A Bad Good Deal: The Challenges of Chinese Foreign Direct Investment in Africa

By Brook Sutton

I. Introduction

The emergence of China as a world economic power presents substantial opportunities, as well as significant challenges for the global economy. One set of challenges involves Africa. Over the last two decades, China's unprecedented rise has resulted in dramatic growth in Chinese investment around the globe, including in resource-rich developing nations in Africa. Broadly speaking, this investment comes in the form of trade, loans, aid packages, and direct foreign investment by Chinese corporations. However, the inflow of money from China has not necessarily benefited recipient African nations. Two distinct yet related challenges arise. First, China's "no-strings-attached" approach to its economic relations with Africa has the potential to prop up authoritarian regimes and support political oppression and violence, while arguably undermining the long-term economic prospects of its partner nations. Second, Chinese firms operating in Africa have bolstered earnings by exploiting weak regulatory institutions within host nations. While proponents of Chinese investment often point to the wealth creation potential of Chinese-backed infrastructure projects,[1] allegations abound that inadequately regulated Chinese-owned operations have inflicted serious social, economic, and environmental harms on Africans in the pursuit of their goals.

In this paper I will analyze the two challenges I have just identified and attempt to illustrate how the first challenge affects solutions for the second. Part One consists of this introduction. In Part Two, I briefly describe the recent history of China in Africa. In Part Three, I provide a definition of the resource curse phenomenon observed by economists and political scientists and argue that the first challenge surrounding Chinese investment in Africa lends itself to a resource curse analysis. This part offers Angola as a case study. Part Four goes beyond the resource curse narrative and looks at the controversy surrounding Chinese mining firms in Zambia as an example of the regulatory challenge posed by Chinese investment. This second challenge comprises the primary focus of this paper. In Part Five, I seek solutions to the regulatory challenge identified in Part Four. First, I explore the potential for market-based solutions to incentivize adequate self-regulation by Chinese firms operating in Africa. Then I consider the prospects that progress toward improvements in corporate governance will begin within China. Finally, I suggest that democratic political processes in Africa represent the best hope for solving the regulatory challenge. Part Six concludes this paper by proposing that China may have sufficient economic incentive to perpetuate weak

[1] See, e.g., Brautigam, Deborah, "Africa's Eastern Promise: What the West Can Learn from Chinese Investment in Africa", Foreign Affairs, 2010, available online at http://www.foreignaffairs.com/print/65884.

states in Africa through aid and investment packages that offer partner nations the worst kind of good deal.

Before beginning my analysis it is worth noting that this paper takes as its main focus Chinese foreign direct investment in Africa, which comprises only one—albeit large and integrated—piece of China's economic relationship with Africa. Foreign direct investment refers to inflows of investment made to acquire a lasting management interest in an enterprise operating in an economy other than that of the investor. In this way, foreign direct investment is distinct from foreign aid, which represents the other key component of Chinese economic relations with African nations. Broadly speaking, foreign direct investment flows from economic actors seeking monetary returns, whereas aid flows from government to government and targets humanitarian or other social needs. It is a concern of this paper to maintain clear distinctions between foreign direct investment and foreign aid while nevertheless acknowledging important intersections of China's two basic forms of economic relation with Africa.

Further, the Chinese approach to foreign direct investment in Africa stands in contrast to the Western approach. This paper does not aim to discuss U.S. and European direct investment in Africa in depth—the West has a long and complicated history of commercial interaction with Africa that far exceeds its scope.[2] Nonetheless, it is crucial for understanding the unique challenges posed by

[2] For example, African countries received over $8.3billion in U.S. FDI in 2010. Data available online at: http://stats.oecd.org/Index.aspx?DataSetCode=FDI_FLOW_PARTNER.

Chinese investment to highlight a critical difference between Chinese and Western investors. Western economic actors investing in Africa are predominantly private corporations—for example large multinationals like Coca-Cola—whereas China's major companies and banks are state-owned enterprises, blurring the boundaries between private and national objectives. Therefore, while investments in Africa made by Western firms essentially reflect diffuse private, profit-seeking decisions tempered by market mechanics, this is much less true of investments made by Chinese firms, which are often driven by overarching political, economic, and national security goals. As a result, one should hesitate to ascribe foreign policy goals to Western investment in the continent—although such objectives may induce Western nations to incentivize private investment in Africa. But the hand of the Chinese government much more clearly steers investment decisions made by Chinese firms operating in Africa.

Likewise, although this paper does not seek to provide a detailed analysis of Western and Chinese approaches to providing foreign aid to Africa, a few words on the subject can shed light on the intersection of Chinese aid and foreign direct investment and provide a backdrop for comparison with Western approaches to both. With respect to their provision of aid to African nations, neither China nor the West is purely altruistic. Both pursue some mix of self-interested political, economic, or security goals.[3] Still there are key differences. Commentators often cite China's desire to secure access to natural resources, open export markets, and

[3] See, e.g., Glosny, Michael A., "Meeting the Development Challenge: American and Chinese Perspectives on Foreign Aid", Policy Brief 21, National Committee on United States- China Relations, August 2006.

forge international alliances to explain Chinese aid packages to its African partners.[4] In addition to establishing diplomatic ties, opening markets, and securing natural resources, the West is thought to leverage its aid contributions to further ideological goals like spreading democracy, promoting the recognition of core human rights, and liberalizing markets.[5] As a result, Western nations, particularly the United States, tend to precondition aid on recipient countries meeting certain policy and governance criteria. For example, the United States has cut off aid to Sudan and Zimbabwe, two of China's key partners in Africa, on account of corruption and human rights abuses. In contrast, China emphasizes a respect for sovereignty and adheres to a policy of non-interference in foreign relations that accommodates support for pariah regimes like Sudan and Zimbabwe.

The divergent attitudes toward foreign aid influence Western and Chinese foreign direct investment in an important way. Although Western multinationals do not exhibit the same level of conditionality or selectivity as Western governments on account of the private nature of their investments, they are nonetheless constrained by ideologically based sanctions, such as those imposed by the United States against Sudan and Zimbabwe. Further, Western firms generally adhere to multilateral statements of good practice for operating abroad, such as the *OECD Guidelines for Multinational Corporations*, that seek to encourage multinationals to

[4] See, e.g., Meidan, Michal, "China's Africa Policy: Business Now, Politics Later", *Asian Perspective*, Vol. 30, No. 4, 2006, pp. 69-93.

