

THE DEMOCRATIC REPUBLIC OF THE CONGO-CHINA'S DEALS ON CONSTRUCTION OF ROADS IN EXCHANGE OF MINES

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After 32 years of dictatorship regime and a decade of various armed conflicts, the newly elected DRC government in 2006 was expected to receive US\$4 billion from the traditional Western donors for reconstruction and development to help cement peace. Based on the issue of the lack of trust in the public institutions, the West failed to provide its promised aid following its conditionality. Alternatively, Joseph Kabila approached China to secure his *cinq chantiers*. Without prior conditionality on good-governance and human rights, China agreed to provide its financial support valued at US\$ 9 billion in exchange for mines.

Using historical and comparative methods, findings reveal that the Chinese presence in the DRC goes back to the colonial era of the 19th century. The conditionality for financial support seems inadequate for post-conflict countries in need of reconstruction. Also, the Chinese non-interference policy as an alternative to the western approach needs to be transparent.

KEY WORDS: CHINESE POLICY, CINQ CHANTIERS, DRC, MINING DEALS, WESTERN CONDITIONALITY

Introduction

The Democratic Republic of the Congo (DRC) is the second largest country in Africa by area after Algeria. It was colonised by the Belgian King Leopold II from 1885 to 1908 (Congo Free State) and by the Kingdom of Belgium from 1908 to 1960 (Belgian Congo colony).

The country is enormously rich in natural resources which range from diamond, gold and oil to copper, cobalt, uranium, and coltan, etc. It is also home to the world's second largest rainforest. However, the population does not benefit from the country's natural wealth while these resources, resources that should be used to help reduce social inequalities. To reach this objective the mining sector should be managed in a transparent and sustainable way and in this regard, the United Nations Security Council reiterated in 2001 that "the resources should be exploited legally and on a fair commercialisation basis to benefit the country and people of the DRC" (UNSC, 2001). The country is indeed seeing growing interest from mining and construction companies keen to invest in the resource-rich country, much of the interest emanating from China.

The Chinese presence in the DRC goes back to the colonial era of the 19th century when the country was the Congo Free State. On 30 June 1960, when the country gained its independence, both heads of governments Patrice Lumumba and Zhou Enlai decided in their capacity to send a respective message. The first message was from Zhou, who was at the same time Premier and the head of the government of the People's Republic of China. He congratulated his counterpart, the head of the government of the Republic of Congo and by so doing expressed recognition of the newly independent state. The process of establishing diplomatic relations between the two countries formally began in August 1960 when both governments opened talks. According to the Chinese Foreign Ministry (2006), the process was stopped due to the attempted coup staged by General Joseph Mobutu on 14 September 1960, following the political crisis between president Kasavubu and Prime Minister Lumumba. When Lumumba was dismissed, President Kasavubu decided to establish "diplomatic relations" with the Taiwan Authority in October 1960. Consequently, on 19 February 1961, China recognized the dismissed government headed by Gizenga¹ arguing that it was the legitimate government of the Congo. The following day 'diplomatic relations' were established between China and the dissident government. Those relations came to an end when Gizenga joined the government in the capital city. His decision pushed China to temporarily suspend its relations which lasted until normalization on 27 November 1972 (Chinese Foreign Ministry, 2006). Since 1972 diplomatic relations between the two countries saw a constant development that was maintained and consolidated by succeeding regimes from Mobutu to Kabila the father, to Kabila the son and to current President Felix Tshisekedi.

Indeed, the country experienced 32 years of the Mobutu military dictatorship and since 1996 this has turned into a vicious circle of various armed conflicts during which infrastructures have been almost completely run down. In the aftermath of political transition, the 2006 presidential elections took place and Joseph Kabila was elected as the President and Head of State. During his presidential campaign, he had expected to receive financial support from the traditional Western donors and therefore had made promises regarding an ambitious program known as the five construction's programme or *cinq chantiers* – comprising of infrastructure, employment, housing, water and electricity, and health and education. The support was noticeably lacking and slow to materialise, as attested by the Memorandum by Lizzie Persons of Global Witness to the House of Lords, stating that donors, including the British government and the European Union, recognised at the Consultative Group meeting for the DRC in Paris in November 2007 that only a limited proportion of the money had been forthcoming while they had pledged US\$4 billion over three years (House of Lords, 2009: 262). Embarrassed by the lack of financial support to secure his five pillars of development, effectively a test by which he was to be judged in the run-up to the next presidential elections scheduled for 2011, the Kabila administration learned lessons from the China-Angolan partnership – and began looking to China for financial support. This alternative to the traditional Western donors involved

1 Gizenga was the Deputy Prime Minister in the first government headed by Prime Minister Lumumba.

an agreement between China and the DRC valued at US\$ 9 billion, which was signed in April 2008. To guarantee reimbursement, the Congolese government had promised copper and cobalt mining titles in exchange for financial support.

