



# Asamblea General

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## Consejo de Derechos Humanos

31<sup>er</sup> período de sesiones

Tema 3 de la agenda

**Promoción y protección de todos los derechos humanos,  
civiles, políticos, económicos, sociales y culturales,  
incluido el derecho al desarrollo**

### **Informe del Experto Independiente sobre las consecuencias de la deuda externa y las obligaciones financieras internacionales conexas de los Estados para el pleno goce de todos los derechos humanos, sobre todo los derechos económicos, sociales y culturales, relativo a su misión a China\***

#### **Nota de la Secretaría**

La Secretaría tiene el honor de transmitir al Consejo de Derechos Humanos el informe del Experto Independiente, Juan Pablo Bohoslavsky, relativo a la misión que efectuó a China entre el 29 de junio y el 6 de julio de 2015. El principal objetivo consistía en determinar la contribución del Estado a la protección y al logro efectivo de los derechos humanos en su concesión de préstamos externos a través de instituciones financieras nacionales e internacionales. Ello conllevaba, entre otras cosas, adquirir mayores conocimientos sobre las prácticas, los marcos de reglamentación y las salvaguardias a que recurren las instituciones financieras chinas y los nuevos bancos multilaterales de desarrollo en que participa China para garantizar que los proyectos financiados protejan y respeten los derechos de las personas y de las comunidades afectadas, y que los beneficios derivados del desarrollo social se distribuyan de manera inclusiva.

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\* Este informe fue presentado después del plazo previsto como consecuencia de las consultas celebradas con el Estado en cuestión.

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**Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to China\*\***

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\*\* Circulated in the language of submission and Chinese only.

## I. Introduction

1. The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights conducted an official visit to China from 29 June to 6 July 2015. The main purpose of the visit was to analyse the impact of the State's external lending through national and international financial institutions on the protection and realization of human rights in borrower countries. Another objective was to gain a better understanding of financial practices, regulatory frameworks and safeguards used by financial institutions, to ensure that financed projects protect and respect the rights of the individuals and communities concerned. During his visit, the Independent Expert particularly focused on the legal and institutional framework of the State's international lending, an issue relating to one of the priorities of the mandate holder, namely, to analyse the complex relationship between international financing and human rights.

2. China, while still a developing country, is a global player in the world economy and a major international lender. Loans from the China Development Bank and the Export-Import Bank of China for investments in foreign countries outnumber those of the World Bank.<sup>1</sup> The State's lending and expertise in infrastructure development, health care, agricultural development and other sectors can be considered important contributions to measures that may enhance the realization of economic, social and cultural rights and the right to development. Nonetheless, the State's leadership in foreign lending and investment comes with responsibilities, including ensuring respect for applicable national and international law binding on China and partner countries. While large infrastructure projects can benefit a majority of people, they should not be developed at the expense of those that may be negatively affected by them.

3. China has been an active promoter of two new multilateral development banks: the Asian Infrastructure Investment Bank in Beijing and the New Development Bank in Shanghai. The banks intend to address infrastructure gaps in many developing countries in a more efficient manner. One purpose of the visit by the Independent Expert was to ensure that the institutional policies of these new institutions adequately reflect social, environmental and human rights standards. Particular attention was paid to the Asian Infrastructure Investment Bank which started operating in January 2016.

4. During his visit to China, the Independent Expert benefited from discussions with government officials from the ministries of foreign affairs, education, finance, public security, human resources and social security, housing and urban-rural development, and commerce, and with representatives of the State Council Information Office, the National Health and Family Planning Commission, the People's Bank of China and the China Banking Regulatory Commission. The programme also included meetings with representatives of the China Development Bank, the Export-Import Bank of China and the Chinese Enterprises Confederation, including the China Chamber of Commerce of Metals, Minerals and Chemical Importers and Exporters, and with scholars and representatives of civil society organizations. The Independent Expert also met with the President-designate of the Asian Infrastructure Investment Bank.

5. The Independent Expert thanks the Government of China for its invitation and its full cooperation during the visit. He is grateful to all those who took the time to meet with him and to share their thoughts and information.

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<sup>1</sup> Denise Leung et al, *Environmental and Social Policies in Overseas Investments: Progress and Challenges for China* (Washington, D.C., World Resources Institute, April 2013), p. 8.

## **II. Framework for analysis: human rights obligations in external lending**

### **A. International human rights obligations**

6. China is party to six of the core international human rights treaties: the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities. Although China signed the International Covenant on Civil and Political Rights in 1998, it has yet to ratify it.

7. Under article 2.1 of the International Covenant on Economic, Social and Cultural Rights, China has assumed obligations to engage in international assistance and economic cooperation with other countries with a view to achieve progressively the full realization of the rights recognized by the Covenant. The State's development financing can make an important contribution to this end.

8. Under international human rights law, China has three essential duties: to respect, protect and fulfil the human rights of individuals or groups within its territory or jurisdiction. The duty to protect entails taking measures to ensure that third parties, including financial institutions and business enterprises, do not contribute to human rights abuses.<sup>2</sup>

9. The Independent Expert welcomes the endorsement by China of the guiding principles on foreign debt and human rights (A/HRC/20/23, annex) and the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex). Both documents set out key international human rights principles that should be upheld by lenders and borrowers, Governments and business enterprises, including public and private financial institutions.

10. China also supports the Declaration of the Right to Development, which specifies that the human person is the central subject of development and should be the active participant and beneficiary of the right to development.<sup>3</sup>

11. Lastly, international labour and environmental standards are also relevant, as they protect the rights described in international human rights treaties and standards, such as the rights to just and favourable conditions of work, to health, food, adequate housing or safe and clean drinking water and sanitation. In this regard, the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work sets out universal standards and rights of workers, and "applies to all persons in all States regardless of their economic development and is binding upon all ILO member States irrespectively whether or not they have ratified the relevant eight fundamental labour conventions."

### **B. Extraterritorial human rights obligations in international lending**

12. It is increasingly recognized that States' human rights obligations can extend beyond borders. Articles 55 and 56 of the Charter of the United Nations require all Member States to take joint and separate action to ensure universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or

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<sup>2</sup> See the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex), principle 1.

<sup>3</sup> General Assembly resolution 41/128, annex, art. 2.1.

religion including through international cooperation. The obligation of States to protect and respect human rights is therefore not only restricted to their own territories.

13. The obligation that States take steps through international assistance and cooperation in the progressive realization of economic, social and cultural rights, enshrined in article 2, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights, implies that States should also refrain from activities that would undermine the enjoyment of human rights outside their own territories. United Nations treaty bodies have reaffirmed extraterritorial human rights obligations in their general comments and in an increasing number of concluding observations.<sup>4</sup> Similarly, several special procedure mandate holders of the Human Rights Council have stressed that States should ensure respect for human rights outside their territory both in relation to their own policies and by ensuring that financial institutions or businesses headquartered in their jurisdiction respect human rights.<sup>5</sup>

14. In the context of international lending, the guiding principles on foreign debt and human rights note that “the duty of international assistance and cooperation enjoins States to ensure that their activities, and those of their residents and corporations, do not violate the human rights of people abroad” (A/HRC/20/23, annex, para. 22).

