Transnational Dispute Management
www.transnational-dispute-management.com

ISSN : 1875-4120
Issue : Vol. 17, Issue 6
Published : October 2020

This paper is part of the special issue on "*State-controlled Entities*" prepared by:

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# Chinese State-Owned Enterprises in Africa: Always a Black-and-White Role?

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# Chinese State-Owned Enterprises in Africa: Always a Black-and-White Role?

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***Abstract***

*This paper provides an analysis of the role of Chinese state-owned enterprises (SOEs) and their investment in Africa. It aims to help understand the complexity of issues concerning Chinese SOEs and clarify the misconceptions about them. It discusses Chinese investment in Africa in general and Chinese SOEs in particular. The concerns and benefits of investment by Chinese SOEs and the impacts of their practice are assessed. It explores the regulatory challenges for both China (as the home state of investors) and African countries (as host states of foreign investment). Further action of the Chinese side is examined with a discussion on China's domestic reform and the implication of the Belt and Road Initiative (BRI). It argues that for the sustainable development and interests of both sides, the enhanced Sino-African cooperation and the corresponding regulation of Chinese overseas investment are necessary.*

## 1. Introduction

The 2018 Forum for China-African Cooperation (FOCAC), with an aim to enhance the Sino-Africa bilateral relation, implies China's increasing interest in the African continent and the desire for both sides to cooperate further. China's growing engagement in Africa has triggered heated debate, particularly from the Western world, concerning the real benefits of China's strategy and policy for Africa's development. It was argued that China's cooperative approaches with African countries are undermining the sustainable development and good governance of Africa that western countries and/or international efforts intend to achieve, and they represent a new form of 'colonialism'.[1] The activities and behaviours of Chinese investors either private-owned enterprises (POEs) or SOEs are also being criticised or suspected.[2] A majority of Chinese investors in Africa are individuals or small and medium enterprises (SMEs), while larger projects are conducted by Chinese SOEs in critical industries, infrastructure and energy sectors in particular, which are the essential parts of the African

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[1] Noah Smith, 'The Future is in Africa, and China Knows It' (*Bloomberg*, 20 September 2018) <https://www.google.com/amp/s/www.bloomberg.com/amp/opinion/articles/2018-09-21/africa-economy-west-should-try-to-match-chinese-investment> accessed 15 February 2019.

[2] The investment model adopted by Chinese investors also takes various forms. In addition to sole proprietorship and joint venture, there are equity participation and merger and acquisition. Both SOEs and POEs are involved in Chinese investment in Africa. A study provided that in recent years the involvement of central and local SOEs maintains its stable status or even experienced a slow rise while the proportion of POEs has grown rapidly. *See* Ming Li et al., 'Spatio - Temporal Evolution of China's OFDI in Africa Countries and Its Influence Factors' [中国对非直接投资时空演化及其影响因素] (2017) 11 Economic Geography 19, 21.

economy.

The operation of these Chinese SOEs in Africa and their alleged 'bad behaviours' are arguably posing an impact on the long-term development of Africa.[3] One of the main reasons behind the criticism can be owed to the different governance structure of Chinese SOEs, different approaches to commercial activities compared with Western firms and different development models. However, although Chinese SOEs are by definition connected to the Chinese government and they are usually embedded in China's national policy, they are actors with their own capacity and preferences. It is therefore that the focus of this paper is put on the role of Chinese SOEs as investors rather than overall China's interests in Africa.

This paper aims to build a closer understanding of the role that Chinese SOEs played in overseas investment and the impact of their investment on local development of Africa, as well as the barriers to further engagement. This paper first reviews the status quo of Chinese investment in Africa, followed by an illustration of the role that Chinese SOEs played in Africa. It then discussed the controversy of Chinese SOEs. The problems posed by the investment of Chinese SOEs to local development and stakeholders as well as benefits brought by Chinese SOEs are analysed. This paper further explores the regulatory challenges to China and African countries. Lastly, it questions further efforts and actions that need to be done for sustainable investment and development, taking account of current China's domestic reforms (i.e. the regulatory reform and the SOE reform), and the implication of the Belt and Road Initiative (BRI) on Chinese SOEs.

## 2. Status Quo of Investment by Chinese SOEs in Africa

China's engagement overseas is an essential part of the 'Going Out' strategy incorporated in the Tenth Five-Year Plan for National Economic and Social Development.[4] It aims partly to promote the internationalism of Chinese companies. Currently, enlarged Chinese overseas involvement is encouraged under the BRI since 2013.[5] It provides opportunities for further investment and trade deals among countries along the BRI.[6] The BRI consists primarily of state or/and private-financed infrastructure projects in developing countries, especially in those countries that have the 'infrastructure gap'. It has been met with both praise and scepticism.

[3] Yi-Chong Xu, 'Chinese State-owned Enterprises in Africa: Ambassadors or Freebooters' (2014) 23 Journal of Contemporary China 822, 823.
[4] Rongji Zhu, 'Report on the Outline of the Tenth Five-Year Plan for National Economic and Social Development' (5 March 2001) <http://www.gov.cn/english/official/2005-07/29/content_18334.htm> accessed 15 February 2019.
[5] BRI aims to promote a trans-continental trade and infrastructure network, covering the Eurasian continent, Latin America, Africa and the Caribbean and the South Pacific region. It includes the Silk Road Economic Belt and the 21st Century Maritime Silk Road.
[6] To facilitate and guarantee the implication of BRI, the National Development and Reform Commission (NDRC) issued an action plan on the Belt and Road Initiative with State Council's authorisation, on 28 March 2015. For more information of the action plan, please see 'Action plan on the Belt and Road Initiative' (30 March 2015) <http://english.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm> accessed 15 February 2019.

Previously, China was mainly a significant capital importer while it is now a critical capital importer and exporter. Given that, Chinese companies are increasingly becoming active in overseas markets and rapidly expanding their business footprints in Africa. Since 2016, China's direct investment in Africa has exceeded $8 billion, making Africa an important emerging destination for China's outbound investment.[7] According to the latest statistics of the Ministry of Commerce of China (MOFCOM), from January to October of 2018, China's non-financial direct investment in Africa reached $2.463 billion, and East African countries were still China's main investment destinations.[8] About one-quarter of Chinese investment in Africa is concentrated in Nigeria and Angola, and Nigeria is one of China's largest partners on the African continent.[9] The Sino-Africa relation has been closer owing to not only the emerging role of Chinese investment in Africa, but also China's being an important trade partner with African countries.[10]

China's involvement in Africa is usually arguably attributed to China's desire to exploit the natural resources of Africa while supporting Chinese business. Whereas this is not the whole picture. Western firms are still the leading group of investors in the African continent.[11] It is important to note that more than 65 per cent of international oil companies operating in Africa are Western-based firms so that Chinese oil companies have less impact than western companies in this region.[12] It is true that the abundant natural resources in Africa can meet the increasing demand of the Chinese manufacturing sector to satisfy the need of its rapid growth. Meanwhile, China's 'outward-facing orientation' can also be attributed to economic reform and newly liberalised markets in many African countries and the requirement of Chinese SOEs to

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[7] MOFCOM, 'Africa has become an important destination for China's outbound investment' [非洲成为中国对外投资重要目的地] (13 September 2018) <http://www.mofcom.gov.cn/article/difang/201809/20180902786189.shtml> accessed 15 February 2019.

