RIMA 2022

GLOBALIZATION, INFRASTRUCTURE INVESTMENT AND DUE DILIGENCE

REGIONAL INFRASTRUCTURE MONITORING ALLIANCE (RIMA)

urgewald Growthwatch clean

Regional Infrastructure Monitoring Alliance (RIMA) is an independent, informal platform that follows anti-colonial, democratic, gender-sensitive principles. Our credibility and independence are our core strengths. RIMA's objectives are to expose safeguarding violations and banks' policy and goverrnance shortcomings. We collect evidence in the form of case studies, which we use to push banks to improve their safeguards and policies. In doing so, we amplify regional voices and confront the responsible shareholders, institutional actors, and governments.

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List of Abbreviations

AC	Accountability Counsel
ADB	Asian Development Bank
AIIB	Asian Infrastructure Investment Bank
AUM	Assets Under Management
BELA	Bangladesh Environmental Lawyers Association
BRI	Belt and Road Initiative
CSO	Civil Society Organizations
EIA	Environmental Impact Assessment
EPC	Engineering, Procurement and Construction
ESG	Environmental, Social and Governance
ESI	Elisabeth Seibert Initiative
FDI	Foreign Direct Investment
FIs	Financial Intermediaries
FPIC	Free Prior Informed Consent
G2G	Government to Government
GCEL	Global Coal Exit List
GDP	Gross Domestic Product
GOGEL	Global Oil & Gas Exit List
HR	Human Rights
HRIA	Human Rights Impact Assessment
HRiD	Coalition of Human Rights in Development
IAMs	Independent Accountability Mechanisms
ICSID	International Center for Settlement of Investment Disputes
ILO	International Labor Organization
JVA	Joint Venture Agreement
LNG	Liquefied Natural Gas
MDB	Multilateral Development Bank
NGO	Non-governmental Organization
RIMA	Regional Infrastructure Monitoring Alliance
SDGs	Sustainable Development Goals
SIA	Social Impact Assessment
SOE	State-owned Enterprises
UNHRC	UN Human Rights Council
WB	World Bank

Introduction

The **Regional Infrastructure Monitoring Alliance (RIMA)** was born out of necessity and urgency. Necessity to merge different individual and collective movements and research on the massive investments in infrastructure by Chinese lenders and companies. Urgency because these investments often threaten the livelihoods of the local people as well as nature, biodiversity and climate protection. RIMA was formed on the basis of longstanding working relationships and friendships. The original demand to form such a support network came from the South East Asian region, and it developed into the RIMA core group.

After three years of remote meetings, we finally met in person in Nepal. Between June 27th and 29th, 2022, a group of over 30 people from 18 different civil society organizations (CSOs) spanning 10 different countries, predominantly from South Asia, participated in the strategy meeting, organized by the RIMA core founders Urgewald, CLEAN, and Growthwatch. The main objectives were to build rapport, share tools, best practices and experiences on advocacy with Chinese financiers, learn about the current activities of civil society organizations at different levels and identify areas for further collaboration.

Why the focus on China? China is the biggest bilateral lender today. China is also the biggest global investor in renewable energies. At the same time, China is the biggest investor in fossil fuels and their expansion. Chinese companies are the most competitive in the field of energy investments. In this context, indigenous communities and civil society need to raise their voices on matters of environmental and social safeguards.[1] The idea was to bring together senior campaigners from the region and some CSOs from the West with Asia expertise to exchange know-how, ideas and best practices. Our ultimate aim is to support local communities and their livelihoods, fight for sustainable infrastructure that respects theSustainable Development Goals (SDGs), mitigates climate change, and meets environmental standards.

As an informal network, RIMA aims to actively help and advocate for the rights of indigenous peoples. Therefore, our target groups are umbrella organizations and multipliers, CSOs, academics, decisionmakers, and representatives from countries in South East Asia.

RIMA's goals are:

- Mapping of all case studies/hotspot analysis of cases collected so far in South East Asia
- Long-term learning network for empowerment of local groups
- Joint development of advocacy strategies for the protection of livelihoods, climate and biodiversity
- Producing and disseminating policy briefings on coal, oil and gas infrastructure
- Producing training materials in English, Bengali, and other languages.

When meeting in Nepal, we structured our meeting as follows:

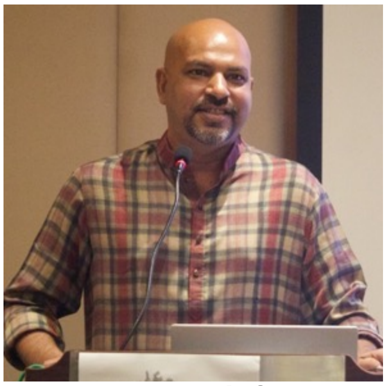
- Day 1 – Setting the stage: What is the status of BRI today? Which main challenges do we meet? Which instruments, tools and strategies do we have to prevent harm and provide redress?
- Day 2 – National scenarios/ experiences.
- Day 3 – Skills building and joint strategy planning.

Directly after RIMA's first in-person gathering, we produced a short documentary which describes the objectives of our Nepal meeting, you can find here. In this written documentation, we focus on the first day of the meeting.

