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Introduction

The past decade has seen a significant increase in Chinese investment in infrastructure and development projects abroad, particularly in Africa. Although China is not the largest investor in African economies,[1] it is the largest investor of the BRIC countries to invest in the region, with total investments valued at US$27.7 billion in 2012.[2] Chinese direct foreign investment in Africa also increased from $317 million in 2004 to $2.52 billion in 2012, or by nearly 8 times.[3] China's Premier Li announced in a speech delivered at the African Union's Chinese-built headquarters in Ethiopia that Chinese direct foreign investment is also expected to quadruple to US$100 billion between 2014 and 2020.[4]

While developing African economies welcome the increased investment, little concern is given to the direct and indirect environmental impacts large development projects have on a region. Environmental laws in most African nations are typically limited in their scope and enforceability, and Chinese environmental regulations are rarely enforced abroad, even when they apply to the banks and enterprises involved with a project. It is also important to note that many of the Chinese environmental laws and guidelines that apply, particularly those that apply to the China Development Bank (CDB), lag behind the internationally accepted environmental standards that most multilateral development banks (MDBs) require of the projects they finance.[5] The little importance given to applicable domestic and Chinese environmental laws and regulations, the minimal stakeholder engagement, and the lack of enforcement of these laws, prevents affected communities and civil society from utilizing the proper grievance mechanisms, when available, to bring attention to violations.[6] These weaknesses must be addressed to ensure that both environmental and related social rights are being recognized and protected by project proponents.

Analysis

There are many examples of Chinese-funded development projects around the continent that have had detrimental environmental impacts, with the most well known being some of the various hydroelectric dam projects. The Bui Dam project in Ghana, for example, is notorious for its environmental and biodiversity impacts, as well as for its poor environmental assessment. The project was financed by the Export Import Bank of China and built by the Chinese company Sinohydro.[7] Wildlife biologists criticized the dam, claiming it not only would contribute to the flooding of national parks, but that it would severely threaten Ghana's rare black hippopotamus.[8] The environmental assessment that was done did not address the contributions the dam would make to the release of greenhouse gases into the atmosphere, nor did it consider the potential impacts of climate change on droughts and the dam's future electrical outputs.[9]

In Sudan, the Merowe Dam was constructed with no proper environmental impact assessment. Construction was also started without the approval of Sudan's environmental ministry, which is a violation of Sudanese law.[10] Although the project was completed in 2010, no environmental assessment has been made available to the public, and activists and impacted communities worry that when the effects and impacts of the project become clear, it will be too late to take action.[11]

Ethiopia's Gibe III hydroelectric dam project on the Omo River, which is currently under construction, has also been riddled with violations of both environmental and social rights. In 2006, construction on the dam began with blatant violations of Ethiopia's own environmental and procurement laws, as well as of the national constitution.[12] The initial environmental impact assessment was published long after construction began, and it did not address any of the project's most serious impacts, including the severe drop in water levels of Lake Turkana, whose main water source is the Omo River.[13] Once the first environmental impact assessment was released, many of the MDBs that were considering investing in the project, including the World Bank and European Investment Bank, decided against it. In 2009, the World Bank's Vice-President for Africa, Obiageli Ezekwesili, expressed concern over the management of the project, and particularly focused on the environmental impact assessment, saying it was "not conclusive."[14] She also questioned the manner in which the contract was awarded to the Italian firm Salini Costruttori without competitive bidding, which led to the African Development Bank commissioning a study that showed that many important aspects of the project were not considered in the initial environmental impact assessment.[15]

In each of these examples, Chinese banks financed at least a large part of the project, and in none of these cases did the Chinese banks involved comply with applicable environmental policies. The banks failed to ensure that the requirements of the Chinese Green Credit Policy and Guidelines[16] —which require

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projects funded by Chinese financial institutions abroad to meet the requirements of domestic environmental laws—as well as the appropriate applicable international norms and standards were met.[17]

Chinese banks face a number of challenges to achieving compliance with the Green Credit policy, ranging from limited transparency and stakeholder engagement to poor governance in host countries, as well as a broad range of standards compiled by individual banks that vary in quality and coverage, which essentially dilutes the efficacy of the guidance.[18] A year after the Green Credit Guidelines were published, the Chinese Ministry of Commerce and Ministry of Environmental Protection issued a similar guidance document addressing the role of Chinese enterprises and contractors who implement development projects abroad in environmental protection.[19] It is critical that the Chinese financial institutions and enterprises that are investing and working in Africa ensure that Chinese environmental and social standards are met throughout a project's lifespan, while also complying with all other environmental regulations that apply.

RECOMMENDATIONS

The Chinese government has begun to establish the legal tools necessary to ensure environmental and social impacts of development projects are addressed and mitigated. However, enforcement, particularly of projects abroad, has been severely lacking. It is vital that China focus on improving its enforcement of its environmental and social policies and regulations on Chinese banks and enterprises that invest and work abroad.