Countries emerging from armed conflicts face an urgent need for reconstruction and development to help cement peace. In this regard, the United Nations Security Council (UNSC) stresses the need to ensure that finance is available from the outset for recovery and peacebuilding activities to meet immediate needs, and to lay a solid foundation for longer-term reconstruction and development (UNSC, 2008). This study relies on the theory of foreign aid. According to this theory, it is claimed that: “even if it may be useful for the economic development of underdeveloped and developing countries in the initial stages, development comes through indigenous efforts and not through foreign aid” (Pankaj, 2005). The motivation is that donors play a leading role in terms of “self-interest, recipient need, and recipient merit” or there is in fact often an *altruistic motivation of foreign aid* (Civelli, Horowitz & Teixeira, 2016). However, as development is a process rather than an outcome, this study argues that financial support is needed in post-conflict countries to help rebuild destroyed infrastructure and to help domestic peace efforts. The purpose of this paper is to explain the reasons why the traditional Western donors failed to provide their promised aid to the DR Congo and how the Chinese non-interference policy became an alternative to the Western partners, by using as a case study the DRC-China’s mining deals in exchange of the construction of roads. Specifically, the paper attempts to analyse the mining deals as a win-win partnership and to demonstrate how the Chinese partnership lacked transparency.

Using a historical and comparative methods approach, the paper compares two aid approaches: the Western aid approach known for its conditionality and selectivity in focusing on good governance and respect for human rights as a prerequisite for the loan, and the Chinese aid approach known as China’s foreign policy of mutual respect for sovereignty and territorial integrity. I also use the historical method to give a brief description of the Chinese presence in the DRC given that the colonial era history and subsequent relations between the DRC and China.

Hence, this paper begins with a background of the relations between the DRC and China, followed by an analysis of the mining deals in exchange for road construction as a win-win partnership. It then focuses on Chinese partnerships and the lack of transparency. Next, it presents the Chinese non-interference policy as an alternative to the Western partners. Lastly, concluding remarks will be presented.

Background to the relations between the DRC and China

This section explores early relations between the DR Congo and China. Contacts started following the need of Leopold II to negotiate labour recruitment from China in 1887.

Indeed, as a result of the Berlin Conference, from 15 November 1884 to 26 February 1885, the African continent was divided and colonial recognition was ensured. Thus, the Congo became the private property of the Belgian King Leopold II and he renamed it the Congo Free State. Following the need to build the Congo railway, King Leopold II sent his emissaries to China to recruit labourers for his private property, based on diplomatic relations

between Belgium and China. Anshan (2012: 76) argues that the Qing court government in China felt that recruitment should be allowed for the Belgium colony following the agreement between Belgium and China, but not for the Congo Free State. As the latter was not a Belgian colony as such, King Leopold II's request was refused. In 1892 contacts were however established with Macau-based Portuguese labour traders to recruit labour on behalf of the Congo Free State. As a result, around 536 Chinese men and six boys were recruited by Portuguese firms in inland Guangzhou under the following contract conditions:

- those who wished to work in the Congo Free State had to sign a three-year contract with the employer;
- during the contract term, workers had to obey the employer and were not to boycott;
- upon arrival in the Congo, each Chinese labourer would receive 45 francs in monthly pay;
- the employer would provide room and board for the Chinese workers;
- the employer would pay the workers' round-trip fares;
- if a Chinese worker wished to remain in Congo at the end of his contract term, he would receive 400 francs in cash from his employer (Anshan, 2012: 76).

The Chinese who were recruited were shipped to the Congo where they were assigned to build the Congo railway, by logging trees and hauling rocks. In order to legalise the recruitment process of Chinese labourers for the Congo Free State and therefore avoid secret recruitment, an agreement was signed in Beijing between China and Congo Free State on 10 July 1898. The *Compilation of Old Sino-Foreign Treaties and Agreements* edited by Wang Tieya stated that "Chinese citizens can at will move to and live in the Congo Free State. All properties, movable or unmovable, can be purchased or traded. Whether for shipping, business, crafts, or arts, Chinese citizens will receive the same treatment as citizens of the most favourable countries" (Tieya, 1957: 785 cited by Anshan, 2012: 77). Based on this provision, Chinese labourers were recruited successfully four times: in 1901, 1902, 1904, and 1906. In striving to build the railway as quickly as possible, the colonial administration mistreated workers. As a result of bad working conditions most of the Chinese labourers died in the forest. In this regard, Anshan highlights that:

