


Kenya's Infrastructural Question

Examining the Renegotiation of the SGR Debt with China

HELLEN ADOGO 

Institute for Pan-African Thought and Conversation
University of Johannesburg, South Africa 
hellena@uj.ac.za

TINUADE OJO 

Centre for the Study of Race, Gender and Class
University of Johannesburg, South Africa 
tinuadeo@uj.ac.za

CHIDOCHASHE NYERE 

Institute for Pan-African Thought and Conversation
University of Johannesburg, South Africa 
Chidonyere@gmail.com

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Abstract

Kenya's Standard Gauge Railway (SGR), the country's largest infrastructure project since its 1963 independence, was initially seen as a mutually advantageous endeavour for both Kenya and China. For China, the SGR complemented its Belt and Road Initiative (BRI), while President Uhuru Kenyatta viewed it as a monumental infrastructure development that would solidify his legacy. This article critically assesses Kenyatta's infrastructure legacy, with a particular focus on the parliamentary transport committee's proposal to renegotiate the SGR loan terms with China. Drawing on both secondary and primary sources, including the SGR loan agreements, the analysis indicates that the project was driven more by political interests than by genuine developmental needs. Kenyatta kept the SGR deal's details confidential and bypassed important oversight institutions. The leaked Auditor General's letter claiming that Mombasa Port had been used as collateral for the railway, raised concerns about a potential debt trap scenario with China. The article concludes that the SGR was primarily a Kenyan initiative, with the ensuing debt distress attributable to poor decision-making processes within the president's executive office, thereby necessitating calls for renegotiation of the loan terms.

Introduction

Kenya exemplifies how African countries can negotiate unfavourable deals, resulting in substantial debt to China. Following its independence in 1963, Kenya and China maintained a stable relationship, although this was significantly disrupted by allegations of actions undermining sovereignty during Jomo Kenyatta's presidency. Relations began to stabilise during the tenure of President Daniel Moi (Patroba, 2012, p.6). The concern that China might seize control of Mombasa port in the event of debt repayment defaults underscored the issue of debt-trap diplomacy in Africa-China relations. The term "debt-trap diplomacy" gained prominence in

2017 following Indian scholar Brahma Chellaney's critique of China's creditor imperialism. Debt-trap diplomacy refers to the practice where lenders use loans to gain access to strategic assets in developing countries, which are then exploited. Chellaney argues that China employs this strategy to acquire strategic assets in countries such as Sri Lanka that fail to meet their payment obligations(Chellaney, 2017).

An alternative perspective argues that the issue is not Chinese debt trap diplomacy but rather an African debt trap created by political elites who prioritised their interests over national economic needs. In Kenya, the government struggled to repay loans from China for the Standard Gauge Railway (SGR) and other infrastructure projects. The SGR agreement comprised a concessional loan of USD 1.6 billion, repayable over twenty years with a seven-year grace period and a two per cent interest rate, and a commercial loan of USD 1.63 billion for ten years with a five-year grace period(The Buyer Credit Loan Agreement, 2014).

Kenya committed to repaying the loans using the operational proceeds from the Standard Gauge Railway (SGR) and provided additional credit safeguards through a fifteen-year take-or-pay agreement (TOPA).

The TOPA agreement, signed between the Kenya Railway Corporation (KRC), the SGR's owner, and the Kenya Ports Authority (KPA), stipulated that KPA would transport a specified volume of freight annually via the SGR and required compensation for any shortfall if this target was not met (Brautigam et al., 2022)

In 2020, Kenya's transport parliamentary committee recommended renegotiating the terms of the bilateral agreement with China (Miriri, 2020). This recommendation prompted questions about the feasibility of Kenya successfully renegotiating the SGR loan agreement with China. While China does not force countries to accept its loans, it offers significant advantages over Western financial institutions by providing infrastructure loans with less stringent conditions. This is appealing to many African countries that face financial constraints and lack the capacity to independently develop infrastructure. Typically, Chinese loans are contingent upon the involvement of Chinese companies in project implementation, which has contributed to their dominance in Africa's infrastructure sector. President Kenyatta sought China's assistance for his infrastructure development agenda without fully considering the long-term economic implications for the country. Consequently, with China's support, Kenyatta's administration asserted that it had achieved greater infrastructure development, particularly in road construction, than any previous administration in Kenya's history (Shiundu, 2022). This article contributes to the discourse on the Belt and Road Initiative (BRI) and the potential of Chinese investments to evolve into a debt trap for African countries. The article begins with an examination of Africa's debt crisis, followed by an outline of the historical context of Kenya-China relations. It then analyses Kenya-China infrastructure relations during President Kenyatta's tenure, critically evaluates the SGR contract and the government's attempts to renegotiate its terms, and concludes by drawing lessons from Kenya-China relations concerning the SGR loan.

The Debt Crisis in Africa: A Conceptual Overview

The historical perspective highlights that the discourse on debt in Africa has persisted for a considerable duration. Following the decolonisation period, there was widespread anticipation that independence would lead to rapid development and improved quality of life for the population (Ezenwe, 1993). Contrary to expectations, many African countries faced various political, social, and economic challenges. Between 1980 and 2000, the continent faced a severe economic crisis characterised by the inability to achieve consistent economic growth and maintain macroeconomic

stability. This crisis hindered efforts to effectively reduce poverty in the short term and ultimately eliminate it in the long term (Geda, 2019, p. 2). It is well-documented that Africa experienced minimal or negligible economic growth from 1980 to 1990. Notably, the sub-Saharan region saw a decline in economic growth at an average annual rate of -1.2 per cent (Mbaku, 1994, p. 14). In stark contrast, regions in Asia recorded robust positive growth rates, averaging 8 per cent per year (Rispen, 2009, p.5). The economic challenges were evident through various indicators such as high levels of unemployment, stagnant growth in the agricultural sector, food shortages, drought conditions, political instability, declining trade conditions, foreign debt, and economic mismanagement characterised by corruption and misuse of resources (Ghai & de Alcántara, 1990, pp. 391-393). Developing countries faced challenges in countering their economies, leading to struggles with growing economic crises and large foreign debts. These countries had limited resources available to address these situations (Oppong, 2014, p. 321).