[8] MOFCOM, 'Yearly Overview VI for Commerce Work in 2018) Beijing Summit Injected New Energy for China-African Economic and Trade Cooperation' (29 December 2018) <http://english.mofcom.gov.cn/article/newsrelease/significantnews/201901/20190102824046.shtml> accessed 15 February 2019.

[9] Mariama Sow, 'Figures of the week: Chinese investment in Africa' (*Brookings*, 6 September 2018) <https://www.brookings.edu/blog/africa-in-focus/2018/09/06/figures-of-the-week-chinese-investment-in-africa/amp/> accessed 15 February 2019.

[10] Although the amount of Chinese investment in Africa is relatively low, the Sino-Africa two-way trade has grown 40 time over the last 20 years and now exceeds $ 200 billion. *See* Witney Scheidman and Joel Wiegert, 'Competing in Africa: China, the European Union, and the United States' (*Brookings*, 16 April 2018) <https://www.brookings.edu/blog/africa-in-focus/2018/04/16/competing-in-africa-china-the-european-union-and-the-united-states/amp/> accessed 15 February 2019.

[11] According to the World Investment Report 2018, multinational enterprises (MNEs) from developed economies, e.g. the US, UK ad France still hold the largest FDI stock in Africa. At the same time, investors from developing economies, i.e. China and South Africa, followed by Singapore, India and Hong Kong (China), are among the top 10 investors in Africa. *See* UNCTAD, 'World Investment Report 2018' (6 June 2018) <https://unctad.org/en/PublicationsLibrary/wir2018_overview_en.pdf> accessed 15 February 2019.

[12] Thompson Ayodele, 'Misconceptions about China's Interest in Africa' (20 October 2015) Georgetown Journal of International Affairs <https://www.georgetownjournalofinternationalaffairs.org/online-edition/misconceptions-about-chinas-interest-in-africa> accessed 15 February 2019.

complete their reforms and transition, such as privatisation.[13]

In the past decades, China has significantly enhanced its engagement in Africa, covering a wide range of sectors. The initial focus of Chinese investment in Africa is on securing its access to energy and natural resources. However, it has expanded the distribution of its investment to cover infrastructure construction, followed by its footprints in other areas, e.g. trade, telecommunication, science and technology, real estate, finance and agriculture.[14] The distribution of Chinese investment in Africa is increasingly diversified with a decrease in the proportion of investment in resource-rich countries and an increase in non-resource-oriented countries. It was suggested that China's investment in Africa before 2007 was mainly concentrated in resource-rich countries, e.g. Sudan Algeria, Zambia and Nigeria. Since then, investment in oil and mineral countries has gradually declined, falling to 41.6 per cent in 2016 while investment in non-oil and mineral countries increased from 38.6 per cent in 2006 to 58.4 per cent in 2016.[15] Thus, non-oil and mineral countries become the major host states for Chinese investors.[16]

The disproportionate attention on China's presence in Africa is partial because of the players involved, among which the group of central-government-level SOEs is the critical player. It was reported that in 2014 there were 620 central-government-level SOEs, 371 local-government-level SOEs and 1,762 non-SOEs in Africa.[17] The means of support, especially financial support, have continuously been improved. The China-Africa Development Fund, the China-Africa Fund for Production Capacity Cooperation and particular loan for African SMEs provide concessional loans for investment projects in Africa. The investment is concentrated in energy and infrastructure, both of which are capital intensive sectors. A large proportion of investment, economic cooperation and assistance to Africa went to infrastructure projects.[18] These projects are mostly undertaken by national level (central-government-level) SOEs governed by the State-owned Assets Supervision and Administration Commission (SASAC) while the engagement of municipal or provincial-level (local-government-level) SOEs is still limited. National-level SOEs tend to undertake various types of larger projects in different countries. They are more likely affected or guided by the national policy while local government level SOEs are less constrained. However, the blame for their conducts and problems raised in China has also be extended to their operations in Africa. A major concern is that the development in the regulatory governance of investment and improvement in environmental protection and labour conditions cannot match the rapid economic development.

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13 ibid.

14 MOFCOM, 'Africa has become an important destination for China's outbound investment' [非洲成为中国对外投资重要目的地] (13 September 2018) <http://www.mofcom.gov.cn/article/difang/201809/20180902786189.shtml> accessed 15 February 2019.

15 Chen Liu and Shunqi Ge, 'Chinese enterprises investing in Africa: Economic Growth and Structural Transformation' [中国企业对非洲投资：经济增长与结构变革] (2018) 5 International Economic Review 9, 12.

16 ibid.

17 ibid.

18 Hannah Edinger and Jean-Pierre Labuschagne, 'If you want to prosper, consider building roads: China's role in African infrastructure and capital projects' (22 March 2019) <https://www2.deloitte.com/insights/us/en/industry/public-sector/china-investment-africa-infrastructure-development.html> accessed 20 February 2019.

It should be noted that this is a problem that the country may face at its stage of development while the important thing is how to improve the legal environment and find a more appropriate way to achieve sustainable development. In this regard, joint efforts by stakeholders may be required, in particular, the efforts made by host states, home states and investors. In the context of this paper, the stakeholders are African countries, China and Chinese SOEs.

## 3. The Controversial Role of Chinese SOEs in Africa

The debate concerning whether Chinese SOEs play a negative or positive role in Africa can be usually found in media and literature. There is usually a misunderstanding on SOEs due to their state ownership. However, the reality is that SOEs have not acted so differently from POEs and many Chinese SOEs have achieved success in their operation and business. It is true that the state ownership provided Chinese SOEs initial advantages in accessing cheap capital and assets easily. However, SOE reforms like the privatisation and mix-ownership reform are efforts to ensure the commercial operation and modern corporate governance of SOEs. Thus it is necessary to clarify and even correct the common perception and the reality of SOEs before assessing the balance of benefits and concerns of Chinese SOEs in Africa. This paper will make this clarification by analysing the behaviours of Chinese SOEs in Africa. Chinese SOEs are usually criticised for violating human and/or labour rights, polluting the environment, spreading corruption and lack of transparency in projects.[19]

Moreover, investment of SOEs is also regarded as a form to spread 'state capitalism' to the African continent.[20] However, Chinese SOEs also provide benefits for local development. Chinese SOEs' investment in African helps African countries create jobs, increase exports and taxes, as well as improve economic structure. The Special Economic Zones (SEZs) established by Chinese SOEs have facilitated the establishment of complementary local activities that can support relevant projects. By supporting other industries, SEZs contribute to the economic development of African countries. It is important to note that the role of Chinese SOEs in Africa is complicated. It is not appropriate to only emphasise the benefits provided or overstress concerns raised or even merely blame the state ownership of Chinese SOEs.

### *3.1 Concerns of investment by Chinese SOEs*

#### *3.1.1 Close Tie with Chinese Government*

The puzzling role of Chinese SOEs in Africa, first of all, can be attributed to its close tie with Chinese government due to state ownership. As some have claimed, SOEs are questioned as agents of the Chinese government to pursue political rather than purely commercial goals,

[19] For more discussion and information of Chinese SOEs, *see* Qingxiu Bu, 'Chinese Multinational Companies in Africa: The Human Rights Discourse' (2015) 8 African Journal of Legal Studies 33; David H. Shinn, 'The Environmental Impact of China's Investment in Africa' (2016) 49 Cornell International Law Journal 25; Barry Sautman, Yan Hairong, 'Trade, Investment, Power and the China-in-Africa Discourse' (2009) 7 The Asia-Pacific Journal: Japan Focus 1.

