

# **Human rights in China, the role of multinational enterprises**

## **The Philips and Volvo Cases**

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## Executive Summary

Multinational Enterprises (MNE) have various motivations for complying with human rights. Those motivations can be categorized into two distinct categories. The first of these entails benefits to the company, and are thus economic motivations. This group includes issues such as a stable business environment, satisfying stakeholders, as well as creating business opportunities and complying with international agreements. The second category is moral obligation. This type entails issues in which MNEs recognize their responsibility, and execute projects which primarily are considered a state issue.

Although China is trying hard to improve the standard of living, via the *'putting people first principle'*, it is still facing many difficulties in terms of health care, social security and equal treatment of workers. Due to the Hukou system, especially (unregistered) migrant workers are subject to discrimination and face harsher living conditions than their peers who are registered in the city in which they live.

The education system is also subject to various changes necessary to improve both the school attendance rate and the quality of education. Although China is doing well in terms of combating illiteracy and increasing the average level of education, again the Hukou system is a source of discrimination which often causes mal-education or denial of education of children of migrant workers.

To improve the standard of living adequate for health and well being and the situation of its education system, China has allocated responsibility to the role of businesses. The social security system has been opened up, and businesses are allowed to establish annuities for their employees. In order to improve the level and availability of education, China allows the establishment of non-governmental schools. Moreover, the Chinese government is promoting interaction between businesses and universities.

The case studies of Philips and Volvo show that MNEs have implemented various programs that help to improve human rights. Those programs are based on both economic factors as well as moral obligation. It is interesting to see that projects based on moral obligation are indeed helping the Chinese government to reach its goals of increasing the level of education, the school attendance rate as well improving as people's standard of living.

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**List of abbreviations**

|         |   |
|---------|---|
| BIAC    | Business and Industry Advisory Committee  |
| CUSTReC | China Urban Sustainable Transport Research Centre.  |
| CSR     | Corporate Social Responsibility   |
| GC      | Global Compact  |
| GCNN    | Global Compact Network Netherlands  |
| ICC     | International Chamber of Commerce   |
| ILO     | International Labour Organization   |
| MNE     | Multinational enterprise  |
| OECD    | Organization for Economic Co-operation and Development  |
| SAHRDC  | South Asia Human Rights Documentation Centre  |
| SOMO    | Stichting Onderzoek Multinationale Ondernemingen<br>(Dutch Centre for Research on Multinational Corporations) |
| UNCRC   | United Nations Convention on the Rights of the Child  |
| UDHR    | Universal Declaration on Human Rights.  |
| VREF    | Volvo Research and Education Foundations  |
| WBCSD   | World Business Council for Sustainable Development  |

## Introduction

Human rights have always been regarded a state obligation. Governments have been seen as the sole institutions responsible for the protection of their citizens against human rights abuses. In other cases states had to refrain from certain actions in order to abide by human rights (e.g. the right to not be subject to arbitrary arrest). The role of businesses and multinational enterprises (MNE), in particular, has been disregarded for a long time by both the businesses themselves, as well as by civil society and governments. Yet in recent years the role of multinational enterprises with regards to human rights has become recognized. First, MNEs were and in some cases still are, blamed by non governmental organizations (NGOs) such as Human Rights Watch for violating human rights. Over the last years however, companies have begun to integrate human rights into their policies, either obvious as a core issue under corporate social responsibility policies, or less obvious as part of their code of conduct. Consequently many organizations have started projects to guide companies in their activities with regards to human rights. With the appointment of John Ruggie as the UN Secretary-General's Special Representative for Business and Human Rights, the United Nations assumed the role as instructor of human rights. This role and other similar initiatives are supported by many businesses around the world. Yet what do MNEs do when faced with a government that does not accept and abide by its responsibility with regards to human rights?

China is an interesting example, in this respect. China's economic progress over the last years is an interesting development. However, it also raises many issues regarding human rights. On the issue of human rights China experiences both positive and negative developments. An ageing population stresses the retirement funds and national policies create discrimination against those who migrate to the cities in order to earn a better living. Yet China is working hard to improve the situation of the standard of living and its education system. Chinese policies such as the '*Putting people first principle*' and objectives set in the '*Dakar framework for action*', seek to improve China's well fare and its position on the global market.

This thesis will examine China's currently evolving economic situation with activities of MNEs with regards to human rights. It will create a better understanding of what multinational enterprises do to improve human rights in China. However, with consideration for time and length, research has been limited to articles 25 and 26 of the Universal Declaration on Human Rights (UDHR). Those two articles have been chosen because, as this thesis will ultimately show, China is facing major issues in

the field of creating a standard of living adequate for health and well being (Art. 25 UDHR) and the right to education (Art. 26 UDHR). Moreover, Philips and Volvo are being used as case studies, in order to create an understanding of what MNEs do to respect or improve human rights.

In order to create a solid understanding of what these companies do to respect and improve human rights in China, a thorough context must be established. In the first chapter, the various reasons which motivate MNEs to respect human rights will be discussed. It will become clear that there are two distinct groups of reasons for MNEs to respect human rights. The first set contains economic factors such as satisfying stakeholders. The second set is based on moral obligation and includes activities which cover issues that are primarily considered state affairs.

The second and third chapters are devoted to examining the standard of living adequate for health and well-being (Art. 25 UDHR) (Chapter 2) and the human right to education (Art. 26 UDHR) (Chapter 3). In both cases, China is facing difficulties. Legislation creates discrimination against own citizens, leading to violations of both rights. China is aiming to decrease illiteracy, but is struggling with meeting this objective and its other objectives to become a leading innovation-oriented society at the end of this decade.

After a thorough understanding of the current situation has been established, Philips and Volvo will be used as a case study in order show what MNEs are doing to improve human rights in China. It becomes apparent that both sets of reasons, economic factors and moral obligation, play an important role in the establishment of activities which aim to improve human rights. In the case of Philips, it will also be found that companies not only execute projects that improve human rights, but also actively try to persuade suppliers to do so. Yet compliance with human rights is often difficult. Even companies which strive to adhere to human rights sometimes find themselves criticised.

The discussion section combines the facts found during the research. This will put all the facts found into a coherent perspective. It will show that MNEs indeed play an active role in improving human rights issues in China, but that there are limits to the influence they have.

In the conclusion a short summary of the chapters will be given, as well as an answer to the main research question: *“What do multinational enterprises do to improve human rights in China?”*.



## Why do multinational enterprises comply with human rights?

### Introduction

The protection of human rights has always been regarded as an obligation of the state. However, in the last few years the issue has become impossible to ignore for multinational enterprises (MNEs). This has led to the establishment of organizations like the World Business Council for Sustainable Development (WBCSD). In addition other organizations recognize the importance of human rights compliance by MNEs as well, as the appointment of UN special representative John Ruggie on the issue of human rights and businesses illustrates (UN, 2005, para.1).

The power and influence of MNEs has made them a key player on various social issues, including human rights. In this chapter, a short outline will be given of the extent to which the Universal Declaration on Human Rights (UDHR) makes MNEs to comply with human rights. When the complexity of the UDHR has been clarified, various reasons will be given as to why MNEs cannot afford to neglect human rights in their business operations. These reasons range from issues such as maintaining a stable business environment to creating new business opportunities. However, moral obligation also is a factor which cannot be denied. The chapter will be concluded with a short summary.

### Human Rights, a state affair?

Human rights are often not directly linked to businesses. On the contrary, they have always been regarded a state obligation. The reason for states being considered the primary protector of human rights probably lies in the fact that states are the main institutions of drafting, signing and ratifying international law. Moreover, “*governments under international law [have] committed themselves to protect their citizens against harm that may be imposed by others within their territory or jurisdiction*” (Global Compact Netherlands, 2010, p. 23). However, in the preamble of the Universal Declaration on Human Rights (UDHR) it is clearly stated that: “[...] *every individual and every organ of society, [...], shall strive by teaching and education to promote respect for these rights and freedoms [...] both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction*” (UN, 1948, preamble). A multinational enterprise is an organ of society, and thus, according to the UDHR, has the obligation of promoting respect for human rights, which includes respecting human rights themselves.

This obligation has been recognized by the three international business organizations, IOE, ICC and BIAC (see list of abbreviations). These organizations have stated that both states and enterprises have obligations with regards to human rights (IOE, ICC, BIAC, 2011, p. 3). Yet despite the influence of these organizations, their guidelines are not legally binding and thus, are not easily enforceable. The same goes for the Universal Declaration on Human Rights as it is adopted by the UN General Assembly<sup>1</sup>.

Although the UDHR, and guidelines of the IOE, ICC and BIAC are not legally binding, they can be regarded as reasons for MNEs to comply with human rights. This is especially true because the UDHR in particular, is in many countries enforced by national laws. The problem is that in various countries these laws are apparent on paper, but are either poorly enforced or neglected entirely by the state government. This is the case in China, where the high degree of corruption in local governments negates the possibility of enforcing national law. Compliance with human rights in such a country is therefore often found to be poorly controlled (Amnesty International, 2009, p.6). The poor enforcement of human rights laws thus makes it possible for MNEs to neglect human rights standards, which often results in cheaper production and more profit.

