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China's Approach to Development in Africa: A Case Study of Kenya's Standard Gauge Railway

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Introduction

China has become a major donor to African states over the past twenty years, but its approach to development has become a source of debate among African opinion leaders and outside experts. Some opinion leaders believe China is not supporting good governance in its development aid, while others disagree, and believe China is a valuable partner for Africa, especially in infrastructure development.[1] Using a case study of Kenya's Standard Gauge Railway, this paper examines this debate, focusing on China's impact on procurement, environmental issues, and labor relations in Kenya.

China-Kenya Procurement, Environmental Issues, and Labor Relations

Although China lacks an overarching law to monitor how Chinese firms operate abroad, the government emphasizes "the importance of higher standards, the relatedness of environmental and social impact, [and] adherence to codes of conduct."[2] According to

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[1] Jin Ding, Christoph Ratz, and Manfred Max Bergman, "What Do We See When Looking at China's Engagements in Africa? An Analysis of Mainstream Academic Perspectives," *Journal of Contemporary China* (2021): 10-11.

[2] *Report on the Sustainable Development of Chinese Enterprise Overseas: Supporting the Belt and Road Regions to Achieve the 2030 Agenda for Sustainable Development* (United Nations Development Program, China, 2017), 15-17. Also, Maria Adele Carrai, "Adaptive governance along Chinese financed BRI railroad megaprojects in East Africa," *World Development* 141 (May 2021).

China's Export-Import (Exim) Bank's 2007 Guidelines on Environmental and Social Impact Assessment (ESIA) of Loan Projects, completion of an environmental and social impact assessment by project developers is mandatory before any loan approval. The bank is not supposed to finance any infrastructure projects that threaten the local environment or lack local environmental agencies' approval.[3] The bank's 2015 Green Credit Guidelines require environmental and social risk management of the projects the bank has funded, while the bank's 2016 White Paper on green financing elaborates steps towards management of projects funded by the bank.[4] Some Chinese state-owned enterprises (SOEs) also publicly state that they should take environmental considerations into account when investing in other countries.[5] On its website, China Road and Bridge Corporation (CRBC), a subsidiary of a larger Chinese state company, says that it is committed to "protecting local ecologies, implementing green technology, integrating environmental protection ideas throughout construction, planning, and management, protecting employees' interests, fostering training and technology transfer and adhering to local regulations."[6]

In Kenya, Article 227 (1) of the constitution requires that "when a state organ or any other public entity contracts for goods and services, it shall do so following a system that is fair, equitable, transparent, competitive and cost-effective." This article thus offers the guiding principles for procurement.[7] The procurement process is further guided by the 2015 Public Procurement and Asset Disposal Act, which stipulates that procurement should emphasize

[3] China Export and Import Bank, "Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank's (China EXIM Bank) Loan Projects," 2007.
[4] China Export and Import Bank, "White Paper on Green Finance," 2016.
[5] Carrai, "Adaptive governance along Chinese financed BRI railroad megaprojects in East Africa."
[6] "Vision and Values," China Road and Bridge Corporation, accessed September 8, 2021, https://www.crbc.com/site/crbcEN/visovalues/index.html?id=d6cc50be-6584-4bd7-9bebbd9327080751. Also, Carrai, "Adaptive governance along Chinese financed BRI railroad megaprojects in East Africa."
[7] Republic of Kenya, *The Constitution of Kenya* (Nairobi: Government Printer, 2010).