"the Chinese laborers were assigned to build the Congo railway. They worked under the blazing sun and extreme heat, logging trees in the dense forest, and hauling rocks to pave railroads. The working conditions were extremely harsh; workers faced a terrible climate, circulating diseases, a poor diet, and mistreatment by foremen. Some laborers fell ill while others escaped or rebelled. In the end, most of the laborers died in the forest. There were reports on the miseries of these Chinese laborers published in Hong Kong newspapers at the time, which caused a stir in China." (Anshan, 2012: 77)

However, the situation of mistreatment toward Chinese labourers was not unique to the Congo Free State, as a similar situation was observed in South Africa, where Chinese labourers had encountered the same difficulties. Yoon Jang Park describes how Chinese workers tried to protest their situation:

“Work conditions for Chinese workers in the Transvaal mines were dangerous and life-threatening. According to various reports, the South African gold mines “lost” nearly one in 20 of their Chinese indentured mineworkers (Yap and Man, 1996: 117-18). Thousands were killed in mining accidents; many others died slowly, from gastrointestinal and respiratory diseases. Several thousand others were permanently disabled by loss of limbs or disease. Appalling work conditions and mistreatment were met with both active and passive resistance. Chinese workers played deaf, feigned illness, and spread rumours. They engaged in work stoppages, vandalism, sabotage, riots, escapes, trespass (into surrounding white homes), and murder (of white foremen). Nearly 50 Chinese mineworkers committed suicide.” (Park, 2017: 91)

After 23 years of brutality by the colonial administration, which led to a huge international scandal, Leopold’s rule in the Congo had become a huge embarrassment. He was forced to cede control of the Congo Free State to the Kingdom of Belgium. The Belgian parliament voted to annex Congo in 1908 as its own colony known as the Belgian Congo (Turner, 2013: 1; Strickland, 2013: 108; Savage, 2006: 3). The Kingdom of Belgium renamed the colony *Congo Belge* and dominated it for 52 years (from 1908 to 30 June 1960). When the Belgian Government took over the administration of *Congo Belge*, the brutality significantly decreased. It also governed *Congo Belge* in a paternalistic way, which means that it managed the affairs of a country in the same manner as a father dealing with his children (Wallace, 1961: 32).

China identified itself as a partisan of the world’s oppressed and exploited. That is why it maintained close relations with the Congolese during the struggle for independence. Thus, on Independence Day, China recognised the new Republic of Congo. Amid political crises that marred Congo between 1960 and 1965, China took an ambiguous position. Officially China stood by the government, while secretly supporting the secessionist movement as a result of its enduring ties with the country.

It is important to mention that Congolese independence in 1960 and the following crises took place during the Cold War, during which Lumumba clearly associated himself with communist ideals at the expense of Western interests. Lumumba coalesced with Pan-African leaders such as Kwame Nkrumah. Many saw in this alignment as a sign that the West would lose control over a strategic country in the centre of Africa. Philipp Gieg argues that it thus came as no surprise that when Lumumba was allegedly assassinated, China blamed the United States and Belgium for the crime. Antoine Gizenga, then Deputy Prime Minister, formed a rebel government in Stanleyville (Kisangani) which China immediately recognised as “the lawful Congolese government to exercise powers” (Gieg, 2016: 260). When Gizenga united with the government in Leopoldville/Kinshasa to become the Deputy Prime Minister in the Government headed by Cyrille Adoula, China shifted its focus to “the Simba rebellion” created in July 1963 by Pierre Mulele (another ‘Lumumbists’). The support was later extended to other ‘Maoist’ rebels in the Kwilu Province who also revolted against the government in Kinshasa (Kabemba, 2016: 76; Kasuka, 2013: 181; Gieg, 2016: 260).

