

COMMENTS

Supplying the World's Factory: Environmental Impacts of Chinese Resource Extraction in Africa

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I. INTRODUCTION

The Chinese are doing more than the G8 to make poverty history. If a G8 country had wanted to rebuild the stadium, we'd still be holding meetings! The Chinese just come and do it. They don't hold meetings about environmental impact assessment, human rights, bad governance and good governance. I'm not saying it's right, just that Chinese investment is succeeding because they don't set high benchmarks.

—Sierra Leone's Ambassador to China (2005)¹

Rapid economic growth over the last three decades has made China the world's second largest economy behind the United States.² With an

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1. Peter Bosshard, *China's Environmental Footprint in Africa*, S. AFR. INST. INT'L AFF. 4 (Apr. 2008), http://www.saiia.org.za/images/stories/pubs/chap/chap_brif_03_bosshard_200804.pdf.

2. *China Overview*, WORLD BANK (Apr. 1, 2014), <http://www.worldbank.org/en/country/china/overview>.

average annual growth rate of roughly 9%, China's energy needs are staggering.³ By 2010, China was the world's largest consumer of energy⁴ and is currently the world's biggest producer and consumer of coal and the largest consumer of oil behind the United States.⁵ According to the International Energy Agency, China will become the world's largest net importer of oil by 2020, with average net imports reaching an estimated thirteen million barrels per day by 2035.⁶ In addition, China is currently the world's largest consumer of aluminum, copper, lead, nickel, tin, zinc, iron ore, coal, wheat, rice, palm oil, cotton, and rubber.⁷ With only about 6% of global gross domestic product (GDP), China consumes 31% of the world's coal, 40% of cement, and 30% of iron.⁸

As Chinese energy needs continue to intensify, the country has increasingly looked beyond its own borders to the global community in search of securing the resources it needs to sustain its phenomenal growth.⁹ As domestic natural resources fell short, the attention of China turned to Africa, a continent rich with natural resources and untapped markets.¹⁰ Between 1996 and 2006, proven reserves of oil increased by 56% in Africa, compared to an increase of only 12% in the rest of the world.¹¹ Africa's importance in energy resources and production cannot be overstated.¹²

Although concerns were raised in earlier times on the environmental consequences of upcoming global powers, the global debate and fears of China plundering Africa (and other regions) in search for natural resources,

3. Christopher Alessi & Stephanie Hanson, *Expanding China-Africa Oil Ties*, COUNCIL ON FOREIGN REL. 2 (Feb. 8, 2012), <http://www.cfr.org/china/expanding-china-africa-oil-ties/p9557>.

4. *China: Overview*, U.S. ENERGY INFO. ADMIN. (Feb. 4, 2014), <http://www.eia.gov/countries/cab.cfm?fips=ch>.

5. Alessi & Hanson, *supra* note 3, at 2.

6. *Id.*

7. Patrick Munson & Zheng Ronghui, *Feeding the Dragon: Managing Chinese Resource Acquisition in Africa*, 2 SEATTLE J. ENVTL. L. 343, 346 (2011) (citing Daniel Griswold, *The Competition for World Resources: China's Demand for Commodities*, CENTER FOR TRADE POL'Y STUD. (Feb. 8, 2007), http://www.cato.org/pub_display.php?pub_id=10906).

8. Wenran Jian, *Fuelling the Dragon: China's Rise and Its Energy and Resources Extraction in Africa*, 199 CHINA Q. 585, 587 (2009) (citing Chen Ya'nan, *The Origin of China's Energy Supply Crisis: 60 Billion Tons of Coal Wasted During the Past 50 Years*, CHINESE MARKET (June 7, 2005), <http://finance.sina.com.cn/g/20050607.shtml>).

9. CHRIS ALDEN, CHINA IN AFRICA 8 (2007).

10. *Id.* at 12.

