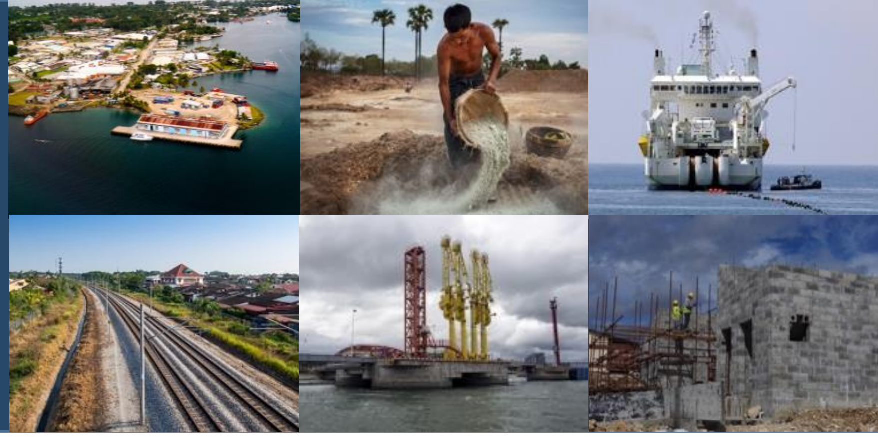
BRI MONITOR

POLICY BRIEF: EXAMINING TRANSPARENCY IN CHINESE LENDING



BRI Monitor is a joint initiative started by think tanks in Asia and the Pacific to track the impact of China's Belt and Road Initiative projects. A key aim is to promote transparency and accountability around the terms and full costs to countries and communities. With support from the Center for International Private Enterprise, BRI Monitor partners developed a new methodology to assess the level of disclosure about various infrastructure projects and contract data. This can help identify governance gaps that make countries vulnerable to corrosive capital situations.

IMPLICATIONS OF CHINESE LENDING

Lending agreements extended by China's state-controlled banks as part of its flagship Belt and Road Initiative (BRI) continue to draw global attention, as more recipient countries reveal they are facing default or other problems. The deals with countless governments to help build huge infrastructure projects, such as high-speed rail lines and mining operations, have helped China become one of the world's main creditors. However, the ultimate cost and benefits of the huge projects are typically difficult to determine, as both Chinese lenders and sovereign debtors rarely disclose key terms and clear progress reports to citizens. Construction quality issues, refusal to use local labor, and environmental threats are said to be common challenges.

Amid speculation over whether China will change its approach to these situations in the future, there is a push for greater awareness to help eliminate risk. This includes increased efforts to understand how China writes its debt contracts and the potential implications. Top researchers are attempting to build on the findings of an in-depth joint study released in 2021 by prominent think tanks and universities. Experts systematically examined 100 Chinese loan agreements with 24 countries. Among the key findings: Chinese contracts impose unusually expansive secrecy clauses compared to most other countries, they frequently require collateral arrangements that disallow restructuring, and they often include language that appears to give China a level of foreign policy influence. There is growing concern that such lending conditions could lead to democratic backsliding for some funding recipients and leave them vulnerable to political or economic manipulation. This in turn could make them less eligible for constructive capital opportunities with foreign investors, where investments are well-governed and respond to market voids.

The BRI Monitor initiative is a growing program to track and monitor Chinese projects in Southeast Asia and beyond. Partner organizations are currently analyzing publicly available information for 20 projects in Asia and the Pacific. Among the locations: Philippines, Cambodia, Malaysia, Papua New Guinea, and Myanmar. As part of their efforts to advance knowledge about Chinese lending practices and inform decision-makers and citizens about potential governance gaps, the partners have a website with numerous case studies and a heat map to emphasize areas of concern. They are also launching a new policy brief series to highlight lessons learned and areas for further study. Philippines projects associated with the country's "Build, Build, Build" program and a river dam deal in Cambodia are among the focuses of this first policy brief.

CONSTITUTIONAL CHALLENGES IN THE PHILIPPINES

The Chico River Pump Irrigation Project (CRPIP) is intended to provide a stable water supply to surrounding communities and has been mired in controversy for years, amid claims that confidentiality clauses with Chinese lenders violate the Philippines Constitution. It requires that that "information on foreign loans obtained or guaranteed by the Government shall be made available to the public." Groups that unsuccessfully petitioned the country's Supreme Court assert that the confidentiality clause was "inimical to national interest." They point to the following language in the loan agreement:

> "The Borrower shall keep all the terms, conditions and the standard of fees hereunder or in connection with this Agreement strictly confidential. Without the prior written consent of the Lender, the Borrower shall not disclose any information hereunder or in connection with this Agreement to any third party unless required to be disclosed by the Borrower to any courts of competent jurisdiction, relevant regulatory bodies, or any government institution and/or instrumentalities of the Borrower in accordance with any applicable Philippine law."