It was in that series of chaotic moments characterised by internal crises and secessionist movements that the then Chief Commander of the army, General Joseph Mobutu staged

a *coup d'état* on 24 November 1965 and declared himself Head of the State. In response to the *coup*, Laurent-Désiré Kabila and others, who were Lumumba supporters, created in 1967 a secessionist Marxist movement called the People's Revolutionary Party (PRP). This Party was supported by China as the Congolese government itself established 'diplomatic relations' with the Taiwanese Authority. The Chinese support to rebel groups and to Lumumba supporters affected the relations between both countries and as a result China's foreign policy became less and less relevant for the Congo. The PRP was defeated by Mobutu aided by mercenaries, in 1980 and fled to Dar es Salam in Tanzania. However, between 1970 and 1990, China began providing social support to the government of President Joseph Mobutu. During this period, China also invested in agriculture focusing on rice and it built the parliament and the national football stadium in Kinshasa (Kabemba, 2016: 76). Thus, from 1972 onwards President Mobutu began to see the Chinese in a different light; he extended diplomatic recognition to China and paid a visit to Beijing in 1973 where he met with Chairman Mao Zedong and received promises of \$100 million in technical aid that was declared to be reinvested in joint Chinese-Zairian projects (Kasuka, 2013: 181).

In early 1990 the country was politically unstable and this slowed the relationship between China and Zaire. In 1996 a coalition of rebel movements, the Alliance of Democratic Forces for the Liberation of Congo-Zaire (AFDL, *Alliance de Forces Démocratiques pour la Libération du Congo-Zaire*), was led by a former Maoist rebel Laurent-Désiré Kabila. The AFDL, backed by a coalition of African states, successfully overthrew the government of President Mobutu in May 1997 (Tunamsifu, 2015: 69). Laurent-Desire Kabila proclaimed himself Head of State and renamed the country the Democratic Republic of the Congo (DRC). Soon after, relations between China and the DRC gained new momentum and trade agreements were signed. Laurent-Désiré Kabila rose to the presidency, and to help foster his relationship with China, he decided to send his son Joseph Kabila to China for advanced military training at the National Defense University in Beijing.

From August 1998 onwards and as a result of continued armed conflicts supported by the neighbouring countries of Uganda and Rwanda "China followed an approach of slow penetration preferring to rely on individual Chinese traders to purchase copper and cobalt directly from artisanal miners in the DRC mineral rich Katanga Province" (Kabemba, 2016: 76).

On 16 January 2001, President Laurent-Désiré Kabila was assassinated and he was succeeded by his son. Joseph Kabila had been trained in China and he immediately maintained good political relationships with China for the potential it offered over a perceived lack of international support. Considering that President Mobutu had left the country in economic chaos with an estimated foreign debt of more than \$5 billion and over ten years of armed conflicts that had affected the country's development and infrastructure, President Joseph Kabila was hesitant to increase foreign debt. Thus, in line with his vision on infrastructure projects, during his presidency, the DR Congo-China relationships were maintained because of the independence and sovereignty it offered for DR Congo. Following the presidential elections which took place on 30 December 2018, Mr Félix Antoine Tshisekedi Tshilombo was declared the winner. This election marked the first

ever peaceful transfer of power in which a former president left office to be replaced by an elected successor. After the inaugural ceremony on 24 January 2019, the elected president started with an emergency program for the construction of flyovers to reduce traffic jams in Kinshasa. The construction of flyovers in the capital city was entrusted to two Chinese construction companies (China Railway Engineering Corporation and China Guangdong Provincial Changda Highway Engineering Co., Ltd). Firm links with China were therefore maintained under President Tshisekedi since the search for partners to embark on the reconstruction process was very urgent for the development of the country.

Chinese non-interference policy as an alternative to the Western partners

Some facts may explain the reasons why the Western partners have failed to provide their promised financial support to the elected post-conflict Congolese government after 2006 and how China became the alternative.

Reasons of failing to provide promised financial support

Foreign debt

Since its independence on 30 June 1960, the DRC, has been confronted with many internal crises due to a range of factors: the lack of legitimacy of its leaders and institutions, to the undemocratic means of accession to power, and the lack of proper orientation of foreign aid and foreign debt. On top of that, the country has also been confronted by large-scale corruption and gross human rights violations.

President Mobutu ruled the country from 1965 to 1997. While his regime was characterised by corruption and poor management, he was to remain in power because of the military and economic support that he received from France and the United States. After 32 years of military dictatorship the country was plunged into various armed conflicts (Tunamsifu, 2014: 94-95). As a result of such a revolutionary attack, Mobutu fled to Morocco in May 1997, leaving the country with a foreign debt of more than \$5 billion while his personal fortune was estimated to be well over the country's foreign debt. As a result, it is clear that western partners could not argue that foreign debt or foreign aid were provided following good politics adopted by Mobutu's administration. If President Mobutu was able to amass a huge personal fortune, it was in large part with the blessing of patrons in the West who were keen to ensure his support during the Cold War. In the researcher's opinion, the inflation, the state of infrastructure and the political and economic crises in the country were among the factors that show that foreign aid had little impact on the country's economic development. Bearing this in mind, the remaining question is how could Mobutu continually receive foreign aid and contract additional debts with little or no benefits to the intended aid recipients when the western approach is presumably based on good governance?