The implementation of structural adjustment programmes (SAPs) by the World Bank and the International Monetary Fund (IMF) was a response to the economic challenges facing sub-Saharan Africa in the 1980s. These programmes, aimed at economic recovery and self-sustainable development, primarily involved loans conditioned on measures such as currency devaluation, trade liberalisation, privatisation, and reduction of public spending (Bawa & Ateku, 2020, p.6). Despite these efforts, SAPs largely failed to yield positive outcomes. They led to a significant reduction in funding for education and health, increased unemployment due to staff layoffs, and adversely affected the agricultural sector due to the withdrawal of government subsidies. Thompson (2010) and Fatton (1992) both concluded that SAPs had detrimental effects on African governments, burdening them with significant debt and causing widespread economic and social failures (as cited in Logan, 2015). For instance, reduced spending on educational infrastructure led to a decline in school enrolment from 80 per cent in 1980 to 69 per cent in 1990 (Cheru, 1995, p. 237).

African rulers responded to the ineffectiveness of SAPs by devising their own initiatives to foster development and tackle the prevailing economic crisis and debt predicament. The African initiatives in question garnered extensive backing from the United Nations Economic Commission for Africa (UNECA). They included, the Lagos Plan of Action, the Abuja Treaty, which aimed to establish the African Economic Community (AEC), the Africa Priority Programme for Economic Recovery (APPER), and the African Alternative Framework for Structural Adjustment (AAF-SAP). However, the efforts made proved to be futile and can be attributed to two main factors: firstly, the African governments' inability to implement the proposed measures, and secondly, the lack of support from Western creditors such as the World Bank and IMF, who perceived these African initiatives as potential competitors to their own undertakings (Bawa & Ateku, 2020, p. 13).

In the 1990s, the World Bank and IMF launched the Highly Indebted Poor Countries (HIPC) initiative, offering debt relief to countries with strong governance, anti-corruption efforts, and prioritisation of healthcare and education. HIPC was later upgraded to HIPC II to provide more comprehensive and expedited relief, linking debt relief with poverty reduction and social policies. These initiatives required countries to implement political and economic liberalisation, deregulation, and privatisation (Omotola & Saliu, 2009, pp. 93-95). Despite these efforts, Africa remains heavily burdened by debt, thereby dispelling the notion that China is solely responsible for the continent's debt predicament.

Like Western creditors, China plays a significant role in global development finance. China's condition stands apart, in that it is relatively less stringent, requiring adherence to the one-China policy. In the context of developing countries, concerns emerge regarding their ability to negotiate development financing with China, particularly due to the contentious issue of debt

trap diplomacy associated with China's lending practices. China's history of lending to African countries dates back to projects such as the Tanzania-Zambia Railway (TAZARA) in the 1970s, which received substantial Chinese financial backing totalling USD 560 million (Yu, 2016, p.14). Notably, the TAZARA project did not initially raise significant concerns about China's development financing practices.

The discourse on debt trap diplomacy is often associated with the BRI, a geopolitical strategy launched by President Xi Jinping in 2013 (Himmer & Rod, 2023, p.250). The BRI aims to enhance trade, infrastructure, and investment links between China and over sixty countries across three continents (Nantulya, 2019). Of the 54 African countries, 52 have signed Memorandums of Understanding (MoUs) with China to participate in the initiative. The only notable exceptions are Mauritius and Eswatini. However, Mauritius may align with the BRI in the future due to its Free Trade Agreement with China concluded in 2019 (Gu et al., 2022, p.6). Conversely, Eswatini's participation remains unlikely due to its lack of diplomatic relations with China, a situation linked to its continued recognition of Taiwan. While the BRI presents African countries with opportunities to address infrastructural challenges, concerns have emerged regarding its potential to precipitate a new wave of debt characterised by a lack of transparency, unfair procurement practices, minimal technology transfer, limited local employment opportunities, non-compliance with national design standards, and substandard infrastructure quality (Lisinge, 2020, pp 2-3). In December 2018, an internal audit document highlighted the risk that Kenya might lose control of the strategic Mombasa port if it defaulted on loans from China, which were primarily used for constructing the SGR (Omondi, 2020). These concerns underscore the need for a thorough analysis of the BRI's potential impact on African countries. The following section offers an overview of Kenya-China relations.

Kenya-China Relations: An Overview

Kenya-China relations commenced in 1963 when China recognised Kenya's independence. Despite ideological differences, the two countries maintained a cordial relationship. As the most developed economy in East Africa, Kenya held significant international political and economic value (Mulati, 2019, p. 737). Under Jomo Kenyatta's government, bilateral relations began favourably with the appointment of Wang Yutien as the Chinese ambassador to Kenya in February 1964. That same year, Vice-President Jaramogi Odinga led a high-level Kenyan delegation to China, urging Chinese participation in a collective African effort to combat apartheid in South Africa and address colonial remnants in Africa (Mulati, 2019, p. 738). Exchanges involving senior government officials intensified to establish a solid foundation for bilateral relations. However, during Jomo Kenyatta's administration, bilateral relations between Kenya and China were notably unstable, with escalating tensions leading to the expulsion of diplomats from both countries (Plummer, 2019, pp. 13-14). This instability caused a temporary interruption in relations until the Moi administration took power in 1978.

According to (Shilaho, 2021, p. 181), the normalisation of Kenya-China relations occurred after Mao Zedong and Jomo Kenyatta exited the political stage. To stabilise these relations, President Daniel Arap Moi adopted a proactive engagement strategy with China, reflecting a significant departure from his previous scepticism during the 1960s. Moi had previously harboured suspicions about China's role in Kenya, even alleging Chinese involvement in a purported plot to incite revolution within the country. During Moi's administration (1978-2002), significant measures were undertaken to restore diplomatic relations. Notably, Kenya appointed an ambassador to China, and in return, China appointed an ambassador to Kenya. This mutual exchange signified the primary manifestation of the complete restoration of relations between the two countries (Mulati,

2019, p. 739). President Moi achieved a historical milestone in 1980, becoming the first Kenyan head of state to officially visit China. The primary outcome of this visit centred on Kenya's efforts to diversify its external partners, which culminated in the signing of a new economic and technical agreement, intended to replace the previous one that was finalised in 1964 (Sun, 2023, p. 137). This agreement incorporated an important provision wherein China pledged financial support to construct the Moi International Sports Centre, which served as the designated venue for the fourth edition of the 1987 All Africa Games. Moreover, within the framework of the economic cooperation agreement, President Moi successfully obtained funding for development projects that primarily benefited his political constituency situated in the Rift Valley region. Since gaining independence, Kenya has predominantly been governed by leaders from two ethnic groups, the Kikuyu and the Kalenjin. The presidents originating from these tribes have consistently prioritised the development of their respective regions, thereby illustrating the ethnically driven nature of Kenyan politics. The development projects included the building of a teaching hospital at the Moi University in Eldoret, the construction of the Gambogi-Serem highway and the supply of teaching equipment to Egerton University. Additionally, China pledged to provide Kenya with a total of ten scholarships annually and to facilitate two high-level military exchanges each year (Mulati, 2019, p. 739). President Moi made two additional visits to China during his tenure in office, specifically in 1988 and 1994 (Onjala, 2008, p.6). It can be argued that the Moi administration significantly contributed to the promotion and strengthening of the bilateral relations between Kenya and China, consequently paving the way for new opportunities to foster continuous growth and development.

