

RECONCILING BUSINESS AND HUMAN RIGHTS IN CHINA

*Jernej Letnar Cernic**

Abstract

This paper critically analyses the normative framework for business, sustainable development and human rights in China. Outlining voluntary and binding approaches for corporations doing business within China and Chinese state-owned enterprises operating outside Chinese borders, it attempts to draw out lessons to facilitate understanding of the current state of affairs. The main objective of this paper is to examine whether the often-expressed statement- China does not care about business, sustainable development and human rights - holds any validity.

China's approach to business and human rights or corporate social responsibility is at times contradictory and therefore, much remains to be wished for. In the past decade China preferred to concentrate on the voluntary approaches to the regulation of potential human rights violations, by business whereas it neglected the binding approaches aimed at identifying, developing and improving corporate human rights obligations, corporate accountability, and victims' access to justice. However, there are signs that China has been softening its approach in recent years, particularly in the sphere of extraterritorial regulation of conduct of the Chinese state-owned enterprises finally agreeing to participate in the work on the treaty on business and human rights.

It is further contended that China should reconsider its approach and attempt to equally pursue both voluntary and binding approaches in business and human rights. A focus on victims' access to justice is essential for China to ensure the legitimacy of its policies in business and human rights among the wide Chinese and global publics. At the same time, Chinese corporations should firmly integrate human rights into their business operations and those of their business partners, contractors and suppliers through a vast array of preventive measures.

I Introduction

THE GLOBAL business environment has changed rapidly in the past few decades. Some corporations have faced sharp drops in revenues, whereas

* Assistant Professor of Law, Graduate School of Government and European Studies, Brdo pri Kranju, Predoslje 39, Kranj, Slovenia. The author acknowledges Francesca Lo Presti for her excellent research assistance.

others, particularly those from Asian and South American countries, have taken over the position once held by corporations from France, Germany, Japan, the United Kingdom (UK) and the United States (US). Chinese and Indian corporations have been particularly effective in climbing the ladder of the world's most successful corporations by revenue or profit. For instance, the 2014 Fortune Global 500 list includes 95 corporations from China,¹ 57 from Japan and 128 from the US.² China has in the last decades witnessed tremendous economic development thereby bringing better standard of living to the majority of its population. At the same time, business, sustainable development and human rights protection in China have not advanced as quickly as in the global business environment.

Chinese corporations are becoming increasingly aware of the importance of sustainable development and human rights for avoiding legal, financial and other risks and assuming a more competitive position in the marketplace.³ What is more, Wright argues that recent years have also seen a shift in Chinese government policy in relation to business and human rights and corporate social responsibility.⁴ Similarly, Juan Pablo Bohoslavsky, UN Independent Expert on the effects of foreign debt, has recently argued that there is a growing awareness within Chinese governmental, business and lending institutions about the need to have more robust social and environmental safeguard policies in place. Yet, market discipline alone is insufficient to ensure human rights compliant business conduct.⁵ However, it is no secret that corporations, especially transnational ones, have been

1 The paper refers to the People's Republic of China as China.

2 See Fortune Global 500, 2014, *available at* : http://money.cnn.com/magazines/fortune/global500/2013/full_list/?iid=G500_sp_full (last visited on Mar. 10, 2015).

3 See Raj Sapru Sustainable Urban Growth: Is Hong Kong a Model for China? , *available at*: <http://www.bsr.org/en/our-insights/blog-view/sustainable-urban-growth-is-hong-kong-a-model-for-china> (last visited on May 10, 2016); Arthur J. Hanson Environment and Sustainability: International Issues and China in China Council for International Cooperation on Environment and Development Annual General Meeting, International Institute for Sustainable Development (Nov. 23-25, 2012).

4 Kathryn Wright, Corporate respect for human rights in the Chinese context June 18, 2015, *available at*: <http://oecdinsights.org/2015/06/18/corporate-respect-for-human-rights-in-the-chinese-context/> (last visited on May 10, 2016).

5 See observations of Juan Pablo Bohoslavsky, Independent Expert on End of mission statement China on the effects of foreign debt United Nations Human Rights Office of the High Commissioner (June 29- July 6, 2015), *available at*: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16203&LangID=E>. (last visited on May 10, 2016)

allegedly involved almost daily in underdeveloped, third world countries and elsewhere in producing negative social impacts. It has also been widely reported that Chinese corporations have been allegedly involved in committing human rights abuses at home and abroad, particularly relating to labour rights, environmental pollution, freedom of expression and privacy violations.⁶

Complying with corporate social responsibility and sustainable development may provide Chinese corporations with access to new markets, which would otherwise remain closed. With this knowledge on board, this paper finds that the Chinese legal system fairs reasonably well on business and sustainable development at the formal level when compared to those of other developed economies and even democracies. What seems to be missing is its diligent and strict application in daily business practice. It seems that Chinese regulation of its own corporations needs to be put in line with the international human rights standards since Chinese corporations have been allegedly involved in several human rights violations, both within and outside the Greater China region.⁷

The paper first outlines the factual background of business, sustainable development and human rights in China. It then critically analyses the normative framework for business, sustainable development and human rights in China. It further analyses voluntary and binding approaches for corporations doing business within China and Chinese state-owned corporations operating outside Chinese borders, their application in practice, and attempts to draw out lessons to facilitate understanding of the current state of affairs. It identifies best practices and deficiencies of the Chinese normative framework and practice. Thereafter it explores China's approach to business and human rights and examines the right to access to justice for victims of human rights abuses in China. Arguing for a holistic approach for business, sustainable development and human rights in China, this paper proposes a mix of voluntary and binding approaches to human rights and business, emphasising legal obligations to protect human rights within and outside its borders, corporate obligations to respect, protect and full access to remedy.

6 See Executive Summary of Greater China Region, 'Time for Action: Business and Human Rights in Greater China' Aug. 26, 2014, *available at*: https://business-humanrights.org/sites/default/files/documents/Executive-Summary-Greater-China-Briefing-26-Aug-2014_0.pdf(last visited on Apr. 10, 2016).

7 *Ibid.*

II The factual background to business, sustainable development and human rights in China

China is the second largest world economy. It has grown in the last few decades on an average by 10%, although the growth has recently stalled.⁸ However, several Chinese economists have disputed such views.⁹ World Bank still considers it, despite scale and growth of its economy, to be a developing country.¹⁰ It reports, 98.99 million people still lived below the national poverty line of RMB 2,300 per year at the end of 2012.¹¹ The growth of Chinese economy has in the recent decades contributed to the creation of millions of jobs and to the increase in the living standard of population. It has also raised the level of protection of socioeconomic rights by complying with all UN Millennium Development Goals.¹² The economy has been mostly controlled by the state, which functions on the basis of one-party rule.