[5] E.g., the "Washington Consensus" identified by Williamson. See Williamson, J. (1990), "What Washington Means by Policy Reform." In J. Williamson (ed.), *Latin American Adjustment: How Much Has Happened?* Washington, DC: Institute of International Economics.

make positive contributions to economic, environmental and social progress in the countries in which they operate.[6] Finally, transparency in corporate governance in the West has encouraged a move toward better human rights, labor, and environmental practices by creating consumer and shareholder demand for greater corporate social responsibility.[7] Accordingly, Western companies are accountable to uphold the norms of the developed world, even where the countries in which they conduct business do not recognize those norms. Comparable commitments to corporate social responsibility are not as evident among Chinese firms operating in foreign countries, as this paper hopes to show. In this way, the business conduct of Chinese multinationals reflects China's policy of non-interference. In addition and perhaps unsurprisingly for a planned economy, China differs significantly from the West with respect to its willingness to leverage aid to create business opportunities for Chinese firms. Chinese loan and aid packages often come with specific requirements that recipient nations contract with Chinese companies. As a result Chinese multinationals operating in Africa enjoy competitive advantages versus their Western counterparts that will be examined below. Proponents of Chinese investment such as Brautigam claim that China's centralized decision-making and no-strings-attached approach promote economic development in its partner nations, which begets better governance. This paper makes the opposite argument.

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[6] The *Guidelines* are available online at: http://www.oecd.org/topic/0,3699,en_2649_37439_1_1_1_1_37439,00.html.

[7] See the discussion in Zadek et al., "Responsible Business in Africa: Chinese Business Leaders' Perspectives on Performance and Enhancement Opportunities", Working Paper No. 54, Harvard Kennedy School, November 2009, pp. 24-32.

II. China in Africa

A. Going Global

In 2000 China formally announced its intention to "go global."[8] Going global involved not only opening its doors to foreign investors, but also looking outward for opportunities to invest its vast foreign currency reserves. Following this policy decision, Chinese investment in Africa boomed. However, China's history in Africa predated the 2000 announcement. While historical evidence shows that economic and political relationships have existed between China and Africa as far back as five hundred years ago, scholars generally divide China's commercial contact with Africa into three phases, beginning in 1850.[9] The last phase is the most relevant for the purposes of this paper. It began in 1990 and has been especially noticeable in the past five years. Adisu, Sharkey, and Okoroafo see the last phase characterized by the movement of Chinese companies into African countries mainly in the areas of construction, mining, and oil extraction.[10] They note that the Chinese government has encouraged.such efforts.[11] In this way, their analysis sets the stage for my own by highlighting the nexus of national and private interests that underpins Chinese foreign direct investment in Africa.

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[8] For recent discussions of the social and economic changes surrounding globalization in China see, Nick Knight, *Imagining Globalisation* in China (2008); see also Doug Guthrie, *China and Globalization: The Social, Economic and Political Transformation of Chinese Society* (2009).
[9] See, i.e., Kinfu Adisu, Thomas Sharkey, and Sam C. Okoroafo, "The Impact of Chinese Investment in Africa," *International Journal of Business and Management*, Vol. 5, No. 9 (2010), at 3.
[10] Id.
[11] Id.

However as mentioned above, foreign direct investment is only one piece of the puzzle. Over the last three decades, as China's national wealth has ballooned, so too has its economic and political presence in Africa. Through Chinese loans, trade, aid packages, and foreign direct investment, a handful of African nations have found themselves among the primary recipients of China's burgeoning wealth. Since the 1980's trade between China and Africa has increased from $10 million to approximately $100 billion in 2008.[12] According to official data for 2006, "Chinese FDI stock in Africa is estimated to be $6.3[billion], covering over 800 'non-financial investment projects in forty-nine African countries."[13] That same year Chinese foreign direct investment in Africa totaled $900 million,[14] and aid in the form of development assistance and debt relief exceeded $2 billion, according to best estimates.[15] While these amounts comprise a minority of overall investments in Africa, they nevertheless represent a significant new stake in the continent.

B. Motives for Chinese Investment in Africa

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[12] "As Chinese Investment in Africa Drops, Hope Sinks," *New York Times*, March 26, 2009.
[13] Dan Haglund, "Regulating FDI in Weak African States: A Case Study of Chinese Copper Mining in Zambia," J. of Modern African Studies, vol. 46, no. 4 (2008) at 551 (citing an interview with an official from China's Ministry of Foreign Affairs).
[14] In the same year, U.S. FDI in Africa totaled $5.2 billion. See http://stats.oecd.org/Index.aspx?DataSetCode=FDI_FLOW_PARTNER.
[15] Jian-Ye Wang and Abdoulaye Bio-Tchanéhttp, "Africa's Burgeoning Ties with China," *Finance and Development*, March 2008, vol. 45 no. 1; available at http://www.imf.org/external/pubs/ft/fandd/2008/03/wang.html.

Commentators list several possible motives to explain the recent surge in Chinese investment in Africa. One common explanation points to China's interest in securing a steady supply of natural resources—particularly oil—to sustain its remarkable economic growth. The past several decades have seen China's economy experience dramatic gains. In the period from 1989 until 2010 China's gross domestic product grew at an average annual rate of 9.3%.[16] As a result of this sustained expansion, China passed Japan in 2010 to become the second largest economy in the world.[17] Manufacturing drives China's economy, earning it the nickname "the world's factory floor."[18] China's emphasis on manufacturing has led to an ever-increasing demand for oil and raw materials. As a result, China has become the world's second largest consumer of oil, behind only the United States.[19]

However, in an article that informs much of the discussion in this essay, Keenan identifies several other factors that make Africa an inviting target for Chinese investment.[20] These factors include China's desire to find productive uses for its wealth, its interest in creating political alliances, its position as a latecomer to resource exploration, and the higher appetite for risk exhibited by state-supported firms pursuing national objectives.[21] An additional factor, not explored by Keenan,

[16] http://www.tradingeconomics.com/Economics/GDP-Growth.aspx?Symbol=CNY.
[17] "China Passes Japan as Second Largest Economy," *New York Times*, August 16, 2010.
[18] See, i.e. http://news.bbc.co.uk/2/hi/business/2415241.stm.
[19] http://www.eia.doe.gov/country/index.cfm.
[20] Curse or Cure? China, Africa, and the Effects of Unconditioned Wealth; 27 Berkeley J. Int'l L. 84.
[21] Id., at 93,94.

involves the development of new markets for Chinese exports. Eisenman and Kurlantzick sum up China's motives for investment in Africa forcefully:

> Beijing's motives are clear. China's growing industries demand new energy and raw material suppliers; its exporters want markets; its diplomats require support in international organizations; and its propaganda still seeks support from allies to advance Chinese interests and, when necessary, to counter the United States.[22]

These four goals will prove critical to an understanding of the problems and possible solutions posed by Chinese investment in Africa.

C. African Attitudes toward Chinese Investment

In general, African leaders have welcomed Chinese investment. For example, in 2003 Robert Mugabe announced his "Look East" policy for Zimbabwe, formally adopting a plan to turn to China for assistance in the face of weakening relations with Western investors.[23] Keenan points to two factors explaining Africa's receptivity to China. First, due to its large cash reserves China is able and willing to fund large-scale development projects, whether through loans, grants, or subsidies for investment by Chinese enterprises. Many African nations are in desperate need of such enthusiastic investment, particularly in the private sector, since substantial

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[22] "China's Africa Strategy," Joshua Eisenman and Joshua Kurlantzick, *Current History*, May 2006 at 219.