The UDHR and international agreements do not provide a legal obligation for MNEs to comply with human rights. Yet more and more MNEs comply with human rights and in some cases even actively promote them. Why is this?

### **Reasons for businesses to comply with human rights**

There are various reasons why MNEs comply with human rights. To understand these reasons completely it should be noted that MNEs have a significant impact on human rights. Mainly this is because their activities are often related to, or have an influence on issues ranging from protection of privacy to the choice of employment. Moreover, MNEs play an important role since they have the (economic) power to influence states and other stakeholders on issues such as human rights. The reasons for their compliance will be described and explained below.

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<sup>1</sup> The UN General Assembly is only allowed to adopt non-binding declarations, and thus the UDHR as such is not binding, nor to states, nor to any entity (UN, General Assembly of the United Nations, para.5).

**Stable business environment**

Multinational enterprises and other businesses profit from a stable business environment. Non-stable environments have negative effects on businesses at the local and regional level, and considering the increasingly globalizing world market, on a global level as well. A good example of this issue is the oil leak early 2010 in the Gulf of Mexico. Sea water was heavily contaminated with chemical substances, affecting the people's right to a healthy environment (Amnesty International (AI), Unknown, para.2). This outraged people all over the world. Consequently BP was heavily criticized for their handling of the situation, and even found itself subject of a boycott (Chernoff, 2010, para.1). The situation, at least on regional level worsened as BP violated human rights during the clean-up process. According to Dupre, not only did BP hire low skilled workers to do the clean-up, it neither provided them with protective gear (2010, para.8). She also reports that poorer regions have not been cleaned as properly compared to wealthier regions (Dupre, 2010, para.10). In other words, the oil leak in the region of the Gulf of Mexico created an unstable business environment for BP worldwide.

**Satisfying stakeholders**

The group 'stakeholders' includes a wide variety of actors (see Annex I for an explanation of stakeholders important in the field of human rights compliance), and every actor has different means to influence a business. With the appearance of human rights on the agenda of businesses, compliance with said rights have also become important to stakeholders. In the last two decades various cases have shown that stakeholders can have a significant impact on the human rights activities of business. In 1997 for example shareholders of Shell adopted a resolution demanding Shell to improve human rights in all its areas (Finch, J, 1997, p, 15).

**Creating business opportunity**

Not only do businesses comply with human rights because it counters negative effects, but also because respecting human rights creates opportunities for businesses. Incorporating human rights into the corporate social responsibility (CSR) policy, and actively executing this policy, can increase their value on the market (Global Compact Network Netherlands (GCNN), 2010, p. 29). This is true for the pecuniary value, as well as its value to the region in which it executes its CSR policy. As Global Compact (GC) illustrates "[...]the right to freedom of expression helps technology companies define their role in society and decide where they can make a positive and sustainable impact."(GCNN, 2010, p.30).

Another advantage of complying with human rights is the favorable position companies get among prospective employees. In an annual rating of most popular employees in the Netherlands, Rabobank

has for the last three years been chosen as the most popular employer. At a stable second and third place are Philips and Shell. These three companies all have extensive CSR policies, in which human rights play a significant role. Companies that come towards the end of the list often have less human rights aspects in their CSR Policy. It should be noted, however, that Coca-Cola is in the bottom five on the list of popular companies, but does have extensive human rights elements in its CSR policy.

### **International agreements**

Next to the UDHR, there are various other international agreements that impose human rights duties on MNEs, either in the form of soft law or via hard law. Examples of soft law influence in the field of human rights are the “*OECD Guidelines for Multinational Enterprises*” and the “*ILO [International Labour Organization] declaration on fundamental principles and rights at work*”. The first document, drafted by the governments of the OECD member countries, lists recommendations for responsible business conduct. This includes an extensive list of recommendations for compliance with human rights (OECD, 2011). The “*ILO declaration on fundamental principles and rights at work*” on the other hand, is an agreement between governments, employers and labour unions. All parties commit themselves to promote: “*freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour [and] the elimination of discrimination in respect of employment and occupation*” (ILO, 1998, p.1).

Another good example of soft law is the UN ‘*Protect, Respect and Remedy*’ Framework, which sets a variety of guiding principles on how businesses should comply with human rights. This document has been based on consultations with actors ranging from businesses and governments to lawyers and NGO’s (UNHCHR, 2011, p1).

Guidelines established by NGOs such as the International Chamber of Commerce (ICC) can also be regarded soft law. ICC, for example, stated in a policy announcement in 2008 (the 60<sup>th</sup> anniversary of the UDHR) that a company’s “*responsibility is above all to respect human rights, meaning that they should take all necessary steps to avoid doing harm – or to be complicit in harm done by others – or else face appropriate action and sanction*” (ICC, 2008, p.2). It is obvious that with this statement ICC recognized that companies not only have a duty to prevent their own actions from infringing human rights, but also to prevent helping other entities, such as states, to infringe human rights.

Next to soft laws, which create influence to coerce MNEs to comply with human rights, there are also hard laws which make businesses to submit to human rights. “*The European Court of Justice* [for example] *has held that provisions of the Treaty of Rome [...] that prohibit states from discriminating based on nationality and require equal pay for equal work apply directly to private entities*” (Ratner, 2001, p.471). This example shows that jurisprudence can create obligations for businesses based on laws aimed at the state. However, more often it is the state which creates obligations for private entities by establishing laws based on requirements set through international agreements. Under the UN Convention on the Rights of the Child (UNCRC), states commit themselves to protecting children from economic exploitation, thus requiring states to protect children in their territory against forced labour, working extensive amount of hours, unsafe working conditions etc. In the Netherlands for example this has resulted in laws directly applicable to employers dealing with issues such as minimum age and maximum working hours per day. However, as described at the beginning of this chapter, not all states enforce those laws.

### **Moral obligation**

Apart from the previously mentioned reasons, compliance with human rights is also simply morally right. In the last two decades CSR has increasingly become part of the general business policies (Catalyst Consortium, 2002, p.1). Furthermore, businesses have established multi-corporate organizations such as the World Business Council for Sustainable Development (WBCSD), which aims to increase sustainable development, as well as fostering human rights. This may be the result of MNEs recognizing the limits to state duties (Ratner, 2001, p.463). This especially applies to developing countries where governments lack the resources to enforce human rights. The power that MNEs have in these countries, and the freedom to conduct business, which is often granted to MNEs by governments in developing countries, has resulted in a situation in which businesses have both a great influence on, and a moral responsibility to the local communities. When companies came to understand this, they also assumed this responsibility, which led to the before mentioned CSR policies.

### **Conclusion**

Although many countries have national legislation which enforces enterprises to respect human rights, on an international level there are few international hard laws, or other legally binding documents which drive MNEs to comply with human rights. However, various other reasons stimulate businesses to make the protection of human rights part of their (CSR) policy. Those reasons can be categorized in two categories: economic factors and moral obligation.

The first set of reasons, the economic factors, are to the benefit of the company. This group entails issues such as a stable business environment, as well as creating business opportunities. Next to these economic factors, there is also a moral obligation which often results in actions which are not initially to the benefit of the company. Often activities based on moral obligation are related to issues which are considered primarily a state affair. The appearance of this moral obligation is partially shown in the various organizations established by business to increase compliance with human rights, as well as the guidelines set up by business organizations such as ICC and the ILO. Moreover, many businesses have come to recognize and accept their responsibility in society.

## **The right to a standard of living adequate for health and well being in China.**

### **Introduction**

This chapter deals with the standard of living adequate for health and well being (standard of living) in China. The economic progress of the country has had both positive and negative effects on the standard of living. As it will become clear, the Chinese law is providing rules for living conditions which should result in an adequate standard of living. In reality however, the implementation and enforcement of those laws is poor, resulting in a standard of living which is inadequate for the health and well being of the Chinese population, but especially so for labourers and people living in rural areas.

In order to create a thorough understanding of the situation, a general analysis will be made of situation in China regarding art. 25 UDHR. Secondly, a variety of issues will be discussed in more detail. The first of those issues to be taken into consideration are labour and income. These issues have a large impact on the living standard in terms of leisure time and money to pay for items such as health care. Furthermore, housing and property are discussed, as they form another primary issues to an adequate standard of living. Thirdly, the living environment will be analyzed. China's economic boom has had a profound impact on the living environment, especially in urban areas. Furthermore, the economic development has led to reforms in the social security system, leading to more liberalized retirement legislation and stricter unemployment rules. Lastly, the issue of migrant workers will be discussed.