11. See Erica S. Downs, *The Fact and Fiction of Sino-African Energy Relations*, 3 CHINA SECURITY 42, 45 (2007).

12. See Efraim Chalamish, *Unquenchable Thirst: The Outlook for Energy Disputes in Africa*, 107 AM. SOC'Y INT'L PROC. 123, 123 (2013).

and of China's actual and future contribution to climate change, to name just two main issues, are unprecedented.¹³

With sustainable development and environmental damage an ever-increasing priority for governments and global institutions, China's growth and natural resource extraction in Africa is being closely monitored by international actors.¹⁴

Africa's relatively unexploited energy sources, timber, agriculture, mining, fisheries, and most significantly oil, present an opportunity for the Chinese to supply their exhaustive economy.¹⁵ This Comment will discuss the role that Chinese financial institutions, including the China Export Import Bank (China Exim Bank), play in the environmental impact of Chinese investments in African nations and the importance of the global community's involvement in the continent. This Comment will also discuss the environmental impacts of Sino-African trade relations by focusing on the problems of Chinese resource extraction in developing African nations and the legal challenges facing African governments.

II. BACKGROUND: CHINA'S EXPANSION INTO AFRICA

China's presence in Africa is not a new phenomenon; however, as Chinese energy needs have increased, so too has the Middle Kingdom's engagement and expansion into Africa. When African countries achieved independence in the 1950s and 1960s, the Chinese began soliciting favor with these nations in order to achieve diplomatic recognition.¹⁶ By the 1970s, thirty African nations were receiving aid from China, who in turn supported China's bid for a United Nations Security Council seat in 1971.¹⁷ More recently, the Chinese government has actively encouraged Chinese energy investment in Africa as part of its larger international policy and the promotion of Chinese participation as leaders in global industries.¹⁸ As China attempts to "quadruple its

13. Arthur P.J. Mol, *China's Ascent and Africa's Environment*, 21 GLOBAL ENVTL. CHANGE 785, 785 (2011).

14. *See id.*

15. ALDEN, *supra* note 9, at 12.

16. David Haroz, *China in Africa: Symbiosis or Exploitation?*, 35 FLETCHER F. WORLD AFF. 65, 66 (2011).

17. *Id.* at 67.

18. Edward C. Chow, *China's Soft Power in Developing Regions: New Major Player in the International Oil Patch*, in CSIS Smart Power Initiative, *Chinese Soft Power and Its Implications for the United States*, CENTER FOR STRATEGIC & INT'L STUD. 91, 91 (Mar. 2009), http://csis.org/files/media/csis/pubs/090403_mcgiffert_chinesesoftware_web.pdf; *see also* Mol, *supra* note 13, at 788 (discussing the "Go Out" Policy of 2001).

economy” by 2020, Africa’s raw materials and energy markets have increasingly become the focus of Chinese investment abroad.¹⁹ This hunger for raw materials directly translates to China’s increased engagement in Africa. In 1977, total bilateral trade between China and Africa stood at \$720 million,²⁰ compared to \$166 billion today.²¹ From 2001 to 2007, China’s trade with Africa increased 681%.²² China’s need for raw materials has, in turn, been seamlessly met by African nations’ aspiration for capital investment.

In 1996, at a speech given at the African Union headquarters in Addis Ababa, Ethiopia, the Chinese head of state, Jiang Zemin, “proposed the creation of the Forum on China-Africa Cooperation (FOCAC).”²³ Beginning in October 2000, the forum has met every three years, most recently in Beijing in 2012, with the sixth ministerial forum scheduled in South Africa for later this year.²⁴ The goals of FOCAC are generally to consolidate “China-Africa traditional friendship, strengthen political mutual trust, deepen practical cooperation, enhance exchanges and mutual learning and advancing the comprehensive development of the . . . strategic partnership.”²⁵ In January 2006, the Chinese government adopted the new “Africa Policy,” which states the guiding principles of the strategic partnership between African nations and China.²⁶ These principles include (1) sincerity, friendship, and equality; (2) mutual benefit, reciprocity, and common prosperity; (3) mutual support and close coordination; and (4) learning from each other and seeking common development.²⁷ Both the new Africa Policy and the FOCAC illustrate the importance that Chinese leaders place on African development.²⁸ Among other promises,

19. Wenran Jiang, *China’s Emerging Strategic Partnerships in Africa*, in CHINA INTO AFRICA: TRADE, AID, AND INFLUENCE 50, 58 (Robert I. Rotberg ed., 2008). China’s unprecedented economic growth over the past thirty years has led to a steep rise in its energy consumption, from an average of 1.2% in 1996 to 14.5% in 2003. JEAN KACHIGA, CHINA IN AFRICA: ARTICULATING CHINA’S AFRICA POLICY 68 (2013).

