

CHINA'S SHARP POWER IN AFRICA

Corruption in the Zambian Construction Sector: The China Factor

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THE CHINA FACTOR

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The construction sector in Zambia continues to play a vital role in the economic development of the country, with a phenomenal increase in the number of both local and foreign companies engaged in the provision of services. The implementation of large-scale construction projects entails high-level technical and financial capacity from construction companies, which have been in short supply among local players. This has opened up opportunities for the involvement of foreign companies with international experience. Chinese international construction and engineering contractors have become major players in the Zambian construction sector. China became the largest origin country for international contractors operating in the African market in 2006; by 2019, Chinese companies had taken up over 60 percent of the total revenue of all major international contractors in Africa.¹ Zambia is one of the African countries with the longest-standing diplomatic relations with China and has been a recipient of Chinese investment in the form of loans, grants, joint ventures, and aid. Through this support there has been an increase in activities with the construction of vital infrastructure in Zambia such as schools, roads, bridges, and hospitals.²

The construction sector, however, is negatively affected by corruption, and authorities and stakeholders have in the last twenty years made valiant efforts to address this scourge. Similarly, China, under President Xi Jinping, has embarked on an ambitious campaign to address the deep and endemic corruption problem.³ Xi's anticorruption campaign has scored some major successes at a national level but, given China's important position as a major exporter and international development partner, it should play a role in combating corruption by its nationals abroad. This policy brief seeks to answer two questions: Is there any congruence between the desire of the Chinese regime to promote clean business at home and the practice of Chinese companies, some of them state-owned enterprises, in foreign jurisdictions? And, more specifically, is the state of corruption in the Zambian construction sector any different today following the involvement of international Chinese construction companies?



Context Setting

Zambia is a developing country, with a vision to attain a lower-middle-income status by 2030. To achieve this vision, it needs to invest in a range of physical infrastructure including transportation systems, energy production and distribution systems, water and sanitation systems, housing infrastructure, office and commercial buildings, and telecommunications installation, among others. It has been observed that most of the infrastructure that Zambia needs can be considered public goods and could therefore be public-sector driven and state funded.⁴ An ambitious public-infrastructure agenda has been pursued by the Patriotic Front (PF) government since its assumption of office in 2011. This agenda is articulated in the Seventh National Development Plan 2017–21, and one of its ten Strategic Development Outcomes focuses on “improved transport systems and infrastructure.” The anticipated outputs include construction and rehabilitation of railways, development of aviation infrastructure and operations, construction and rehabilitation of the road network, and construction and rehabilitation of maritime and inland waterways.

In 2012, the PF government instituted a countrywide Link Zambia 8000 program, officially named the Accelerated National Roads Construction Programme (ANRCP). This program was intended to rehabilitate or upgrade the core road network to bituminous standard.⁵ Other public-infrastructure projects include the expansion of the Kenneth Kaunda International Airport, construction of the Ndola International Airport, and construction and expansion of a number of hydroelectric power plants as well as bridges, schools, and hospitals.

Corruption and the Construction Industry

The increasing demand for public infrastructure has come with other consequences, which include unethical and corrupt practices. The construction industry has been affected by economic crimes such as fraud, bid rigging, bribery, collusion, coercion, misrepresentation of facts, and extortion.⁶ The public and oversight bodies, such as the National Assembly and the Office of the Auditor General, are concerned about corruption in the procurement and implementation of public infrastructure projects. Similarly, reports from nongovernmental organizations (NGOs) such as Transparency International Zambia underscore the challenges posed by corruption in the construction industry. The Zambian construction industry has its fair share of large, complex, nonstandard activities in which quality can be very hard to assess.⁷ These are mostly one-off and unique projects that present very little scope for detecting when costs are artificially inflated to facilitate corrupt activities.⁸

Corruption in the construction industry may occur at any of the phases of a project cycle, namely conception, planning and design, tender preparation, bidding, tender

adjudication, and construction, as well as operation and maintenance. It can also occur at the point of project financing design, with loans and grants structured in a manner that allows for kickbacks and other forms of corruption. Generally, scholars and practitioners identify twelve forms of corruption in the construction industry that also apply in the Zambian context, and these include bribery, fraud, collusion, bid rigging, embezzlement, kickback, conflict of interest, dishonesty and unfair conduct, extortion, negligence, front companies, and nepotism.⁹ Other malpractices endemic in the Zambian environment include political interference, bribery, corruption, and abuse of copyright with respect to professionals' drawings, especially by engineers and architects; overdesigning and overstating a project's scope; abuse of single sourcing when appointing consultants or contractors; conflicts of interest; exaggeration of the experience and academic qualifications of technical staff by bidders; leaking of engineers' estimates; bias in tender evaluation; inclusion of unreasonable provisional sums in tenders due to inadequate estimation of costs or designs; breaches of confidentiality; collusion among contractors; and uncompetitive tendering.¹⁰