15. Principle 3 of the Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights affirm that all States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially, while principle 13 specifies that States should desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights outside their own territory.

16. For projects or operations financed and implemented abroad, applicable human rights norms include first and foremost the international and regional human rights treaties that have been ratified by the recipient State, including the national legislation of the particular country.<sup>6</sup> The human rights obligations of recipient countries may occasionally go beyond the human rights obligations of China, as the recipient country may have ratified additional human rights treaties. The principle of the most protective standard should be adhered to in cases where international, regional or national standards binding on a foreign country are more protective than those binding on China, or if the opposite is true.

17. When the Committee on Economic, Social and Cultural Rights reviewed the situation in China in 2014, it welcomed the fact that the country had provided economic and technical assistance for more than 2,000 projects in more than 120 developing countries. With regard to the State’s external human rights obligations, the representatives of China expressed concern that some of the projects had reportedly resulted in violations of economic, social and cultural rights in the receiving countries. The Committee called

<sup>4</sup> See for example Committee on Economic, Social and Cultural Rights, general comments No. 12 (E/C.12/1995/5), paras. 36-39, No. 15 (E/C.12/2002/11), para. 30-36 and No. 19 (E/C.12/GC/19), paras. 52-58; and concluding observations on Austria (E/C.12/AUT/CO/4), paras. 11-12, Belgium (E/C.12/BEL/CO/4), para. 22, China (E/C.12/CHN/CO/2), paras. 12-13, Germany (E/C.12/DEU/CO/5), paras. 9-11, and Switzerland (E/C.12/CHE/CO/2-3), para. 24. Similar general comments and concluding observations relating to the extraterritorial application of international human rights treaties have been made by the Committee on Civil and Political Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination.

<sup>5</sup> See for example A/HRC/21/39, paras. 96-99; A/HRC/27/55, paras. 70-72; A/HRC/28/65, paras. 41-47; A/HRC/29/25, paras. 18, 25, 38 and 72; and A/66/271, A/HRC/25/52 and A/HRC/31/61.

<sup>6</sup> Certain core human rights norms may be binding for all countries regardless of whether they have been ratified, given that they are considered to be of a customary nature or to reflect general principles of international law.

upon China to adopt a human-rights based approach to its policies of international cooperation, by (a) undertaking a systematic and independent human rights impact assessment prior to making funding decisions; (b) establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries, and to take remedial measures when required; and (c) ensuring that there is an accessible complaint mechanism for violations of economic, social and cultural rights in the receiving countries. With regard to business enterprises, the Committee recommended that China adopt appropriate legislative and administrative measures to ensure the legal liability of companies and their subsidiaries operating in or managed from its territory regarding violations of economic, social and cultural rights in the context of their projects abroad (E.C.12/CHN/CO/2, paras. 12-13).

### **C. Responsibilities of financial institutions**

18. In China, the two main lending institutions providing loans and credit insurance for infrastructure and industrial projects abroad are the China Development Bank a development financing institution, and the Export-Import Bank of China, a policy bank.

19. According to principle 4 of the Guiding Principles on Business and Human Rights,<sup>7</sup> States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support or services from State agencies, such as export credit agencies, official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence..

20. According to the commentary to principle 4,<sup>8</sup> where a business enterprise is controlled by the State or where its acts may be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligation. In the case of export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions, it was noted in the commentary that, where such agencies do not explicitly consider the actual and potential adverse impact on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State..<sup>9</sup>

21. The guiding principles on foreign debt and human rights also cover national and international financial institutions. They require lenders to conduct due diligence to ensure that a proposed loan will not increase the borrower State's external debt stock to an unsustainable level, that will make debt repayment difficult and impede the creation of conditions for the realization of human rights.<sup>10</sup> They also add that lenders should not finance activities or projects that violate, or would foreseeably violate, human rights in borrower States. To avoid this eventuality, it is incumbent upon lenders intending to finance specific activities or projects in borrower States to conduct a credible human rights impact assessment as a prerequisite to providing a new loan.

22. The financial industry has developed guidelines, such as the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation of the World Bank, and the Equator Principles. The Independent Expert welcomes the fact that the

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<sup>7</sup> A/HRC/17/31, annex.

<sup>8</sup> *Ibid.*, p. 9.

<sup>9</sup> See also A/66/271, paras. 18-28.

<sup>10</sup> See A/HRC/20/23, paras. 1, 6 and 39.

Industrial Bank has already adhered to the Equator Principles, and encourages all major financial institutions in China to join also.

#### **D. Responsibilities of business enterprises**

23. Chinese business enterprises, their subsidiaries and joint ventures operating or registered abroad are major recipients of lending. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate, and applies irrespectively of ownership, or whether enterprises are lenders or recipients of funding. Business enterprises must avoid causing or contributing to any adverse human rights impact throughout their own activities, and address such an impact when it occurs. Their responsibility to respect human rights is independent of whether a host or home State takes appropriate steps to prevent human rights abuses by businesses.

24. According to the Guiding Principles on Business and Human Rights, business enterprises should carry out human rights impact assessments, engage in meaningful consultation with potentially affected groups and other relevant stakeholders, provide remedies for any adverse human rights impact that they have caused or contributed to, and establish effective operational-level grievance mechanisms for individuals and communities who may be adversely affected.

#### **E. Human rights obligations of host States**

25. Home and host States – China and its partner countries – have complementary obligations. The duty to protect individuals living in host countries from business human rights abuses rests first and foremost with the host State where businesses operate or infrastructure projects are implemented. Host States are also primarily responsible to take appropriate steps to prevent, investigate, punish and redress such abuses and to enforce laws and regulations aimed at ensuring business respect for human rights within their territory and jurisdiction. This obligation does not, however, relieve home States, such as China, of their obligation to take appropriate measures to ensure that businesses headquartered in China or owned by the Chinese State or Chinese persons respect human rights in their overseas operations.

26. The obligation of China to ensure that Chinese business enterprises respect human rights in their overseas investments is commensurable to the relevant human rights risks of a particular operation in a particular country; for example, in conflict-affected areas, the host State may be unable to protect human rights adequately owing to a lack of effective control. In such situations, principle 7 of the Guiding Principles on Business and Human Rights call upon home States of transnational corporations that they should assist corporations and host States to ensure that businesses are not involved in human rights abuse.

