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Leading While Catching Up?: Emerging Standards for China's Overseas Investments

Kirk Herbertson

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*by Kirk Herbertson**

Introduction

In February 2011, activists marched across Nairobi, Kenya to the Chinese embassy waving banners and chanting "haki yetu!" (our right!).[1] They demanded that the Chinese government end Chinese companies' involvement in construction of the Gibe 3 dam, Ethiopia's largest ever public infrastructure project.[2] The activists had previously petitioned the Chinese government, Chinese companies, the Kenyan government, and Ethiopian government, but received no response.[3] The march symbolized people's frustration in being unable to communicate with the Chinese companies involved in the project.[4]

The Gibe 3 dam will span across the Omo River in Ethiopia, which flows into Lake Turkana on the southern border with Kenya.[5] When completed in 2012, the dam will reduce the Omo River's flow by thirty percent, affecting the 500,000 local people who depend on the lake and river for their livelihoods.[6] The Lake Turkana region is already a landscape in crisis. According to several independent studies, the reduced water flow could lead to food insecurity, intensify pre-existing tribal conflicts in the area, and potentially destabilize the region near the Ethiopian, Kenyan, and Sudanese borders.[7] The Gibe 3 dam is one of five large hydropower projects underway in Ethiopia.[8] More dams are planned as the Ethiopian government has decided to export electricity to neighboring countries (although agreements have not yet been reached with these countries).[9] When the dam's reservoir is filled, over 100,000 people will need to relocate to grow crops.[10] Hundreds of thousands of others may lose their livelihoods from herding, fishing, and trading.[11]

Many foreign investors declined to finance the project. In 2008, JPMorgan Chase decided not to underwrite the project, and by 2010 the World Bank, African Development Bank, and European Investment Bank also withdrew funding considerations.[12] In July 2010, however, the Industrial and Commercial Bank of China ("ICBC," the world's largest bank) agreed to become the project's largest lender, granting a loan of $500 million to a Chinese company to provide equipment necessary to construct the dam.[13]

The Gibe 3 dam project is one example of how China's overseas investments have gained international media attention in recent years. China's decades-long growth has made it the second largest economy in the world, surpassing Japan in mid-2010 and soon to eclipse the United States.[14] As China's economy grows, so does its demand for natural resources and new markets.[15] The Chinese government has shaped its foreign policy to keep up with demand for energy and resources by encouraging companies to "go global."

From a macroeconomic perspective, the results have been impressive. Overseas investments have tapped natural resources ranging from minerals and oil in Africa, to hydropower in Southeast Asia.[16] New markets have opened for Chinese goods and services.[17] Many Chinese companies have found particularly lucrative opportunities in impoverished, resource-rich developing countries.[18] In 2010, China became Africa's largest trading partner.[19] Yet at the same time, many people have expressed concern about the environmental and human rights footprint of these investments.[20]

This article provides a brief overview of efforts underway to strengthen environmental and social sustainability in China's overseas investments. In recent years, the Chinese government and several companies have recognized the importance of ensuring that investments are responsible, and have begun to adopt standards that govern overseas investments. The article first provides a brief overview of China's approach to overseas investments, using examples from Africa. The article then describes how Western and multilateral financial institutions have traditionally played a role in promoting environmentally and socially responsible investments, and considers whether Chinese financial institutions could play a similar role. This article will also examine the environmental and social standards that are emerging for China's overseas investments.

China's Approach to Overseas Investments

In 2001, China's tenth Five-Year Plan[21] directed Chinese companies to "go global," as a way to gain access to natural resources, stimulate China's exports, and build China's markets abroad.[22] The Chinese government, in turn, provided support to companies, including access to finance, tax exemptions, and insurance to lower the costs of doing business.[23] As a result of the "go global" Strategy, China's foreign direct investment flows increased from less than one billion dollars in 2000 to an estimated fifty-five billion dollars in the first half of 2010 alone.[24]

As early as 1954, Chinese premier Zhou Enlai announced the "Five Principles of Peaceful Coexistence" that continue to set the parameters for China's approach to international development: (1) mutual respect for sovereignty and territorial integrity; (2) mutual non-aggression; (3) non-interference in each other's

** Kirk Herbertson is an Associate at the World Resources Institute ("WRI"), an environmental nonprofit organization based in Washington, DC. The author wrote this paper in his personal capacity, and has drawn upon research by WRI consultant Bruce Jenkins. Please direct comments to kherbertson@wri.org.*

internal affairs; (4) equality and mutual benefit; and (5) peaceful coexistence.[25]

Based on these principles, the Chinese government has branded Chinese overseas investment as a "new type" of strategic partnership for developing countries that differs from Western aid and investment.[26] China's overseas investments are closely linked to its development aid—both are important parts of the loan packages that the Chinese government often negotiates with host governments. The Chinese government encourages "win-win" development, guarantees non-interference in domestic affairs, and promises not to condition the receipt of aid on governance and democratic reforms.[27] Often, Chinese aid comes in the form of infrastructure projects that are built by Chinese companies.

