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PRACTICE OF LEADERSHIP

Chinese Funded Projects and Open Governance in Kenya

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Abstract

This article examines how Kenyan civil society uses open governance to call for government accountability around debt acquisition from China. Through two case studies, I illustrate how strategic litigation has become a framework through which civil society exercises leadership from below in the face of constrained parliamentary scrutiny. Rather than a one-sided conversation about "China in Africa", these case studies show that open governance serves a dual role of holding the Kenyan government accountable to its citizens, whilst critiquing the debt acquisition infrastructure of the Chinese government.

Keywords: China, Kenya, Infrastructure, Open Governance, Foreign Policy

1. INTRODUCTION

China's foray into Kenya begun with Uhuru Kenyatta's predecessor Mwai Kibaki. In 2006, after President Hu Jintao official visit to Nairobi, China secured six expansive oil prospecting blocks for the National Offshore Oil Corporation covering some 115,343 square kilometres in the Kenyan coastal stretch and northern region. In addition, China controls the majority of an estimated 70% of infrastructure projects that includes road construction, airports, water systems, power generation, housing, and hospitals.[1] The Nairobi-Thika highway, was re-engineered at a total cost of US$375 million. Upgrading and renovating the Jomo Kenyatta International Airport at a cost of €187m was awarded to the China National Aero Technology International Engineering Company.[2] In 2013, when President Kenyatta and his deputy William Ruto took office, they were both facing charges for crimes against humanity in the International Criminal Court for violence during the 2007/8 post-election period. The Uhuru, Ruto duo came into office during President Obama's last term in office and caused the US and other European countries discomfort with their candidature due to the ICC case posing risks to future financial partnerships. Johnnie Carson, Obama's assistant secretary of state, noted: "Kenyans are, of course, free to pick their own leaders but that "choices have consequences."[3] The foreign policy rhetoric that accompanied Uhuruto as they came to be known was one of "looking East" which many

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[1] Onjala, Joseph (2008), A Scoping Study on China-Africa Economic Relations, Africa Economic Research Consortium
[2] *Ibid*
[3] Gettleman, Jeffrey (2013), Leader of Vote Count in Kenya Faces U.S. With Tough Choices, *New York Times*

interpreted as looking to China whose footprint across the African continent was increasing.

Kenya has acquired debt from the Chinese government during both of Uhuru's terms. The Central Bank of Kenya notes that China accounts for about one third of the country's 2021-22 external debt service costs and is the country's biggest foreign creditor after the World Bank. China owns 72% of Kenya's external debt, which stands at US$50 billion of largely infrastructure financing for the Standard Gauge Railway from Mombasa to Nairobi which was an effort to update the railway line built by the British colonial government.[4] Built at a cost of more than US$4.7 billion, the standard-gauge railway (SGR) is Kenya's most expensive infrastructure project. Since its inception, the project has been marred by accusations of being overpriced and damaging to the environment. The SGR is estimated to have cost over US$10 billion divided into three phases: from the Mombasa port to Nairobi, from Nairobi to Naivasha, and from Naivasha to Malaba, which borders Uganda. Phase I was completed in August 2017, right before the presidential election, and Phase II was near completion by mid-2019. The SGR was financed primarily by the China Import and Export Bank and contracted to the China Communications Construction Corporation Group. Over the next three years, Kenya is expected to pay US$60 billion to China Exim Bank. This paper examines how Chinese investments in Kenya have propelled accountability from below by social movements and civil society organisations. These movements have mobilised the language of open governance and transparency to argue for transformative governance. I argue that what we witness is leadership from below framing debates about China's economic foreign policy in Africa and Kenya specifically.