27. Human rights abuses caused by business enterprises are frequently a result of weak regulatory frameworks or enforcement capacities within host States. An adverse impact is often a consequence of lack of experience, capacity or willingness of the host State to ensure that complex infrastructure projects supported by foreign lenders comply fully with international standards. Home States, development banks and corporations that have gained experience both at home and abroad in managing large-scale infrastructure projects can therefore play a very helpful role in assisting partner countries overcoming such challenges. Similarly, host States can make a significant difference in ensuring that investments supported by foreign lenders or businesses result in maximal positive social outcomes for

their own population with regard to employment, environmental protection or human rights.<sup>11</sup>

28. The guiding principles on foreign debt and human rights also underscore the principle of shared responsibility of creditors and borrowers, and include public and private actors providing and receiving funds in their scope of application.<sup>12</sup>

## **F. Human rights obligations of multilateral development banks**

29. States that have ratified binding international human rights treaties, retain their human rights obligations when they participate in multilateral development banks. For example, 52 of the 57 member States of the Asian Infrastructure Investment Bank, holding a combined 97.2 per cent of voting shares, have ratified five or more core international human rights treaties.<sup>13</sup> The initiators of the New Development Bank – Brazil, the Russian Federation, India, China and South Africa – have also ratified most core international human rights treaties.<sup>14</sup> The obligation of multilateral development banks to respect human rights in their operations is therefore beyond doubt.

30. Principle 10 of the Guiding Principles on Business and Human Rights calls upon States, when acting as members of multilateral institutions, to encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights. Where requested, such institutions are to help recipient States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising. Similarly, the guiding principles on foreign debt and human rights reaffirm that States may not derogate from international human rights law obligations when acting collectively through international and regional organizations of which they are members.

31. While most articles of agreement of multilateral development banks contain provisions requiring them not to interfere in political affairs of any member, the provisions cannot be interpreted as waiving due diligence or the need to ensure that their own operations comply with international environmental, social and human rights norms. In the twenty-first century, good governance and respect for environmental, social and human rights are not only part of sound economic decision-making but also reflect basic binding legal obligations. An anachronistic and inconsistent interpretation of such provisions in the articles of agreement would be in disrespect of international law and the integral relationship between human rights and development.

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<sup>11</sup> See Garth Shelton and Claude Kabemba, *Win-Win Partnership? China, Southern Africa and the Extractive Industries* (Johannesburg, Southern African Resources Watch, 2012), chap. 6.

<sup>12</sup> See A/HRC/20/23, annex, paras. 1, 16 and 23.

<sup>13</sup> German Institute for Human Rights, Consultation on AIIB Environmental and Social Framework, submission, annex, 23 October 2015.

<sup>14</sup> Brazil, the Russian Federation, India, China and South Africa have ratified the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of The Child and the Convention on the Rights of Persons with Disabilities. Four of the five States have ratified the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.



### III. Lending to developing countries

#### A. Lending in the context of the “Going Global” strategy

32. South-South cooperation in China has a 60-year history, during which it has undergone several changes.<sup>15</sup> The past 15 years have witnessed an unprecedented acceleration in economic and development cooperation in the context of the State’s “Going global” strategy, which encourages outward investment by Chinese companies, the promotion of trade and export of products, services and technologies, overseas exploitation of resources and infrastructure construction by Chinese enterprises. Most of the State’s economic cooperation with developing countries is of a commercial nature, even though China has also significantly increased its assistance to partner countries.

33. During the period from 2010 to 2012, China provided \$14.4 billion in foreign aid, including grants, interest-free loans and concessional loans to 121 countries. Its foreign aid has further increased in recent years. According to a white paper issued in July 2014 by the Information Office of the State Council, 36.2 per cent of all assistance is provided in the form of grants, 8.1 per cent in interest-free loans and 55.7 per cent in concessional loans. Although the State’s foreign assistance statistics are gathered in a manner different to that followed in member countries of the Organization for Economic Cooperation and Development (OECD), it can be safely said that China – itself a developing nation – has become one of the world’s 10 largest providers of development assistance.

34. According to the Ministry of Commerce, Chinese outward foreign direct investment surged from \$12.3 billion in 2005 to \$123.12 billion in 2014.<sup>16</sup> It has been estimated that, during the period 2004-2013, a large proportion of foreign direct investment was received by the global South, including Africa (14 per cent), Asia (31 per cent) and Latin America (5 per cent).<sup>17</sup>

35. Lending usually comes in the form of large loans. To reduce lending costs, the State has used, inter alia, loans-for-oil agreements or included purchase requirements, requiring the borrower to purchase Chinese equipment or to hire Chinese companies for construction activities. One study found that Chinese banks channelled 87 per cent of their loans in Latin America into the infrastructure, energy, mining, transportation and housing sectors, which received only about one third of the funds allocated by the World Bank and the Inter-American Development Bank.<sup>18</sup>

36. In 2001, China pledged to reduce or cancel some \$1.2 billion of debt owed by heavily indebted poor countries and least developed Countries.<sup>19</sup> According to information provided by the Government, since 2000, China has signed debt exemption protocols amounting to 30 billion RMB with 50 States in the African, Asian, Caribbean and Pacific regions. Unlike the Heavily Indebted Poor Country debt relief regime, Chinese debt relief was non-conditional and was also extended to distressed developing countries above the strict poverty line.

<sup>15</sup> See Deborah Brautigam, *The Dragon’s Gift: The real story of China in Africa* (Oxford University Press, 2010).

<sup>16</sup> Ministry of Commerce, “The State Council Information Office Holds a Press Conference on Statistical Communiqué of 2014 on China Direct Investment Overseas”, 22 September 2015.

<sup>17</sup> See Lihuan Zhou and Denise Leung, “China’s Overseas Investments, Explained in 10 Graphics”, World Resources Institute, 28 January 2015,.

<sup>18</sup> See Kevin P. Gallagher, Amos Irwin and Katherine Koleski, “The New Banks in Town: Chinese Finance in Latin America”, report, Inter-American Dialogue, February 2012.

<sup>19</sup> See Brautigam, *The Dragon’s Gift* (see footnote 15), p. 127-130.

37. China has not tied its lending to the implementation of IMF structural adjustment programmes, which frequently include such controversial conditions as the privatization of basic services or trade liberalization. China has also assisted a number of States that were cut off from other international financial support. Nonetheless, the loans granted by its policy banks are not completely free of certain embedded conditionalities, such as tying loans to the purchase of a certain percentage of goods and services from Chinese businesses.<sup>20</sup>

38. China has focused on improving trade-related infrastructure and production capacity in partner countries by building or upgrading roads, bridges, railways, airports and harbours, and reducing import taxes, in particular for products from least developed countries. Projects in the energy, telecommunication and information technology sectors also make up a large percentage of the State's South-South cooperation. In total, 44.8 per cent of all foreign assistance during the period 2010-2012 supported economic infrastructure, while 27.6 per cent was allocated to social and public infrastructure.<sup>21</sup>

39. In March 2015, the Government of China released a blueprint for a "silk road and belt", a huge infrastructure development initiative designed to "promote the connectivity of Asian, European and African continents and their adjacent seas".<sup>22</sup> The Asian Infrastructure Investment Bank and the New Development Bank are expected to play an important part in infrastructure investment in the region; in November 2014, China pledged to contribute \$40 billion to set up a "silk road fund".

