

Transplanting China's ecological civilization to the Belt and Road Initiative: What will it take?

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Abstract

This article focuses on how Chinese state actors understand the concept of sustainable development and implement policies for achieving the 2030 Agenda and the Sustainable Development Goals (SDGs). We examine the concept of Ecological Civilization (EC) that has gained momentum within China and examine how EC is constructed around certain organizational principles that are difficult to export without expanding Beijing's political control abroad. Based on the example of a coal-fired power plant in Kenya, we also explore the potential opportunities EC presents for African stakeholders to hold Chinese state actors to account for China's normative principles.

KEYWORDS

belt and road, China, coal, ecological civilization, Kenya, sustainable development

1 | INTRODUCTION

There is growing global attention on the threats posed by climate change and the need to rethink established approaches to development. The mantra since 2015 has been to encourage countries and their leaders to pursue a development path in accordance with the 2030 Agenda and the 17 Sustainable Development Goals (SDGs). However, many countries on the African continent have struggled to secure the required financial resources to achieve the SDGs. Through its ambitious Belt and Road Initiative (BRI), China has attempted to fill the continent's infrastructure needs by providing material, infrastructural, financial and technical assistance. Under the umbrella of South-South Cooperation, Beijing has actively promoted the narrative that it is fast-tracking socio-economic development

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in Africa. However, the discourse on the BRI is often polarized, and Chinese activities on the continent have often been criticized for their adverse environmental impacts. Although it proclaims its strong commitment to climate-friendly technologies and renewable energy solutions, Beijing has for decades supported polluting industries such as coal at home and abroad.

This article examines how the Chinese state understands the concept of sustainable development and the extent to which these ideas are underpinned in development projects undertaken by Beijing as part of the BRI. We focus on the concept of 'Ecological Civilization' (hereafter EC), which has gained momentum within China in recent years. While Beijing has promoted the BRI as a global operationalization of the SDGs, it has at home promoted the EC idea as a Chinese philosophical and Marxist–Leninist interpretation of sustainable development. As the Chinese state intends to mainstream this conceptualization of sustainable development in the BRI, partner countries must acquire a nuanced understanding of the legal and ideological structures of the EC concept. This is also an opportunity for Beijing's partners in the Global South to actively engage with and interpret legal norms within a Chinese legal context to advance social and environmental governance. Within China, it is unclear how well the Chinese Communist Party (CCP) leadership can adhere to EC principles and achieve the SDGs (Hanson, 2019; Wang, 2018). The structural element of political control is even more difficult to implement overseas, and this is perhaps a significant barrier to using EC as a guiding ideology. At the same time, however, civil society organizations in African states could use the EC ideology strategically to demand greater adherence to environmental standards from Chinese actors.

We address the following two interrelated questions: How and to what extent is EC capable of becoming the guiding ideology for Chinese actors in South–South Cooperation? What are the potential implications of the export of EC on sustainable development in an African context? We undertake a textual analysis of relevant academic literature as well as legal, ideological and official policy documents to explore how Beijing understands and operationalizes sustainable development and EC. The goal is to examine norms, laws and policies to better understand how the Chinese government perceives itself in the context of South–South Cooperation. While EC is a legal concept found in the 2018 amendments of the PRC Constitution and the Party Constitution (2017), there is no EC law. Moreover, as the distinction between law and politics is blurred in China, legal discussions must be combined with political considerations. Between 2015 and 2019, we participated at numerous events on sustainable development in China and interacted extensively with business leaders and managers, civil servants, environmental non-governmental organizations (NGOs), think tanks, diplomats, UN officials, journalists, scholars, students and civil society organizations. A key purpose of these interactions was to get an overview of the key institutions involved in promoting sustainable development and to examine how the 2030 Agenda was operationalized within the country, including the range of actions undertaken by state and non-state actors to push for policies aimed at achieving the SDGs. Our empirical focus on the African continent is a major infrastructure project planned by the Kenyan government with a \$2 billion Chinese loan—east Africa's first coal-fired plant adjacent to the Lamu Archipelago on the northern coast of Kenya. This project received considerable international attention as it was strongly resisted by environmental activists and the local community on environmental grounds. It is currently suspended following an order by Kenya's National Environmental Tribunal, which decided to stop the project in 2019 citing environmental concerns and a failure to adequately consult the public. In Kenya, we interacted with journalists, civil society organizations, policymakers and academicians between September 2018 and May 2019. Since follow-up fieldwork in Kenya was not possible due to the COVID-19 pandemic, we interacted virtually with activists and scholars, in addition to conducting interviews in Nairobi with the help of a local research assistant. Our goal was to better understand how policies aimed at achieving the SDGs were implemented in Kenya and the country's partnership with China in terms of major infrastructure projects. The fieldwork in Kenya illustrated how civil society, rather than the government or external actors, played a key role in demanding access to clean energy solutions.

We begin by discussing the evolution of the EC idea and how it is currently closely linked with Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era. In this section we also examine EC in the context of China's support for the 2030 Agenda and the SDGs. Thereafter, we focus on the extent to which EC is being transplanted in the BRI with a specific focus on the coal-fired power plant case in Kenya and how local civil society

organizations played a key role in opposing the project. Based on the Kenyan example, we undertake a discussion of the relationship between EC and sustainable development to examine the potential implications China's evolving green development approach for African partners.

