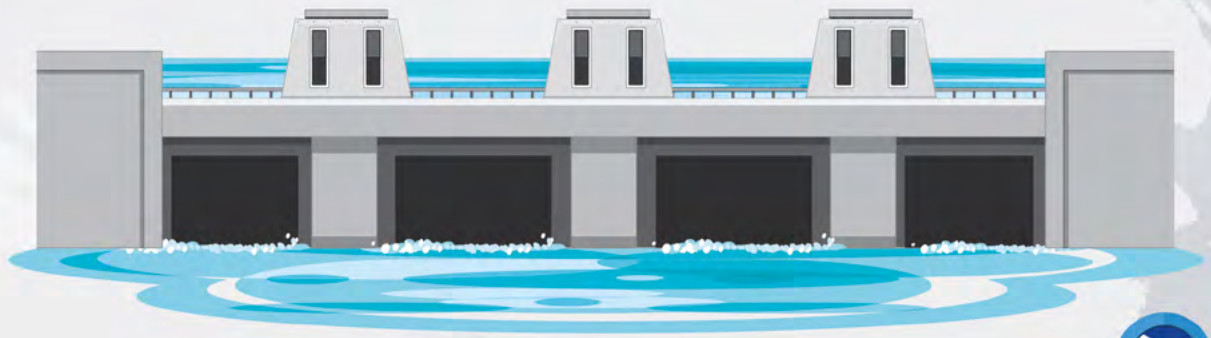




# The Chico River Pump Irrigation Project: A Sweetheart Deal Between The Philippines And China?

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**THE PHILIPPINES** •



The Stratbase ADR Institute for Strategic and International Studies (ADRi) is an independent international research organization focused on the in-depth analysis of economic, social, political, and strategic issues influencing the Philippines and the Indo-Pacific region. In the age of geopolitical uncertainties and technological advancements, ADRi gives equal importance to the interdependent nature of states, sectors, and stakeholders in its strategic analyses and solutions design.



Image from <http://car.nia.gov.ph/>

## Introduction

The Chico River, covering the provinces of Mountain Province, Kalinga, and Cagayan, is known as the “river of life” by the indigenous Kalinga people. It is the most extensive river system in the Cordillera region of Luzon, the largest and most populous island in the Philippines.

In the 1970s, the river rose to prominence in the Philippines national consciousness as a symbol of the struggles of indigenous peoples (IPs), notably the Kalinga and Bontoc tribes, regarding a proposed project to construct a dam on the river (the Chico River Dam Project) and its effect on their ancestral domains. The project was eventually shelved for political reasons after years of conflict between the indigenous communities and the government.

In 2016, the Chico River was once again catapulted to prominence with the announcement of the Chico River Pump Irrigation Project (CRPIP) as the first flagship project of the Duterte Administration’s “Build, Build, Build” (BBB) program, financed by Official Development Assistance (ODA) from China. For the affected communities, the project revived the bitter memories of the Marcos-era Chico River Dam Project.

The BBB program is meant to usher in what President Duterte terms a “golden age of infrastructure,” with an initial targeted P8-to-9 trillion to be spent on high-impact projects. Before President Duterte assumed office, annual infrastructure expenditure in the Philippines had typically been below five percent of the country’s gross domestic product (GDP). Poor infrastructure has significantly hindered Philippine economic growth and contributed to restraining investment flows as well as reducing employment generation.<sup>1</sup> In the 2015–2016 Global Competitiveness Report of the World Economic Forum, the Philippines ranked 106 out of 140 countries in overall infrastructure quality.<sup>2</sup> Among the countries of the Association of Southeast Asian Countries (ASEAN)—excepting Myanmar, which was unlisted—the Philippines was in the last spot, as it has been for several years.

<sup>1</sup> Department of Finance, “DOF Signs Infra Loan Accord, Eco Cooperation Pact with China,” April 12, 2018 <https://www.dof.gov.ph/dof-signs-infra-loan-accord-eco-cooperation-pact-with-china/>

<sup>2</sup> World Economic Forum. *The global competitiveness report 2016–2017*. Geneva: World Economic Forum, 2016.

The public reaction to the BBB program was generally optimistic given its potential to boost the economy. Economist Bernard Villegas described it as “light-years ahead compared to the past governments in terms of implementation of the infrastructure program.”<sup>3</sup> The BBB program, however, is not without critics. There were obvious and expected questions regarding the plan for financing the program, given its massive price tag. Moreover, other issues weighed down the program in general and the individual projects in particular. The CRPIP, for one, was beset by issues relating to the affected communities, reminiscent of the struggles in the 1970s. In 2019, the National Commission on Indigenous Peoples, the national agency tasked with protecting indigenous peoples’ rights, stopped the project temporarily.<sup>4</sup>

