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Holding Chinese Investors to Account: Environmental Impacts 中国投資家、環境への影響、責任問われる

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With toxins in the air and dead pigs in the rivers, environmental destruction has become a huge topic in China. The government has closed down hundreds of polluting factories, banks have refused lending for polluters, and protests have derailed numerous destructive projects. For Chinese companies, environmental risks have become business risks.

The same is true internationally. Chinese banks, mining and hydropower companies have faced protests and lost contracts when their projects destroyed the environment. China Southern Power Grid pulled out of Cambodia after concerns emerged about the social impacts of its dam projects, and China Power Investment lost a multi-billion dollar contract for the Myitsone Dam in Burma.

Rendition of the Myitsone Dam, Burma

As a result, Chinese investors have started worrying about their long-term acceptance in host countries, and the government, about the country's soft power.

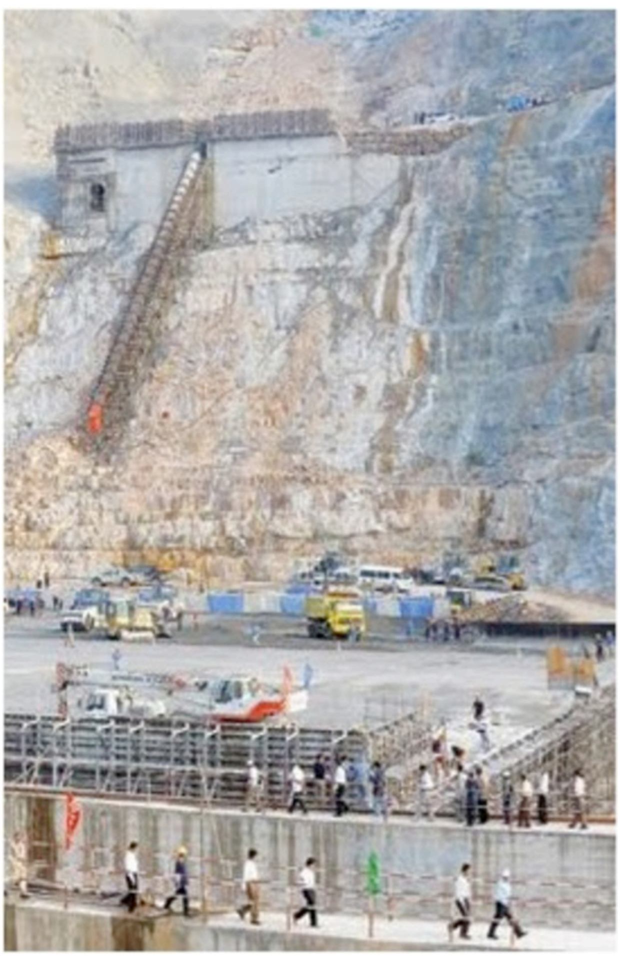
Since 2006, the Chinese government has issued a series of appeals and recommendations calling on companies to respect the environment, community interests and workers' rights when investing abroad. It has for example requested that investors apply Chinese laws if host country laws are insufficient and that their projects comply with the international treaties that China has signed.

New environmental guidelines

Two recent guidelines mark China's commitment to improve the environmental track record of its overseas projects. In February 2012, the China Banking Regulatory Commission updated the Green Credit Guidelines that regulate the environmental performance of Chinese banks. They now stipulate that banks "shall strengthen the environmental and social risk management for overseas projects" and follow "appropriate international practices or international norms" in such projects.

In February 2013, the Ministries of Commerce and Environmental Protection issued their long-awaited Guidelines on Environmental Protection in Foreign Investment and Cooperation. Their goal is to guide Chinese companies "to identify and preempt environmental risks in a timely manner, lead our companies to actively fulfill their social responsibility in environmental protection, build a good foreign image of Chinese companies and support the sustainable development of host countries.”

The new guidelines stipulate that environmental strategies and management plans be developed, environmental impact assessments and mitigation plans for sensitive projects be prepared, environmental information be disclosed to the interested public, and environmental aspects be considered in the supply chain. As my colleague Grace Mang has commented, the guidelines have not been designed to stop projects, but to mitigate damages and improve projects that go forward. Had they been in place earlier, they might, for example, have convinced Sinohydro to redesign the Kamchay Dam, which flooded parts of Bokor National Park in Cambodia.



Kamchay Dam under construction

In substance the new guidelines are similar to the environmental recommendations of the OECD Guidelines for Multinational Enterprises. The OECD guidelines are the most important international norms for foreign investors and cover a broad range of topics from human rights to labor relations and corruption. They are wider in scope than the Chinese guidelines, but unlike China, the OECD does not have any specific guidelines for banks and the environment.

Brazil, Argentina and numerous other non OECD-countries have endorsed the OECD guidelines for their own companies. In contrast, China is not keen to follow norms that rich countries prepared without its involvement. The new guidelines add to the profusion of international norms, but Chinese enterprises may well take recommendations from their own government more seriously than OECD norms.

Questions about compliance

Beyond the environment, the responsibility of businesses for respecting human rights has gained wide recognition in recent years. In 2011, the UN Human Rights Council confirmed this responsibility in its Guiding Principles for Business and Human Rights. According to the UN, state-owned enterprises (including those in China) have a particular responsibility for upholding human rights, for example through “meaningful consultation” with affected communities.

China has so far not prepared any guidelines on the human rights obligations of its overseas investors. The new environmental guidelines emphasize the need to establish good relations with local communities, but do not recognize any community rights. Recognizing and protecting the rights of project-affected communities would be particularly important in countries with a long history of government repression such as Burma, Cambodia, and Laos.

Neither the Chinese nor the OECD guidelines are binding. Yet the OECD norms allow civil society groups and others to file complaints about violations with national authorities, which are supposed to initiate mediation processes between the companies and the plaintiffs. More than one hundred such complaints have been filed, including on the role of Pöyry and Tractebel, two European engineering companies, in the Xayaburi and Houay Ho dams in Laos.

The Chinese guidelines are not supported by any compliance mechanism. An earlier draft of the guidelines stipulated that banks (not other companies) "establish an appeal mechanism for local controversial projects," but the final version did not take this up. It is positive that the Chinese government has started addressing the environmental performance of its companies overseas. A compliance mechanism would help ensure that the new guidelines are actually being implemented.

Some Chinese companies have already taken steps to act as good ambassadors for their country when investing abroad. Sinohydro requires environmental impact assessments for its projects even where local laws don't, as was the case for example in Burma. The company has also adopted an environmental policy that goes beyond the new guidelines (but has so far been slow in rolling it out). Other companies and banks, including Gezhouba, China Power Investment and ICBC, have not made serious efforts to address their corporate social responsibility abroad.

Chinese companies have expressed an interest in building large, environmentally sensitive dam, mining, pipeline and other projects in Africa, Asia and Latin America. Chinese companies have for example signed Memoranda of Understanding to build four of the proposed eleven dams on the Mekong mainstream. The Global Environmental Institute has translated the new Guidelines into English, and International Rivers, into Spanish and Burmese. Civil society groups around the world can now hold Chinese companies to account for their responsibilities under the new guidelines and the UN human rights principles.

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