During project execution and supervision, some of the common unethical and corrupt practices in the Zambian construction sector include collusion between contractors and client representatives; collusion between contractors and consultants; certification of poor-quality works; false certification of works; bribery and corruption; failure to enforce specifications and standards; unreasonable variations during implementation; lack of integrity; fabrication of test results at the expense of quality; dishonesty and unfair conduct; deliberate delay in payments to induce corruption and bribes; recruitment of poorly qualified and inexperienced consultants; ambiguous variations and fluctuations; negligence of duty; covering up of poor workmanship; unfair reward for work done; concealment of errors; violation of environmental requirements; constant change of specifications; and certification of work not done.¹¹

Participation of Local and Foreign Contractors in the Industry

Local and foreign companies participating in the construction industry are required by the National Council for Construction Act No. 13 of 2003 to formally register with the regulator, the National Council for Construction (NCC). The NCC contractor registration scheme is based on a self-assessment tool that enables contractors to be graded and categorized according to ability. There are six grades, with Grades One and Two being the highest in terms of both scope and budget of projects handled. In 2019, the total number of registrations issued was 9,208, and the total number of registrations issued to Zambian construction firms accounted for 95.8 percent compared to those issued to foreign firms, which accounted for 4.2 percent.¹²

Foreign-owned companies have dominated Grades One and Two since the contractor registration scheme was initiated in 2005. In 2019, the majority of the registered



contractors in Grade One were foreign-owned companies, at 247 compared to only 61 Zambian-owned companies. Similarly, foreign-owned companies made up the largest group of registered contractors for Grade Two at 136, while Zambian-owned companies stood at 86. In 2019, Grade One was composed of 80 percent foreign contractors compared to 74 percent in 2018, and Grade Two had 66 percent foreign contractors compared to 65 percent in 2018.¹³

While foreign-owned firms constitute less than 5 percent of registered construction companies, they generally dominate the industry in terms of the value of contracts awarded. In 2014, 90 percent of foreign-owned construction firms that submitted public tender bids successfully secured the tenders, compared with 3.8 percent of Zambian-owned firms in the same year.¹⁴ Criticism has been leveled against this contractor registration scheme for its negative effects on firm-level diversity and its potential to establish an oligopolistic market structure in which the largest, most dominant firms could collude in setting prices and deciding on the supply of construction services.¹⁵

Practices of Chinese Companies in the Zambia Construction Industry

The Zambian construction sector is beleaguered by allegations and incidences of unethical practices among local and foreign companies. The question is whether the participation of Chinese companies has positively or negatively impacted this environment. To answer it, this brief examines the current operations and external factors that shape the activities of Chinese companies involved in the construction sector in Zambia by way of a literature review and interviews with key informants.

Entry of Chinese Companies into the Zambian Construction Industry

The entry into overseas markets by Chinese construction companies has over the years been largely driven by Chinese state-owned companies. This has been partly facilitated by the decisions and guidance made by China's State Council in August 1979, which permitted Chinese companies to operate overseas. This policy was one of the thirteen official policies intended to open the economy.¹⁶ Before 1979, Chinese companies operating overseas were restricted to projects that provided economic and technical aid with funds sourced from the Chinese government.¹⁷ The Chinese companies were mainly commissioned by the Chinese government to undertake infrastructural aid projects in countries such as Zambia and were selected through a competitive tendering process conducted in China and open to all Chinese companies.¹⁸

The overseas investment activities were mainly linked to the Chinese government's political considerations rather than commercial objectives. The key decisions about

where to make investments and which sector to support were anchored to considerations of enhancing China's political and economic influence and expanding its international trade relationships.¹⁹ Between 1967 and 1994, only one Chinese lender existed in Zambia: China's central government, represented by the foreign aid office of the Ministry of Commerce (now China International Development Cooperation Agency, or CIDCA). The Bank of China, the first Chinese bank allowed to do foreign exchange-related banking, set up its first African branch office in Lusaka in 1997, offering banking services and bid bond security. Exim Bank of China arrived in 2001 and became the largest Chinese lender.²⁰ Thus, government-endorsed projects have enabled Chinese companies to secure low-cost capital from China's banks to facilitate start-up costs including mobilization of personnel and equipment.²¹ This invariably gives such companies an advantage over local construction firms, which face challenges in accessing lines of credit for their operations.