"value for money, integrity, public accountability, openness to competition and trade partners, support for economic and social objectives, and efficiency."[8]

With respect to environmental conservation, Kenya has a comprehensive environmental and social protection regime to guide the implementation of any infrastructure project. *Kenya's Vision 2030*, the country's long term development plan, aims for "a clean, secure and sustainable environment."[9] A new constitution promulgated in 2010 placed emphasis on environmental protection as well. Article 42 of the new constitution states: "Every person has the right to a clean and healthy environment, which includes the rights…to have the environment protected for the benefit of present and future generations through" appropriate legislation. Article 70 (1) of the same constitution gives Kenyan citizens the right, at least in theory, to "apply to a court for redress in addition to any other legal remedies that are available" for violations of Article 42. To enforce Article 70 and other similar articles, a range of laws, institutions, and regulations have been put in place. The 2011 Environmental and Land Court Act mandates "a supervisor court to retain original and appellate jurisdiction over disputes related to environmental planning and protection, climate issues, land use, and minerals mining."[10] Kenya also has a Public Complaints Committee, National Environment Tribunal (NET), National Environmental Management Authority (NEMA), Kenya Wildlife Services (KWS), Kenya Parks Service, and the Water Regulations Management Authority to manage its environment.[11] In addition, the National Land Commission Act and the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act protect, in theory, the rights of those displaced by foreign investments. As

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[8] Republic of Kenya, *Public Procurement and Disposal Act (Amended)* (Nairobi: Government Printer, 2015).
[9] Republic of Kenya, "Vision 2030," accessed June 3, 2021, www.vision2030.go.ke. Also, *World Development* 141 (May 2021).
[10] Republic of Kenya, *Environment and Land Court* (Nairobi: Government Printer, 2011). Also, Carrai, "Adaptive governance along Chinese financed BRI railroad megaprojects in East Africa."
[11] Carrai, "Adaptive governance along Chinese financed BRI railroad megaprojects in East Africa."

for labor issues, the labor force is protected in the constitution, the Labor Relations Act, and other regulations.

The Standard Gauge Railway

The Standard Gauge Railway (SGR) is the largest infrastructure project constructed in Kenya since independence in 1963. Promulgated in 2008 by Kenya and Uganda, the idea of the SGR was part of the Northern Corridor Initiative that links the Kenyan coastal city of Mombasa to the landlocked countries of the Great Lakes Region. Even before Kenya's Treasury signed a memorandum of understanding (MoU) with China's Exim Bank in July 2013, opinion was divided among consultants, policy makers, and civil society activists on the economic viability of a standard gauge railway. For instance, a Canadian consultancy report and later World Bank study about the proposed SGR said that building the railway did not make economic sense.[12]

In August 2009, Kenya's Ministry of Transport (MoT) and CRBC signed a memorandum of understanding whereby CRBC was to undertake a free feasibility study on the SGR project. In January 2011, CRBC submitted the feasibility report to the Ministry. The report recommended that the SGR be changed from an electric engine to a diesel engine.[13] The implication of the free feasibility study was that its findings would be utilized by the two governments, but it also potentially suggested that the procurement process would favor CRBC, which had already done the feasibility study. This arrangement also was consistent with China's Exim Bank's approach, which usually requires that a Chinese firm that

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[12] Canadian Pacific Consulting Services, *East African Railways Master Plan Study: Final Report* (Bridgetown, Barbados: CPCS Transcom International Limited, 2009); World Bank, *The Economics of Rail Gauge in the East Africa Community* (Washington, DC: World Bank-Africa Transportation Unit, 2013).

[13] National Assembly, *The Public Investments Committee, Special Report on the Procurement and Financing of the Construction of Standard Gauge Railway from Mombasa to Nairobi (Phase 1)* (Nairobi: 2014). Also, Carrai, "Adaptive governance along Chinese financed BRI railroad megaprojects in East Africa."

conducted a feasibility study proceeds to implement a project. In January 2012, through Kenya's embassy in China, Kenya Railways Corporation (KRC) requested financing from China's Exim Bank to build the SGR.