40. When China became a major international lender, some depicted the country as a "resource-hungry tiger", allegedly exporting its own labour force without providing job opportunities to locals, or accused China of providing excessive lending to developing countries that would not be able to repay their debts. A more differentiated view has, however emerged, challenging such general perceptions with a more nuanced assessment.<sup>23</sup> Comparative studies conclude that the record of Chinese actors investing abroad is often not very different from that of local or other foreign businesses, with regard to compliance with international norms in the field of human rights, labour and the environment.<sup>24</sup>

41. The Independent Expert wishes to highlight the fact that, over the past decade, the Government of China has made significant policy changes with regard to the promotion of environmental policies and corporate social responsibility. In his view, however, it has made more progress in endorsing concepts of green financing and corporate social responsibility than in incorporating a human rights-based approach into its international lending and foreign assistance.

42. It should be noted that respect for human rights is not part of the official criteria required for providing support to other developing countries. While China uses foreign aid and preferential loans to support raising living standards in partner countries, it characterizes its South-South cooperation as being based on the principle of non-interference in domestic affairs. In addition, Chinese officials and media usually refrain from using human rights terminology to present the State's support for partner countries in

<sup>20</sup> See Mikael Mattlin and Matti Nojonen, "Conditionality and Path Dependence in Chinese Lending", *Journal of Contemporary China*, vol. 24, No. 94 (2015), pp. 701-720.

<sup>21</sup> Information Office of the State Council, "China's Foreign Aid (2014)", p. 4.

<sup>22</sup> National Development and Reform Commission, Ministry of Foreign Affairs, "Visions and actions on jointly building silk road economic belt and 21<sup>st</sup>-century maritime silk road", *Xinhuanet*, March 2015.

<sup>23</sup> See for example Brautigam, *The Dragon's Gift* (see footnote 15); Gallagher et al, "The New Banks in Town" (see footnote 18 above); and Rebecca Ray et al., *China in Latin America: Lessons for South-South Cooperation and Sustainable Development* (Boston University Global Economic Governance Initiative, April 2015).

<sup>24</sup> See Shelton and Kabemba, *Win-Win Partnership?* (see footnote 11 above), chap. 5, pp. 147-173.

the field of development. In the Independent Expert's view, the South-South cooperation policy aimed at delivering "mutual benefits" can contribute to the realization of economic, social and cultural rights in partner countries.

## **B. Institutional framework**

43. In China, the development cooperation framework involves a number of government agencies, primarily the Ministry of Commerce, the Ministry of Foreign Affairs and the Ministry of Finance, which work in partnership with other central and local government agencies, and public and private enterprises, and institutions. The Ministry of Commerce is responsible for the formulation of policies on foreign trade, export and import regulations, foreign direct investments, consumer protection, market competition and negotiating bilateral and multilateral trade agreements, while its Department of Aid to Foreign Countries oversees the State's development assistance.

44. The Export-Import Bank of China and the China Development Bank are the main instruments of the State's foreign economic cooperation, financing large-scale infrastructure development projects in Africa, Asia and Latin America. The Export-Import Bank of China, founded in 1994, is mandated to facilitate the export and import of Chinese mechanical and electronic products, equipment and high-tech products, to assist Chinese companies in their offshore project contracting and outbound investment, and to promote international economic cooperation and trade. It is the sole provider of State concessional loans, which account for the majority of Chinese foreign aid.

45. The China Development Bank, also established in 1994, provides medium- to long-term financing facilities, with a particular focus on the development of infrastructure and key industries. The bank has become the world's largest development finance institution and the State's largest foreign investment and financing bank. By end of 2013, it had signed 243 cooperation agreements with 81 States, to support them in constructing infrastructure facilities and developing small- and medium-sized enterprises and agricultural businesses. According to its sustainability report for 2013, at the end of 2013, its foreign currency loans to 114 States and regions had reached \$250.5 billion.

46. In China, large State-owned enterprises are the most prominent actors in the "Going Global" strategy, and are backed by lending and export credit insurance of Chinese financial institutions. Since 2011, 113 centrally administered State-owned enterprises have sustained an annual growth rate in their overseas assets of 16.4 per cent. By the end of 2014, 107 centrally administered enterprises had set up 8,515 branches in 150 countries and regions, and accounted for 70 per cent of all outbound direct investment.<sup>25</sup>

## **C. Regulatory framework for external lending and outbound investment**

47. The Chinese authorities have made efforts to strengthen their regulations for outbound investment in order to avoid negative environmental and social impact. The Independent Expert encourages China to further strengthen these regulatory frameworks in accordance with international best practice. Such efforts should more visibly include human rights standards, obligations and responsibilities, and also ensure their enforceability.

48. Achieving greater human rights protection would also require ensuring that existing guidelines and policies are more rigorously monitored in their implementation. Most are currently voluntary and lack an accountability and enforcement mechanism. In particular,

<sup>25</sup> "SOE overseas assets surge", *Xinhua*, 19 June 2015.

affected individuals and communities should have access to effective remedies if existing regulations and international norms are not adhered to.

49. During his visit, the Independent Expert was briefed about the State's most recent national human rights plan of action (2012-2015), which did not address the issue of human rights in the field of business, by for example ensuring that lending and outbound investment complied with international human rights standards.

50. Over the past decade, however, an increasing number of guidelines relating to business and finance have been adopted by different government bodies. Some relate to human rights, such as the principles of non-discrimination, compensation of losses in case of resettlement and consultation with affected communities. Nonetheless, they do not yet cover human rights in a comprehensive manner.

51. In December 2007, the State-owned Assets Supervision and Administration Council issued a set of guidelines for all central State-owned enterprises on fulfilling corporate social responsibilities. The guidelines require State-owned enterprises to give top priority to work and product safety, the legal interests of employees, compliance with regulations and laws, investment into environmental protection, and non-discrimination on grounds of gender, nationality, religion or age, including equal pay for equal work, and encourage State-owned enterprises to participate in social welfare programmes.

52. In March 2009, the Ministry of Commerce issued Measures for Overseas Investment Management, containing detailed regulations for the approval of overseas investments. According to the regulations, any overseas investment considered likely to violate "any international treaty conducted by China with a foreign party" would not be approved. While in theory this allows for the consideration of obligations from international human rights treaties signed by China and partner countries, the Independent Expert was not informed during his visit on how the Ministry screens overseas investments that may pose significant human rights risks.