2 | THE IDEA OF AN 'ECOLOGICAL CIVILIZATION'

EC as an idea has gained considerable momentum within China in recent years. It is guided by the theoretical framework developed by the Communist Party (CCP) and relevant state organs. The evolution of the EC concept can be traced back to the 1972 United Nations Conference on the Human Environment in Stockholm. It was nearly a year since China had joined the UN, and its reaction to the Stockholm Declaration was to point out that pollution was mainly a capitalist problem, rather than a socialist one (China Dialogue, 2021; Goron, 2018). Fast forward a decade and Deng Xiaoping's 'reform and opening' was setting China on a path to becoming a global economic powerhouse. During the 1980s, the CCP initiated two campaigns that focused on building material and spiritual forms of modern civilization. Material meant that capital accumulation was allowed for the first time since 1949 while spiritual meant that the CCP possessed the mandate and authority to curate and guide the ideological influences within society during this new period of capital accumulation and socialist development. Juxtaposed with spiritual civilization was the concept of spiritual pollution that entailed unwelcome foreign influences like individualism, unregistered religious activity, certain genres of music and liberal democracy. The use of the term *civilization* was an assertion that the CCP was not only the heir to Chinese civilization but that Chinese civilization was reframed by the Party as if it had always been on a teleological and deterministic path towards Party rule and Communism (Government of China, 2018; Kaufman, 2018).

As the Chinese economy rapidly expanded, there were growing concerns about the natural environment, which, in turn, resulted in the emergence of EC a new Chinese environmental concept. EC was initially translated from Soviet eco-Marxist literature as 'ecological culture' but was readapted to *civilization*, mirroring the terminology of the Deng administration. Moreover, the concept is juxtaposed with *industrial civilization*, which early scholars on EC like Pan Yue equated with western, anthropocentric and destructive to nature (Pan, 2006). Many of these scholars selected portions of Chinese philosophy that emphasize the virtue of living in harmony with nature and an eco-centric interpretation of Chinese history, philosophy and Marxism (Pan, 2006; Wang & Karl, 1998; Zou, 2013). While the CCP's focus for many years was on bullish economic growth, by 2010, environmental disasters in China had begun to cause a legitimacy crisis for the Party. By that time, EC had become a home-grown concept that was applied to highlight the need for the state to do more to protect the environment (Pan, 2006; Wang & Karl, 1998; Yu, 2005). Chen (2020) therefore argues that EC was coopted by the CCP to placate this source of criticism, which increased during the final years of Hu Jintao's administration.

Despite endorsing the Millennium Development Goals (MDGs) and achieving considerable success in poverty reduction, China struggled to mainstream the concept of sustainable development. Some of this was due to the organizational structures of the Party-State characterized by a lack of transparency, weak access to justice and the lack of consultations in developmental projects (Chen, 2020). Upon his elevation to the presidency in 2013, Xi Jinping began promoting and redefining the practice of sustainable development within the country. According to the official narrative, a central feature of his political career has been a focus on the environment (Lin, 2021). EC is currently linked closely with Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era (hereafter XJPT), which offers a long-term development plan for the country. In the first stage (2020–2035), it is aimed at achieving socialist modernization, including the rolling out of the BRI. Thereafter, in the second stage (2035–2050), XJPT's vision is a strong, prosperous and harmonious China (Peters, 2017). For Xi, sustainable development entails 'ensuring harmony between man and nature', which, in turn, requires 'the whole party and the people to build ecological civilization' (Government of China, 2017a). The goal is to strive for 'the strong awareness of green development, efficient use of resources, strict protection of the environment and effective control of carbon emissions' with the purpose of

showcasing 'China's leadership in the global endeavour towards a green transition and our commitment to building the world into a better and cleaner place and laying the groundwork for a new development paradigm' (Government of China, 2021b). As the Historical Resolution of the 6th Plenum of the CCP Central Committee shows us, XJPT is treated as the basis on which contemporary theories of governance are developed in China (Government of China, 2021a). While Article 1 of the PRC constitution states that the leadership of the CCP is the defining feature of Chinese socialism, XJPT is presented in the Party Constitution (2017) as the defining feature of the CCP's ideology in the 21st century. EC was adopted into the Party Constitution at the same time as XJPT.

President Xi has personally promoted EC as a crucial part of XJPT by including the concept in his administration's amendments of state and party constitutions and by writing 'thoughts' on EC principles. These amendments to the party and state law make XJPT a source of law. In XJPT, Xi outlines seven principles for EC: civilization prospers when ecology prospers; clear waters and lush mountains are invaluable assets; a sound ecology is the most inclusive form of welfare; mountains, waters, forests, farmlands, lakes and grasslands form a biotic community; protect the ecology with the strictest regulations and laws; mobilize the whole society to build a beautiful China; jointly promote a global EC (Fang, 2021; Gao, 2021; Lin, 2021; Shi, 2021; Wu, 2021; Zhao, 2021). From a plain reading of these principles, the environment is ideologically central to the future sustainability of civilization. Indeed, within XJPT, one finds a substantive acknowledgment for green development and environmental solutions (Government of China, 2017a). However, Xi's environmentalism is inseparable from other norms in his ideology that reinforce securitization and control. For example, green energy is often viewed as synonymous to hydropower projects, which can be very destructive to humans and nature. Yet, resistance to such projects is demonized as anti-environmental (Grünwald et al., 2022). Hence, EC has been critiqued for being an instrument for greenwashing Beijing's political actions, for diverting attention away from deteriorating living standards and quality of governance and as an excuse for increased political control of commercial and civil life in the name of a green socialist morality (Shapiro & Li, 2020; Wang, 2018). Nevertheless, EC appears several times in the PRC Constitution (e.g., in the preamble, article 46 and article 89).¹

