhance their public image, actively fulfil their social responsibilities, and improve their treatment of local staff.

To help Chinese businesses in South Sudan, the Chinese Government needs to:

- update its regulations for overseas enterprises,
- give the private sector more guidance on working overseas,
- boost the consular protection it provides Chinese businesses in South Sudan,
- enhance its efforts to support peace and security in South Sudan, and
- use public relations to promote a better understanding of China among South Sudanese.

At the same time, the Government of South Sudan needs to:

- adhere to stable policies and regulations that don't change constantly without warning,

- safeguard the lawful rights and interests of foreign enterprises, and
- control better effects that foreign investments have on local communities.

6.8.7 Unstable Bilateral Relations

Chinese enterprises in South Sudan are affected by politics at the national-level and the country's tense relations with Sudan to the north. For example, in 2012 South Sudan shut down its oil production due to its row with Sudan. Armed conflict in Heglig-Panthou followed.

Many matters, such as how oil revenues and debts should be shared, territorial disputes and the demarcation of their borders, support for rebel groups, and whether the international community should have a role in negotiations, are yet to be settled. These unresolved issues could easily make bilateral relations much worse.

The effects of the bad blood between the two countries has been very serious for Chinese companies operating along the border between South Sudan and Sudan. In 2008, nine CNPC employees were snatched from blocks 1, 2 and 4. In January 2012, 29 Chinese Sinohydro employees were taken from a construction site in Southern Kordofan State by the Sudan People's Liberation Movement-North (SPLM-N). (32)

Kidnapping Chinese staff may be a way for Sudanese rebels to blackmail the GoSS. As South Sudan gets most of its revenues from oil exports, the shutdown of oil production could stymie the development of the country. At the same time it would also have an adverse effect on the continuing engagement of Chinese oil majors in South Sudan.

All these factors mean that the security environment in many areas outside Juba is very fragile. (23) For this reason, most Chinese companies choose to only operate in Juba.

6.8.8 Crime

The government is unable to provide security in many areas of South Sudan. As a result

foreign enterprises are being targeted by criminal gangs. The security risks are highest for outdoor projects such as construction as these very exposed to attacks by armed robbers. But even in Juba, the offices of Chinese companies have been attacked. In April 2013, two armed robberies were committed against Chinese businesses during which office staff were beaten and money, computers, mobile phones and other items were taken. (10)

Chinese enterprises in South Sudan face two major security challenges:

[1] Their security capabilities are limited. To operate in South Sudan, Chinese security firms require a special permit from the GoSS. Thus Chinese companies rely on local security firms, while the GoSS provides police and troops to guard the oil fields.

Some construction companies rely almost fully on local security services. For example, the privately-owned Zhonghao Overseas Construction Engineering Company hired armed security guards from Veteran Security Services Limited, which is licensed in South Sudan, to protect its projects. Other Chinese entities, including the China Friendship Hospital in Juba, employ local police under contract.

[2] The local judiciary lacks the ability or motivation to protect the interests of Chinese companies. Local protectionism means Chinese companies are in a weak position when they become involved in disputes with South Sudanese citizens.

6.8.9 Challenging Policy Environment

There are times when Chinese companies find the creation and execution of policy by the GoSS very testing. The government, it seems, devises new policies without warning, announces them on radio or TV, and then brings them into force the following day.

When it is having a row with Sudan over oil revenues, the GoSS threatens to suspend existing oil contracts. This worries the oil companies so much that they won't invest further.

The GoSS once banned all foreign-operated water projects, which led to severe water shortages.

Taxation is another challenge. In 2012, when oil production was halted the GoSS, hoping to make up for lost oil revenues, increased taxation on foreign companies. This 'short-term' tax measure is still in operation. Persons working in construction have said that the GoSS continues tax the importation of building materials heavily despite South Sudan's urgent need for infrastructure. (28)

6.9 What Chinese Companies Need to Do

There are three things Chinese companies could do to improve their standing in South Sudan:

1-Explore mechanisms to prevent conflicts. Chinese enterprises should work with civil society and international organisations to establish early warning systems in order to prevent conflicts from flaring up.

CNPC is one company out of several that say they have worked with an international consulting company to assess political risks, improve their sensitivity to conflicts and enhance their abilities to respond to crises. This exercise given them the ability to see potential hazards and prepare for potential disputes and hostilities.

2-Enhance self-image and actively fulfil social responsibilities. Chinese enterprises need to be fully aware that

Local communities have high expectations of the benefits the operations of Chinese companies will bring them. These expectations are often unrealistic. Thus the Chinese need to use public relations to ensure that local people understand properly what they are doing and how they will benefit the local community. They need to communicate these matters clearly to

dampen down hyper-expectations, learn the local language and understand local customs and culture, and actively promote their own image and soft power.

Rather than simply flaunting the benefits they are bringing to the area, Chinese firms should try to develop along with the communities in which they operate. Mutual development is quite an effective way to protect their investments and is also the only basis for developing South Sudan in the long-term.

3-Improve treatment of local staff. Chinese employees of Chinese companies have been victims of robbery and theft, partly because of the maltreatment of local employees by these enterprises. Chinese company staff need to learn how to be friendly, humble, more disciplined and better able to communicate. They need to treat local staff better by providing more training opportunities and improving their welfare. Chinese enterprises should also try to hire more South Sudanese as corporate managers.

6.10 What the Chinese Government Needs to Do in South Sudan

There are five things the Chinese government could do to improve matters in South Sudan:

1-Strengthen consular protection. Because of understaffing and limited experience in South Sudan, the Chinese Embassy is unable to protect Chinese enterprises and citizens there. It also has a very limited capacity to handle security incidents. The Chinese Government needs to reinforce its consular protection in diplomatically important but unstable countries such as South Sudan.

2-Improve regulation of enterprises operating overseas. Regulations issued by the Chinese government are often poor and not very effective. As a result, some of the Chinese companies operating in South Sudan are not sufficiently qualified or experienced in the work

they are supposed to be doing. This reflects negatively on the image of all Chinese companies in South Sudan and on the perceived quality of the infrastructure they are building.

The Chinese Government thus needs to improve the effectiveness of the regulations governing overseas working to prevent technically and managerially inadequate companies from harming China's overseas reputation. Specialised agencies to help companies when they run into difficulties should be established. The Chamber of Commerce or other private entities could help coordinate and protect the interests of Chinese enterprises.

3-Provide more guidance to the private sector. Compared to state-owned entities, private enterprises tend to be less capable of taking care of themselves as they lack sufficient government supervision. The Chinese government, through its embassy in South Sudan, needs to guide private Chinese enterprises. The embassy could organise training for their executives to improve their knowledge of the host country. These executives could, in turn, train their middle managers and front-line staff.

4-Increase efforts to support peace and security. The Chinese Government should be more dedicated to South Sudan's peace and security within the framework of the Forum on China-Africa Cooperation through, for example, improving local livelihoods, promoting reconciliation between South Sudan and Sudan, and encouraging South Sudan to improve its overall investment environment.

5-Promote better understanding of China. The Chinese Government should organise cultural and educational exchanges between people in China and South Sudan. To promote Chinese culture, they should set up Confucius Institutes or Chinese teaching centres in colleges and universities like the University of Juba.

6.11 How the Government of South Sudan can Improve Relations with

Outside Investors

There are three essential things the government needs to do to improve South Sudan's investment climate:

1-Develop more stable policies and regulations. The GoSS should, once and for all, identify South Sudan's most pressing problems and develop the policies and regulations needed to resolve these issues. Stable policies such as a sound monetary and exchange rate policy, a clear tax policy, and an effective labour law will create a stable investment environment.