However, the major point of contention regarding the entire BBB program is China’s significant involvement in these projects and the attendant social, economic, and political implications. President Duterte has described China as “a very important ingredient” in the BBB program.<sup>5</sup> Duterte’s championing of Chinese finance in national infrastructure projects is part of a larger foreign policy strategy: in Duterte’s state visit to China in October 2016, he announced that the Philippines would decouple itself from the United States in favor of dependence on China.<sup>6</sup> This official pronouncement signaled a closer relationship between Manila and Beijing and between President Duterte and Chinese President Xi Jinping. But Filipinos are wary of China. A 2018 Pulse Asia nationwide survey on the trustworthiness of selected countries and regional organizations reported that about 60 percent of Filipinos do not have too much trust in, or do not trust, China at all.<sup>7</sup> China consistently ranks at the bottom of the list of countries Filipinos trust, with the United States at the top. It is therefore not surprising when suspicions run high in dealings with China. ODA loan agreements for infrastructure projects, including the CRPIP, are no exception.

Such sentiments are mainly due to the disputed territories in the South China Sea (also known as the West Philippine Sea). Many Filipinos regard the repeated incursions by China into Philippine territory as taunting behavior. In the background, there is also a growing fear of the country falling into a debt trap with China as a result of the continued and enthusiastic participation of the Duterte administration in China’s Belt and Road Initiative.<sup>8</sup>

This paper is a governance case study of the CRPIP under the Duterte administration. It will examine project actors’ adherence to established Philippine and international regulatory processes.<sup>9</sup> In the process, the report will also identify gaps and assess their implications.

<sup>3</sup> Ralph Villanueva, “Duterte: China Vital for ‘Build Build Build.’” *The Manila Times*, April 10, 2018

<sup>4</sup> Freddie Lazaro, “Chico River Irrigation Project Suspended,” *The Manila Bulletin*, 2019 <https://news.mb.com.ph/2019/05/16/chico-river-irrigation-project-suspended/>

<sup>5</sup> Ralph Villanueva, “Duterte: China Vital for ‘Build Build Build,’” *The Manila Times*, April 10, 2018 <https://www.manilatimes.net/2018/04/10/business/duterte-china-vital-for-build-build-build/391543>

<sup>6</sup> Presidential Communications Operations Office. “Speech of President Rodrigo Roa Duterte during the Philippines-China Trade and Investment Forum,” October 20, 2016 <https://pcoo.gov.ph/oct-20-2016-speech-of-president-rodrigo-roa-duterte-during-the-philippines-china-trade-and-investment-forum/>

<sup>7</sup> Pulse Asia, 2018

<sup>8</sup> Ralf Rivas, “Philippines ‘Extra Careful’ with China Loans – NEDA,” *Rappler*, June 27, 2018 <https://www.rappler.com/business/205903-philippine-government-extra-careful-china-loans-neda>

<sup>9</sup> Caution must be exercised in drawing conclusions. In the absence of corroborating evidence, it is not unreasonable to cast doubt on documents available to the public from official sources. The community quarantine caused by the COVID-19 pandemic has affected the viability of coordinating with government offices and securing interview schedules.



## The Chico River Dam Project

During the Marcos administration, the Chico River was eyed as the location of a proposed electric power generation facility popularly known as the Chico River Dam Project. The project was conceived in 1965 as the Chico River Basin Development Project. Still, it was not until the 1973 oil crisis that the government set plans in motion. In 1974, it became known that indigenous people, who had not been consulted or informed about project plans, would be affected. Reports indicated that even if only one out of the four proposed dams were implemented, more than a thousand families would be displaced and rendered homeless, several barrios would be submerged, farmlands would be lost, and other areas flooded.<sup>10</sup> The affected communities rejected the various financial relocation settlement packages offered by the Marcos government because of “the significance of the lands to their religious beliefs and to the legal system which shaped the relationship of their tribes and communities to one another.”<sup>11</sup>

Having secured a grant from the World Bank, the government was eager to proceed with the project. However, opposition was mounting from the indigenous people, who organized with the help of various non-governmental organizations. In response, President Marcos issued Presidential Decree No. 848 in 1975, creating a Kalinga Special Development Region (KSDR) to neutralize the opposition. With martial law still in place, it became easy to militarize the project areas and suppress opposition to the project.<sup>12</sup> This resulted in several opposition leaders being rounded up.

The conflict came to a head when Macli-ing Dulag, the official spokesperson of the organized opposition to the project, was murdered in his home by the military.<sup>13</sup> With the outcry stemming from Dulag's death, the World Bank and President Marcos shelved the project. The Chico River Dam Project has since been a symbol of the indigenous peoples' struggles to protect their ancestral lands and their way of living.