The origin of business and human rights/corporate social responsibility in China can be traced to the historical evidence of culture of diligence, honesty and charity among businessmen during Ming and Qing dynasties.¹³ For example, an edict issued in 1731 by an emperor of the Qing dynasty provides that the ideal way for a wealthy household to perpetuate itself included the need to be constantly vigilant, even in peacetime, in dispensing relief and aid to the poor.¹⁴ Such historical evidence is underpinned by the doctrine of harmonious society, which has been overly present in every corner of Chinese society.¹⁵

8 William Pesek, China's Economic Troubles Start to Spread *Bloomberg View*, July 15, 2015, available at: <http://www.bloombergvew.com/articles/2015-07-14/china-s-economic-troubles-start-to-spread> (last visited on Mar. 10, 2016).

9 Hu Angang, Embracing China's New Normal Why the Economy is Still on Track *Foreign Affairs* 8-12 (May-June 2015). For an opposing view see Zhiwu Chen, China's Dangerous Debt Why the Economy Could be Headed for Trouble *Foreign Affairs* 13-18 (May-June 2015).

10 See World Bank China, Overview Mar. 25, 2015, available at: <http://www.worldbank.org/en/country/china/overview> (last visited on May 10, 2016).

11 *Ibid.*

12 United Nations Millennium Declaration, G.A. Res. 55/2, UN GAOR, 55th Sess., UN Doc. A/RES/55/2 (Sep. 18, 2000), available at: www.un.org/millennium/552 e.poy (last visited on May 20, 2016).

13 Li-Wen Lin, Corporate Social Responsibility in China: Window Dressing or Structural Change 28 *Berkeley J. Int'l Law* 64 (2010), available at: <http://scholarship.law.berkeley.edu/bjil/vol28/iss1/3> (last visited on Apr. 20, 2016).

14 *Ibid.*; Teemu Ruskola, Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in a Chinese Perspective 52 *Stan. Law Rev.* 1599 (2000).

15 See for example, John Delury, Harmonious 148 *China Policy Review* 35-44 (Apr-May, 2008).

China's current approach to business and human rights has not been an isolated island in the divisive and sometimes emotional debates on how to more effectively reconcile human rights and business conduct.¹⁶ It seems that Chinese government's policies on business and human rights have preferred more voluntary initiatives in the form of the corporate social responsibility approach in the past,¹⁷ while at times neglecting more focused initiatives on improving hard law initiatives and enhancing victims' access to justice,¹⁸ particularly when it came to enforcing the accountability of Chinese corporations for an alleged human rights impact beyond Chinese borders. However, this has begun to change slowly. Chinese corporations are becoming increasingly aware of the fact that human rights protections should be placed at the centre of business operations. A small survey conducted by the Business and Human Rights Resource Centre appears to confirm this hypothesis.¹⁹ Liang Xiaohui, for instance, noted thus:²⁰

As Chinese companies become more international, the voice of stakeholders like NGOs is becoming stronger. As a result, Chinese companies are incorporating human rights into their management systems. Even within China they cannot avoid this topic.

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- 16 For an overview see, Shu Zhou, William Jiang, Xiaohong Quan, 'Corporate Social Responsibility and Sustainable Development in China: Literature Review and Case Analysis' 10 *Journal of Supply Chain and Operations Management* 1 (Feb., 2012); Zhang Hui, Ma Deying, 'Sustainable Development and Corporate Social Responsibility: The Role of Government in China', available at: <http://www.seiofbluemountain.com/upload/product/201005/2010qyjhy06a17.pdf> (last visited on May 10, 2016); US Chamber of Commerce, 'Corporate Responsibility and Sustainable Economic Development in China: Implications for Business' 2012, available at: https://www.uschamber.com/sites/default/files/legacy/international/files/17296_China%20Corp%20Social%20Responsibility_Opt.pdf (last visited on Apr. 20, 2016); Ramon Mullerat, 'Corporate Social Responsibility: A European Perspective' 13 *Miami-Florida European Union Center of Excellence* 6 (June, 2013), available at: http://aei.pitt.edu/43368/1/Mullerat_CSR_Europa.pdf (last visited on Apr. 20, 2016).
- 17 Po Keung Ip, 'The Challenge of Developing a Business Ethics in China' 88 *Journal of Business Ethics* 211-224 (April 2009). See also, Robert G. Peijun Duan Eccles, 'The State of Sustainability in China' 26(1) *Journal of Applied Corporate Finance* 76-84 (2014).
- 18 Surya Deva, *Access to Justice: Human Rights Abuses Involving Corporations* (China 104 (International Commission of Jurists, Geneva, 2011).
- 19 *Supra* note 6.
- 20 *Id.* at 5. Global Business Initiative, 'Sustainable Business and Investment in the Global Context: Rights, Risks and Responsibilities', Business Executives Conference, Beijing, China (Apr. 16, 2013).

International conventions are being translated into Chinese law and the enforcement of these laws is becoming more stringent. Chinese companies must comply, either voluntarily or involuntarily. This is why Chinese enterprises have a strong drive to respect human rights.

Furthermore, he argues that after a decade of promoting business and human rights in China, the concept of corporate social responsibility (CSR) and sustainability is now commonly braced by the Chinese government and businesses.²¹ Another development that can be observed in China in business and human rights field is that workers and civil society organisations have formed several bottom-up social movements to protest against environmental degradation, labour rights, public administration's corruption and other abuses of local and national power.²² They have become so vocal that local and national governments are not able to suppress them anymore. In this way, government and state-owned corporations have been forced to prioritise social, labour and anti-corruption concerns when deciding how to proceed with large investment and infrastructure projects. Such development can be interpreted together with the increasing support of China to various initiatives in business and human rights at the level of United Nations (UN).²³ Though China has advanced substantially in past decades in business and human rights, it seems that time is ripe to consider its strategy for the future.

In the last few decades, two prevailing approaches have emerged in global business and human rights – a voluntary approach based on corporate social responsibility, and a binding approach concentrating on the development of imperative national and international norms and corporate obligations and regulations, reducing the negative impact of business on human rights. China is no exception here. By focusing on the voluntary dimensions of business and human rights, one risks neglecting many of the normative processes that play an equally important role in the regulation of corporations. Some recent

21 Solveig Marie Igesund, Promoting business and human rights in China Norwegian Human Rights Centre, May, 13 2015, available at: <http://www.jus.uio.no/smr/english/about/programmes/china/news/business-and-humanrights.html> (last visited on May 10, 2016).