20. Li Anshan, *China’s New Policy Toward Africa*, in CHINA INTO AFRICA: TRADE, AID, AND INFLUENCE, *supra* note 19, at 21, 25.

21. *More Than Minerals*, ECONOMIST (Mar. 23, 2013), <http://www.economist.com/node/21574012>.

22. JIANG, *supra* note 19, at 53.

23. HOWARD W. FRENCH, CHINA’S SECOND CONTINENT 12 (2014).

24. *The Fifth Ministerial Conference of the Forum on China-Africa Cooperation Beijing Action Plan (2013-2015)*, FORUM ON CHINA-AFR. COOPERATION (2012), <http://www.focac.org/eng/ltada/dwjbzjjhys/t954620.htm>.

25. *Id.*

26. J.S. Kohli, *The Dragon on Safari: China’s Africa Policy*, INST. PEACE & CONFLICT STUD. 1 (Oct. 2009), http://www.ipcs.org/pdf_file/issue/SR86-China-Kohli-Final.pdf.

27. *Id.* at 1-2.

28. IAN TAYLOR, CHINA’S NEW ROLE IN AFRICA 18 (2009).

[t]he summit in late 2006 approved a three-year action plan to forge ‘a new type of strategic partnership,’ which included a pledge that China would double aid to Africa by 2009 (to reach about US\$1 billion); set up a US\$5 billion China-Africa development fund to encourage Chinese companies to invest in Africa; provide US\$3 billion in preferential loans and US\$2 billion in preferential buyer’s credits to African countries.²⁹

China’s push into Africa comes at a time when awareness about the need for environmental protection and sustainable development is at its peak. Beginning in the 1970s and steadily continuing into the 2000s, degradation of raw materials and environmental pollution could no longer be ignored as harmless side effects of the global economic development.³⁰ “As early as during the 1972 UN Conference on Human Development, discussions took place with regard to the role of business in the global protection of the environment and on the necessity of integrating environmental concerns into corporate decision-making.”³¹ Through local and global environmental institutions, multilateral environmental agreements, environmental nongovernmental organizations (NGOs), and government behavior, a “global environmental consciousness and normativity” has been created.³² Multinational corporations and governments are now being held to a higher environmental standard and as such are accountable to the global community for transgressions beyond this paradigm.³³ This environmental normativity is the standard by which Chinese investments in Africa will be critiqued.

Table 1: China’s Top Ten Trading Partners in Africa³⁴

	Economic Type	Average Annual Trade, 2006-2010 (US \$ million)	Share in Total China-Africa Trade
Angola	Oil Export	18,627	21%
South Africa	Diversified Economy	166,86	18%
Sudan	Oil Export	6,445	7%
Nigeria	Oil Export	5,774	6%
Egypt	Diversified Economy	5,384	6%
Algeria	Oil Export	4,155	5%
Libya	Oil Export	4,154	5%

29. *Id.*

30. Mol, *supra* note 13, at 786.

31. ELISA MORGERA, CORPORATE ACCOUNTABILITY IN INTERNATIONAL ENVIRONMENTAL LAW 11 (2009).

32. Mol, *supra* note 13, at 786.

33. *Id.*

34. Lu Yong, *China’s Trade Rush with Africa*, FORUM ON CHINA-AFR. COOPERATION (Apr. 25, 2011), <http://www.focac.org/eng/zfgx/t820242.htm>.

	Economic Type	Average Annual Trade, 2006-2010 (US \$ million)	Share in Total China-Africa Trade
Republic of the Congo	Oil Export	3,241	4%
Morocco	Diversified Economy	2,548	3%
Benin	Agriculture	2,097	2%
		Total Share of African Trade	76%

A. *China's Development Aid to Africa*

China's development aid to Africa is based on a policy of nonintervention,³⁵ which creates environmental concerns because this aid is not contingent upon meeting sustainable environmental standards. The use of aid is just one economic means of access into Africa, which helps the Chinese gain access to natural resources and enhances the country's soft power goals.³⁶ A clear bright-line rule for African nations to qualify as a recipient of Chinese aid is the diplomatic recognition of China, and rejection of Taiwan, in order for China to "secure diplomatic support for the One China Policy."³⁷ Unlike Western countries, Chinese foreign aid is not contingent on government reform, transparency, human rights, or environmental reform.³⁸ Liu Guijan, China's special representative on Darfur, stated:

We [China] have never, and will never in the future, attach any kind of political conditions to these aid and development projects, because we think that providing assistance is just for the benefit of the people, it is not for political purposes, not for showing off to the outside world.³⁹

Beginning in 1975 and continuing to the present, China has had more aid programs in African nations than the United States.⁴⁰ China's Africa Policy puts an emphasis "on cooperation, bilateralism, and a win-win strategy," with China's aid pattern changing "from unitary aid to multiple forms of aid, such as government deducted-interest loans, aid

35. Madison Condon, *China in Africa: What the Policy of Nonintervention Adds to the Western Development Dilemma*, 27 FLETCHER J. HUM. SEC. 5, 6 (2012).

36. See Denise Zheng, *China's Use of Soft Power in the Developing World: Strategic Intentions and Implications for the United States*, in CSIS Smart Power Initiative, *supra* note 18, at 1, 5-6.

37. Haroz, *supra* note 16, at 68.

38. See Condon, *supra* note 35, at 7-8.

39. MARCUS POWER, GILES MOHAN & MAY TAN-MULLINS, CHINA'S RESOURCE DIPLOMACY IN AFRICA: POWERING DEVELOPMENT? 138 (2012) (citing Liu Guijan, *China in Africa: A Sincere, Co-Operative and Equal Partner*, EMBASSY PEOPLE'S REPUBLIC CHINA IN REPUBLIC S. AFR. (Oct. 25, 2006), <http://za.china-embassy.org/eng/dsxx/dshd/t277443.htm>).

40. Deborah Brautigam, *China's Foreign Aid in Africa: What Do We Know?*, in CHINA INTO AFRICA: TRADE, AID, AND INFLUENCE, *supra* note 19, at 198.

combined with co-investment, and grants.”⁴¹ This “win-win” approach is a strategic partnership driven by China’s economic goals and its access to African natural resources.

Chinese aid to Africa comes in three forms, including grants, zero-interest loans, and low-interest “concessional” loans.⁴² The majority of aid is managed by the Ministry of Commerce (MOFCOM), within which the Department of Aid to Foreign Countries conducts foreign aid policy and the laws and regulations directing foreign aid.⁴³ At the same hierarchical level, MOFCOM’s Bureau for International Economic Cooperation handles the direct implementation of aid.⁴⁴ The China Exim Bank manages the majority of concessional loans to African nations⁴⁵ and coordinates with the Ministry of Commerce on which projects are to be financed by concessional loans.⁴⁶ “China’s aid is supposed to be based on equality, mutual benefit, and respect for the sovereignty of the host. Loans [are] to be nonconditional and interest free, with repayment easily rescheduled, and projects [are] designed to make the recipient self-reliant rather than dependent on China.”⁴⁷ The use of financial incentives in the form of development assistance and low-interest investment coupled with the policy of noninterference forms the basis of China’s approach to Africa, in turn helping China to secure access to precious raw materials. Chinese aid to Africa is strategic and precise. However, there is no singularly well-defined Chinese strategy for individual countries.⁴⁸

B. *The Role of Financial Institutions*

China Exim Bank and the China Development Bank (CDB) were founded in 1994, and both are fully state-owned.⁴⁹ China Exim Bank reports directly to the State Council, and its activities are overseen by the Ministries of Finance and Commerce, the People’s Bank of China, and

41. Anshan, *supra* note 20, at 32.

42. Christopher Tung, *The Influence of Chinese Climate Policy & Law on Africa*, 4 CARBON & CLIMATE L. REV. 334, 337 (2010).

43. BRAUTIGAM, *supra* note 40, at 200-01.

44. *Id.* at 201.

45. Tung, *supra* note 42.

46. BRAUTIGAM, *supra* note 40, at 201.

47. *Id.* at 200.

48. MOFCOM heads the China-Africa relations. However, other ministries such as Foreign Affairs, Land and Resources, and Water Resources “have different agendas and interests with respect to Africa.” Often state-owned and private Chinese enterprises active in Africa are more directed by these lower governmental authorities than by MOFCOM or by Chinese embassies in Africa, because these companies come from provinces or municipalities, or they are owned by them. Mol, *supra* note 13, at 788-89.