The financing from Exim Bank has had multiple parts. It included a concessional loan of U.S. $1.6 billion for a period of twenty years, with a grace period of seven years and a two percent interest rate, and also a commercial loan of U.S. $1.63 billion for ten years with a five-year grace period.[14] Although planning for the SGR started before President Uhuru Kenyatta came to power in March 2013, the project became a key component of his administration's vision for Kenya's future. The groundbreaking took place on December 12, 2014, amidst protests about potential environmental risks of the SRG.[15] In spite of these concerns, Kenyatta's ruling coalition was determined to complete phase one by May 2017, ahead of the August 2017 general elections. Construction on phase two, which runs 120 kilometers, began in late 2016 and ended in August 2019. Phase three, from Narok, southwest of Nairobi, to Kisumu in western Kenya, is yet to begin. Crucially, China's Exim Bank did not approve the loan for phase three of the SGR as expected in August 2018, casting doubts over the extension of the SGR to other parts of East Africa. According to the original plan, extension of the railway into Uganda was contingent on completion on the Kenyan side.

Procurement and Debt Sustainability

Despite the fact that Kenya has laws governing procurement, the SGR procurement process was not transparent. The governments of Kenya and China allowed the feasibility study for the project to be conducted by CRBC without allowing other firms to do a feasibility study.

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[14] Oscar Otele, *Understanding Kenyan Agency in the Acquisition and Utilization of Chinese Development Finance in the Transport Infrastructure, 2003-2017*, PhD Dissertation (Shandong University, 2018), http://cdmd.cnki.com.cn/Article/CDMD-10422-1018099104.htm.
[15] Uwe Wissenbach and Yuan Wang, "African politics meets Chinese engineers: The Chinese-built Standard Gauge Railway Project in Kenya and East Africa," *Working Paper No. 13,* China-Africa Research Initiative (June 2017).

This decision to only allow CRBC to conduct a feasibility study was challenged by the Law Society of Kenya (LSK) which argued that Kenyan laws require competitive bidding for a feasibility study. However, a Kenyan court ruled in favor of the government, and stated that the whole procurement process was legal.[16] After the award of tender for the whole project was given without competitive bidding, sub-tenders such as design supervision did not follow competitive bidding processes but instead were just handed to the Chinese firm. Two Kenyan parliamentary committees, learning of this lack of competitive bidding, recommended cancellation of the sub-tenders, but they were ignored by President Kenyatta.[17]

Because there was no competitive bidding for the entire project, it was difficult to tell whether the government obtained value for money in the construction of the SGR. The construction of Kenya's SGR also increased the country's debt to China by almost 750 percent between 2014 and 2019.[18] Although the SGR was designed to accommodate 22 million tons of cargo per year,[19] in reality since its launch the SGR has been underutilized. During the 2017-2018 financial year, it lost around $5 million.[20] In 2018, only 5.039 million tons of cargo were ferried from Mombasa to Nairobi, while 3.25 million tons of cargo were transported between January and September 2019, implying that the SGR was seriously underutilized and thus not generating expected revenues.[21] By mid-2020, the SGR had amassed losses estimated at U.S.

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[16] Cynthia Olotch, "Kenya's New Railway and the Emergence of the 'Government-to-Government Procurement' Method," *World Bank Blogs*, July 27, 2017, https://blogs.worldbank.org/ppps/kenya-s-new-railway-and-emergence-government-government-procurement-method.
[17] "The Standard Gauge Railway: The Next Big Scandal," *The Star*, March 5, 2016, https://www.the-star.co.ke/siasa/2016-03-04-the-standard-gauge-railway-the-next-big-scandal/.
[18] Eric Olander, "Kenya-China Debt Relief Talks Stall," *The China-Africa Project,* July 10, 2020, https://chinaafricaproject.com/2020/07/10/kenya-china-debt-relief-talks-stall/.
[19] "Mombasa-to-Nairobi Rail Line Set for Commissioning," *Concrete Trends*, May 15, 2017, https://concretetrends.co.za/news/mombasa-to-nairobi-rail-line-set-for-commissioning/.
[20] Lee Mwiti, "SGR Makes Sh10 Billion Loss in First Year," *Standard Digital*, July 18, 2018, https://www.standardmedia.co.ke/business/business/article/2001288487/sgr-makes-sh10-billion-loss-in-first-year.
[21] "Kenya earns Sh7.54bn from ferrying cargo on SGR," *TradeMark East Africa*, https://www.trademarkea.com/news/kenya-earns-sh7-54bn-from-ferrying-cargo-on-sgr/#:~:text=Kenya%20earned%20Sh7.,3.25%20million%20tonnes%20of%20cargo.