22 See for critical discussion, James Leung, Xi's Corruption Crackdown – How Bribery and Graft Threaten Chinese Dream *Foreign Affairs* 13-18 (May-June, 2015).

23 UN Human Rights Council, UN Guiding Principles on Business and Human Rights, 2011 part 4, available at: www.dichs.oug/document/publication/HR-IN.pdf (last visited on Apr. 20, 2016).

documents adopted in the past few years suggest that China and its public institutions are committed to finding a reasonable equilibrium between voluntary and binding initiatives.²⁴ Equipped with this knowledge, this paper submits that for Chinese regulation to be effective and legitimate, the only viable concept of law is a holistic approach that merges the voluntary with the more substantive hard law approach.

III The normative framework for business, sustainable development and human rights in China

Normative framework within China

National legal order could provide the primary layer of corporate obligations to observe human rights.²⁵ Such is also the case with China. Majority of national Constitutions provide protection for human rights, however the Constitution of the Peoples Republic of China, 1954 is somehow different as it places rights and duties on the equal footing. Article 33 of the Constitution makes this connection between rights and duties explicit: Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and other laws.²⁶ Constitutional protections apply also to legal persons such as corporations. It seems that constitutional protections can be invoked also in the horizontal relationships between private actors.²⁷

The 2013 Report of the UN Working Group on Business and Human Rights notes that while business enterprises generally do not have legal obligations directly relating to human rights emanating from international instruments, they will often have legal obligations resulting from state laws that incorporate international standards, or contractual obligations with regard

24 Ans Kolk, Pan Hong, *et.al.*, Corporate social responsibility in China: An Analysis of Domestic and Foreign Retailers Sustainability Dimensions Amsterdam Business School Research Institute (2010), available at: <http://dare.uva.nl/document/177592> (last visited on Mar.20, 2016).

25 See J Letnar ěrni , Direct Corporate Accountability for Human Right in J Letnar ěrni and Tara Van Ho (ed.), *Human Rights and Business: Direct Corporate Accountability for Human Rights* 10 (Wolf Legal Publishers, Hague, 2014).

26 Constitution of the People's Republic of China, adopted at the 5th session of the 5th National People's Congress and promulgated for implementation by the Announcement of the National People's Congress on Dec. 4, 1982. See also, Thomas Kellog, Constitutionalism with Chinese Characteristics? Constitutional Development and Civil Litigation in China 7 *International Journal of Constitutional Law* 215(2009).

27 *Qi Yuling v. Chen Xiaoqi* [Supreme People's Court of the People's Republic of China] 158 (2001). The case recognised the constitutional right of a citizen to education, name, identity, and reputation in China.

to respecting international standards.²⁸ Stephens notes that all domestic legal systems recognize that corporations can be held accountable for the harm they do to others.²⁹ This section examines several sources of domestic obligations for Chinese companies in civil/company law, criminal law and administrative law areas. It appears that China has employed piecemeal approach to corporate social responsibility and human rights.³⁰

A number of specific laws regulate the conduct of corporations. Among them, the principal role goes to the Company Law of the People's Republic of China, 2006 (PRC, 2006) which in article 5 provides that corporations in their business operation must abide by the laws, regulation, social and business morality and good faith rules, must accept supervision by government and the public, and must undertake social responsibilities.³¹ It is not entirely clear what is meant by social and business morality, but possibly human rights protections could fall under this category. The PRC, 2006 includes a number of other similar provisions.³² For instance, article 17 provides that companies shall protect the lawful rights and interests of their staff and workers, sign labour contracts with them according to law, participate in social insurance, and improve occupational protection so as to achieve safety in production. It further lays down that companies shall improve vocational education and on-the-job training among their staff and workers so as to enhance their quality. Those two provisions seem to aim at labour law obligations of corporations. Moreover, the PRC, 2006 in article 20 states that the shareholders of a company shall comply with the laws, administrative regulations and articles of association, and shall exercise the shareholders rights according to law. None of them may injure any of the interests of the company or of other shareholders by abusing the shareholders rights, or injure the interests of any creditor of the company by abusing the independent status of legal person or the shareholders limited liabilities.³³ PRC, 2006,

28 Report of the Working Group on the issue of human rights and transnational corporations and other business Enterprises, A68/279 Aug. 6, 2013, para. 19.

29 Beth Stephens, The Amoral of Profit: Transnational Corporations and Human Rights 20 *Berkeley Journal of International Law* 45, 64 (2002).

30 For a comprehensive overview see Surya Deva, *Access to Justice: Human Rights Abuses Involving Corporations India* 5-24 (International Commission of Jurists, Geneva, 2011).

31 Company Law of the People's Republic of China, 2006, art. 5.

32 See also, Minkang Gu, *Understanding Chinese Company Law* (Hong Kong University Press, Hong Kong, 2006).

33 *Supra* note 31, art. 20.

article 64 notes that where any of the shareholders of a company evades the payment of its debts by abusing the independent status of legal person or the shareholders limited liabilities, and thus seriously damages the interests of any creditor, it shall bear joint liabilities for the debts of the company.³⁴ The PRC, 2006 has codified the duties of directors,³⁵ however, they do not refer to the protection of interests of stakeholders or the community.³⁶ Chinese company law can, therefore, be compared with the statutes of most developed countries. However, the implementation remains deficient. Several provisions relating to corporations are also found in the food safety law and the mines safety and production safety law.³⁷ What is more, corporations are strictly monitored as to their compliance with the labour law legislations, whereas right to freedom of association in the form of trade union has still not been recognised.³⁸

As far as criminal responsibility for human rights goes, China recognises both, individual criminal liability for criminal offences and also corporate criminal liability. Article 30 of the Criminal Law of the People's Republic of China, 1979 provides that any company, enterprise, institution, State organ, or organization that commits an act that endangers society, which is prescribed by law as a crime committed by a unit, shall bear criminal responsibility.³⁹ China is, however, not a state party to the Rome Statute of the International Criminal Court. Apart from criminal responsibility, China provides non-criminal forms of corporate liability in the form of administrative liability that may be imposed on corporations for some offences against environment.⁴⁰

34 *Ibid.*

35 *Id.*, ss. 21(1), 148 and 149.

36 Surya Deva, Sustainable Development: What Role for the Company Law? 8 *International & Comparative Corporate Law Journal* 76-102, 95 (2011).

37 Law of the People's Republic of China on Safety in Mines, adopted at the 28th Meeting of the Standing Committee of the 7th National People's Congress on Nov. 7, 1992; and the Production Safety Law of the People's Republic of China, 28th meeting of the Standing Committee of the Ninth People's Congress, June, 29 2002.