Bangalore/Cologne/Dhaka 2023


Vidya Dinger, Growthwatch


Dr. Nora Sausmikat, Urgewald


Hasan Mehedi, CLEAN

NEPAL FACT SHEET

trade relations China-Nepal

PROFILE NEPAL

Economic[1]

Category	Value (2020)
GDP	**33.66 bn USD**
GDP/capita	**1,155.1 USD**
GDP growth (annual)	**-2,1%**
Remittances received/capita	**24.1 %** of GDP

Environmental[1]

Category	Value (2020)
CO_2 emissions	**0.4** (metric tons/capita)
Forest Area	**41.6%** of land
Access to Electricity	**89.9%** of total population
Electricity from renewables, excluding hydroelectric	**0.2%** of total electricity production

Institutions[1]

Category	Value (2020)
Central gov. debt	**33.9%** (total of GDP)
FDI inflows	**0.4% (of GDP)**
FDI from China 2020	**90%** of total FDI[5]

TRADE CHINA-NEPAL (2020)[2]

Total Commodities (Import) – **1.17 billion USD** (2nd largest trading partner)
Total Commodities (Export) – **15.3 million USD**

Major Imports from China[3]

- Petroleum Products
- Iron and Steel Products
- Machinery and Parts
- Electronics and Electronical Equipment
- Pharmaceuticals
- Fertilizers

NOTABLE

Border[4,5]
There are six border points for official trade; however, border inhabitants (living within 30 km of the border) are permitted to uphold traditional trade relations. China successfully encourages Nepal to monitor the border to prevent Tibetans from fleeing China.

Undeclared Blockade[4,5]
Nepalese traders protested against a trade blockade China implemented in early 2020, allegedly as a response to the Covid. The blockade was presumably a move to show discontent with the current Nepalese government's broadening relations with India.

Belt and Road Initiative (BRI)[5,6]
Nepal signed up for the BRI (on June 21, 2018 and April 29, 2019) and received investments into infrastructure, especially hydropower. BRI also symbolized the dream of being connected to the world by long awaited railways. Recent local critique says the investments come "with strings attached". Tibetan refugees, security agreements as well as seeking support for the Chinese position on the Ukraine war are just some of the critical issues.

Chinese investments [5,9]
Beijing and Kathmandu signed a transit protocol in 2020 granting Nepal access to four seaports and three land-ports in China. Adding to that, China connected Nepal to the internet. Cooperation with China offers a chance to be less dependent on India. Strong competition between US and China aid has put Nepal in the middle of a power rivalry.

Sources:
[1] https://data.worldbank.org/country/nepal
[2] https://oec.world/en/profile/bilateral-country/chn/partner/npl
[3] https://cn.nepalembassy.gov.np/trade-in-nepal/
[4] https://economictimes.indiatimes.com/news/defence/china-blockades-traders-from-nepal-under-the-guise-of-covid/articleshow/90366334.cms?from=mdr
[5] https://www.dw.com/en/nepals-delicate-balancing-act-between-china-and-india/a-52693835
[6] https://www.cgdev.org/publication/chinas-foreign-aid-primer-recipient-countries-donors-and-aid-providers
[7] https://sustainabledevelopment.un.org/content/documents/26539VNR_2020_Nepal_Report.pdf
[8] https://www.irena.org/IRENADocuments/Statistical_Profiles/Asia/Nepal_Asia_RE_SP.pdf
[9] https://dokumen.tips/documents/silk-road-bottom-up-regional-perspectives-on-the-belt-and-road-2017-12-13-and.html?page=4

Our host for RIMA 2022 was Nepal. We were delighted to have four different local CSOs as well as the German Friedrich-Ebert-Foundation's Nepal Office at the meeting.

In his deep dive about the challenges CSOs face in their work on infrastructure investments in Nepal, Prabindra Shakya of CEMSOJ spoke about Nepal's alleged role as "a vibrant bridge between India and China". He also explained how hydroelectricity is being touted as THE key to Nepal's future prosperity. Accordingly, a number of north-south trade and transport corridors and cross-border transmission lines, particularly with India, are being planned and developed across Nepal. Most of the financing has come from multilateral development banks such as the ADB and the World Bank. Nepal's dept nearly tripled in the last five and half years. Almost 90% of its foreign debt goes back to such donors. The rest can be attributed to bilateral donors, among whom Japan looms largest. In this context, indigenous and local communities have been struggling to safeguard their rights against such internationally financed projects, particularly hydropower-related and mega-scale infrastructure projects.

China is sluggish in building its financial leverage in Nepal's infrastructure investments, such as through a proposed Kerung-Kathmandu railway. The AIIB also has a rather small portfolio in Nepal with three hydropower projects. And five years on, BRI projects are nowhere on the horizon for Nepal. While Chinese contractors have been bagging construction projects across Nepal, that is also set to change as India uses its geopolitical influence over hydropower projects in Nepal as the country's sole international market.

Nonetheless, infrastructure projects in Nepal have intrinsic challenges such as lack of reliable planning and financial return analyses vis-à-vis their environmental and social impacts. The proposed second international airport in Nijgadh, Southern Nepal, is a good example. Similarly, affected communities have challenged the economic corridor plans, such as the Newar communities in Khokana and Bungamati and in Kirtipur in the south of Kathmandu who oppose the Fast Track Expressway and the World Bank financed Chobhar Dry Port.