2. CHINA IN AFRICA

The Belt and Road Initiative which is considered the centrepiece of President Xi Jinping's foreign policy is described as follows:

"Aims to promote the connectivity of Asian, European and African continents and their adjacent seas, establish and strengthen partnerships among the countries along the Belt and Road, set up all-dimensional, multi-tiered and composite connectivity networks, and realize diversified, independent, balanced and sustainable development in these countries. The connectivity projects of the Initiative will help align and coordinate the development strategies of the countries along the Belt and Road, tap market potential in this region, promote investment and consumption, create demands and job opportunities, enhance people-to-people and cultural exchanges, and mutual learning among the peoples of the relevant countries, and enable them to understand, trust and respect each other and live in harmony, peace and prosperity".[5]

From funding the African Union building to infrastructure investments in Ethiopia, Malawi, Niger, Mali to name a few, 40 out of 54 African countries have signed memoranda of understanding alongside the African Union to formalise Chinese investments in the country. Since 2000, China has provided cumulative loans of US$143 billion in Africa making it Africa's fourth largest bilateral creditor. At the 2018 Forum for China–Africa Cooperation in Beijing, US$60 billion in development financing was offered until 2021. The African Development Bank estimated that Africa's infrastructure deficit amounts to more than US$100 billion annually until 2021. Venkateswaran observes five significant trends emerge from China's BRI projects in Africa.[6] The first is investments in ports and port areas from the Gulf of Aden through the Suez Canal towards the Mediterranean Sea. Second, China is using its rail and road lines, to link its industrial and energy projects to the infrastructure projects along the African coastline**.** Third, the "win-win model of cooperation" that is argued to underpin the BRI can be contested. Fourth, China's success in transnational projects is enabled by a deficit strong governance. Fifth, China has had limited success in working with other third-partner countries.

Across Africa protests around projects funded by China have revolved around three areas. The first is land dispossession. Between 2016 and 2017 in Madagascar, Nigeria and Tanzania, protests erupted over the lack of compensation for land and businesses acquired and/or destroyed to make way for infrastructure projects. The second area is around economic dispossession through loss of jobs taken up by Chinese workers. At the centre of the anger against Chinese companies is the conveyor belt approach to benefits which sees all labour and materials sourced directly from China with limited trickle down to local communities. For instance, in Uganda and Kenya local traders have protested the

[4] Otele, Oscar (Nd), China's Approach to Development in Africa: A Case Study of the Kenya's Standard Gauge Railway, *Council on Foreign Relations*

[5] Zeng, Jinghan (2019), Narrating China's Belt and Road Initiative, *Global Policy Volume*, 10 (2), pp.207 - 216

[6] Venkateswaran, Lokanathan (2020), "China's Belt and Road Initiative: Implications in Africa," *ORF Issue Brief No. 395*, August 2020, Observer Research Foundation

presence of Chinese traders in small businesses, which is perceived as taking resources away from informal traders. Finally, there have been protests generated by accounts of racism about the treatment of Africans by Chinese workers. While these protests are framed as targeted at Chinese projects, they are in effect anti-government protests.[7]

At a political level, there has been growing concern about the BRI project as a form of neo-colonialism that facilitates debt trap diplomacy. The idea of debt trap diplomacy creates the conditions of indebtedness and opacity of said debt under the guise of development support. An additional aspect of debt trap diplomacy is that borrowed money often goes to pay contractors from the source country. While China has argued that its relationships with African countries stimulates economic growth through job creation, improved infrastructure and accompanying skills. The now deceased Tanzanian president Magufuli argued that the BRI loan agreements were "exploitative and awkward" evidenced by the demand for a guarantee of 33 years and an extensive lease of 99 years on a port construction.[8] Much like the Tanzania example, Kenya's auditor general warned that the country risks losing control of Mombasa port if it defaults on loans from the China Exim Bank. The terms for a US$ 2.3 billion loan for Kenya Railways Corporation specify that the port's assets are collateral, and they are not protected by Kenya's sovereign immunity due to a waiver in the contract.[9]

3. STRATEGIC LITIGATION AND OPEN GOVERNANCE

In Kenya, protests have been animated around two projects. The first is a coal power plant in Lamu Island that was announced in 2015, financed through a loan of US$ 900 million from Industrial and Commercial Bank of China and its affiliate South African Standard Bank putting forward an additional US$300 million which amounted to 60% of the financing cost.[10] The Power Construction Corporation of China and China Huadian Corporation would build and operate the plant respectively. Environmental and civil society groups such as DeCOALonize and Save Lamu took the National Environment Management Authority and Amu Power to the National Environmental Tribunal in 2016 focussing on the coal plant's environmental and cultural impacts.[11] Three years later, in June 2019, they won the case. The judgement affirmed that the environmental and social impact assessment failed to adequately consider pollution from the plant or its negative impacts on people, flora, and marine life. The judgement also found that public participation had been insufficient.[12] A new environment and social impact assessment would be necessary before construction could resume. The coal plant was subsequently cancelled after the companies involved in financing and construction eventually withdrew due to legal protests over environmental concerns.