Natural Resource Extraction in Africa

Like many Western investments, a significant portion of China's investments in Africa focus on natural resource extraction. Over fifty percent of all foreign direct investment inside Africa goes towards natural resource exploitation.[28] Over one quarter of U.S. and Chinese imports come from major African oil exporting countries—Nigeria, Angola, and Algeria for the United States and Angola, Sudan, and Libya for China.[29] Since 2000, the number of oil companies operating in Africa (both private and state-owned) has increased from 250 to over 800.[30] Competition to exploit Africa's natural resources is growing.[31]

Chinese oil companies remain relatively small players in Africa, providing only eight percent of the combined commercial value of international oil companies' investments in Africa.[32] Due to intense competition, Chinese companies have often invested in developing countries with weak governance systems, political instability, and high levels of corruption.[33] Many companies—both Western and Chinese—have come under criticism for their environmental and human rights records in Africa.[34] In this sense, China's interest in Africa's natural resources is not unique but often receives media attention because of its high-risk approach.

Challenges in Protecting the Environment and Human Rights

While Chinese companies are not unique in their interest in Africa's natural resources, their approach often differs from Western counterparts. This poses distinct challenges in upholding environmental and human rights protections.

Chinese aid often takes the form of turn-key projects—financed and built entirely by Chinese companies, and then turned over to the host government with technical assistance. These projects focus overwhelmingly (but not always) on concrete infrastructure projects such as roads and dams.[35] After the civil war ended in Angola in 2002, for example, China was one of the first countries to provide development assistance.[36] With Chinese support, Angola initiated over one hundred projects in energy, water, health, education, telecommunications, fisheries, and public works.[37] Many of these projects involved construction of new infrastructure.

The relationship between China and Angola is complex, but several elements are revealing about the nature of China's overseas investments:[38]

- *The Chinese government worked directly with Angola's president.* In 2006, the president described the relationship as "mutually advantageous," "pragmatic," and with "no political preconditions."[39] Cooperation is characterized by frequent bilateral visits of important state officials, and signing of various agreements. In these high-level negotiations, there was little accountability to the public or efforts to respond to public concerns.[40]
- *Bilateral trade increased rapidly in a few years time.* Crude oil was the main Angola export to China, and imports from China also increased—including steel, cement, autos, and batteries.[41] China was a major source of foreign direct investment, especially through the entry of Chinese construction firms.[42]
- *Although China received the most media attention, it was not the only actor.* Angola also had investment agreements with India, Brazil, South Africa, and others that have increased in volume.[43] Over time, other donors have expressed a willingness to extend credit lines to Angola.[44]
- *China's loans to Angola were backed by oil revenue.* In 2004, China Export Import Bank pledged a two billion dollar oil-backed loan to Angola to fund reconstruction of infrastructure.[45] For each project, the Chinese government proposed a few Chinese companies.[46] Repayment began as soon as the project was completed.[47] Revenue from oil was deposited in an escrow account, from which the amount for servicing the debt was deducted.[48] The Government of Angola was then free to use the remainder at its own discretion.[49] Loans were provided at a deeply concessional rate (LIBOR +1.5%).[50]
- *Chinese laborers remained separate from the local population.* Chinese laborers typically stayed in Angola for one or two year contracts, often living in closed compounds near the construction site.[51] There was little contact with Angolans.[52] At the same time, a growing number of Chinese entrepreneurs entered Angola.[53] Communication challenges existed due to cultural differences and language barriers, and most businesses remained separate from local communities.[54]
- *Corporate social responsibility was not part of the business plan*. Chinese companies did not interact with local communities or civil society organizations, and did not discuss environmental and human rights concerns openly.[55] In general, Chinese companies did not keep local communities informed of operations.[56]

Using Finance to Hold Companies Accountable for Overseas Impacts

Civil society activists have long struggled to find ways to hold companies accountable for the environmental and human rights impacts of their overseas operations. Traditionally, the laws of the United States and other major investor countries do not apply overseas.[57] One important approach, developed over the past two decades by activists, has been to follow the money—to ensure that companies and governments only receive financing for projects that are environmentally and socially responsible.[58]

Many, but not all companies rely on financing to pursue large-scale overseas investments. When companies seek financing from investors, they often must prove that the investment is likely to generate a return. This includes identifying risks to the project's success and demonstrating that these risks can be mitigated.[59]

Increasingly, companies acknowledge that environmental and human rights risks can harm the success of a development project (see Box 1).[60] Harm to communities can lead to protests that block or delay construction, and can motivate governments to alter licenses, permits, and oversight of projects. Local and international civil society campaigns can also damage the reputations of companies and financial institutions involved, affecting share prices and the implementation of related projects.[61]

Box 1: Environmental and Social Risks[62]

When investing in developing countries, companies increasingly consider the ways that harm to the environment and local communities can affect a project. The following are examples of risks that can arise out of environmental and human rights harms.

Financing risk – Financial institutions and investors may delay their financing, require more conditions, or decide not to participate.

Construction risk – The proponent may not be able to complete the project on time or on budget.

Operational risk – The proponent may not be able to access necessary inputs, produce sufficient output, or sell at a sufficient price, which can disrupt operations.

Reputational risk – The project may harm the proponent's or financial institutions' brand identity, which can translate into loss of market value.

Corporate risk – Delays or interruptions to a project may reduce the proponent's profitability and asset values, decreasing the proponent's stock value, lowering its credit rating, and raising the cost of borrowing.

Host government risk – The host government may withdraw permits and licenses, commence enforcement actions, impose civil or criminal penalties on the proponent, or tighten requirements.