In this context, civil society and environmental groups that campaign against such infrastructure projects and for the rights of those communities have faced reprisals, ranging from tighter restrictions on NGOs all the way to killings of anti-riverbed mining activists. The government has been planning to introduce more favorable legislation to push its development project at the expense of indigenous and other rights since many projects are stuck in legal, compensation and environmental disputes. While the general population views development at any cost favorably, in line with teachings from politicians, there are divisions among civil society groups along political lines (specifically in relation to so-called “development” projects) as well as competition and unhealthy dynamics between civil society groups. Specifically, on indigenous rights issues, land and resource rights in particular, there is a general lack of empathy from leading or powerful civil society groups. Indigenous peoples’ organizations’ outreach to potential allies is similarly inadequate.

Literature on China in Nepal:

- China’s Emergence in Nepal’s Infrastructure. Status, Issues, and Challenges, Amish Raj Mulmi, Arpan Gelal, Anil Giri, Raunab Singh Khatri, Milan Acharya. Centre for Social Inclusion and Federalism, (220 pp.) Nepal 2023.
- China’s engagement in Nepal, ed. By Ajaya Bhadra Khanal, Vijay Kant Karna, Centre for Social Inclusion and Federalism, (250 pp), Nepal 2022.
- Evolving Nepal-China cross-border relations and its impact on borderland citizens, Prashanti Poudyal, Shila Devi Parajuli, Prabisha Basnet, ed. By Vijay Kant Karna, Arpan Gelal. Centre for Social Inclusion and Federalism, (51 pp.) Nepal 2023
- Gaida’s Dance with Tiger and Dragon, Ed. By Changra D. Bhatta, Jonathan Menge, Friedrich-Ebert-Foundation Nepal Office (235 pp.), 2021.

Setting the stage: Main challenges for countries and communities that receive Chinese-led investments

The session started with three inputs: an overview on the situation in Sri Lanka (Janaka Whitanage), incl. a comparison to Nepal, current developments of the BRI (Mark Bo) and the specific role of Chinese companies (Dr Stella Hong Zhang).

Sri Lanka, debt and Nepal

Similar to Nepal, Sri Lanka is torn between big powers like India, China and the US. India is investing in 90-year-old oil tanks with a capacity of 8 million barrels of oil at the natural harbor near the strategically important Trincomalee port. China's investments include four six-lane highways nobody uses, a congress center Lotus-Tower with no furniture and no events, an airport with no flights, as well as countless faulty constructions and poorly selected project locations. Sri Lanka has become notorious for so-called "white-elephant projects". China also faces accusations it exports its old coal technologies which cause considerable health problems and function poorly. Sri Lanka still has to pay, though. Road construction, financed by MDBs like ADB and others, is running. Specific projects often fall prey to massive corruption, like the extension to the empty airport Hambantota financed by EXIM China. ADB's and WB's safeguards clearly failed in this case. One port is run by Chinese entities, one port by the Indian conglomerate Adani and a US-based company will potentially acquire a third port. Sri Lanka is being carved up and shared among big powers and corporations.

> **There is no income for Sri Lanka – we have to pay money – why do we have to pay this money? There is no way out now, we have to face the situation, everything shut down, people are protesting. Why is Sri Lanka now in a position to borrow money to pay off its debts? Is there still the possibility to avoid such a crisis for Nepal? How to navigate the terms and conditions of loans and grants from various donor agencies?**

BRI – narratives and facts

Putting this into the perspective of the China-led BRI, Mark Bo from Inclusive Development International informed on the current trends and developments around BRI. Looking back, the vision of BRI was not defined concretely. In 2015, five key areas of activities were defined: policy coordination, facilities connectivity, unimpeded trade, financial integration and peoples-to-peoples ties. Ever since, BRI became more a synonym for China's global engagement. Most countries around the world signed MoUs – non-binding documents – on BRI with China, with the exception of Australia, North America, Northern Europe, Japan, India and Brazil. Many countries already had well-developed relationships with China at the time, while others never got to that stage even after signing MoUs. But the comprehensive nature of the BRI vision always links infrastructure projects with policy coordination (friendship agreements as precondition for investments), pushes for unimpeded trade conditions internationally and inside global trade institutions, and establishes own MDBs, like the AIIB, as part of the financial integration pillar.

Narratives on BRI tend to ignore the fact that growing outbound investments were rising sharply already *before* the initiative was announced and dropped sharply after 2016, similar to finances. Investments also spiked in 2016, then dropped. What often goes by the wayside are the steadily increasing overseas contracting numbers. Chinese companies receive EPC contracts – and receive from a wider range of actors then before, like World Bank, where Chinese companies are among the top contract recipients, or ADB. Finally, after strong global criticism, the BRI was in need of a more positive framing: inclusive vision on geopolitical interests, host countries' demands and national development plans, green BRI talk and high-quality infrastructure. The goal was to push back against the criticism of low-quality projects. Simultaneously, a growing number of policies and guidelines on environmental and social issues were developed, but they lacked implementation frameworks. Also, in the Global North, pressure is growing from civil society on big national companies for their reliance on Chinese raw materials which do not follow due diligence procedures, such as Chinese-mined bauxite. In the near future, we will see green credit systems expanding, and a long-term shift to renewables.

In a second step we learned about **the key players of the BRI.** Yu Yin and Shawn Shieh from SIA lectured on the power mapping and the official Chinese worldview on governance, development and human rights.