### **Art 25 UDHR, the right to an adequate standard of living**

Article 25 of the Universal Declaration on Human Rights deals with the so called standard of living adequate for health and well-being. This includes issues such as food and clothing, proper housing and a properly functioning social security system in cases of e.g. disability and old age. Moreover, paragraph two deals with the issue of protection and assistance of mother and child (UDHR, 1948). However, this thesis only focuses on issues mentioned in Art. 25 (1) UDHR.

China is a signatory of the UDHR and various other international agreements that coerce complicity with human rights on states. Nevertheless, China needs much improvement on various human rights, including the right to an adequate standard of living.

In its economic program for the period of 2006-2010, the Chinese government has aimed to improve the standard of living in the Chinese society, focussing especially on issues such as medical care and social security (Singh, 2011, para.3). In order to stimulate local governments to deal with those issues, China has set a new poverty line. This new poverty line will statistically increase the amount of Chinese people living in poverty to 128 million people, compared to 'only' 27 million in 2010. In other words, statistically the situation has worsened, which creates a higher need for the state, local governments and other institutions to take action to reduce the amount of people living in poverty. In practice this means that more Chinese citizens will be eligible to receive state funding (Singh, 2011, para. 4). Although this might sound promising, the Chinese poverty line (€0,76 a day), is still lower than the one set by the World Bank (€0.87 a day).

### **Labour and income**

China is working hard to meet international standards and to improve the standard of living of its citizens. However many Chinese people, and especially factory workers, still face a living standard far from adequate for a comfortable living every day. Moreover, Wang, Hu and Kang's research has shown that income disparities have grown due to the economic development in mainly the coastal areas of the country (as cited by Zhao, 2009, p.68).

### **Minimum wage**

China has no standard minimum wage. Instead, the Chinese government has set up a calculation method which sets out a variety of criteria that should be taken into account when regional governments determine the minimum wage for the region. These criteria include cost of shelter and food as well as labour productivity (the Danish institute for Human Rights (DIHR), 2009, p 15). As determination and control of minimum wages lies with the various Chinese regions, minimum wage varies across China. Some of the regions even employ different minimum wages for people working in rural or urban areas (Global Compact, unknown, para.6). The method of regional implementation has resulted in minimum wages that in some cases are lower than that which is required for a proper living<sup>2</sup> (DIHR, 2009, p.15).

### **Working hours, leave and holidays**

Whereas minimum wage is determined on a regional level, the amount of working hours and free-time is dealt with on a national level. Officially, Chinese workers are not allowed to work more than 40

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<sup>2</sup> Living wage: "practical measure of the amount a worker must earn to achieve a reasonable standard of living through full-time labour" (DIHR, 2009, p.15).



hours a week with no less than one day off per week (DIHR, 2009, p.12). In addition to the standard working hours, the Chinese government has made provisions for overtime, restricting it to 36 hours per month and consultation with the employees is needed (DIHR, 2009, p.12). It is interesting to note however that overtime due to natural disasters, rush repair of production equipment, and various other issues is not restricted, giving companies a wide variety of possibilities to force their employees to work longer than legally allowed.

Despite all the legal restrictions, and a set amount of maximum working hours, the reality is often different. In its annual report 2011, Philips recognizes that an average of 72 working hours per week is not unusual in China, especially for migrant workers (Philips, 2011, p.194). This indicates a poor law enforcement, which is likely due to the economic boom. As all regions want to benefit from the economic boom, it is likely that some regional/local governments allow businesses to break the rules in order to keep those businesses in the region.

Just as with the provisions about the maximum working hours, the national government has also set a minimum of holidays and leave days for Chinese workers. Next to the 11 national holidays, a Chinese employee is allowed to take a certain amount of days with pay per year. The amount of days allowed for leave is determined by the amount of years worked. In the first 10 years of work, a Chinese employee is entitled to 5 days leave; between 10 and 20 years of work, 10 days leave; people that have worked longer than 20 years are allowed 15 days off (DIHR, 2009, pp. 21-22). Next to those annual paid leave days, employees have the right to take days off for marriage, for a funeral of a direct family member, family visit and occupational injury and maternity leave. However, if an employee gets ill and consequently cannot work for more than 20 days, he or she is not entitled to take the annual paid leave days off. (DIHR, 2009, pp. 21-22). Again, the laws are favourable to the employers, drastically curtailing the standard of living of Chinese employees.

| <b>Amount of years worked</b> | <b>Allowed amount of days off per year, incl. national holidays</b> |
|-------------------------------|---|
| 1-10                          | 16  |
| 11-20                         | 21  |
| 21 and more                   | 26  |

**Overview of allowed days of in relation to number of years worked.**

### **Housing and property**

Part of an adequate standard of living are proper housing and proper housing conditions. The exodus from people from rural areas to the cities, as an effect of the economic boost, is directly affecting the

situation of the housing and housing conditions in China. Many employees, especially labourers live in company dormitories. Chinese housing law provides clear standards for company dormitories. Apart from the amount of square meters available to each person living in a dormitory, Chinese law also prescribes the presence of toilet facilities, laundry rooms and cultural facilities. Moreover company housing must be suitable for elderly, children and disabled people (DIHR, 2009, p. 77). In other words, Chinese law provides for adequate housing when it comes to company dormitories. For other types of housing there is no clear evidence of any criteria. Nevertheless, in 2005 the Information Office of the State Council reported a continuing shift from basic living standards to modern living standards (Peoples daily online, 2005, para.1).

Despite the positive news reported by the Information Office of the State Council not all groups in society experience this increase of living conditions. The expansion of cities and related construction of dormitories, impedes the proper housing of farmers living around the cities. As more and more people move to the city and some of the larger villages, the expansion of the cities and these villages is inevitable. Consequently, farmland is being sold to developers causing forced evictions of the farmers off their land. Yet forced evictions are in itself not a direct violation of the right to an adequate standard of living or any other human right. The UN recognizes the need for modernization and development which might lead to forced evictions (Office of the High Commissioner on Human Rights (OHCHR) and UNHabitat, 2009, p.7). However, the UN also recognizes the duty of governments to inform the people of the need to be evicted properly and well in advance. According to Amnesty International however, local governments do not always properly inform the farmers concerned. In 2011, Amnesty International reported that: *“Chinese citizens rarely have an opportunity for genuine consultation before eviction, rarely receive adequate information on the nature or purpose of the eviction and often receive little or no compensation”* (Amnesty International (AI), 2011, para.12).

### **Safe environment**

According to Art 25 UDHR, health is a fundamental part of the standard of living. As with many issues of this right, the economic boost has also had its influence on the health of the Chinese population. The industrialization of the country has caused pollution of air, water and land. This has had its effects on the health of all people in China., not merely on those that live near the industrial sites.

The pollution is so severe that it will cause serious health issues for years to come. In 2007, the New York Times reported that pollution has caused cancer to become the number one cause of death in China; moreover smog and air pollution, prevents sunlight from reaching the people on the street (Kahn and Yardley, 2007, para.3-5). The World Bank reported in 2007 that air pollution caused roughly 400.000 premature deaths (Kahn and Yardley, 2007, para. 40).

The most imminent consequence of the pollution however, is the effect it has on the quality and availability of water. Pollution of the waterways is partially the cause of food shortages. According to the Millennium Project, *“More than 70% of China's waterways and 90% of its groundwater are contaminated; 33% of China's river and lake water is unfit for even industrial use”* (2010, para.7). Because only a small amount of the water can thus be used for irrigation of farmlands many crops are ruined. This is a direct violation of the right to an adequate standard of living by China, as it is the duty of a state to provide food for all, and anticipate on issues that might hamper this right (UN, 2011, art. 10,a-b).

However, pollution does not just affect the availability of water. It also affects the quality of drinking water. According to the New York Times almost 500 million people, which is 37 percent of the Chinese population at the time, did not have access to safe drinking water in 2007 (Kahn and Yardley, 2007, para.3).

It is surprising though that despite all the negative effects of the economic boom on the health of people, the percentage of elderly people (60 year and older) suffering from an chronic disease is 40-50 percent (Wong, 2008, p.90). This may at first glance seem like a high percentage, but is low compared to 80 percent of the elderly people (65 and older) in a welfare state like the Netherlands (Bruggink, 2011, p.46).

### **Social security**

The economic development in China also has a large impact on the social security system of the country. The combination of an ageing population and the fact that China is still a relatively poor country puts pressure on the social security system (UNDP, unknown, p.5). To overcome this problem, the Chinese government started to reform its social security system in mid-2000, under the so called *‘putting people first principle’*. An important part of this reform policy has been the creation of a national social security fund. The resources of this fund are pulled from *“funds acquired from*

*reducing state shareholding, stock ownership assets, funds from the central budget, funds raised by other means approved by the State Council, and investment returns”* (Chinese government, 2004, para. 14). At the same time, a privatization of the social security system is arising. The opening up of the Chinese market, for example, has changed the nature of Chinese society, from one in which the family used to take care of the elderly, into one where care for the elderly is left to social organizations. This phenomenon, as well as the open market, made Chinese entrepreneurs establish social care organizations. However, the less reformed healthcare insurance system discriminates against these private health organizations, and people using their services. Private organizations, for example, must pay rent for their premises and people using their services can not reclaim the costs with the insurance companies. This results in patients not receiving the care they need (Wong, 2008, pp 89-94). A more extensive description of the medical care system, retirement funds and unemployment benefits can be found in Annex II.