Host country political risk – Political forces in the host country may threaten the project.

As a result, managing environmental and human rights risks is not just goodwill, but good business. Many studies show how safeguarding against these risks can help to manage the complex impacts of development projects.[63] For example, engaging local communities in the design of a project can help build community support for the project and avoid conflict later in the project cycle.[64]

Environmental and Social Standards of Financial Institutions

In response to public criticism of its involvement in controversial projects in the 1980s and 1990s—such as the Narmada Dam in India, which displaced over 300,000 people—the World Bank developed "safeguard" policies to help identify, avoid, and minimize harm to people and the environment.[65] These policies require borrowing governments to follow risk mitigation procedures in order to receive Bank financing.[66] Examples of these procedures include conducting an environmental and social impact assessment, consulting with local communities, and restoring the livelihoods of displaced people.[67]

Since that time, other financial institutions have adopted similar policies.[68] The International Finance Corporation ("IFC")—the private sector financing arm of the World Bank Group—developed a detailed set of environmental and social standards in 2006.[69] Over sixty private financial institutions have adopted the IFC's standards through the Equator Principles.[70] These policies are constantly evolving. In 2011, for example, the IFC will adopt an updated version of its standards.[71]

Although these standards are far from perfect and have not always successfully prevented harmful investments from going forward,[72] they have become an important pillar of environmental and human rights protections in overseas investments.

A Role for Chinese Banks in Sustainable Development?

Is there a role for Chinese banks to promote environmentally and socially responsible overseas investments? In the past few years, both the Chinese government and several Chinese financial institutions have recognized the importance of environmental and social standards.[73] Efforts are now underway to develop these standards in the Chinese context.[74]

China's financial sector has the potential to play an influential role in strengthening the environmental and social performance of China's overseas investments. Because many Chinese companies do not raise funds in the capital markets, the majority of total capital available to Chinese industry comes from financial institutions.[75] Over the past five years, in response to concern about the massive pollution that accompanies China's rapid growth, the Chinese government has begun to apply "green credit" policies to domestic lending.[76] Chinese officials have also worked closely with international financial institutions, particularly the IFC, to build capacity of Chinese financial institutions to manage environmental and social risks.[77] While still in their early years, China's "green credit" policy has demonstrated measurable success.[78]

Government Influence Over Overseas Investments

While the Chinese government has encouraged Chinese companies to "go global," these companies are not merely arms of the central government; many companies are encouraged to act autonomously.[79] For example, many Chinese national oil companies, are partially owned and controlled by the government,[80] but have gained influence due to surging profits, listing on foreign stock exchanges, and relationships with international investors.[81] Significant profits from years of high oil prices have also enabled Chinese oil companies to finance their own investments, rather than relying solely on Chinese financial institutions.

Nevertheless, the government continues to provide financial support to these companies to help them compete against established international oil companies.[82] In particular, Chinese banks play a prominent role in large acquisitions and investments and in negotiations with host governments.[83] As many Chinese companies interact at least to a certain extent with Chinese banks, their influence over environmental and social standards could continue to grow.

Key Banks in China's Overseas Investments

Although China's largest private and state-owned banks often invest overseas, China's state-owned "policy banks" are the leading financial actors behind the "go global" strategy.[84] The two primary banks that support overseas investments are the Export Import Bank of China ("China ExIm") and the China Development Bank ("CDB").[85]

Most major economies have "export credit agencies" that help to finance companies exporting goods and services abroad.[86] China ExIm is one of the largest export credit agencies in the world.[87] In 2009, ExIm and CBD combined approved over one hundred and ten billion dollars in lending.[88] Founded as a policy bank, and now a semi-private bank, China Development Bank has also been one of the key funders of large infrastructure and industrial projects overseas.[89]

As Deborah Brautigam of American University describes:

> The importance of policy banks like the ExIm Bank and China Development Bank in China's development model and its international economic relations cannot be emphasized too strongly. China . . . is in many ways a typical East Asian developmental state. It acts to accelerate development through deliberate use of state policies. The central characteristic of a developmental state is its control over finance. This control need not be exclusive – but it must be important at the margin in order to influence the behavior of firms in directions determined by political leaders. In this regard, Beijing is following directly in the footsteps of the earlier Asian successes, Japan, Korean, and Taiwan, who all used development finance to "pick winners" in the globalization race.[90]

In the next five years, we can expect these financial institutions to play an increasingly important role in encouraging Chinese companies towards environmentally and socially responsible investments. In March 2011, the National Peoples' Congress met in Beijing to approve the next Five-Year Plan.[91] At the core of this plan are environmental protection and social equity.[92]

Emerging Standards in China's Overseas Investments

Standards are already emerging that could influence China's overseas investments. These include domestic policies, voluntary corporate standards, and policies designed specifically for overseas investments.

Domestic Policies

For several years, Chinese financial institutions have pursued "green credit" policies in their domestic lending.[93] In 2003, China adopted a stronger environmental impact assessment law that ensures greater public participation in project decision-making.[94] In 2007, the State Environmental Protection Agency (now the Ministry of Environment), Peoples' Bank of China, and Central Banking Regulatory Commission issued a green credit policy that requires all commercial banks to conduct environmental screening of loans, and to restrict lending to companies with high energy consumption and pollution.[95] The policy also established a credit blacklist that prohibits banks from lending to companies that fail to meet environmental standards. The Chinese government followed the Green Credit Policy with a Green Trade Policy (2007), Green Securities Policy (2008), and a Green Insurance Policy (2008).[96] In 2008, the government took measures to increase public access to environmental information from the government and companies.[97] These experiences may help to inform future standards for China's overseas investments.