President Mwai Kibaki, who succeeded Moi, introduced Kenya's Look East Policy to attract investments from China and other Asian countries (Kagwanja, 2015). Political tensions in Kenya have often strained relations with its traditional Western partners, driving the country to seek closer ties with China and other Eastern nations. Although perceived as anti-Western, this policy aimed to diversify Kenya's funding sources by engaging with Asian countries (Otele & Etyang, 2019, p.145). Despite this shift, the Kibaki administration maintained strong relations with Western allies, particularly in security matters (Otondi, 2014, p. 63). Kenya-China relations notably improved under Kibaki, beginning with his 2005 visit to China, which resulted in the signing of agreements in infrastructure, energy, and other sectors (Chege, 2008, p.26). Chinese President Hu Jintao's 2006 visit, the second by a Chinese president, marked a key moment, resulting in agreements for various projects including road maintenance and anti-malaria initiatives (Ministry of Foreign Affairs of the People's Republic of China, 2006). The trade relationship between Kenya and China has remained an area necessitating improvement, as the trade balance is markedly skewed in favour of China. In 2002, Kenya's exports to China were only USD 5.798 million against China's exports to Kenya of USD 180.576 million, reflecting a significant trade imbalance. This situation reveals a significant disparity in the trading patterns between the two countries, with Kenya having previously enjoyed a more favourable position at the time of its independence. Trading patterns of this nature are, common in Africa-China relations, leading to a trade deficit for African countries, including Kenya. The Kibaki administration acknowledged this imbalance and pledged to work with the Chinese government to address and reduce this gap (Onjala, 2010; Patroba, 2012, p. 7). In 2008, the Kibaki administration launched Vision 2030, an economic development blueprint aimed at transforming Kenya into a globally competitive, industrialised middle-income nation with an improved quality of life for its citizens by 2030. Within Vision 2030, the Lamu Port, Southern Sudan, and Ethiopia Transport Corridor (LAPSSET) was designated as a flagship project. The Kenya-led SGR was officially launched in Nairobi during President Kibaki's tenure, marked by a joint communiqué between President Mwai Kibaki and Ugandan President Yoweri Museveni (Otele, 2021). The successful implementation of these projects depended on securing substantial financial resources. Recognising the importance of

infrastructure development in Kenya–China relations. In 2012, as part of his “Look East Policy,” President Kibaki sought Chinese investment in LAPSSET during a visit led by Liu Qi, a member of the Chinese Communist Party (CPC) Central Committee. However, with Kibaki’s presidency ending that year, the responsibility for advancing these projects fell to the incoming government (International Department Central Committee, 2012).

Kenya – China infrastructure relations during Uhuru Kenyatta’s presidency (2013–2022)

In August 2013, President Uhuru Kenyatta undertook his inaugural state visit to China, reflecting a continuation of the Look East Policy initiated by the preceding Kibaki administration. This policy, akin to those adopted by other African nations such as Zimbabwe, seeks to diversify sources of development finance, particularly in light of increasingly strained relations with traditional Western development financiers (Ojakerotu & Kamidza, 2018; Wekesa, 2013). The state visit pursued dual objectives: firstly, to enhance diplomatic relations between Kenya and China. During their initial meeting, Presidents Kenyatta and Xi Jinping concurred on upgrading the bilateral relationship to a Comprehensive Cooperative Partnership (Wekesa, 2013). Secondly, the visit aimed to diversify Kenya’s foreign policy options to secure financing for the development agenda of the Jubilee government (Raghavan, 2013; Sitienei, 2021, p. 115). The enhancing of Kenya–China relations under the Jubilee administration was influenced by the strained relations between Kenya and Western governments due to the International Criminal Court (ICC) charges against Kenyatta and his deputy, William Ruto (Sitienei, 2021, p. 114). China supported Kenya’s Jubilee government by endorsing an African Union (AU) motion presented to the United Nations Security Council (UNSC), which advocated for the deferral of charges against Kenya’s leaders (Kelley & Menya, 2013). Shilaho (2021, p. 184) posits that China’s consistent opposition to the Kenyan ICC cases can be attributed to its defence of economic interests in Africa, a stance influenced by its status as a permanent member of the UNSC.

The bilateral relationship was further enhanced in May 2014 when Chinese Premier Li Keqiang visited Kenya as part of his Africa tour. Several agreements were inked during this visit as part of the two countries’ comprehensive cooperative partnership. The most important feature of this visit was the signing of a USD3.8 billion finance deal for the construction of the SGR railway connecting Nairobi and Mombasa (Taylor, 2020, p. 33), which will help Kenya achieve its Vision 2030 goals. Kenya–China relations advanced further when Presidents Xi and Kenyatta upgraded bilateral ties to a Comprehensive Strategic Cooperative Partnership, the second highest classification among East African countries (Xuequan, 2017). China’s partnership diplomacy places comprehensive strategic cooperative partnerships among the higher levels of partnerships, reserved for countries with extensive economic ties with China. The word “cooperative” is added to widen the scope of bilateral relations. Furthermore, countries assigned higher-level partnerships have one or a combination of these attributes: they either trade strategic resources with China, are involved in the BRI, or have strategic resource supply projects with China (Braga, 2018). Although the so-called strategic resources purported to be traded with China are questionable, seeing that there seems to be more benefit to China than there is to Kenya. Kenya is not a mineral-rich resource country, but it does have BRI projects, which explains its high-ranking relationship with China.