53. The Guidelines on Environmental Protection in Foreign Investment and Cooperation, published by the Ministry of Commerce in March 2013, focus on ensuring environmental protection and promote the sustainable development of foreign investment and cooperation. They also require, however, that enterprises should respect the religious belief, cultural traditions and national customs of community residents of the host country, safeguard the legitimate rights and interests of labourers, offer training, employment and re-employment opportunities to residents in the surrounding areas, promote the harmonious development of the local economy, the environment and the community, and cooperate on the basis of mutual benefit.

54. The Independent Expert was informed by the China Banking Regulatory Commission about its Green Credit Guidelines, which apply to all policy and commercial banks. Article 4 of the Guidelines covers "hazards and risks [to] the environment and society that may be brought about by the construction, production and operating activities of banking institutions' clients and key affiliated parties thereof, including environmental and social issues related to energy consumption, pollution, land, health, safety, resettlement of people, ecological protection [and] climate change". Article 10 stipulates that Chinese banking institutions are to "establish and constantly improve policies, systems and processes for environmental and social risk management", while article 11 requires clients facing major environmental and social risks to put in place risk response plans and to establish sufficient, effective stakeholder communication mechanisms, including third-party assessment of such risks.

55. In 2012, an article 21 was included in the Green Credit Guidelines, requiring banking institutions to strengthen explicitly environmental and social risk management for overseas projects for which credit has been granted. It requires Chinese financial

institutions to ensure that project sponsors comply with applicable laws and regulations on, inter alia, environmental protection, land, health and safety in the country or jurisdiction hosting the project. In addition, banking institutions are required to pledge publicly that appropriate international practices or international norms will be followed in the implementation of the project so as to ensure alignment with good international practices.

56. The Green Credit Guidelines provide an opportunity to enhance respect for human rights in Chinese project financing and foreign investment. The Independent Expert is nonetheless concerned about the implementation of the Guidelines by Chinese banking institutions in overseas projects given that the mechanisms for monitoring and enforcing compliance still appear to be weak.<sup>26</sup> While the Guidelines attribute the responsibility to supervise environmental and social risk management, including off-site and on-site examination, to the China Banking Regulatory Commission, the Independent Expert did not receive any information on any investigations conducted with regard to cases of potential non-compliance of financial institutions when lending for overseas projects.

#### **D. Guidelines of the China Development Bank and the Export-Import Bank of China**

57. During his visit, the Independent Expert was informed by the China Development Bank and the Export-Import Bank of China about their guidelines for reviewing the environmental and social impact of projects. The evaluation manual of the China Development Bank requires programmes to comply with local laws, to undergo the necessary approval and registration procedures, and to meet certain requirements on environment protection, use of land, labour standards and community responsibilities. Once a project has been approved and completed, the bank also requests a report on environmental monitoring efforts, and solicits comments from the local environmental authority to ascertain whether environmental protection requirements have been met. Relevant evaluation guidelines are, however, considered core business secrets and not published. As a consequence, the Independent Expert was not able to assess fully the extent to which compliance with international human rights standards has been integrated into the guidelines. More importantly, this lack of transparency may also constrain public scrutiny and access of affected individuals or communities to redress.

58. Annual corporate social responsibility reports published by the China Development Bank since 2007 show that the bank has fully endorsed the concepts of green financing and lending for sustainable development in its policies. Unlike environmental and social considerations, human rights are not explicitly considered in any depth in its social responsibility reports.

59. The China Development Bank is a member of the United Nations Global Compact and has adhered to its 10 principles, covering human rights, labour rights, respect for the environment and combating corruption. In this context, the bank has regularly expressed its commitment to observe international conventions and international practices signed or recognized by the Government of China to ensure that its business is not complicit in human rights violations. In its sustainability report for 2013, the bank has also pledged to observe the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as other conventions and declarations.

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<sup>26</sup> Friends of the Earth, *Going out, but going green? Assessing the implementation of China's Green Credit Guidelines overseas* (Washington, D.C., Friends of the Earth U.S., November 2014).

60. While the China Development Bank uses 84 indicators of the Global Reporting Initiative for its sustainability reporting, to date it has not reported on any of the 12 human rights indicators suggested in the guidelines issued by the Initiative. For example, the Global Reporting Initiative Guidelines encourage companies to report regularly statistical information on significant investment agreements that include human rights clauses or that have undergone human rights screening. They also suggest that companies provide information on the number of operations that have been subject to human rights reviews or impact assessments, and on human rights grievances that have been filed, addressed and resolved through formal grievance mechanisms. To date, the China Development Bank has not reported on compliance with these indicators.

61. Like the China Development Bank, the Export-Import Bank of China has fully endorsed green lending and the concept of sustainable development. The Export-Import Bank has, however, refrained from making any explicit policy commitment to respect human rights in its public annual reports and corporate policy statements.

62. According to information received by the Government, in the second half of 2015, the Export-Import Bank of China introduced, on the basis of the Green Credit Guidelines, a new green credit system covering labour and work conditions, pollution prevention and control, community health and safety, land acquisition and involuntary resettlement, respect for minority cultures and customs, and protection of cultural heritage.

63. The Export-Import Bank may require the inclusion of environmental and social responsibilities in the loan contract, and stop disbursing loans or demand early payback of a loan, in accordance with the loan contract, if the borrower fails to take agreed measures to avoid, reduce or mitigate any negative environmental or social impact. The bank has an independent selection committee to assess project feasibility and environmental and social impact, and conducts regular site and off-site inspections after loan disbursement to monitor compliance. A consultative mechanism between the bank, project owners and implementing corporations has been created to ensure successful project implementation.

64. The Export-Import Bank of China has also developed an environmental assessment framework and a resettlement policy framework based on the environmental and social safeguards of the World Bank relating to involuntary resettlement.

65. Neither the China Development Bank nor the Export-Import Bank of China disclose basic project information, including environmental and social impact assessments, resettlement plans or corresponding monitoring reports on their corporate webpages. According to the Government of China, such information cannot be disclosed to the public owing to project confidentiality clauses. The disclosure of such documentation would, however, greatly improve compliance by borrowers.

66. To the knowledge of the Independent Expert, the China Development Bank and the Export-Import Bank of China have yet to establish any formal institutional grievance mechanisms. The establishment of such mechanisms would be important, particularly if local grievance mechanisms provided by borrowers fail to bring affected persons any effective remedy. Many multilateral development banks and an increasing number of national developing banks and export credit agencies have established independent review or complaint mechanism to engage in a dialogue or investigate concerns when individuals, groups, communities or other parties believe that they have been adversely affected by projects financed by them.

## **E. Guidelines for business associations**

67. The Independent Expert was briefed on the Guidelines for Social Responsibility in Outbound Mining Investments published by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters in October 2014. They were supplemented in December 2015 by the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, which aim at preventing extraction and trade of natural resources from fuelling violent conflict and serious human rights abuses. While both sets of guidelines are of a voluntary nature, they set a precedent by incorporating human rights, labour and environmental standards in a holistic manner.