38 *Supra* note 18 at 11-15. See also, Dana C Nicholar, China's Labour Enforcement Crisis: International Intervention and Corporate Social Responsibility 11 *St. Mary's Law Review on Minority Issues* 155 (2009); Marisa Anne, Pagnattaro, Is Labour Really Cheap In China? Compliance With Labour and Employment Laws 10 *San Diego International Law Journal* 357(2009).

39 Criminal Law of the People's Republic of China, 1979, art. 30.

40 Environmental Protection Law of the People's Republic of China, 2014 establishes in art. 6 that all units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment.

All in all, it seems that the Chinese national systems offer the growing support for corporate liability in increasingly more fields in law. What is clear is that legal culture has not yet followed the developments in the formal sources of law, thereby explaining few cases being brought against corporations. Nonetheless, there exists the formal legal complaints being brought against corporations. Notwithstanding these developments, the prospects of bringing claims against a corporation in China for the violation of human rights remain relatively low. A prosecution on the basis of the individual liability of corporate managers appears a more viable option in this context.

Extraterritorial normative framework beyond Chinese borders

China and its corporations have in the past two decades embarked on an far unprecedented investment conquest, particularly in rest of Asia, Africa and Latin America. More than 18,000 Chinese corporations were doing business in 177 countries at the end of 2011.⁴¹ They have mostly operated in extractive industries and in infrastructure projects.⁴²

The number has arguably, increased, since then. Chinese investment has brought investment, technology, capital and jobs to the countries of the global south. However, it seems not without causing negative consequences,⁴³ both to human rights and environment.⁴⁴ Particularly notorious has been Chinese foreign direct investment in African countries.⁴⁵ Most of that investment has been channelised through Chinese state-owned corporations. More specifically,

41 Global Business Initiative on Human Rights, Corporate Responsibility in the Era of the UN Guiding Principles at The China Responsible Business Forum 5 (2014), available at: <http://www.global-business-initiative.org/wp-content/uploads/2012/04/2015-02-17-China-Responsible-Business-Forum-Briefing.pdf>. (last visited on May 10, 2016).

42 See for example, James Thuo Gathii, Beyond China's Human Rights Exceptionalism in Africa: Leveraging Science, Technology and Engineering for Long-Term Growth 51 (3) *Columbia Journal of Transnational Law* 664-695(2013). Jonathan Watts, China's Amazonian railway threatens uncontacted tribes and the rainforest *The Guardian*, May 16, 2015, available at: <http://www.theguardian.com/world/2015/may/16/amazon-china-railway-plan> (last visited on May 11, 2016).

43 See Business and Human Rights Resources, Chinese firms' impacts abroad, available at: <http://business-humanrights.org/en/chinese-firms-impacts-abroad> (last visited on May 11, 2016).

44 Jonathan Watts, *supra* note 42.

45 See for example, Timothy Webster, China's Human Rights Footprint in Africa 51 *Columbia Journal of Transnational Law* 626-663 (2013).

Business and Human Rights Resources Centre notes that Chinese corporations have been allegedly involved in many abuses and the abuses most frequently occurred in Myanmar (Burma) (24%), Cambodia (9%), India (9%) and Democratic Republic of Congo (6%).⁴⁶ However, China is often reluctant to recognise and protect human rights extraterritorially. Therefore, it is necessary to map out the nature and scope of state obligations. Does China have normative extraterritorial obligations to regulate Chinese corporations in human rights field when they do business abroad? If so, what is the nature and scope of such obligations? In this way, the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 2011 in principle 9 provide:⁴⁷

[A] State has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following: a) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law; b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory; c) situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law.

However, the Maastricht principles do not specify what is the nature and scope of those obligations. Nonetheless, it appears that obligations of territorial states to ensure economic and social rights could be shared with that of developed or industrialized states, which could be duty-bearers of obligations of international assistance and co-operation as it derives from practice of international human rights bodies. The Committee on the Rights of the Child, 2011 (CRC) noted that when States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global

46 *Supra* note 6 at 4.

47 Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 2011, *available at*: http://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23 (last visited on May 10, 2016).

implementation.⁴⁸ To some extent, China recognises the human rights obligations of their state-owned companies who do business abroad. In 2008, it developed Guidelines to the State-Owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities, 2008 (SASAC 2008).⁴⁹ Those guidelines note in section 6 that CSOEs should enhance the awareness of CSR; actively implement CSR, setting example in legal and honest business operation, resource-saving and environment protection. CSOEs should also the model in building human-oriented and harmonious enterprise, and become the backbone of China not only in economy but also in CSR.⁵⁰ What do they include when referring to CSR? Chinese state-owned enterprises (CSOE) are requested to comply with a legal and honest way in business operation.⁵¹ This includes compliance with regulations and laws, public ethnics and commercial conventions, and trade rules and fulfilment of their tax obligations, undertake the interests of investors and creditors, protect intellectual property rights, keep business creditability, oppose improper competition and eradicate corruption in commercial activities.⁵² Aizawa argues that corporate social responsibilities are essential for the sustainable development of the SOEs. Among these responsibilities are legal and honest business operation, sustainable profits, innovation, resource conservation and environmental protection, duties toward employees well-being and development, community engagement, and reporting on implementation.⁵³ The SASAC 2008 is not a binding document, but it nonetheless provides an authoritative guidance for Chinese state-owned companies when they do business abroad. However, a detailed empirical study would be necessary in order to assess the added value in real life businesses environments. At least some examples illustrate that business practice is far away from the guidelines.⁵⁴

48 Committee on the Rights of the Child, 2011, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child UN Doc. CRC/GC/2003/5 (2003), *available at*: <http://www.rewoud.org/docid/453884/11>. (last visited on May 10, 2016).

49 Guidelines to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities, 2008 (SASAC 2008), *available at*: <http://en.sasac.gov.cn/n1408035/c1477196/content.html> (last visited on May 10, 2016).

50 *Id.*, s.6.

51 *Id.*, s.8.

52 *Id.*, s.8.

53 Motoko Aizawa, Going Out in Search of Oil and Gas: How should Chinese companies investing abroad tackle human rights challenges? Institute for Human Rights and Business, Mar. 24, 2015.

54 Sophie Richardson, China: Quashing Criticism at Home and Abroad *Human Rights Watch* (May 27, 2014), *available at*: <https://www.hrw.org/news/2014/05/27/china-quashing-criticism-home-and-abroad> (last visited on May 12, 2016).