2-Protect the legitimate rights and interests of foreign enterprises. The GoSS needs to be fully aware of how important foreign companies are to its national development. Given the serious shortage of infrastructure, the government should value the role of Chinese enterprises in this sector more and provide preferential policies, improve the investment environment and get rid of local protectionism. The GoSS should also regulate the behaviour of its law enforcement authorities to ensure the legal rights of foreign companies are protected.

3- Better manage the effects of foreign investments. The GoSS should coordinate with all the stakeholders who are affected, including local communities, before allowing new projects to begin operations. In particular it should resolve land disputes to ensure all parties share the benefits of foreign investment.

Attracting foreign investments while, at the same time, improving people's livelihoods is conducive to national stability and unity. It also creates a positive relationship between foreign companies and the local population, thus ensuring a constructive interaction between foreign investment and domestic development.

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Chapter Seven

In this section of my thesis I explore that activities of Lundin Energy (as it is now called) and its activities in what is now South Sudan, and the recurrent implications that the company was involved in war crimes and crimes against humanity.

This will help answer research question 4, how governments (in this case home governments) deal with the CSR practices of their international oil companies.

7.1 Backstory – Lundin in South Sudan

Lundin Petroleum AB is a Swedish oil company that was formed in 2001 from Lundin Oil, a Lundin family company. Lundin Petroleum's main activity is oil production and exploration in Norway. It is one of Europe's largest independent oil companies. It changed its name to Lundin Energy AB in April 2020.

In 1997, according to a report published by the European Coalition on Oil in Sudan (ECOS), an alliance of NGOs, Lundin Petroleum [then Lundin Oil] signed a contract with the government of Sudan for the exploration and production of oil in the Block 5A concession in southern Sudan. At that time Block 5A was in a war zone and was not under the full control of the government of Sudan. (4)

The second Sudanese civil war (1982 to 2005) was fought by the government of Sudan in the north, the Sudanese People's Liberation Army (SPLA) in the south, and other armed groups. Fighting between the government and armed groups supported by the SPLA for the control of Block 5A was intense. Lundin, along with OMV (of Austria) and Petronas (of Malaysia), allegedly paid the Sudanese army and other allied non-state armed groups to drive the local population out of the oil-rich areas of their concession. Almost 200,000 civilians were forcedly

displaced, and up to 12,000 died according to ECOS. These people were killed through hunger, exhaustion, or diseases related to the conflict. Other crimes allegedly carried out to clear the land included murder, rape, enslavement, torture, indiscriminate attacks, pillage, and the recruitment of child soldiers. (2)

Satellite pictures of the areas where the three oil companies were working, taken between 1997 and 2003, show a spectacular drop in the use of agricultural land.

7.2 War Crimes and Crimes Against Humanity

The members of the Lundin Consortium active in Block 5A (in what was then Sudan) from 1997 to 2003 were:

- **Lundin Oil AB**, a publicly traded Swedish company, had a 40.375% share of the concession. It first entered Sudan in 1991 (as International Petroleum Corporation) so it had a good knowledge of the country and how it was run by a violent oppressive government.
- **OMV (Sudan) Exploration GmbH**, had a 26.125% interest in the concession. It is a 100% subsidiary of Austria's OMV AG, a publicly traded Austrian company in which the Austria state has a 31.5% interest. (12)
- **Petronas Carigali Overseas Sdn Bhd**, which is wholly-owned by the state oil company of Malaysia, Petroliam Nasional Berhad, had a 28.5% interest in the concession in 1997. It bought out Lundin's stake in 2003 and now plays a leading role in Sudan's oil industry. (11)
- **Sudapet**, which is wholly owned by the Sudan Ministry of Oil & Mining had a 5% share in the concession. It holds similar minority shares in all Sudan's blocks.

7.2.1 Was the Lundin Consortium complicit in international crimes?

According to the International Commission of Jurists, companies may be complicit in international crimes when:

- they contribute to the perpetration of the crimes,
- when they know or should know that their conduct would be likely to do so, and
- when they have close relations with the principal perpetrator of the crimes or with the victims. (1)

Before Lundin signed the concession contract for Block 5A, the violent displacement of populations, that included murders and other crimes, were committed in other oil areas in Sudan. Thus it is unlikely the Lundin Consortium would not have been aware of the abuses committed by the armed groups upon which they relied for security.

All members of the consortium that was going to develop Block 5A would have been aware that the GoS had a well-documented track record of disregarding human rights and using torture and murder to forcibly displace local populations to secure oilfields. Yet Lundin and its partners in the consortium went ahead, signed the contract and continued to work with the GoS, its army and militias. (9)

Of course it is for a competent court to decide on their guilt or otherwise, the reports make it seem likely that Lundin and its partners were guilty of complicity in war crimes and crimes against humanity, and also provided material support to militias involved in gross abuses of human rights. Presumably the board of directors of Lundin are all intelligent men, so having been involved in Sudan since 1991, they must have realised that their activities in Block 5A were likely to ignite a war in which international crimes were extremely likely to be committed.

The Consortium commissioned a road and a bridge that enabled government armed militias to attack civilians living in and near Block 5A. By murdering or displacing the population, these raids enabled the Lundin Consortium to exploit its concession. The consortium, whose members must have been aware of the reputation of the GoS, failed to require the

government to guarantee that it would respect its international legal obligations. In other words, the consortium must have consciously accepted that it had a potential liability for complicity with any crimes the GoS would commit.

7.3 Traditional Lifestyle and Compensation for the Victims of Block 5A

The area of Block 5A is mainly inhabited by Nuer people. The population also includes some Dinka.

The Nuer are agro-pastoralists. They depend on cattle herding, farming, and fishing for their living. Their lifestyle revolves around the period drought and flooding of the land. In December, the beginning of the dry season, most Nuer communities migrate to the rivers with their cattle. They camp in the wet-lands, graze their animals on the nutrient-rich vegetation alongside the rivers and streams of the seasonally flooded grasslands (*toic*), and fish. The area along the White Nile in Block 5A provides rich *toic* for the Nuer. At the start of the rainy-season, the communities head back to their permanent settlements where they cultivate sorghum and other crops. When the rains end in September, the cattle start being driven back to the camps in the *toic*. Young men go with the cattle to the *toic*, along with women to milk the cattle. Other family members stay behind to cultivate crops until December or January.

The period October to December is the best time to assess the overall use of agricultural land, as grazing in the *toic* has started while land around the permanent settlements is still being cultivated.

7.3.1 Nuer Villages

Brick buildings are only found in the larger towns in Sudan and South Sudan. A typical village includes several extended families living in various compounds. Each compound usually contains a few circular huts made of mud with thatched roofs (*tukhuls*) as well as larger housing

(*luaks*) for their livestock. (8) Similar huts in which the Nuer camp during the dry season are built along the river but these are flooded during the raining season.

7.3.2 Evidence of Destruction

Detailed accounts of the atrocities committed against civilians in and around Block 5A from 1997 to 2003 are contained in many publicly available reports.(14) Proceedings in the US District Court for the Southern District of New York (*The Presbyterian Church of Sudan et Al vs Talisman Energy Inc and Republic of the Sudan Civil Action No 01 CV 9882*) brought to light security reports for the oil companies, testimonies from militia commanders and army orders to forcibly remove the population away from the oil areas. An analysis of satellite images of the use of agricultural land in Block 5A, before, during and after the time the Lundin consortium was there, shows that there was an 80% reduction in agricultural land use while the oil companies were operating there and the GoS was trying to secure the area.

