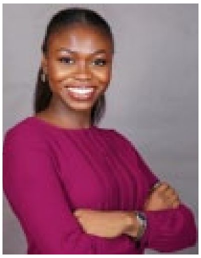
Unpacking Infrastructure-For-Resources Deals in Africa's Mining Sector and Best Practices for Future Investments

By Esther Ocheni



My name is Esther Ocheni. I am a policy professional of Nigerian descent currently working in the education policy space as Senior Researcher and Policy Analyst at the First Nations Education Steering Committee in Vancouver, Canada. Before this, I worked as a junior policy consultant for the United Nations Development Program in Cambodia. I got my Bachelors degree in Development Studies from American University in Washington, DC and a Masters in Public Policy and Global Affairs at the University of British Columbia (UBC). I have extensive research and policy analysis experience, including a 2-year project with UBC's Institute of Asian Research exploring China's political, military and economic activities in Africa. I believe that the current China-Africa trade relationship is underutilized and more effective collaboration could be achieved through stronger negotiations and a clearer African development vision.

I became passionate about development, owing to my experiences growing up in Nigeria. My interests include international development, finance and economic policy, rural development, poverty research and much more.

Abstract

Africa's combination of a huge infrastructure gap, poor international credit rating and abundant natural resources is attractive for an energy and natural resource-hungry construction behemoth seeking to bolster its ambitious Belt & Road projects and increase its diplomatic reach. However, Africa's mining sector's lack of regulation makes it a casualty in Resource-for-Infrastructure (RFI) deals with China. This paper contributes to the existing literature by assessing the impacts of RFI deals on Africa's mining sector and uses Zambia's copper belt as a microcosm of the regulatory dysfunction and the social and environmental casualties happening across the continent when deals are poorly negotiated, and regulations are ineffectively enforced. This paper concludes by identifying cost-mitigating best practices to raise revenue in existing deals, secure better returns from incoming investments by competitors, and take a stronger stance in the new frontier in China-Africa relations as outlined by FOCAC 8.

Introduction

There is a dichotomy of the views of Chinese activities in Africa, as a threat or an opportunity. RFI deals, 'hidden debt'[1] and the opacity of loan agreements are often cited as evidence of threats, while the opportunity-camp spotlights China's provision of crucial growth-enabling infrastructure such as ports and roads. Numerous scholars have already assessed this debate and identified that the impacts vary.[2] Africa's huge infrastructure gap, poor international financial market credit rating and abundant natural resources, are attractive for a natural resource-hungry construction behemoth seeking to bolster its ambitious Belt & Road projects and increase its diplomatic reach. Negotiations tend to be tied to electoral considerations to create political legacies as African bureaucrats seek political points and loans without strings, while Chinese investors seek profits—a perfect match. [3]

African countries are generally rich in natural resources— minerals alone account for an average of 70% of total African exports and about 28% of GDP—but poor in infrastructure; thus, rationalizing the popularity of the resource-for-infrastructure lending model of the Chinese. [4] This model combines China's business and resource security interests with its comparative advantage in wealth to provide financial assistance and infrastructure construction. However, Africa's poorly regulated natural resource extraction sector makes it vulnerable to exploitation and degradation.

This paper argues that Africa's mining sector's lack of regulation makes it a casualty in resource-for-infrastructure deals with China—which sets a precedent for other investors to do the same. This paper contributes to the existing literature by assessing the impacts of RFI deals on Africa's mining sector, using Zambia's Copperbelt as a case study, and identifies cost-mitigating best practices to raise revenue in existing deals with China and secure better returns from competitor investments.

Zambian Case Study

In the mid-1900s, Zambia's copper-powered economy met the fate of the 1970s global copper price crash—leaving the country impoverished and heavily indebted.[5] Structural adjustment reforms in the late 90s led to the sector's privatization and Zambia's attempts to diversify its economy; which attracted Zambia to join the Belt and Road in the 2000s.[6] Following extensive mineral prospecting into Zambia's copper belt, pledged Chinese investments in the Zambian manufacturing and mining sectors exceeded total pledged investments of the rest of the continent combined—a testament to the size of its reserves. [7]

The RFI deal with China helped Zambia's economy (long struggling under external debts) to rehabilitate its dilapidated mining infrastructure and construct processing facilities to enhance its production capacity.[8] These investments have been proven to be more resistant to commodity price fluctuations than their Western counterparts.[9]