Lack of trust in public institutions

Following a global and inclusive agreement on transition in the DRC, a government of national unity and transition was established on 30 June 2003 (under Joseph Kabila), based on a transitional power-sharing mechanism. Subsequently, warlords who had al-

legedly committed international crimes and serious international humanitarian law violations and individuals with known records of human rights abuses were also integrated into the government and the diplomatic corps. Other alleged perpetrators from rebel groups were promoted or offered important posts in the army of the DRC and National Police. The appointment of rebel leaders to higher ranks thus raised the issue of lack of trust in public institutions (Tunamsifu, 2016: 153).

In 2006 the country's first multi-party presidential and parliamentary elections did not ease these frustrations because many former rebel leaders who were suspected of committing crimes were candidates. Those who won the parliamentary election and others who were in partnership with Joseph Kabila for the presidential elections were again part of the newly elected institutions. As a result, in the researcher's opinion, the Western partners were not motivated to provide financial support in the aftermath of 2006 elections.

Western approach to foreign aid

Each State has the primary responsibility for its development. To achieve the countries' development goal, each elected government has the right to implement the ambitious program for which it has been elected. As there is no government that can achieve this goal in isolation, the State might agree to cooperate with two or more countries in pursuing common goals, based on mutual trust and reciprocal cooperation. In this regard, Article 3(3) of the Declaration on the Right to Development stipulates that:

“States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.” (Declaration on the Right to Development, 1986)

However, the Western approach to foreign aid is characterised by political conditionality and aid selectivity. These ideas and ideologies are nowadays viewed as necessary conditions for enhanced aid effectiveness and as useful tools for promoting democratic governance and institutional reform in developing countries (Broich, Szirmai & Adedokun, 2019: 44). Conditionality as defined by Johnson & Zajonc cited by Dennis, is a set of requirements, determined in the grant or loan agreement, which must be implemented prior to further disbursement of the loan or grant (Dennis, 2008: 9). In this regard, the “conditions are designed to ensure the funds are used properly” (Dennis, 2008: 8). Thus, the requirements of effective good governance and the respect for human rights as a prerequisite for the loan or grant by the West merely means that the Western partner will interfere in the domestic affairs of the recipient country because there is no way to monitor or appreciate the level of good governance without interference.

Such conditionality determining which partners will receive the loan or grant does not comply with the aforementioned Article 3(3) of the Declaration on the Right to Development. The assumption that the loan would be misused simply testifies to a lack of

confidence. However, if the goal of the financial aid or grant is development, as argued by Wang and Ozanne, the aid should be targeted to remove the constraints to development, rather than making the removal of those constraints a prerequisite for the receipt of aid (Wang & Ozanne, 2010: 23). Bearing in mind Article 2(1, 7) of the United Nations Charter,² most States are unwilling to sacrifice elements of their sovereignty for the sake of human rights by authorizing a State or foreign authority to intervene in their domestic affairs. Similarly, Shotwell, as cited by Lauren, argues that States are jealous of their sovereignty. Lauren further notes that any expression of foreign interest in the welfare of its citizens can be regarded as interference in their own affairs, which is seen as unacceptable (Lauren, 2011: 188). However, in the modern international legal order, interference in a sovereign state is allowed a state commits serious human rights violations including genocide, war crimes, ethnic cleansing, or crimes against humanity. When such crimes are being committed, based on Article 4(h) of the African Union Constitutive Act, the African Union has the right to intervene in a Member State following a decision of its Assembly. When failing to do this, Article 4(j) of the AU Constitutive Act provides that Member States of the African Union have the right to request intervention from the Union in order to restore peace and security.

Indeed, the Western conditionality approach to foreign aid could have been acceptable if it had simply encouraged beneficiary States to improve their governance and human rights situation. Instead this behaviour has delayed the development of many countries in Africa. More precisely, Wang & Ozanne state that:

“Poverty, corruption and inefficiencies in government management are interdependent. Because underdevelopment and poor governance are two sides of the same coin, it is theoretically flawed to make receipt of development aid conditional on good governance. If countries did not have these governance problems, foreign private capital would flow into them more freely and there would be less need for aid. Aid should be used to help solve such problems, but instead African countries are told by the World Bank and its followers that they must first commit to solving the problem in government first, otherwise aid will not be forthcoming. This partly explains the failure of Western aid in Africa.” (Wang & Ozanne, 2010: 23)