[20] Martyn Davies, 'How China is Influencing Africa's Development' (2010) OECD 9 <https://www.oecd.org/development/pgd/45068325.pdf> accessed on 29 April 2019.

either by controlling natural resources and inserting its influence in Africa or by undermining values and practices exerted by Western countries in Africa.[21]

The issue concerning ‘political versus commercial objectives’ of these state-owned investors has been widely debated in international investment.[22] It can be admitted that although the initial plan of large projects (in particular BRI projects) are announced by the Chinese government and/or supported by Chinese national policy, the overseas operation of Chinese SOEs is determined by themselves. Some of the rules governing SOEs may not be designed on the basis of economic principles, while their operations are constrained by accountability, which requires them to invest in areas or projects that are economically feasible and profitable.

National policy is not always incompatible with commercial interests. Intergovernmental cooperation (e.g. FOCAC) and Chinese national policy (e.g. ‘Going Out’ and the BRI) can provide advantages for those who intend to follow the direction to invest. For example, during the 2018 FOCAC, President Xi announced that China would extend a total of $60 billion of financing in the form of government assistance, investment and finance by financial institutions and companies.[23] In addition, China’s investment in infrastructural development in Africa comes ‘with no political strings attached’.[24] Chinese Premier Minister Li Keqiang stated during his visit to Africa, “China will not follow the beaten track of colonialism of other countries or allow the re-emergence of colonialism in Africa. For Africa and China, collaboration means opportunities and mutual gain”.[25] Chinese SOEs may invest in Africa to fulfil these promises. These SOEs may enjoy a range of subsidies and privileges, such as loans with lower than market rates, special government funds, or direct capital contribution.[26]

However, there is also fierce competition between SOEs and POEs, between different Chinese SOEs and even with their international counterparts to obtain specific bid or project.[27] In this regard, SOEs often act no differently from other market players. They prefer to invest in

[21] Elizabeth J. Drake, ‘Chinese State-Owned and State-Controlled Enterprises: Policy Options for Addressing Chinese State-Owned Enterprises’ (15 February 2012) <https://www.uscc.gov/sites/default/files/2.15.12drake_testimony.pdf> accessed 5 March 2019; Ming Du, ‘The Regulation of Chinese State-Owned Enterprises in National Foreign Investment Laws: A Comparative Analysis’ (2016) 5 Global Journal of Comparative Law 118, 122.

[22] OECD, ‘Foreign Government-Controlled Investors and Recipient Country Investment Policies: A Scoping Pape’ (January 2009) <https://www.oecd.org/daf/inv/investment-policy/42022469.pdf> accessed 5 March 2019.

[23] Xinhua, ‘Xi announces 60 billion USD of financing to Africa’ (03 September 2018) <http://xinhuanet.com/english/2018-09/03/c_137441596.htm> accessed 5 March 2019.

[24] Catherine Wong and Laura Zhou, ‘No political strings attached: China doubles financial pledges to Africa and vows to waive debt for poorest nations’ (South China Morning Post, 4 September 2018) <https://www.google.com/amp/s/amp.scmp.com/news/china/diplomacy/article/2162590/no-political-strings-attached-china-doubles-financial-pledges> accessed 5 March 2019.

[25] Yabin Wu and Xiao Bai, ‘China’s Infrastructure Development Strategy in Africa: Mutual Gain?’ (21 March 2017) <https://www.ictsd.org/bridges-news/bridges-africa/news/china’s-infrastructure-development-strategy-in-africa-mutual-gain> accessed 5 March 2019.

[26] Ming Du, ‘The Regulation of Chinese State-Owned Enterprises in National Foreign Investment Laws: A Comparative Analysis’ (2016) 5 Global Journal of Comparative Law 118, 123.

[27] POEs in Africa often face less constrains by state regulation, national policy and they do not necessarily receive subsidies. Tak-Wing Ngo, ‘Chinese State-owned Enterprises in China’s Africa Policy’ (2008) Expert Meeting Report-Chinese State-owned Enterprises and Stability in Africa <http://www.bibalex.org/Search4Dev/files/345107/178469.pdf> accessed 5 March 2019.

projects that are guaranteed with funding from the Chinese government in the form of foreign assistance or cooperation and aid, or even projects funded by multinational institutions. Chinese SOEs undoubtedly have to take some political and social responsibilities. Chinese SOEs can seek government support to carry out these responsibilities, but they rarely do so at the expense of their financial interests. In the cases where the financial interests of Chinese SOEs and China's strategic goals come into conflicts, the SOEs have to strike a balance.[28] Moreover, since many Chinese SOEs have already conducted overseas investment for several years, for their international image and reputation, they should follow commercial standards and practice. As foreign investors, the SOEs may expect to maintain long-term operation rather than short-term benefits.

*3.1.2 Lack of Transparency and Alleged "Debt Trap"*

Lack of transparency is another problem that is usually criticised in the process of bidding for projects. The western approach usually comes in the form of direct transfers of material and cash with conditions while China's approach is mainly via the means of providing low-interest commercial loans and exporting credits to African countries for large infrastructure projects that are more flexible, faster and without condition.[29] According to statistics, as of 2015, nearly two-thirds of new debts of African countries was from loans provided by China.[30] It was also argued that these loans are used to purchase Chinese goods, services and labour in exchange for natural resources.[31] For example, there are a variety of banks financing infrastructure projects, including Chinese commercial banks, Chinese government-linked banks (e.g. the China Export-Import Bank-Exim Bank and China Development Bank) and multilateral institutions, e.g. the African Development Bank and World Bank.[32] Since both Chinese SOEs and financial institutions are most relevant to the Chinese government, the question may arise concerning the less transparency of the bidding process. It seems that infrastructure construction is mostly conducted and supported by Chinese characters. For example, the parliament of Uganda initiated an investigation of the procurement process of the railroad where Chinese investors were involved, and it was reported that the Kenya portion of rail was awarded to the China Road and Bridge Corporation (CRBC) without a competitive bidding process.[33]

Furthermore, the claim of 'debt trap' is nowadays frequently labelled on Chinese overseas

[28] Yi-Chong Xu, 'Chinese State-owned Enterprises in Africa: ambassadors or freebooters' (2014) 23 Journal of Contemporary China 822, 836.

[29] J. Peter Pham et al., 'Chinese Aid and Investment Are Good for Africa' (*Foreign Policy*, 31 August 2018) <https://foreignpolicy.com/2018/08/31/chinese-aid-and-investment-are-good-for-africa/> accessed 5 March 2019.

[30] Heather Brown, 'Chinese investment in Africa: New Model for Economic Development or Business as Usual?' (13 September 2018) <https://doc-research.org/2018/09/chinas-approach-to-africa/> accessed 5 March 2019.

[31] Witney Schneidman, 'Are Chinese Companies Retooling in Africa?' (Brookings, 18 December 2018) <https://www.brookings.edu/blog/africa-in-focus/2014/12/18/are-chinese-companies-retooling-in-africa-2/amp/> accessed 5 March 2019.

[32] Lorenzo Cotula, Xiaoxue Weng, Qianru Ma & Peng Re, *China- Africa Investment Treaties: Do They Work?* (International Institute for Environment and Development 2016) 20.