$200 million, and KRC was required to pay a fixed quarterly operation fee estimated at U.S. $28.8 million to Afristar—the SGR operator.[22] Following the inability of KRC to meet operating costs in 2020, a parliamentary oversight committee recommended renegotiation of the "[o]perating [a]greement by planning to reduce the operating costs by at least 50 percent."[23] Although Kenya's economic growth is projected at 6.6 percent in 2021,[24] the country's growing debt problems and the economic effects of COVID-19 may place it on the brink of defaulting on its debt to China Exim Bank for phase one of the SGR.[25]

Environmental and Land Appropriation

Consistent with its 2007 Guidelines, China Exim Bank conducted an Environmental and Social Impact Assessment (ESIA) before approving funding for the SGR. The bank's assessment considered the SGR's potential hazards such as pollution, health problems, land acquisition problems, and forced resettlement.[26] The Chinese embassy in Kenya also said it wanted to ensure that CRBC complied with Kenyan environmental and social laws.[27] It claimed that the project achieved this goal through regular visits, meetings, training, and warnings of Chinese managers who did not comply with local laws.[28]

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[22] John Mutua, "SGR services at risk over Sh38bn China firm debt," *Business Daily*, June 9, 2020, https://www.businessdailyafrica.com/news/SGR-services-at-risk-over-Sh38bn-China-firm-debt%20/539546-5573788-95fsrt/index.html.
[23] Edwin Mutai, "Chinese SGR operator faces 50 percent pay cut," *Business Daily*, September 24, 2020, https://www.businessdailyafrica.com/bd/economy/chinese-sgr-operator-faces-50-percent-pay-cut-2370644.
[24] "Kenya GDP Annual Growth Rate," Trading Economics, accessed September 5, 2021, https://tradingeconomics.com/kenya/gdp-growth-annual.
[25] Pádraig Carmody, Ian Taylor, and Tim Zajontz, "China's spatial fix and 'debt diplomacy' in Africa: constraining belt or road to economic transformation?" *Canadian Journal of African Studies / Revue canadienne des études africaines* (2021), 8.
[26] Liu Weidong, *The Belt and Road Initiative: A Pathway towards Inclusive Globalization* (New York: Routledge, 2019), 159
[27] Liu, *The Belt and Road Initiative,* 160; Carrai, "Adaptive governance along Chinese financed BRI railroad megaprojects in East Africa."
[28] Liu, *The Belt and Road Initiative,* 170.

But many Kenyan activists did not agree. In September 2016, activists filed a petition at the National Environment Tribunal alleging that the SGR traversed Nairobi National Park which is protected and cannot be traversed. In the same month, the tribunal issued an injunction stopping the work until the case was heard.[29] Although the Ministry of Transport had conducted an ESIA for the whole route, civil society activists argued that since the ministry was an interested party in the project, the report was not objective and urged the government not to allow construction of the railway through the park.[30] In response to these concerns, CRBC explored more than ten routes and selected one that bypassed the park.[31] This shift suggests that CRBC responded to public opinion, although local media reports claim that despite bypassing the park the railway has adversely affected animal migration patterns.[32]

Safeguarding socioeconomic rights of displaced communities was another challenging aspect of the SGR. Compensation was managed externally by Kenya's National Land Commission (NLC), which had to deal with exorbitant compensation claims.[33]

Localization and Transfer of Technology

CRBC was expected to follow Kenyan labor laws in addressing local labor issues. By mid-2015, CRBC employed more than 10,000 local workers as masons, mechanics, carpenters, and heavy construction equipment operators. Furthermore, at least 1,000 Kenyans had worked on the project from the level of foreman and middle manager.[34] Over three years the construction of the SGR saw in total the creation of 38,000 temporary jobs.[35] However, there