68. The above-mentioned Guidelines for Social Responsibility explicitly declare that companies should respect human rights and comply with the eight fundamental conventions of the International Labour Organization and the labour laws, regulations and standards of the host country. They call upon Chinese mining companies to observe the Guiding Principles on Business and Human Rights throughout the life cycle of mining projects and to strengthen responsibility throughout the extractive industries value chain.

69. The Guidelines also call for minimizing the involuntary resettlement of people residing in the mining area and ensuring that they are fairly compensated. They recognize the right to free, prior and informed consent of local communities, including indigenous peoples, and include comprehensive chapters on occupational health and safety, labour rights issues (including the prohibition of child, forced and compulsory labour), non-discrimination in access to employment, the prohibition of corporal punishment, harsh or degrading treatment, the enforcement of legal or industry minimum wage standards and respect for the rights to freedom of association and to collective bargaining.

70. The Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains are similarly comprehensive, having been formulated on the basis of the Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

71. The Independent Expert commends the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters for having developed, through consultative processes, both sets of guidelines, and encourages it to continue its efforts to assist Chinese mining companies to implement the guidelines through training and workshops. He hopes that the guidelines will be a source of inspiration for other Chinese industries to incorporate human rights due diligence into their own policies and business practices.

## **IV. Human rights impact of external lending and outbound investments**

### **A. Positive effects and good practices**

72. By addressing infrastructure backlogs in developing countries, promoting agricultural development and improving medical and health services, China has made an important contribution to social development, including the realization of economic, social and cultural rights. In the period from 2010 to 2012, China assisted 49 agricultural projects and dispatched more than 1,000 agricultural experts to recipient countries, assisted more than 80 projects in the educational sector and provided more than 75,000 scholarships to foreign students to allow them to study in China. It assisted in the construction of some 80 medical facilities, including general hospitals, mobile hospitals and health centres, and

dispatched 55 medical teams with 3,600 medical workers to nearly 120 medical centres in recipient countries. China has also been active in improving access to water supplies, having drilled more than 600 wells and constructed approximately 600,000 m<sup>3</sup> in floor space in affordable housing projects in developing countries. Infrastructure projects have made important improvements to transport systems in developing countries, improved energy supply and IT and telecommunication networks.

73. Several examples illustrate cases where Chinese corporations or their subsidiaries have reportedly managed human rights issues well. In December 2005, the Peruvian subsidiary of the China National Petroleum Corporation, Sino-American Petroleum Development Peru Inc. (SAPET), signed a number of agreements with the Government of Peru to explore for oil in the Peruvian Amazon. Concerns were raised by indigenous federations and non-governmental organizations with regard to the concession granted for block 113, which is located in a territorial reserve established in 2002 by the Ministry for Agriculture for the protection of isolated native tribes, pursuant to a ministerial resolution. Recognizing the legal rights of the indigenous peoples to the land, SAPET initiated a dialogue with all parties concerned with a view to alleviate tensions over the concession, allowing them to participate in the decision-making process. Following a series of consultations, SAPET requested a revision of its contract to accommodate the rights of the indigenous peoples living in voluntary isolation, and decided to stay out of areas of the concession located in the territorial reserve, which amounted to more than half of the oil block.<sup>27</sup>

74. The Belinga hydropower project in Gabon is an inspiring example of how the Expert-Import Bank of China reacted to concerns brought to its attention by civil society. The project was intended to provide electricity for a nearby Greenfield iron ore mine project; however, after being alerted to several environmental and human rights concerns linked to the project – including alleged deforestation, impact on indigenous peoples and on fisheries, lack of transparency and lack of any environmental impact assessment – the bank withdrew financing from the project until the issues were addressed.

## B. Challenges and concerns

75. Several infrastructure projects, such as mines, oil wells, pipelines, roads or hydropower dams funded or co-funded by Chinese institutions, do appear to have given rise to concerns. The most frequently reported problems include lack of meaningful consultation with affected populations, labour rights issues, disregard of the rights of indigenous peoples, insufficient resettlement options or compensation packages, forced relocation, health issues caused by emissions, oil spills, water and soil pollution, negative effects on food security caused by destruction of natural resources, such as forests, arable lands and waterways, and concerns relating to lack of transparency.<sup>28</sup>

76. Projects that have raised concerns include:

<sup>27</sup> Adina Matisoff, “Going Beyond Compliance to Mitigate Risks: CNPC’s Engagement with Indigenous Federations in Peru”, *Environmental and Social Risk Management of Chinese Transnational Corporations*, Yale School of Forestry and Environmental Studies and WWF, 2014, p. 11.

<sup>28</sup> Concerns have been raised in, inter alia, Friends of The Earth, *Going out, but going green?* (see footnote 26 above); Friends of the Earth and BankTrack, *China Development Bank’s overseas investments: an assessment of environmental and social policies and practices*, July 2012; Green Innovation Hub, *China’s Mining Industry at Home and Overseas: Development, Impacts and Regulation*, 2014; and The Global Initiative for Economic, Social and Cultural Rights, joint parallel report submitted to the Committee on Economic, Social and Cultural Rights on the occasion of the consideration of the second periodic report of China at the Committee’s 52nd session.



- The Gibe III hydropower dam in Ethiopia (alleged lacking meaningful consultation, expected destruction of the livelihood of large indigenous populations along the Omo river, partly due to the destruction of arable lands or the change of flood patterns, strong impact on fisheries around Turkana lake, on which thousands of people rely).<sup>29</sup>
- The Lower Sesan 2 hydropower project in Cambodia (alleged lack of meaningful consultation, reports of expected forced evictions, expected dramatic reduction in fisheries, therefore putting at risk a major source of food for many people in the lower Mekong basin, environmental impact assessment failing to meet international standards).
- The Shwe gas and oil pipelines from Myanmar to China (alleged lack of meaningful consultation, land confiscation, reported violence of the military forces employed in the context of pipeline construction, reported cases of forced labour, negative impact on farmland without appropriate compensation, discrimination against women (for example, in terms of wages paid), and contribution to internal conflict owing to the pipeline route through areas of political and ethnic tension).<sup>30</sup>
- The Mirador mine in Ecuador (alleged severe negative effects on indigenous peoples, failure to seek prior, informed consent, destruction of large areas of land inhabited by indigenous nations, including cloud rain forest, plans to store millions of tons of toxic waste close to the Quimi river, thereby putting vast areas of highest biodiversity and consequently livelihoods at risk).<sup>31</sup>
- Agua Zarca and Pactua River hydroelectric dams in Honduras (alleged lack of meaningful participation and of free, prior informed consent of indigenous peoples, forced evictions, violations of the right to food and safe drinking water).<sup>32</sup>
- Mining in the Democratic Republic of the Congo (alleged lack of due diligence in supply chain by Chinese and other foreign business corporations contributing to child labour, hazardous and unhealthy working conditions, forced evictions, and negative impact on the right to food and water for affected communities).<sup>33</sup>
- The Monywa Project – copper mining in Myanmar (alleged forced evictions from homes and lands, insufficient compensation for loss of farmland and housing, negative impact on the right to housing and food, lack of genuine and meaningful consultation with affected communities, environmental and social impact

<sup>29</sup> See A/HRC/18/51, cases CHN 4/2011 and A/HRC/19/44, case CHN 24/2011.