A similar controversy can be found in the case of the New Centennial Water Source-Kaliwa Dam Project (NCWS-KDP). The project is jointly financed by Chinese Official Development Assistance (ODA) and funds from the Philippine government. In contrast with other projects in the Philippines funded through ODA from Japan and South Korea, the

NCWS-KDP's interest rate is twice as high and with half the amount of time to pay back funds. As with the Chico River Pump Irrigation Project, the loan agreement contains a strict confidentiality clause that appears to be at odds with public disclosure laws.

CAMBODIA: TATAY RIVER HYDROPOWER DAM

When clear information about government procurement processes and spending is not made publicly available, it can be nearly impossible for civil society to detect irregularities. This can prove especially problematic when tracing financial flows and determining how much money has been spent on a project, such as Cambodia's Tatay River Hydropower Dam. When the deal was signed in 2010, it was reportedly the largest investment project by a Chinese state enterprise in Cambodia at that time and figures associated with the project have risen over the years. While several early reports from independent organizations listed the project budget to be around $200 million, a series of later reports listed it to be as high as $540 million.

It is unclear whether the original estimates were simply misinformed, the project experienced delays, or took longer than expected, and what implications this had on the overall project budget. Without a clear understanding of costs, stakeholders cannot track potentially illicit financial flows and conduct a cost-benefit analysis to determine whether the millions of dollars were well-spent. When key responsible stakeholders – project owners, Chinese lenders, and governmental development agencies – fail to release the official financial reports and the updates on the reason for changes, it is harder for their constituents to hold them accountable.

INFORMATION VOIDS: A BREEDING GROUND FOR CORROSIVE CAPITAL

There is increasing evidence that countries that do not allow public access to information around procurement processing and budgetary matters have more corruption issues and are more vulnerable to corrosive capital situations, which can widen governance gaps and weaken democracy. Recent examples include Papua New Guinea, where BRI Monitor partners cited challenges with a lack of right to information laws. BRI Monitor researchers had great difficulty accessing and collecting primary data on the Kumul Submarine Cable Network Project (KSCNP), including the terms and conditions associated with the loan, tendering and engagement of contractors, project implementation, and the current status of the project. They faced similar obstacles obtaining key project information and documents on the Pacific Maritime Industrial Zone and Ramu 2 Hydroelectricity Project. The implementation of a right to information law would provide a legal basis for more public disclosure and oversight.

In certain instances, elites in host countries are suspected of disincentivizing information disclosure. In Myanmar, military-controlled state-owned enterprises (SOEs) in extractive industries are not required to disclose key financial information, leaving these projects vulnerable to elite capture. Under Myanmar law, SOEs are permitted to retain up to 55% of their net profit of extractive sector revenues in "Other Accounts," where it is not recorded in the national budget and there is little oversight of the management or use of these accounts. A 2019 government directive mandated the closure of the Other Accounts; however, due to the overall lack of public data on SOE finances, it is unknown whether this was actually carried out.

TAKEAWAYS AND RECOMMENDATIONS

Countries that embrace measures to keep citizens informed about how public funds are spent and maintain solid records around procurement processes are considered more accountable and thus more attractive to a wider range of foreign investors. Demonstrating a commitment to transparency and addressing information flow issues are two critical steps policy makers can take to encourage sustainable economic development. For example, many countries have freedom of information laws that are not often obeyed. Among the possible actions countries can take: adherence to universal standards, such as the Construction Sector Transparency Initiative's Infrastructure Data Standards.

Experts at the Center for International Private Enterprise (CIPE) are among those that have been tracking investment patterns for years and routinely provide recommendations to help governments identify gaps in their policies and practices that may invite corrosive capital situations and ultimately limit their potential for more constructive capital investments. Proven efforts include the adoption of specific oversight mechanisms, like parliamentary oversight or an independent auditing authority, and regulatory frameworks, like right to information laws, that may help increase transparency and reduce corruption. Commitment from donor countries to follow through on their existing transparency standards and procedures can also deter secrecy and corruption. The experts also encourage civil society organizations and the media to play a more significant role in monitoring and dialogues about government spending, foreign investments, and the impact on communities, local businesses, and other economic aspects.

*BRI Monitor founding members include the Institute for Democracy and Economic Affairs (IDEAS) in Malaysia, Future Forum in Cambodia, Institute of National Affairs (INA) in Papua New Guinea, Sandhi Governance Institute in Myanmar, and Stratbase ADR Institute for Strategic and International Studies (ADRi) in the Philippines. To view their latest research and sign up for newsletters and briefs, visit **brimonitor.org** or email **contact@brimonitor.org**.*