## The Build, Build, Build Program

The BBB program was not one of President Duterte's campaign promises. By his own admission, it was an afterthought when he was assured of winning the presidency. By spending about P8-to-9 trillion on infrastructure, he aims to contribute to reducing poverty in the Philippines from 21.6 percent in 2015 to between 13 and 15 percent by 2022 through high-impact projects envisioned to increase the “productive capacity of the economy, create jobs, increase incomes, and strengthen the investment climate leading to sustained inclusive growth” from 2017 to 2022.<sup>14</sup>

Despite its lofty goals, the BBB program is not without issues. The following critiques have been raised:

- (a) Projects under the BBB program will rely partly on government revenues, such as those generated from the Tax Reform for Acceleration and Inclusion (TRAIN) Law. This approach may strain government coffers and impact the budget deficit level.

<sup>10</sup> “Valley of Sorrow,” *Asiaweek*, September 5, 1980

<sup>11</sup> Joanna K. Cariño, “The Chico River Basin Development Project: A Case Study of National Development Policy,” paper presented at the Third Annual Conference of the Anthropological Association of the Philippines, April 22–27, 1980 <http://116.50.242.171/PSSC/index.php/agt01/article/download/1601/1536>

<sup>12</sup> Cariño, “The Chico River Basin Development Project”

<sup>13</sup> Maria Elena Catajan, “Chico Hydro Project Opposed,” *Sunstar Philippines*, April 21, 2017 <https://www.sunstar.com.ph/article/138075/Business/Chico-hydro-project-opposed/>

<sup>14</sup> Philippine Infrastructure Transparency Portal. (n. d.). Projects. Retrieved from <http://build.gov.ph/Home/Project>

- (b) President Duterte abandoned the Public-Private Partnership (PPP) modality in favor of concessional loans and ODA, mainly from Japan and China, as his primary sources of infrastructure funding. The loan could be used to erode Philippine sovereignty and its conditions weaponized in furtherance of Chinese territorial claims.<sup>15</sup>
- (c) The data used to justify the projects may be unreliable. There is a tendency to “underestimate costs and overestimate revenues,” according to Michael Pettis, professor at Peking University’s Guanghua School of Management, that may lock countries into unsustainable infrastructure spending cycles.<sup>16</sup>
- (d) There is a problem with the absorptive capacity or the government’s ability to implement projects to achieve their objectives given specific weaknesses, such as jurisdictional and procedural issues in the bureaucracy, accusations of unfair bidding, corruption leading to court injunctions, and right-of-way problems.<sup>17</sup> A report released by the Commission on Audit (COA) showed that in 2017, the Department of Public Works and Highways was only about to utilize around one-third of the allocated budget for infrastructure projects for the year.<sup>18</sup>
- (e) The projects under the program include those that are “carryovers” from the previous administration of President Benigno Aquino III and had even already been inaugurated.<sup>19</sup>
- (f) Critics say the program would simply sustain the existing “exclusive development” pattern wherein the implementing companies receive much of the profits instead of the working poor, adding that “inequality will continue to worsen, and poverty reduction will become, at best, palliative.”<sup>20</sup>
- (g) The domestic construction industry has a limited implementation capacity.<sup>21</sup>
- (h) Chinese project contractors bring their own engineers, workers, and suppliers to the recipient country.<sup>22</sup> The influx of Chinese workers in the Philippines has raised concerns that Filipinos are being deprived of job opportunities.<sup>23</sup>
- (i) With the influx of Chinese workers, Filipinos are losing the opportunity to buy affordable homes since property prices have surged due to increased demand from Chinese buyers and renters.<sup>24</sup>

<sup>15</sup> Ward as cited by Alito Malinao. “Beware those Chinese Loans to PH”. *Inquirer.net*, August 4, 2018

<https://opinion.inquirer.net/115119/beware-chinese-loans-ph>

<sup>16</sup> Mark Magnier, “Benefits of Infrastructure Spending Not So Clear-Cut, Economists Say,” *Wall Street Journal*, February 1, 2015

<https://www.wsj.com/articles/benefits-of-infrastructure-spending-not-so-clear-cut-economists-say-1422819575>

<sup>17</sup> Raymond Franco. Not enough warm bodies for Build! Build! Build! Program,” *BusinessWorld*, September 8, 2017

<https://www.bworldonline.com/not-enough-warm-bodies-build-build-build-program/>

<sup>18</sup> “Sign of Tangible Progress in ‘Build, Build, Build,’” *Manila Times*, July 26, 2018

<https://www.manilatimes.net/2018/07/26/opinion/editorial/sign-of-tangible-progress-in-build-build-build/423392/>

<sup>19</sup> *Ibid.*

<sup>20</sup> V.C. Camilon, “‘Build, build, build’ and the working poor,” *Inquirer.net*, January 25, 2018

<https://opinion.inquirer.net/110534/build-build-build-working-poor>

<sup>21</sup> Franco, “Not enough warm bodies for Build! Build! Build program”

<sup>22</sup> *Ibid.*

<sup>23</sup> Panos Mourdoukoutas, “Duterte opens up the Philippines to Chinese workers, as Filipinos seek jobs overseas,” *Forbes*, December 23, 2018 <https://www.forbes.com/sites/panosmourdoukoutas/2018/12/23/duterte-opens-up-the-philippines-to-chinese-workers-as-filipinos-look-for-jobs-overseas/>

<sup>24</sup> *Ibid.*

Early concerns about costs and funding sources may have been prophetic. In 2019, the Duterte administration began rethinking the entire BBB program. From the original 75 projects scheduled to be completed mostly within his term and a massive budget of about P8 trillion, the program was scaled down to P4.3 trillion for 100 smaller projects, most of which are to be completed after President Duterte's term of office.