Substantial changes in land use and settlement patterns between 1994 and 2004 can be seen in a comparison of Landsat images. Enormous population movements began in 1998 after the Lundin consortium began operations and reached their peak in 2002 when the Government's attempts to secure Block 5A

had degenerated into full-scale war.

7.3.3 The Right of Compensation

The murdered and displaced Nuer and Dinka peoples of Block 5A definitely have a right to compensation. The international legal principle that persons whose rights have been violated and who have suffered damage as a result have a right to remedy and reparation has been well established. The right of compensation for victims of gross violations of international human rights law and serious violations of international humanitarian law has been explicitly confirmed

by the UN General Assembly. (7)

In fact, article 4 (5) of Sudan's Comprehensive Peace Agreement (CPA) and Article 208 of the country's Interim National Constitution established a specific right to compensation:

Persons whose rights have been violated by oil contracts are entitled to compensation. On the establishment of these violations through due legal process the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused. (10)

But to date no compensation has been paid under the CPA by the GoS or members of the Lundin consortium to the peoples of Block 5A for several reasons:

- Though the people affected know that they are entitled to compensation they don't know how to go about getting it.
- They don't have the financial means to hire lawyers and start legal proceedings.
- A fully functioning court system does not really exist in South Sudan.
- The few courts that do exist do not have the resources to hear such claims.

7.4 Government Responsibilities

Under international law countries are obliged to prevent violations of human rights law and to ensure that their own internal criminal law penalises international crimes. Shame to say, the home governments of the three international members of the consortium, Sweden, Austria and Malaysia, did nothing after they received credible warnings that decisions made by their nationals allegedly contributed to violations of human rights and the commission of international crimes.(13) At the very least they need to investigate fully the alleged violations of international law by their national oil companies and their failure, as home governments, to prevent or end them. They also have grounds to investigate whether the Lundin consortium provided financial and material aid to the Sudanese army and militias that were responsible for the commission of

international crimes and gross violations of human rights.

Lundin denies that it violated the norms of international law. It also denies that it had participated in or had, or ought to have had, knowledge of any of the illegal acts that have been reported publicly. In November 2008, Lundin stated that it “has at all times acted in accordance with all applicable local and international laws and its operations have been, and continue to be, conducted in a manner that seeks to have a positive influence on the country and people of Sudan”. (3)

7.5 War in Block 5A

The *Baggara* (aka Chadian Arabs) are a grouping of Arab ethnic clans that inhabit part of Africa's Sahel mainly between Lake Chad and southern Kordofan. They number more than six million. They consider themselves to be brave and valiant warriors. They go to war on horses or in armoured personnel carriers. In the 1980s, the government of Sudan had hired the Baggara as mercenaries to drive Nuer and Dinka ethnic groups off their land in order to clear Blocks 1, 2, and 4 for oil development. It seems they did so again in 1997.

Block 5A had been relative peaceful until the Lundin consortium signed an Exploration and Production Sharing Agreement for the area with the Government of Sudan in February 1997. Having been working in Sudan for several years already, Lundin, OMV and Petronas must have known that oil exploration in neighbouring blocks had triggered violent conflict. The Lundin consortium's activities in Block 5A were centred on Ryer, which is in the *toic* of the Jagei Nuer people, ten miles west of the Nile. The Consortium renamed the site Thar Jath and set up its operational headquarters on the Nile nearby, where it also based a seismic operation.

Médecins Sans Frontières (MSF), (15) an international, medical humanitarian organisation that delivers emergency aid to people affected by armed conflict, epidemics,

pandemics, natural disasters and exclusion from healthcare was working in the area at the time. MSF reported that, as soon as the Lundin Consortium began exploring for oil, Block 5A became the scene of intense fighting and gross human rights violations. To secure the oilfields, the GoS violently depopulated the area using a military campaign. In the early 1990s it had followed the same playbook in Blocks 1, 2, and 4. (17)

By 1999, the Khartoum Peace Agreement was dead and buried because of the actions of the GoS. In May 1999, the Consortium's Thar Jath installation was attacked by the South Sudan Defence Forces (SSDF) under the leadership of Dr Riek Machar, a prominent Nuer politician and one of the signatories of the Peace Agreement. This was just after the consortium had finished drilling its first well. (18) Operations were suspended for eighteen months.

7.6 The Story of Mary Chabak

Skye Wheeler, a journalist based in Sudan, interviewed Mary in Juba on the 23rd of August 2008, six years after she and her family had been displaced. (6)

Mary Chabak was from Thar Jath. She lived there with her husband and his first wife in the home of her husband's grandmother. The two wives have 12 children between them. They were displaced to a new place called Guk. Before they left, they were told they had to leave Thar Jath because it was a dangerous place, that if they did not go they could die along with all their cows. The local commissioner talked to them and they believed him so they decided to leave for Guk. It took them three hours of walking to reach Guk. More than two hundred people were displaced to Guk. Mary expressed her dislike of Guk, complaining that it is full of water and very muddy when it rains, and that there are a lot of mosquitos. (16)

Mary's family left two *luaks* and three *tukhuls* behind in Thar Jath. They lost fifty cows during the move. She had to carry everything on her head, on her back, and in her hands. She

still has pains from all that carrying. They lost the trees they had planted and their seeds for crops. In Thar Jath they used to plant mango, neem, guava, bananas, and lemon trees to sale. They could earn up to 300 Sudanese pounds a day. But now the family is not growing any crops as they cannot plant because of the water. Also there is no market nearby and no road. In Thar Jath they could also catch fish, which they could sell for 10 to 20 Sudanese pounds depending on it size. Every day they used to sell fish, and milk too. They could earn 2,000 Sudanese pounds in a year.

Mary said that they are unable to earn a living in the new place, Guk. In Thar Jath they had everything they needed. But the new place cannot support them. Now they don't have money to buy medicine and there is no hospital nearby. Now the Nuer have to take their cows far for grazing as there is too much water as well as too many mosquitoes in Guk. Over the past two years her family has lost 206 cows. Mary finished her interview by saying, "Now we cannot go back, a company is there, they have taken our place. (5) And in fact we don't want to go back to Thar Jath because it is full of the buildings of the company and the water is said to be bad. I don't know of anybody who has asked for compensation. I know I have the right for compensation but there is no way. We know only it is to be done with the commissioner and state governor. Maybe one day there will be something to come to us."

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Chapter Eight

This final chapter looks at human rights as understood in the West and in China, and how these concepts have been evolving recently.

The influence of the UN's Guiding Principles on Business and Human Rights (2011) on the respect for human rights exhibited by governments and international oil companies is examined thus answering research question 5.

8.1 Backstory – Human rights in China

Ideas on human rights in the West and in China have developed along widely divergent paths. In the West, the development over centuries of modern individualism has favoured the individual over the collective. In China, by contrast, the collective is favoured over the individual and has been for millennia.