For the CCP, EC implies more than just green development; it is a political mandate and a legal idea that is intended to make environmentalism a central aspect of socialist theory that ensures the next stage or era of socialist development. In July 2021, the Ministry of Commerce and the Ministry of Ecology and Environment jointly issued the Guidelines for Green Development in Foreign Investment and Cooperation. The official text contains an explanation of EC that is applicable at the global level: 'China is building a sound, green and low-carbon circular economic development system at home while contributing to global environmental governance and fulfilling its international obligations. In a new era, only by practicing the concept of green development can we rely on outbound investment and cooperation to reinforce domestic and international circulations, pursue open development and take the lead in international cooperation and competition' (Government of China, 2021b). Most interestingly, section III.7 of the joint guidelines states that in relation to greening the BRI, ministries will 'encourage companies to adopt international or Chinese standards in investing activities where local laws and regulations are non-existent or too lenient'. At the level of international law, EC has also been used to draft the recent Kunming Declaration under the Convention on Biodiversity. In this declaration, China's contributions made it clear that EC meant, 'building a shared future for all life on Earth'. The Declaration went on to state that EC is central to ensuring 'the development, adoption and implementation of an effective post-2020 global biodiversity framework ... and appropriate mechanisms for monitoring, reporting and review, to reverse the current loss of biodiversity and ensure that biodiversity is put on a path to recovery by 2030' (UNCBD, 2020). However, the official rhetoric does not necessarily always match actual action on the ground.

2.1 | EC and reinterpreting the SDGs

Beijing played an active role in the process leading up to the 2030 Agenda and the 17 SDGs. It has long advocated the principle of 'Common but differentiated responsibilities', according to which individual countries have different

capabilities and differing responsibilities in addressing climate change. However, Beijing also actively blocked attempts to create binding obligations for the 2030 Agenda as it is weary of legally binding mechanisms that are unsupportive of its Marxist view of law as a tool to build socialism (Creemers, 2020). While the implementation of the SDGs has thus far received a mixed global response, Beijing appears to have embraced these global goals, and there is considerable talk of the importance of sustainable development in administrative and political circles. Yet, there is still an implementation gap, especially in how Beijing facilitates the achievement of the SDGs in overseas contexts.

Following the adoption of the 2030 Agenda at the UN General Assembly in September 2015, China published a National Plan in 2016 (Government of China, 2016a), which advocated strong support for the SDGs and a pathway to consolidate the country's success in achieving many of the MDGs, including that of poverty reduction. The Plan outlined a coordinated strategy that was to be driven by 'innovation' and with an emphasis on 'green', 'open' and 'shared' development. Six specific priority areas were identified, including a renewed focus on planning to achieve the SDGs; initiation of innovative pilot projects within the country; new and more productive forms of public-private partnerships; interest in undertaking administrative and legal reforms; greater interaction with a diverse group of national and international development actors; and broad-based international cooperation aimed at promoting the linkages between the much-touted BRI and the SDGs.

In its Voluntary National Review (VNR) presented at the United Nations in 2016, China highlighted its priorities abroad, which included a renewed commitment for increased aid and investments a part of its South-South cooperation strategy, greater involvement of the Chinese private sector in increasing investments in least developed and landlocked developing countries and small island states, as well as overall closer integration of the BRI with the SDGs (Government of China, 2016a). The following year, a 'progress report' reiterated the country's numerous achievements in registering 'sound and steady growth', improving the living conditions of its population and 'all-round progress ... in green development' (Government of China, 2017b). Although disputed, in its latest VNR, Beijing claimed that by the end of 2020, it had successfully eradicated extreme poverty. It also highlighted its commitment to tackling climate change and promote global green development, improvements in public health and its efforts in tackling the pandemic, its achievements in maintaining steady economic growth and its readiness to assume greater responsibility as 'a major country' in promoting international development cooperation (Government of China, 2021c). Among the challenges ahead, the report listed the fight against COVID-19, the challenge of vaccinating a large population, maintaining sound economic and social development and its vision of building a global health community under the auspices of the United Nations (Ibid., pp. 45-46).

There is little academic work on the actual progress achieved by China in terms of achieving the SDGs; the annual progress reports are often descriptive and journal articles published within the country on the topic usually repeat official government policy and extoll the simple 'win-win' rhetoric. However, there are some exceptions. For example, a 'notice' issued by the State Council in January 2018—urging urban consumers to purchase products from rural areas characterized by high levels of poverty—emphasized the importance of boosting consumption, while keeping in mind the importance of promoting sustainable development.² The government has encouraged state-owned and private enterprises to integrate the SDGs into their business models (Banik & Lin, 2019). In addition, the focus of numerous conferences organized in Chinese cities on a regular basis is on green growth and how China can make a gradual transformation to a greener and cleaner economy. At these events, hundreds of delegates typically try to familiarize themselves with the latest government regulations and information on subsidies and other incentives available for green entrepreneurship and the promotion of so-called 'high quality development'.

Faced with Western criticism of its aid and investments abroad, Beijing also appears to have taken steps to undertake administrative reforms. In 2018, it established a new aid agency—The China International Development Cooperation Agency (CIDCA) to consolidate the roles and functions that have traditionally been shared by the ministries of commerce and foreign affairs. To what extent it will make a difference is still uncertain, but the very fact that such an agency was established is itself noteworthy (Banik, 2019). Numerous other university institutes and think tanks are also being established but with an added emphasis on sustainability. Although the expansion of state

agencies and institutes creates employment for a job hungry population, the limits on academic freedom, top-down management and an emphasis on CCP ideology could potentially limit the capacity of these new institutions to act on environmental and social issues, especially when they are in conflict with state run 'green' industries such as those involved in generating hydropower. Furthermore, as top-down leadership is an established practice, Chinese investors are more likely to seek elite endorsement for aid or investment in recipient country states and less likely to engage with other stakeholders (Banik & Bull, 2018).