[23] See Jeremy Youde, "Why Look East? Zimbabwean Foreign Policy and China," 53 Africa Now 3 (2007).

political and business risk associated with African projects has made many Western investors wary. Evidence of the need for economic development assistance to African nations is ample. For example, in the past sixty years Africa has received over a trillion dollars in aid packages.[24] In 2008, development aid flowing to Africa rose to a record $119.8 billion.[25] Nevertheless, Africa remains home to many of the world's poorest countries. Second, Chinese investment generally comes without strings attached. Unlike other wealthy nations, which tend to tie funding to social and political reform, China has adopted a policy of non-interference that many African leaders find refreshing. The following statement from a spokesperson for the Kenyan government is illustrative:

> The Chinese do not peg their economic activity or aid to political conditions. You never hear the Chinese saying that they will not finish a project because the government has not done enough to tackle corruption. If they are going to build a road, then it will be built.[26]

A 2006 article aptly summarizes China's Africa policy:

> China's Africa strategy has five components. The first is that China stresses that it is a different type of global power, a developing country that understands Africa's development needs, and is better

[24] "Why Foreign Aid Is Hurting Africa," *Wall Street Journal*, March 21, 2009.
[25] http://www.oecd.org/document/35/0,3343,fr_2649_34487_42458595_1_1_1_1,00.html.
[26] *USA Today*, June, 21 2005, available at: http://www.usatoday.com/money/world/2005-06-21-africa-china-usat_x.html.

> equipped to advocate for Africa at international trade negotiations. China also cultivates African nations that do not have significant pre-existing international relationships or that are currently isolated from the world, such as Sudan and Zimbabwe and Liberia – either nations that have become international pariahs or are recovering from conflict. China stresses that China-Africa relations are win-win and promotes this message bilaterally and within African regional organizations; China supposedly does not interfere in African domestic politics. Lastly, Chinese diplomats and leaders frequently travel to Africa to cultivate relations, traveling more frequently than US or French diplomats.[27]

A point-by-point reading of this policy supports the conclusion that the five components of China's African policy are meant to appeal specifically to the leaders of African nations, but not necessarily their people. China stresses its respect for the sovereignty and dignity of African governments, no matter the state of their domestic affairs. This observation has implications for the following analysis of the challenges of Chinese investment in Africa.

III. The Resource Curse: The First Challenge of Chinese Investment

A. Definition and Applicability

[27] Josh Kurlantzick, David Shinn, and Minxin Pei, "China's Africa Strategy: A New Approach to Development and Diplomacy?" available online at http://www.carnegieendowment.org/events/?fa=eventDetail&id=941.

The first category of challenge Chinese investment poses to Africa hews closely to the resource curse narrative. For that reason, I will refer to it here as the resource curse challenge. Economists and political scientists coined the phrase “resource curse” to describe their observation that nations that possess a wealth of natural resources tend to fare less well compared to their resource-poor counterparts.[28] In macroeconomics literature the resource curse, variously known as the “Dutch disease,” looks at the way rapid infusions of wealth from foreign sources can disrupt a domestic economy. At least three considerations support the application of a resource curse analysis to Chinese investment in Africa. First, China has become a partner in the development of mines and oil fields across Africa. Chinese investment allows African partner nations to harness more of their wealth potential—particularly in export-oriented industries like drilling and mining. Second, Chinese demand for fuel and natural resources has driven price spikes in the global market for these goods. This effect generates greater revenues and profits for African nations who are rich in them. Further, China is a primary consumer for resources extracted in Africa, especially among pariah states like Sudan and Zimbabwe, who have been locked out of trade with many other wealthy nations. For instance, in 2009 China imported sixty-five percent of total Sudanese oil exports, whereas the United States prohibits US nationals from engaging in any transactions at all with Sudan’s oil sector.[29] Therefore, much of the wealth flowing

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[28] See generally, Jeffrey D. Sachs and Andrew M. Warner, “Natural Resource Abundance and Economic Growth,” Development Discussion Paper no. 517a. Cambridge, Harvard Institute for International Development (1995).
[29] “Sudan Energy Profile: Oil Exports Over 90 Percent Of Total Export Revenues,” *Eurasia Review*, November 24, 2010.

into these countries is specifically Chinese wealth. Finally, China has increased the amount of foreign aid it directs to Africa. As discussed above, Chinese investment and aid differs from that of other wealthy nations insofar as it comes virtually free from political or social conditions. The net effect of these three factors is a large and sudden infusion of unconditional wealth deriving from China, either through revenues from African natural resource exports or through no-strings-attached Chinese joint ventures, loans, and grants.

B. Effects of the Resource Curse

The resource curse has distinct and significant implications both for developed and developing economies. With respect to developing economies, a resource boom tends to cause resources to shift from one productive, or potentially productive, sector of the economy to another. This phenomenon is referred to as the "resource movement effect."[30] For example, investment capital may move into sectors associated with the booming industry, causing other areas of production to atrophy. The resource movement effect can be especially damaging when the boom is short-lived, because abandoned industries, which might have held brighter long-term prospects, can struggle to recover to pre-boom levels. In addition to the resource movement effect, resource booms occasion a "spending effect," whereby increased incomes lead to greater spending on certain goods and services,

[30] See Keenan, supra note 12, at 106.

particularly those goods related to the booming industry.[31] The increased spending drives up prices on those goods, resulting in price imbalances relative to other goods. When the more expensive goods are essential to other promising industries, the boom can rob those industries of growth opportunities they otherwise would have enjoyed, resulting in capital flight from those industries. Further, price imbalances for basic necessities can inflict hardships on those persons not sharing in the newfound wealth. This can lead to further dependency on the booming sectors, as labor also moves into their periphery.

While a macroeconomic analysis produces worthwhile insights into the potential negative effects of sudden natural resource wealth, Keenan favors a broader political economics approach in his analysis of Chinese investment in Africa. He finds this approach preferable because it more fully accounts for the "robust empirical evidence showing that a reliance on natural resource exports, particularly oil, is associated with lower-quality governance, greater corruption, and a higher likelihood of civil war"[32]–issues that have plagued Africa's resource-rich countries. Keenan identifies two general effects of the resource curse, which he calls its "governance effect" and its "management effect." At bottom, the governance effect, as Keenan describes it, involves the manner in which resource wealth reshapes the incentives that produce responsive political institutions and efficient policies. Keenan observes unconditional wealth affecting incentive structures in three main ways, which he summarizes succinctly:

[31] Id.
[32] Id., at 107.