### **Migrants**

Due to the Hukou system (see below) migrant workers and their children are a special group when it comes to human rights in China. As will be shown in the case of education (see next chapter), discrimination prevents children from migrants, who move from the rural areas to the city, to attend public schools in urban areas. However, the discrimination of migrants goes much further than education, it also affects the standard of living.

The base of this discrimination is the so called ‘Hukou’ registration system, put in effect in the late 1950’s to control migration. The system is a sort of internal residence permit system in which Chinese citizens are registered as a resident of a certain region. This allows them to work, live, and use public facilities in that region. When people want to start a new life in another region (which in practice means the migration of people from the rural areas to the urban areas) they need a temporary residence permit to be allowed to live in that region and enjoy the same rights as locals. Without residence permit *“Migrant workers and their accompanying dependents [...] cannot access health care, education or other social benefits because they are not registered in the area where they work”* (DIHR, 2009, p.41). Yet obtaining such a permit is difficult. Permits are virtually unaffordable for people from the country side, who generally earn less than workers in the cities. Moreover, there are many criteria a migrant has to meet in order to be able to apply for a permit (Pai, 2011, para.8).

In order to eliminate the discrimination caused by the Hukou system the Chinese government has adopted various legislative acts. Some of those acts make companies responsible for providing migrant workers with issues, such as housing. However, not all employers follow the rules, and due to poor law enforcement, migrant workers are often dependant on the will of employers to respect human rights and give them a good standard of living.

## Conclusion

The economic development of China has a huge impact on the living conditions of the Chinese people. Although the government has developed policies which aim to increase peoples living standard, at the level of implementation it appears that there are still many implications. The base for these implications lays mainly with regional governments who profit from the economic development of their region. Consequently, people living in poorly developed neighbourhoods no longer have the security of a stable home. Enforcement of labour laws is poor or non-existent. In the case of housing only the wealthier people, or those living in factory dormitories have the security of housing. The latter group, however, has little privacy and personal space, as in most cases the workers need to share their room with colleagues. This violates the right to adequate housing as this incorporates adequate personal space (OHCHR and UNHabitat, 2009, p.4).

Pollution is another significant issue that affects the adequate standard of living in China. Not only does it cause climate change, which cause food shortages, but it directly affects peoples' health as it causes cancer and fosters extreme sunlight deprivation in cities.

The only aspect of the adequate living standard that has increased is the social security system. Under the '*putting people first principle*' much of the social security system has been reformed. The reform has increased the amount of money for the government can spend on issues such as retirement, health care and unemployment benefits. In addition, it has created the possibility for companies to set up private funds for their employees, such as annuities, which will lead to more security for retirees.

The above has shown the standard of living in China to be inadequate on various issues and generally is in a poor condition. This is especially true for migrants who move from rural areas to big cities for work. Due to the Hukou system, migrant workers are discriminated against, which often results in a lack of access to healthcare, and other social benefits such as unemployment benefits.

## **The Chinese implementation of the right to education**

### **Introduction**

Education plays an important role in society. It gives people a better understanding of what happens in the world around them, and provides an important asset for a country's development. As China's economic growth continues to progress, the Chinese government has begun to invest in its education system. One of the main goals of the Chinese government is to improve its innovation sector. Therefore higher education is receiving a lot of support from the government. This has already made China a competitor in the field of engineering, which was first only an area for established countries like the USA and Japan. However, what does this mean for the overall education system, and in general, the access to education?

In this chapter an outline will be given of why the right to education is an important human right. Once this concept has been clarified, the current status of education in China will be analyzed, including the changing view on education, and the objectives China has set to itself.

### **The human right to education**

Article 26 of the Universal Declaration on Human Rights explains the right of education for all people. Education should be made available to everyone and free of charge in the most fundamental stages; it should work toward the development of the individual and should create understanding towards people of all kinds; the choice of education remains with the parents of the child (UN, 1948, art. 26). One of the most important aspects of this right is the development of the person. According to Maslow's *Pyramid of Needs*, self actualization is the highest state in the development of a human being, and could only be reached through education. However, good education and self development is not only to the interest of the individual. States also profit from well educated citizens. It is thus in the interest of the state to make education available to its citizens.

### **Education, right and duty**

Not only has China recognized education as a right, it has made it a duty for all to receive education (right to education project, 2008, para.3). Chinese law obligates all state bodies, both national and regional, to ensure that primary education is available to both children and adolescents. Moreover, the state is not allowed to withhold people from education based on "*gender, nationality, race, status of*

*family property or religious belief*" (Chinese ministry of education, 2006, art. 4). Although these laws oblige the Chinese people to go to school, many of the state regulations make it hard for the people to actually attend schools. Children from migrant workers, who move from the rural areas to the cities, experience resistance when trying to attend schools in the cities (Froissart, 2003). This discrimination is to a large degree created through national legislation like the Hukou system. Various acts and regulations adopted over the past decades have made education into a local affair, rather than a national affair (Froissart, 2003). This has caused "*the right to an education, recognized under Chinese law [to have] no legal value for the children who reside in a place that is different to the one in which they are registered*" (Froissart, 2003, p.3). The Hukou system (see migrant workers in the previous chapter), in this sense, conflicts with the state's obligation to guarantee education for everyone without discrimination.

### **Education and illiteracy**

Nevertheless, according to the Chinese government 98.6 percent of the children received primary education in 2002 (Bureau of Democracy, Human Rights and Labour (BDHRL), 2006, section 5b). This would imply that restriction due to the Hukou system are much more a restriction on paper and not nearly as much as in practice. However, when UN Special Rapporteur on Education, Katarina Tomasevski, visited China one year later, she found that these numbers were highly exaggerated, and that children from rural areas were often discriminated against (South Asia Human Rights Documentation Centre (SAHRDC), 2003, para.3). It is unclear whether the Chinese government is right or the UN special Rapporteur on education. Data from the UN Economic and Social Commission for Asia and the Pacific (UNESCAP) however, shows that school attendance rates vary across China (UNESCAP, 2002 Jiangxi, Hainan, Shaanxi, Xinjiang and Yunnan basic data).

UNESCO has reported that China's education has improved a lot in recent years, and that a further improvement is to be expected, especially in the field of adult illiteracy (with 67 million illiterate people, China places second worst in the world after India (UNESCO, 2011, p.66)). Under the '*Dakar Framework for action*', China has made it an objective to combat adult illiteracy and decrease the number of adult illiteracy by 50 percent by 2015 (UNESCO, 2011, p.7). According the UNESCO's EFA Global Monitoring Report, China is well on its way to reaching this goal (2011, p.7). "*Kevin Watkins, director of UNESCO's 2011 Education for All Global Monitoring Report, [...] [claims] that "China is one of the world's success stories in education."*" (Xinhua, 2011, para.7).

### **A changing view on education**

China has not only made progress in decreasing its adult illiteracy. In its higher education China seems to experience a boost as well. In 2008, Cliff Waldman already noted in his report '*China's Educational Performance: Implications for Global Competitiveness, Social Stability and Long-Term Development*' that especially higher education has seen an increase in enrolments and graduates (Waldman, as cited by Arunachalam, 2008, para. 3-4). According to KPMG, the amount of students that graduate each year had increased with 600 percent between 2001 and 2009 (KPMG, 2010, p.1). Although the increase is impressive, the total amount of graduates (bachelor or higher) is still only 7.4 percent, compared to 24.4 percent in the USA (KPMG, 2010, p.3 and USToday, 2002, para. 6). Especially in the field of engineering, China is doing well and is outperforming countries like the USA and Japan, who historically were leading nations in engineering (Arunachalam, 2008, para.5). Furthermore, Waldman reports that China has expressed the ambition to "*become an "innovation-oriented society" by 2020 and a world leader in science and technology by 2050*" (Waldman as cited by Arunachalam, 2008, para.8). The improvements reported and the high amount of graduates in tertiary and university level education cannot stand on its own, however. In order for more people to enrol in higher education, the basic education needs to have improved and the amount of children receiving primary education should have increased as well. UNESCO reports that China has, indeed, seen an increase of enrolments in primary education, and consequently in higher education as well (Xinhua, 2011, para.2).

The above seems to be in line with China's plan to establish a well educated and innovation oriented population. In 2010 the government published its reform plan for the next ten years. The core of the plan, with regards to the compulsory phase of education, is to increase the level of education nation wide and guarantee access to education for every child in China. This goal should be partially reached by establishing non-governmental schools, for which the Chinese government has clearly allocated a task to private businesses. At the same time, China will encourage students to continue their education after the compulsory nine years of education. To do so, the Chinese government will make vocational education free of charge and give study grants to children from poor families, which could otherwise not attend higher education (Unknown, 2010, p.18).