Sustainable development entails a transition to a sustainable future by coordinating and assisting global actors to balance three main developmental tensions, the environmental, the social and the economic (Hanson, 2019). While EC also aims to balance these three tensions, it proposes that mass action must be initiated in politics and culture to manage these three tensions (Ibid.). The CCP believes that through the leadership of the Party over all work, an eco-centric civilization can be built that will resolve problems associated with the transition to sustainable development (Government of China, 2015a; Government of China, 2015b; Government of China, 2021a). The approach is thus designed to maximize China's achievement of sustainable development targets without relinquishing power to civil society organizations or international institutions. At the same time by aligning itself with international goals and taking a strategic but active role at the UN, Beijing can be seen to strengthen global governance while it simultaneously strengthens its own position in multilateral institutions (Piccone, 2018).

Sustainable development has long been considered to be an ambiguous concept. EC tries to solve this ambiguity by creating a space for focused efforts under the leadership of the CCP, even though the Party relies on economic growth for its political legitimacy. While the CCP can, within China, control information about the actual outcomes of environmental or economic laws and policies, this is more challenging to do overseas. Indeed, controlling or assisting enterprises in faraway lands poses numerous challenges and dilemmas. For example, despite EC's environmental focus, older ideas about development that focus mainly on GDP growth continue to dominate the approach adopted by Chinese enterprises operating abroad. Another major challenge involves engaging actively with a diverse group of local stakeholders, including civil society organizations, in a foreign country—a feature that the CCP leadership is not accustomed to back home.

3 | TRANSPLANTING EC IN THE BRI

Since 2013, President Xi's administration has repeatedly emphasized China's impressive progress in achieving the MDGs (the precursor to the SDGs) and has undertaken a purposive strategy to make the transition from 'rule-taker' to 'rule-maker' (China Daily, 2013; Kennedy & Cheng, 2012). Much of Beijing's increased assertiveness in foreign policy, and interest in becoming a rule-maker, derives from the soft power it has cultivated through its active aid and investments in large parts of the world, including in Africa. The most ambitious foreign policy initiative from Beijing in recent years has been the BRI. Launched in 2013 and estimated to cost over \$5 trillion, the BRI aims at global investments in transportation, infrastructure, telecommunications, logistics, energy and oil and gas. Beijing's long-term plan is to undertake a series of large investments in roads, bridges, gas pipelines, railways, ports and power plants in over almost 150 countries around the world.³

Reactions to the BRI have been mixed, with some countries embracing the project as a symbol of the solidarity between developing nations. Others have reacted negatively to a growing Chinese presence, citing debt trap diplomacy, a threat to human rights, democracy and neocolonial resource exploitation as issues requiring urgent international attention. A central component of sustainable development is a human rights-based approach complimented by institutional rules-based mechanisms (United Nations, 2019). One concern stemming from CCP ideology is that EC could be used to weaken legal mechanisms that protect human rights in BRI partner states in the quest to 'green wash' political mechanisms that emphasize development as the fundamental and primary human right (China Dialogue, 2012; Government of China, 1991; Piccone, 2018; Shapiro & Li, 2020). Based on a Chinese understanding of human rights, these concerns are not unfounded (Government of China, 2016b; OHCHR, 2017; United

Nations, 2018; Article 4 PRC Constitution 2018). In CCP ideology, socialism and the work of the Party are fundamental, not rights (Article 1, PRC Constitution).

A recent report finds that nearly half of BRI investments thus far have prioritized the energy sector, including fossil fuel and renewable energy projects (Metzger, 2021). Among these, investments in coal projects have been significant, and Chinese financial institutions and enterprises are among the biggest and most influential in the global coal sector (Bingler, 2019; Nakano, 2019). We now turn to a major BRI-related initiative to improve access to electricity on the African continent. The complications that arose in this case suggest that the CCP needs a more coordinated approach.

3.1 | The case of the Lamu coal plant

In recent years, African energy security challenges have come to the forefront regarding coal-powered power plants. Although supporters claim that coal is the 'cleanest least costly option', critics have long wondered why Africa should construct such projects when coal is being phased out in large parts of the world. An example of a BRI project that contradicts the EC focus is a coal-fired coal plant project in Kenya aimed at improving energy security. With a \$2 billion Chinese loan, the Kenyan government decided to build a coal-fired plant adjacent to the Lamu Archipelago on the northern coast of the country. After a public tender process, the contract was in 2014 awarded to Amu Power Company—a Kenyan, Omani, American and Chinese consortium. Finance for the project was then secured after the consortium signed a credit agreement for \$900 million with the Industrial and Commercial Bank of China (ICBC) and with local lenders such as the Standard Bank of South Africa. The project was deemed by the Chinese authorities to be an important part of their BRI with the goal of solving 'the power shortage for millions in the region'.⁴ Construction was planned to begin in September 2015 and expected to be complete in less than 3 years. The actual task of construction was assigned to the Power Construction Corporation of China. And the consortium—Amu Power—intended to recover its investment by selling electricity until the year 2050 based on the build-own-operate model. The Kenyan government claimed that this power project would strengthen national energy security in addition to creating jobs and reducing poverty in the region. The discovery of coal reserves in the country together with the availability of Chinese finance provided the Kenyan government an opportunity to address lack of electricity access in many parts of the country, including Lamu (Bouille, 2019). A civil society representative told us: 'The government and the project proponents came to the people and promised them they will have cheap electricity that is going to generate or provide employment opportunities, but they weren't very honest when it came to the impacts'.⁵ In addition, a study concluded that the Kenyan government had underestimated the actual costs involved (e.g., in relation to payments for annual capacity charges even if the plant did not generate any power) and that 'Amu Power's claims for the cost of Lamu-generated electricity are unrealistically low, based on outdated costs for the imported coal that will be burned and on overly optimistic assumptions about how much electricity the plant will generate' (Schlissel, 2019, p. 2).