This favouring of the collective in China can be traced back to Confucius, an ancient philosopher, who emphasised the importance of responsible behaviour by the individual within a community system in which the role of the individual was subordinate to the need for social cohesion. However, in the view of Confucius, the behaviour of the individual should be self-regulated and not coerced. Later in imperial China, an amalgamation of Confucianism and Legalism (the idea that the enforcement of strict laws is necessary to discipline the inherent selfish nature of man) took place. In the late 19th century, as the imperial rule of the Qing waned, the concept of individual human rights began to develop when socio-political elites in China and Japan, seeing the colonial advances of Western powers, began to evaluate the utility of the social norms underlying the governance of their imperial systems. They felt that Western political systems functioned better than their own systems based on Confucianism.

The Eastern elites selected the Western liberal traditions that were most compatible with

traditional Chinese philosophy. But, to maintain social order, Chinese ideas on reform did not extend to allowing individuals to clash with the purposes of the state. The reformers merely took a few emancipatory ideas from the West and fused them into traditional Chinese philosophies.

8.1.1 The Republic of China and the United Nations

The Republic of China (ROC) was established in 1912. The Chinese Communist Party (CCP) was founded in 1921. The ROC's nationalist government lasted until 1949 when it lost its civil war with the CCP under Mao Zedong. The nationalist government under Chiang Kai-shek fled to Taiwan while the CCP set up its socialist government in mainland China.

The modern Western-based international human rights regime began after the end of World War II. The ROC was a founding member of the United Nations in 1945 when it signed the UN Charter and became one of the five permanent members of the UN Security Council. In 1946, the UN formed the Commission on Human Rights (rebranded as the UN Human Rights Council in 2006), which was originally made up of 18 elected members of whom Chang Peg-chun represented the ROC as vice chairperson. Chang (1892-1957) was a Chinese born academic, philosopher, playwright, activist and diplomat. (1) His personal philosophy combined traditional Chinese Confucian philosophy with Western liberal rights under the influence of the American philosopher John Dewey who lectured in China from 1919 to 1921.

The first task of the Commission on Human Rights was to draft the Universal Declaration of Human Rights (UDHR). Chang was able to guide the differing sides toward reconcilable universalism by means of philosophy and ethics rather than politics.

8.1.2 The People's Republic of China and UN Human Rights Standards

The PRC did not take over the ROC's seat at the UN until 1971 when US President Nixon dumped Taiwan in favour of trade with China. In the meantime, the ROC had signed but

not ratified the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), adopted by the UN General Assembly in 1966. On joining the UN, the PRC deemed all actions previously taken by the ROC at the UN as illegal. (2) China did not fully re-join the UNCHR until 1982 nor did it sign any international conventions on human rights (HR). However, the PRC's first Constitution of 1954 incorporated the majority of the HR principles laid out in the UDHR. Ideologically however, the CCP had a distinctly different view of what constituted human rights.

For the party, it was the duty of the state to protect individuals from being oppressed by imperialism and the bourgeoisie by guaranteeing subsistence rights. These mainly included the right to work, the right to education, the right to social welfare, and security. Liberal notions of individual human rights, according to the CCP, lead the working classes away from realizing the oppression inherent within any society ruled by the bourgeoisie. Against this philosophical backdrop, attributable to the Chinese communal tradition, communist China established a constitution that included mostly unambiguously worded rights from the UDHR. All four constitutions of the PRC have included freedom of speech, of the press, of assembly, of association, of procession, of demonstration, of religion, to vote and stand for elections, as well as freedom from arbitrary search of person or home, and arrest and detainment.

Although the Chinese constitutions have all included certain rights guaranteed to all citizens, they have also included various corresponding duties that have tended to take precedent over the rights. As a clear example of the supremacy of the state, article 51 of the constitution states: *The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens.* These legal declarations served as a way for the

government to pay lip service to a growing international consensus in favour of human rights. The PRC recognized its obligations to guarantee certain rights to its citizens. But is also asserted its right to decide whether to override these rights. This attitude was fuelled by mistrust of western intentions.

To an extent, the CCP regarded human rights advocacy as part of a covert agenda to undermine its rule run by the United States called 'peaceful evolution'. *Peaceful evolution* is still a political euphemism in China that refers to foreign attempts to cripple the Chinese state.

The most problematic idea for the PRC within the emerging international human rights regime was the idea that individual rights should take precedence over state sovereignty. The PRC seemed aware of its appeal from early on and reserved the right to define and adhere to its own standard of human rights.

8.1.3 The Five Principles of Peaceful Coexistence and the Three Worlds Theory

The Sino-Soviet split in 1960 was the breaking of political relations between the PRC and the Union of Soviet Socialist Republics (USSR). It was caused by ideological divergences that arose from their different interpretations of Marxism–Leninism and Khrushchev's denouncement of Stalinism.

Following the split, China aligned itself with the Non-Aligned Movement (NAM) which consisted mainly of the newly independent former colonies of Africa and Asia. NAM interpreted the UN Charter as a basis for a peaceful post-colonial world derived from non-intervention in the internal affairs of nations. China supported its calls for sovereignty to be respected as much as human rights. This was included in the *Five Principles of Peaceful Coexistence*, a set of maxims adopted by China and India in 1954 to promote non-intervention in the domestic affairs of states. These principles guide Beijing's foreign policy today.

In the 1960s, Mao abandoned the bipolarity of the Cold War in favour of a *Three Worlds Theory*, which sought to establish a framework a ‘Third World’ of recently decolonized states in Africa, Asia and Latin America, with China at the centre. China and the rest of the developing world jointly saw that the emerging international HR regime posed a danger to their self-determination in that it tended to erode the centralized state in favour of groups and communities demanding separate political identities. A rigid adherence to Western notions of HR in a developing state would threaten its development and thus its security. China and the developing countries did not want these notions to take precedence over sovereignty in international law.

During the 1980s, though China remained wary of the general Western bent of the international human rights regime, it increased its participation within the UN’s HR framework, partly to understand it better and partly to look good as a founding member of the UN and a member of the UNSC. China had more to gain from an involvement in the human rights regime than in avoiding it altogether. This generated a lot of goodwill towards China. All this goodwill ended when the Chinese authorities violently suppressed a pro-democracy protest by students in Tiananmen Square in June 1989, drawing widespread condemnation from many countries and international institutions. The UN sub-commission on HR passed a resolution condemning the actions of the Chinese authorities, a first for a permanent member of the UNSC for human rights violations. China’s image around the world was tarnished by Tiananmen.

But then in 1990, as a member of the UNSC, China avoided censorious resolutions at the UNCHR in exchange for not opposing actions taken against Iraq for invading Kuwait in 1990. Then China expanded its presence at the UNCHR and began pressuring non-western states to vote against resolutions critical of its human rights record. Initially, Asian states were more likely to support China than African ones. In 1992, when the member count of the UNCHR went

from 43 to 53, China lobbied heavily for the extra seats to be given to less developed states, figuring out they would be more sympathetic to its interests. This effort along with subsequent pushes to improve diplomatic relations with its Asian neighbours, as well as many African states, ultimately resulted in a more favourable environment for China within the UNCHR. The result was that ensuing annual resolutions critical of China's human rights record failed to garner enough votes. Before and during the 1993 World Conference on Human Rights in Vienna, the China backed interpretation of human rights (as just a policy issue of sovereign nation states) made enormous gains in Asia and elsewhere in the Global South.

Not every developing state agreed with China's version of subsistence and collective rights as the font for human rights. But most supported the general principle of non-intervention by other states. This undercut the fundamental universality embedded within the Western notion of human rights and paved the way for greater North-South divide on the matter.