> First, if political power is the primary means to obtain access to wealth, politicians have a strong incentive to retain power for as long as possible. Consequently, unconditioned wealth creates an incentive to centralize control of access to the source of the wealth. Second, unconditioned wealth can lead politicians to cease to rely on taxes or other sources of revenue available only if the politician is at least moderately sensitive to the wishes of citizens. Finally, when political power and wealth are so closely linked, and when politicians can distribute resource revenue however they wish, there is a strong trend to increase the number of government jobs beyond an optimal level.[33]

The last observation is particularly interesting for the purposes of this paper because it bridges the divide between the first and second challenge by illustrating the power of unconditional wealth to corrupt democratically-controlled institutions. To illustrate the governance effect with respect to this observation, Keenan cites the current Zambian government's reliance on mining revenues to support government hiring policies that foster political loyalty.[34] Zambia is discussed in Part Four as an example of the second category of challenge posed by Chinese investment in Africa, but an account of China's economic relations with that nation also exhibits elements of the classic resource curse problem.

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[33] Id., at 111-2.
[34] Id., at 113.

In addition to negative governance effects associated with sudden resource wealth, Keenan identifies negative management effects.[35] These effects align closely with governance effects, although the perspective has shifted. Therefore, it may be helpful to distinguish the two classes of effect. As they are treated here, governance effects involve changes in politicians' incentive structures, resulting in less responsive political institutions and inefficient policies. Management effects pertain to the economic outcomes of the decisions those politicians are likely to make under reconfigured incentive structures. Keenan identifies three management effects of sudden resource wealth. First, politicians whose political future is uncertain have strong incentives to exploit resources for political gain. This can easily result in the rapid depletion of those resources, such as where a politician relies on them to buy political favors. A second related effect involves poor investment decisions that may be made by politicians seeking to protect their position. Combining the first two management effects, not only might political considerations lead an official to deplete a resource too quickly, but they might also cause that official to squander the resulting income. For example, a politician might use resource revenues to construct a lavish soccer stadium rather than investing in job-creation. While such a decision can be characterized as inefficient, stupid, or wasteful, it is important to recognize that by depriving his people of economic opportunities that politician perpetuates their dependency on him. Therefore, it is just as plausible that he is acting in accordance with his rational self-interest when he chooses to build the stadium. Third, where a steady flow of foreign wealth exists, politicians may forego

[35] Id., at 113-5.

pursuing other revenue streams, for instance by not collecting taxes or by neglecting other promising investment opportunities. The third management effect identified by Keenan maps onto the resource movement effect of the macroeconomic analysis discussed above, although the resource movement in this case results from self-interested political decisions made by individual officeholders rather than the aggregate outcome of the activity of a multitude of rational economic actors.

To summarize the preceding paragraphs, in addition to the potential negative macroeconomic effects a rapid infusion of unconditional foreign wealth can have on a developing economy, it can also change the incentive structure of politicians who control access to it, leading them to exploit the source of that wealth toward unproductive and self-serving ends. The following case study of Angola illustrates these elements of the resource curse related to Chinese investment in that country. However, Angola is by no means the exception. For example, China's involvement with Nigeria, Sudan, Zambia, and Zimbabwe also fit the resource curse narrative to varying degrees. In each case, the question is whether and how unconditional Chinese investment undermines the general economic and social welfare in spite of its wealth-creating potential. For the purposes of this paper, I will only touch on Angola and Zambia. Angola represents the classic instance of the resource curse, where sudden inflows of foreign wealth produce unresponsive political institutions and inefficient policies. Zambia is taken up later to exemplify a second distinct, yet related category of challenge that Chinese investment poses to more democratic African nations.

C. Case Study: China in Angola

Angola won its independence from Portugal in 1975. Following independence, a twenty-seven year civil war engulfed the nation, lasting until 2002. Although Angola has since stabilized, it has yet to institute regular democratic processes and has a poor human rights record. For example, in 2010 it ranked forty-second among African nations in quality of governance according to one international index; it ranked forty-fourth on that index with respect to participation and human rights.[36] Oil revenues drive the Angolan economy. In 2009, Angola was the leader in oil production among African nations and ranked seventh among OPEC members.[37] Nearly all of Angola's oil production is exported.[38] According to OECD data, the oil sector accounted for more than fifty-two percent of Angola's GDP, seventy-eight percent of its government revenues, and ninety-three percent of its exports in 2006.[39] In recent years China has become the world's second leading importer of Angolan oil; Angola, in turn, is one of the leading suppliers of oil to China.[40]

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[36] The 2010 Ibrahim Index; available at http://www.moibrahimfoundation.org/en/media/get/20101108_eng-summary-iiag2010-rev-web-2.pdf.
[37] http://www.eia.doe.gov/cabs/Angola/Oil.html.
[38] Id.
[39] The OECD's 2008 report on Angola (containing data for 2006) is available online at http://www.oecd.org/dataoecd/3/49/40568599.pdf.
[40] Supra note 29.

In addition to its poor record on democracy and human rights, Angola is perceived to be among the world's most corrupt nations.[41] Between 1997 and 2002, over $4.2 billion—mostly consisting of oil revenues—went missing from Angola's public accounts due to corruption and mismanagement.[42] In response to its record of corruption and mismanagement, the International Monetary Fund increased its demands on the Angolan government for more transparency and better stewardship of public resources.[43] However in 2004, China came forward with an assistance package that offered a viable substitute for the IMF package but neglected to impose the rigorous transparency and accountability requirements attached to IMF funds. The Export-Import Bank of China, a state-owned financial institution under control of the State Council, offered a $2 billion line of credit to the Angolan government to rebuild infrastructure in that country.[44] Because China was willing to supply the Angolan government with no-strings-attached financing backed by Angola's substantial oil revenues, Angolan officials avoided international scrutiny and resisted external pressure to provide more transparency and accountability. In addition to perpetuating poor governance, this Chinese investment decision enabled the Angolan government's continued mismanagement of its resource wealth. Human Rights Watch noted in its report on the missing funds that "[h]ad the

[41] See, i.e., Transparency International Corruption Perceptions Index 2010 Results; available at http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results.
[42] "Some Transparency, No Accountability," Human Rights Watch, January 12, 2004; available online at http://www.hrw.org/en/node/12195/section/1.
[43] International Monetary Fund, Angola: 2004 Article IV Consultations 17 (IMF Country Report No. 05/228 July 2005).
[44] John Reed, "Angolan Oil Loan Likely to Raise Transparency Issues," *Financial Times*, Oct. 11, 2005, at 13.

government properly accounted for and managed the disappeared funds it is likely that more funds would have been allocated to the fulfillment of economic, social, and cultural rights, such as increased spending on education, health, and other social services."[45]

The above example represents just one instance in which Chinese investment in Angola has insulated the Angolan officials who control access to it from pressures that could result in better governance and prevented the people of Angola from sharing in wealth created through the development of their nation's natural resources—a classic resource curse scenario.