When the media began initially reporting on the development projects planned by the government in Lamu (which included the development of Lamu port, roads, railways and the coal plant), members of the local community believed that these would finally usher economic development in a historically marginalized area. However, community members and civil society organizations soon began to wonder why the Kenyan government was planning a coal project which could pose major health hazards and when other countries were moving away from coal. They began organizing a wave of protests citing concerns over revenue sharing arrangements and the threat of increased pollution, endangered marine species, destruction of mangroves, air pollution and a 700% increase of Kenya's annual emissions of greenhouse gases. As the local protests grew in momentum, the coal plant became a symbol of the lack of political interest in sustainable development and disregard for the democratic rights of local citizens who clearly did not want a highly polluting project in their midst. The movement began attracting not just environmental activists and the local community but also that of others around the country, including the media, academics and lawyers.

Subsequently, the local community, civil society organizations and environmental activists filed a lawsuit before the country's environmental tribunal. While the protest movement began to attract national media attention, the Kenyan government also faced growing international criticism for causing damage to the UNESCO world heritage site in Lamu and for going ahead with a highly polluting project. As one of the leading activists told us, 'We didn't have as much knowledge or know-how within the country' regarding coal plants and 'the government and the project proponents really took advantage of that'.⁶ He was particularly critical of the Kenyan government that promised 'cheap electricity that is going to generate or provide employment opportunities, but they weren't very honest when it came to the impacts'. An influential local community activist was particularly critical of the fact that while the rest of the world was moving away from coal, Kenya was willing to 'implement a project which has a lot of environmental hazards'.⁷ Being aware of the health hazards associated with coalmining and coal power plant projects, their message to the authorities was: 'you want to generate electricity so that you can use in this area, and you can expand some of the services to the people, but why don't you use an alternative sustainable source of energy to generate electricity?'.⁸ While the local community thus actively pushed for renewal energy—from solar, wind and hydro, the government refused to cancel the project. When Amu Power's request for the environmental licence, following a process of environmental impact assessment, was granted by Kenya's environmental regulator—National Environment Management Authority (NEMA)—it was perceived by community activists and their supporters to be a 'nightmare scenario'. Despite providing detailed comments, both in terms of the procedural aspect and flaws in terms of the scientific evidence that was provided in the environmental impact assessment report, the environmental licence was granted only 7 days after the consultation process was complete.

Shortly thereafter, and with legal representation from the *Katiba Institute* and *Natural Justice*—an organization that supports local communities with pioneering lawyers and legal experts, the community members of Lamu, spearheaded by the organization Save Lamu (an umbrella organization of activists), filed an appeal against the environmental licence in the country's National Environmental Tribunal. In June 2019, the Tribunal decided to stop the project citing environmental concerns and a failure to adequately consult the public. The lead lawyer for the *Save Lamu* petition claimed that in issuing the verdict, the Tribunal mainly focused on procedural aspects: 'They want to understand whether the project proponent has followed the laws and regulations. They also want to assess whether the environmental authority had considered all information and had followed the correct process as per law'.⁹

While the verdict provided much cause for celebration, Kenyan activists do not believe they have achieved total closure as there is a risk that construction activities may once again resume soon. The good news is that both the ICBC and the Standard Bank of South Africa have subsequently withdrawn from the Lamu project. The key takeaway from this Lamu case is that this successful social movement and the ensuing legal fight have showcased the demand by local populations that their leaders should prioritize renewable energy rather than polluting coal-powered solutions. A highly polluting project was stopped by people power, and hence, the Lamu case is a good example of how claiming and exercising democratic rights and freedoms have aided the goal of sustainable development.

4 | DISCUSSION

The Lamu coal plant case is illustrative of some of the challenges and limitations of the Chinese approach that constrain its effectiveness and can distort its economic and environmental impact. One major concern has been inconsistent policies on sustainable development pursued by Beijing on the African continent. While it proclaims its commitment to EC, climate-friendly technologies and renewable energy solutions, Beijing has for decades supported polluting industries such as coal both within the country and abroad. Another major concern that the citizens of some African countries, including Kenya, have expressed is that certain projects initiated by Chinese companies may not be prudent or suitable for their local contexts. There is also the lack of transparency surrounding the terms of Chinese investment decisions and the size and nature of aid allocations. Citizens and civil society organizations in many parts of the world are routinely questioning the logic and conditions behind various Chinese loans negotiated

by their governments, even when these loans are interest-free and concessional. They often seek more information about the conditions attached, whether their countries can afford such loans, and the consequences if their governments were to default on their obligations. The local community in Lamu, although more critical of the Kenyan government than the Chinese contractor, believes that rather than coal, other renewable energy projects should have been on the table. They also question the motives of government officials for initiating the project with Chinese funding, suspecting bribes and kickbacks as has been the case for the Standard Gauge Railway (SGR) project, the largest infrastructure project implemented in Kenya's history with Chinese funding and expertise (Wang & Wissenbach, 2019). Without binding environmental procedures and punishments for overseas actors, EC remains difficult to enforce.