China should follow the established international practice of MDBs by creating a grievance mechanism that is available to affected stakeholders and members of civil society. This will not only allow stakeholders to become more engaged in the process, but assists the Chinese government with enforcement efforts. It is also crucial that the government engage and consult with stakeholders, as well as strictly enforce environmental assessment laws. Allowing for public access to assessments and other relevant information in a timely manner will strengthen community awareness of project impacts. It will also provide an opportunity for local communities to become educated on the impacts of the project, as well as the laws and regulations the project proponents must abide by. Properly educated locals will be able to bring forward complaints of potential violations in a timely manner, again assisting with enforcement efforts.

Endnotes: Recommendations for Addressing Environmental Impacts of African Development Projects Funded by Chinese Banks

1 Together, the United States, United Kingdom, and France held the largest share of investments in the region in 2012, the latest available data, totaling $178.2 billion. Matina Stevis, *Foreign Investment in Africa Seen at Record $80 Billion in 2014, Report Shows*, The Wall Street Journal (May 19, 2014), http://www.wsj.com/articles/SB10001424052702304422704579571363402013176.

2 *Id.*

3 Denise Leung and Lihuan Zhou, *Where are Chinese Investments in Africa Headed?*, World Resources Institute (May 15, 2014), http://www.wri.org/blog/2014/05/where-are-chinese-investments-africa-headed.

4 Zhuang Punghui, *Trade with Africa Will Double by 2020, Li Keqiang Tells Ethiopia Conference*, South China Morning Post (May 06, 2014), http://www.scmp.com/news/china/article/1505388/trade-africa-will-double-2020-li-keqiang-tells-ethiopia-conference.

5 *See* BankTrack and Friends of the Earth, China Development Bank's Overseas Investments:
An Assessment of Environmental and Social Policies and Practices 17-18 (July 2012); *see* Michelle Chan, *New Report Details Risks of China Development Bank's Global Footprint*, Friends of the Earth Blog (July 2, 2012), http://www.foe.org/news/archives/2012-07-new-report-details-risks-of-china-development-banks (for a short summary of the report).

6 The China Development Bank, for example, has no requirement for adequately consulting local stakeholders or to establish any type of grievance mechanism to address complaints. *See* BankTrack, *supra* note 5, at 18.

7 *Finance Plan*, Bui Power Authority, http://www.buipower.com/node/5 (last visited March 14, 2015).

8 *Bui Dam*, International Rivers Network http://www.internationalrivers.org/resources/bui-dam-ghana-3608, (last visited March 14, 2015); *see* Wolfram Laube et al, Impact of Climate Change on the Black Volta Basin and the Bui Dam, (GLOWA Volta Policy Brief) 3 (March 2008) (citing two scientific studies and climate models that predict a strong reduction in river flow and severe impacts on the Bui dam. On page 3, the brief also states that "it is a serious oversight that the impact of global climate change was not taken into account when the plans for the construction of the Bui dam were evaluated and finalized.")

9 *Id.*

10 *Merowe Dam* International Rivers Network, http://www.internationalrivers.org/campaigns/merowe-dam-sudan-0.

11 Reem Abbas, *SUDAN: No Clear Studies on Impacts of Merowe Dam*, Inter Press Service, January 2, 2012, http://www.ipsnews.net/2012/01/sudan-no-clear-studies-on-impacts-of-merowe-dam/.

12 *Gibe III Dam*, International Rivers Network, http://www.internationalrivers.org/campaigns/gibe-iii-dam-ethiopia.

13 *Id.*; *See also* John Vidal, *Ethiopian Dam will turn Lake Turkana into 'Endless Battlefield', Locals Warn*, The Guardian (January 13, 2015), http://www.theguardian.com/global-development/2015/jan/13/ethiopia-gibe-iii-dam-kenya (stating this would lead to a depletion of the lake's fisheries, upon which many Ethiopian and Kenyan communities depend, leading to concerns of a potential rise in ethnic conflicts in the region due to limited food and water).

14 Mark Kapchanga, *Keeping the Lights on in East Africa*, The South African .com (Nov 15, 2012) http://www.thesouthafrican.com/keeping-the-lights-on-in-east-africa/; Mark Kapchanga, *Ethiopia's Controversial Gibe III Mega-Dam*, Think Africa Press (January 16, 2013), http://thinkafricapress.com/ethiopia/gibe3-dam-ethiopia-controversy.

15 *ID.*

16 The Green Credit Policy was created in 2007, but was difficult to implement; in 2012 the Chinese Banking Regulatory Commission developed the Green Credit Guidelines to ensure Chinese banks achieve compliance with the policy. It was initially created to address the environmental concerns associated with domestic development projects, but Article 21 of the guidelines make the policy applicable to projects abroad that are financed by Chinese institutions. Paulina Garzón, Manual Legal Sobre Ruglaciones Ambientales y Sociales Chinas Para Los Prestamos e Inversiones en el Exterior: una Guía para las

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