IV. Chinese FDI in Zambia: The Regulatory Challenge of Chinese Investment

A. Overview of the Regulatory Challenge

An examination of another Sub-Saharan African nation, Zambia, raises concerns about Chinese direct investment in Africa that transcend the classic resource curse challenge. The previous case study involving Angola attempts to show that inflows of unconditional wealth (in any form, whether loan, grant, or direct investment) from China reshape the incentive structure of local politicians who control access to that wealth, resulting in unresponsive political institutions and inefficient policies. Primary responsibility for the negative effects of Chinese wealth lies with government officials who abuse their office—Chinese investment merely plays a

[45] Supra, note 29.

secondary, enabling role by creating a climate conducive to resource curse effects. In contrast, Chinese firms operating in Zambia threaten to undermine that nation's weak regulatory institutions, representing a direct harm visited on Zambia by those investors. Further, many of the Chinese firms responsible for various alleged social, economic, and environmental harms in Zambia are state-owned or state-backed, thereby implicating China and not just its corporate citizens. This phenomenon does not follow the classic resource curse narrative because the harms identified flow from the source of foreign wealth rather than the wealth itself. Moreover, these harms arguably result from a failure of capacity in the host nation rather than a failure of government to respond to the needs of it people. Nevertheless as noted above, there is an element of the resource curse problem at work, for example where dependency on Chinese wealth corrupts democratic institutions. This last point will resurface in Part Six.

B. Strong Legislative Mandates, Weak Regulatory Capacity

Zambia gained independence from Britain on October 24, 1964. Shortly thereafter, it became the first country in southern Africa to establish diplomatic relations with China. Zambia was a one-party state for the entire period between 1972 and 1991. In 1991, it made the transition to a multiparty democracy. Since that time, it has made modest democratic gains relative to several of its neighbors. The Economist Intelligence Unit Index of Democracy for 2008 lists Zambia as a "hybrid democracy," ranking it 97th among national governments with respect to five key indicators.[46] Zambia's EIU Index average score is substantially higher than the average for Sub-Saharan African nations.[47] By comparison, Zambia rates significantly higher than Angola in this metric.[48] Zambia's relatively high level of political stability and respect for civil rights has produced a commensurate degree of social stability. Nevertheless, persistent poverty has hounded Zambia. In 2004, sixty-eight percent of Zambians lived below the poverty line,[49] while 2000 unemployment levels were estimated at fifty percent.[50] Notwithstanding its high levels of poverty and unemployment, Zambia has been among the fastest growing economies in the last decade, largely due to increases in demand for copper.[51]

Haglund observes that Zambia's social stability has "engendered institutional development, while pervasive poverty continues to undermine the *effectiveness* of these institutions."[52] He continues, "The regulatory context can thus be described as one with . . . well-developed legislation providing mandates for regulatory agencies. However, it is also characterised by significant shortfalls in institutional capacity,

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[46] EIU Index of Democracy, 2008, at 6; available online at http://graphics.eiu.com/PDF/Democracy%20Index%202008.pdf.
[47] See id., at 6, 10.
[48] See id., at 6, 7.
[49] See http://data.worldbank.org/country/zambia.
[50] See CIA World Factbook; available online at https://www.cia.gov/library/publications/the-world-factbook/geos/za.html#Econ.
[51] African Economic Outlook for Zambia; available online at http://www.africaneconomicoutlook.org/en/countries/southern-africa/zambia/. The relatively small effect economic growth driven by the copper sector has had on poverty and unemployment in Zambia is not unusual for extractive industries, exacerbating the negative macroeconomic effects of the resource curse.
[52] Haglund, supra note 6, at 559.

weak reporting and accountability, and pervasive political interference."[53] This dynamic distinguishes Zambia from Angola and sets the stage for a discussion of the regulatory challenge Chinese direct investment poses for developing African nations. In the discussion that follows, I will pay special attention to Zambia's mining industry because it is especially illustrative of the regulatory challenge. Despite recent efforts to diversify, Zambia's export economy remains heavily dependent on copper mining.[54] Much of China's foreign direct investment in Zambia has focused on this sector in order to meet China's demand for copper, which is used in construction, electronics, and manufacturing.

C. A Recent History of China in Zambia

The relationship between China and Zambia dates back to the pre-independence period when present-day Zambia was a protectorate of Great Britain. However, economic relations between the two nations were limited until more recently. In the past four decades—and especially in the past two—China's ascension has caused it to take a greater interest in Zambia's economy. Accurate figures for total Chinese investment are difficult to ascertain. However, it is substantial. For example, in the early 1970's China constructed the 1,155 mile-long TAZARA railway, linking landlocked Zambia to the Tanzanian coast. Chinese direct investment in the country was limited to public construction projects like the railway until the

[53] Id.
[54] See African Economic Outlook for Zambia, supra note 43.

government began to denationalize major industries in the 1990's. By 2006, there were officially 145 Chinese projects in Zambia.[55] The Zambia Development Agency estimates Chinese total investment as of December 2009 at over one billion dollars, creating approximately 15,000 jobs in the country.[56]

In particular, China has assumed a growing role in Zambia's mining sector. According to the Zambian Development Agency, Chinese mining companies currently produce approximately five percent of Zambia's copper output, and China buys at least twenty percent of Zambia's annual copper production.[57] Moreover in 2009, Chinese firms made two major acquisitions in the mining sector. The Jinchuan Mining Group completed its plans to acquire Zambia's only nickel mine after low metal prices forced the original owners to sell.[58] China Non-Ferrous Metals Mining Company (CNMMC) acquired Luanshya Copper Mine through its African subsidiary, NFC Africa, pledging to invest over $400 million into that mine.[59] Even more noteworthy, in 2009 the Chinese mining company Zhongui Mining Group signed an Investment Promotion and Protection Agreement with Zambia pledging $3.6 billion for future mining projects in northwestern Zambia.[60] Including the agreement with Zhongui Mining Group, pledges for mining constitute over eighty-

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55 Haglund, supra note 6, at 555.
56 Zambia Development Agency official website; http://www.zda.org.zm/246-chinese-investments-zambia.
57 Id.
58 "Jinchuan Mining to Take Over Zambian Nickel Mine, Minister Says," Bloomberg, August 5, 2009.
59 "Zambia Picks China Firm to Run Luanshya Copper Mine," Reuters, May 8, 2009.
60 "China and Zambia Sign US$3.5 Billion Investment Deal," *Lusaka Times*, July 22, 2009; available online at http://www.lusakatimes.com/2009/07/22/china-and-zambia-seal-us-3-5-billion-investment-deal/.

eight percent of total Chinese pledged Investment in Zambia—adding up to more than $5.5 billion.[61]

While this Part focuses on Chinese foreign direct investment in the mining sector, it is worth noting in passing that Chinese companies have acquired significant stakes in other sectors of the Zambian economy, including manufacturing, construction, and tourism. Moreover, China's interest in Zambia's mineral reserves has caused it to undertake other forms of investment in the country, beyond direct investment. For example, according to the Zambia Development Agency China is actively pursuing aid and development projects, including providing debt relief to the Zambian government, building stadiums, and awarding grants for partnership projects between Zambian and Chinese companies.[62] Further in 2007, China announced that one of five Chinese special economic zones was to be established in Chambishi in Zambia's Copperbelt Province, the area that corresponds to NFC Africa's mining surface rights.[63] This area will become home to an $800 million copper smelter, as well as additional Chinese investment. Elements of the resource curse challenge discussed in Part Three inevitably arise as a result of the range and scope of Chinese investment in Zambia. However, the focus of this Part remains the regulatory challenge.