Chinese government recently adopted a very advanced document entitled the, Guidelines for Social Responsibility in Outbound Mining Investments of the Chinese Chamber of Commerce and Minerals, Metals and Chemical Importers and Exporters (CCCMC).⁵⁵ These guidelines note in article 1.3 that corporations should respect human rights and comply with the eight fundamental conventions of the International Labour Organisation and the host country's labour laws, regulations, and standards.⁵⁶ The guidelines further recognise that Chinese corporations have obligations to protect and to comply with human rights in their supply chain. Article 1.6 provides that all companies should aim to promote a sustainable development of the overseas mining industry by continuously improving their performance in sustainability and by generating positive impacts from the industry, so as to jointly establish and optimize the responsible value chains for the development of the mining industry.⁵⁷ They even acknowledge the rights of indigenous people by noting that corporations need to protect the right for free, prior and informed consent of the local communities, including indigenous peoples.⁵⁸

In spite of their soft law character, the guidelines provide strong evidence of emerging obligations and commitments that Chinese corporations need to adhere to. Hathaway, for instance argues, that it is often that the content of international document that matters more than its standing.⁵⁹ By focusing on the normative and institutional aspects, one risks neglecting many processes such as this and other guidelines that play an equally important role in the regulation of corporations. As for the enforcement, the guidelines envisaged the establishment of a formal grievance mechanism for community issues which includes third party involvement,⁶⁰ which would focus on all stakeholders and affected parties, with special emphasis on the most vulnerable persons, groups, and organisations.⁶¹ It shall be legitimate, accessible,

55 China Chamber of Commerce of Metals, Minerals and Chemicals Importers & Exporters, *Guidelines for Social Responsibility in Outbound Mining Investments*, 2014, available at: <http://www.ihrb.org/commentary/in-search-of-oil-and-gas.html>http://www.srz.com/files/upload/Conflict_Minerals_Resource_Center/CCCMC_Guidelines_for_Social_Responsibility_in_Outbound_Mining_Operations_English_Version.pdf (last visited on Apr. 10, 2016).

56 *Id.*, art. 1.3.

57 *Id.*, art. 1.6.

58 *Id.*, art. 2.4.5.

59 Oona Hathaway, *Do Human Rights Treaties Make a Difference?* 111 *Yale Law Journal* 1935 (2002).

60 *Supra* note 55, 2.8.4.

61 *Ibid.*

predictable, equitable, transparent and rights-compatible, but not undermine legal mechanisms if criminal, commercial or labor laws and regulations are affected⁶² and shall allow for anonymous complaints to be raised in a safe environment.⁶³ Such commitments are laudable as they seem to suggest the provision of full-fledged access to justice for victims of human rights violations. But for the implementation, the guidelines envisage more or less voluntary implementation measures, among others, such as, providing trainings, workshops, exchanges, and other measures to strengthen the capacities of companies in implementing these guidelines,⁶⁴ assessing their social responsibility according to the principles and social responsibility issues of these guidelines,⁶⁵ and evaluation of CSR performance of Chinese companies engaged in outbound mining investments according to these guidelines and disseminate best practice.⁶⁶ It seems that China now recognises that its corporations are obliged to respect human rights extraterritorially. Such obligations are a negative right and thereby oblige China to refrain from interfering in the enjoyment of individuals' human rights both within and outside its territorial borders.⁶⁷ The extraterritorial obligation to respect suggests that states must undertake due diligence ensuring not only that they comply with human rights obligations, but that they additionally do everything possible to avoid causing harm to them. The measures that China can further adopt to ensure respect for the reasonable minimum core of human rights include: acknowledging them in external policies, constantly and consistently examining human rights situations where economic and social rights are at stake, effectively monitoring policies that protect economic and social rights, and implementing an effective monitoring system to ensure that economic and social rights are being implemented. States are also obliged to prevent and investigate violations, bring to justice and punish the perpetrators, and provide reparations for harm and injuries caused. The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights state in article 13:⁶⁸

62 *Ibid.*

63 *Ibid.*

64 *Id.*, art. 3.2.

65 *Id.*, art. 3.3.

66 *Id.*, art. 3.4.

67 See Int'l Hum. Rts. Instruments, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 (May 12, 1994).

68 *Supra* note 47.

States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.

Bohoslavsky argues that international human rights standards and guidelines are in particular relevant when China provides funding for projects in countries with high risks, experiencing internal armed conflicts, weak governance structures or a lack of effective enforcement of national and international law by national authorities.⁶⁹ Chinese corporations are in need of guidance on how to operate in difficult political and social environments in compliance with human rights applicable in the respective host country.⁷⁰ The UN Committee on Social, Economic and Cultural Rights (CESCR) urged China in June, 2014 to adopt a human rights-based approach to its policies of international cooperation, by: (a) undertaking a systematic and independent human rights impact assessment prior to making funding decisions; (b) establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries and to take remedial measures when required; (c) ensuring that there is an accessible complaint mechanism for violations of economic, social and cultural rights in the receiving countries.⁷¹ Moreover, the CESCR committee expressed concern about the lack of adequate and effective measures adopted by the state party to ensure that Chinese companies, both state-owned and private, respect economic, social and cultural rights, including when operating abroad (article 2, para 1).⁷² It therefore recommended China to, (a) establish a clear regulatory framework for companies operating in the State party to ensure that their activities promote and do not negatively affect the enjoyment of economic, social and cultural human rights; (b) Adopt appropriate legislative and administrative measures to ensure the legal liability of companies and their subsidiaries operating in or managed from the State party's territory regarding

69 *Supra* note 5.

70 *Ibid.*

71 See UN Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, E/C.12/CHN/CO/2 (June 13, 2014), available at: <http://www.reworld.org/docid/53c77e.html> (last visited on May 11, 2016).

72 *Id.*, para 13.

violations of economic, social and cultural rights in the context of their projects abroad.⁷³

It seems that there are quite few an abysses between formal commitments and their applications in every-day business conduct. Bohoslavsky notes that Chinese companies and lending institutions appear occasionally to have been difficult to approach or insensitive to respond to concerns raised⁷⁴ and lack of an open and responsive dialogue with persons protesting against development projects can frequently be a seed for larger trouble, enhance social tensions, and generate additional conflict.⁷⁵ He concludes that Chinese corporations have contributed in several countries to serious violations of human rights, including forced evictions, arbitrary detention, and violations of the right to life.⁷⁶ Further, China has also adopted Guidelines on Environmental Protection in Foreign Investment and Cooperation, 2013. These guidelines advise Chinese companies doing business abroad to respect host country environmental protection laws, religions, and customs, and ensure rights and interests of workers; in addition, they suggest that companies follow established principles and practices of international organizations and multilateral financial institutions.⁷⁷ As SASAC guidelines, they are also of non-binding nature and their practical value would have to be verified empirically.