Understanding the incentives of Chinese infrastructure companies

According to Dr. Stella Hong Zhang from the Ash Center for Democratic Governance and Innovation, Harvard Kennedy School), we need to understand the thinking of Chinese companies. First and foremost, they act as contractors and have to fulfill their contract obligations as defined by projected timelines and budgets. Recently, some contractors and companies start acting more like equity investors (e.g., China Harbor Engineering company, CHEC, invests in Colombo City). Contracts usually pertain more to the technical nature of projects and disregard environmental protection obligations. The latter requirements often depend on the clients. For most of the companies, delivering results on time is top priority. Social and environmental protection are optional.

In the following paragraphs, for the first time very clearly and based on research, we describe what lead to the current situation of devasting environmental and social harm as well as over-indebtedness.

The contractor-initiated model

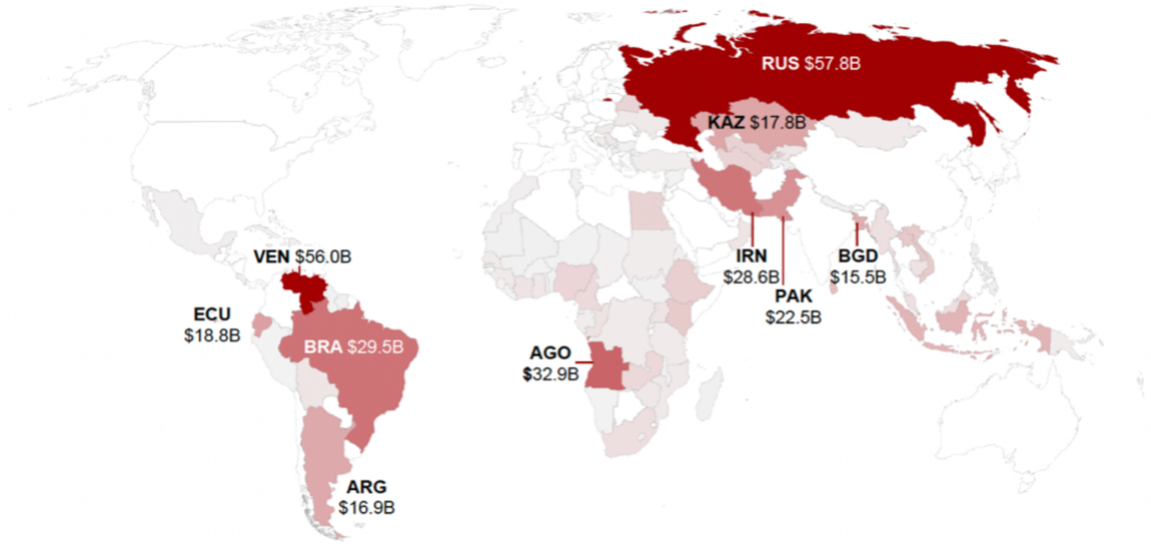
Sovereign loans became driver for the international market expansion of Chinese companies. They made it possible to get large contracts and invest in large, high-risk infrastructure projects. The reason why Chinese companies were awarded so many contracts is that they often offer financing plus EPC (EPC+F). When companies can secure funding, that often involves private negotiations rather than public tendering. The profit level for host governments is also comparably higher with Chinese companies than with others. In these cases, the companies themselves introduce the various options to the host country governments, i.e., the companies act as project initiators.

Government to government (G2G) loans

EXIM bank concessional loans are the most important loans for Chinese companies because they have lower interest (2%) and longer tenor (20+ years), as well as 5–7 years grace period. These are mainly used for large-scale infrastructure projects. G2G loans' main beneficiaries are large-scale state-owned enterprises (SOEs), like Power China and their subsidiaries

Sinohydro and SEPCO. SOEs are more likely to win loans because they are backed by their big parent companies and are able to demonstrate that the projects are beneficial to the host country. When companies apply for G2G loans, they need to demonstrate benefits for host countries' development. Since criteria and oversight are sparse, it is common practice to overstate such benefits. G2G loans need to be approved by the State Council, the chief administrative authority and the national cabinet of China.

Geographic Distribution of Chinese Overseas Development Finance Commitments, Total, 2008-2021



Source: https://www.bu.edu/gdp/2023/01/19/small-is-beautiful-a-new-era-in-chinas-overseas-development-finance/

The danger of over-indebtedness

Chinese banks providing the loans to SOEs are obliged to analyze country-specific risks. Generally, the contractors for a specific project the contractors supply the information, and banks' actual capacity for proper risk evaluation is very limited. Each loan requires an Environmental Impact Assessment (EIA), usually included in the feasibility study. Since there is no oversight, the EIAs are mostly overly simplistic and often resemble checkbox exercises. The EXIM bank, for instance, evaluates country-specific risks via ad hoc studies done by internal experts – a gaping loophole in the risk assessment procedure. After more than 20 years of the so-called going-out policy, meaning the push to invest abroad, the urgent need to push for more thorough EIAs/SIAs remains.

It is becoming evident that more and more host countries delay their payments. Different types of finances (grant, export buyer credit, concessional loan, and others) use different ways for selecting contractors. Oversight authorities are also dependent on the type of project. The Chinese government has its own bidding procedures when it comes to grant projects, while concessional loan and export buyer credits would more often be driven by Chinese companies seeking the contracts. Because of the debt trap controversy and the risks of default, as mentioned in the context of BRI, loans – especially G2G loans – are shrinking in recent years. Debt restructuring processes are underway, but that is bordering on state secret. The companies are waiting for a clear signal from top leadership.