<sup>30</sup> See EarthRights International, “Photo essay: Selected impacts of the Shwe natural gas & Myanmar-China oil transport projects”, 2013; and Shwe Gas Movement, “Sold Out: Launch of China pipeline project unleashes abuse across Burma”, 2011 For the responses of some of the companies involved in the projects, see Business & Human Rights Resource Centre, “Shwe gas & Myanmar-China oil transport projects (Apr-Jun 2013)”. In the view of the Government of China, necessary compensation was provided, and the project company spent \$20 million in the field of health, education and culture for residents living along the pipeline.

<sup>31</sup> See Global Alliance, “The case for Rights of Nature in face of the Mirador Open Pit Copper Mining Project”, Global Alliance for the Rights of Nature, 26 February 2013; and David Hill, “Chinese banks ignore pleas of Ecuador mining campaigners”, chinadialogue, 12 May 2014.

<sup>32</sup> The Global Initiative for Economic, Social and Cultural Rights, joint parallel report (see footnote 28 above), pp. 5-12.

<sup>33</sup> See Amnesty International, “Profits and loss: mining and human rights in Katanga, Democratic Republic of the Congo”, June 2013, and “Democratic Republic of Congo: ‘This is what we die for’: human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt”, January 2016; and Global Witness, “Tackling Conflict Minerals: How a new Chinese initiative can address Chinese companies’ risks”, October 2014.

assessment and resettlement plan of action allegedly not meeting international standards, and alleged corporate material assistance for police attacking peaceful protesters).<sup>34</sup>

77. The Independent Expert did not undertake in situ visits to receive first-hand information on the above matters; he therefore cannot reach any conclusions on the alleged facts. The reported concerns underline, however, the need for human rights due diligence and to ensure, if necessary, appropriate remedial action.

78. In some cases, infrastructure projects or business operations were taken over by Chinese stakeholders after other investors had withdrawn. Chinese investors occasionally entered local contexts that were already marked by mistrust and lack of dialogue, if not violent conflict between affected communities, project developers, Governments or other stakeholders. In the Independent Expert's view, Chinese investors were not always prepared to operate successfully in such challenging environments already entailing significant human rights risks.

79. In such environments, comprehensive risk and impact assessments covering human rights issues would afford a deeper insight into the operational environment and help in addressing any likely adverse human rights impact or conflicts. They would not only increase the likelihood of successful project implementation but also improve security for local and Chinese workers employed at project sites.

80. Particular care should be taken when lending in contexts where there have been reports on systematic or widespread human rights violations, as the Independent Expert outlined in his thematic report on financial complicity (A/HRC/28/59).

## **V. Promoting new multilateral development banks**

### **A. New Development Bank**

81. In July 2014, China, together with Brazil, the Russian Federation, India and South Africa, agreed to create the New Development Bank, headquartered in Shanghai, with an initial authorized capital of \$100 billion. The purpose of the bank, which was formally opened on 21 July 2015, is to mobilize resources for infrastructure and sustainable development projects in participating States and other emerging market economies and developing countries. As at 15 January 2016, the institution had not yet issued draft or final standards on how it would address environmental, social and human rights impact in its lending activities.

### **B. Asian Infrastructure Investment Bank**

82. The Asian Infrastructure Investment Bank has the aim of fostering sustainable economic development, creating wealth and improving infrastructure connectivity in Asia by investing in infrastructure and other productive sectors. It also has the objective of promoting regional cooperation and partnerships in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions. The bank has an initial authorized capital stock of \$100 billion, of which 75 per cent is available to Asian regional countries. Its single-largest shareholder is China, which holds a stake of 30.34 per cent in its authorized shares.

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<sup>34</sup> Amnesty International, "Myanmar: open for business? Corporate crime and abuses at Myanmar copper mine", February 2015.

83. During his visit, the Independent Expert met with the President-designate of the Asian Infrastructure Investment Bank, and highlighted, inter alia, the need for civil society input into the environmental and social safeguard policies of the bank. The Independent Expert also engaged with the bank and its prospective members by addressing, on 26 October 2015 a letter, co-signed by several other special procedure mandate holders, containing comments on its draft environmental and social framework.<sup>35</sup>

84. In the above-mentioned letter, the human rights experts recalled the contributions that the Asian Infrastructure Investment Bank could make to the realization of economic, social and cultural rights, as well as to the right to development in Asia, by addressing the backlog in infrastructure in the region. In an annex to the letter,<sup>36</sup> they also made detailed comments on how the draft environmental and social framework could be further strengthened to ensure human rights due diligence by the bank and its clients. The Independent Expert welcomes the fact that the bank has decided to undertake a consultation process, which has also allowed civil society organizations to provide comments on the draft environmental and social framework. As at 15 January 2016, consultations were still ongoing and the bank had not published the results of the process or issued a revised framework.

85. The Independent Expert hopes that both the Asian Infrastructure Investment Bank and the New Development Bank will, in the near future, adopt comprehensive safeguard procedures that ensure human rights due diligence and the protection of the rights of affected individuals. The procedures should also include appropriate independent complaint mechanisms to ensure that persons that believe their rights may have been infringed may seek appropriate relief.

## VI. Conclusions and recommendations

### A. Conclusions

86. **China has become a key player in funding South-South cooperation and providing its partner countries with long-term financing for sustainable development. Over the past decade, foreign aid and outbound investment by China have witnessed unprecedented growth. Through its economic cooperation, China has assisted many partner countries in realizing economic, social and cultural rights. By establishing new multilateral development banks in collaboration with other States, it is providing additional opportunities for funding aimed at addressing infrastructure shortfalls in developing countries.**

87. **Although development projects supported by Chinese financial institutions have brought benefits, some have nonetheless had an adverse environmental, social and human rights impact on certain individuals and communities. The Government of China has responded to this challenge by developing regulations aimed at preventing and mitigating negative environmental and social impact. Indeed, while there has been significant progress in addressing environmental and social impact, a comprehensive framework for ensuring explicitly respect and protection for human rights in international lending and outbound investment is still lacking. Additional efforts are needed to strengthen the implementation of existing guidelines in operational practices, to improve consultation with affected individuals and communities, and to improve the responsiveness of financial institutions to their**

<sup>35</sup> Available from [www.ohchr.org/Documents/Issues/IEDebt/261015\\_Letter\\_AIIB.pdf](http://www.ohchr.org/Documents/Issues/IEDebt/261015_Letter_AIIB.pdf).