49. KACHIGA, *supra* note 19, at 75.

the China Bank Regulatory Commission.⁵⁰ China Exim Bank provides export credits to Chinese companies and foreign clients, lends on foreign governmental loans for projects in China, offers foreign exchange guarantees, and administers the Chinese government's concessional loans to foreign governments.⁵¹ China Exim Bank also "actively bankroll[s] individual firms' 'going out' expansion activities, coordinating with the MOFCOM to authorize Chinese firms to bid for China's aid projects."⁵² Furthermore, as part of its strategy to encourage global investment, the bank offers interest discounts to overseas investors.⁵³ By 2006, China Exim Bank was financing 256 projects in 36 African countries, with 79% of these projects comprising infrastructure construction including dams, railways, mines, oil facilities, and power plants.⁵⁴ Today, China Exim Bank's loans to Africa are larger than that of the World Bank.⁵⁵

The CDB also supports Chinese trade and investment in Africa.⁵⁶ The CDB is a commercial bank that assists Chinese foreign direct investment (FDI) and administers the China-Africa Development Fund.⁵⁷ This fund supports investments in African manufacturing, agriculture, and infrastructure projects.⁵⁸ By March 2007, the CDB had loans worth \$1 billion in Africa and was operating over thirty development projects across the African continent worth approximately \$3 billion.⁵⁹

While Western countries condition loans to African nations on requirements of transparency, human rights, and demonstration of democratic principles, Chinese financial services require no such obligations. As such, Chinese financial investments require no environmental impact assessment of projects, and Chinese investors are often willing to fund projects where other nations have deemed them to be too dangerous or environmentally unsound.⁶⁰ "The absence of conditionality is a feature of China's soft power diplomacy—China differentiates itself from other world powers by refusing to 'make demands upon other nations' sovereignty, economic models, governance or political

50. Bosshard, *supra* note 1, at 2.

51. *Id.*

52. POWER, MOHAN & TAN-MULLINS, *supra* note 39, at 108.

53. Bosshard, *supra* note 1, at 2.

54. KACHIGA, *supra* note 19, at 76.

55. Mike Cohen, *China EXIM Lends More to Africa Than World Bank, Fitch Says*, BLOOMBERG NEWS (Dec. 28, 2011), <http://www.bloomberg.com/news/articles/2011-12-28/china-exim-loans-to-sub-sahara-africa-exceed-world-bank-funds-fitch-says>.

56. KACHIGA, *supra* note 19, at 76.

57. *Id.*

58. Bosshard, *supra* note 1, at 2.

59. KACHIGA, *supra* note 19, at 76.

60. *See* Mol, *supra* note 13, at 790.

culture.”⁶¹ For example, the International Finance Corporation (IFC) of the World Bank adopted environmental guidelines that projects are required to meet before funding will be granted.⁶² In comparison, Chinese financial institutions and investments often have no guidelines or standards that comply with international environmental standards. This, in turn, undermines the safeguards that global multilateral banks have put in place. Furthermore, Chinese financial institutions will give concessional loans to be repaid in natural resources.⁶³ “In September 2007, the Democratic Republic of the Congo revealed an agreement with China wherein \$12 billion, possibly more depending on need, will be loaned to Congo for infrastructure-building, railroads, roads, and mines in exchange for China’s rights to mine copper ore of the equivalent value.”⁶⁴

Such limited conditions on loans suits many African nations well because they are hungry for capital investment and have often struggled to receive money from Western countries who hold governments to a higher standard. “Chinese loans and aid flows allow African governments to eschew the often dogmatic economic policy conditions of international financial institutions like the World Bank and International Monetary Fund (IMF).”⁶⁵ For example, in the late 1990s the Sudanese government approached several foreign countries searching for \$2 billion in funding for construction of the Merowe Dam.⁶⁶ With debts to both the World Bank and IMF, the Sudanese were unable to receive funding from any international donors.⁶⁷ However, the Chinese did not share in the same hesitations as Western countries and institutions, and in 2002, China Exim Bank became the largest financier of the Merowe Dam.⁶⁸ The policy of Chinese financial institutions fuels the role of China as the world’s factory and Africa as its source of raw materials.