[33] Witney Schneidman, 'Are Chinese Companies Retooling in Africa?' (Brookings, 18 December 2018) <https://www.brookings.edu/blog/africa-in-focus/2014/12/18/are-chinese-companies-retooling-in-africa-2/amp/> accessed 5 March 2019.

projects, in particular, those projects under the BRI.[34] However, it is important to note that despite using debt as leverage, there is no evidence to support that China is intentionally creating 'debt trap' via the BRI projects and the main thing to consider is how to deal with issues that have happened.[35] The $60 billion mentioned by President Xi in financial support to Africa, which will come in the form of government assistance and investment, has drawn criticism stating that it could burden developing nations with unsustainable levels of debt.[36] Taking power projects building as an example, although Chinese-built power projects help supporting electricity access and increasing power generation, this raises challenges for African countries, particularly those countries with higher constraints on their budgets.[37] Power projects have relied heavily on sovereign debt while some African countries are reaching their external debt limits or facing severe financial situation. Given this, despite the lower construction and equipment costs and the benefit provided by Chinese financing for the development of the power system, this adds to a burden of the public debt of African countries.

It is wise to note that the loan provided by China is neither inherently bad nor good but the impact it can have depends on how African countries utilise it. The success of these projects also depends on the ability of African governments (as host states) to negotiate and implement them.[38] It also depends on whether the projects only focus on deals providing short-term gains rather than long-term costs.[39] It means that if the African countries use Chinese aid to offset poor governance and irresponsible policies, then Chinese SOE's investment may lead to further problems. If the African countries use Chinese finance in a wise and responsible manner, then it may help to improve the necessary infrastructure thus spurring economic development.

On the side of Chinese SOEs, investment projects conducted by them are usually funded by a variety of stakeholders, ranging from development aid \ to equity financing.[40] To diversify sources of financing and find a more sustainable approach, Chinese SOEs have begun to seek alternative and market-based solutions for their projects. These solutions may include private equity from western countries and other sources, e.g. co-financing fund established by the People's Bank of China and the African Development Bank (AfDB), thus creating new

[34] Nyshka Chandran, 'Fears of excessive debt drive more countries to cut down their Belt and Road investments' (CNBC, 17 January 2019) <https://www.cnbc.com/amp/2019/01/18/countries-are-reducing-belt-and-road-investments-over-financing-fears.html> accessed 5 March 2019; The ASEAN Post, 'Is the BRI debt trap real' (The ASEAN Post, 11 December 2018) <https://theaseanpost.com/article/bri-debt-trap-real> accessed 5 March 2019.

[35] Laurie Chen, 'China defends belt and road strategy against debt trap claims' (SCMP, 5 March 2019) <https://amp.scmp.com/news/china/diplomacy/article/2188577/china-defends-belt-and-road-strategy-against-debt-trap-claims> accessed 20 March 2019.

[36] Mariama Sow, 'Figures of the week: Chinese investment in Africa' (Brookings, 6 September 2018) <https://www.brookings.edu/blog/africa-in-focus/2018/09/06/figures-of-the-week-chinese-investment-in-africa/amp/> accessed 2 March 2019.

[37] International Energy Agency, *Boosting the Power Sector in Sub-Saharan Africa: China's Involvement* (OECD/IEA, 2016) 8.

[38] ibid.

[39] J. Peter Pham et al., 'Chinese Aid and Investment Are Good for Africa' (*Foreign Policy*, 31 August 2018) <https://foreignpolicy.com/2018/08/31/chinese-aid-and-investment-are-good-for-africa/> accessed 2 March 2019.

[40] Development aid or development assistance refers to financial aid provided by governments and other agencies or multilateral to support the economic development and social welfare of development countries.

opportunities for trilateral cooperation in infrastructure investment.[41]

### *3.1.3 Environmental and Labour Concerns*

The challenge to environmental protection has been in the spotlight. It is usually claimed that since the enforcement of environmental standards in China is usually lax, and many Chinese SOEs are the source of serious pollution incidents, critics have grounds to believe that Chinese SOEs may generate concerns regarding weak environmental standards, unrestored land and pollution.[42] Likewise, there are also concerns that infrastructure construction may affect the life of the local people. It is true that Chinese SOEs often adopt a fast or even different approach compared to those accepted by many Western countries in responding to these issues, but a different path does not necessarily mean there is a problem. However, actions adopted by many Chinese SOEs have shown their more significant interests in protecting the environment.[43] For example, in order to eliminate the discharge of effluents, the world's largest biodegradable wastewater treatment facility was built by China National Petroleum Corporation in Sudan.[44] As one of Chinese SOEs engaged in Africa, the China Petroleum and Chemical Corporation (SINOPEC) was committed to the United Nation Global Compact[45] and released its white paper on environmental protection.[46] On the other hand, China Development Bank and China Exim Bank also have their own policies concerning their social and environmental responsibilities, but these are different, to a certain extent, from the environmental impact assessments required by global financial institutions.

In addition, the employment practices by Chinese SOEs in Africa are usually criticised. For instance, critics argue that Chinese companies often bring their workers from China instead of hiring local workers. However, the available database from the local governments does not support this claim.[47] In 2013, a report provided by the Chinese Academy of International Trade and Economic Cooperation (CAITEC) stated that 82 per cent or 17,600 employees of the CNPC staff in Africa are local people and Chinese National Minerals Corporation (CNMC)

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[41] Witney Schneidman, 'Are Chinese Companies Retooling in Africa?' (Brookings, 18 December 2018) <https://www.brookings.edu/blog/africa-in-focus/2014/12/18/are-chinese-companies-retooling-in-africa-2/amp/> accessed 5 March 2019.

[42] Sarah Eaton and Genia Kostka, 'Central Protectionism in China: The "Central SOE Problem" in Environmental Governance' (2017) 231 The China Quarterly 685; Mehran Idris Khan and Yen-Chiang Chang, 'Environmental Challenges and Current Practices in China – A Thorough Analysis' (2018) 10 Sustainability 1.

[43] David H. Shinn, 'The Environmental Impact of China's Investment in Africa' (2016) 49 Cornell International Law Journal 25, 32.

[44] May Tan-Mullins, 'China: Gradual Change – Increasing Transparency and Accountability in the Extractive Industries' (2012) Revenue Watch Institute & the Transparency and Accountability Initiative Working Paper Series <http://www.transparency-initiative.org/archive/wp-content/uploads/2012/12/TAIChinaEng1.pdf> accessed 5 March 2019; Namukale Chintu et al., 'Chinese State-Owned Enterprises in Africa: Myths and Realities' (2013) IVEY Business Journal <https://iveybusinessjournal.com/publication/chinese-state-owned-enterprises-in-africa-myths-and-realities/> accessed 5 March 2019.

[45] United Nation Global Compact is a non-binding and voluntary initiative to encourage businesses to implement socially responsible and sustainable policies and to provide reports concerning their implementation. It includes ten principles in the areas of labour, environment, human rights and anti-corruption.