Zambia's Regulatory Infrastructure

The Zambia has two major government agencies that monitor its mining sector: Zambia Development Agency (ZDA) and Zambia Environment Management Agency (ZEMA). ZDA was established to implement the 2006 Zambia Development Agency Act outlining government initiatives to promote private sector economic development through trade and investment.[10] ZDA's primary mission is to entice investors with fiscal (investments > US$500,000) and non-fiscal (> US$250,000) incentives to secure foreign investment in priority zones that employ at least 200 Zambians.[11] However, employment generation is the only indicator monitored in ZDAs framework which relies on self-reporting of the foreign companies.[12] Therefore, indicators such as safety of working environments, wage rates, etc. aren't effectively monitored. Furthermore, the government's preference for an 'encouraging environment' deters ZDA from enforcing punitive measures in response to malpractice, such as license revocations, and limits its monitoring capacity even as investors often fail to self-report.[13] In 2010, Chinese owned Non-Ferrous Company Africa (NFCA) blatantly refused its legal obligation to pay property taxes to the Kalulushi District Council, within which it operates, under claims of being unable to afford it.[14] This is bogus as it operated across the continent at the time, and was ranked in the Fortune Global 500 for its operating revenue of USD 24 billion in 2013.[15] On escalating the issue to the Ministry of Commerce, the district council advised ZDA against further efforts to recover the funds.[16] This lackadaisical attitude towards corporate social responsibility (CSR) and government supported impunity disempowers the agency.

The Environment Management Act of 2011 established ZEMA for Zambia's environmental protection and as a watchdog of its economic—especially its copper mining—sectors.[17] Environmental impact assessments (EIAs) is ZEMA's primary regulatory mechanism in granting permits to mining projects. However, to qualify for assessment, ZEMA organizes public consultations involving government agencies, civil society organizations, and interested and affected parties to establish the scope of the terms of reference between ZEMA and the company.[18] 12-36 months post-permit approval, ZEMA conducts environmental audits to ensure compliance or revocation. These provisions are unfortunately difficult to transfer from theory to practice due to the understaffing of the agency and the gaps in the law relegating some environmental standards to mere conditions rather than legislated requirements.[19]

Sino-Zambia Relations: The Chinese Advantage

Sino-Zambian relations began pre-independence (1964)[20] but were monumentalized by the then-largest ever Chinese construction project in Africa—a USD 500 million interest-free loan. This loan funded the 1860km Tanzania–Zambia Railway (TAZARA) completed in 1975which facilitated copper exports from land-locked Zambia. [21] , [22]

In the 2000s, Sino-Zambian relationships, as with the rest of the continent, pivoted from aid to conditional project loans that are tied to Chinese contractors, Chinese majority ownership, and access to Zambia's resources. The conditional and secretive nature of lending engagements compromises the ability to align Chinese partnership with Zambian interests. Chinese companies enjoy exorbitant benefits from their government to provide comparative advantage in Zambia's copper-belt; and by developing the Zambia–China Economic and Trade Cooperation Zone (ZCCZ)—managed by state-owned NFCA—they draw further incentives from Zambia's governments. [23, 24]

Win-Win?

The tax shelters of the zone provided by Zambia are not limited to Chinese companies; Chinese government incentives include concessionary loans from the Chinese Development Bank, reduced VAT and tariffs on Chinese-bought machinery and personal income tax reductions, making these zones exclusively occupied by Chinese enterprises.[25] The co-development of the ZCCZ and agglomeration of Chinese enterprises in government priority zones gives Chinese companies major influence at the Zambian government level and creates powerful self-sufficient enclaves of Chinese power/wealth accumulation as they service each other (vertically and horizontally) to the exclusion of Zambian businesses and workers.

Another incidence of Chinese disregard for CSR is Zhonghui's obtention of a prospecting license for a total of 656,050 hectare in Luapula, backed by Chinese EXIM Bank to invest USD 5.3 billion, despite Zambia's Mines and Minerals Act prohibiting licenses exceeding 500,000 hectare.[26] It is public knowledge that Zhonghui circumvented this rule by operating through three company names, but the magnitude of the investment earned them a pass.[27] Impunity is detrimental to environmental sustainability especially when the allocated area is remote, densely forested and governed by small local governments against powerful corporate rent-seeking. The projected employment of 40,000 workers to previously sparsely inhabited areas imply likely displacement and deforestation. Additionally, a toxicology report conducted by a consortium of universities showed that drinking water and crop samples close to mining sites in Zambia (and the DRC) were contaminated by metals (copper, zinc, lead, uranium and more), which have major implications for food security.[28]