Chinese investment in mining and other sectors of Zambia's economy has not been without controversy. In 2006, Michael Sata, president of the opposition

[61] ZDA website, supra note 43.
[62] Id.
[63] Haglund, supra note 6, at 555-6.

Patriotic Front party, tapped into widespread anti-Chinese sentiment, primarily regarding labor and supply conditions related to Chinese investment projects.[64] In an October 2007 address at Harvard University, Sata outlined a number of objections to Chinese investment in Zambia.[65] Broadly, Sata's criticisms comprise charges of corruption, low wages, unfair competition, and labor, health, and safety violations.[66] Sata's remarks at Harvard came in the wake of a devastating 2005 explosion at the BGRIMM facility in Chambishi.[67] NFC Africa owned the BGRIMM plant, which manufactured explosives for use in nearby Chinese mines. The explosion killed all fifty-two African employees working there at the time.[68] Subsequent investigations of the incident uncovered numerous health and safety violations at the plant. In response to public outrage related to this and other events, China implemented policy guidelines aimed at avoiding future conflicts between overseas enterprises and host countries.[69] Under new Chinese policies, local managers would be held responsible for failures related to safety standards at their plants. Haglund quotes a Deputy CEO of NFC Africa, who said, "We have to follow [Beijing's] order to stay here, to take away less, and to give back, contribute

[64] See "Zambian Hopeful Takes a Swing at China," *Washington Post*, September 25, 2006. Sata lost the 2006 election but achieved a surprising victory in 2011 over another incumbent Rupiah Banda, who had been elected to the presidency in 2008.
[65] Michael Sata, "Chinese Investment in Africa and Implications for International Relations, Consolidation of Democracy and Respect for Human Rights: The Case of Zambia," paper presented to the Harvard University Committee on Human Rights Studies Events Series, October 24, 2007, Harvard University, Cambridge, Boston, MA.
[66] Id., at 7-10.
[67] "Dozens killed in Zambia explosion," *BBC News*, April 21, 2005 (reporting the day after the incident).
[68] See Brian Chama, "Economic Development at the Cost of Human Rights," 17 Hum. Rts. Br. 2, at 4 (2010).
[69] Haglund, supra note 6, at 568.

more. That is a general request for all the Chinese companies in Zambia by President Hu Jintao, that is what he told us. That is one of the six policies for all the projects and enterprises in Zambia."[70] However, it is unclear what impact this policy shift will have. In February 2010 interview, Bob Sichinga, a leading business consultant and former legislator in Zambia, stated that the Chinese have the poorest safety record for their employees in the mining sector.[71] And in a particularly shocking incident in October of 2010, Chinese managers opened fire with shotguns on a crowd of mineworkers protesting poor pay and working conditions in another Chinese-owned mine.[72] The gunfire wounded eleven Zambians. In the wake of this event, the Zambian government indicated that the mine's Chinese managers would be punished, but ultimately the charges against them were quietly dropped.[73] The regulatory challenge highlights the gap between public sentiment and government action in monitoring and holding accountable Chinese firms.

D. Lack of Institutional Capacity in the Mining Sector

Zambia's inability to effectively supervise Chinese mine operators results primarily from a lack of institutional capacity, although a dearth of political will among

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[70] Id.
[71] "China Reaps Reward of Zambia Copper Investment," *BBC News*, February 19, 2010.
[72] "Zambian Miners Shot by Chinese Managers," *The Telegraph*, October 19, 2010.
[73] "Opposition Leader Is Handed Reins in Zambia," *The New York Times,* September 23, 2011. The article suggests that the Chambishi mine shootings factored heavily in Sata's 2011 election.

officials who remain loyal to Chinese investment wealth is also responsible for regulatory failures. Three agencies collaborate to oversee mining operations in Zambia. The Ministry of Mines and Mineral Development assumes primary responsibility for regulating the operation of mines. It contains the Mines Safety Department, which monitors the health and safety performance of mining companies. In addition, two other state agencies play a significant role in regulating mining activities. The Environmental Council of Zambia monitors the environmental impact of mining operations under the Environmental Prevention and Pollution Control Act, and the Zambian Revenue Authority collects tax revenues from mine operators.

Notwithstanding this regulatory framework, three key factors undermine effective regulation of the mining sector.[74] First, regulatory bodies in Zambia are persistently underfunded, resulting in a shortage of skilled inspectors responsible for monitoring the rapidly expanding mining sector. The resulting low wages for public employees mean that especially competent inspectors are often hired away from the regulatory agencies by mining firms. Second, regulators rely on self-reporting by mine operators. Reliance on self-reporting supports a common view that regulators are enabling agents of mining companies. Further, effective regulation based on self-reporting is complicated by a lack of common standards between companies, so that confusion persists regarding the requirements regulators should enforce. Finally, regulatory actions are subject to veto by the ruling party. For example, the Environmental Act allows the Minister of the

[74] These factors are discussed in detail in Haglund, supra note 6, at 559-62.

Environment to overrule ECZ decisions. As a result, the effectiveness of regulators depends on the motivations and priorities of Zambia's leaders, who may or may not be captured by Chinese investors. In this respect, Zambia's political structure reflects the postcolonial African tradition of centralized decision-making and interventionism. This last factor overlaps the resource curse challenges examined earlier. Zambia's ruling party has private incentives to interfere with the effective regulation of Chinese mines insofar as Chinese wealth sustains them in office. The combination of these three factors creates a climate in which Chinese companies cut corners with relative impunity.[75] Accordingly, a comprehensive approach to solving the regulatory challenge in Zambia must contend with Zambia's limited regulatory resources and the agency problems resulting from a dominant executive branch.

V. The Search for Solutions

This part will briefly explore three possible approaches for solving the regulatory challenge identified in Part Four. Each approach looks outside the limited regulatory institutions within Zambia, abandoning a command-and-control model in search of more cost-effective forms of mining supervision. A successful approach

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[75] It is unclear that Sata's presidency will bring a solution to the structural problems I have attempted to identify in this paper. Chinese investment remains an integral part of the Zambian economy. Accordingly, China still possesses substantial leverage in its relationship with Zambia. Perhaps in recognition of this fact, Sata has appeared to soften his stance toward China in his first three months in office. See "Has Zambia's 'King Cobra' delivered on his 90-day promise?" *The Guardian,* December 21, 2011; see also "Sata calls for continuous cooperation with China," *Lusaka Times,* December 13, 2011.

presumably lends itself to applications beyond mining regulation. The first approach I explore relies on international capital markets to drive reforms in Chinese corporate governance, either through direct competition with Chinese state-backed enterprises or through corporate social responsibility campaigns aimed at China's publicly traded corporate partners. The second approach concedes that China's foreign exchange surpluses make it virtually immune to market forces but predicts that China will undertake reforms on its own in order to facilitate better relations with local stakeholders, deflect criticism, and preserve international goodwill. The third approach calls for Africans to exert political pressure on their leadership to protect local interests in conflicts with Chinese investors.