Chinese President Xi Jinping encourages banks to talk with the borrowers and to find a solution. However, there are no specific guidelines or implementation rules banks can follow in such delicate situations. The main requirement of the financial institution is to safeguard Chinese assets. Based on interviews, it is clear that the banks are confused. It seems the approach currently taken by the Chinese government is to keep deferring loan repayment, in hopes that the borrowing countries' economies will turn around in the future and enable them to repay in full. But China may now realize that would be impossible for many countries, leading it to adopt new ways of dealing with the debt restructuring.

Fresh money – coming from self-invested projects

In this situation, companies need to find new forms of financing. While loans are decreasing, investment into financial intermediaries (FIs) are increasing. Some companies become investors themselves and hire their own subsidiaries to deliver. Self-invested projects are focused on business viability and profit is their sole driver. The Chinese government encourages companies to go this way.

Meanwhile, Chinese companies also compete for MDB loans (from AIIB, ADB, the World Bank Group and so on). There is public tendering in the MDB-financed projects, and Chinese companies very often have cost advantages. The increasing emphasis on ESG in Chinese policies as well as the possibility of green financing (loans conditioned on green practices) also makes Chinese companies more incentivized to invest in ESG measures. In general, there is still a lack of knowledge and therefore a need to create awareness raising and training for ESG investments.

Who is setting what incentives for what standards

Here, the host countries need to come in: They set the parameters for what needs to be done. They are the ones who need to take care of the environment, since this all is already before the investments start very much agreed between the host governments and the MDBs. When Chinese companies win the tender they come as contractors who deliver the contract. They do not determine requirements.

We know that **MDBs hold high standards**, but in practice **a lot of things go wrong. Based on Dr. Zhang's research it became clear that many** host governments and Chinese companies **try to find a way to work around some of the high requirements** and make the project happen. The host governments may have strong incentives to push forward for these projects, so they write their reports in a way that satisfy the requirements of the Worldbank, and which might be dispatched from realities.

On the other hand, in the process of implementing Worldbank projects, Chinese companies might be building their own capacities. They get acquainted with best practices. Again, some complain that these MDB projects with all these high standard requirements and technical higher standards are lower profit. So, if there will be other funding, they may be less eager to bid for MDB-financed projects.

Discussion part: Are there laws or guidelines like the Green Credit guideline which Chinese companies have to follow? How to engage larger SOEs like Sinohydro? What are the standards companies headquartered in China have to follow?

There are a number of guidelines Chinese companies have to follow:

- Who is who No. 3: Chinese commercial banks: An NGO guide (2023, p. 15-16).
- RIMA tools: living document on tools
- IDI Follow the money

Most of the guidelines are non-binding. There are no legal consequences for Chinese companies' bad behavior in their overseas activities.

The interface for local communities with these companies, at least in Nigeria (where Dr. Zhang conducted her research), will be the project delivery team, which consists mostly of engineers with ample technical knowledge and a vested interest in the project's realization.

Purely Chinese setting:
When approaching the companies, it is always better to choose a non-confrontational style like: "We want the project to go ahead, but at same time we have concerns like A/B/C". Taking this approach increases the chances of a constructive conversation. We need to understand that they are laser-focused on the delivery of the project since they have the obligation to fulfill their contract. So, the entry point is always their contractual responsibility. If they should do something on top, we need to communicate in a constructive way. The contracts define their roles regarding the technical nature of the project. The project must be delivered on time to avoid high penalties.

International setting:
In the international setting, there are other opportunities to campaign and put pressure on the stakeholders involved. For example, if Sinohydro is the contractor with the World Bank, or other international stakeholders are involved, or if there are links to supply chains or joint venture partners in Europe or the US, we usually can take the cause to the annual meeting of the companies, organize a protest in front of the involved multilateral lender of public money, or display the harms done to the general public.

What can CSOs do? How to network with our Chinese CSO colleagues?
What can CSOs do? There are a large number of complaints mechanisms, in particular with the treaty bodies, several mandate holders of the UN Special Procedures, monitoring human rights conventions.

- Every UN human rights treaty, such as on women's rights, offers, within procedural conditions, the chance, as far as the State party has agreed upon this complaint provision, to submit an individual complaint to the monitoring treaty body. Everybody is entitled to submit a shadow report to the regular review session.
- UN mandate holders of the Special Procedures, such as the one on Environment or Freedom of Speech, can be approached by anybody and at all times via a simple letter. They then address the human rights violation with the responsible government, urging it to end the violation.

- A next monitoring body on human rights conventions is, for example, the Complaint Procedure of the UN Human Rights Council (UNHRC) which under certain conditions can be involved in terminating the violation.
- In addition, complaints can also be submitted to the working groups on business and human rights set up by the UN Human Rights Council, the OECD complaints mechanisms and regional bodies such as the African Court on Human and Peoples' Rights (which has no equivalent in Asia). Special Procedures mandate that holders in the UNHRC council sometimes even help in immediate cases (e.g., urgent allegation letters).

But: all these engagements are very tedious. First, all submissions require that complainants submit an evidence-based report with facts and figures. Press clippings are not sufficient. Secondly, the majority of the cases are not resolved in hours or days but rather in months. This extended timeframe necessitates a certain organizational structure to maintain the urgency and presence of the complaint

Recommendations:

SOEs are mindful of their reputation and do not want their projects eliciting negative sentiments in the host countries' population. As SOEs, they represent their country.