Businesses are also expected to play a role in the reforms on the level of vocational training. China wants to stimulate the interaction between the private sector and educational institutions, an imperative goal, given the high amount of graduates not suitable for working with MNEs. According to Farrell and Grant, only one percent of the 1.6 million engineers in China, meets the requirements multinationals demand (2005, p.72).



**Conclusion**

Although Froissart described a rather grim scenario of the Chinese education system in 2003 and China is still facing disparities in availability of education, it has become obvious that China is well on its way to combating illiteracy and provide all its citizens with at least the basic education. It also stimulates students to continue to learn professional skills.

The reform of China's education system seems in line with both the goal China has set for itself under the '*Dakar Framework for action*' (combating adult illiteracy), as well as its objective to "*turn China in a country rich in human resources*" (Xihua, 2010, para. 3). In order to reach these goals, China has called upon businesses to actively contribute to both primary education and higher educational. It remains to be seen however, if enterprises will answer this call from the government, and invest in educating the future Chinese workforce.

## **What multinational enterprises do to respect the right to an adequate standard of living, The Philips Case**

### **Introduction**

The previous chapters analyzed the motivations of MNEs to respect and comply with human rights, as well as the situation in China with regards to the right to an adequate standard of living and the right to education. In this chapter, Philips will be used as an example to research what multinational enterprises do to respect and comply with the right to a standard of living adequate for the health and well-being of people in China. The projects will be categorized according to the base on which they are established, meaning either economic factors or moral obligation. Moreover, Philips' supplier code of conduct will show that some activities are founded on both reasons.

As with many organizations, Philips' has not stayed free from accusations and negative claims either. At the end of the chapter the flaws in Philips' human rights policy will be shortly discussed.

Some of Philips' CSR activities have a global approach. Unless information has been found which refutes this global approach with regards to China, it will be presumed the global approach applies to China as well.

### **The Philips case**

Philips is a large producer of medical devices used in hospitals all over the world. Therefore, it is not surprising that the medical and 'health' aspects play an important role in its corporate social responsibility policy (CSR). Activities based on economic factors and moral obligation both focus on the healthcare aspect. The projects in China therefore help to increase the standard of living in various ways.

### **Economic reasons**

#### **Meeting healthcare demands**

As discussed in chapter two, pollution and an ageing population are a problem for the standard of living. Those issues, in combination with the economic development, make Chinese hospitals demand higher quality products. Philips has recognized the market potential in this, and has set for itself the goal of improving the quality of healthcare across China. Philips clearly saw the business opportunity created by the high demand of medical equipment in China. In its annual report of 2011 Philips seeks

*“to become one of the CT [Computertomography] and MR [Magnetic Resonance] market leaders in China. [...] The cooperative effort within our China team [...] and targeted collaborations with customers got us to our goal of becoming one of the imaging technology leaders in China”* (Philips, 2011, p. 16). Moreover, Philips is already identifying and anticipating on expected improvement demands by the Chinese government or its leading hospitals (Philips, 2011, p. 16).

Although this goal is based on economic factors, the commitment to improve the healthcare system in general, and improve the accessibility of quality healthcare in the rural areas, will improve the healthcare for many people across China. What the exact results will be in terms of improved accessibility and better quality, is hard to say, as the goal was set in 2011. Yet other medical applications (beside the CT and MR discussed above) have clearly decreased mortality rates as a consequence of chronic diseases (Philips, 2011, p. 64). Although Philips does not give clear figures about the role it has played in this respect, it is not unlikely it has played a major role. In 2007, State Secretary of Economic Affairs reported to parliament that most of the Dutch MNEs which operate in China can be regarded an example for many other business (F. Heemskerk, 2007, para.5).

With the production of medical devices, and its aim to acquire a significant market share, Philips has to a certain extent helped to improve the healthcare availability in many regions of China, and thus has slightly improved the standard of living.

## **Moral obligation**

### **Food for Children**

As already discussed in the previous chapters, migrant workers and children of migrant workers often suffer from discrimination in the cities. However in many cases, migrant worker do not take their children to the city. Instead the migrant workers leave their children at the countryside with their grandparents. This causes many problems. Children often exhibit problematic behavior, or have trouble studying. Another problem is the food consumption of children. Children left behind often lack a nutritious diet, consume low-quality food or suffer from food poisoning (Chinese Radio International (CRI) 2012, para. 4-6). In order to solve this problem Philips (and various other organizations) has established a program to provide children in rural areas with sufficient, healthy and nutritious food.

Under the Nutrition Intervention Program, which is part of the SimplyHealthy@schools program, Philips has established initiatives that enable schools to provide children with high quality food. An example of this, provided by Philips, is a chicken farm at a local school. This chicken farm provides a

win-win situation for both the school and its pupils. “[The] eggs produced can be used to provide breakfasts [to both children and teachers, and] the profit generated by the chicken farm provides an additional source of finance for the school” (Philips, unknown, para.4).

Apart from the Nutrition Intervention Program that was specifically set up for schools in China, the SimplyHealthy@School program, on a global scale, provides educational packs “which help educating schoolchildren by working with their teachers to create awareness on how air, earth, oral healthcare, light, water and exercise lead to a healthier well-being, community and planet” (The Star online, 2010, para.2). In other words, the SimplyHealthy@school program helps to positively improve the well-being of children around the world (BusinessMirror, 2010, para.4).

Although the SimplyHealthy@School program is for a large part based on moral obligation, it also creates positive publicity, as well as further opportunities for Philips. Philips installs lighting in all the schools that are in the program, and thus creates a future market for its lights. However, it is not clear whether schools need to buy new lighting, or will receive new lighting for free when the installed lights are broken. Neither is it clear if the schools need to purchase the lights Philips provides. On the other hand, when looking specifically at the Nutrition Intervention Program, there is no evidence showing an economical interest of Philips in providing children with save and healthy meals.

### **Improving the environment**

Art. 25 of the UDHR explains what is needed for a standard of living adequate for health and well-being. Yet research done by Philips in China and other countries shows that there are other factors important to the health and well-being of a person. Those include the “*perception of [...] health, emotional well-being, personal relationships, occupation and the community in which [people] live*” (Philips, 2010, para.7). In order to improve those issues and the ones mentioned under Art. 25 UDHR, Philips has established the livable city award.

Although the livable city award is not specifically aimed at China, it encourages (Chinese) people and organizations to improve their standard of living at community level. As the name already implies the program is “*designed to encourage individuals, community groups and businesses to develop practical, achievable ideas to improve the health and well-being of people living in cities*” (Philips, 2010, para.1). The entries are judged and supervised by both Philips senior executives, as well as an independent expert.

Apart from the livable city award, through which Philips stimulates others to improve the livability of communities, Philips also takes part in such initiatives itself. An initiative launched by the organizations 'One foundation' and 'The Climate Group' provides electricity to rural communities with solar powered street-lighting. This project enhances the quality of life in those areas (The Climate Group, China; Guiyang Municipal Engineering Administration Department; Philips Lighting, China; One Foundation, China, Unknown, para. 1-2). In 2010 Philips has donated "100 solar LED street lights to 13 villages around Guiyang city" (The Climate group, 2011, para.6).

### **Philips as stakeholder, influencing the supply chain**

Due to its size and turnover, Philips is quite a powerful MNE that can influence its suppliers. In order to do so, in terms of sustainability and human rights, Philips has endorsed the Electronic Industry Citizenship Coalitions (EICC) Code of conduct. This document sets various requirements in order "*to ensure that working conditions in the electronics industry supply chain are safe, that workers are treated with respect and dignity, and that business operations are environmentally responsible*" (EICC, 2009, p.1). Although this alone does not take into account all human rights, and all elements of Art. 25 UDHR, it clearly touches upon certain elements that affect the standard of living adequate for the health and well being of employees. Some of the elements include living conditions in dormitories, and working hours.

However, the EICC code of conduct does not specify whether the workers in the supply chain are only those working on production lines within the supply chain of Philips, or if it encompasses all employees working for the business that have production lines (amongst other) that fall within the Electronic Industry supply chain. Philips has not ignored this uncertainty. All production sites of a supplier, including those that do not fall directly under the supply chain of Philips, will be subject to its supplier code of conduct (Philips, Supplier Sustainability, para. 9). Yet a code of conduct is not always enough to enforce suppliers to abide to the requirements set. So how does Philips insist that its suppliers follow the code of conduct? And what does this mean in practice?