At the outset, the administration's economic managers shunned the PPP arrangement because they expected transactions to move faster under ODA. Presidential Adviser for Flagship Programs and Projects Secretary Vince Dizon explained that PPP projects during the previous administrations "failed to promote the public interest."<sup>25</sup> According to Punongbayan, data show that 75 percent of the projects (or 91 percent of total costs) are to be financed by ODA, while PPPs support only 11 percent of the projects (or 4.5 percent of total costs).<sup>26</sup>

## CRPIP Overview

The CRPIP was conceived to provide ample and stable water supply to 8,700 hectares of agricultural land through the construction of new diversion and canal systems, increasing agricultural productivity and benefiting some 4,300 farmers in 21 barangays (districts) in the municipalities of Tuao and Piat in Cagayan Province and Pinukpuk in Kalinga Province. The project includes the construction of a pump house, sub-station, transmission line, diversion main canal, lateral canals, appurtenant structures, service/access road, and terminal facilities.<sup>27</sup>

According to Louise Simeon's reporting for *The Philippine Star*, the project aims to contribute some 36,000 metric tons of milled rice to the country's rice supply, generate about USD \$16 million in savings from rice imports and yield an incremental income of about P75,000 per hectare per year.<sup>28</sup>

It was expected to be completed in three years. According to official publicly available sources, the project is worth P4.372 billion (USD \$87 million). According to the Department of Finance (DOF), about 85 percent, or P3.7 billion, was taken as an ODA loan from the state-owned China Export-Import Bank with an interest of 2 percent per annum and a maturity period of 20 years, including a seven-year grace period.

The National Irrigation Administration of the Cordillera Administrative Region (NIA-CAR), on its official website, describes the CRPIP as the first flagship infrastructure project to be financed by China under the BBB program.<sup>29</sup>

<sup>25</sup> Dizon as cited by Ralf Rivas, "Duterte's team changes tune on PPPs as infra push gets reality check," *Rappler*, November 7, 2019 <https://www.rappler.com/business/duterte-team-changes-tune-public-private-partnerships-infrastructure-push-reality-check>

<sup>26</sup> JC Punongbayan, "The Pipe Dream That Is Build, Build, Build," *Rappler*, July 24, 2019 <https://www.rappler.com/thought-leaders/236177-analysis-pipe-dream-build-build-build-program>

<sup>27</sup> National Irrigation Administration-Cordillera Administrative Region, "Chico River Irrigation Project rises in Kalinga and Cagayan" <http://car.nia.gov.ph/?q=content/chico-river-pump-irrigation-project-rises-kalinga-and-cagayan>

<sup>28</sup> Louise Maureen Simeon, "Chico River Project Ahead of Schedule," *The Philippine Star*, September 7, 2019 <https://www.philstar.com/business/2019/09/07/11949614/chico-river-project-ahead-schedule>

<sup>29</sup> National Irrigation Administration-Cordillera Administrative Region, "Chico River Irrigation Project rises in Kalinga and Cagayan"

## Issues and Controversies

Despite the anticipated benefits, the CRPIP has been very controversial from its inception. These critiques fall into three general categories: negative impacts on local communities and the environment, governance issues in how the project has been carried out, and issues with the financing of the project and the loan terms.

### Social and Environmental Issues

#### Social Issues

In 2018, the Cordillera Peoples Alliance (CPA), founded in 1984 as an independent federation of progressive people's organizations in the Cordillera Region, expressed concerns about the project, saying:

Under the guise of advancing socio-economic agenda, the hand of foreign investors in the implementation of this project will result in the privatization of agricultural services and will force us to succumb to unfair conditions set by these corporations in exchange to access to our very own resources. This is one of the regime's means to fast-track the entry of foreign corporations to make profit from our deprivation while exploiting our natural resources.<sup>30</sup>

The CPA further contends that the CRPIP is not sustainable under the overall development plan for the Chico River and has no assurance that the project will work, especially in the long run. They are concerned that the CRPIP will deprive downstream communities of water supply and further aggravate the scarcity of water on the Chico River during the summer.<sup>31</sup>

The CRPIP comes with significant potential social costs, similar to those of the Chico River Dam Project. The Chico River and any project that involves it will always be tainted with the memory of the struggles of the indigenous people against the Marcos-era project. The social unrest that was created by the staged consultation process during the Marcos martial law years seems to be happening again.