All in all, states must undertake extraterritorial due diligence over corporations on their territory to ensure that they comply with human rights obligations regarding the reasonable minimum core of economic and social rights, and do everything possible to avoid causing harm. It appears that Chinese state practice is emerging in relation to extraterritorial obligation to respect.

IV China's approach to business and human rights within the United Nations

The UN Human Rights Council adopted the UN Guiding Principles on Business and Human Rights in June, 2011.⁷⁸ They rest on the three pillars of

73 *Id.*, para 13(b).

74 *Supra* note 5.

75 *Ibid.*

76 *Ibid.*

77 *Ibid.*

78 Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on

protect, respect and remedy framework.⁷⁹ China has voted for their adoption. However, China like most states, has been very passive in developing national plans and strengthening the national systems towards greater corporate human rights accountability; a situation which is far from the consensus reached at the time of the adoption of the UN Guiding Principles.⁸⁰ However, Chinese state-owned enterprises have recently started to engage with the UN Guiding Principles and corporate social responsibility issues in general.⁸¹ Development in business and human rights in the past decade have illustrated a dialectic division between voluntary and binding approaches as to the questions of whether corporations have human rights obligations and whether they should be held accountable for their human rights impact. Even though the proponents of both sides attempt to demonstrate that these approaches are not mutually exclusive, victims on the ground still witness the continuation of the status quo, which mostly benefits the major corporate players. The aforementioned differences came into view at the recent UN Business and Human Rights Forum, 2014, just six months after the UN Nations Human Rights Council adopted two resolutions, namely, Norway's resolution supporting the implementation of the UN Guiding Principles,⁸² and Ecuador's support for a human rights treaty.⁸³ China pragmatically voted for both resolutions and has

Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework (hereinafter UN Guiding Principles), UN Doc A/HRC/17/31 (Mar. 21, 2011).

79 *Ibid.*

80 See also the recent developments in Switzerland, Swiss parliament motion for mandatory human rights due diligence narrowly turned down Conservative backlash blocks increased corporate accountability *Corporate Justice* (Mar. 13, 2015), available at: http://www.corporatejustice.ch/media/medialibrary/2015/03/150311_sccj_press_release_-_swiss_vote_on_mandatory_human_rights_due_diligence.pdf. (last visited on Apr. 20, 2016).

81 Tracktwo, CSR Training Programme for Chinese Central State-owned Enterprises (Oct. 2014), available at: <http://tracktwo.se/portfolio/csr-training-programme-for-chinese-central-state-owned-enterprises/> (last visited on May 10, 2016).

82 UN Human Rights Council, Human rights and Transnational Corporations and Other Business Enterprises, proposed by Norway (June 26, 2014), A/HRC/26/L.1 (adopted by the UN Human Rights Council on June 27, 2014). The resolution asked for the effective implementation of the Guiding Principles (para. 2). available at: <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G14/062/40/PDF/G1406240.pdf?OpenElement> (last visited on June 24, 2016).

83 UN Human Rights Council, Resolution on Elaboration of an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to Human Rights (Bolivia (Plurinational State of), Cuba, Ecuador, South Africa, Venezuela (Bolivarian Republic of Venezuela) draft resolution, A/HRC/26/L.22/Rev.1, para 1. (June 24, 2014), available at: <http://daccess-dds-ny.un.org/doc/>

thereafter supported the workings of the open-ended inter-governmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights. China appears to support that the treaty would only apply to transnational corporations, and not to the ordinary local or state-owned companies. However, it was not very vocal in the first meeting of the working group on a legally binding instrument.

Victims access to justice in China and beyond

Chinese corporations directly affect the day-to-day respect and protection of the human rights of vulnerable individuals.⁸⁴ On the one hand, such corporations create jobs, tax revenues and economic growth, on the other hand, some of them attract constant criticism due to their lack of human rights protection. The right to a remedy or access for justice for victims of human rights violations as an individual or group is a tenet of every functioning judicial system.⁸⁵ Individuals who have suffered human rights violations allegedly committed by corporations, often face extreme difficulties in bringing their claims before a court of law, let alone proving them. If they or their relatives are lucky, they can claim compensation from the state, but in the majority of cases they are left empty-handed. The effectiveness of all other rights rests on access to an effective legal remedy.

Victims, in the Chinese legal order, can submit civil claims against corporations. They can submit public petitions to the institutions of public administration both at the local and national level. Chinese corporations have, in the past decade, become increasingly aware of their corporate, social and human responsibilities. However, with the exception of a few isolated cases, access to justice has barely improved. In most cases of human rights violations by the corporations, victims remain without the right to effective judicial protection. There is huge discrepancy between formal protections in Chinese

UNDOC/LTD/G14/064/48/PDF/G1406448.pdf?OpenElement (last visited on Mar. 15, 2016). The resolution called for the creation of an open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights; whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of Transnational Corporations and Other Business Enterprises.

84 *Supra* note 6.

85 Ugo Mattei, Access to Justice: A Renewed Global Issue? 11(3) *Electronic Journal of Comparative Law* (Dec. 2007), available at: <http://www.ejcl.org/113/article113-14.pdf> (last visited on May 10, 2016).

legal system and their application in reality. However, one needs to note that such situations are common all over the world and China is here not exception.

Successful claims against Chinese and others corporations in China have been few and far in between. The scandal around the melamine-affected baby milk products produced by Sanlu Group has been, arguably, one of the most visible issues in business and human rights in China.⁸⁶ Tens of thousands of victims have received compensation from the corporation, however, no case has successfully ended before the courts of law despite several claims filed.⁸⁷ Another set of violations often left unattended or under-examined in the courts of law are mine and factory accidents.⁸⁸ Chinese courts have been more permissive when allowing claims relating to labour-law disputes. A civil damages claim against Yahoo! for alleged complicity in human rights abuses in China has been settled in the US courts.⁸⁹ Class actions have not been employed as much as in other countries. However, Wu, notes that [e]nvironmental class action lawsuits are on the rise, as China confronts major environmental problems. In addition, with increased worries about product safety, Chinese consumers are likely to seek greater enforcement of consumer protection laws. A narrow textualist interpretation of the new Company Law suggests that the Company Law's veil piercing provisions may not cover all such litigation.⁹⁰

Difficulties in enforcing corporate responsibility arise not only from the incompleteness of the Chinese normative order in supervising the activities of these companies, but also from their inconsistent implementation and general deficiencies. Victims have faced a number of obstacles when enforcing their claims in the court of law, ranging from the lack of full-fledged right to

86 Supreme People's Court of the People's Republic of China, Judicial News China's top legislature decides to remove milk scandal official from deputy post, available at: <http://en.chinacourt.org/public/detail.php?id=4463> (last visited on accessed Apr. 20, 2016).