Under Kenyatta’s administration, Kenya–China relations were upgraded twice, demonstrating the importance of the relationship. High-level visits also increased during Kenyatta’s presidency. Between 2013 and 2022, Kenya and China exchanged several high-level visits. President Kenyatta visited China four times since taking office. Kenyan opposition politicians Raila Odinga and Kalonzo Musyoka also visited China. Following the 2017 elections, which were marked by heightened political tensions, Beijing sought to ensure that both the opposition and the government adopted

a unified stance (Wafula, 2018). On the Chinese side, Premier Li Keqiang, State Councillor and Foreign Minister Wang Yi, Wang Yang (Chairman of the National Committee of the Chinese People's Political Consultative Conference – CPPCC), and Special Envoy Yang Jiechi are among the high-level Chinese leaders who have visited Kenya. Despite the strong ties between Kenya and China, it is notable that Kenya has yet to host a high-level visit from President Xi Jinping. The absence of a state visit to Kenya by President Xi Jinping suggests that the relationship between Nairobi and Beijing remains in the process of development. Consequently, assuming that the relationship is symmetrical and of equal significance to both parties does not accurately reflect the true nature of the bilateral relationship.

It was under Kenyatta's government (2013–2022), that Kenya significantly increased its borrowing from China, ranking among the African countries with the highest external debt to China. Figure 1 below demonstrates that Chinese lending reached its peak during President Kenyatta's tenure. Kell (2023) asserts that the persistent inclination to seek loans was rooted in a history of ineffective decision-making in Kenya and a planning process that prioritised short-term electoral considerations over long-term strategic needs.

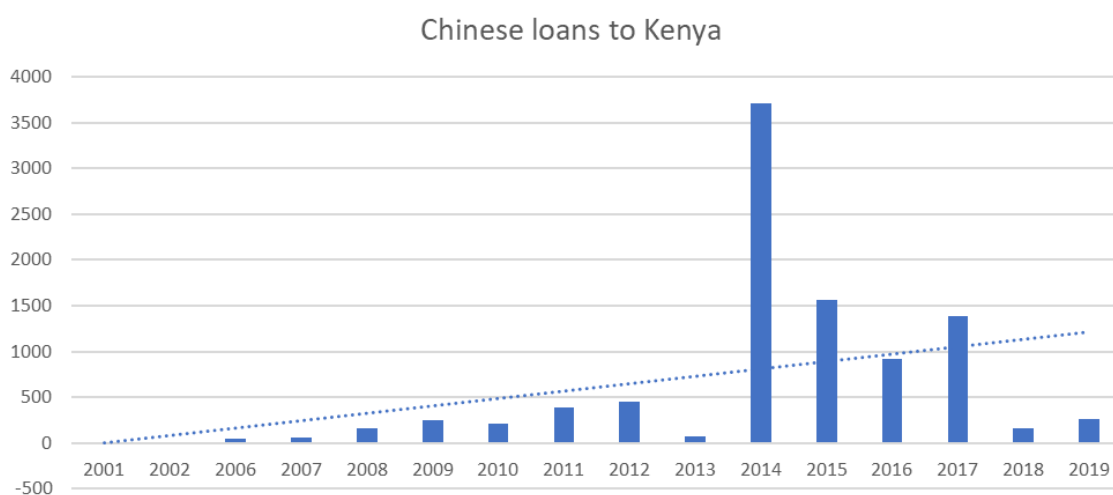


Figure 1: Chinese loans to Kenya

Source: (Chinese Loans to Africa Database, 2024)

China's strategic engagement with Kenya focused on infrastructure development, with the Kenyatta administration relying heavily on Chinese financing for major projects. Chinese companies, including Huawei and China Roads and Bridge Corporation (CRBC), dominated Kenya's infrastructure sector, mirroring their extensive involvement across Africa. For instance, Huawei committed USD 172.7 million to finance and construct a data centre and smart city in Konza Technology City (Moss, 2019), though the impact of this investment on Kenya remains to be fully assessed. Similarly, CRBC, despite being blacklisted by the World Bank for corrupt practices in the Philippines, financed and constructed the Nairobi Expressway (Kimari, 2021, p.142). This situation highlights a notable irony: that despite its blacklist status, CRBC continued to secure significant international contracts.

The Nairobi Expressway, one of the significant BRI projects, entailed the construction of a 27km dual-carriage toll road at an estimated cost of USD 668 million (Nyabiage, 2022). This infrastructure will connect Mlolongo in Machakos County with Jomo Kenyatta International Airport (JKIA) and the Nairobi-Nakuru highway (Adoyo, 2021). It also forms an integral part of the northern transport corridor, which facilitates 85 percent of the freight traffic to neighbouring

landlocked countries, including Uganda, Rwanda, the Democratic Republic of Congo (DRC), and South Sudan. Given the substantial benefits that these neighbouring countries were expected to derive from the enhanced road and rail network, they needed to be more actively involved in the decision-making process of this initiative, rather than merely remaining passive observers of Kenya's efforts. According to Adoyo, (2021), the Nairobi Expressway is expected to boost Kenya's competitiveness in East Africa and reinforce Nairobi's position as a major economic hub. However, the project faced criticism due to the 27-year operational contract granted to China Roads and Bridge Corporation (CRBC), which will collect toll payments through its subsidiary, Moja Expressway (Mutua, 2022). This arrangement highlights the imbalanced nature of Kenya-China relations. Legal challenges have been raised against the toll fees due to a lack of public consultation (Kiplagat, 2022), and the tolls, ranging from \$2 to \$3, are set in US dollars to protect the Chinese operator from exchange rate fluctuations (Sipuka, 2023). This situation reflects a broader asymmetry in the Kenya-China relationship, where China appears to profit significantly beyond the initial investment, echoing historical patterns reminiscent of British imperialism in Africa.

Kenya's engagement with the BRI underscores Africa's strategic role in Chinese investments in infrastructure, including roads, railways, airports, bridges, and ports. Djibouti, Kenya, and Egypt were early adopters of the BRI, with additional African countries subsequently signing Memorandums of Understanding (MoUs) with China (Gu et al., 2022; Lisinge, 2020). In 2017, President Kenyatta, during the BRI forum in Beijing, described Kenya's participation as a "paradigm shift" for the continent (Xinhua, 2017). The BRI has been pivotal for Kenya's infrastructure projects, including the SGR and the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) corridor. Initiated in 2013 as part of Vision 2030, LAPSSET aims to become East Africa's largest seaport with 32 berths, enhancing regional connectivity to Ethiopia, South Sudan, and Cameroon's port of Douala (LAPSSET Corridor Development Authority, 2016). This initiative aligns with the African Union's (AU) goals for regional integration (Kabukuru, 2016). While enhancing national competitiveness is crucial, it should not overshadow the importance of regional and continental integration. A nationalist approach may undermine the broader goals of regional and continental development. Africa's fragmentation—characterised by individual countries negotiating bilaterally with external partners—allows global actors, such as China, to exploit these fragmented interactions to their advantage. This can lead to deals that primarily benefit the external partners and potentially exploit African nations. Although Kenya should not abandon its development efforts to the AU, the lack of coordination among African countries remains a significant barrier to achieving common developmental goals.