#### Environmental Degradation

There is a threat that the project will lead to environmental degradation, including widespread flooding, and consequently contribute to disturbing the rich biodiversity in the area. According to La Viña and Reyes, the CRPIP is "development aggression at its worst," considering that it is "bad for nature and our people and will result in social conflict and fuel an already intensifying insurgency in both the Sierra Madre and the Cordillera."<sup>32</sup>

### Governance Issues

Major governance issues—from a defective consultation process to a gross disregard for existing regulatory processes—have dogged the project. In view of these issues, a group of legislators from the House of Representatives known as the Makabayan (Patriotic Coalition of the People) bloc filed a petition before the Supreme Court on April 4, 2019, asking it to stop the CRPIP loan agreement with China.

<sup>30</sup> "CPA Statement on the Chico River Pump Irrigation Project," Indigenous Peoples Human Rights Defenders Network, April 13, 2018 <https://iphndefenders.net/philippines-cpa-statement-on-the-chico-river-pump-irrigation-project/>

<sup>31</sup> "Chico River Pump Irrigation Project loan agreement, a sell-out of ancestral land and Philippine sovereignty," Cordillera Peoples Alliance, March 7, 2019 <https://www.cpaphils.org/crPIP.html>

<sup>32</sup> Tony La Viña and Joy Reyes, "Kaliwa and Chico Dams: More Than Just Debt of Money," Rappler, April 13, 2019 <https://www.rappler.com/thought-leaders/227855-opinion-more-than-just-debt-money-kaliwa-chico-dam-series-part-1>



## Consultation Process

Reminiscent of the protests against the Chico River Dam Project during the Marcos years, the CRPIP also experienced challenges from the local communities, leading to the “No to Karayan Movement.”<sup>33</sup> According to Frank Cimatu, reporting for *Rappler*, the “Naneng, Dallak, and Minanga tribes have written a letter to the National Commission on Indigenous Peoples (NCIP) in the region about this project” and the parties invited to the consultations are those who would not be affected by the party.

Republic Act No. 8371, also called the Indigenous Peoples’ Rights Act of 1997 (IPRA), recognizes the right of indigenous cultural communities (ICCs) and indigenous peoples to self-determination. The law also provides mechanisms for the protection of their ancestral domains and the resources present therein. One of the means to achieve this is through the concept of free and prior informed consent (FPIC), defined as the:

consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.<sup>34</sup>

Moreover, a certification pre-condition (CP) is necessary before a project can proceed, as stated in the law:

All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production-sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.<sup>35</sup>

Similar provisions on consultation with the indigenous peoples are contained in the 2007 United Nations Declaration on the Rights of Indigenous Peoples.<sup>36</sup>

Official sources indicate that groundbreaking ceremonies for the project were held in Pinukpuk, Kalinga, as early as June 8, 2018.<sup>37</sup> A groundbreaking event held in Barangay Pinococ in Pinukpuk, province of Kalinga, was documented, and a photo of it was posted on the official NIA-CAR website. However, it was not until May 23, 2019 that the CP was issued by NCIP en banc, according to NCIP Cordillera Director Roland Calde.<sup>38</sup> While no official groundbreaking date was obtained, a statement from Roland Calde, Regional Director of the NCIP-

<sup>33</sup> Frank Cimatu, “Locals Protest Duterte Admin’s Chico River Project,” *Rappler*, June 24, 2017,

<https://www.rappler.com/nation/173866-protest-duterte-admin-chico-river-project>

<sup>34</sup> The Indigenous Peoples’ Rights Act of 1997. Republic Act No. 8371. Official Gazette,

<https://www.officialgazette.gov.ph/1997/10/29/republic-act-no-8371/> Sec. 3g

<sup>35</sup> The Indigenous Peoples’ Rights Act of 1997. Republic Act No. 8371, Sec. 59..

<sup>36</sup> United Nations, “United Nations declaration on the rights of indigenous peoples,” September 13, 2007 [https://www.un.org/development/desa/indigenouspeoples/wpcontent/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wpcontent/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

<sup>37</sup> National Economic Development Authority, “The NEDA Board Approved Projects (Duterte Administration)”

<sup>38</sup> Vincent Cabreza, “Kalinga Elders OK Tunnels for Chico Irrigation Project,” *Inquirer.Net*, May 24, 2019

<https://newsinfo.inquirer.net/1122896/kalinga-elders-ok-tunnels-for-chico-irrigation-project>

Cordillera, confirmed that construction began before the issuance of the CP, noting “the project had already commenced even before they could receive the report.”<sup>39</sup>

In fact, in a meeting on May 7, 2019, in response to the situation, the NCIP, NIA-Cagayan Valley, the Regional Development Council, and the Department of Environment and Natural Resources agreed to suspend project activities while the CP was processed. Eventually, construction resumed after the necessary documents were completed.