But perhaps the greatest challenge relates to the top-down elite focus of Chinese diplomacy. Diplomatic missions and state-owned as well as private companies have not paid adequate attention to engaging with civil society and key local stakeholders, which in turn has resulted in protest movements such as the one in Lamu. The developing world's desire for cheap energy and China's expertise in coal plants appeared to be a perfect solution for many African leaders. However due to increased concerns over climate change, coal has become a central issue that the Xi administration has used to persuade the world that it is serious about its commitment to sustainable development. And in a major and much welcomed announcement, President Xi announced at UNGA in September 2021 that Beijing will stop supporting new coal plants outside China and rather promote renewable energy (Xinhua News, 2021).

Despite a long history of building affordable coal-fired power plants at home and abroad for decades, China is increasingly supporting renewable energy solutions. In addition to passing domestic legislation on environmental impact assessment and encouraging public interest litigation on environmental issues, it is providing green financing and encouraging afforestation programmes while undertaking a range of 'green' campaigns (Ding, 2020; Holzmann & Grunberg, 2021). EC rhetoric at home emphasizes the principle of protecting the environment first. Protection is to be expanded by limiting the activities of certain industries in scientifically demarcated ecological areas like watersheds, wetlands and forests as part of a system called the ecological protection red line or ERL. Several policy documents have also urged the government to begin exporting new conservation zoning practices to BRI projects abroad (CCICED, 2020). ERL requires data and human capital, and China seeks to provide this through tech-sector enterprises and scientific cooperation. However, the enhancement of scientific and technological support for the construction of EC will increase the demand for natural resources to support new technologies and the human resources that own or operate the technologies. There have been concerns that Chinese support, based on cyber, space or tech systems, may tie host states into infrastructures that could erode their 'data sovereignty' (Wright, 2021). The CCP is also engendering Party cells and Party organizations with increasing powers over society, NGOs and enterprises to guide, audit, train, report and even punish actors, in order build socialism (Government of China, 2020). The rhetoric highlights that party discipline and inspection is aimed at solving the problem of non-compliance with the law. However, there are no binding environmental rules overseas that actors must follow beyond host state laws. Although the commercial representatives based at Chinese Embassies around the world are playing a supervising role, they may not always have the capacity or willingness to monitor environmental governance in all BRI-related investments.

The debate about China's growing global economic footprint is often quite polarized. Some voices in the West routinely express concerns about the potentially negative effects that Chinese aid and investment may have on the governing capacities of recipient countries, and others criticize Beijing for its unwillingness to be more transparent about the financial assistance it provides and for pursuing 'debt-trap diplomacy' (Kinyondo, 2019; Pryke, 2020). This debate is only increasing in importance as the scale of Chinese overseas aid and investment grows. Beijing's overall strategy is to present itself as a country driven by the conviction that state-to-state relations ought to benefit both parties. When it makes decisions about aid and investment projects around the world, including in BRI projects, it strives to present itself as not questioning the legitimacy of the governments in recipient countries. This is done by emphasizing the 'non-interference' principle. Indeed, China touts its aid policies as representative of a set of interrelated general principles, such as win-win outcomes, non-interference in the domestic affairs of other countries, mutual respect and friendship. Chinese leaders often are particularly wary of being perceived to be preaching to

friendly countries, and Beijing routinely places a rhetorical emphasis on experience sharing between developing countries and economic self-reliance (Banik & Bull, 2018).

Enforcing stringent guidelines on investment portfolios will not be an easy task going forward, not just in coal projects but also in relation to other fossil fuel projects. We may even witness, although highly unlikely now, Chinese companies seeking compensation for lost income and suing governments for forcing them to change or cancel contracts. There is also considerable uncertainty in African capitals on the extent to which Beijing will now prioritize investments in renewable energy and whether recipient countries will have the necessary financing to initiate such costly ventures. Thus, affordability of energy projects is going to be key going forward. Another issue is whether local communities and civil society groups will accept opaque MOUs offered by Chinese companies.

According to the IEA (2020), China is the world's biggest coal producer, importer and consumer and currently consumes over 50% of the world's coal. Despite China's rather ambitious goal to achieve carbon neutrality by 2060, coal has been essential for China's economic growth, and the Chinese economy continues to be heavily coal reliant. Even the most recent government policies continue to advance the profitability of the coal energy sector and new power plants are still under construction and planned. This continued emphasis on promoting coal usage seems to directly contradict China's goal to strive towards decarbonization of the economy. Indeed, fossil fuel extraction activities, including coal mining, are completely exempted from tax obligation under the Resource Tax Law (Government of China, 2019). Furthermore, the coal sector continues to receive direct and indirect state subsidies. This practice keeps the coal power prices low and does not reflect their full environmental cost (Carbon Brief, 2020). Moreover, coal power is also prioritized at the regional level in China. The performance of regional officials is judged based on the economic development under their administration, and thus, approving coal projects that stimulate economic activity much faster than a long-term focused transition to renewables allows the incumbents to move up the ladder much quicker.

For years, China has witnessed uneven development (Zhang et al., 2020) with several central and western provinces lagging on most indicators of human development.¹⁰ While rural poverty remains high, there are also growing problems related to urban poverty and the overall quality of life for migrants that lack access to social services. There is also a renewed debate within China about the costs of rapid economic growth. With the growing menace of air pollution and growing concerns over food safety, the discourse on most Chinese social media platforms has often focused on the desire for blue skies, clean air, clean water and safe food. Hence, it makes perfect sense for President Xi and the CCP to exhort the virtues of sustainable development, particularly at a time when there is considerable public concern over an economic slowdown and rising cost of living. The global stage, however, offers President Xi an opportunity to build legitimacy for Chinese ideas and perform its environmental competency in ways that could offset the restrictions of domestic systemic complexities. Thus, 'greening' the BRI has received considerable attention in recent years from Chinese officials. At two high-level Belt and Road Forums (organized in 2017 and 2019), guidance documents that outline the government's strategic vision for greening the BRI were released together with political statements by President Xi and high-ranking officials on the importance of building infrastructure projects that are green, sustainable and facilitate high-quality growth (China Ministry of Ecology and Environment, 2017; Metzger, 2021; Ng, 2019).