Voluntary Corporate Standards

> In 2008, President Hu Jintao announced that companies should establish the concept of global responsibility, include social responsibility in their business strategy on their own, abide by the laws in the country where the enterprises operate and international common business practices, improve their management models, and pursue unity of economic returns and social results.[98]

Encouraged by the government, some Chinese banks and companies are taking an interest in corporate social responsibility.[99] This becomes particularly relevant as Chinese banks and companies increasingly interact on a global scale, enter foreign stock exchanges, and market their products abroad.

In 2007, China Construction Bank was the first state-owned Chinese bank to publish a corporate social responsibility report.[100] In the following year, China Development Bank, ICBC, Agricultural Bank of China, and Bank of China also released their first reports.[101] In 2008, Industrial Bank became the first private Chinese bank to adopt the Equator Principles,[102] a global standard for environmentally and socially responsible project finance. Although many banks' voluntary corporate standards focus on their domestic lending activities, this may soon expand to overseas lending.

Overseas Lending

Traditionally, Chinese banks and companies have addressed environmental and social risks only by complying with host countries' laws and regulations. As companies expand their operations in countries with weak governance and regulatory capacity, and as other multilateral institutions improve their own standards, Chinese companies appear to be moving in a similar direction.

Slowly but steadily, environmental and social standards are emerging for financial institutions' overseas lending (see Emerging Standards for Chinese overseas investment Box 2). All financial institutions now apply the government's Green Credit Policy to domestic lending. In 2004, China Export Import Bank developed a short set of environmental guidelines for its overseas lending, and publicly disclosed revised, more robust guidelines in 2008.[103] These guidelines require clients to conduct an environmental and social impact assessment.[104] China ExIm monitors the client's implementation of the assessment.[105]

In 2009, the Ministry of Environmental Protection's think tank, the Chinese Academy for Environmental Planning, along with the non-governmental Global Environmental Institute and the University of International Business and Economics, completed draft environmental guidelines for Chinese companies involved in aid and overseas investment.[106] Several Chinese ministries and regulatory bodies are negotiating the guidelines and may approve them in the coming months.[107] The guidelines would require companies operating overseas to conduct environmental impact assessments, develop mitigation measures, compensate people for environmental damage, and adhere to international treaties signed by China and host countries.[108] Chinese companies would be required to follow Chinese environmental standards if they were higher than host countries.[109]

Box 2: Emerging Standards for Chinese Overseas Investment

Date	Description of standards
2004	**China Exim Environment Policy**[110] Three-paragraph policy developed in 2004 but publicly released only in April 2007.
2006	**State Council's Nine Principles on Overseas Investment**[111] Developed to "encourage and standardize" companies' overseas investment. Requires Chinese companies to comply with local laws, design contract bidding to be transparent, protect labor rights of local employees, protect the environment, and implement corporate responsibilities.
2007	**China Export Import Bank's Environmental Guidelines**[112] Publicly released in 2008. Governs investments overseas. Requires companies to conduct an environmental impact assessment and to compensate communities for environmental damage.
2007	**Guide on Sustainable Overseas Silviculture by Chinese Enterprises**[113] Governs the overseas practices of Chinese logging companies. Requires preservation of high value forests and endangered species, monitoring systems, and consultations with local communities.
2008	**SASAC statement on overseas state-owned companies**[114] The Director of State-owned Assets Supervision and Administration Commission (which governs state-owned companies) stated that Chinese companies going abroad must comply with international rules and local laws.
2008	**State Council regulations on international contracts**[115] A State Council regulation allows the government to fine companies up to RMB one million for undertaking contracts without official approval. This regulation improves government supervision, protects the rights of Chinese workers, and enhances compliance with host country laws.
2008	**National Audit Office's new department on overseas assets**[116] The office announced a new department focusing on state-owned or central-capital controlled companies and overseas national assets. The department will seek to uncover any potential misuse of funds, with special attention to overseas state owned assets.
2009	**Draft environmental guidelines for overseas investment**[117] The Chinese Academy for Environmental Planning, in cooperation with the Global Environmental Institute and the University of International Business and Economics, completed draft guidelines. The Ministry of Environmental Protection and China Banking Regulatory Commission are negotiating the final guidelines.

Conclusion

As Chinese banks and companies continue to expand their overseas footprint, they will undertake more projects in environmentally and socially sensitive areas. The Chinese government's current efforts to develop standards are an important first step, but other changes will need to follow. As Western financial institutions have experienced, policies on paper are meaningless unless they change the behavior of companies abroad.

Numerous challenges remain. The implementation of any guidelines will need buy-in and coordination across the numerous Chinese agencies involved in overseas investment. Financial institutions will also begin to explore ways to enforce and hold companies accountable for their environmental and social performance. Chinese companies have little experience in engaging directly with local communities and civil society organizations, even though direct engagement is the pillar of environmental and human rights risk management.