The modus operandi of these state-owned enterprises (SOEs) once they enter a market has been twofold, namely, to execute a government-funded project and to contemporaneously gain local knowledge about the industry while pursuing other business opportunities. Most of the SOEs have stayed on and established a presence in countries where they operate. While seeking large-scale government projects, they engage in small-scale private projects, thus competing with local companies.²² In Zambia today, it is estimated that approximately half of the Chinese construction firms are completely private and most of these are locally registered, making it difficult to formally classify them as Chinese companies apart from the ethnicity of their owners. An important point, equally confirmed during key informant interviews, is that these companies continue to follow a Chinese-style work ethos and are still able to access Chinese government capital through different channels, including the Bank of China, which has a presence in Zambia.²³

Undercutting the Competition

The entry into the Zambian construction sector by Chinese companies came at the expense of other foreign-owned companies, mainly from Europe and South Africa. Chinese companies undercut local rates and operate on profit margins of under 10 percent, compared to the average margin for the construction industry of between 15 and 25 percent. It has been observed that in some exceptional cases, Chinese companies may undercut competitors by as much as 50 percent on the price of an overall bid.²⁴ Information obtained from interviews indicates that while a number of Chinese contractors bid very low in order to win the contracts, the final contract sum is usually inflated due to variations and price escalations that are in some instances facilitated by the unethical conduct of consulting engineers or architects.



Preferential and Supplier-Driven Financing Arrangements for Large-Scale Projects

China has become Africa's largest bilateral infrastructure financier, accounting for about a fourth of total infrastructure financing in 2018.²⁵ In Zambia, China has been actively involved in the financing of road infrastructure projects, providing nearly 85 percent of funds utilized on road-rehabilitation projects.²⁶ Project financing from China quite often comes as part of a package; in the case of large-scale road projects, it is typically tied to the selection and participation of primarily Chinese contractors.²⁷ For this reason, sixteen out of twenty-three contracts tendered for the Link Zambia 8000 project were contracted to Chinese companies.²⁸ Further, Chinese companies were awarded numerous other road contracts, including the US\$108 million contract awarded in 2013 to Sinohydro to construct a 45.5-kilometer dual carriageway linking Kitwe and Chingola, and in 2005, a US\$207 million contract was awarded to China Henan International Cooperation Group by the Zambian Road Development Agency (RDA) to design and construct the Mansa-Luwingu road.²⁹ The Lusaka 400 project, dedicated to the improvement of four hundred kilometers of urban roads, was financed through a US\$348 million loan from Exim Bank of China.³⁰ This project was implemented in two phases, with the first phase commencing in June 2013, while an agreement on funding of US\$241 million for phase two was signed between the Zambian government and Exim Bank of China in February 2018.

In addition to loan financing facilitated through bilateral arrangements, supply-driven financing from Chinese companies has increased, and this is referred to as "Contractor Facilitated Initiatives (CFIs)." It has been observed that Chinese contractors often advertise their ability to obtain financing from Chinese financial institutions as a key source of their competitiveness.³¹ CFIs were introduced around 2016, primarily to address difficulties in raising external loans and shortfalls in local revenues for undertaking politically popular roads and other construction projects.³² Briefly, CFIs refer to situations where the Zambian government, being unable to pay up front for a road project, agrees to a solicitation from a contractor to mobilize financing at competitive rates, and the government commits to reimbursing the funds on agreed terms. According to the government, CFIs have the advantage of enabling the completion of road infrastructure projects at the earliest opportunity, while the state implements budget provisions to pay the contractor later.³³

CFIs can be said to fall within the ambit of public-private partnerships (PPP), although they are often not a national priority and tend to be overdesigned and price inflated. Of additional concern is that Chinese contractors actively lobby officials within line ministries and specialized agencies by proposing particular projects, with the promise to facilitate tailor-made loans for their implementation.³⁴ Anecdotally, some practitioners and government officials contend that large-scale infrastructure projects

financed through Chinese loans always come with “fine print” in loan contracts whereby the transactional benefits are all captured by Chinese entities.³⁵

Some examples of these CFIs include the 175-kilometer Mansa-Luwingu road for which China Henan International Cooperation Group in 2005 secured a US\$207 million contract that came with a US\$180 million commercial loan from China Development Bank.³⁶ Similarly, in 2015, the Zambian government signed a US\$493 million contract with China Henan for the rehabilitation of four hundred kilometers of township roads in Copperbelt Province through an export credit loan secured from China Development Bank.³⁷ In 2017, the government awarded a US\$1.25 billion engineering, procurement, and construction plus finance (EPC+F) contract to China Jiangxi Corporation for International Economic and Technical Cooperation Ltd. for the purpose of upgrading to a dual carriageway of the 321-kilometer road between Lusaka and Ndola in Zambia’s Copperbelt Province.³⁸ This project was highly controversial and was extensively discussed in parliament, and as of the end of 2020 it had not yet commenced.