A. Market-Based Solutions

Some commentators have suggested that market forces might provide a solution to the regulatory challenge created by Chinese direct foreign investment. For instance, Keenan explores ways to introduce the concept of market discipline into the decision-making processes of African leaders considering Chinese investments. He defines market discipline as the "various mechanisms available to owners of capital to exert influence over the people who manage that capital."[76] Market discipline can offer a solution to the regulatory challenge by subjecting firms seeking capital to evaluation by the market. The market will be unlikely to fund a project if it does not create positive net present value for its investors. A project has positive net present

[76] Keenan, supra note 12, at 115.

value if its expected return, discounted for risk, outweighs its costs. Increasingly for sophisticated financial institutions, costs include potential social costs related to a community's rejection of a project. Haglund cites an executive at Macquairie Bank in London who explains:

> Sophisticated [financial] institutions will look at a mining company's development projects and ask will these companies have social approval? I'm not saying it's a certificate, but it's a concept… is this thing embraced by the local community? Do they say there's jobs, revenue, infrastructure, all these good things, or can they not imagine anything worse? That's a huge point for a potential investor, without that social approval you are wasting your time.[77]

As rising anti-Chinese sentiments in Zambia show, projects that exploit laborers or cause other social, environmental, or economic harms provoke controversy that can be costly for investing firms. As a result, investors are less likely to undertake these projects and banks are less likely to finance them.

However, while sophisticated financial institutions outside of China might factor social approval into their decision to finance a project, the above analysis fails to fully account for the unique nature of Chinese state-backed investment in Africa. In the conventional account of market discipline, owners of capital make decisions to buy, sell, or lend based on information they receive about an investment. In the context of securing financing for a project—for example a copper mine in Zambia—

[77] Haglund, supra note 6, at 565.

owners of capital will primarily focus on two factors: risk and return. Generally, investors will demand greater returns for riskier projects. Projects in Africa tend to feature relatively high levels of risk due to the absence of infrastructure, political instability, civil unrest, etc. Therefore, private investors will seek higher returns if they are to fund these projects. However, investment by Chinese firms like NFC Africa adds a unique wrinkle because these firms receive implicit or explicit backing from China's government. Usually, state backing of Chinese multinationals takes the form of favorable terms on loans from state-owned banks like the Export-Import Bank of China. Further, unlike most other major providers of international project finance, state-owned Chinese banks do not require their borrowers to comply with rigorous environmental and social performance standards for outward foreign direct investment.[78] With cheap financing from China and no requirements for compliance with costly performance standards, these firms are capable of undertaking riskier projects for lower returns than their non-Chinese counterparts. The recent mine purchases by Jinchuan Mining Group and NFC Africa, which occurred after Western investors abandoned them in the face of declining profits, underscore this point. The advantages of Chinese state support are not limited to Chinese firms operating in Africa, but also extend to Chinese lenders. Brautigam, who is a proponent of China's approach to Africa, reports:

> The terms of Chinese loans also tend to be better than those of deals from Western companies. As Congolese President Joseph Kabila has pointed out, a $3 billion joint mining venture in the DRC gives his

[78] Id.

> government a 32 percent share, compared with the 7 to 25 percent that is typical for mining deals with other companies.[79]

As a result, Chinese firms can outcompete their non-Chinese rivals on price. This remains true as long as the goals of those firms align with national interests, and thus garner state support.

Nevertheless, if China's national interests were purely profit-driven, there might be little difference in the terms of Chinese and non-Chinese deals. China could be expected only to back ventures with a profitable combination of risk and return, all other things being equal. Thus, under this assumption investments in Africa should be subject to something like classical market discipline. However, as outlined in Part Two, China possesses strategic interests in African ventures beyond profit, which means it is willing to subsidize projects that are unprofitable in the conventional sense. Accordingly, Chinese foreign direct investment in Africa does not introduce market discipline into the deal-making process in the same way that financing from international capital markets would. As a result, Chinese firms are likely to step in where non-Chinese investors cannot—for example, in the Jinchuan Mining Group and NFC Africa purchases—provided an investment opportunity serves other national interests.

Since Chinese investment in resource-rich African nations serves broad and substantial national interests, in order for investors who are subject to profit motives and more demanding international regulatory standards to outcompete

[79] Supra Note 1.

Chinese firms (and thereby introduce market discipline into investments in Africa) they must find ways to minimize risk that offset the competitive advantages enjoyed by those firms. One potential option is through innovative financial instruments. For instance, non-Chinese financial institutions could look to securitization, pooling risky African investments and selling them to the public on international capital markets. This approach has been tried in the context of other risky assets, most notably subprime mortgage loans. However, it is widely blamed for the recent credit crisis, and therefore may prove unlikely to be adopted in the near term. Further, it is unclear whether gains from securitization would be large enough to offset the competitive advantages Chinese firms enjoy as a result of generous state support and protection from the costs of externalities.

Another potential market-based solution would involve pressuring China's publicly traded counterparties to demand that health and safety standards at Chinese-owned plants approximate international standards. This latter strategy may have an analogue in conflict diamond literature. However, it probably fails as well. Such a strategy requires international consumers to overcome substantial informational and collective action hurdles. Further, China is the end user for much of the resource wealth extracted from its African trading partners so that effective consumer action could suffer from a lack of viable targets in the marketplace. Finally, since China is so intertwined with the global economy, large-scale consumer pressure applied indiscriminately to China's trade counterparties appears impracticable and unlikely in the extreme.

B. Solutions from within China

Even in the absence of outside pressure from international consumers, China may have sufficient internal motivations to improve its corporate governance standards. Haglund provides two reasons why a finance provider might wish to limit unethical behavior among borrowers:

> First, lenders want to minimise the reputational risks associated with NGO and media campaigns against financiers of extractive industries projects, such as those targeting the World Bank . . . and the [Export Import Bank of the United States] . . . . Media attention generates uncertainty and can drive down share prices . . . . Second, lenders are wary of conflicts with local stakeholders, which may lead to withdrawal of concessions, operational disruption, or other risks to project viability and future capital returns.[80]

Because Chinese firms investing in Africa are primarily state-owned or state-sponsored, they do not need to raise money on openly traded markets. Therefore, the first reason cited by Haglund does not reach them. The second reason appears more relevant insofar as conflicts with local African stakeholders can threaten the strategic goals of Chinese investment discussed in Part Two. Events like the BGRIMM explosion might cause communities to reject future Chinese projects. Recently, China has shown signs that it is interested in avoiding such local conflicts.

[80] Haglund, supra note 6, at 565.

For example, Part Four highlights China's 2006 announcement of new policy priorities related to workplace safety in the face of heavy criticism from groups inside Zambia.