Aside from the failure by the government to observe the requirement of having a CP before the implementation of the project, Cimatu also noted the following issues concerning FPIC:<sup>40</sup>

- (a) According to the Cordillera People’s Alliance and other IPs, the FPICs of the communities where the project is located (in Katabbog and Pinococ in Pinukpuk, Kalinga) were not obtained;
- (b) There is a lack of full disclosure of information about the project prior to the supposed consultations for the FPIC, such as the provisions of the loan agreement, including the Chinese contractor and Chinese workers that will implement the project; and
- (c) In lieu of true FPIC, the consent came in the form of the Individual Right of Way Permit to Enter and Construct, signed by the individual landowners and NIA. These documents became the go-signal to begin construction.

With construction in full swing, these issues appear to have been legally settled. However, it is not clear whether the genuine concerns have been resolved to the satisfaction of the indigenous peoples in the affected communities.

### **Monetary Board Approval**

Critics have pointed out the irregular sequence of events of the project as evidence of non-compliance with specific regulatory processes and requirements. The first instance where this was alleged is in the commencement of construction before the issuance of the CP by the NCIP, as discussed in the previous section. The second instance is in the signing of the loan agreement before the Monetary Board issued its approval as required by the Constitution.

The CRPIP was approved by the Investment Coordination Committee on September 28, 2016, according to the list of projects approved by the NEDA Board under the Duterte administration.<sup>41</sup> The Investment Coordination Committee is a cabinet-level and inter-agency body that “evaluates the fiscal, monetary and balance of payments implications of major national projects, and recommends to the President the timetable of their implementation on a regular basis.”<sup>42</sup> It consists of the Secretary of Finance as chairman; the NEDA Director-General as co-chairman; and the Executive Secretary, the Secretaries of Agriculture, Trade and Industry, Budget and Management, and the Governor of the Central Bank of the Philippines as members.

<sup>39</sup> Frank Cimatu, “NCIP Calls for Suspension of Chico River Project,” *Rappler*, May 8, 2019 <https://www.rappler.com/nation/230010-ncip-calls-suspension-chico-river-project>

<sup>40</sup> Cimatu, “Locals Protest Duterte Admin’s Chico River Project”

<sup>41</sup> National Economic Development Authority, “The NEDA Board Approved Projects (Duterte Administration)” December 30, 2019 <http://www.neda.gov.ph/wp-content/uploads/2019/12/ICC-NB-Approved-Projects-Duterte-Admin2.pdf>

<sup>42</sup> Investment Coordination Committee, “<http://www.neda.gov.ph/investment-coordination-committee/>

Under Article VII, Section 20 of the 1987 Constitution, foreign loans on behalf of the Republic of the Philippines may be contracted “with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law.”

On April 10, 2018, Finance Secretary Carlos Dominguez III and Chinese Ambassador to the Philippines Zhao Jinhua, representing the Export-Import Bank of China, signed the Preferential Buyer’s Credit Loan Agreement on the Chico River Pump Irrigation Project and the Agreement on Economic and Technical Cooperation with Chinese Commerce Minister Zhong Shan. However, it appears from the official documents that it was not until May 17, 2018 that the Monetary Board approved the loan agreement.<sup>43</sup>

Moreover, although not raised as an issue by those opposing the project, there appear to be inconsistencies in the dates released to the public. Simeon reported that “it was in November 2016 when NIA eyed a P42.6-billion financing from the Chinese government for several flagship irrigation projects that will be completed before the end of the administration.”<sup>44</sup> According to NEDA documents, it was not until March 31, 2017 that the ICC approved the change in funding source—from local financing using the General Appropriations Act to ODA. The NEDA Board approved the change of funding source on June 9, 2017.<sup>45</sup>

Scouting for Chinese financing as early as November 2016, at which time the CRPIP was still intended to be funded from the national budget, may not necessarily have been legally problematic. The NIA may claim it was proactive and that the talks were exploratory, at best. However, it may also suggest otherwise—that there could have been advanced negotiations underway even before the government officially revised the funding source for the project from the national budget to Official Development Assistance in March 2017.

### **Lack of Transparency**

Another issue raised in the petition before the Supreme Court was the “confidentiality clause” in the agreement. The petitioners considered this specific provision a violation of the “constitutional right of the Filipino people to information on foreign loans obtained or guaranteed by the government and is considered inimical to the national interest.”<sup>46</sup>

Section 21 of Article XII of the 1987 Constitution states, in part, that “information on foreign loans obtained or guaranteed by the Government shall be made available to the public.”