In 2013, China Communications Construction Company (CCCC) secured the contract to build the initial three berths of the Lamu port project, valued at USD 484 million, after other investors withdrew, giving CCCC a competitive advantage (Anam, 2022; Williams, 2014). The first berth was completed in 2019, with the remaining two finished in early 2022, shortly before Kenyatta's term ended (Global Construction Review, 2021). LAPSSET is anticipated to contribute significantly to the AU's vision of a peaceful, prosperous, and fully integrated continent by 2063. Its admission into the AU's Presidential Infrastructure Championship Initiative (PICI) underscores its critical importance to the continent's regional integration aspirations (Kabukuru, 2016). When fully operational, the Lamu port could enhance Kenya's role in transshipment and maritime trade (Mwita, 2021), with significant Chinese involvement in its development. However, the projected USD 29 billion cost of the LAPSSET project raises concerns about its impact on Kenya's national debt (Chichava & Alden, 2021). At its conceptualisation, the project attracted international investors due to its strategic link to oil-rich South Sudan, aiming to reduce dependence on Sudan for oil exports (Goldsmith, 2020). However, investor interest waned due to concerns over the project's

slow progress, hindered by political, economic, and security challenges, ultimately leaving the Kenyan government to proceed independently(Wangiha, 2024).

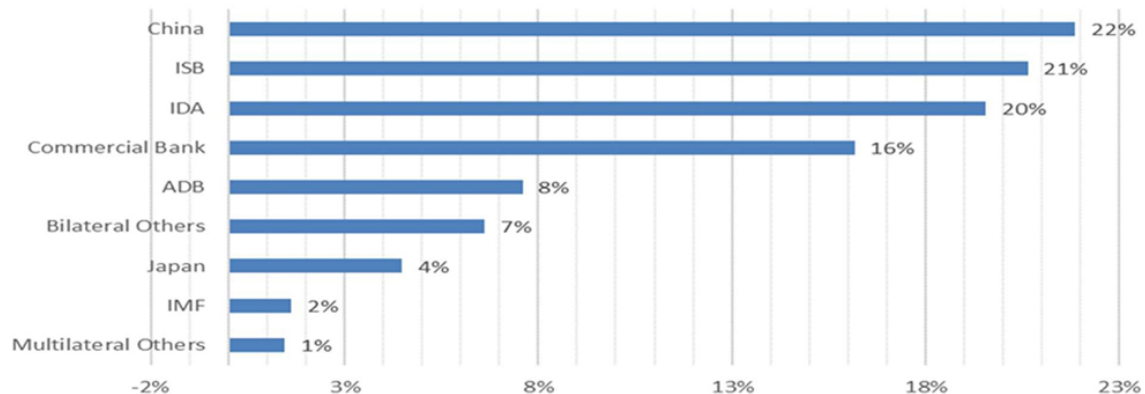


Figure 2: Classification of Kenya's Major Creditors

Source: (National Treasury and Planning, 2019)

At the beginning of Kenyatta's presidency in 2013, Kenya's public debt stood at approximately Ksh 1.89 trillion (USD 14 billion). By the end of his term in 2022, this debt had escalated to Ksh 8.2 trillion (USD 63 billion), partly due to borrowing from China, Kenya's largest creditor. During the Madaraka Day celebrations in June 2022, Kenyatta defended this borrowing as essential for funding infrastructure and accelerating economic growth (Ngugi, 2022). The origins of Kenya's most prominent BRI project, the SGR, are subject to debate. Kenyan oligarch Jimmy Wanjigi, the originator of the initiative, withdrew his support when the project transitioned from a public-private partnership to a government-led initiative(Nantulya, 2021). In April 2008, Du Fei, General Manager of China Roads and Bridges Corporation (CRBC), expressed interest in developing an electric railway linking Nairobi to Mombasa to then-Transport Minister Chirau Ali Makwere. The ministry did not respond, leading the Chinese firm to seek the support of Prime Minister Raila Odinga. Upon taking office in 2013, President Kenyatta integrated the SGR into Vision 2030, leveraging his familiarity with the project from his tenure as Deputy Prime Minister and Finance Minister in Kibaki's administration(Alden & Otele, 2022, pp. 455-456).

In May 2014, Kenya and China agreed to modernise the British-era railway system for USD 3.8 billion (Taylor, 2020, p. 33). The China Roads and Bridges Corporation (CRBC) secured the contract for the first phase, connecting Mombasa and Nairobi, with branch lines to cities like Malaba, Naivasha, and Kisumu, and extensions to neighbouring countries(Ngwenya & Lema, 2020, p 45; Taylor, 2020). The Mombasa-Nairobi line was completed in 2017 despite procurement irregularities (Wissenbach & Wang, 2017). The second phase to the Rift Valley finished in 2019 for USD 1.5 billion(Elmendorp, 2019) (Elmendorp, 2019). However, the final phase remained incomplete due to Kenya's failure to secure further funding from China. Reports indicate that the Chinese government postponed funding for the Naivasha-Kisumu SGR line pending a comprehensive commercial viability study of the entire SGR project (Concrete Trends, 2019). The first and second phases of the SGR, totalling USD 5.3 billion, significantly increased Kenya's debt to China from USD 756 million in 2014 to USD 6.47 billion in 2019 (O. M. Otele et al., 2022). This rising debt highlighted concerns about developing countries' participation in the BRI, especially after Sri Lanka ceded control of a strategic port to settle its debt with China (Gopaldas, 2018). A genuinely equitable relationship cannot be realised if one party endures suffering. This understanding became apparent to Kenya's political establishment when the debt of approximately USD 6 billion associated with the SGR contract was disclosed(Africa Defense

Forum, 2023). As a result, the SGR project emerged as a crucial test of Kenya's capacity to reassess its arrangement with China.