8.1.4 21st Century China is Asserts its Version of Human Rights More Vigorously

In 1994, President Clinton delinked China's record on human rights from its status as a 'Most Favoured Nation' with regards to tariffs on trade. By 1996, the country had largely managed to separate politics and economics from human rights concerns in its relations with most of the world, including the West. Steady economic growth during the 1990s also protected the CCP from any major domestic backlash. Now it could use outside criticism to nurture a culture of nationalism around the one-party state. By the turn of the millennium, China had already made it clear that any further attempts at shaming the country for its human rights record would have serious consequences. A clear correlation between the decline in willingness to criticize China and its burgeoning economy was visible. To develop solidarity with the Global South, the country began saying that resolutions targeting China were also indirectly targeting

other developing countries.

The *Global South* is made up of Africa, Latin America and the Caribbean, Pacific Islands, and developing countries in Asia, including the Middle East. It includes Brazil, India and China, which, along with Indonesia and Mexico, are the largest Southern states in terms of population and land area.

Eventually in 1997, China united with like-minded states pushing for reform within the UNCHR. Europe dropped all pretence of public outrage over Beijing's human rights abuses and adopted a unified stance within the quiet diplomacy framework of the EU-China Human Rights Dialogue. Much of the democratic world, except USA, eventually limited their criticisms of China's human rights record to the CCP's preferred path of diplomacy rather than confrontation, essentially moving human rights from the very public arena of the UNCHR towards more private bilateral discussions. After the 9/11 attacks on the US in 2001, a new international security environment made a closer partnership between the USA and China necessary. Consequently, human rights concerns took a backseat while China helped the Global War on Terror.

During this time, China developed a favourable view of expanding the role of the UN in peacekeeping and humanitarian intervention, but only under the authority of the UNSC and the consent of the host-state. This tepid breach of its sovereignty-first philosophy signalled that China was willing to entertain intervention in certain cases. But China's reticence in debates on the "Responsibility to Protect (R2P)" highlighted how unwilling it is to stray away from its core principle of non-intervention.

The makeup of the UNHRC is favourable to China's interests, as most members are from Africa and Asia. This allows China to play a more assertive role in the UNHRC. This was shown when China addressed the UNHRC in September 2011 after the Arab Spring started. China

stated on behalf of 32 states the rights and duties of governments to maintain social stability and criticised any attempt to use human rights to undermine territorial integrity and sovereignty. Another statement warned how internet freedom could be misused to promote hateful and offensive ideas, provoke violence, and undermine the state. The CCP was worried the Arab Spring might spread to China in the form of a Jasmine Revolution. News of the events was strictly limited in China.

The 2010s have seen China more assured of its position within the UNHRC. After decades of advocacy in favour of prioritizing sovereignty and stability over human rights, as well as economic, social and cultural rights over civil and political rights, the country now has much of the developing world on its side. According to a Human Rights Watch report, China is using its position to limit any criticism aimed at it, even going so far as to manipulate the process of the Universal Periodic Review (UPR), a key UNHRC mechanism that regularly monitors the human rights development of all member states of the UN.

Chinese state media and private media are claiming that the era of western domination over human rights is finished. China, it seems, is finally in a position to export its 'Five Principles of Peaceful Coexistence' successfully to an international audience.

Lately, China, Russia and a number of other states had moved to defund the Human Rights Up Front initiative, an office set up by Secretary-General Ban Ki-moon in 2014 to encourage greater synergy among relevant entities of the UN in order to report or prevent large-scale human rights abuses. China and Russia recently agreed with Donald Trump's decision to decrease funding for the UN, with the aim of reducing HR monitoring posts in vulnerable states, such as South Sudan and the DRC. These developments signal China's intentions to become more involved in shaping the future of the UN HR regime and limit its scope. Considering its

perceived status as the most powerful advocate for the cause among developing nations, along with its successful history of defying the West, China is now in a position to change the prevailing narrative on how best to preserve human dignity and security.

In summary, the PRC has interpreted ancient Chinese philosophy and history in a way that supports its authoritarian political culture. Since 1971, China has worked steadily to carve out a space within the UN favourable to its interests. It has built a postcolonial narrative that implies that universal human rights are Western incursions into the domestic sphere of underdeveloped sovereigns and has been preaching this in the international arena since the 1990s. The recent successes of this campaign show the strength of China's overall influence in the present international system and its ability to project its steadfast belief in the sovereign right of states to dictate and define what constitutes human rights.

8.2 The Western concept of human rights

The Western concept of human rights is diametrically opposed to the Chinese concept. The West puts the individual on top, at least in theory, with the collective below.

The fundamental document of the modern concept of human rights in the West is the UN Charter which was signed by the founders of the United Nations in June 1945. In Article 1, para 3, the UN Charter commits signatory states to *reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small*. Article 1 goes on to require states *[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*. (3)

Under the Western concept, human rights are inherent to all humans, regardless of their

nationality, race, gender, religion, language, or sexual orientation. In the past, only the rights of privileged groups of people were respected. This changed in 1948 when the UN General Assembly adopted the Universal Declaration of Human Rights. This document is considered the foundation of international human rights law. The UDHR has inspired a rich body of legally binding international treaties on human rights.

The Universal Declaration begins by recognising that *the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world*. It declares that human rights are universal, to be enjoyed by all people, no matter who they are or where they live. The Universal Declaration includes civil and political rights, such as the right to life, liberty, free speech and privacy. It also includes economic, social and cultural rights, including the right to social security, health and education. It forbids slavery and torture, and protects livelihoods and property rights such as ownership of land.

The Universal Declaration is not a treaty, so it does not place legal obligations on countries. But it is an expression of the fundamental values shared by all members of the international community. It has had a profound influence on the development of international HR law. As the UDHR has been consistently invoked by countries since 1948, some say it is now binding as part of customary international law.

The UDHR is the first document in what is known as the International Bill of Human Rights:

- *Universal Declaration of Human Rights (1948)*
- *International Covenant on Civil and Political Rights (1966)*
- *International Covenant on Economic, Social and Cultural Rights (1966)*
- *Optional Protocol to the International Covenant on Civil and Political Rights*

- *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*
- *Convention on the Elimination of All Forms of Racial Discrimination 1965*
- *Convention on the Elimination of All Forms of Discrimination against Women 1979*
- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*
- *Convention on the Rights of the Child 1989*
- *Convention on the Rights of Persons with Disabilities 2006*

As the UDHR is merely a declaration, it is not binding on the signatories. But, it does have strong moral suasion. By contrast, international conventions are treaties that are legally binding on contracting states.

The Western concept of human rights and its enforceability in international and national laws is well known and understood by educated Westerners and especially the executives of businesses that operate internationally. Oil and gas companies such as Lundin Energy of Sweden would have been fully aware of their duties and obligations under international law as well as Swedish law.

8.2.1 Extraterritorial Jurisdiction

Extraterritorial jurisdiction (ETJ) is the legal ability of a government to exercise its authority beyond its national boundaries. Any authority can claim ETJ over any external territory they wish.

ETJ may refer to a country's laws extending beyond its boundaries in the sense that they may authorise the courts of that country to enforce their jurisdiction against parties appearing before them in respect of acts they allegedly engaged in outside that country. For example, many countries have laws which give their criminal courts jurisdiction to try prosecutions for piracy, sexual offences against children, computer crimes and/or terrorism committed outside their national boundaries, as well as human rights abuses and crimes against humanity. Sometimes such laws only apply to their own nationals, at other times they may apply to anyone.