Noncompetitive Bidding

The domination of Chinese-owned companies among the higher grades of the contractor registration scheme, as well as the preferential and supplier-driven financing highlighted above, has exacerbated the abuse of single-source procurement, which is often noncompetitive. Public concern has been raised about the blatant abuse of single sourcing, especially in road projects such as the Lusaka-Ndola dual carriageway and the expansion of the Kenneth Kaunda International Airport in Lusaka, where contract sums were unnecessarily inflated. In some instances, single-sourced contractors determine the costs without conducting any feasibility studies.³⁹ Package financing deals tied to commercial conditions facilitate the procurement of services from Chinese contractors on a noncompetitive, single-sourced basis.

Anecdotal evidence indicates that during the last ten years of PF party rule (2011–21), there has been a new unethical and corrupt practice by which senior government and ruling party officials use private or shell companies to obtain single-sourced, large-scale construction contracts without the requisite technical and financial capacity to execute the contracts. These officials then sell the contracts to foreign, mostly Chinese, companies at a premium. The additional costs incurred by the contractor to buy off these contracts are subsequently recovered through variations and claims for price escalation, ostensibly due to unforeseen additional work.

Local contractors, consumer groups, and construction experts decry the perceived competition among Chinese companies, particularly SOEs that are accused of collusion, to push out other players in any major public tender. Some have argued that while



the names and identities of the Chinese construction companies may be different, they are for all intents and purposes companies run by the Chinese government. Further, these companies have used their dominance to influence the terms and conditions of contracts by, for instance, refusing to participate in a bid until suitable changes are made. While Zambia has a Competition and Consumer Protection Commission in place, unethical practices such as collusion have not been easy to detect and are often difficult to prove.⁴⁰

Unknown Terms and Conditions of the Chinese Funding

The terms and conditions attached to funding from Chinese lenders, whether through major policy banks, state-owned commercial banks, or government agencies, are not transparently disclosed, and this makes it impossible for stakeholders such as the media, the Zambian parliament, and civil society to have a clear account of the commitments that the Zambian government has made.⁴¹ Additionally, some studies on Chinese sovereign debt contracts in Africa highlight the inclusion in funding agreements of confidentiality clauses as well as the right to cancel the loan and demand immediate repayment under a wide range of circumstances, which can include political and economic developments not directly connected to the lending relationship.⁴²

Conclusion and Recommendations

The involvement of Chinese companies in the Zambian construction sector has brought with it new dynamics and challenges insofar as combating corruption is concerned. The practices, which include preferential funding support from Chinese banks and tolerance for noncompetitive behavior by Zambian authorities, present Chinese companies with unfair advantages over the local competitors, and, as Cheelo and Liebenthal indicate, this has caused supply-response distortions, particularly in the equitable distribution of public tenders and construction contracts.⁴³ The robust anticorruption campaign that President Xi Jinping is undertaking at home is not reflected in the relationships that China has with bilateral countries such as Zambia. For state-owned Chinese construction firms to even participate in or benefit from processes that are influenced by unethical and corrupt practices is paradoxical. Some of the Chinese companies, using bribes and kickbacks, also receive local political protection and are shielded from full compliance with local laws. Such political protection and support has been used to facilitate payments of certificates and to avoid sanctions from regulators.

Against this background, it is important that China use its advantaged position as Africa's largest bilateral partner and largest exporter to influence positive change by promoting transparency and accountability in the procurement of large-scale

infrastructure projects involving Chinese companies. This will require a fresh look at the noncompetitive conditions that are part of financing packages and require full adherence by both local and foreign-owned companies to public procurement laws and regulations. To be consistent with the anticorruption campaign, the Chinese government should not prohibit the full publication of terms and conditions for all project financing, including bilateral loans.

The Zambian government should equally improve its own negotiating capacity and ensure that Chinese investment complies with internationally accepted open-contracting standards in financing and procurement of large-scale infrastructure projects. It is important that the Zambian government in its engagement with Chinese lenders address the inclusion in financing agreements of clauses such as those that protect confidentiality and others that render public scrutiny, whether by the Zambian parliament or watchdog institutions, untenable. Further, the Zambian government should, to the extent possible, ensure that financing agreements are fully aligned with national laws such as those related to public procurement, competition, fair business practices, and consumer protection.

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