The terms of the SGR Contract

Contracts between African governments and China often lack transparency, and the Standard Gauge Railway (SGR) agreement was no exception. The terms of the SGR deal were kept confidential, known only to President Kenyatta and his close associates. Malito & Kiuwa (2022, p. 166) noted that the SGR became one of the most contested BRI projects, with various actors across different levels of governance disputing aspects of its policy implementations and outcomes. A significant turning point came with a 2018 letter from Auditor General Edward Ouko, which raised concerns about the terms of the SGR contract. In his letter, Ouko revealed that the Kenyan government had entered into a problematic agreement with China's EXIM Bank for the construction of the Mombasa-Nairobi line. The leaked letter provoked considerable controversy among Kenyan lawmakers and concerned citizens, who criticised the SGR deal and demanded greater transparency. In 2020, Kenyan lawmakers proposed that the government renegotiate the SGR loan agreements with China (Yusuf, 2020). Subsequently, in 2022, activists Wanjiru Gikonyo and Khelef Khalifa successfully petitioned the High Court, seeking access to the contracts, agreements, and feasibility studies related to the construction and operation of the SGR (Olander, 2022). However, the Kenyatta administration consistently disregarded court directives, drawing criticism for its lack of transparency regarding the SGR deal. The government maintained that its actions were constrained by a non-disclosure agreement (Muyanga, 2022). Clause 17.7 of the contract stipulated confidentiality requirements, obligating the Kenyan government to keep all terms and conditions of the agreement confidential. The contract explicitly prohibited the borrower from sharing any details of the agreement with external parties without written consent from the lender, the Export-Import Bank of China. Buyer Credit Loan Agreement (Buyer Credit Loan Agreement, 2014)

The government contended that disclosing the details of the agreement would breach the bilateral pact, potentially jeopardising diplomatic relations between Kenya and China (Mureithi, 2022). During his campaign, former Deputy President William Ruto pledged to reveal the specifics of the agreement if elected president (Hourel & Miriri, 2022). Following his victory in the disputed elections, Ruto honoured this pledge by making a partial disclosure of the SGR contract available to the public. This limited disclosure, atypical of African agreements with China, revealed the unfavourable terms that Kenya had accepted in the contract (Dahir, 2022). The SGR deal corroborated the perspective that African leaders are complicit in accepting disadvantageous agreements for their countries (Adogo, 2022). The Exim-Import Bank of China imposed stringent conditions for the loan, including a requirement that goods, technologies, and services financed by the railway's operations be predominantly sourced from China. This condition undermined Kenya's industrialisation efforts by excluding local manufacturers and suppliers from the procurement process. Additionally, the contract stipulated that all commodities and services procured under the SGR project would be exempt from taxation. If legal stipulations required taxes or duties, the Kenya Railway Authority, as the end user, would bear these costs (Preferential Buyer Credit Loan Agreement, 2014, p. 13). This blanket tax exemption prevented Kenya from generating potential revenue from the importation of Chinese goods, deviating from standard business practices. Mulaku & Sabala (2024, p. 13) contend that the funding for the SGR represents a form of neo-colonialism, as Chinese financial support influenced Kenya's decision to grant tax incentives designed to maximise profits for Chinese investors.

Furthermore, the contract stipulated that disputes arising from the agreement must be resolved through binding arbitration overseen by the China International Economic and Trade Arbitration Commission (CIETAC) in Beijing. This choice likely reflects China's perceived distrust of the Kenyan judicial system, which is widely considered compromised by corrupt practices. Additionally, Kenya was required to remit a management fee of USD 4 million within 30 days of formalising the agreement, with both the management and commitment fees slated for repayment at a rate of 0.25 per cent. Kenya was also obligated to independently procure approximately 15 per cent of the funds, to be paid to the contractor, CRBC, before the initial disbursement of the loan (Preferential Buyer Credit Loan Agreement, 2014, pp. 6–7). Unsurprisingly, the SGR contract was crafted to prioritise Chinese interests, illustrating the Kenyan government's inability to secure an agreement that adequately addresses its national interests. Furthermore, the contract required Kenya to maintain a minimum balance of USD 175 million in an escrow account, thereby ensuring the lender's confidence in Kenya's ability to fulfil its loan repayment obligations (Kipkemoi, 2022). Clause 6.12 of the agreement stipulated that the Kenyan government or relevant authorities implement preferential policies, regulations, or approvals for the railway development fund (RDF) (Preferential Buyer Credit Loan Agreement, 2014, p. 17). This measure aimed to safeguard the lender's interests and ensure that, in the event of loan repayment failure, the RDF would be used as the primary resource to settle any outstanding obligations (Kipkemoi, 2022). The asymmetrical nature of the contract is evident in Clause 8.3, which prohibits the borrower from assigning or transferring any rights or obligations to a third party without the lender's written consent, while allowing the lender to transfer its rights and obligations without informing the borrower in case of default (Kipkemoi, 2022; Preferential Buyer Credit Loan Agreement, 2014, p. 19). The SGR agreement thus positioned Kenya unfavourably. Former Transport Cabinet Secretary Michael Kamau admitted to the Parliamentary Public Investment Committee that procurement laws were ignored during negotiations with China, leading to the acceptance of imposed terms. The procurement process bypassed competitive bidding, as required by the Public Procurement and Disposal Act, favouring CRBC (Taylor, 2020, p. 33). The selective disclosure of the SGR deal did not confirm the use of a strategic asset, debunking claims that the Mombasa port was pledged as collateral.

Mulaku & Sabala, (2024) argue that funding and developing mega infrastructure projects is a modern manifestation of neo-colonialism. Evidence of this can be seen in Clause 8.3 of the SGR agreement, which restricts the borrower from assigning or transferring any rights or obligations without the lender's written consent. In contrast, the lender retains the exclusive authority to assign or transfer its rights and obligations without informing the borrower in the event of a default (Kipkemoi, 2022; Preferential Buyer Credit Loan Agreement, 2014, P. 19). The SGR agreement thus placed Kenya in a burdensome and unfavourable position. Former Transport Cabinet Secretary Michael Kamau admitted to the Parliamentary Public Investment Committee that procurement laws were ignored during negotiations with China, compelling Kenya to accept the imposed terms. Taylor, (2020. p. 33) confirms this view, noting that the procurement process bypassed competitive bidding as required by the Public Procurement and Disposal Act, thereby favouring CRBC in securing the tender. Initial reports suggesting that the Mombasa port was used as collateral are contradicted by the disclosed information, which shows that the SGR contract did not include the port as collateral. However, the terms of the SGR agreement highlight the need for Kenya to revise its contractual framework in future negotiations through the proposed renegotiation process.