The contested provision in Article 8.8 of the loan agreement reads:

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

<sup>43</sup> National Economic Development Authority, “The NEDA Board Approved Projects (Duterte Administration)”

<sup>44</sup> Simeon, “Chico River Project Ahead of Schedule”

<sup>45</sup> National Economic Development Authority, “The NEDA Board Approved Projects (Duterte Administration)”

<sup>46</sup> Vann Marlo Villegas, “Supreme Court TRO Sought on Chico River Project,” *BusinessWorld*, April 4, 2019

<https://www.bworldonline.com/supreme-court-tro-sought-on-chico-river-project/>

In a press interview held on February 28, 2019, DOF Assistant Secretary Tony Lambino did not address the issue regarding the confidentiality provision.<sup>47</sup>

In his 2019 report in *Rappler*, Ralf Rivas said that Chinese contracts were templated to include confidentiality clauses, whereas other countries had no provisions on confidentiality at all.<sup>48</sup> This raises the question of why strict confidentiality clauses are standard in their contracts.

It is essential to note that public procurement documents, by international standards, should be easily accessible and in wide circulation to allow all interested parties to monitor outcomes, results, and performance.<sup>49</sup> These unpublished documents prohibit civil monitoring and degrade the overall transparency of the project, even though the DOF claims that documents can be made available upon proper request.

Martin Hala, author of the book “A New invisible Hand: Authoritarian Corrosive Capital and the Repurposing of Democracy, asserts that corrosive capital tends to thrive when information is scarce.<sup>50</sup> It is therefore critical to determine whether the lack of information is a mere bureaucratic lapse or is intentional. Eventually, most likely in response to calls for the loan agreement to be made public, the DOF posted on its website a copy of the document. The post is dated March 18, 2019, almost a year from the date of signing.

Still, there is a dearth of materials on official websites of the concerned government entities. A web search of the details and history of the CRPIP has yielded minimal information, such as the land area affected and the target number of beneficiaries. The way the available results are worded gives the impression that they were lifted from the same source—presumably an official press release. Many pertinent project documents remain unavailable to the public. These include, but are not limited to:

1. NEDA’s assessment and basis of approval of the project
2. Compliance documents such as the Environmental Compliance Certificate, and the like
3. Commercial contract between NIA and China CAMC Engineering Co. Ltd. (CAMCE)
4. Documents relating to the negotiations between the PRC and the Government of the Republic of the Philippines
5. General technical and financial plans of the project, with details on the need for the project
6. Documents relating to the selection of CAMCE

The NIA, as the end user, should publish pertinent information regarding project monitoring, responsible officials and their assignments, and other information that will facilitate monitoring and increase accountability. However, the NIA-CAR website barely publishes any news about the project. A universal search of its webpages returned only one entry about the project, made on July 27, 2018, announcing the project and showing a photo of the groundbreaking ceremonies. Even the Facebook page created by NIA for CRPIP on March 27, 2019 to inform the public of its progress leaves a great deal to be desired. Of the 90 posts made up to March 27, 2020, only 14 posts (16 percent) are relevant to the project.

<sup>47</sup> “DOF: No need to be alarmed over PH-China loan agreement”, CNN, March 6 2019 <https://www.cnn.ph/news/2019/2/28/department-of-finance-lambino-bayan-muna-chico-river-river-pump-irrigation-project.html>

<sup>48</sup> Ralf Rivas, “Made in China: Loan Terms Shrouded In Secrecy,” *Rappler*, March 27, 2019 <https://www.rappler.com/newsbreak/in-depth/226728-provisions-waivers-philippines-loan-agreements-with-china>

<sup>49</sup> OECD, *Methodology for Assessing Procurement Systems*, 2016 <https://www.oecd.org/gov/public-procurement/Methodology-Assessment-Procurement-System-Revised-Draft-July-2016.pdf>

<sup>50</sup> Martin Hala, “A New Invisible Hand: Authoritarian Corrosive Capital and the Repurposing of Democracy,” NED, March 2020 <https://www.ned.org/wp-content/uploads/2020/03/New-Invisible-Hand-Authoritarian-Corrosive-Capital-Repurposing-Democracy-Hala.pdf>

To date, the most recent news, from July 2019, was that the project was approximately 31 percent complete, ahead of the 23 percent target, as reported by the project management office.<sup>51</sup> On the other hand, the Philippine Information Agency reported a more modest 28 percent as of August 5, 2019.<sup>52</sup>

### Government Response

The government's response to these critiques has been dismissive. Presidential Spokesperson and Chief Presidential Legal Counsel Salvador Panelo said the "government could no longer negotiate the terms in the contract"<sup>53</sup> and that it was not onerous to begin with "because the Philippines will be able to settle its debt anyway,"<sup>54</sup> in response to accusations that some of the provisions of the agreement are disadvantageous to the Philippines in case of a default on its repayment. At one point, he admonished critics of the project, saying that "politics must be put aside to let the China-funded CRPIP finally benefit farmers in Northern Luzon."<sup>55</sup>

A chronology of events is necessary to validate the allegations. Table 1 provides the pertinent series of events.