Chinese banks and companies can learn from foreign companies by engaging in dialogue and trading experiences, but this will not be enough. Ultimately, a uniquely Chinese approach will need to develop to environmental and social risk management that is appropriate for Chinese culture, but also fully respects the environment and human rights of local communities. In this way, the Chinese development model can truly help to bring "mutual benefit" and "win-win" development to other developing countries.

Endnotes: Leading While Catching up? *on page 41*

1 Samuel Maina, *Social Justice Demonstration Day a Success*, FRIENDS OF LAKE TURKANA (Feb. 22, 2011), http://www.friendsoflaketurkana.org/index.php?option=com_content&view=article&id=164&catid=24&Itemid=36.

2 *Id*.

3 Peter Bosshard, *Grassroots Protests Against Chinese Dams in Africa*, INT'L RIVERS (Feb. 23, 2011, 1:48pm), http://www.internationalrivers.org/en/blog/peter-bosshard/2011-2-23/affected-people-protest-chinese-involvement-african-dams.

4 *See id.* (citing the Chinese Bank and Embassy's refusal to respond to the African peoples' concerns).

5 INT'L RIVERS, ETHIOPIA'S GIBE 3 DAM: SOWING HUNGER AND CONFLICT 1-2 (Jan. 26, 2011), http://www.internationalrivers.org/files/Gibe3Factsheet2011.pdf.

6 *Id.* at 1, 5 (claiming as many as 500,000 people living in the area could be harmed); Terri Hathaway, *Chinese Loan Underwrites Lake Turkana Destruction*, INT' RIVERS (Sept. 17, 2010), http://www.internationalrivers.org/en/node/5819.

7 INT'L RIVERS, *supra* note 5, at 4.

8 *Gibe 3 Dam*, *Ethiopia*, INT'L RIVERS, http://www.internationalrivers.org/africa/gibe-3-dam-ethiopia (last visited Apr. 10, 2011).

9 *See id*.

10 *See* INT'L RIVERS, *supra* note 5, at 2 (stating that at least 100,000 people cultivate crops in the river's flooded banks, which will not be possible when the dam is completed).

11 Hathaway, *supra* note 6 (fishing); INT'L RIVERS, *supra* note 5, at 2 (herding and trade).

12 INT'L RIVERS, *supra* note 5, at 3.

13 Hathaway, *supra* note 6.

14 Justin McCurry & Julia Kollewe, *China Overtakes Japan as World's Second-Largest Economy*, GUARDIAN (Feb. 14, 2011), http://www.guardian.co.uk/business/2011/feb/14/china-second-largest-economy.

15 In July 2010, for example, the International Energy Agency estimated that China had become the world's largest energy consumer (although on a per capita basis, it only consumes about one-third of the OECD average). *China Overtakes the United States to Become World's Largest Energy Consumer*, INT'L ENERGY AGENCY (July 20, 2010), http://www.iea.org/index_info.asp?id=1479. Likewise, oil demand for transportation is expected to quadruple by 2030. *World Energy Outlook 2007 Fact Sheet – China*, INT'L ENERGY AGENCY, http://www.iea.org/publications/free_new_region_result.asp?COUNTRY_CODE=CN (last visited Apr. 13, 2011).

16 THOMAS LUM ET AL., CONG. RESEARCH SERV., CHINA'S FOREIGN AID ACTIVITIES IN AFRICA, LATIN AMERICA, AND SOUTHEAST ASIA (2009), http://www.fas.org/sgp/crs/row/R40361.pdf.

17 *China's African Policy,* FORUM ON CHINA-AFR. COOPERATION (Jan. 2006), http://www.focac.org/eng/zfgx/dfzc/t481748.htm.

18 LUM ET AL., *supra* note 16.

19 *China Becomes Africa's Largest Trading Partner*, CNTV (Oct. 15, 2010), http://english.cntv.cn/program/bizasia/20101015/101588.shtml.

20 *See* LUM ET AL., *supra* note 16; *China's African Policy*, *supra* note 17.

21 *The 10th Five-Year Plan (2001-2005)*, GOV.CN (Apr. 5, 2006), http://www.gov.cn/english/2006-04/05/content_245624.htm.

22 *See China Launches Two-Way Investment Strategy for Better Access to*, PEOPLE'S DAILY (Sept. 21, 2001), http://english.peopledaily.com.cn/200109/12/eng20010912_80006.html; David Barboza, *China Seeks Known Brands to Go Global*, N.Y. TIMES (June 30, 2005), http://www.nytimes.com/2005/06/29/business/worldbusiness/29iht-brands.html.

23 *China's Phenomenal Demand for Natural Resources*, CHINA ANALYST (Beijing Axis, Beijing, China), Aug. 2010, at 34, http://www.chinasourcingblog.org/The%20China%20Analyst%20-%20August%202010.pdf.

24 *See id.*

25 China has had an active foreign aid program since the 1950s. *See* DEBORAH BRAUTIGAM, THE DRAGON'S GIFT: THE REAL STORY OF CHINA IN AFRICA 22-42 (2008) (providing background on China's early aid program).