98% of Chinese FDI to Zambia is in its mining and minerals processing sectors and over the 2000s, China surpassed South Africa to become Zambia's second largest export partner—copper accounting for 83% of exports.[29, 30] Over the years, the Zambian mining sector has raised concerns. The government faced political criticism over the legislative loophole created by the clash between development agreements signed during the privatization era—following the global copper price collapse—and its more lucrative Mines and Minerals Act.[31] Facing political backlash due to high unemployment and high fiscal deficit, Zambia's ruling government of the 70s cut down royalties by 80%, provided numerous deductibles on capital expenditure and exemptions from import duties and levies.[32] Pressure from civil society and voters led to the government rescinding the agreements in 2008 and imposing a more stringent tax regime to capture more revenue.[33] However, resistance from mining companies against the 'windfall tax' led the Zambian government to scrap it for fear of disinvestment.[34]

Worse than the lost revenue due to tax loopholes is the year-after-year massive discrepancies in value and quantity of copper imports reported by China versus exports reported by Zambia. In 2009, China reported USD 570 million more copper trade than Zambia; same year, Zambia reported zero unrefined copper exports while China reported USD 463.6 million unrefined imports.[35] The latter alone amounts to a USD 69.5 million loss to Zambia given that its new tax regime imposed a 15% levy on unrefined copper. The cause is unknown but possible factors include poor monitoring and reporting mechanisms of Zambian agencies, illegal Chinese export activities, corruption or a gross administrative error by Zambian customs.

Human/Worker Rights Violations

The main company involved in the reporting discrepancy is NFCA, a subsidiary of China Nonferrous Metal Mining Company (CNMC), which owns majority shares in multiple copper mines and constructed and owns numerous copper smelters (including the Chambishi Copper Smelter, CCS). NFCA has been linked to the explosion of the explosives factory in Chambishi that killed forty-six Zambian employees, the death of five Zambians shot by police during a wage increase protest and CCS's firing of 500 unionized employees for striking against labor conditions.[36, 37] In order to circumvent Zambia's strict labor laws and strong mine workers' unions, NFCA discriminates between its workers by offering permanent positions to only fifty-two out of 2100 of its Zambian employees versus all 180 of its Chinese workers.[38] The casual status of its contracted Zambian workers enables it to pay them the lowest wages in the industry, give less benefits, and maintain an overall lower job security.[39]

In 2010 the Zambian government dropped all charges against the Chinese Managers at the Collum Coal Mine who indiscriminately opened fire on their employees to break up a protest over poor pay and unsafe conditions.[40] The Zambian government has been criticized by civil society and opposition parties for its failure to condemn or act against these incidents which Zambian pundits say is due to fear of damaging diplomatic relations since

Chinese companies, especially NFCA, have strong government ties.

Other African Nations Not Exempted

Since Africa's resource wealth is distributed across the continent, the Sino-Zambian relationship described above is no outlier. Africa's copper-cobalt ores, called the Copperbelt region (which includes Zambia, DRC and Angola) is the largest sediment-host copper province in the world.[41] The DRC holds the world's largest cobalt reserve and Africa's leading copper deposit; 70% of which is owned by Chinese-owned Sicomines, who secured these deposits tax-free when the DRC was desperate for infrastructural investments.[42] President Felix Tshisekedi's government is renegotiating the loans, and they were unfairly negotiated by Congo's former president and the infrastructure remains largely undeveloped as of October 2021.[43]

Africa's oil reserves are valued at over 125 billion barrels and are distributed across Nigeria, Libya, Angola and Algeria, with more African countries discovering more deposits.[44] Chinese oil companies, such as China National petroleum Corporation (CNPC), China National Offshore Oil Corporation (CNOOC) and Sinopec, operate and own significant stakes in twenty African countries.[45] South Africa dominates the globe in gold and manganese reserves and has experienced labor rights struggles with China African Precious Metals Corp, as well. [46, 47] Ghanaian environmental activists sued Ghana over a bauxite-for-infrastructure deal that threatens the Atewa forest.[48] Evidently, corruption, poorly negotiated deals, incapacitated government agencies are a phenomenon across the continent.