On 18 October 2018, the Swedish Government authorized the Swedish Prosecution Authority to proceed to prosecution in a case regarding the activities of two corporate directors within Swedish oil company Lundin Oil (now Lundin Energy) in Sudan (now South Sudan) between 1998 and 2003. The company's chief executive and chairman were charged with aiding and abetting gross crimes against international law in accordance with Chapter 22, Section 6 of the Swedish Penal Code. The legal framework available to Swedish prosecutors in fulfilling the obligation is Chapter 22 Section 6 of the Swedish Penal Code, which applies to international crimes committed before 1 July 2014 – such as the Lundin case – and the Act on Criminal Responsibility for Genocide, Crimes against Humanity, and War Crimes which applies to international crimes committed after 1 July 2014.

In Europe, corporate accountability for atrocities and gross human rights violations is gaining traction as the international and national regulatory systems, previously deemed

underutilized, shift into gear. The charges against the senior executives of Lundin carry a prison sentence of up to ten years or life. The Lundin case should make corporate actors aware of the personal dangers they face by being involved in international crimes abroad.

8.3 The Guiding Principles on Business and Human Rights

Globalisation and international commercial activity of the last few decades have grown exponentially. The most powerful actors in the world today are businesses, not governments. Their reach extends far beyond that of states. Businesses have the power to affect human rights (both positively and negatively) in the areas in which they operate. How to control the effect of businesses on human rights is now a serious challenge for the international community because corporate social responsibility (CSR) is largely based on non-binding rules.

In 2005, the UN appointed a Special Representative on Human Rights and Business Enterprises, aka the Special Representative of the Secretary-General (SRSG). The SRSG's mandate included identifying and clarifying standards of CSR and accountability for MNCs and other business enterprises regarding HR. The SRSG produced two major documents: *The Protect, Respect and Remedy Framework* (Framework) in 2008 and the *Guiding Principles on Business and Human Rights* (Guide) in 2011. Both were endorsed by the Human Rights Council of the United Nations. (4)

The Framework established a structure of three principles or pillars:

[1] the state's responsibility to protect ... ie the state has primary responsibility to protect its citizens

[2] business's responsibility to respect ... ie a social expectation that is not a legally binding obligation

[3] access to remedy ... ie the duty of states to enable their citizens to seek and obtain

remedies against human rights abuses by businesses.

These three major principles are founded on the legal jurisdiction of each state and they do not create additional legal responsibilities. In both documents, corporate responsibility is seen as voluntary, which clearly marks the difference between the obligations of states and corporate responsibilities.

8.3.1 The duty of States to Protect

This *duty to protect* means that states are the key actors in enforcing the human rights obligations of companies through their policies, requirements of accountability and international commitments. This implies that states have certain responsibilities towards how businesses conduct themselves. It is up to states to enforce human rights in the conduct of businesses, ie they have a duty to pass laws and regulations that oblige companies to conduct their operations in ways that respect human rights.

There is nothing new in this duty of states to protect, no new obligations or aspirations. The Guide merely reiterates existing international law concerning the duties of states.

8.3.2 Corporate Responsibility to Respect

The term *responsibility to respect* highlights the fact that international law does not impose legal obligations on multinational corporations. What the term *responsibility to respect* does is impose two voluntary obligations on business. The first of these self-contradictory expressions is ‘to avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur’. The second obliges businesses to voluntarily undertake due diligence and to ‘seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts’.

The Guide does require businesses to not only comply with national legislation but also with all applicable law, respect human rights and honour internationally accepted human rights. All this is voluntary which means that there is a complete absence of legislative teeth to back up what is little more than a polite request. Complicity is the one area where international corporations can be put at serious risk as *international tribunals have developed a fairly clear standard for criminal aiding and abetting liability; knowingly providing practical assistance, encouragement or moral support that has a substantial effect on the commission of a crime* as mentioned in the Guide. The Guide has not added to this threat.

8.3.3 Access to Redress

Proper access to remedies is vital if victims to human rights abuses are to be compensated for the harm they have suffered. The remedies mentioned in the Guide include national judicial systems, grievance systems operated by companies and international mechanisms. The Guide sets out stipulations for making sure that both state and corporate systems are effective. Effectiveness requires, among other things, that systems for redress be legitimate, accessible, equitable, predictable, and transparent. These standard are aimed at the states who are responsible for ensuring that these requirements are present not only in the states' judicial systems but also in the systems of remedy non-state businesses set up.

8.3.4 Social Expectations

Aside from the legal systems they operate under, corporations are constrained by social norms and moral considerations as well as by what their stakeholders (inside or outside) expect of them. In other words, businesses are obliged to do what society expects them to do, ie they must respect human rights because those who grant their social licence to operate require them to do so.

This concept of a social licence has been very effective in enabling consumers to stop buying goods such as clothing from manufacturers with a reputation in running ‘sweat shops’ in the Far East. But it has had minimal effect on MNCs in the oil and gas and other extractive industries. Only the laws of the marketplace can enforce social expectations.

8.3.5 Assessment

The Framework and the Guide were praised by businesses because the obligations it placed on business were purely voluntary. However NGOs involved in the human rights field were less than enthusiastic. The International Federation for Human Rights, which represents over 150 human rights organisations, has criticised the lack of effective remedies for victims and the complexities surrounding the obligations of states to prevent abuses committed by companies overseas. Human Rights Watch views the Guide as doing nothing than endorsing the status quo which, it says, is ‘a world where companies are encouraged, but not obliged, to respect human rights’.

The Guide has been criticised for leaving a variety of issues untouched. Several NGOs have criticised it for not providing sufficient guidance to governments and businesses, and for unexplained terms. For example, what exactly is meant by “appropriate steps” and “appropriate action” when referring to state regulation of business activities is not explained. The Guide leaves key questions unanswered. As regards the obligations of states, what can victims do if their government is unwilling or unable to provide access to remedies? This can happen when businesses are operating in poor or post-conflict countries or countries in the throes of civil war or countries with corrupt governments.

The lack of legal obligation concerning the responsibility of businesses to respect civil rights makes it highly likely that victims of abuse will be unable to access any effective remedy.

The Guide notes that states have an existing obligation to respect, promote and fulfil human rights. In other words, their responsibilities are no more than they are under current international law. In addition, the documents do not mention any obligation for states to regulate corporate behaviour outside its territory, while extraterritorial jurisdiction is now exercised by several European countries such as Sweden and France.

The Framework and Guide are obviously quite insufficient to deal with the many issues relating to the adverse impacts of business on human rights.

8.4 Conclusions

The mining industries are involved in extracting a range of primary materials, such as oil and gas, gold, diamonds, and other precious metals and minerals from the earth. These substances are vital inputs in many industries including energy, plastics, jewellery, mobile phone components and so on. Hence they are expensive and sell for far more than the cost of extracting and processing them.

The primary motive of firms operating in extractive industries appears to be profit. Regulations and law, and the norms of human rights, are often viewed as nothing more than constraints on profit-generating activities. The extractive industries are, at scale, mainly operated by multi-national corporations. These MNCs mainly operate in countries other than their own. For example, Lundin Energy is a Swedish company that operates in Norway as well as other foreign locations further abroad.

8.4.1 Hard Law V Soft Law

Hard law is traditional, legally binding law, ie it refers to legal obligations that are binding on the parties involved and which can be legally enforced before a court. The scope of hard law includes contract law, criminal law, and many other categories of law. (5) *Soft law*, by

contrast, is a term that is used to denote agreements, principles and declarations that are not legally binding. Soft law instruments are predominantly found in the international sphere.