87 *Supra* note 18 at 59-62.

88 See for example, the most recent incident, Zhejiang shoe factory collapse kills at least 12 workers, injures 33 others *China Labour Bulletin* (July 6, 2015), available at: <http://www.clb.org.hk/en/content/zhejiang-shoe-factory-collapse-kills-least-12-workers-injures-33-others> (last visited on May10, 2016)..

89 *Wang Xiaoning v. Yahoo! Inc.*, No. C07-02151 CW/JCS (N.D. Cal. 13 Nov. 2007).

90 Mark Wu, Piercing China's Corporate Veil: Open Questions from the New Company Law 117 *Yale Law Journal* 328, 334(2007).

fair trial,⁹¹ the interference of politics,⁹² corruption, non-transparent governance, the low level of rights awareness among general public and the prosecution of lawyers and human rights-defenders.⁹³ These factors are coupled with a number legal obstacles faced by victims when bringing claims from piercing the veil, lack of litigious culture against corporations, and the symbiosis of interests of corporations and state officials at the local and national levels.⁹⁴

This is also apparent from the vagueness of the institutional and regulatory framework for the regulation of corporations in China, where several commentators have argued, the judiciary is not functioning as it should. Daily politics has played an instrumental role not only in the functioning of Chinese state but also of its judiciary.⁹⁵ Grimheden has, for instance, argued in 2014 that much more needs to be done to improve the independence of the Chinese judiciary.⁹⁶ According to him, reforms in the last decades have been impressive and the Chinese judiciary has been proceeding towards enhanced professionalization, stature, and independence and reform in the future is likely to continue along these same.⁹⁷ What is more, it seems that since then several changes have been employed.⁹⁸

The international system for the protection and promotion of human rights is based on national jurisdictions that have an important role in protecting

91 David C Buxbaum, China: Litigation Without a Law of Evidence, Oral Testimony, Witnesses, and a Transparent Judiciary 34 *Comparative Law Yearbook of International Business* 37-55 (2012).

92 Guanghua Yu, *The Roles of Law and Politics in China's Development* (Springer, 2014).

93 *Supra* note 18 at 34-50. See article on recent prosecution of the lawyers: Jennifer Duggan, China targets lawyers in new human rights crackdown *The Guardian* July 13, 2015, available at: <http://www.theguardian.com/world/2015/jul/13/china-targets-lawyers-in-new-human-rights-crackdown> (last visited on May 20, 2016).

94 *Supra* note 18 at 51-55.

95 See for example, Zhu Suli, Political Parties in China's Judiciary 17 *Duke Journal of Comparative & International Law* 533-560 (2007).

96 Jonas Grimheden, Themis v. Xiezhi: Assessing Judicial Independence in the People's Republic of China under International Human Rights Law PhD Thesis, University of Lund, 2004, available at: <https://lup.lub.lu.se/search/publication/21659> (last visited on May 22, 2016).

97 Jonas Grimheden, The Reform Path of the Chinese Judiciary: Progress or Stand-Still? 30 (4) *Fordham International Law Journal*, (2006).

98 See for instance, Wim Muller, Beyond history and sovereignty: China and the future of international law PhD Thesis, European University Institute, Florence, 2013 available at: eadmms.evi.eu/bitstuar/handle/1814.pdf (last visited on Apr. 20, 2016).

international human rights standards that in turn also partially affect those national legal systems and national courts. If Chinese corporations and their employees are continually violating the basic human rights of individuals and peoples within and beyond Chinese borders, it is necessary to provide appropriate mechanisms for enforcing their legal corporate and individual responsibility. The development of the corporate social responsibility initiative is certainly to be welcomed, even though it should be complemented by judicial and quasi-judicial mechanisms to effectively respond to alleged corporate human rights violations. Asia has so far not developed regional human rights protection regimes along the examples of the European system for the protection of human rights which consists of several parallel systems, dominated by the legal order of the Council of Europe: the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and the case law of the European Court of Human Rights on one hand, and the acquiescence of the European Union Charter of Fundamental Rights as a central human rights document, on the other. Therefore, this way, individuals cannot access a regional human rights court or commission *via* the right of individual petition in China and rest of Asia; they can only have access to domestic mechanisms against the activities of enterprises when they impact human rights in their business operations.⁹⁹

Therefore, it would be necessary for China to establish transparent, effective and binding standards¹⁰⁰ and remedies for the conduct of corporations doing business inside and outside Chinese borders in the field of human rights and related monitoring mechanisms.¹⁰¹ For instance, the US legal system has for several decades provided opportunities to enforce the liability of legal persons for alleged violations of international human rights law committed outside the territorial boundaries of the US.¹⁰² In short, establishing a stronger system

99 Amartya Sen, *Freedom, Rationality and Social Choice: The Arrow Lectures and Other Essays* (Oxford University Press, 2000).

100 See Jun Zhao, China and the Uneasy Case for Universal Human Rights 37 *Human Rights Quarterly* 29-52 (2015).

101 See for example, Frank Bold, Report on The EU's Business: Recommended actions for the EU and its Member States to ensure access to judicial remedy for business-related human rights impacts, (Brno, 2014), *available at*: accessjustice.eu/download (last visited on May 10, 2015)

102 28 U.S.C. 1350. Beth Stephens, *Corporate Accountability: International Human Rights Litigation against Corporations in US Courts* (Martinus Nijhoff Publishers, Boston, 2008); Sarah H. Cleveland, The Alien Tort Statute, Civil Society, and Corporate Responsibility 56 *Rutgers Law Rev.* 971 (2004).

for the protection of human rights and national *conditio sine qua non* for effective monitoring of the operation of companies in the field of human rights is imperative.