The available guidelines for Chinese companies mostly fall back on the standards of the host countries. China also does not impose any legal consequences for non-compliance so far. Chinese companies are often involved in projects financed by European or regional development banks. For instance, the Nepal Tanahu dam project relies on financing from the European Investment Bank, the Asian Development Bank, The German KfW and the Japanese JICA, but China's Sinohydro is constructing the dam.

When communicating with Chinese stakeholders, you need strong documentation to show that your allegations are real. Evidence-based advocacy is key. Examples include science-based biodiversity assessments or mining and hydrology experts' risk analyses.

Writing letters is effective, even if responses are very rare. The communication is what counts. You can write to contractors, banks, embassies. If companies are involved in controversies and receive complaints, mechanisms which remain unseen to the public kick in, and pressure on the companies rises behind the scenes. They can be downgraded internally and their access to credit or insurance can be restricted; they can also lose their favorite status for overseas investment.

Separate myth from facts: The critical, fact-based assessment of Chinese companies' behavior is paramount. Researchers can help provide information to resolve misunderstandings as one way to engage with Chinese companies. If allegations rely on wrong facts, there will be negative consequences for CSOs. Criticism needs to be to the point and leave no possibility for a company to dismiss it as nonsense. RIMA could be exactly this: equip ourselves with the necessary evidence-based knowledge and facts to tackle the problems!

Practical part: Our advocacy tools

After these more theoretical inputs, we moved on to **map our concrete advocacy tools** on accountability, due diligence and fossil divestments. The RIMA group discussed how to apply each of them in the context of Chinese infrastructure investments.

MDB campaigning

There are established regional networks in Europe, Latin America and Asia focusing on the two MDBs, AIIB and ADB.

- For Europe, Urgewald together with Recourse are coordinating for the Eurozone and Wider Europe constituencies of the AIIB. The European shareholders represent almost a quarter of voting power in the AIIB.
- In Asia, NGO forum on ADB is coordinating the work.
- In Latin America, Latinoamérica Sustentable is coordinating the work.

Campaigning mainly relates to the banks' climate policies, i.e., Paris alignment, and relevant safeguard issues. Whereas the ADB already established management-CSO roundtables at annual meetings which can be organized by the CSOs themselves, the AIIB is lagging far behind. Only the European shareholders offer CSOs room for participation. Nevertheless, the AIIB tried to do better by reaching out to CSOs individually – likely in an attempt to prevent group pressure.

What do the CSOs monitor?

- Strategy and policy development and revisions (climate/energy, safeguards, etc.), the general governance structure, project approvals/proposals, rights and accountability, country strategies, lending mechanisms

Who do CSOs address?

- Shareholder governments, constituencies, management and other stakeholders

How to do advocacy?

- Supporting and amplifying community voices and concerns, filing cases to accountability mechanisms, meetings, letter writing, protests and stunts, research and publications, media engagement.

This collaboration model functions well. We need to stabilize and perpetuate this – RIMA supports the regional work on the two banks, AIIB and ADB.

Campaign tools for fossil finance divestment

Urgewald's two leading divestment databases on coal, oil and gas:

1. The **Global Coal Exit List (GCEL)** was developed to help financial institutions navigate the complicated landscape of coal-based business models. The companies listed in the GCEL represent 90% of the world's coal production and coal-fired power capacity. It provides key statistics on more than 1,000 parent companies and approximately 1,800 subsidiaries operating along the thermal coal value chain. Investors representing

more than $19 trillion in assets under management (AUM) already apply one or more of GCEL's three divestment criteria to weed out coal companies from their portfolios. Among them are AXA, Ostrum (France's 4th largest asset manager), the Norwegian Pension fund, Generali, and according to their own statement also IFC. But if more don't follow suit, and quickly, we will fail the most fundamental climate test of all: phasing out coal. GCEL also provides data for partner CSOs around the world.

2 The **Global Oil & Gas Exit List (GOGEL)** is the world's first comprehensive public database of companies in the oil and gas industry. GOGEL currently includes 887 companies, representing nearly 95% of global oil and gas production. Users of the database, especially those in the financial industry, can use GOGEL to easily identify the oil and gas companies with the largest expansion plans as well as the most controversial forms of oil and gas production. It covers 94% of the upstream oil and gas sector, 91% of planned LNG terminal capacity, and nearly 75% of new oil and gas pipeline development. The most shocking reality is the ignorance of the Paris Agreement and the expansion of the fossil industry: In the last three years, a total of $168 billion has been spent on oil and gas exploration. In addition, GOGEL also highlights companies' involvement in projects with high reputational risk. These include projects that exacerbate violent conflict, cause immense social or environmental damage, or are challenged by lawsuits and community opposition.

The two databases are powerful divestments tools and can be used by all banks which declare their willingness to become coal-free or stop oil and gas expansion. Data from both databases are provided to partner CSOs around the world. If needed, Urgewald can provide specific country sheets or focus on fossil companies headquartered in specific countries. CSOs can use these data to do research on individual companies and their finances, compile country profiles with information on which companies are involved, and detailed information on fossil fuel expansion.

Regional campaigning on mining, transitional minerals, and climate justice

The Asia Pacific gatherings on human rights and extractives described by Jaybee Gargarnera:

Human Rights Impact Assessment: Corporations must be held accountable for human rights abuses! Corporations are many times more powerful than governments! We also must convince communities to believe us, to take care for their own security, and take care whom they talk to. Security assessments and security planning and implementation needs discipline by us! We had sad stories and bitter experiences. Basic digital security understanding is crucial for communities on the ground. Our devices we are using all the times give everyone access to-so the weakest link is the phone.