61. Paul Hubbard, *Chinese Concessional Loans, in CHINA INTO AFRICA: TRADE, AID, AND INFLUENCE*, *supra* note 19, at 217 (quoting JOSHUA KURLANTZICK, *CHARM OFFENSIVE: HOW CHINA’S SOFT POWER IS TRANSFORMING THE NEW WORLD* 84 (2007)).

62. Munson & Ronghui, *supra* note 7, at 352.

63. See HUBBARD, *supra* note 61.

64. KACHIGA, *supra* note 19, at 143.

65. Bosshard, *supra* note 1, at 2.

66. *Id.* at 3.

67. *Id.*

68. *Id.*

III. ENVIRONMENTAL CHALLENGES OF CHINESE INVESTMENT

A. *Exportation of China's Domestic Environmental Practices*

China's domestic policies have prioritized economic growth over the protection of the environment with devastating consequences. China emits more carbon dioxide than the United States and Canada combined, and its total emissions have increased by 171% since 2000.⁶⁹ "China's insatiable appetite for natural resources to fuel its domestic growth and satisfy its domestic energy needs has thus left an unparalleled and increasing footprint on the world's environment."⁷⁰ Concerns about China's domestic environmental practices are relevant to developing African nations as the Chinese government attempts to regulate its multinational corporations (MNCs). Poor Chinese domestic environmental regulation and lack of effective control over MNCs threaten the environmental integrity of African nations as China risks exporting its domestic environmental record to Africa through its resource extraction and investment strategy.

The open-door reforms and industrialization of the 1970s and 1980s sparked the massive rate of environmental destruction and degradation of China.⁷¹ "Natural resource management in post-independent China was a laissez faire matter with numerous agencies managing various components of the environment . . ."⁷² Following the 1972 United Nations Conference on Human Environment in Stockholm, a formal institution for environmental protection was created.⁷³ The State Environmental Protection Agency (SEPA) became a full ministry in 1988 and was again reorganized in 2007 as the Ministry of Environmental Protection (MEP).⁷⁴ The MEP provides the central leadership for China's environmental protection mechanisms and is locally run by the environmental protection bureaus (EPBs) affiliated with their respective municipal governments.⁷⁵

While China has begun to address the environmental challenges it faces, there are several obstacles to the implementation of an efficient and effective environmental legal system. "The Chinese environmental legislation is quite strong on paper and more sophisticated than many

69. POWER, MOHAN & TAN-MULLINS, *supra* note 39, at 191-92.

70. *Id.*

71. *Id.* at 195.

72. *Id.* at 196.

73. *Id.*

74. *Id.*

75. *Id.* (citing Bryan Tilt, *The Political Ecology of Pollution Enforcement in China: A Case from Sichuan's Rural Industrial Sector*, 192 CHINA Q. 915, 915-32 (2007)).

assume, but its implementation is rather weak, depending on the efforts of local governments and other state agencies.⁷⁶ Bureaucratic fragmentation of government agencies has diluted the chain of command, rendering enforcement of environmental regulations ineffectual.⁷⁷ For example, environmental accountability in China is often delegated to local authorities that report violations of environmental regulation to the EPB of its locale.⁷⁸ Both the national Ministry of Environmental Protection and the local people's government of a specific region will be notified of environmental reports.⁷⁹ However, the local people's government supplies the majority of funds for the EPB and appoints the head of the EPB, meaning that violations of national environmental laws and regulations will often be overlooked in favor of local stipulations.⁸⁰ There can be no effective environmental legal system when national and local regulations are at such inherent odds.

Furthermore, China threatens to export its unofficial policy of economic growth over environmental protection. Propelled by an ethos of economic performance and job creation, both local and regional leaders often ignore environmental regulations that hamper industrial growth.⁸¹ "The nub of the problem is an evaluation system that ties officials' career prospects to goals that prioritize economic growth . . ."⁸² In addition, this culture of economic growth above all else disinclines local authorities from enforcing environmental laws for fear of placing "a local industry at a competitive disadvantage by enforcing regulations they believe are not imposed upon the industry's competitors in other jurisdictions."⁸³ This fragmentation of environmental compliance severely hampers China's ability to operate an effective environmental legal system. Some estimates have concluded that as little as 10% of China's environmental laws are actually enforced.⁸⁴ As Chris Alden states in his book *China in Africa*:

76. Daniel Compagnon & Audrey Alejandro, *China's External Environmental Policy: Understanding China's Environmental Impact in Africa and How It Is Addressed*, 15 ENVTL. PRAC. 220, 222 (2013).