V Towards a holistic approach to business and human rights

A holistic approach to business and human rights in China includes a commitment to the plurality of initiatives and approaches that can at times be in conflict.¹⁰³ Rather than advocating and/or preferring a particular initiative and approach, it is more appropriate to identify areas and issues which should be included in any effective proposal to move forward in business and human rights in China. Such a holistic approach, including both voluntary and binding initiatives, can strengthen corporate records in the human rights field and develop victims' rights in obtaining court access and legally enforcing their claims. What is more, it can consolidate China's positions in the global environment.¹⁰⁴

China's practice in business and human rights reflects such a conundrum. Restricting access to justice for victims is still a major obstacle to the achievement of human rights in business operations. However, there are signs that reform has been proceeding successfully in the past years.¹⁰⁵ The regulatory framework for promoting the rule of corporate responsibility for human rights violations at the national and local levels remains unclear. Therefore, it seems that legal protection for the enforcement of corporate accountability needs to be improved. What is more important is to determine whether and how Chinese legal systems can provide answers regarding the enforcement of the legal accountability of companies for alleged human rights violations.¹⁰⁶ Many successful Chinese corporations have adapted their operations, values and market strategy in line with socially responsible behaviour, however they have encountered problems in implementing them

103 Jernej Letnar Šturm and Tara Van Ho, Introduction in Jernej Letnar Šturm and Tara Van Ho (eds), *Direct Corporate Accountability for Human Rights* 1-23 (Wolf Legal Publishers, 2015).

104 See for example, Katrin Kinzelbach, Will China's Rise Lead to a New Normative Order? : An Analysis of China's Statements on Human Rights at the United Nations (2000-2010) 30(3) *Netherlands Quarterly of Human Rights* 299-332(2012).

105 Lowell Chow Signs human rights are moving slowly up the agenda in corporate China *The Guardian*, Sep. 17, 2014.

106 Daniel C.K Chow, How China Uses International Trade to Promote Its View of Human Rights 45 (4)*The George Washington International Law Review* 681-726(2013).

in practice and transfer them to the operations of all employees and local communities.¹⁰⁷ Socially responsible behaviour should be established at all levels of a company and include appropriate upgrades. Chinese corporations and transnational corporations are deciding to engage in socially responsible behaviour and, in particular, to protect the competitiveness of their own business.¹⁰⁸ Corporate commitment to corporate social responsibility in corporations depends largely on the commitment of a company to engage in socially responsible business. Nevertheless, the social responsibility of these companies is often insufficient if left just to the dedication of the management and employees of a company as it often requires an external stimulus, government or local community to ensure that the company integrates socially responsible activities in their operations.

Even business partners of a company must be selected based on the criteria of social responsibility and promote awareness about this issue. Decisions on socially responsible projects are taken at managerial level, which has the largest overview of the capabilities of the company's business. It is recommended that companies develop a code of ethical conduct, including rules on the behaviour of the company, not only in the relationship with external actors, but also rules of conduct within the company. Further, there should be a mechanism in a company for evaluating performance and market success. Indeed, for corporations it is crucial that socially responsible behaviour is included in their overall activity. In smaller companies, socially responsible behaviour depends mainly on the entrepreneur and whether he has a positive attitude to socially responsible behaviour. It is very important that employees are involved in socially responsible behaviour in the business activities of the company in the design and planning of operations.

Chinese corporations must implement socially responsible activities and liaise closely with their daily business if they want their socially responsible efforts to give them a competitive advantage. Socially responsible activities,

107 Toh Han Shih, Study finds Chinese firms can beat global peers on social responsibility *South China Morning Post* Apr. 15, 2015, available at: http://www.scmp.com/business/companies/article/1767246/study-finds-chinese-firms-can-beat-global-peers-social?utm_source=edm&utm_medium=edm&utm_content=20150416&utm_campaign=scmp_today (last visited on Apr. 25, 2016).

108 See Global Business Initiative, Project Report on Corporate Responsibility to Respect Human Rights in China and Globally: A case-based learning project involving business leaders from Chinese state-owned enterprises and multi-national corporations from diverse geographies (Aug., 2014).

which do not relate to the primary activity of the company, not only bring increased efficiency, productivity and market success, but also a good reputation among employees and the general reputation of the company. One has to be very patient when introducing social responsibility into a company because in most cases the results will only show after a considerable time. The results of the evaluation of social responsibility must be continuously monitored and assessed qualitatively and quantitatively. Chinese corporations must also ensure that socially irresponsible behaviour, which is contrary to the values of the company, is also punished, and thus establish effective and transparent mechanisms for risk assessment in socially responsible activities. Such mechanisms would help in the selection of socially responsible activities that would also bring commercial success and higher income from operations to the company, in addition to the benefits of socially responsible behaviour. Commercial companies may also seek to improve working conditions and support employees in balancing their work commitments in education and other obligations. The essence of the holistic approach is that the social and legal obligations of the company are intertwined and complementary. The fact is that not only states such as China have the obligation to respect and protect human rights, but the corporations also have comparable obligations of a different legal nature.

VI Conclusion

China's approach to business and human rights or corporate social responsibility is at times contradictory and much remains to be wished for. This paper has illustrated that China in the past decade preferred to concentrate on the voluntary approaches to the regulation of potential human rights violations by business, whereas it has neglected the binding approaches aimed at identifying, developing and improving corporate human rights obligations, corporate accountability, and victims' access to justice. However, this practice appears to be slowly changing. Such assumption follows from China's recent unconditional support of the UN Guiding Principles, the work of the UN working group, Norway's resolution as well as the initial objections to work on the development of an international treaty on business and human rights. However, there are signs that China is softening its approach in the recent years, particularly in the sphere of extraterritorial regulation of conduct of the Chinese state-owned enterprises and has finally agreed to participate in the work on the treaty on business and human rights.

This paper has argued that China should reconsider its approach and attempt to equally pursue both voluntary and binding approaches in business

and human rights. Nonetheless, China should make sure that the regulation of China-based corporations doing business beyond its borders improves and that individuals obtain effective access to judicial forums against Chinese corporations for alleged human rights impact. Such a focus that also includes victims' access to justice is essential for China in order to ensure the legitimacy of its policies in business and human rights among the wide Chinese and global publics. At the same time, Chinese corporations should firmly integrate human rights into their business operations and those of their business partners, contractors and suppliers through a vast array of preventive measures. A reasonable balance between binding and voluntary measures should ensure that Chinese state and the corporations based on their territories advance the levels of protection in business and human rights. China needs to improve its record in protecting human rights in the operations of Chinese corporations within and beyond Chinese borders. They should carefully, consistently and accurately implement their obligation to protect the individual's human rights with respect to corporate conduct. Individuals affected by Chinese corporations should reasonably expect that their rights will be protected. A holistic approach requires that China concentrates on voluntary and holistic approaches to business and human rights, without neglecting one or another. Such a strategy could combine the interests of two groups – corporate and civil society organisations – which currently find themselves on opposite sides of the business and human rights movements both in China and elsewhere. Rather than conflict, complementarities between them are advised. However, much depends on the potential improvements concerning the access to justice in China.