In the context of international law, the term "soft law" covers such elements as:

- most resolutions and declarations of the UN General Assembly
- statements, principles, code of practice etc often found as part of framework treaties
- quasi-legal policy instruments of the EU, eg recommendations, codes of conduct, guidelines etc
- other non-treaty obligations

Soft law instruments are non-binding agreements that have the potential to morph into hard law in the future. For example, non-treaty agreements can have a direct influence on the practice of states. To the extent that they are successful in doing so, they can lead to the creation of international customary law.

8.4.2 Conclusions on Lundin

Customary international law poses a direct legal obligation on companies in international humanitarian law. However, enforcement is a matter for national courts. But corporate responsibility to respect human rights consists of nothing more than an established international principle and a variety of instruments of soft law.

As discussed in this thesis, Lundin contributed to an adverse impact on human rights in Block 5A for several reasons:

- Lundin's presence in the area aroused the cupidity of local and regional militias, a very foreseeable happening
- Lundin constructed infrastructure (a road and a bridge) that enabled the perpetrators of

human rights abuses (ie the Sudanese army, the Baggara and other militias) to gain access to Block 5A and wreak havoc on the indigenous population, another foreseeable happening

- Lundin took the side of one of the parties, the government side, when hiring militias as guards, and
- Lundin failed to act appropriately when the situation deteriorated drastically.

The adverse impact on human rights was severe because of its scale and irremediable character of the damages caused by Lundin's activities. Mary Chabak, who was displaced from Lundin's area of operations, said at the end of her interview (see section 7.6) that her people cannot go back because the company is there (ie, has taken over the land) and the water is now bad. Before it signed its exploration and production-sharing agreement with the Sudanese government, the company did not have a policy statement as to how it should respect human rights. Such a statement would have helped Lundin to recognise the potential risks of its operations in Block 5A. Nor did Lundin undertake any due diligence concerning the adverse effects its presence and operations would have on the human rights of the local inhabitants. It only assessed the financial and geological risks relating to its contract and ignored the risks to human rights. During the operation of its contract, the company did not heed the reports and warnings of numerous NGOs and various stakeholders. When writing their reports Lundin executives turned Nelson's blind eye to what was happening on the ground.

Almost two decades later, Lundin have yet to provide a remedy to the victims of the abuses of human rights in which it was complicit. In fact, the company have not yet accepted that it had an adverse impact on human rights in Block 5A, and so have not accepted any responsibly nor have they offered any remedy or compensation for the grievous nature of their actions and lack of actions.

8.4.3 Conclusions on China and CNPC

Sections 8.1 and 8.2 of this thesis have shown that the Western concept of human rights is radically different from the Chinese concept of human rights. Does this mean that their behaviour as regards human rights by executives of Chinese MNCs should be judged by different criteria than the criteria used to judge the executive of Western MNCs?

Since 1995, China National Petroleum Company (CNPC) has participated in a series of exploration and development projects in Blocks 1, 2 and 4, Blocks 3 and 7, Block 15 and Block 13, as well as in refining, chemical and trading projects. The latter include Khartoum Refinery, Khartoum Petrochemical Plant and Petrochemical Trading Company. Currently, it's estimated that CNPC owns half of Sudan's refineries. CNPC has also undertaken several major petroleum engineering construction and oilfield service projects. Investments by CNPC since 1999 exceed \$15 billion in Sudan. Between 1970 and 1990s, China gave Sudan large interest-free loans for building roads and bridges, and for improving its agricultural sectors, particularly rice production. Sudan is now exporting more than one millions barrels of oil a day to China as China's ever-expanding economy becomes ever more dependent on imports of oil in order to function. South Sudan and Sudan are now strategic sources of energy China.

The wealth generated by its exports of oil was not spent by Khartoum for the benefit of the Sudanese people. Instead the regime of Omar Al-Bashir (who took power in a military coup 1989 and was deposed in 2019) used this wealth to fund civil wars in southern Sudan, southern Kordofan, Blue Nile, Abyei and Darfur. In these places the Khartoum government carried out many atrocities some of which have been labelled as a genocide or crimes against humanity. China and Chinese companies supplied the weapons. These weapons included helicopters, thousand pound high-altitude bombs, ammunitions in massive quantities, helicopters for

transporting troop, fighter jets, anti-personnel mines, anti-tank mines, anti-aircraft guns, 122mm towed howitzers, battle tanks, 37mm antiaircraft guns, among many other types.

Since Khartoum began signing deals with Chinese' oil companies, Sudan has acquired more weapons to increase the intensity of its civil wars. In 2005, Sudan's imports of arms from China were more than 90% of its exports of oil to China in that year which were worth more than \$3 billion. A Human Rights report stated that, by the end of 2005, small arms imports to Sudan had risen to more than 680 times of what Sudan's arms imports were in 1999. During the same time military cooperation between Beijing and Khartoum was intensifying. It is evident that the relationship between the two countries is a symbiotic one. China needs the oil and Sudan needs the weapons to survive. So it has to protect Sudan from the wrath of the international community at the UN in order to ensure a long-term supply of the energy its roaring economy needs.

At the UN China vetoed UN Security Council resolutions condemning President Bashir and the violent actions of his regime actions in Sudan and South Sudan. For example, in 2004, China threatened to veto UNSC resolution 1564 which called for an oil embargo on Sudan. In 2005, China used its influence to block resolutions that gave the International Criminal Court the authority to bring Bashir and others behind war crimes to justice. China also refused African Union and the United Nations calls to deploy a large contingent of peacekeeping forces in Western Sudan or the Darfur region. Yet, Beijing was quick to send 400 Chinese soldiers to guard its oil's wells in Sudan.

After the independence of South Sudan and the eruption of renewed violence, Beijing seemed to realise that Khartoum lacked the ability to resolve its civil wars and that this was perpetuating cycles of conflict between the centre and the periphery. Beijing also realised that it had shared interests with the USA and the wider international community in bringing peace and

stability in Sudan and South Sudan. China realised that instability in Sudan could have a negative impact on its interests in that country and so it needed to play a more engaged role to resolve the ‘internal’ conflicts. As a result, China began to support more coercive external measures to bring about stability on the ground in Sudan and South Sudan, provided these measures did not include ‘regime change’ but did include the rewarding of positive behaviour rather than being solely punitive in nature. As always, China’s main focus was on protecting its economic interests in Sudan and South Sudan.

Based on a recent researched by Centre for Research on Epidemiology of Disasters (CRED), there is a general consensus that violence caused by the Khartoum regime has resulted into death of thousands of people, destruction of homes, displacement of thousands if not millions of people into refugee camps, the interruption of livelihoods which has resulted in hunger and starvation, and war related diseases. The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that 396,563 people died as a result of war in Darfur alone. If you add the 2.5 million who died during war between Sudan and South Sudan and thousands of people killed in Southern Kordofan, Blue Nile and Abyei not to mention the millions displaced in these regions, then, the number would be very much higher.

So, regarding the question posed at the beginning of this section, are CNPC and/or China guilty of abusing human rights under the Western or Chinese concept? CNPC is a state-owned corporation and (its subsidiaries) is one of the largest industrial businesses in China. As such it is controlled by the Chinese government and must obey the policies and dictates laid down by the Chinese state. Thus they may be considered as a single entity in answering the question.