[29] "Stop Order for Construction of Phase 2A of the Standard Gauge Railway (SGR), Nairobi-Naivasha Section," National Environmental Tribunal, 2016.
[30] Sebastian Mwanza and Catherine Chumo, "Will the Iconic Park Survive? Standard Gauge Railway through Nairobi National Park," *United Nations Perspectives* no. 32 (2019), 1-8
[31] Mwanza and Chumo, "Will the Iconic Park Survive?" 5.
[32] Mwanza and Chumo, "Will the Iconic Park Survive?" 5.
[33] Wissenbach and Wang, "African politics meets Chinese engineers."
[34] Otele. *Understanding Kenyan Agency in the Acquisition and Utilization of Chinese Development Finance in the Transport Infrastructure*, 223-4.
[35] Wissenbach and Wang, "African politics meets Chinese engineers."

were reported cases of wage discrimination by Chinese managers in both phases of the SGR.[36] The project recruited workers from both rural and urban counties. Some workers were sourced from Nairobi because of the unavailability of certain skills in counties near the railroad. Some of these workers from Nairobi were resented by the locals as they were seen as "outsiders," and this became a source of tension in the construction of the SGR.[37] Another source of tension was the frequency of strikes by Kenyan workers. A Chinese manager at a construction site complained that Chinese companies often complied with local labor laws and yet he could not fathom why they could not sort out their labor issues amicably with Kenyan workers.[38]

Technological skill transfer also was a key component in the construction of the SGR. CRBC established training, in Kenya, in railway operation and management and railway engineering.[39] CRBC also established an advanced training program in China for some 18,000 Kenyans.[40] Under the management of China's Ministry of Commerce, high-performing trainees were offered opportunities to travel to China for further study.[41]

Conclusion

Both African states and China are becoming more aware of the risks inherent in BRI lending, as China increasingly tells African states to institute mechanisms for debt sustainability and the two sides work out measures to pause loan disbursal. Generally, China is increasingly becoming conscious that the infrastructure projects it finances must make commercial sense, to avoid placing recipient states in debt traps. May-Tan Mullins and Maria Carrai — China-

[36] Lee Mwiti, "SGR Contractor Refutes Claims of Pay Discrimination at Maai Mahiu," *Standard Digital*, January 6, 2018, https://www.standardmedia.co.ke/business/article/2001265042/chinese-firm-deniesdiscriminately-paying-sgr-workers.
[37] Wissenbach and Wang, "African politics meets Chinese engineers."
[38] Wissenbach and Wang, "African politics meets Chinese engineers."
[39] Anshan Li, **"**Technology transfer in China–Africa relations: myth or reality," *Transnational Corporation Review* 8, no. 3 (2016), 183-195.
[40] Li, **"**Technology transfer in China–Africa relations."
[41] Li, **"**Technology transfer in China–Africa relations."

Africa relations experts — have indicated that Chinese companies often are aware of local environmental and social concerns,[42] yet there is often a lack of local enforcement of environmental and social policies. Given that local authorities are not enforcing their own laws, they create weak incentives for Chinese firms to improve governance in BRI projects. The effort by environmental activists in monitoring the construction of the SGR suggests that public participation and civil protests are important ingredients in ensuring that Chinese companies comply with local expectations. In the final analysis, then, although some Chinese companies are becoming conscious of the reputational risks linked to ignoring local environmental and labor laws, host states ultimately must ensure that local regulations are implemented.[43]

[42] May Tan Mullins, "Smoothing the Silk Road through Successful Chinese Corporate Social Responsibility Practices: Evidence from East Africa," *Journal of Contemporary China* 29, no. 122 (2020), 207-220; Carrai, "Adaptive governance along Chinese financed BRI railroad megaprojects in East Africa."

[43] Carrai, "Adaptive governance along Chinese financed BRI railroad megaprojects in East Africa."