We learned that in the Philippines there is no law for mandatory EIAs. Also, the political system is far away from "real" democracy. The local commission on HR was very ambitious, also before the Marcos/ Duterte government. One "tool" for success is to do HRIA in several emblematic cases with the help of international partners. In some cases, this created so much documentation and became effective pressure points that in the end some investors left (Tambacarn project-Glencore owned that and left Philippines). Generally, due diligence still need to push for, many constraints and policy gaps are in the laws, and communities face harassments and killings. One crucial topic for CSOS becoming active is the security assessments. Also, the local communities need to be convinced to do security assessments, here, the main challenge is trust between CSOs and local communities. Digital security understanding is crucial. Here, RIMA could help to build internal capacities.

Tools and strategies on human rights due diligence and advocacy work

Theo Rathgeber, coordinator of Adivasi Koordination in Germany, provided an overview on where indigenous communities could rely on international judicial regimes like the Guiding Principles on Business and Human Rights (UNHR Framework/Universal Declaration on HR, UN Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169), including procedures laid down in the guiding principles.

He highlighted the media's central role in a successful campaign on due diligence. Risk assessments, as he pointed out, have to follow certain instructions laid down in the international human rights regulations. He lectured in detail on the different infringements addressed by due diligence procedures like child labor, forced labor, forms of slavery as well as infringements on the freedom of association, fair wages and unequal treatment. International tools for advocacy on forced evictions and environmental degradation were also included.

> **"The vision that due diligence would become binding law is finally becoming reality.**
> **(Theo Rathgeber)**

In the European companies themselves, people can leverage risk assessment procedures, and there is inhouse responsibility for human rights protection. Companies are required to have regular risk analyses, develop compliance mechanisms, provide remedies inside companies and, if needed, enter into legal procedures in the courts. In Europe and elsewhere there is some national legislation on due diligence, like the modern slavery act (UK, 2015), the law of vigilance (France, 2017), due diligence in supply chains (Germany, 2022), a regulation on risk minerals (EU, 2017), and others.

What can CSOs do? There are numerous complaint mechanisms, in particular with the treaty bodies, several mandate holders of the UN Special Procedures, monitoring HR conventions; working groups on business and human rights established by the UN Human Rights Council (UNHRC); the OECD-complaint mechanisms and regional bodies such as African court on HR and people's rights (not existing in Asia). Special procedures mandate holders in the UNHRC council to intervene in pressing cases (i.e., urgent allegation letters). But: all these engagements are very exhausting engagements.

He addressed the topic of reprisals and the role of international surveillance mechanisms, which can involve the police in preventing reprisals. With the help of support programs like the German Elisabeth Seibert Initiative (ESI), activists can get immediate protection in case their lives are in danger.

The proof and evidence of reprisals is described in the report "Wearing blinders", published by the Coalition of Human Rights in Development (HRiD). Ashley McDonald (HRiD) presented the main findings. The report found that the main causes of sustained reprisal risk is the ignoring of previous reprisals by the responsible banks. The report consists of five bank cases studies. In all cases the assessment of the risk of reprisals, meaningful participation, and stakeholder engagement and transparency were missing. One case describes the Chinese EXIM Bank's engagement in the Kaliwa Dam in the Philippines:

> **In the island of Luzon in the Philippines, the Dumagat-Remontado Indigenous communities have been fiercely resisting against dams and big infrastructure projects threatening their territory for decades. In 2009, they successfully fought against the massive Laiban hydroelectric project, which was threatening to displace thousands of people and destroy the local ecosystem.**
> **(Wearing Blinders, p. 33)**

A decade later, another EXIM loan started again the same dam project, ignoring the protests and the communities' will.

> **In November 2018, Manila's Metropolitan Waterworks and Sewerage System (MWSS) secured a loan for over US$ 211 million from the Exim Bank of China for the New Centennial Water Source-Kaliwa Dam Project, an integrated dam system that is set to address water shortages in the area of Metro Manila. Although smaller in scale compared to the hydroproject proposed earlier, the Kaliwa dam risks having a devastating environmental, social, cultural and economic impact. The dam is being built in ancestral lands belonging to Dumagat-Remontado Indigenous communities. The reservoir, which is expected to submerge 230 acres of land, will flood their homes, their sacred sites, part of the forests that are crucial for their livelihoods, and displace members of the communities. It will also affect fishing communities and farmers downstream. The site is part of the Kaliwa Watershed Forest Reserve, which was recognized as a wildlife sanctuary in 1968. Activists say around 100,000 people could be endangered because of the project.**
> **(Wearing blinders, p. 33)**

Consultations were done, but findings were ignored and construction went on. The project received its environmental compliance certificate, and the environmental impact assessment (EIA) was done *after* the project was approved. An investigation directly linked killings to the ignorance of due diligence especially with concern to Free Prior Informed Consent (FPIC).

Fear of reprisal is a major factor behind the low number of complaints filed with international financial institutions. The human rights due diligence process is critical, but it is not taken very seriously, and neither are safeguards or EIAs. Often, project finance disbursement happens *before* the due diligence process is completed. The risk of retaliation is always there. Often, governments claim to have nothing to do with the retaliation process, all the while activists get harassed and jailed.