Back on the African continent, and after much delay and uncertainty, The Forum of China Africa Cooperation (FOCAC) convened in November 2021 and reaffirmed the continuation of Chinese investments and development projects in the Dakar Action Plan. Although greening China's investments and supporting conservation projects in Africa is a central theme in the document, an exact list of conservation projects was not included. Furthermore, Beijing has promised increased cooperation on many aspects of development, including 'Party building training' for political parties, conservation, legal work, cyber space and space technology, infrastructure, NGO engagement, human resources and clean energy solutions. However, the role of civil society, a free press, or free, prior and informed consent, was not emphasized at the FOCAC meeting. It thus remains unclear by which predictable legal mechanism a Chinese stakeholder in an investment or development project could halt a BRI project on the grounds of environmental concerns. The Dakar Action Plan also emphasizes improving extradition agreements, which is

particularly interesting in relation to the CCP's Leninist organizational system, which demands military discipline in political matters.¹¹ Since Xi has come to power, a new institution has been created—the all-powerful National Supervisory Commission (NSC)—which is above the judiciary and has the power to investigate, sanction, punish and detain anyone who is a party member or a legal subject affiliated with a state funded institution (Li, 2021). As most CEOs of SOEs are also members of the CCP, extraditing expatriates back to China for violating environmental standards could become a way to enforce the internationalization and 'greening' of party discipline. The agreement reached in Dakar promises that China will set up and support many cooperation centres like the China-Africa Environmental Cooperation Centre, the China-Africa Joint Arbitration Centre and the Sino-Africa Joint Research Centre. Under improved extradition treaties, Beijing would be able to extradite and investigate actors affiliated with these institutions under the powers of the NSC. However, this approach to enforcing norms on overseas actors through extradition will need to be studied further before we can say anything about its effects. Nevertheless, the Leninist 'accountability' system of the Party is supposed to build incorruptible institutions.¹² However, incorruptible in this sense means adherence to party ideology, rather than full disclosure of the financial audits of key enterprises.

Interestingly, the Dakar Action Plan situates Sino-African cooperation as part of Xi Jinping's community of shared futures in the *new era* and encourages African states to jointly support Chinese norms at the international level. The concept of *shared futures* implies a vague communal duty instead of individual human rights, rendering human actors as an undifferentiated mass, diverse but not pluralistic (Creemers, 2020). The dignity of human beings is satisfied by taking part in this community of shared futures, rather than having dignity in a universal sense—regardless of one's state of development or the society one belongs to (Piccone, 2018; United Nations, 2017). In this ideology, conflict between the needs of diverse groups is identified as something that must be resolved. These conflicts, in the CCP's view, are not seen as legitimate; rather, they are simply incommensurable interests that can only be mediated through a top-level political design in which courts are subservient to the Party (Creemers, 2020). What is legitimate, in this view, is socialist state-led development (Government of China, 2016b). This approach may suit some African elites, who have made little effort to include references to the African Union's environmental and human rights law concepts in the action plan.

The recent 6th Plenum of the CCP's Historical Resolution informs us that, 'we [the party] must use Marxist positions, viewpoints, and methods to observe, understand and steer the trends of the times [...] and the development of human society'. Along with a goal to assist Africa's development, there is also a goal to foster a XJPT-inspired normative view of socialist development on the African continent. However, it is unclear whether environmental concerns, which are often entangled with human rights, have any predictable method to override security interests in XJPT. The Dakar Action Plan and other BRI documents assume that Xi's administration is working towards *a common future for all life on earth*. These documents do not identify problems with access to justice or the appropriate legal forums in which to pursue environmental cases in the BRI, especially when host states do not have strong institutions that safeguard and promote sustainability. Even though XJPT identifies environmentalism as a vital part of socialist development, it is unclear how this will work without China's support and recognition of actionable and justiciable human and environmental rights. In January 2022, the country's top diplomat stated that China will 'jointly build the "Belt and Road" with high quality' and 'actively participate in global climate governance' (Government of China, 2022). Accordingly, Beijing plans to 'provide more assistance for domestic green and low-carbon transformation and development' with the goal of contributing to 'the construction of a new development pattern' (Government of China, 2022). For African citizens and their leaders, it will be crucial to clarify what constitutes 'high quality' development and who is a legitimate stakeholder for this joint building of the BRI.