As seen in the DRC, Gabon, Nigeria and more, numerous loans and projects have been frozen or indefinitely halted due to regime changes, environmental harm, unfair distribution of gains, the COVID-19 pandemic and the fluctuating value of resources—but China-Africa trade from January to September 2021 reached $185.2 billion, up 38.2% year-on-year. [49] This is concerning, as the structure of China-Africa deals ensures that capital transfers go directly from the borrower's account with the China EXIM Bank to Chinese constructors.[50] Thus the benefits of transfer of knowledge, local capacity building, and infrastructure development lag behind trade.

Policy Recommendations

As reports of souring China-Africa relations continue to rise due to evidence of the challenges and inconclusive benefits of RFI deals, it is important to recognize the essentialness of China's hard-infrastructure provision, recognize that China's loans offer better and non-politically conditional terms, and that its donor-contractor direct disbursement channel reduces embezzlement. [51, 52] The solution is not to cut or reduce ties with China but rather to establish revenue raising, environmental monitoring and transparency-enabling policies to protect these sectors. The Forum on China-Africa Cooperation (FOCAC) action plan for 2022-2024 engagements prioritize investments in medium and high-technology manufacturing, technology transfers, expansion of mining industrial chains and promoting local industrial development to build Africa's domestic processing capacity.[53] This FOCAC also saw a lowered investment into infrastructure development—understandable given that most African countries are at their debt capacity—and instead emphasized technology/knowledge transfers, COVID vaccine supply, and digital infrastructure. [54, 55] These changes in priorities demonstrate some attentiveness to Africa's needs and Africa only needs better policies such as:

Deviating from mono-resource dependency

Many African countries are mono-resource dependent for their foreign exchange earnings and revenue.[56] Economic crises, high debt, price fluctuations and the lucrativeness of these resources create a cycle of further dependency which forces them to lax mining regulations to sustain their revenues. Supporting FOCAC's commitment to building local capacity in varying sectors with diversification policies is crucial for developing a stronger negotiating standpoint.

Shoring-up regulatory capacity

Good governance is a prerequisite to harness the financial and economic values of Africa's resources, incoming investments, and Sino-African collaborations. As demonstrated, a major barrier to inclusive and sustainable development on the continent is the structural failures of domestic agencies for reasons including underfunding, understaffing, outdated policies, corruption and poor monitoring and evaluation (M&E) implementation frameworks. Reviewing existing 'unconscionable' mining deals is important to capture the gains to trade. Legislative loopholes must be rectified to match international standards. M&E of infrastructure projects must ensure that they are comparably being realized as China reaps its profits. Labor laws must provide job security, protect workers, and fairly distribute wealth. Transparency, accountability, and public participation are needed to ensure public representation in negotiations with investors.[57]

Greater protective state presence in remote areas

Remote areas overwhelmingly constitute the majority of mine sites and tend to be further away from government influence, are harder to access by inadequately supported government agencies and lacking the presence of local governance.[58] As demonstrated in Zambia, these regions turn into enclaves of poorly regulated Chinese power, labor rights violation and mining malpractice. Stronger governance in remote areas is needed to protect forest biodiversity, protect human health, and capture development opportunities for more inclusive growth.

Tie investment incentives to CSR standards

Chinese companies enjoy dominance in the mining sectors of multiple African countries which it leverages to strong-arm government agencies and legislators into acquiescence. The enclaves of Chinese contractors and subtractors running every level of project implementation not only denies the host country of the multiplier effect that should normally happen at the local level but outcompetes and harms it.[59] Improved CSR standards will be especially important as G7 countries shore up investment funds through the Build Back Better and Global Gateway Infrastructure initiatives to compete with China, and also in the next frontier of FOCAC collaborations. Setting a higher standard for incoming investors will capture more revenue for Zambia and create an ethically competitive environment in the sector.

Conclusion

With better mechanisms in place, Chinese participation in Africa would achieve the win-win model it claims to be and be an integral part of the continent's economic development. Better frameworks encourage knowledge transfers, greater transparency, job security, adequate regulatory enforcement, and higher project completion rates. Continuance with the inadequate and feeble regulatory mechanisms will make Africans, the environment and economy casualties of the global scramble for key minerals. The new FOCAC commitments for 2022-2024 signal China's openness to addressing many of the issues identified in this paper—thus, Africa only needs to leverage the true dimension of its bargaining power to fully reap the benefits of an opportune partnership.

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