[46] David H. Shinn, 'The Environmental Impact of China's Investment in Africa' (2016) 49 Cornell International Law Journal 25, 33

[47] Tang Xiaoyang, 'Does Chinese Employment Benefit Africans? Investigating Chinese Enterprises and their Operations in Africa' (2016) 16 African Studies Quarterly 107, 109.

had 12,500 local hires in Zambia.[48] It is true that there are many Chinese workers who come to Africa after Chinese SOEs have made an investment there. In particular, at the beginning stage of an investment project, many Chinese workers come to Africa because they are familiar with the operation and working process of these companies.[49]

Critics also claim that Chinese SOEs pay lower wages, provide poor working conditions or less work training programme etc. to the worker to cover their basic needs. However, a report provided by the World Bank demonstrated that in Ethiopia, employees' monthly salary provided by Chinese companies were more than the average salary and Chinese companies also provided formal training programmes to these hires.[50] Apart from that, Chinese SOEs need to pay attention to cultural difference in working place. Those workers from China and local hires in some Chinese companies might not have strong ties or relationship with each other because of different living habits, languages, and ways of working.[51] This difference may cause mistrust, conflicts and even bring a negative effect to ongoing projects if not adequately managed.

### *3.2 Benefited provided by Chinese SOEs*

It is crucial to notice that compared to Western firms in Africa, Chinese SOEs are still newcomers. Problems associated with their conducts can be partly attributed to their less experience in internationalism and overseas operation. Although the Chinese model is different from the Western approach, many studies and reports have illustrated the benefits provided by Chinese SOEs for local development.

First, as discussed above, the state ownership of Chinese SOEs is not always a bad thing, and this background may help Chinese SOEs get support from the FOCAC. Chinese SOEs can incorporate their investment strategies within the broad framework of Sino-African cooperation, thus reducing political risks and improving the compatibility with the development policies of African countries. Given that, they can contribute to a wide range of investment projects that are important in Sino-Africa cooperation and for Africa's development. During the 2018 FOCAC, the President of African Development Bank Group addressed that Chinese financing to Africa primarily focused on energy and agricultural sectors.[52] To promote investment in these sectors, infrastructure is essential for a substantial investment. Even though the infrastructure gap has been recognised by the international community, the West does not really address this issue, which needs further engagement and various supports.[53] Under this

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[48] Witney Schneidman, 'Here's how Chinese investors are rebooting their approach to Africa' (30 December 2019) <https://www.google.com/amp/s/qz.com/318985/heres-how-chinese-investors-are-rebooting-their-approach-to-africa/amp/> accessed 5 March 2019.

[49] Tang Xiaoyang, 'Does Chinese Employment Benefit Africans? Investigating Chinese Enterprises and their Operations in Africa' (2016) 16 African Studies Quarterly 107, 110.

[50] World Bank, *Chinese FDI in Ethiopia, A World Bank Survey* (World Bank 2012) 12.

[51] Tang Xiaoyang, 'Does Chinese Employment Benefit Africans? Investigating Chinese Enterprises and their Operations in Africa' (2016) 16 African Studies Quarterly 107, 120.

[52] 'Chinese financing to Africa focused in energy and agricultural sectors: African Development Bank' (*People's Daily*, 5 September 2018) <http://en.people.cn/n3/2018/0905/c90000-9497827.html> (accessed 20 March 2019).

[53] Rene Vollgraaff and Ntando Thukwana, 'AfDB Seeks to Plug Africa $ 170 Billion Infrastructure Needs' (*Bloomberg*, 8 May 2018)

circumstance, the notion of the BRI is to address these issues by investing hugely in infrastructure with the Chinese SOEs playing essential roles.

Infrastructure is a critical asset for the sustainable growth of the economic and inclusive development of Africa.[54] China has provided funding for a variety of infrastructure projects in Africa. For example, railway projects usually play an important role in the development of African countries and the daily life of the people. China funded the railway projects in at least five African countries, including Kenya, Ethiopia, Angola, Djibouti, and Nigeria.[55] China funded Kenya's largest infrastructure project since the independence of Kenya, the Mombasa-Nairobi Standard Gauge Railway, at an estimated cost of R57.2 Billion.[56] Other projects include, for example, the African Union Headquarters, the Headquarters of the Economic Community of West African States (ECOWAS), the new city of Egypt and the new parliament of Zimbabwe etc. These projects are somewhat the symbols of their countries. And China's infrastructure commitments to Africa vary from 16.1 per cent of total funds in 2013 to 4.1 per cent in 2014, 26.5 per cent in 2015, and 10.2 per cent in 2016.[57]

Moreover, the energy sector as the foundation of industrialisation and development is the priority of Africa.[58] Many infrastructural projects are also for the purpose of facilitating the development of the energy sector. China is the most significant partner with Africa in the energy sector.[59] Africa is also the largest overseas market for the energy infrastructure that Chinese SOEs provide services.[60] Despite being driven by the need for overseas markets, projects conducted by Chinese SOEs contribute to the development of the power sector through the construction of new generation capacity and new grids. This kind of investment projects can be divided into two main categories: upstream activities such as oil and gas, and power projects, such as power generation, transmission and distribution.[61]

Energy access is one of the critical missions for African countries. For instance, in 2015, there were still over 635 million people in sub-Saharan living without access to electricity.[62] Furthermore, a reliable supply of power is critical for economic growth, which also has a positive impact on productivity: for individuals to improve health care, increase educational

<https://www.google.com/amp/s/www.bloomberg.com/amp/news/articles/2018-05-08/afdb-seeks-funds-to-plug-africa-170-billion-infrastructure-gap> (accessed 20 March 2019)

[54] African Development Bank, 'African Economic Outlook 2018' (2018) <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/African_Economic_Outlook_2018_-_EN.pdf> accessed 20 March 2019.

[55] George Tubel, '10 massive projects the Chinese are funding in Africa - including railways and a brand-new city' (*Business Insider*, 25 September 2018) <https://www.businessinsider.co.za/here-are-150-million-rand-projects-in-africa-funded-by-china-2018-9> accessed 20 March 2019.

[56] ibid.

[57] ibid.

[58] 'Chinese financing to Africa focused in energy and agricultural sectors: African Development Bank' (*People's Daily*, 05 September 2018) <http://en.people.cn/n3/2018/0905/c90000-9497827.html> (accessed 20 March 2019).

[59] Giorgio Gualberti, 'Energy Investments in Africa by the US, Europe, and China' (20 August 2014) <https://www.aiddata.org/blog/energy-investments-in-africa-by-the-us-europe-and-china> accessed 20 March 2019.

[60] International Energy Agency, *Boosting the Power Sector in Sub-Saharan Africa: China's Investment* (OECD/IEA 2016) 7.

[61] ibid 10.

[62] ibid.

opportunities, and for businesses to improve their commercial ability and decreases costs.[63]Chinese SOEs' activities contribute to power sector development in emerging countries through construction of new generation capacity and new grids. Chinese SOEs also play a growing role in developing cross-border energy infrastructure. These projects provide reliable and affordable energy access to people in Africa.[64]

The merits of investment by Chinese SOEs that are attractive to African countries may be various. First, compared to Western companies, Chinese SOEs focus primarily on tangible outcomes of projects while they may put less attention or spend less time in project designing, capacity building and environmental assessment. Second, Chinese SOEs are less risk-averse while other countries' financing institutions may be not keen to support large power plants or hydropower projects. The costs of Chinese-build projects are lower than other Western countries, supported by loans with lower interests or rates issues by policy banks. Chinese SOEs' access to preferential loans for social development and infrastructure has been facilitated through support from China Exim Bank and China-African Development Fund.[65] Thirdly, grids and power plants built by Chinese SOEs can have direct impacts on social, economic and environmental development. For example, renewable power plant or low-carbon projects built by Chinese companies may help African countries' transition to lower $CO_2$ emitting electricity system.[66] However, it is important to note that although a combination of loans, government-driven investment and equity investment was provided, power sector development and large infrastructure projects building require massive support and greater access to capital funds, technologies and capacity building.