The second major project that continues to draw protests is the Standard Gauge Railway (SGR) line. The SGR project has drawn concerns around two major issues. The first issue was environmental impact given that sections of the SGR were going to cross two major national parks. The Lands and Environment Court dismissed a case filed in 2018 by Okiya Omtatah and others to have the path of the railway line shifted from the park. The second issue is transparency around the terms of the loans and conditions that the government signed onto.[13] In 2014, the Law Society of Kenya and Okiya Omtatah, a human rights activist, through a constitutional petition against SGR Phase I asserted multiple accounts of unconstitutionality. Specifically, the absence of parliamentary approval of SGR expenditure and the lack of competitive bidding for the procurement of the SGR. In 2015, Omtatah filed a separate suit, based on the constitutional right to information asking for the disclosure of relevant documents and agreements relating to the SGR Phase II. In 2020, the Court of Appeal, ruled that state-owned Kenya Railways had failed to comply with – and violated – the nation's laws "in the procurement of the SGR project". In 2021, two activists Khelef Khalifa and Wanjiru Gikonyo filed a petition at the High Court in Mombasa seeking to obtain all contracts, agreements, and studies for the construction and operation of the SGR.[14]

4. LEADERSHIP FROM BELOW

[7] See Venkateswaran (2020)
[8] Venkateswaran (2020)
[9] National Public Radio (2018), A New Chinese-Funded Railway in Kenya Sparks Debt-Trap Fears
[10] National Public Radio (2018)
[11] Birgen, Rose (2019), Reflections of the Lamu Coal Plant, *Natural Justice*
[12] Republic of Kenya Tribunal Appeal Number 196 of 2016
[13] Kenya Debt Abolition Network (2021), Kenyan Activists Raise Questions About Debt
[14] Malemba, Mkongo (2021), Activists move to court to compel government to publish Standard Gauge Railway contracts, *The Star Kenya*

The cases above offer an opportunity to reflect on how conversations on China's investments in Kenya have been animated around two approaches. The first approach is a conversation that citizens have with their governments about their responsibility to its citizens. These debates are less about Chinese investments but are more about citizens engaging and challenging their government. This challenge emerges through conversations about open governance, transparency, and accountability for external contracts. This challenge to the government is in a much longer history of grand corruption, weakening state institutions such as parliamentary committees and the judiciary which have increasingly alienated citizens through both economic shocks and accompanying inequities. Strategic litigation has therefore become an important avenue through which citizens use legal pathways as a basis to both develop institutional memory about citizen demands and establish legislative precedence which serves as a basis for future work in the area. In this context what we are seeing is leadership from below, as a model of transformational leadership where leaders elevate followers to enact the vision set out. In this case, we can argue that civil society organisations and individuals who have worked together to develop strategic litigation cases have mobilised citizens across the country to both pay attention and generate a critical mass around the issues. If we draw on feminist transformational leadership scholarship, I argue that what civil society organisations and individuals engaging in these strategic litigation cases do is demonstrate a commitment to challenging inequalities.[15] Addressing inequalities therefore lie at the heart of the tactics taken. The second approach falls within the realm of direct action coupled with legislative interventions. In this area, we see a combination of long-term engagement using social media as a basis to attract and enable broader knowledge sharing across the country. This was the case on the coal plant, for example, unlike SGR where there was broad knowledge about the contextual issues associated with the construction of the new railway and its environmental implications. Leadership from below as is evidenced here lies in mobilising citizens towards a vision of environmental safety linked to the coal plant. Put together, the strategies by activists mapped above illustrate the leadership from below as the basis for transforming conversations about Chinese investments in Africa that focus on government accountability to its citizens rather than on China as an external actor. In this way, the conversations about China in Kenya are as much about citizens holding the Kenyan government accountable as they are about a broader critique of bilateral and multilateral partnerships.

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[15] See Batliwala, Srilatha (2011), Feminist Leadership for Social Transformation: Clearing the Conceptual Cloud. *CREA*

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