Presumably the 2006 policy shift evidences Beijing's acknowledgement that anti-Chinese sentiment in Africa could jeopardize its strategic goals in region. Those goals justify China's commitments in Africa. Accordingly China has a strategic interest in avoiding local conflicts. China can adopt one of at least two approaches to handle local conflicts. It can capitulate to its critics and demand higher standards of corporate governance for international operations. But this approach concedes a key component of Chinese firms' competitive advantage in the region. Therefore, it has a proportionately high cost to Chinese firms. Alternately, China can leverage its foreign exchange wealth to counteract local political pressure. There is evidence to suggest that China has chosen the latter strategy. During the 2006 elections in Zambia, a Chinese ambassador initially threatened to cut diplomatic relations and suspend operations in the country if Sata won.[81] This action suggests that despite China's supposed adherence to a policy of non-interference, Beijing may be willing to take actions to alter the political landscape in response to political threats to Chinese economic interests. The recent shooting of coalminers protesting low pay and hazardous working conditions further indicates that Chinese firms have not reformed in response to international controversy.[82]

[81] "China Flexes Muscles in Africa," *CNSNews*, June 9, 2006.
[82] "Zambian Miners Shot by Chinese Managers," supra note 64.

Another theory relies on political will within China to provoke reforms in corporate governance. But prospects for internal change of this sort are similarly dim. As Haglund notes, "the limited civil society in China is unlikely to be able to hold businesses to account, for instance over environmental issues."[83] Additionally, Chinese companies do not face significant reporting and disclosure requirements so that there is little publicly available information about overseas operations, even assuming the government would be responsive to civic action. Finally, given that Chinese citizens have been remarkably slow to embrace higher corporate governance standards at home where they suffer the resulting harms directly, how likely are they to make demands for greater corporate governance abroad, where they only reap the economic benefits?

C. Political Will in Africa

The most promising solution to the regulatory challenge raised by Chinese foreign direct investment might lie with Africans themselves. Haglund concludes, "In the final analysis, responsibility thus rests with host country governments."[84] He continues, "The challenge for Zambian policy makers is to reform the institutions that enable regulatory enforcement by increasing the capacity and independence of inspectors, improving reporting mechanisms and formalizing state–firm

[83] Haglund, supra note 6, at 566.
[84] Id., at 567.

relationships."[85] A lack of capacity constrains effective regulation, but legislators can overcome this limitation by empowering domestic and international stakeholders to hold firms accountable for violations. One way Zambian legislators might accomplish this goal is by establishing substantive reporting and public disclosure requirements for businesses operating in Zambia. The law of other nations supplies precedents for this approach. For instance, in the United States the Surface Mining Control and Reclamation Act of 1977 provides for citizen complaints as an essential piece of its regulation of mining activities.[86] Further, Haglund speculates, "Where social discontent leads to popular pressures for regime change, such developments may jeopardise relationships with key resources suppliers."[87] However, as the last section shows, social discontent among Africans is only effective when government is responsive to its constituents. This approach to solving the regulatory challenge may run aground precisely due to the deleterious governance effects stemming from the resource curse challenge. Zambia evidences this dynamic, where a dependency on Chinese investment and aid has made arousing democratic support for a more effective regulatory scheme difficult.

VI. Conclusion

[85] Id.
[86] See Surface Mining Control and Reclamation Act, codified at 30 U.S.C. §§ 1201-1328 (1982).
[87] Haglund, supra note 6, at 568.

This paper has attempted to flesh out two distinct, yet related challenges related to increased Chinese foreign direct investment in Africa. The first challenge follows the resource curse narrative. It involves the manner in which unconditional foreign wealth flowing from Chinese investment creates less responsive government institutions and inefficient policies. While the resource challenge is more closely associated with Chinese economic relations in general, it has implications for the second, regulatory challenge that more directly pertains to foreign direct investment. The regulatory challenge refers to the problems African nations that are dependent on Chinese investment face in attempting to effectively regulate Chinese corporations operating within their borders. In considering possible solutions to the regulatory challenge, I outlined the weaknesses of solutions that rely on market forces or motivations internal to China. I suggested that the most promising avenue for solutions to the regulatory challenge runs through Africa itself. However, I also noted that the potential for African nations to solve the regulatory challenge depends on the effectiveness of their regulatory institutions. This conclusion will paint a less optimistic picture.

I will suggest in closing that Chinese foreign direct investment in Africa virtually forecloses the possibility of effective local regulatory institutions in the near term by subjecting them to regulatory capture. The threat of regulatory capture arises from the agency problems created by the resource curse, which I discussed in Part Two. Even in relatively democratic African nations, Chinese investment systematically produces unresponsive and inefficient governments. The 2006 Zambian elections testify to this effect. Arguably, because the Zambian government had not invested its resource wealth to make the country economically self-sufficient, Zambians could not afford to jeopardize economic ties with China. Therefore they could not elect Sata's opposition party in 2006. However, by reinstating the ruling party, Zambians further entrenched an unresponsive incumbent government.[88] As a result, Zambia's leaders have a clear counterincentive to invest in the country's economic development, because limited access to wealth underpins their political future. Without the prospect of meaningful economic development, poverty can be expected to persist, reinforcing Zambian voters' dependence on government handouts funded by inflows of Chinese wealth. This vicious cycle all but ensures that countries like Zambia will become more, not less reliant on Chinese investment, despite widespread anti-Chinese sentiment.

Building on the above reflections, it follows that the regulatory challenge is just the tip of the iceberg. The underlying problem of Chinese foreign direct investment in Africa involves China's strategic use of its vast national wealth to secure lopsided deals with Africa's weakest states. The source of this problem lies in provisions like the one discussed in Part Four, which authorizes Zambia's Minister of the Environment to interfere in regulatory decisions. Unfortunately,

[88] Moreover, while Sata may have ridden heightened anti-Chinese sentiment in the wake of the Chambishi mine shootings to the presidency in 2011, in his first months in office he has not exacted significant concessions from Chinese investors—in fact, he has welcomed Chinese investment. See, e.g. "Has Zambia's 'King Cobra' delivered on his 90-day promise"; "Sata Calls for Continuous Cooperation with China," supra note 75; see also "China Hails President Sata," *Lusaka Times,* December 15, 2011. Nevertheless, Sata's presidency may eventually deliver incremental improvements in labor conditions in Chinese-owned mines. Whether such gains could warrant claims that Chinese investment is a boon for Zambia remains an open question.

China appears to have substantial economic and political incentives to perpetuate weak African states through aid and investment packages that are generous enough to create dependency. Therefore, stronger laws regulating firms operating in Africa only represent one half of an effective solution to the challenge of Chinese foreign direct investment. A deeper constitutional shift that would decentralize power and defeat the agency problems that arise from a dominant executive appears to be the more important piece of a total solution. Until that change occurs, China can be expected to continue exploiting resource-rich developing African nations through lopsided foreign direct investment deals.