Another good example of Chinese SOEs that can benefit their projects and Africa's society and economy as well as many other western investors are not interested in, is the establishment of Special Economic Zones (SEZs) in Africa.[67] There are seven SEZs in Zambia, Mauritius, Egypt, Ethiopia, Algeria and Nigeria.[68] These SEZs were designed and approved by MOFCOM but executed by Chinese SOEs. These SEZs not only support Chinese SOE's projects by facilitating the establishment of complementary local activities (e.g. construction materials, logistics, manufacture of equipment), but also contribute to the economic development of African countries by supporting other industries, e.g. production of medicines, textiles, furniture. Moreover, compared to Chinese SOEs' involvement in large-scale

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[63] ibid.

[64] ibid 27.

[65] A study provided that China has become the world's largest development bank and China Development Bank and China Exim Bank provides as much financing as the World Bank. *See* Kevin P. Gallagher, 'Opinion: China's Roles as the World's Development Cannot Be ignored' (11 October 2018) <https://www.npr.org/2018/10/11/646421776/opinion-chinas-role-as-the-world-s-development-bank-cannot-be-ignored> accessed 20 March 2019.

[66] David Bénazéraf and Yilun Yan, 'Commentary: Another Look at China's Involvement in the Power Sector in Sub-Saharan Africa' (1 April 2019) <https://www.iea.org/newsroom/news/2019/april/another-look-at-chinas-involvement-in-the-power-sector-in-sub-saharan-africa.html> accessed 10 April 2019.

[67] Deborah Bräutigam and Tang Xiaoyang, 'African Shenzhen: China's Special Economic Zones in Africa' (2011) 49 The Journal of Modern African Studies 27.

[68] For more discussion of SEZs in Africa, please see Thomas Farole and Lotta Moberg, 'Special Economic Zones in Africa: Political Economy Challenges and Solutions' in John Page and Finn Tarp (eds), *The Practice of Industrial Policy Government – Business Coordination in Africa and East Asia* (OUP 2017) 234.

infrastructure projects, Western investors prefer engaging in public-private partnerships (PPPs) in infrastructure projects. However, they usually engage in projects that are directly linked to their major business operation as their shareholders may pressure them to focus on their activities and assess each investment projects. Investors from other Western countries and Asian countries (e.g. India) may prefer engaging in smaller projects. In this regard, Chinese SOEs have played a significant role in helping African countries meet their infrastructure needs thus further promoting economic growth.

It is wise to recognise that Chinese SOEs in Africa have neither wholly black nor wholly white roles. They bring both challenges and benefits. This can partly be attributed to their limited experience in internationalisation. On the positive side, SOEs' links with the Chinese government and constraints by China's policy initiative in Africa have allowed them to engage more deeply in the development of Africa than many other Western investors. Chinese SOEs have played an important role in building hard infrastructure and soft institutions like SEZs. On the negative side, given their lack of enough and sufficient practice and experience in ensuring transparency and delivering governance notions, the flexibility of Chinese approach sometimes is regarded as imposing harmful and unethical influence on the continent.

## 4. Regulatory Challenges of Investing in Africa by Chinese SOEs

Given the size of projects Chinese SOEs involved and their lack of enough practices, they have raised regulatory challenges to both African countries and China. The regulatory challenge on the side of African countries is the way to address investment risks and disputes, i.e. the accountability of Chinese SOEs as foreign investors and responsibility of African governments as host states. In many African countries, the supervision mechanism of several kinds of projects is not sufficient, and governments do not provide appropriate requirements to ensure the sound and sustainable operation of projects with significant social, economic and environmental impacts.

Greater political proximity between China and African governments has led to higher investment inflows.[69] However, political risks arising from uncertainty around elections and successions increase sharply in several African countries, such as the Democratic Republic of the Congo, Kenya, Zimbabwe, Ivory Coast, and Gabon.[70] The political risks might threaten foreign investors' desire to invest in Africa. In particular, whether there are political risks is a prominent consideration in the long-term incentives of large SOEs.[71] In comparison with Western investors, Chinese SOEs may prefer investing in less politically stable countries since those countries host fewer competitors from Western countries thus leading to easy access to

[69] Dhruv Gandhi, 'Figures of the week: Trends and Determinants in Chinese FDI in Africa' (Brookings, 25 July 2018) <https://www.brookings.edu/blog/africa-in-focus/2018/07/25/figures-of-the-week-trends-and-determinants-in-chinese-fdi-in-africa/amp/> accessed 20 March 2019.
[70] Marsh, 'Political Risk Map 2018: Tensions and Turbulence Ahead' <https://www.marsh.com/in/campaigns/political-risk-map-2018.html> accessed 20 March 2018.
[71] Lorenzo Cotula et al., 'China- Africa Investment Treaties: Do They Work?' (2016) International Institute for Environment and Development (IIED) 43.

these markets.[72] Chinese foreign investments are attracted to countries that have political risks along with valuable natural resources.[73] Although the 'Five No' approach of China to deal with Sino-Africa relation aims to build mutual trust between Africa and China, political risks within some African countries remain the top issues in Africa.[74] The dispute is inevitable while under this circumstance. Therefore, an appropriate dispute resolution mechanism is necessary for the interests of investors and host states.

However, when Chinese investors suffer losses in the host state, they will resort remedies via negotiation, contract-based arbitration or guarantees under commercial insurance.[75] The managers of Chinese SOEs usually hold that if a dispute occurs, the best solution is to use the means that can maintain a good relationship with the local government instead of relying on investment treaty protection.[76] China has signed bilateral investment treaties (BITs) with most of the sub-Saharan African countries since it signed the BIT with Ghana in 1989. So far, there is no publicly available investor-state arbitration case that Chinese investors would bring against African countries as host states. In practice, African countries have frequently appeared as respondents before international arbitration tribunals due to their violation of investment treaty obligations and most of these are based on expropriation relevant provisions. For instance, African countries have been involved in about 20 per cent of ICSID arbitral disputes.[77]

In recent times, African countries have raised concerns about the investor-state dispute settlement (ISDS) provisions since they claimed that these provisions focus on the interests of investors from developed countries and do not address concerns of developing countries. The lack of legitimacy, transparency, high costs of arbitration proceedings and inconsistent decision are criticised.[78] Host states concerned that the ISDS system undermines their sovereignty and

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[72] Wenjie Chen et al., 'Why is China Investing in Africa? Evidence from the Firm Level' (2018) 32 The World Bank Economic Review 610.

[73] Bala Ramasamy, Matthew Yeung, and Sylvie Laforet, 'China's Outward Foreign Direct Investment: Location Choice and Firm Ownership' (2012) 47 Journal of World Business 17, 20.