Litigation as an instrument

Syeda Rizwana Hasan, lawyer and Chief Executive for Bangladesh Environmental Lawyers Association (BELA), reported on specific successes and failures of litigation for due diligence, including a case that has been fought in both Bangladesh Supreme Court and in the International Center for Settlement of Investment Disputes (ICSID)[2]. Her long professional experience made it very clear: without a functional democracy and an independent judiciary, getting favorable judgment may be possible but implementation will always be a challenge. Politics may play against passed judgment and may impact the court ruling. Mobilizing public opinion may be one way to counteract such political meddling.

She reported on cases against land acquisition prior to EIA (Rampal coal power, Bangladesh), on irregularities with EIA in Matarbari Coal fired Power Plant, Bangladesh, and on the killings of villagers and construction workers of the Banshkhali coal-fired power plant jointly owned by S. Alam Group of Bangladesh, SEPCOIII Electric Power Construction Corporation of China and HTG Development Group of China.

In all the cases, the court was initially favorable, but political pressures impacted the outcome. One has to carefully pick the right cases to file when the responsible judiciary is under pressure or lacks technical expertise. If one doesn't get the legal system tested, it will get paralysed. We need to ensure that laws are implemented. If we do not take the initiative to implement laws through class action or otherwise, they will always remain in books. That way, the legal system will never deliver and remain ineffective. Even laws that are considered weak have been relied upon and with progressive interpretation from the judiciary, delivered justice. In some cases, judicial interpretations have led to progressive interpretation and even changes in the legal regime and in understanding the law better. If we are reluctant to go to the court or seek administrative relief as provided for by laws, the legal system will get paralysed. Court decisions need to be used for creating public awareness. Also, in the face of political difficulties, emphasis on awareness-building, networking and international mobilization is important before approaching the courts. In legal actions, one has to be persistent and must have scientific as well as technical understanding. One has to be clear about the legal process as well and may have to wait till the time is right for the final hit.

Rizwana shared key highlights of the case of Bangladesh v s.NIKO. In this case, the Bangladeshi court once said that the Joint Venture Agreement (JVA) was legal since it was verified by the highest political office. However, after ICSID directed the government to pay NIKO for its gas supply, the court suddenly ruled that the JVA was illegal. Politics clearly affected the course of the legal dispute. Here, the strength of the environmental case can be appreciated, but the subsequent turn of events sadly shows that financial and political interests ultimately side with corporations. Non-compliance with the legal provision on public participation in the EIA process of coal projects was also highlighted by the speaker.

Filing cases inside MDBs: Non-judicial accountability mechanisms as a tool for justice

In contrast to litigation as an instrument, Stephanie Amoako from Accountability Counsel (AC, a US-based CSO that advocates for people harmed by internationally financed projects) evaluated the potential successes of complaint mechanisms inside MDBs, like the World Bank Group, ADB or AIIB.

For advocacy, we all can make use of the "Accountability Console", a comprehensive database of human rights, environmental grievances and community complaints filed with independent accountability mechanisms (IAMs) so far. Recent developments in **Accountability for Chinese Finance include:**

- Asian Development Bank model accountability mechanism for Chinese finance
- The "Green Finance Guidelines", published on June 1, 2022, by the China Banking & Insurance Regulatory Commission, which supervises and regulates banking and insurance institutions in China. Here in article 28, a kind of accountability mechanism is mentioned: "For credit or investment situations involving significant environmental, social and governance risk impacts, they **should establish a complaint response mechanism** and disclose relevant information in a proactive, timely, accurate and comprehensive manner, in accordance with laws and regulations, self-regulatory rules, etc., and accept the supervision of the market and stakeholders." More analysis here.
- *They are new additions to China's green finance system and build on the Green Credit Guidelines issued in 2012, which established the concept and instructed Chinese banks to improve due diligence, client compliance review and project assessment with respect to environmental and social issues.*
- *A main purpose of issuing the new guidelines is to strengthen the implementation of green finance policies, which many banks have done poorly. Another purpose is to expand the scope to include insurers and to standardize the requirements for the banking sector and the insurance sector.*
- *The guidelines are not binding, but they are not completely voluntary either. They fall in the category of what is called "normative document" in China.*

Endnotes

1 Three contradicting developments: 1) Since BRI started in 2013, civil society spaces were shrinking not only in China but globally. Simultaneously, there was the top-down order for Chinese NGOs to fulfil their patriotic duty to go out/ network internationally with civil society organizations from the country recipients of infrastructure investments.

2) Massive investment in mega infrastructure brought on human rights violations and climate change that are threatening millions of people.

On the European level, for the sake of helping to realize the SDGs, the so-called Juncker Plan, or connectivity platform, was launched. It later evolved into the “Global Gateway” to counter the BRI, creating even more challenges for human rights defenders and environmental activists. The G20 is pushing for a roadmap toward infrastructure as an asset class to standardize infrastructure investment.

On the Asian level, AIIB and ADB push for massive infrastructure investments, mainly by mobilizing private capital, much of it embedded in the Chinese BRI.

3) The Covid pandemic and the Russia-Ukraine war fired up a massive debt crisis. New China-led MDBs (NDB/AIIB) piggyback on processes of decoupling of the Global South. meaning economies of Global South countries fight for diversifying and becoming less dependent on Global North countries economies.

2 ICSID was established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention)—a treaty that entered force in 1966, and which today has been signed and ratified by 156 States. The ICSID is part of and funded by the Worldbank Group.

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