Chinese officials have always known the scale of the destruction in Sudan as a result of China’s business there. The indigenous people living in China’s oil fields in blocks 1, 2 and 4

were cleared out using the same tactics as were used to clear block 5A on behalf of the Lundin consortium. The massive arms sales by China to Sudan would have been equally well known to Chinese officials and their end-use obvious. The deep ties between the senior officers of the two countries' militaries could only have been used to discuss tactics and advice, and provide training opportunities for Sudanese police, armies, militias, and air-force pilots. Thus, without a doubt, under the Western concept of human rights, China and CNPC are guilty at a very minimum of complicity with human rights abuses carried out by the state organs of Sudan.

As regards the Chinese definition of human rights, China's constitution grants citizens the same rights more or less as Western constitutions but with the added text that the exercise of these rights may not infringe upon the interests of the state, etc. Under the Chinese concept of human rights, it was the duty of the state to protect people from being oppressed by imperialism by guaranteeing subsistence rights, such as the right to work, the right to education, the right to social welfare, the right to security and so on. Providing a foreign country with the arms to deny these rights to its citizens is hardly in accord with China's concept of human rights. Thus, under its own concept of human rights, China is guilty, at a minimum, of aiding and abetting the abuse of human rights.

8.5 Recommendations

Multinational corporations have unprecedented power and influence, even greater at times than that of the governments of the states in which they operate. Their impact on people's lives and communities in which they operate can be enormous, for both good and evil. On the good side, jobs are created, new technology improves lives and investments in local communities can result in real benefits for indigenous populations. On the bad side, MNCs may exploit weak laws and unenforced domestic regulations with devastating effects on the ways of life of

indigenous peoples without giving them anything in return, such as an alternative way to make a living in return.

In many cases, traditional livelihoods are destroyed as land and water supplies polluted, and populations are violently expelled from the lands of their ancestors. In industries in the extractive sector, such as oil and gas, these kinds of human rights abuses are particularly bad. Their impact can be especially severe for indigenous peoples because their way of life and their identity is often closely related to their land. When indigenous communities try to get justice they are often thwarted by:

- ineffective legal systems,
- lack of information,
- corruption in governments and the courts, and
- powerful alliances between governments and MNCs.

As a result, sadly, MNCs soon learn that they can exploit local communities without consequences.

8.5.1 Possible Solutions

All countries in the world need to pass legislation that effectively quells human rights abuses by multi-national corporations:

Due diligence ... all businesses should be required by law to identify possible human rights abuses and how they can avoid them before signing a contract. The due diligence needs to be recorded in writing and signed by the board before the contract is signed, and deposited with a government authority.

Protect rights beyond borders ... because MNCs operate across borders, their national governments need to pass laws claiming extraterritorial jurisdiction (see 8.2.1 above) which will

enable their courts to try cases involving human rights abuses beyond their national boundaries.

Personal accountability ... executives of MNCs must be made personally liable in criminal law for decisions made that lead to human rights abuses or corporate complicity in human rights abuses.

Boards of directors ... must be made criminally liable for conspiracy to commit human rights abuses where their company has committed human rights abuses on the assumption that they know or should have known that abuses were taking place or were likely to take place.

Information on available remedies ... to ensure that local communities in the areas in which they will be operating will know how to seek redress, MNCs should, after they have signed a contract but before they begin operations, print and distribute leaflets in their national language translated into local languages detailing the rights of the local inhabitants to seek remedies for any human rights abuses they suffer and showing how they may contact the national government of the MNC involved.

To have these recommendations implemented in practice, the European Union needs to be prevailed upon to draw up the required legislation and ask for that legislation to be incorporated in the national laws of EU members. In addition, the United Nations needs to use its good offices to prevail upon countries to pass the required national legislation.

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END

Appendix – 1: Abbreviations & Acronyms

AGIP	AGIP, an Italian oil company
APICORP	Arab Petroleum Investment Corporation
AU	African Union
CCP	Chinese Communist Party
CIA	Central Intelligence Agency
CNCP	China National Petroleum Corporation
CPA	Comprehensive Peace Agreement
CPOC	Chinese Pioneer Operating Company
CSR	Corporate social responsibility
DPOC	Dar Petroleum Operating Company
DRC	Democratic Republic of the Congo
EAP	Employee Assistance Programme
ECE	Economic Commission for Europe
ECOS	European Coalition on Oil in Sudan
EJT	Extraterritorial jurisdiction
ER	Emergency response
FOCAC	Forum on China-Africa Cooperation
Framework	The Protect, Respect and Remedy Framework (refers to human rights)
GNPOC	Greater Nile Petroleum Operating Company
GoS	Government of Sudan
GoSS	Government of South Sudan
GRI	Global Reporting Initiative
Guide	Guiding Principles on Business and Human Rights
HR	Human rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOC	International oil company
JOC	Joint operating company

MNC	Multi-national corporation
MSF	Médecins Sans Frontières
NAM	Non-Aligned Movement
NGO	Non-government organisation
NSCC	New Sudan Council of Churches
ONAC	Oil and Natural Gas Corporation Limited
ONGC	Oil and Natural Gas Corporation Limited
PRC	People's Republic of China
ROC	Republic of China
SASAC	State-Owned Assets Supervision and Administration Commission
SOE	State owned enterprise
SPLA	Sudan People's Liberation Army
SRRA	Sudan Relief and Rehabilitation Agency
SRSR	Special Representative of the Secretary General (of the UN)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council
UPR	Universal Periodic Review
USA / US	United States of America
USSR	Union of Soviet Socialist Republics
VP	Vice-president
WBCSD	World Business Council for Sustainable Development

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- (11) 'This deal resulted in an after tax profit contribution to Lundin Petroleum of SEK [Swedish krona] 720 million, out of total net profit of SEK 930 million and clearly demonstrates the value that can be generated through successful exploration drilling', in: Lundin Petroleum, Annual Report, 2003, <https://www.lundin->

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- (12) OMV Aktiengesellschaft, OMV on the move in 2004: Annual Report, p 110
- (13) ECOS interview with Christine Batruch, Vice President Corporate Responsibility Lundin Oil AB, Autumn 2000. <https://www.hrw.org/report/2003/11/24/sudan-oil-and-human-rights>
- (14) Johnson, Douglas H., Expert Report, July 26, 2005, US District Court for the Southern District of New York, File 01 CV 9882 (DLC), p. 6.
- (15) Médecins Sans Frontières (April 2002), p 9 <https://www.msf.org/south-sudan>
- (16) Elsevier Engineering Information, “Lundin Oil: Thar Jath first exploration well in Sudan establishes a significant new oil discovery”, May 20, 1999. www.fataltransactions.org
- (17) Human Rights Watch (2003), p. 581 <https://www.hrw.org/report/2003/11/24/sudan-oil-and-human-rights>
- (18) South Sudan Independence Movement (SSIM) renamed South Sudan Defence Force (SSDF) in 1997 and eventually Sudan People’s Democratic Front (SPDF). https://nointervention.com/archive/Sudan/aboutsudan.com/democracy/peace_process/ssim_garang_bloody_dictator.htm

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Chapter Eight

- (1) *China's Participation in the International Human Rights Regime: A State Identity Perspective* by [Chen Dingding](#), *The Chinese Journal of International Politics*, Volume 2, Issue 3, Summer 2009, Pages 399–419, <https://doi.org/10.1093/cjip/pop002>
- (2) https://en.wikipedia.org/wiki/Charter_of_the_United_Nations
- (3) https://en.wikipedia.org/wiki/Charter_of_the_United_Nations
- (4) <https://unpaiddebt.org/>
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