77. *Id.*

78. CHARLES R. MCELWEE, ENVIRONMENTAL LAW IN CHINA: MANAGING RISK AND ENSURING COMPLIANCE 5-6 (2011).

79. *Id.*

80. *Id.*

81. *Id.*

82. RACHEL E. STERN, ENVIRONMENTAL LITIGATION IN CHINA: A STUDY IN POLITICAL AMBIVALENCE 27 (2013).

83. MCELWEE, *supra* note 78.

84. Julianne Smith & Jesse Kaplan, *The Faulty Narrative: Fact, Fiction, and China's Efforts To Combat Climate Change*, in CSIS SMART POWER INITIATIVE, *supra* note 18, at 102, 102.

The wholesale destruction of the environment in the course of rapid development, the inability of the central government to stop corrupt local officials from selling land from under millions of peasants, the struggle to effectively implement newly promulgated laws and regulations: these are all regular features of the Chinese development experience at home. These attitudes, circumstances and practices are part of what is being exported, along with the Chinese financial capital, to Africa.⁸⁵

This culture of profits above all else makes environmental consciousness a low-level priority for Chinese enterprises.⁸⁶ Weak environmental regulation and poor implementation domestically suggests that enforcement of Chinese MNCs in Africa will be similarly inefficient and environmentally destructive.

B. Challenges of Liability Under Host State Law

The principle of national sovereignty states that MNCs are subject to the jurisdiction of the host state in which they are established.⁸⁷ Before granting an MNC the right of entry into the national jurisdiction, the host state may protect itself by conditioning entry on certain legal provisions.⁸⁸ Traditionally these tools of protection include foreign investment laws, tax incentives, environmental impact assessments, contractual requirements regarding local collaborations and labor standards, and screening through various administrative agencies.⁸⁹

In this regard, it should be highlighted that an investment project or agreement can be cancelled, even after it has commenced, if it can be shown that the environmental protection condition has not been fulfilled, and, according to some authors, also if harm to the environment is irreversible or outweighs the benefits of the project.⁹⁰

It is critically important that African nations understand the value of their natural resources and implement high standards for Chinese MNCs before they grant access to their domestic markets and raw materials. Furthermore, because “the investor voluntarily subjects himself to the regime of the host State by making entry into it,” Chinese MNCs will be governed by African nations’ domestic environmental laws.⁹¹ Weak legal systems and corrupt government practices hinder the effectiveness of

85. ALDEN, *supra* note 9, at 58.

86. *See* Jian, *supra* note 8, at 587.

87. MORGERA, *supra* note 31, at 25 (citing V. Lowe, *Corporations as International Actors and International Law Makers*, 13 ITALIAN Y.B. INT’L L. 23, 32 (2004)).

88. *Id.*

89. *Id.* at 26.

90. *Id.*

91. *Id.*

many developing nations' environmental laws.⁹² In addition, African countries often face the challenge of implementing environmental legislation due to the constrained financial and human resources that they may have.⁹³ Further challenges are posed to the environmental protection of African nations as they compete for FDIs.⁹⁴ In order to gain an advantage against other African countries, many nations may lower the standards of environmental protection that they require of MNCs,⁹⁵ creating even less incentive for Chinese companies to implement strict environmental policies and safeguards.

C. *Challenges of Liability Under Home State Law*

As previously discussed, domestic implementation of Chinese environmental law is sporadic and ineffectual, leaving little optimism for the effective domestic control of Chinese MNCs abroad. The home state may exercise control over the corporate environmental conduct of its MNCs through "the extraterritorial application of home standards or international standards over the multinationals' operations abroad."⁹⁶ The assumption is that because the home state is benefitting from the MNCs' activities abroad, the state has an inherent interest in making sure that the MNC is not injuring the host nation or violating international environmental standards of law.⁹⁷ "In addition, it can also be argued that there exists a duty on all States to ensure compliance with standards that are prescribed either at the level of international treaties or custom on environmental protection."⁹⁸ China may face difficulties exercising effective extraterritorial jurisdiction, as is already evidenced by the low level of coordination between the Chinese government and its national oil companies.⁹⁹

D. *Exploration in Particularly Sensitive Regions*

While China's economic growth has made it the world's second largest economy, it is still a relative latecomer to the energy sector in comparison to Western countries.¹⁰⁰ Late market entry and competition

92. *Id.*

93. *Id.* at 27.