In order to make sure Philips' suppliers comply with the Philips Supplier Sustainability code of conduct<sup>3</sup>, Philips has set up an auditing program through which they monitor their suppliers every three years. Especially suppliers which are based in high risk-countries, such as China, are monitored

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<sup>3</sup> Philips Supplier Sustainability code of conduct is the EICC code of conduct including right to association and collective bargaining (Philips, 2011, p.5).

every three years by both independent and Philips-employed controllers. These controllers inspect all departments and production lines, investigate dormitories and monitor issues such as working hours of the supplier company. After the audit has been conducted, Philips will discuss the results with the supplier and set up a program that will dissolve the areas of non-compliance and improve issues that are still not fully in compliance with the Philips supplier sustainability code of conduct. (Philips, 2011, pp 3-4). The EICC Checklist, which is used in the audits, categorizes issues from less important to very important (Philips, 2010, p.2). According to the issues that came up in the audit, Philips sets deadlines of three or six months for the supplier to resolve the problems. The number of months a supplier gets to resolve the problem depends on the severity of the issue. After the deadline has expired, auditors will return to the supplier to check whether or not compliance has been satisfied (Philips, 2011, p.4).

Although Philips puts a lot of effort into making sure its suppliers respect human rights, due to little actual enforcement procedures, it cannot prevent suppliers from violating human rights. In 2008, a supplier of Philips was found violating various human rights. Those violations included wages below the minimum standard, and an excessive amount of working hours (Os, 2009, pp 6-7). The latter issue was not a single incident. Excessive working hours still occur often in China. Audits in 2011 showed that many suppliers (more than 75 percent) still practiced a 72 hour working week (Philips, 2011, p. 194). Nor did some suppliers allow their employees one day of a week (Philips, 2011, p. 194).

As a result of these findings, Philips has set up a program that should reduce the working hours to 60 hours per week and include one day off per week for each employee (Philips, 2011, p. 194). Statistics about all aspects of the code of conduct, published in Philips' 2011 year report, show that there is still a substantial part of the suppliers in China that break the code of conduct and with that, harm the standard of living adequate for health and well being. Of all the suppliers based in China, 10-25 percent has major non-compliance issues if it comes to the living conditions in the dormitories, and 50-75 percent of the suppliers do not pay their employees the minimum wage or have other major issues in the payment of employees (e.g. not paying overtime) (Philips, 2011, p.195). Pöyhönen and Chan Sze Wan reported that the Flextronics/Multek Factory, which produces equipment for Philips and other companies, was breaking the EICC Code of Conduct and Chinese laws on various grounds. Although many conditions had improved since the last investigation in 2008, wages were still too low for appropriate living conditions and overtime was still a problem in 2010 (Pöyhönen and Chan Sze Wan, 2011, p.12). According to the report, Flextronics paid their workers an average of 1298 Yuan (149

Euro) which is slightly above the regional minimum wage. Yet workers complained that the wage was too low to provide for a suitable standard of living (Pöyhönen and Chan Sze Wan, 2011, p.25). Pöyhönen and Chan Sze Wan continue to report that overtime ranges between 57 and 78 hours per month, exceeding the legal amount of overtime hours by a minimum of 20 hours (2011, p.25). Other issues that were raised include disciplinary measures and difficulties with resignation (Pöyhönen and Chan Sze Wan, 2011, pp.25-26).

### **The flaws of Philips' respect for human rights**

Although Philips demands respect for human rights of its suppliers, Philips has not been able to fully comply with human rights standards itself. In 2010 it was reported that Philips failed to pay social insurance contributions for 50 employees in China (CSR China, 2010, para.2). *"A spokesperson from Philips China told local media that loopholes in some cycles of the company's internal management have resulted in a failure in paying complete social insurance for these employees"* (ChinaTechNews, 2010, para.5). Although Philips has asked a third-party to investigate the issue and to solve the problem, the fact that the loopholes exist implies that this problem could have occurred more often with other employees, without any investigation or solution to the problem.

Another issue concerning costs and benefits was reported about in 2004. According to the Dutch Centre for Research on Multinational Corporations (SOMO), Philips was already relocating production sites from the coastal cities to cities in western China where production is cheaper (Stichting Onderzoek Multinationale Ondernemingen (SOMO), 2004, p. 15). This, in itself, is not a violation of human rights, however in a high risk country such as China, it could lead to human rights violations. Especially migrant workers who often live in the cities unregistered, cannot use the social benefits that compensate the lost income. This could lead to the unemployed living on the street without shelter and food, and in the worst case, could force them to get involved into practices such as prostitution (GCNN, 2010 p.44) (See also Annex I).

### **Conclusion**

Philips has various projects through which it helps to improve the standard of living adequate for health and well-being. Some are based on economic factors, others on moral obligation.

Projects such as the SimplyHealthy@school program are based on moral obligation. This program helps to improve the lives of children, but also helps to improve the standard of living in whole

communities. For example in the case of the chicken farm, where the whole community gains access to fresh eggs and poultry. Other projects are specifically aimed at whole communities, such as the 'livable cities award' and the project executed in cooperation with 'One foundation' and 'The Climate Group'.

Other activities which help to improve the standard of living concern Philips' production of equipment for the Chinese hospitals and other medical institutions. However, this issue is not primarily undertaken to improve healthcare in China, but rather to create direct profit for Philips.

Philips' code of conduct can be regarded an activity based on both economic factors and moral obligation. The code of conduct tries to improve the lives of many Chinese employees (moral obligation), but also will prevent Philips to be related to human rights violations via its suppliers (economic reason). The code of conduct alone, however, has not shielded Philips from human rights accusations. Issues such as failing to pay social insurance contributions, and moving production sites to cheaper areas, show there is a limit to respecting human rights.



## **What multinational enterprises do to respect the right to Education, The Volvo Case**

### **Introduction**

As described in chapter three, the Chinese government is investing in education, and reforming education laws which open up the educational market. Under the '*Dakar Framework for action*' eradicating illiteracy has become an important objective for China. Given the results of UNESCO's research (see chapter three) and given the increasing amount of students that enroll and graduate from universities, China is well on its way to meeting its objectives, not only in terms of combating illiteracy, but also in becoming an innovation oriented society. However, as described earlier, businesses are expected to play an important role in the reform of the education system, especially with regards to the non-government funded schools. Therefore, a closer look will be taken at the activities of Volvo with regards to education in China. Just as with Philips, Volvo's activities will be categorized to economic based activities and moral obligation.

### **Volvo and China**

China has become a flourishing market for Volvo over the last couple of years. In 2011 Volvo became the market leader in various industries, mostly through joint ventures. The manufacturing tool industry is doing particularly well for Volvo (Volvo, 2011, p.24). As a major player on the Chinese market, Volvo has developed a CSR policy specifically for this country. However all projects are executed in cooperation with other organizations.

Just like Philips, Volvo is keeping the core of its CSR policy close to its core business. Most of the CSR activities are aimed at reducing CO2 emissions, or reducing its effects by producing vehicles which use less fuel, for example. However, Volvo is also assuming its responsibility for issues outside the scope of its core business. In the so called 'Blue Care program' Volvo established various activities that improve mainly primary education in several Chinese regions.

### **Volvo Research and Educational Foundations (VREF)**

The Volvo Research and Educational Foundations, which is also executed outside China, is obviously to the merit of the company. Still, it also helps China to increase the quality of vocational training in the field of transportation and environment. Through the VREF program, various centers of excellence

have been built around the world. Those centers research more sustainable types of transportation, mainly in cities (Volvo, About VREF, para. 3).

In China, this has resulted in the China Urban Sustainable Transport Research Centre (CUSTReC). Although the centre has been established with the help of Volvo, it officially falls under the jurisdiction of the Chinese ministry of Transport. The CUSTReC not only researches and develops sustainable transport, it also aims at educate and train people in this field of expertise (Ministry of Transport, China Urban Sustainable Transport Research Center, para. 1). Although Volvo regards the VREF project as part of its CSR policy, it clearly creates a benefit for Volvo as the developments made by the centre will help Volvo adapt to future demands and future circumstances.

### **Blue Care program – Hope schools**

The Hope school program is part of the worldwide Hope project, which was established by an organization that provides schools to poor communities around the world (Volvo, Giving poor schoolchildren new hope, para.2). Since 2009, Volvo has built three Hope schools, of which the last one was delivered in 2012. The building of these schools encompasses more than just building the school. It includes the whole learning environment. In its first project, for example, Volvo provided a library, including books and a playground to a primary school in the Hainan province (Volvo, unknown, para.10).

Apart from executing its CSR and human rights policy outside the organization, Volvo also stimulates its employees to take part in those activities or set up related projects. In 2011, for example, the staff of the IT department of Volvo China raised money in order to provide the Volvo Hope schools with sport equipment, toys, books, writing materials and other stationary (Volvo IT China, unknown, para.4). The other side is that Hope schools do not normally come with proper learning materials or well educated teachers. The latter issue, however, could be regarded an obligation of the state, as a government should at least establish the satisfactory requirements for teachers. Yet as discussed in chapter three, China expects businesses to play an active role in this area as well. Volvo seems to have acknowledged this role. As part of the Blue Care program, and in collaboration with the China Youth Development Cooperation, Volvo has launched a program which seeks to train teachers, especially for schools in the rural areas. In 2009 and 2010, 500 teachers were trained that will be employed by the Hope schools, as well as other schools (Volvo, unknown, para.10).