[74] The 'Five No' approach was proposed by President Xi at the FOCAC. It includes "no interference in African countries' pursuit of development paths that fit their national conditions; no interference in African countries' internal affairs; no imposition of our will on African countries; no attachment of political strings to assistance to Africa; and no seeking of selfish political gains in investment and financing cooperation with Africa." Xinhua, 'Full text of Chinese President Xi Jinping's speech at opening ceremony of 2018 FOCAC Beijing Summit (1)' (3 September 2018) <http://www.xinhuanet.com/english/2018-09/03/c_137441987.htm> accessed 20 March 2019.APO, 'Political risk remains the key consideration for dealmaking in Africa' (9 April 2018) <https://www.cnbcafrica.com/apo/2018/04/09/political-risk-remains-the-key-consideration-for-dealmaking-in-africa/> accessed 20 March 2019; Pauline Bax et al., 'Crisis and Hope: A Country Guide to Africa's Top Political Risks', (Bloomberg, 10 January 2019) <https://www.bloomberg.com/news/articles/2019-01-10/crisis-and-hope-a-country-guide-to-africa-s-top-political-risks> accessed 20 March 2019.

[75] Lorenzo Cotula et al., 'China- Africa Investment Treaties: Do They Work?' (2016) (International Institute for Environment and Development) 44 <https://pubs.iied.org/pdfs/17588IIED.pdf> accessed 20 March 2019.

[76] ibid 45.

[77] ISDS Platform, 'Africa' (February 2017) <https://isds.bilaterals.org/?-africa-263-&lang=en> accessed 20 March 2019.

[78] Talkmore Chidede, 'Investors-State Dispute Settlement in Africa and the AfCFTA Investment Protocol' (11 December 2018) <https://www.tralac.org/blog/article/13787-investor-state-dispute-settlement-in-africa-and-the-afcfta-investment-protocol.html> accessed 20 March 2019.

‘right to regulate’ thus resulting in ‘regulatory chill’.[79] Given that, countries have adopted measures and/or national investment regulations limiting or even omitting ISDS provisions. For example, in 2014, the Namibian government raised its doubts about the correlation between BITs including ISDS and FDI and argued that ISDS would bring developing countries risks rather than benefits .[80] Protection of Investment Act 22 of 2015 was enacted by South African to limit ISDS to mediation or arbitration via domestic authorities or tribunals.[81] The 2016 amendments to the Southern African Development Community (SADC) Finance and Investment Protocol limited ISDS provision and narrowed the scope of investors’ rights.[82] Only state-to-state arbitration has been preserved and it requires the use of domestic remedies.[83] For instance, Tanzania excludes international arbitration.[84] For example, the Public-Private Partnership Act No. 9 of 2018 (Amendment) prohibits international arbitration as a means to resolve investor-state disputes.[85]

On the other hand, African regional economic communities have adopted diverse ISDS approaches, which may lead to the confusion or an overlap of approaches that a country may use. For example, the Investment Agreement for the Common Market for Eastern and Southern Africa (COMESA) Common Investment Area (CCIA) provides ISDS arbitration via African arbitration tribunals, the COMESA Court of Justice, and also ICSID and UNCITRAL arbitral tribunals. But the Economic Community of West African States (ECOWAS) Supplementary Act on Investment and the SADC Finance and Investment Protocol exclude ISDS but rather provide local remedies.[86] The Pan-African Investment Code provides for arbitration via African arbitration institutions, which are governed by UNCITRAL rules and subject to exhaustion of local remedies and the applicable law of host states. It seems that different approaches to ISDS adopted by African countries may depend on the partners they are dealing with. It may leave a question, which approach they may choose and will be adopted in the African Continental Free Trade Agreement (AfCFTA) Investment Protocol if one country belongs to more than one of these regional communities.

Under this circumstance, if there is no unified Pan-African approach to investment dispute resolution, Chinese SOEs undertaking projects in different African countries may resort to different or even confrontational ways to claim damages or losses. Since infrastructure project

[79] ibid.
[80] ibid.
[81] ibid.
[82] ibid.
[83] ISDS Platform, ‘Africa’ (February 2017) <https://isds.bilaterals.org/?-africa-263-&lang=en> accessed 20 March 2019.
[84] At present, international arbitration is prohibited in disputes related to Tanzania’s natural resource sector and Public Private Partnership agreements. Tanzania also terminated the Tanzania-Netherlands BIT. See Ibrahim Amir, ‘A Wind of Change! Tanzania’s Attitude towards Foreign Investors and International Arbitration’ (28 December 2018) <http://arbitrationblog.kluwerarbitration.com/2018/12/28/a-wind-of-change-tanzanias-attitude-towards-foreign-investors-and-international-arbitration/> accessed 20 March 2019.
[85] Aisha Ally Sinda, ‘Investor-State Dispute Settlement in Tanzania’ (11 February 2019) <https://isds.bilaterals.org/?investor-state-dispute-settlement-38352&lang=en> accessed 20 March 2019.
[86] Talkmore Chidede, ‘Investors-State Dispute Settlement in Africa and the AfCFTA Investment Protocol’ (11 December 2018) <https://www.tralac.org/blog/article/13787-investor-state-dispute-settlement-in-africa-and-the-afcfta-investment-protocol.html> accessed 20 March 2019.

often takes a long time to complete, maintaining a sustainable business relationship is important for investors. As many African countries have expressed the concerns that international arbitration for investor-state dispute resolution and existing BITs between China and African countries are outdated or only limited to specific disputes, it is crucial for China to ensure the interests of its overseas investment. To promote the development of Africa and to maintain a healthy environment for foreign investment, it is necessary for China and Africa to find an appropriate way to address investment disputes.

The regulatory challenges on the side of China are how to regulate overseas investment of Chinese SOEs, in particular, the issues concerning competition and corporate social responsibility (CSR). Since the behaviour of foreign investors is usually governed by the local law of host countries, the home state of foreign investors cannot supervise and regulate their investors overseas. It should be noted that although many central Chinese SOEs may be constrained by national policy or comply with goals, small companies or municipal SOEs may not operate like that. Large Chinese SOEs may dominate Chinese investment in Africa, especially in large scale projects, but their activities often are a small part of their global activities. The intense competition between Chinese investors results in many issues. Private enterprises and a large group of small SOEs have brought unregulated competition into Africa.[87] Many SOEs have to compete among themselves and with others in the fields of operation, strategies and policies.[88]

In terms of accountability of Chinese SOEs in labour rights and environmental protection, some Chinese investors may not comply with soft CSR requirements and they may even be not constrained by CSR policies set by the Chinese government. However, although Chinese SOEs are not the members of global initiatives that aim to improve corporate governance to the extent they might be expected to, China has developed a number of internal policies followed by SOEs and POEs. The SASAC has issued specific Guidelines for SOEs to fulfil CSR, so as to realise the sustainable development of enterprises, society and environment in all respects.[89] It includes an obligation for all SOEs under the Central Government to release CSR reports. An increase in CSR management, training and skills development programmes have been organised.[90] In 2016, SASAC published the *Guiding Opinions on Better Fulfilling Social Responsibilities of State-Owned Enterprises*, which emphasises the 'CSR performance plays its part in deepening SOE reform'.[91] The reality, however, is that the complex and uncertain

87 Yi-Chong Xu, 'Chinese State-owned Enterprises in Africa: ambassadors or freebooters' (2014) 23 (89) Journal of Contemporary China 822, 824.

88 Jin Zhangming, 'Corporate Strategies of Chinese Multinationals' in Jean-Paul Larcon (ed) *Chinese Multinationals* (World Scientific Publishing Co, 2008) 11-49.