Kenya's Approach to Renegotiating SGR's Terms

In 2020, the Kenyan Parliament urged the National Treasury and government to reassess the SGR loan conditions. Kimani Ichung'wa, former chairman of the Parliamentary Budget Committee, admitted that the investment decisions were detrimental to the country and advocated for renegotiation of the debt with China to prevent a severe financial crisis (Anyanzwa, 2020).

According to Ichung'wa –

“It is very easy to resolve this issue of loan repayment by just sitting down with the Chinese and telling them we made a mistake. We owe you all this money, but you are also demanding so much from us in terms of repayment. This is a debt. Look, our economy is beaten, and we are not able to pay. We are not saying the debt is not there, but we want to renegotiate what we owe you and the terms of payment.” (Anyanzwa, 2020).

Ichung'wa's proposal suggested a simplistic approach of directly asking China to amend the contract terms. However, the Chinese view such financial matters with great seriousness, requiring careful negotiation for favourable results. The Kenyan authorities should have considered this from the outset. By August 2022, as Kenyatta's presidency ended, it was clear that no renegotiation strategy had been prepared for the Chinese, leaving the debt issue to the incoming administration. The August 2022 election acted as a referendum on Kenyatta's debt-financed infrastructure legacy. Candidates Raila Odinga and William Ruto offered contrasting debt management strategies. Odinga pledged to renegotiate Kenya's debt with China, proposing a high-level negotiating team to enhance the likelihood of favourable terms, recognising the importance of a robust negotiation strategy given China's expertise (AidData, 2024). In contrast, Ruto's campaign adopted an anti-China stance, blaming the rising debt on loans from China acquired during Kenyatta's administration, of which Ruto was a part. He pledged to disclose Chinese contracts and renegotiate the loans (Voice of America, 2022) but did not outline a concrete plan for these negotiations (AidData, 2024). After taking office, Ruto's position on China softened; he attended the BRI forum in 2023 and sought an additional USD 1 billion from China to finance stalled projects, despite the public debt reaching USD 70 billion for the 2022/2023 fiscal year (Clynch, 2023; The East African, 2023). This highlights the fact that renegotiating the SGR deal is a complex process that cannot be resolved merely by declaring the agreement a mistake, as Ichung'wa suggested. The Kenyan government should have developed a detailed strategy with clear objectives for addressing the debt issue, but such a plan has yet to be presented to China for consideration.

Lessons from Kenya's Experience on African Deals with China

A key lesson for Kenya and other African countries is that China strategically engages in Africa to secure advantageous outcomes and maximise their return on investment, rather than acting out of altruism. De Kluiver (2023) supports this perspective, arguing that the Chinese lending model differs from Western models in its emphasis on profit maximisation. This approach often results in loan agreements that impose significant strain on weaker economies. While China's "win-win" narrative clearly articulates its objectives, Africa's goals in these engagements remain ambiguous and poorly defined. African leaders must recognise this reality and negotiate agreements that advance African interests in their interactions with China. What lessons can other African nations derive from Kenya's SGR loan agreement? The SGR, a flagship project of Kenya's Vision 2030, was conceived by Kenyans, not the Chinese, highlighting that it was driven by Kenyan interests. Rather, it was Kenya's political elite who leveraged Chinese investment and

development financing to advance domestic political agendas, thereby fuelling their own greed. In their analysis, Mulaku & Sabala (2024, pp. 13-14) confirm that the inclusion of influential local figures in China's client-patron networks, characterised by corruption and personal gain, was evident in the development, implementation, and maintenance of the SGR. Similarly, Wang, (2023, p. 61) contends that Kenyatta's promotion of the SGR was politically motivated. Kenyatta pledged to develop a modern rail network in return for electoral support from Jimmy Wanjigi, the principal financier of his 2013 campaign. After winning the election, Kenyatta made the SGR a flagship project, managing it directly from the presidency and bypassing formal institutions. Kenyatta exercised complete control over the project, excluding even the parliament from any involvement. This approach mirrors the exclusion strategy utilised by former Malaysian Prime Minister Najib Razak with the 2016 loans from China (Abadi, 2022). Challenges related to the SGR were addressed through informal networks to expedite solutions (Wang, 2023). This action entirely excluded the parliament from fulfilling its oversight role, which is essential for holding the executive accountable for its actions and ensuring the implementation of policies following legal and budgetary provisions. Kenyan institutions are weak and entrenched in neo-patrimonial tendencies, contributing to the stagnation of the country's development.

The Kenyan judiciary remains constrained by the executive branch of government. However, the judicial decision in June 2020, which determined that the SGR deal violated Kenyan procurement laws, represents a positive step towards ensuring greater compliance and transparency in future infrastructure agreements. Key institutions, such as parliament, must rigorously scrutinise government borrowing and spending to prevent the country from veering onto an unsustainable economic path. The SGR deal significantly contributed to Kenya's national debt, which the government subsequently sought to offset through increased taxation on citizens. Therefore, parliament must fulfil its oversight role, ensuring that laws serve the interests of the populace rather than being co-opted by an executive focused on re-election.

Improved transparency in infrastructure projects is essential. The lack of transparency further complicated the situation, as the SGR deal was conducted in secrecy, with only the presidency having access to critical information, thereby disadvantaging the public. The exclusionary approach contravened Article 10(2) of the Constitution of Kenya 2010, which mandates public participation as a fundamental governance principle in project management. (Alden & Otele, 2022) argue that transparency necessitates the scrutiny of projects through interactions with both state and non-state actors. (Soule, 2022) emphasises that a critical lesson in negotiating successful infrastructure deals with China is the involvement of all relevant stakeholders in the process. This practice contributed to Benin's successful negotiations, as Beninese negotiators did not accept the contract from their Chinese counterparts without a thorough review. Instead, they conducted a comprehensive multistakeholder evaluation (Soulé, 2022, p.12). In contrast to Kenya's approach, where Kenyatta's centralised control undermined key ministries and institutions, Benin adopted a more inclusive strategy. This indicates that the Kenyan government negotiated the SGR deal from a position of weakness. In Benin's case, the Ministry of Environment, Habitat, and Urbanism, as the lead coordinator, engaged other relevant ministries to ensure the contract aligned with Beninese laws. This collaborative approach, which involved multiple rounds of negotiations, enabled Beninese officials to present a united front and effectively press for necessary modifications from their Chinese counterparts (Soulé, 2022, p. 12).