26 MARTINE DAHLE HUSE & STEPHEN L. MUYAKWA, CHINA IN AFRICA: LENDING, POLICY SPACE, AND GOVERNANCE (2008).

27 *Id*. However despite rhetoric about "non-interference," borrowing governments must often meet certain conditions to receive Chinese assistance. *See Chinese Government Concession Loan and Preferential Export Buyer's Credit,* CHINA EXIM BANK, http://english.eximbank.gov.cn/businessarticle/activities/loan/200905/9398_1.html (last visited Apr. 12, 2011). For example, when governments borrow money from China's Export Import Bank, they must meet certain political and financial conditions such as "1) The project shall be approved by both the Chinese Government and the Government of the borrowing country; 2) The borrowing country shall have sound diplomatic relations with the Chinese Government, and shall be politically stable and economically sound, with debt servicing capacity and reliable contract-performance record; 3) The project shall be technically feasible and shall fall within priority sectors that can contribute to the economic development and sector planning of the borrowing country while being able to yield sound economic returns or social benefits; 4) Chinese companies shall be selected as the project contractor and for procurement projects, equipment supply shall come from a Chinese exporter in principle; In project procurement, priority shall be given to equipment, materials, technology or services from China; 5) In principle, no less than 50% of total procurement shall be made in China; 6) The counterpart funds for the project shall be already in place." *Id*.

28 ORG. FOR ECON. CO-OPERATION & DEV., OECD INVESTMENT POLICY REVIEWS: CHINA 2008, at 110 (2008) [hereinafter "OECD"].

29 UNITED NATIONS CONFERENCE ON TRADE & DEV., ECONOMIC DEVELOPMENT IN AFRICA 79 (2010).

30 JEREMY STEVENS, STANDARD BANK, ECONOMICS: CHINA AND AFRICA – PRAGMATIC PARTNERS MATURING 5 (Apr. 2009), http://ws9.standardbank.co.za/sbrp/DocumentDownloader?docId=2916.

31 Erica Downs, *The Fact and Fiction of Sino-African Energy Relations*, CHINA SECURITY, Summer 2007, at 45, http://www.brookings.edu/~/media/Files/rc/articles/2007/summer_china_downs/downs20070913.pdf.

32 *Id*. at 44.

33 *Id*. at 42, 63.

34 *See* Barry Suatman & Yan Hairong, *Trade, Investment, Power, and the China-in Africa Discourse*, ASIA-PACIFIC JOURNAL: JAPAN FOCUS (Dec. 28, 2009), http://japanfocus.org/-Barry-Sautman/3278.

35 HUSE & MUYAKWA, *supra* note 26, at 10.

36 Indira Campos & Alex Vines, *Angola and China: A Pragmatic Partnership* 1 (Ctr. for Int'l Studies, Working Paper, 2008), http://csis.org/files/media/csis/pubs/080306_angolachina.pdf.

37 *Id*.

38 *See generally id*.

39 *Id*. at 1.

40 *Id.* at 4-6.