With the Hope school project, Volvo seems to have acknowledged the role it can play in society and in improving human rights in China. Moreover, the project helps the Chinese government in its objectives to eradicate illiteracy and to create an innovation oriented society. Furthermore the project seems to create no economic benefit to Volvo. The Hope school project, including the training of teachers, can therefore be classified a CSR project based on moral obligation.

**Need for schools?**

As described above, Volvo has built three Hope schools in various provinces (Hainan, Yunnan and Jiangxi). However, when looking at the rate of school attendance, it seems that the need for those schools was rather limited. In 2002, the UN Economic and Social Commission for Asia and the Pacific (UNESCAP) reported a school attendance rate higher than 99 percent in those three provinces (UNESCAP, 2002 Jiangxi, Hainan and Yunnan basic data). Since 2001 the school aged population (younger than 15) in China has declined with 6.29 percent (Kent, 2011, para.6). Although a decline in school aged population does not automatically result in an increase in the rate of children attending schools, it does imply there should be enough schools, or available places in schools for the whole school aged population. In other words, it is not clear why Volvo built the Hope schools in those particular provinces, instead of provinces like Shaanxi and Xinjiang, where the availability of schools is low and level of education is poor compared to Hainan, Jiangxi and Yunnan (UNESCAP, 2002 Jiangxi, Hainan, Yunnan, Shaanxi and Xinjiang basic data).

**Conclusion**

There is only a limited amount of information available about activities of Volvo which help to improve education in China. Yet the information that is available, or has been made available on request, shows that many aspects of education are taken into consideration with the projects carried out. Moreover, the projects focus on both primary education as well as vocational training/scientific research. This could imply that Volvo has accepted the role it can play in China's educational system and the planned reforms accordingly. Given the fact that Volvo is doing a lot with regards to the right to education, it is surprising the company has only focused on provinces which did already well in terms of school attendance.

## Discussion

As described under chapter two, Chinese legislation provides for a 40 hour working week with a minimum of one day off per week. Moreover, employees are by law not allowed to work more than 36 hours of overtime per month which would result in a maximum of 49 hours per week. Yet as Philips has found, many of its suppliers are employing a working week of 72 hours. This would result in an average working day of 12 hours if the one day off principle is maintained and 10.2 hours per day if employers are not giving their employees one day off per week. In other words, enforcement of the Chinese labor law is very poor, and has a negative impact on the standard of living. However, this right is not only violated because of poor enforcement. The decentralization of minimum wage laws (regionally controlled wages, instead of state controlled) has caused much trouble. As, for example, Pöyhönen and Chan Sze Wan have found that even regional minimum wages are sometimes too low to provide for a proper standard of living (2011, p.25).

Furthermore, the Hukou system is undermining Chinese law in various ways. The requirements of the Hukou system make it hard for migrant workers to obtain a permit to legally live and work in the cities, and to enjoy the same rights as city natives. This results in many migrant workers living and working illegally in the city areas. Consequently, they cannot make any legal complaints against abuse, or violation of their rights by their employers. For example, if the company dormitories, do not have proper toilet facilities or the workers do not have the legal minimum of square meters, there is little the immigrant workers can do about it. Obviously, reporting it to the authorities could have immediate consequences for the workers themselves.

The right to education, as discussed in chapter three, is also undermined by the Hukou system. Although China regards education not only a right, but also an obligation, the Hukou system is causing severe problems for children of migrant workers in attending public schools. The system has made education a local affair and thus the right is only applicable to the region where the child is registered, which often coincides with where the child was born, rather than where they live. Fortunately, the Chinese objective of combating illiteracy and becoming an innovation oriented society has allowed for the establishment of private schools, or schools run by charity organizations, such as Volvo's Hope schools. In this way, in some areas, children of migrant workers can receive education without too much trouble.

As mentioned above, the objectives of the Chinese government to combat illiteracy and to become an innovation oriented society in 2020 have opened up the 'education-market'. This will give more children and students the opportunity to attend schools. Yet the need for, and the establishment of, schools run by charities seems to contradict the 2002 statistics of the Chinese government. These statistics indicate that 98.2 percent of the children attended primary school that year. It is, however, likely that this percentage is exaggerated. The figures of UNESCAP show that the school attendance rate varies across China, and that in this respect, both the conclusion of the Chinese government as well as the conclusion of the UN Special Rapporteur on Education tell part of the truth. Moreover, these statistics need constant updating, as according to Waldman and UNESCO, China is working hard to combat illiteracy and meet its objective to become a world leader in science and technology in 2050.

It has become clear that the situation regarding the right to education and the right to a standard of living adequate for health and well-being is improving in China, but is still far from appropriate. This is partially due to contradictory laws and partially to poor execution or enforcement of laws. However, as the previous chapters have shown, MNEs are recognizing their responsibility with regards to human rights. Sometimes they execute projects to create profit to their business, other activities are based on moral obligation. Yet given the fact that a good CSR policy creates a positive perception amongst students, employees and the people in general, the question remains to what extent projects based on moral obligation, are purely executed because of moral obligation. This is especially true in a market where only few graduates have the skills to work for MNEs. In other words, it is likely that projects that help to improve the right to education have become a marketing tool in a labor market where demand outgrows supply. An argument for this claim can be found in the fact that Volvo has stamped all the books that are provided to schools with "Volvo IT Donation" (Volvo IT China, unknown, para.5).

Furthermore, it also appears that there is a limit to respect for human rights. Philips, which demands good working conditions from its suppliers, moved to cheaper locations once employees in coastal cities became too expensive. Volvo carried out the Hope school project in provinces which already had a high rate of school attendance. However, it would be too easy to simply conclude that MNEs only respect human rights as they please, or only carry out activities in areas (either geographically or in field of specialization) which do not cost too much effort. Volvo, for example took all aspects of a learning environment into account, instead of just building schools. Similarly, Philips operates an extensive and time consuming trajectory once a supplier is found to be in violation of human rights, or

the supplier code of conduct. At the same time, MNEs have difficulties with enforcing their human rights policies. In the case of the Philips supplier code of conduct, the only real means Philips has to enforce compliance with the supplier code of conduct, would be to lessen orders, or annul contracts with suppliers. However, this could lead to a total lack of control, and thus worsening circumstances for the employees working at those factories. In the worst case it could lead to the unemployment of people.

## **Conclusion and recommendations**

Human rights have long been regarded the responsibility of the state, either through granting and securing certain freedoms, or refraining from particular actions which impose on those rights. Nowadays, states still have this responsibility. Yet over the last decade, businesses have started to play a role in the field of human rights as well. Due to their (economic) power MNEs in particular have an important role to play, especially in politically and economically unstable societies, such as China.

In this thesis, first the reasons of why MNEs would take responsibility for human rights were discussed and analyzed. These reasons could be divided into two separate groups. One group can be regard economic factors, which include a stable business environment, satisfying stakeholders, the creation of business opportunities and abiding by national or international law. The other group can be seen as moral obligation. In this case, MNEs take care of issues which could initially be regarded the responsibility of the state, such as provision of education, or the establishment and maintenance of an adequate standard of living.

Secondly, an analysis has been made of the current situation in China, regarding the right to a standard of living adequate for health and well-being (Art. 25 UDHR), and the right to education (Art. 26 UDHR). In both cases, it has become clear that, due to its economic development, China is struggling with the demands of education and the social security systems. Moreover, China's laws, such as the Hukou system, discriminate against Chinese citizens. People that move from the rural areas to cities face difficulties in enjoying the same rights as their peers born in the city. But not only migrant workers face difficulties, also retired people and unemployed people have to fear regarding their pension or unemployment benefits.

In terms of education, China has planned to decrease illiteracy and improve the education system. Yet at the same time, China needs to reform its educational system in order to overcome the problem many graduates are facing now: a lack of skills required by large businesses, and MNEs in particular. With this in mind, the cooperation and input from businesses in the field of education, be it at the primary or university level, is not only a good decision strategically, but a very necessary one as well.

In short, it can be concluded that China, regarding the situation of the standard of living and education, still faces problems and is far from adequate. Either in terms of laws or in terms of a functioning system which does not meet the demands of the market players.

It can be concluded from the case studies that MNEs are accepting their responsibility with regards to human rights. Both Philips and Volvo have initiated projects, or take part in projects, which improve the situation of human rights. The case of Philips shows that MNEs can improve human rights simply by executing their core business plans, and adapting to market demands. In general, both cases show that respecting and improving human rights helps to create business opportunities, either on the short term or on the long term. Other economic factors, such as satisfying stakeholders or managing a stable environment, seem to play a far smaller role when it comes to improving human rights.