When the Western partners fail under Article 3 paragraph 3 of the Declaration on the Right to Development and Article 2 paragraphs 1 and 7 of the UN Charter, the Chinese approach without political conditions seems to be an alternative as it is based on mutual respect and benefits. In the same vein, Broich, Szirmai and Adedokun point out that “in the eyes of African recipient governments, China’s aid is viewed as a welcome alternative to Western aid linked to political conditionality and aid selectivity – despite the fact that much of Beijing’s development assistance in Africa is tied to the purchase of Chinese

2 Article 2 paragraph 1 of the UN Charter stipulates that ‘[t]he Organization is based on the principle of the sovereign equality of all its Members’. Paragraph 7 provides that “[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”.

goods and services or to Chinese access to African natural and energy resources” (Broich, Szirmai & Adedokun, 2019: 44).

Chinese approach to financial support

The Chinese aid approach is well known because it concentrates on infrastructure building by avoiding conditionality based on effective good governance and the respect for human rights. In order to prevent the misuse of financial support and achieve the development objectives, China has developed a strategy on direct infrastructure development in the recipient countries. The Chinese approach was developed by the Chinese Communist Party in the 1940s as the driving force behind China’s foreign policy – also known as the Five Principles of Peaceful Coexistence. They include ‘mutual respect for territorial integrity and sovereignty, non-aggression, non-interference in others’ internal affairs, equality and mutual benefit, and peaceful coexistence’. These principles were formulated as a major pillar of China’s foreign policy toward all countries. Richardson argues that these principles were (and still are) a guide to action that explains why China forges and maintains relationships with a large number of States (Richardson, 2010: 5).

Comparing the Western foreign aid approach characterised by political conditionality and aid selectivity, the Chinese aid offers a valid alternative. As pointed out by the then President of Senegal, Abdoulaye Wade (2008), the Chinese aid is welcome because it is offering new opportunities for Africa after many years of Western aid (Wang & Ozanne, 2010: 23). The Angolan government observed that the Chinese partnership comes with “no humiliating conditions” and “surpasses the contractual framework imposed by European and traditional markets (IBP USA, 2015: 86).

In the case of the DRC, if the Western partners had delivered their promised financial aid to the then elected President Joseph Kabila in 2006, he would not have faced difficulties securing the five construction sites known as the *cinq chantiers*. As an alternative to the Western aid refusal, the Chinese government was then approached in order to try to implement his ambitious electoral program. A deal was signed based on mutual respect and non-interference in domestic affairs to construct roads, railway tracks, airports, schools and hospitals, etc. in exchange for the exploitation rights for copper and cobalt. This is the point that marks the difference between the Chinese approach to aid and that of the West. According to Broich, Szirmai and Adedokun “[t]his makes China a major financier and builder of infrastructure and holds promise for the provision of the necessary financial resources to attain the SDGs in the area of physical infrastructure” (Broich, Szirmai & Adedokun, 2019: 44).

Mining deals as a win-win partnership

After Joseph Kabila had announced his ambitious program for the Republic known as the *cinq chantiers* to boost the Congolese economy he began seeking the funding to bring the project into reality. As the Western partners failed to deliver on their promised financial support to the Congolese government, Joseph Kabila approached the Chinese government (Landry, 2017: 4; Global Witness, 2011: 11). A deal for massive ‘resources-

for-infrastructure' between a consortium of Chinese state-owned enterprises (Chinese State Construction companies) and the DRC's state copper company was signed in September 2007. The Memorandum of Understanding between the parties represented the first stage of negotiations of a deal granting the consortium a 68 % stake in a new joint venture – the *Sino-Congolais des Mines* (Sicomines) – with the DRC's Gécamines holding the 32 % other. In return, the Chinese consortium would provide the Democratic Republic of the Congo with grand infrastructure projects financed by Eximbank (Landry, 2017: 4):

“The Chinese partners to the deal promised to provide \$9 billion finance for nationwide construction of roads, railways, hospitals, schools and dams, as well as for mine development. In exchange, the Congolese government pledged to provide the companies with up to ten million tonnes of copper and hundreds of thousands of tonnes of cobalt from mines in the south-eastern province of Katanga. Total revenues from the mines could come to at least \$40 billion, even reaching as high a figure as \$120 billion. This amounts to roughly four to eleven times Congo's GDP.” (Global Witness, 2011: 4)

The International Monetary Fund (IMF) protested because the ‘clause de garantie’ inserted in the contract meant that if the DRC mines were not able to pay back the \$9 billion Chinese investment, they would seek payment in whichever means possible. The IMF strongly believed that the DRC would not reach the *point d'achèvement de l'initiative PPTÉ*. The deal was thus revised from \$9 billion to \$6 billion (AfBD, OECD, UNDP, UNECA, 2011: 124).