89 State-owned Assets Supervision and Administration Commission of the State Council, 'Guidelines to the State-Owned Enterprises Directly under the Central Government' (6 December 2011) <http://en.sasac.gov.cn/2011/12/06/c_313.htm> accessed 20 March 2019.

90 MOFCOM, 'Research Bureau of the SASAC held a CSR Management Training in Beijing' (2 July 2014) <http://csr2.mofcom.gov.cn/article/policies/national/sasacnews/201407/20140700648755.shtml> accessed 20 March 2019.

91 MOFCOM, 'Guiding Opinion on Better Fulfilling Social Responsibilities of State-Owned Enterprises' (30 September 2017) <http://csr2.mofcom.gov.cn/article/policies/national/sasac/201709/20170902653924.shtml> accessed 20 March 2019.

politics and poor governance of many African countries inevitably pose challenges for Chinese SOEs. This may require Chinese SOEs to be more cautious about their conducts and pay much attention to their CSR performance.

## 5. Way Forward: Implication of China's Internal and External Actions

Sustainable investment and sustainable development are the common interests of China and Africa. To maximise the benefits of Chinese SOEs and to reduce the issues or threats to local development, further efforts should be made by China, and the enhanced cooperation between African countries is indispensable. In reality, China has adopted many measures to improve the operation of SOEs and to regulate Chinese outbound investment. Domestic reforms are ongoing. To improve the current operation and governance of SOEs, a new round of SOE reform is undertaking on the central government level and the local government level. The 19th National Congress of the Community Party of China reinforced the notion that China was determined to make SOEs leaner and healthier. It was stated that 'overcapacity, poor corporate governance, and low labour productivity had dragged down profits of China's SOEs, which deteriorated in 2015'.[92] By realising the significant role of SOEs to the country's sustainable growth, China has launched a series of reforms to promote the modern corporate governance of SOEs, improve share-holding structure. Since 2015, 50 SOEs have been selected to conduct pilot reform and in 2019 more than 100 SOEs will be included in the fourth round of mixed ownership reform.[93]

To regulate overseas investment and to ensure the legitimate investment activities, on 4 August 2017, a guiding opinion for overseas investment was released jointly by MOFCOM, People's Bank of China and the Ministry of Foreign Affairs. It classifies overseas investment into three categories, i.e. encouraged investment, limited investment and prohibited investment. The opinion provides that overseas investment that does not meet the environmental, security and energy consumption standards should be limited. On 26 December 2017, the National Development and Reform Commission (NDRC) released the Measures for the Administration of Overseas Investments of Enterprises (hereafter the 'Measures'). Article 41 of the Measures requires that investors are encouraged to innovate in the modes of overseas investment, adhere to the principles of operation in good faith, abstain from acts of unfair competition, protect the lawful rights and interests of their employees, respect local public order and good morals, fulfil necessary social responsibilities, pay attention to environmental protection, and build a good image of Chinese investors. It is important to note that to promote sustainable and green investment, environmental assessment (according to global standards), sufficient and necessary regulation of overseas investment, as well as CSR relevant requirement are necessary. At the same time, the enforcement and implementation of these requirements should be guaranteed.

In addition, China's current environmental regulations and practice are necessary, as its

[92] Xinhua, 'Economic Watch: China SOE Reform Set to Accelerate' (*Xinhua*, 26 October 2017) <http://www.xinhuanet.com//english/2017-10/26/c_136707498.htm> accessed 20 March 2019.
[93] Xinhua, 'China to expand SOE mixed ownership reform: spokesperson' (*Xinhua*, 18 April 2019) <http://www.xinhuanet.com/english/2019-04/18/c_137988405.htm> accessed 20 April 2019.

domestic performance or policies eventually tend to be reflected in approach overseas. China has tightened its environmental regulation and governance.[94] It even reinforced the enforcement of environmental rules.[95] Apart from the actions of the government, financial institutions can also influence the behaviour of Chinese SOEs. Relevant standards can be adopted by the government to decide whether to grant loans and whether to control the credit of SOEs and projects with environmental violations. Financial institutions can set environmental protection of Chinese SOEs as one of the necessary requirements for approval of loans and veto projects that are below acceptable environmental protection facilities. Or they can even veto the financing projects that do not pass environmental impact assessment.

Foreign direct investment and financial assistance bring important capitals to support the development of Africa. Infrastructure is critical to inclusive and sustainable development. BRI, proposed by China, aims to enhance and promote international cooperation. It also features the UN Sustainable Development Goals and the African Union's Agenda 2063. These initiatives require partners to work together on joint market development. On the side of China, in order to accelerate interconnection and intercommunication in the field of infrastructure at the global level, at the G20 Hangzhou Summit, Chinese President Xi Jinping proposed establishing the Global Infrastructure Connectivity Alliance to support connectivity through cooperation and knowledge exchange.[96] Promoted by China, the Asian Infrastructure Investment Bank was established in 2013 that aims to use infrastructure to improve economic development in the region. These initiatives demonstrate China's interests and determination to promoting infrastructure development as a global public good.

On the side of Africa, the 2063 Agenda emphasises the need for Africa to build world-class infrastructure across the continent, thus further enhancing the connectivity of African countries through plans to develop the interconnection of roads, railways, civil aviation and shipping, and also regional and pan-African communication technologies and power grids.[97] It can be found that China has the capacity and desire to tackle the infrastructure deficit of Africa, in particular in power and transport. Africa can provide the markets and natural resources that can fuel China's growth. Deepening Sino-African cooperation serves the interests of both sides, while this requires that investment of Chinese SOEs are commercial sound, well-managed and socially responsible.

Furthermore, although the FOCAC provides business opportunities for investors from both sides, it mainly focuses on political partnership. To attract need-based investment, the sound

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[94] Jonathan Kaiman, 'China strengthens environmental laws' (*The Guardian*, 25 April 2014) <https://www.google.com/amp/s/amp.theguardian.com/environment/2014/apr/25/china-strengthens-environmental-laws-polluting-factories> accessed 20 April 2019; Genia Kostka and Chunman Zhang, 'Tightening the grip: environmental governance under Xi Jinping' (2018) 27 Environmental Politics 769, 769.

[95] Rob Schmitz, 'China Shuts Down Tens of Thousands of Factories in Unprecedented Pollution Crackdown' (23 October 2017) <https://www.npr.org/sections/parallels/2017/10/23/559009961/china-shuts-down-tens-of-thousands-of-factories-in-unprecedented-pollution-crack> accessed 20 April 2019.

[96] World Bank, 'Global Infrastructure Connectivity Alliance' (12 April 2017) <http://www.worldbank.org/en/topic/transport/brief/global-infrastructure-connectivity-alliance> accessed 20 April 2019.

[97] African Union, 'Goals & Priority Areas of Agenda 2063' <https://au.int/en/agenda2063/goals> accessed 20 April 2019.

regulatory governance and politically stable and business-friendly environment are the guarantees of successful Sino-African collaboration in infrastructure investment and sustainable development. At the initial stage, preferential investment policies need to be in place while regulations are necessary to manage relevant risks (e.g. security concerns, environmental pollution and corruption). On the other hand, legal protection for foreign investors should be safeguarded. China is currently promoting cooperation with African regional organisations and actively participating in the cross-regional cooperation of the African Union. Given that, a possible approach to guarantee the investment protection and to promote the development of Africa legal environment can be a multilateral or regional model, i.e. a kind of pan African-China investment treaty.