5 | CONCLUDING REMARKS

The key question we have examined is whether and to what extent the EC concept can become the guiding ideology for Chinese actors in BRI projects on the African continent. China faces the same challenges as the

rest of the world in relation to sustainable development, and it appears to have warmly embraced the 2030 Agenda and the SDGs. Within China, EC promotes an approach to sustainable development within a top-down Leninist organizational system. Its principles elevate environmental concerns and promote strict legal protection of the environment. The extent to which Beijing has the political will to enforce such strict Chinese standards in Africa is uncertain. The so-called 'debt trap diplomacy' that China consistently refutes is a source of frequent international media attention, and there are widespread concerns that the pandemic has worsened the ability of many African governments to repay their mounting debts. A recent example is the much-publicized recent allegation that China may grab Entebbe airport in case Uganda fails to service a \$200 million loan¹³—a claim Beijing has vehemently denied,¹⁴ terming it 'malicious', 'ill-intended' and without factual basis.¹⁵ We believe such negative international media reports will further complicate the BRI's system of engagement that relies heavily on cooperation with local and national elites. Moreover, while Beijing does not question the legitimacy of host governments, the Lamu case in Kenya illustrates some of the challenges that Chinese-backed projects face on the African continent, especially when local communities and civil society organizations are strongly against an idea of development supported by their own government. Such challenges may increase in the future as Chinese interests become further entrenched in Africa. Although EC relies on a Leninist system of control and discipline, it is unclear how far the CCP will go to institute strong control and disciplinary mechanisms outside of its territory. Would the PRC really extradite CEOs of Chinese companies back to China if they are suspected, or accused, of damaging the local environment in a host country? Thus, without an international party accountability system, EC's Marxist-Leninist design is more challenging to transplant. The situation is further complicated in the absence of an EC law, which, if in place, could help create binding requirements, clarify jurisdictions and create accountability systems. As of now, there are no compensation mechanisms in place to deal with the cancellation of BRI contracts based on EC. A set of regulations on 'green' due diligence in Foreign Direct Investment may help clarify uncertainties and improve China's and BRI's global image. Rather than clear legal regimes, the system currently consists of a set of political forums and non-binding agreements that can be moulded to suit the interests of local elites. However, China in this sense is not very different from most Western powers and their development strategies, except that the sheer volume of Chinese investments has a greater impact on the natural environment on the African continent.

Although the Dakar Action Plan encourages African civil society participation, could an African NGO sue a Chinese company using Chinese law and win? Perhaps the China Africa Joint Arbitration Centre will become a forum for such litigation.¹⁶ Public Interest Litigation on environment issues is growing in China. If a similar system were adopted for the BRI, then EC could potentially become a guiding ideology. However, for this to happen, it would require an incredible effort on the part of the Chinese government to support Chinese actors, especially private enterprises and NGOs, in improving their environmental and social governance abroad. The volume of investments required to become the global leader in green development may, in the long run, lead Beijing to believe it can demand BRI partners to do things that are not in their interest. Beijing may, in turn, become frustrated by civil society resistance of the kind the proposed Lamu coal plant witnessed in Kenya. There is also the possibility that Chinese companies, following the Lamu case, may in the future prioritize greater consultation with local communities to avoid local resistance to proposed BRI projects, even when the governments of host countries are in favour of such investments.

Xi Jinping has made environmentalism a key ideological and legal component of the current stage of Chinese socialist development. Accordingly, the failure to achieve an EC will mean a failure of the Chinese development model. The ideology of the EC may enable African stakeholders to employ Chinese normative and legal language to hold Chinese actors accountable to their own standards rather than using legal norms that Beijing is uncomfortable with. In this manner, BRI partners may be able to use their own courts to expand the substantive definitions of EC and adapt it to suit their national conditions.

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DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available from the corresponding author upon reasonable request.

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ENDNOTES

- ¹ Also see Article 9 (the green principle) of the Chinese Civil Code (2021), which is evidence that EC's inclusion in constitutional law has influenced civil legal principles.
- ² 'Consumption key to poverty relief', *China Daily*, 22 January 2019, <http://www.chinadaily.com.cn/a/201901/22/WS5c467448a3106c65c34e5c28.html>.
- ³ As of March 2022, 146 countries and 32 international organizations have signed cooperation agreements for the BRI. <https://greenfdc.org/belt-and-road-initiative-about/>.
- ⁴ 'Kenyan court blocks China-backed power plant on environment grounds', *The Financial Times*, 17 June 2019, <https://www.ft.com/content/9313068e-98dc-11e9-8cfb-30c211dcd229>.
- ⁵ Interview: Omar Elmawi, National Coordinator of *DeColonize*, Nairobi, 24 May 2021.
- ⁶ Interview: Omar Elmawi, National Coordinator of *DeColonize*, Nairobi, 24 May 2021.
- ⁷ Interview: Raya Ahmed, representation, *Save Lamu*, Lamu, 24 May 2021.
- ⁸ Raya Ahmed, *Ibid*.
- ⁹ Interview: Gino Cocchiaro, Country Director, *Natural Justice Kenya*, Nairobi, 28 May 2021.
- ¹⁰ Also see, Chart of the week: uneven economic growth in China's regions, *The Financial Times*, <https://www.ft.com/content/72b67912-69b2-39b7-bfa2-da14b8afebce>.
- ¹¹ Once a decision has been made, Party members must execute them unconditionally.
- ¹² See the four obedience's 四個服從 (Thornton, 2021).
- ¹³ 'Uganda surrenders key assets for Chinese cash', *The Daily Monitor*, 25 November, <https://www.monitor.co.ug/uganda/news/national/uganda-surrenders-airport-for-china-cash-3631310>.
- ¹⁴ 'China rejects allegations it may grab Ugandan airport if country defaults on loan', Reuters 29 November 2021, <https://www.reuters.com/markets/rates-bonds/china-rejects-allegations-it-may-grab-ugandan-airport-if-country-defaults-loan-2021-11-29/>.
- ¹⁵ 'China is forced to deny rumor that it will take control of Uganda's international airport should the country default on \$200million loan from Beijing', *The Daily Mail*, 30 November 2021, <https://www.dailymail.co.uk/news/article-10257897/China-forced-deny-rumour-control-Ugandas-international-airport.html>.
- ¹⁶ See China-Africa Joint Arbitration Centre, <https://cajacjhb.com/>.

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