However, the deal was praised by both the Chinese government and the administration of Joseph Kabila. Following the deal, the DRC was to be provided with much-needed infrastructure, valued at US\$ 6 billion, most notable of which would be 3,200 km of railway tracks and the construction of 4,000 km of roads as well as two hydroelectric dams, airports, schools and hospitals. In exchange, the Sino-Congolese joint venture Sicomines would have the right to access to concessions of copper and cobalt to extract 10.6 million tons of copper and 626,619 tons of cobalt (Edinger & Jansson, 2008: 4). Initially, the projects on infrastructure would cover only US\$ 3 billion (as opposed to the promised US\$ 6 billion). Following pressure from the Bretton Woods institutions (World Bank and IMF) in 2008, the amount was reduced to US\$ 1.053 billion. According to the *Agence congolaise des grands travaux* (Congolese Agency for Major Works), on 6 November 2019, US\$ 800 million of infrastructure projects have so far been realised (Amédée, 2019).

For the Congolese government, the deal was a good opportunity to realize the construction of those buildings highlighted in the presidential program. The Chinese win-win policy focusing on infrastructure aimed to contribute visibly to the reconstruction of the DRC destroyed by years of dictatorship and various armed conflicts. Nonetheless, the process of implementing this policy has shown a clear lack of transparency in the DRC. That is why the following section concentrates on Chinese partnerships and the lack of transparency. Because if this policy on “resources-for infrastructure” was transparent, it would be a very rewarding policy, as it focuses on mutual respect.

Chinese partnership and the lack of transparency

The people's demand for transparency in public affairs has become the real battle in many countries, in an attempt to fight an administration that used to avoid democratic accountability. We talk about transparency in public administration when decisions taken and enforced have respected the principle of legality and when they are therefore freely accessible to those who will be affected by such decisions (Tunamsifu, 2014: 241). In addition, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) argues that transparency also means that enough information is provided and that it is provided in easily understandable forms and media. In other words, transparency is related to the fact that citizens do not need public or official information to be interpreted. According to Birkinshaw, as cited by Dacian, the issues of openness and transparency are tightly connected with free access to public information, as the second is a condition for the first. The concept typically means having access to files or to information in any form, in order to know what the government is doing (Dacian, 2006: 26). Often, a deal that engages a State follows an international bidding process, negotiated and signed by the official member of the government on behalf of the State. However, the deal between the Chinese State construction companies and the DRC's state copper companies was not signed by an official member of the Congolese government (Tunamsifu, 2014: 248). According to Global Witness, negotiations took place behind closed doors, without any open bidding and they were led by a small cluster of Congolese government representatives. They included Katumba Mwanke, the then powerful politician close to President Joseph Kabila but without an official government position (Global Witness, 2011: 5). Moreover, contracts about the deal were not published. In addition to that, Global Witness found that the original Memorandum of Understanding (September 2007), the more detailed Collaborative Agreement (April 2008), and the renegotiated supplementary agreement (October 2009) have never been publicly released (Global Witness, 2011: 5).

Article 100(2) of the 2006 DRC Constitution, as amended by Law No. 11/2011 of 20 January 2011, provides that "the Parliament controls the government, the public companies as well as the public establishments and the [public] services". Nevertheless, the Members of Parliament who have the mission to monitor governmental actions, and the members of the government, who might represent the government during the negotiations, were not aware of the main contract. The deal was indeed entirely governed by the presidency while Article 91(5) of the Constitution provides that "the Government is responsible before the National Assembly". That is why Global Witness argues that the deal was not more transparent than many other mining deals signed by the Congolese government – lack of information made it impossible for the Congolese to judge how beneficial it will be for the country (Global Witness, 2011: 4).

Finally, after many advocacy efforts calling on the government of the DRC to publish natural resource contracts, on the 20th of May 2011 a Prime Minister's Decree n° 011/26 on the obligation to publish all contracts related to natural resources was signed by the Prime Minister, the Minister of mines, of oil, of environment, nature conservation and tourism.