41 *Id.* at 12-13.
42 *Id*.
43 *Id.* at 20.
44 *Id.* at 22.
45 *Id.* at 3.
46 Alex Vines et al., Chatham House, Thirst for African Oil: Asian National Oil Companies in Nigeria and Angola 48 (2009).
47 Campos & Vines, *supra* note 36, at 9.
48 *Id*.
49 *Id*.
50 *Id.* at 6.
51 *Id.* at 22-23.
52 *Id.*
53 *Id.*
54 *Id.*
55 Louise Redvers, *Angola: Questions About China's 'Win-Win' Relationship with Nation*, All Afr. (Feb. 2, 2011), http://allafrica.com/stories/201102030058.html.
56 *Id.*
57 *But see Legal Programs,* EarthRights Int'l, http://www.earthrights.org/legal (last visited Mar. 26, 2011) (describing EarthRights' use of the Alien Torts Claims Act to litigate in U.S. courts human rights and environmental abuses by U.S. companies operating internationally).
58 Lisa Roner, *JP Morgan's Green-Lending Promise: A Point of No Return for Financial Institutions?*, Ethical Corp. (May 12, 2005), http://www.ethicalcorp.com/content.asp?ContentID=3680&ContTypeID=.
59 *See* Steven Herz et al., World Res. Inst., Development Without Conflict: The Business Case for Community Consent 5 (2007), http://pdf.wri.org/development_without_conflict_fpic.pdf.
60 *Id.* When investing in developing countries, companies increasingly consider harm to the environment and local communities can affect a project. *Id.*; Herbertson et al., World Res. Inst., Breaking Ground Engaging Communities in Extractive and Infrastructure Projects (2008), http://pdf.wri.org/breaking_ground_engaging_communities.pdf.
61 *Id.* at 13.
62 Herbertson et al., *supra* note 60.
63 Herz et al., *supra* note 59, at 15.
64 *Id*. at 14-19.
65 The World Bank safeguards are being updated in 2011-2012. *See* Kirk Herbertson & Kim Thompson, *Can the World Bank Regain its Lead on Sustainable Development?*, World Res. Inst. (Oct. 5, 2010), http://www.wri.org/stories/2010/10/can-world-bank-regain-its-lead-sustainable-development.
66 *World Bank Safeguard Policies,* World Bank Grp., http://go.worldbank.org/QL7ZYN48M0 (last visited Mar. 31, 2011).
67 *See generally* Independent Evaluation Grp., World Bank Grp., Safeguards and Sustainability Policies in a Changing World: An Independent Evaluation of World Bank Group Experience (2010), http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/B56001EB4A0DCE24852577D6005B5CB8?opendocument.
68 *See generally Leadership in Environmental and Social Sustainability*, World Bank Grp, http://www.ifc.org/enviro (last visited Mar. 26, 2011); Equator Principles, http://www.equator-principles.com (last visited Mar. 26, 2011).
69 *See generally Leadership in Environmental and Social Sustainability*, World Bank Grp, http://www.ifc.org/enviro (last visited Mar. 26, 2011).
70 *See generally* Equator Principles, *supra* note 68.
71 *The Review Process*, World Bank Grp., http://www.ifc.org/ifcext/policyreview.nsf/Content/Process (last visited Mar. 31, 2011).
72 Some concerns with existing environmental and social standards include: (1) limited leverage of financial institutions over a development project, depending on when they become involved and the type of financing arrangement; (2) many standards grant clients a wide range of discretion over how to manage critical environmental and social issues; (3) financial institutions sometimes conduct only limited oversight over their clients; (4) in general, each financial institution creates its own standards, and these are often not entirely consistent with international environmental and human rights standards; and (5) increasingly, public financial institutions such as the World Bank provide borrowing governments with general budget support rather than investing in specific projects, where the standards do not apply. *See* Vince McElhinny, Bank Info. Ctr., World Bank and DPLs: What Middle Income Countries Want (Feb. 2011), http://www.bicusa.org/en/Document.102530.aspx; *Out of Sight, Out of Mind? IFC Investment Through Banks, Private Equity Firms and Other Financial Intermediaries*, Bretton Woods Project (Nov. 22, 2010), http://www.brettonwoodsproject.org/art-567190.
73 Michelle Chan-Fishel, *Time to Go Green: Environmental Responsibility in the Chinese Banking Sector*, Friends of the Earth 15-16 (May 2007), www.foe.org/pdf/Chinese_Bank_Report_5-9-07.pdf.
74 *Id.*
75 Gant Morgner, *Two Major Developments in Chinese Capital Markets*, Equities Magazine (Jan. 28, 2010), http://www.cvca.com.hk/template/newstemplate.asp?ArticleID=1519.
76 For overview of the wide-ranging energy and climate-related measures adopted by China, see *WRI Fact Sheet: Energy and Climate Policy Action in China*, World Res. Inst. (Nov. 5, 2009), http://www.wri.org/stories/2009/11/fact-sheet-energy-and-climate-policy-action-china-update; Deborah Seligsohn, et al., *China, The United States, and the Climate Change Challenge* (World Res. Inst., Policy Brief, Oct. 2009), http://www.wri.org/publication/china-united-states-climate-change-challenge.
77 *IFC in China*, World Bank Grp., http://www.ifc.org/ifcext/eastasia.nsf/Content/China (last visited Mar. 26, 2011).
78 Motoko Aizawa & Chaofei Yang, *Green Credit, Green Stimulus, Green Revolution? China's Mobilization of Banks for Environmental Cleanup*, 19 J. of Env't & Dev. 19 (2010).
79 Erica Downs, *The Fact and Fiction of Sino-African Energy Relations,* China Security, Summer 2007, at 48, http://www.brookings.edu/~/media/Files/rc/articles/2007/summer_china_downs/downs20070913.pdf.
80 Bo Kong, China's International Petroleum Policy 14 (2010). *See* Downs, *supra* note 31, at 48-50.
81 Downs, *supra* note 31, at 49.
82 *Id.* at 51-52.
83 *Id.* at 48-49.
84 Kong, *supra* note 80 at, 67-68.
85 Duncan Freeman, *China's Outward Investment: A Policy Overview* 9-10 (BICCS Policy Paper 2008), http://vub-be.academia.edu/DuncanFreeman/Papers/179327/Chinas_Outward_Investment_A_Policy_Overview.
86 *OECD Glossary of Statistical Terms – Export Credit Agency Definition*, Org. for Econ. Co-operation & Dev. (Aug. 28, 2003), http://stats.oecd.org/glossary/detail.asp?ID=5944.
87 *See* Tom Durkin, *China's Export Credit Agencies*, China Afr. News (Aug. 17, 2010), http://www.chinaafricanews.com/index.cfm?fa=contentGeneric.mvaudpzxoueifxzh&pageId=1537096.
88 Geoff Dyer et al., *China's Lending Hits New Heights,* Fin. Times (Jan. 17, 2011), http://www.ft.com/cms/s/0/488c60f4-2281-11e0-b6a2-00144feab49a.html#axzz1HLcFVWgT.
89 *See* Brautigam, *supra* note 25, at 115.
90 *Id.* at 80.
91 Sarah Wang, *What Does China's New Five-Year Plan Address?*, BBC News (Mar. 3, 2011), http://www.bbc.co.uk/news/world-asia-pacific-12639898.
92 *Id.*
93 *See* Deborah Seligsohn et al., *WRI Fact Sheet: Energy and Climate Policy Action in China*, World Res. Inst. (Nov. 5, 2009), http://www.wri.org/stories/2009/11/fact-sheet-energy-and-climate-policy-action-china-update.
94 Jesse L. Moorman & Zhang Ge, *Promoting and Strengthening Public Participation in China's Environmental Impact Assessment Process: Comparing China's EIA Law and US NEPA*, 8 Vt. J. Envtl. L. 281 (2007).
95 *See* Deborah Seligsohn et al., World Res. Inst., China, The United States, and the Climate Change Challenge 10-11 (Oct. 2009), http://pdf.wri.org/china_united_states_climate_change_challenge.pdf.
96 OECD, *supra* note 28, at 264-65.
97 Measures on Open Environmental Information (for Trial Implementation) (promulgated by State Envtl. Prot. Admin. Feb. 8, 2007, effective May 2, 2008) (China), http://www.greenlaw.org.cn/files/laws/open_environmental.pdf.
98 Zadek et al., Responsible Bus. in Afr., Corporate Social Responsibility Initiative 33 (Nov. 2009) (quoting President Hu Jintao speaking to CEOs at the APEC summit in Peru in November 2008).
99 OECD, *supra* note 28, at 267.
100 *China Construction Bank Releases CSR Report*, China CSR (May 31, 2007), http://www.chinacsr.com/en/2007/05/31/1376-china-construction-bank-releases-csr-report/.
101 *Annual Report 2008: Corporate Social Responsibilities* (2008), China Dev. Bank, http://www.cdb.com.cn/english/NewsInfo.asp?NewsId=3140; *Industrial and Commercial Bank of China Limited Releases Its Annual Report of CSR for the Year 2008,* Indus. & Commercial Bank of China (Mar. 3, 2009), http://www.icbc.com.cn/icbc/icbc%20news/industrial%20and%20commercial%20