African countries often engage with China in isolation, revealing a critical deficiency in knowledge sharing. While each country has varying levels of engagement with China, sharing knowledge is essential. Allegations of debt-trap diplomacy, which originated with Sri Lanka's Hambantota port and later extended to Africa, highlighted these concerns. Claims were made that China might

seize strategic assets in Zambia due to potential debt defaults and that Kenya had used Mombasa port as collateral for the SGR. Although these allegations were unfounded, they underscore the significant debt challenges African governments face when dealing with China. Countries like Angola and Ethiopia, with substantial debt to China, illustrate the importance of learning from each other's experiences in managing Chinese loans. Knowledge sharing is crucial for negotiating more favourable terms with China and avoiding similar pitfalls. For instance, under the leadership of former President John Magufuli, demonstrated that rejecting detrimental agreements, Tanzania demonstrated that African countries could reject agreements that are detrimental to their national interests, embodying the principle that it is preferable to forgo a deal than to accept a detrimental one. Outside the continent, countries such as Malaysia have successfully renegotiated their infrastructure deals with China. This illustrates that, although renegotiating deals with China is possible, the success experienced by one country does not guarantee similar results for others. Therefore, it is essential for the AU and subregional organisations, such as the East African Community (EAC), to establish mechanisms for knowledge sharing. Such mechanisms would enable member states to exchange strategies, thereby strengthening their negotiating positions and achieving more favourable agreements with China.

Mega projects often extend beyond national borders, impacting and involving neighbouring countries. The SGR project, intended to reach across the EAC region, exemplifies this regional scope, with plans to extend to Tanzania and Uganda. However, the lack of coordination among EAC members is evident, as each country developed its own SGR plans and approached China (other investors) unilaterally for funding. This fragmented approach underscores a substantial deficiency in regional cooperation within Africa. While China initially financed parts of these projects, such as in Kenya, other countries encountered challenges. In Uganda, Chinese financing was insufficient, leading the country to seek alternative funds from partners like Turkey. Similarly, Tanzania faced delays due to extended negotiations with China. Kenya, meanwhile, continues to pursue Chinese funding for its stalled SGR projects. Presenting the SGR as a regional initiative, rather than as separate national projects, could have strengthened bargaining leverage and potentially secured more favourable terms from China. The project's economic and financial viability would be greatly enhanced by integrating the EAC countries, thus maximising regional benefits and the overall impact of the railway line.

Kenya and other African governments should prioritise capacity building by establishing teams of technical experts dedicated to negotiating contracts with the Chinese. Emerging literature is beginning to elucidate the practices and strategies employed by the Chinese government in lending to foreign governments. For instance, a study by the Centre for Global Development outlines the nature of these contracts and how they are drafted to safeguard Chinese interests (Gelpern et al., 2021). This information is valuable for African governments, enabling them to better prepare their technical negotiation teams for future engagements with Chinese counterparts. Several African countries, including Kenya, the Democratic Republic of Congo, Angola, and Zambia, have found themselves in positions of weakness, necessitating the renegotiation of loan terms with China due to financial distress. However, they often approach this situation with a nonchalant attitude, lacking a well-defined strategy for engaging their Chinese counterparts. This approach grants the Chinese an advantage, enabling them to control the negotiation process, as evidenced by the Sicomines deal in the Democratic Republic of Congo. The Chinese typically avoid negative publicity, and the terms of reference for the renegotiations of the Sicomines deal have been kept confidential (Livingstone, 2024). Renegotiating unfavourable deals necessitates transparency and must be supported by a comprehensive debt repayment strategy, which is crucial for Kenya and other African countries indebted to China. Unfortunately, such strategic planning is frequently lacking. The Chinese are known for their rigorous negotiation tactics, and mere initiation of dialogue is

insufficient as a strategy. This is evidenced by Malaysia's experience with renegotiations. Former Prime Minister Najib Razak faced criticism for securing unfavourable deals with China, leading to accusations of "selling Malaysia to China." After the Pakatan Harapan coalition won the 2018 Malaysian elections on an anti-China platform, it became clear that renegotiating with China was complex. Indeed, Daim Zainuddin, the head of Malaysia's Council of Eminent Persons advisory body who led the renegotiations with China, admitted that it was "the longest, most complicated, and most challenging deal." There was no option to completely back out of the deal, as the blanket cancellation of Chinese-funded projects was impractical due to a termination penalty of approximately USD 5.2 billion. Although Malaysia did not achieve all its objectives, it successfully reduced contract costs to USD 10.3 billion and negotiated an increase in the participation of local Malaysian partners from 30 percent to 40 percent (Bowie, 2019). This case illustrates the necessity of a well-formulated strategy when renegotiating loan agreements with China. It underscores the challenges inherent in such renegotiations and highlights the critical importance of thorough and intense preparations.

Conclusion

The SGR case highlights the detrimental impact of poor decision-making processes in African countries, thereby debunking the narrative that China is engaging in debt-trap diplomacy. It reveals that the SGR project was driven by political motivations rather than genuine developmental needs. Key oversight institutions were excluded from the deal, and President Kenyatta employed exclusionary strategies to keep the loan agreement's details confidential, leading to the massive accumulation of debt to China. Controversy and debate were ignited by a leaked letter from the Auditor General's office, exposing the SGR deal as favouring Chinese interests over Kenya's. This analysis underscores that future loan agreements of such magnitude must be approached differently, ensuring transparency and the inclusion of oversight institutions to safeguard national interests. African governments must adopt a strategic and informed approach when negotiating infrastructure development loans with China to secure advantageous outcomes. Recognising that China seeks to maximise its return on investment rather than acting altruistically, African countries must prioritise their own interests in these agreements. The experience of Kenya's SGR loan, driven by political elite interests and characterised by a lack of parliamentary involvement, underscores the need for greater transparency and compliance with governance principles. Learning from the Kenyan judiciary's decision to enforce procurement laws and the Malaysian experience with renegotiations, African governments should enhance transparency in infrastructure projects, share knowledge regionally, and establish technical expert teams dedicated to negotiating with China. Additionally, developing a comprehensive debt repayment strategy is essential for managing and renegotiating unfavourable deals.

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