In addition to creating business opportunities, the investigated MNEs also act upon human rights issues because it is morally right. It is interesting to see that these projects executed by both Philips and Volvo, help to improve the learning environment of children in China, an objective that meets the interest of the Chinese government. However, the Volvo case shows that projects undertaken out of moral obligation are not always executed in the regions that need it most. Still, it cannot be concluded that companies only execute 'morally right' projects in areas which are not too expensive, both in terms of money and of time. Such would be an oversimplification.

Whatever the reason behind respecting human rights is, it is not always easy for a company to abide by their own policy. States have the legal authority to enact and enforce laws. But if states do not enforce or poorly enforce those national laws, then how can businesses do so? In the case of Philips, it has become clear that enforcing human rights amongst suppliers is difficult. This is mainly because the company lacks the power to (en)force suppliers to comply with the supplier code of conduct or human rights in general. The only power companies have, is to annul contracts with suppliers or diminish orders. However, as Global Compact concluded, doing so could result in the unemployment of people, making a bad situation even worse.

With all of the above in consideration, it can be concluded that in order to improve human rights in China, multinational enterprises employ various activities, either alone, or in cooperation with other organizations. In some cases, those activities are based on economic factors. In other cases the activities help the Chinese government to improve the human rights situation of the Chinese population.

### **Recommendations**

Businesses cooperate on a wide variety of issues, including human rights, via many international forums such as ICC, Global Compact and the WBCSD. However, when it comes to the execution of



projects aimed at improving human rights, companies seem to cooperate more with other organizations, such as NGOs, rather than with other businesses. Yet if companies would work together, it would not only save money, but also enhance the outcome of the project. The Hope school project of Volvo, for example, could be combined with the SimplyHealthy@school project of Philips. Together they could build the schools and provide them with learning materials.

Another recommendation is for companies to execute projects which are close to their core business. This would make it easier for business to execute the projects, and all companies in the same industry could learn from each other through practical experience.

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## Annexes

### Annex I Stakeholders

Before describing the group “stakeholders”, it is important to know what is understood by the term “stakeholder”. According to the Financial Times lexicon a stakeholder is: *“a group or individual who can affect or be affected by the achievements of a business”* (Financial Times Lexicon, unknown, para.1). This definition shows that almost everyone, ranging from local residents to shareholders and national governments, can be a stakeholder of a business. In other words, the group ‘stakeholders’ is very heterogeneous. However, for this thesis, only those that can have a big impact on MNEs, with regards to their human rights policies will be described.

- **Shareholders:** Shareholders provide a part of the company’s financial resources. Therefore, they can have a significant influence on a company’s policy. In 1997 for example, Shareholders of Shell adopted a resolution demanding Shell to improve human rights in all its areas (Finch, J, 1997, p.15).
- **Governments:** Governments, due to their law making and law enforcing capabilities, can have a profound influence on businesses and the way business is conducted. One tool which governments can use to influence businesses are permits needed to conduct a specific business. By setting requirements for obtaining a permit, governments can refuse a permit, or the continuation of it, when a company does not respect human rights. But also the opposite is possible; governments can force businesses to break human rights. A good example of this is the case with social media in regimes like China. Social media businesses are required to censor, or limit the freedom of expression, in order to be allowed to operate in those countries.
- **Employees/labor unions:** In countries where labour unions are allowed and well established, they can have (but by no means always have) an impact on a company’s behavior, or even a governments policy towards employees.
- **Customers:** Ethical behavior is becoming increasingly important to customers. Banks, especially, seem to be a target of customers demanding that their money is invested ethically. In 2002, the Sunday Herald reported that 97 percent of the people surveyed

supported a boycott of oppressive regimes by banks, and one third of the Co-op Bank's customers choose this bank for its ethical investment policy (hunter, p. 26).

- **Communities:** Communities can be very influential and can have a profound impact. The power of a community is shown by the Arabic Spring revolutions early 2011. During these revolutions, entire societies turned against their governments and overthrew them. Similar situations can occur with companies. As described under stable business environment, various communities around the world called for a boycott of BP oil.
- **Media:** Media can make or break a company. As an image of a business can be destroyed in two seconds with a bad news report in any type of media, the media has a profound impact on the image of a company. Although the effect of a bad image is often determined by the substitutability of the products a company produces, companies suffer from a bad image and have therefore set up public relations and marketing departments in order to control, and create (to a certain extent), their image and media exposure.
- **NGOs:** Non-governmental organizations can have a big impact on the policy of businesses. The International Chamber of Commerce, for example, is an organization that represents international businesses on an international level. They put forward guidelines and positions that push businesses to respect human rights. In 2011, for example, ICC put forward a policy statement in which it commits itself to working together with various UN institutions to improve the positive impact of businesses on human rights (IOE, ICC, BIAC, 2011). Other NGOs such as the International Labour Organization (ILO) and Human Rights Watch often publish recommendations and guidelines on human rights issues for companies to improve their human rights policies. The Amnesty International publication "Doing business in China, the Human Rights Challenge" (2009), is one example of this.
- **IGOs:** Intergovernmental or supranational organizations increasingly have an impact on the way companies conduct their business. The OECD '*Guidelines for Multinational Enterprises*', for example, are hard to ignore for businesses when developing/executing their CSR policy. Similarly, the UN special representative on human rights and businesses drafted a framework of guidelines on how and why businesses should take human rights in

account when doing business. Moreover, the EU has a profound impact on businesses, either directly via its many legislative acts, or indirectly via jurisprudence of the European Court of Justice.

- **Multinational Enterprises:** Multinational Enterprises can be stakeholders too. Enterprises that highly value compliance with human rights, or at least do not want to be linked to human rights abuses, may demand that their suppliers comply with human rights as well. However, enforcing suppliers to comply with human rights is hard because *“[e]xperience has shown that when buyers immediately terminate suppliers if human rights violations are found , this can lead to even worse situations. Examples are children that are fired from a factory being forced to make up for lost income through prostitution.”*(GCNN, 2010 p.44).

## **Annex II social security system**

### *Retirement*

The legal age of retirement in China is set at 60 for men, and depending on their work, 55 or 50 for women. The amount of pension a retired person will receive depends on various factors. First of all, a retiree is entitled to receive the base-pension if he or she has paid premiums for 15 years. Next to that, is funding from a personal account in which 11 percent of the employees monthly salary is deposited (Chinese Government, 2004, para.7). A normal retirement fund thus includes the money given by the state, and a self-established fund by the employee. In recent years this has slightly changed as private enterprises are being allowed to set up annuities for their employees as well.

However, the aging population is putting pressure on social funds. In practice this means there might not be sufficient money to pay all retirees their retirement benefits. Therefore, the Chinese government has also asked the regional and local governments to re-allocate their expenditures to ensure that pensions can be paid, and be paid on time.

### *Medical care*

The medical care system differs across China. In urban and industrialized areas, medical care is paid from social funds to which governments, enterprises and employees all contribute. In the rural areas, medical expenses are often taken care of via a cooperative construction to which central and regional governments contribute. Despite the difference in pooling resources for covering health care costs, the system of reimbursement of medical costs incurred by patients is similar across China. The medical costs paid by either the insurance agency or the cooperative fall between two thresholds. Costs which are not higher than ten percent of the average wage in the region are often to be paid by the patients themselves. The threshold for the maximum costs covered is in the urban areas roughly four times the annual wage (Chinese government, 2004, para. 35). If the costs incurred are higher than that threshold, the patient needs to pay the surplus. Giving the right care and using the latest techniques, however, is a problem that governmentally run hospitals are also facing (Philips, 2011, p 15).

### *Unemployment benefits*

The current Chinese unemployment system divides the nation into two groups: those eligible for unemployment benefits and those not eligible. The first group consists of people employed by businesses and institutions, and self-employed people. People working for the government or on a farm, on the other hand, are not entitled to unemployment benefits.

People from the first group, however, still need to meet several requirements in order to be able to receive the benefits. First of all, the unemployed person needs to have contributed to the unemployment insurance system for at least one year; secondly, he or she needs to have lost the job involuntarily and third, the unemployed person needs to be registered at an unemployment office and willing to take on work (Vodopivec and Hahn Tong, 2008, p.13).

If the unemployed person meets all those criteria, he or she will receive unemployment benefits. The duration of the benefits depends on another set of factors. If the former employer or the unemployed person have contributed to the social insurance system for 1-5 years, the unemployed person is entitled to 12 months of benefits, between 5-10 years, 18 months and when the contribution has been longer than 10 years, the unemployed person will receive 24 months of benefits (Chinese Government, 2004, para. 23). The amount of money an unemployed person receives differs per region, as this is depending on regional legislation. The only criteria set by the central government is that the unemployment benefits must be higher than the minimum living standard, but lower than the average minimum wage in the region (Vodopivec and Hahn Tong, 2008, p. 12).