bank%20of%20china%20limited%20releases%20its%20annual%20report%20of%20csr%20for%20the%20year%202008.htm; *Corporate Social Responsibility Reports*, AGRIC. BANK OF CHINA, http://www.abchina.com/en/about-us/csr-report/ (last visited Mar. 26, 2011); Bank of China, *CSR Report 2008*, http://www.boc.cn/en/aboutboc/ab1/200905/t20090506_690712.html (last visited Mar. 31, 2011).

[102] Press Release, International Finance Corporation, China's Industrial Bank Adopts Equator Principles (Nov. 3, 2008), http://www.ifc.org/ifcext/media.nsf/Content/China_Equator_Principles_Nov08.

[103] *Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank's Loan Projects*, INT'L RIVERS (Aug. 28, 2009), http://www.internationalrivers.org/en/node/3139.

[104] *Id.*

[105] *Id.*

[106] Li Jing, *Environmental Guidelines for Firms Investing Abroad*, CHINA DAILY (Sept. 12, 2008), http://www.chinadaily.com.cn/bizchina/2008-09/12/content_7022679.htm.

[107] Li Jing, *Green Rules Eye Chinese Firms Abroad,* CHINA DAILY (May 9, 2009), http://www.chinadaily.com.cn/bizchina/2009-05/29/content_7952605.htm. The Ministry of Environmental Protection and China Banking Regulatory Commission are involved in drafting the new rules, which would be called Chinese Overseas Direct Investment Environment Protection Guidelines.

[108] *Id.*

[109] *Id.*

[110] *Civil Society Recommendations Regarding China Exim Bank's Environmental Policy*, INT'L RIVERS (Sept. 30, 2007), http://www.internationalrivers.org/en/china/chinas-global-role/civil-society-recommendations-regarding-china-exim-banks-environmental-poli. For an unofficial translation of the policy, see ENV. DEF. & INT'L RIVERS, INTERNATIONAL CIVIL SOCIETY RECOMMENDATIONS REGARDING CHINA EXIM BANK'S ENVIRONMENTAL POLICY BASED ON INTERNATIONAL GOOD PRACTICE 13 (Sept. 2007), http://www.internationalrivers.org/files/International%20Civil%20Society%20Recommendations%20Regarding%20China%20Exim%20Bank.doc.

[111] Scott Zhou, *China as Africa's 'Angel in White*,' ASIA TIMES, Nov. 6, 2006, http://www.atimes.com/atimes/China_Business/HK03Cb04.html.

[112] *Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank's Loan Projects*, *supra* note 103.

[113] GUIDE ON SUSTAINABLE OVERSEAS SILVICULTURE BY CHINESE ENTERPRISES, STATE FORESTRY ADMIN. (Aug. 27, 2007), http://www.studioliq.org/clients/ca/images/uploads/guide_silviculture_en.pdf.

[114] *See Li Rongrong: Cooperation of Overseas Enterprises Must be Win-Win and They Could Decide the Projects Independently*, MINISTRY OF COMMERCE OF THE PEOPLES REPUBLIC OF CHINA (Aug. 12, 2008), http://zgb2.mofcom.gov.cn/aarticle/workaffair/200808/20080805719661.html%29.

[115] *See New Regulation Aims to Keep Chinese Firms within Law on Foreign Contracts*, MINISTRY OF COMMERCE OF THE PEOPLES REPUBLIC OF CHINA (July 29, 2008), http://english.mofcom.gov.cn/aarticle/newsrelease/commonnews/200807/20080705693072.html (reproducing article from Xinhua).

[116] *See* Lin Liyu, *Auditor to Step Up Scrutiny of Overseas State Assets,* CHINA VIEW (XINHUA) (Aug. 11. 2008), http://news.xinhuanet.com/english/2008-08/10/content_9131789.htm.

[117] *See* Jing, *supra* note 107.