94. *Id.* at 26-27.

95. *See id.*

96. *Id.* at 30 (citation omitted).

97. *Id.*

98. *Id.*

99. *See* Downs, *supra* note 11, at 49.

100. Munson & Ronghui, *supra* note 7, at 349.

with both Western and Chinese companies have pushed Chinese investors to access resources that have been previously ignored.¹⁰¹ Driven by market saturation, Chinese companies are willing to delve into high-risk regions and markets in order to secure raw materials.¹⁰² Access to areas that were considered insignificant in size or geographically too remote requires considerable investments in mines, oil exploration, and supplementary infrastructure.¹⁰³ These investments in hard-to-reach areas in turn lead to significant environmental risks and degradation as these sectors are especially environmentally sensitive.¹⁰⁴

Mining and oil exploration are extractive processes that entail significant levels of blasting, seismic testing, and pollution, all of which have potentially devastating effects on the environment. Oil exploration in Gabon is one such example of the impact of Chinese business and resource extraction in an environmentally sensitive region. In 2002, the Gabonese government designated a quarter of the country's territory as a nature reserve.¹⁰⁵ The Loango National Park in Southern Gabon protects over 67,000 square kilometers of virgin rainforest and is home to endangered lowland gorillas and elephants.¹⁰⁶ In 2006, it emerged that Sinopec, a state-owned Chinese oil company, had been prospecting for oil within the national park.¹⁰⁷ Scientists reported that Sinopec contractors had entered the park and were employing destructive exploratory tactics including dynamiting areas of the park and building roads through the forest.¹⁰⁸ Oil exploration threatened rare plants and endangered animals and led to water pollution, the killing of wildlife, and the massive disruption of animal habitats.¹⁰⁹ Sinopec has since been charged with mass pollution although large amounts of irreversible environmental damage have already been done.¹¹⁰ Chinese investment in a previously untapped market such as Gabon exposed the delicate ecosystem of the area to potentially severe environmental consequences. While the Gabonese government finally did exert legal power over Sinopec, it will

101. Bosshard, *supra* note 1.

102. *Id.*

103. *Id.*

104. *Id.*

105. Ian Taylor, *China's Environmental Footprint in Africa*, CHINA DIALOGUE (Feb. 2, 2007), <https://www.chinadialogue.net/article/741-China-s-environmental-footprint-in-Africa>.

106. Munson & Ronghui, *supra* note 7, at 349.

107. *Id.* at 350.

108. *Id.* (citing Chris Haslam, *Oil Prospecting in Gabon*, WILDLIFE EXTRA NEWS (Oct. 2006), <http://www.wildlifeextra.com/go/news/gabon-oil.html#cr>).

109. *Id.*

110. Taylor, *supra* note 105.

be important for African nations to monitor Chinese corporations and their resource extraction practices.

IV. CONCLUSION

The relationship between China and African nations has the potential to benefit both parties tremendously and is bringing growth to a continent that has largely been left out of the global arena. It is important that the projects that are helping to elevate African nations out of poverty are conducted with environmentally sound practices in order to secure the economic viability of both Chinese and African development. While Chinese resource extraction in Africa does pose a serious environmental threat, there is a growing trend of Chinese corporations adopting environmental initiatives and sustainable development techniques. Domestically, Chinese corporations have become subject to increasing media concern regarding environmental issues, laws, and regulations.¹¹¹ Additionally, African civil society is exerting more pressure on their own governments and Chinese investors to comply with international environmental standards.¹¹² As this trend continues, it will be important for international organizations, governments, and NGOs at a global level to enforce Chinese compliance with international environmental standards. In addition, it is up to the African nations to best utilize their natural resources and ensure that proper environmental regulations and protections are in place for sustainable and prosperous development.

111. See May Tan-Mullins & Giles Mohan, *The Potential of Corporate Environmental Responsibility of Chinese State-Owned Enterprises in Africa*, 15 ENV'T, DEV. & SUSTAINABILITY 265, 270 (2012).

112. See *id.*