Article 2³ of the Decree commits the government to disclose all natural resource contracts within 60 days of their coming into effect. This provision specifically demanded the Minister in charge of the sector to effectively play his role and therefore avoid the involvement of individuals without an official government position. Unfortunately, such an obligation involved contracts related to natural resources signed before the aforementioned Decree no 011/26 came into force, but it did allow the population to be informed and to supervise future work undertaken by the public administration (Tunamsifu, 2014: 249). As the mining sector, which is supposed to provide the State with the substantial revenues, has not yet met expectations, the principle of transparency was revised and finally clearly defined under Article 1(54bis) of the law No 18/001 of 9 March 2018 amending and supplementing law No 007/2002 of 11 July 2002 on the Mining Cod. It states that:

“...[transparency is a]: set of rules, mechanisms and practices making declarations and publications compulsory, by the State and by extractive companies, in particular those of the mining industry, of revenues and payments of all kinds, including, in particular, revenues from mining operations and transactions, publication of production and sales statistics, publication of contracts and disclosure of beneficial owners of mining assets as well as data on resource allocation from the mining sector. It also extends to compliance with the obligations of procedures for the acquisition and alienation of mining rights.”⁴

Concluding remarks

After 32 years of dictatorship and a decade of various armed conflicts, the newly elected government in 2006 was expected to receive financial support from the traditional Western donors. As former leaders of rebel groups were among the elected members of the parliament, and others occupied important positions in the army and the national police, this situation raised the issue of a lack of trust in the public institutions.

The western conditionality approach on aspects of democracy, good governance and respect of human rights fails to recognise that most of African countries such as the DR Congo are post-dictatorship regimes and post-conflicts countries. As Jonker and Robinson argue: “the conditionality approach practised by the West rightly recognises the importance of good governance for the effectiveness of aid, but sometimes fails to recognise that African countries are in different phases of growth and development, and

3 Translated from the original in French: Article 2 Décret no 011/26 du 20 Mai 2011 Portant Obligation de publier tout Contrat ayant pour objet les ressources naturelles « Tout contrat conclu entre l'Etat ou une Entreprise du Portefeuille et un ou plusieurs partenaires privés nationaux ou étrangers, de droit privé ou public, et ayant pour objet la recherche, l'exploration ou l'exploitation d'une des ressources naturelles définies à l'article 1er ci-dessus, est publié par le Ministre en charge du secteur duquel relève l'administration de la ressource naturelle concernée dans les soixante (60) jours francs qui suivent la date de son entrée en vigueur. »

4 Translated from the original in French: Article 1(54bis). Transparence: ensemble de règles, mécanismes et pratiques rendant obligatoires les déclarations et les publications, de la part de l'Etat et des entreprises extractives, en particulier celles de l'industrie minière, des revenus et paiements de tout genre, comprenant, notamment les revenus des exploitations et des transactions minières, la publication des statistiques de production et de vente, la publication des contrats et la divulgation des propriétaires réels des actifs miniers ainsi que les données sur l'allocation des ressources provenant du secteur minier. Elle s'étend également au respect des obligations de procédures d'acquisition et d'aliénation des droits miniers.

that often inadequate governance is a consequence of the country's development phase" (Jonker & Robinson, 2018: 13-14).

The Chinese approach is appreciated for the mutual respect and economic benefits it engenders, but the DR Congo-China's deals were not transparent. If the policy on "resources-for infrastructure" can be transparent, it will be highly advantageous as it focuses on mutual respect. This approach prevented the Congolese parliament from monitoring the deals on how beneficial they were for the development of country. That is why the Prime Minister's Decree no 011/26 of May 2011 from then onwards commits the government to disclose all natural resource contracts within 60 days of their coming into effect. As the expectations have not yet been met, to clearly define the principle of transparency, the Mining Cod was finally amended in 2018.

Finally, because the Chinese approach is less transparent, the West may adopt new strategies to support transitional justice processes, especially investing in institutional reform, vetting and capacity building processes and afterwards impose its conditionality focusing on good governance and respect for human rights. Providing financial support to transitional justice processes may be very helpful in the aftermath of armed conflict or a dictatorship, in order to initiate the lustration process that includes limiting access to public institutions for politicians and members of judicial institutions who are corrupt or guilty of misconduct, and members of the armed or security forces of the State who have committed crimes under the past authoritarian regime (Tunamsifu, 2016: 58). As the recipient countries require capable trustworthy leaders, investing in capacity building may help trained leaders to identify suitable solutions that work and that are sustainable in their own countries. Following the institutional reform and vetting processes such capacity building efforts can create an improved institutional environment and begin to address the issues of governance and human rights. Therefore, this may help to improve governance, help to fight corruption and help to resolve the challenges of justice in post-conflict countries – it is only thereafter that the Western approach might be met.

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