<sup>36</sup> Available from [www.ohchr.org/Documents/Issues/IEDebt/261015\\_Letter\\_AIIB-ANNEX.pdf](http://www.ohchr.org/Documents/Issues/IEDebt/261015_Letter_AIIB-ANNEX.pdf).

concerns. This includes ensuring that affected persons enjoy effective remedies for potential human rights abuses.

## **B. Recommendations**

### **1. Government**

88. The Independent Expert recommends that the Government of China integrate a more visible and explicit human rights-based approach into its development cooperation and international lending, by:

(a) Strengthening further the framework for international lending and investment by incorporating explicitly the guiding principles on foreign debt and human rights and the Guiding Principles on Business and Human Rights into existing regulations;

(b) Requiring financial institutions providing project financing and businesses active abroad to establish accessible, operational-level, non-judicial complaint or grievance mechanisms;

(c) Taking appropriate legislative and administrative measures to ensure the accountability and legal liability of Chinese companies and their subsidiaries abroad for human rights abuses;

(d) Establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in receiving countries, and to take remedial measures when required;

(e) Providing through State institutions, embassies and consulates comprehensive guidance and training for financial institutions and businesses on applicable national and international standards in the fields of human rights, labour, social security, health and the environment in host countries;

(f) Encouraging Chinese financial institutions, business associations and businesses to collaborate with international organizations, academic experts and civil society entities in the exchange of good practices and the development of corporate policies with regard to human rights due diligence;

(g) Considering including a chapter on business and international lending in future national plans of action on human rights;

89. The Independent Expert also recommends that the Government:

(a) Continue efforts to ensure that only projects that are economically, socially and environmentally viable are supported, and that loans provided to partner countries can be repaid in the future;

(b) Continue to consider favourably applications for debt relief by heavily indebted poor countries that face a debt service burden such that it would undermine their capacity to realize social, economic and cultural rights;

(c) Consider endorsing the Principles on Promoting Responsible Sovereign Lending and Borrowing, under which proper due diligence based on the notion of co-responsibility should be put in place.

## 2. National and multilateral financial institutions

90. The Independent Expert recommends that national and multinational financial institutions:

- (a) Express in public a policy commitment to respect human rights, and include information about actions taken in relation to the said commitment in corporate social responsibility reports;
- (b) Incorporate the guiding principles on foreign debt and human rights and the Guiding Principles on Business and Human Rights into their environmental and social guidelines;
- (c) Include human rights into risk analysis and due diligence processes, and conduct human rights impact assessments alongside environmental and social impact assessments prior to making funding decisions;
- (d) Include systematically human rights, environmental and social clauses in loan agreements to ensure that borrowers or clients are aware of the obligation to abide by host country law and applicable international norms when funding overseas projects;
- (e) Develop institutional policies related to access to information and information disclosure, and make them publicly available;
- (f) Enhance compliance with environmental and social guidelines by disclosing publically on corporate websites the following information:
  - (i) Guidelines and institutional policies related to human rights, environmental and social compliance,
  - (ii) Core project information, by country;
  - (iii) Human rights, environmental and social clauses included in loan agreements;
  - (iv) Environmental, social and human rights impact assessments conducted by clients;
  - (v) Relevant mitigation or resettlement plans and evaluation reports on implementation of such plans or agreed measures;
  - (vi) Corrective measures requested from clients in case of non-compliance;
- (g) Require clients to establish accessible and effective operational-level non-judicial grievance mechanisms that are legitimate, accessible, predictable, equitable, transparent and rights-compatible;
- (h) Require clients to ensure remediation for any potential adverse human rights impact to which they may contribute;
- (i) Improve stakeholder consultation and participation by establishing units or officers responsible for engaging with affected individuals, communities or civil society;
- (j) Consider establishing an independent complaints mechanism to engage in dialogue or to investigate concerns when individuals, groups, communities or other parties believe to have been adversely affected by projects financed by them, and to report publicly thereon on the basis of international best practices;
- (k) Consider joining the United Nations Global Compact or adopting the Equator Principles.

**3. Asian Infrastructure Investment Bank and New Development Bank**

91. **The Independent Expert recommends that the Asian Infrastructure Investment Bank and the New Development Bank:**

(a) **Establish (in the case of the New Development Bank) or revise draft (in the case of the Asian Infrastructure Investment Bank) environmental and social safeguard procedures to ensure that financed projects address adequately all forms of adverse human rights, environmental and social impact;**

(b) **Undertake (in the case of the New Development Bank) or continue (in the case of the Asian Infrastructure Investment Bank) consultations with stakeholders, including civil society organizations on institutional policies aimed to avoid and reduce environmental, social or human rights risks.**

(c) **Set standards and develop a mechanism to deal with recipient countries that may face economic or financial problems when repaying loans; a formal space for timely, fair and efficient ways to grant debt relief without egregious conditionalities should be considered.**

**4. Partner countries**

92. **The Independent Expert recommends that partner countries:**

(a) **Ensure that foreign investments and development projects financed by bilateral or multilateral development banks adhere to national and international norms in the field of human rights;**

(b) **Ensure that international lenders, implementing agencies and business enterprises are adequately informed about and trained in applicable national and international standards;**

(c) **Protect individuals against human rights abuses in accordance with the guiding principles on foreign debt and human rights and the Guiding Principles on Business and Human Rights;**

(d) **Establish effective judicial, administrative and legislative measures to ensure that affected individuals have within their jurisdiction access to an effective remedy;**

(e) **Require lending institutions and their clients to establish accessible and independent grievance mechanisms for affected individuals and civil society organizations representing them at the operational and headquarters levels;**

(f) **Require comprehensive impact assessments for projects that pose any significant social, environmental or human rights risks, and disclose them in an appropriate and accessible format to affected individuals and communities before projects are approved;**

(g) **Require project developers to undertake meaningful consultations with affected individuals and communities before, during and after project implementation;**

(h) **Enforce requirements for free, prior and informed consent of indigenous peoples with regard to development projects affecting them;**

(i) **Strengthen the capacity of public administrations, national human rights institutions and civil society entities to monitor compliance with national and international norms in the fields of human rights, labour and the environment.**

**5. Recipient enterprises**

93. **The Independent Expert recommends that recipient enterprises:**

**(a) Implement the Guiding Principles on Business and Human Rights as far as applicable to enterprises, and in particular:**

- (i) Carry out appropriate human rights impact assessments;**
- (ii) Engage in meaningful consultations with potentially affected groups and other stakeholders; and improve stakeholder consultations and participation by establishing units or officers responsible for engaging with affected individuals, communities or civil society entities;**
- (iii) Provide remedies for any adverse human rights impact caused or contributed to, and establish effective operational-level grievance mechanisms that are legitimate, accessible, predictable, equitable, transparent and rights-compatible;**

**(b) Consider joining the United Nations Global Compact.**

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