**Table 1. CRPIP Chronology of Events**

Date	Milestone
28 Sep 2016	Investment Coordination Committee approves the CRPIP
20 Oct 2016	Signing of Memorandum of Understanding on Financing Cooperation between Government of the Republic of the Philippines and the Export-Import Bank of China
14 Nov 2016	Instruction by the NEDA Board to NIA to reconfigure the project design of the CRPIP to include a hydropower energy component
03 Mar 2017	Note Verbale no. 17-1049 sent to the People's Republic of China (PRC)
31 Mar 2017	Investment Coordination Committee approves funding source change from local financing (General Appropriations Act) to Official Development Assistance
09 Jun 2017	NEDA Board approval of funding source change
29 Jun 2017	Execution of Clarificatory Procedures and Arrangements between PRC and GRP
30 Jun 2017	DOF endorses request to the Chinese government to secure loans to finance the project
15 Nov 2017	Signing of Financing Cooperation Agreement on the CRPIP and New Centennial Water Source-Kaliwa Dam Project
05 Dec 2017	NEDA Board approval of project design change and cost increase
08 Mar 2018	Signing of contract between NIA and CAMCE
09 Mar 2018	DOF request for loan facility up to USD \$62 million
10 Apr 2018	Signing of loan agreement
17 May 2018	Monetary Board approval of loan
05 Jun 2018	Effectivity of loan agreement
08 Jun 2018	Groundbreaking ceremonies held in Pinukupuk, Kalinga
18 Mar 2019	Loan agreement made public
23 May 2019	NCIP issuance of CP

Sources: *List of Approved Projects by NEDA Board under the Duterte administration (2017, 2019)*; *Preferential Buyer's Credit Loan Agreement (2018)*; *Loan Agreement on the Chico River Pump Irrigation Project (2019)*



## Loan Issues

In addition to the social, environmental, and governance issues regarding the project, the specifics of the loan agreement have drawn criticism. As discussed above, many experts and interest groups have questioned the loan agreement. The presence of specific onerous provisions in the contract and the reasons the Philippine government agreed to them have caused concern, such as the confidentiality requirement, the waiver of immunity, or the arbitration terms.

### Financial Terms

The contracts entered into with China put the Philippines at a significant disadvantage based solely on interest rates. However, then Director-General Ernesto Pernia of the NEDA defended the choice to pursue these loans by saying, “we need more friends.”<sup>56</sup> Pernia also said that the Philippines “cannot get all the loans from the ODA of Japan. They have to give to other countries as well. Between 2% and 3% interest rate is still much better than commercial loans.”<sup>57</sup>

Table 2 below compares the terms—interest rate and tenor—of the loan agreement for the CRPIP in relation to other infrastructure projects funded from loans from other countries.

**Table 2. Comparison of Loan Terms on Other ODA Projects**

Project	Funding Country	Total Cost (in Billion peso)	Interest rate (p.a.)	Tenor (in years)
Chico River Pump Irrigation Project	China	4.37	2.00	20
Kaliwa Dam	China	12.19	2.00	20
Panguil Bay Bridge	South Korea	7.38	0.15	40
New Cebu International Container Port	South Korea	9.96	0.15	40
Improvement of Sections along Pasig River from Delpan Bridge to Napindan Project	Japan	6.97	0.75	40
Cavite Industrial Area Flood Risk Management project	Japan	9.89	0.3	30
Metro Manila Subway Phase I	Japan	356.97	0.1	40
North-South Commuter Railway Project	Japan	628.42	0.1	40

Source: Department of Finance; Rivas, “Duterte’s Golden Age of Infrastructure Will Have to Be Completed by Next President.”

<sup>51</sup> Simeon, “Chico River Project Ahead of Schedule”

<sup>52</sup> Peter Balocnit, “NIA Reports a 28.36% Accomplishment on CRPIP,” Philippine Information Agency, August 27, 2019 <https://pia.gov.ph/news/articles/1026431>

<sup>53</sup> Nestor Corrales, “Palace: ‘Onerous Provision in Chico River Project Loan Just ‘Standard.’” Inquirer.Net, March 25, 2019 <https://newsinfo.inquirer.net/1099459/palace-onerous-provision-in-chico-river-project-loan-just-standard>

<sup>54</sup> Argyll Cyrus Geducos, “Panelo calls Carpio ‘unpatriotic’ for claims on Chico River project,” Manila Bulletin, March 27, 2019 <https://news.mb.com.ph/2019/03/27/panelo-calls-carpio-unpatriotic-for-claims-on-chico-river-project/>

<sup>55</sup> “Palace: Let Chico River Project Benefit Farmers,” Tempo, March 28, 2019, <http://tempo.com.ph/2019/03/28/palace-let-chico-river-project-benefit-farmers/>

<sup>56</sup> Rivas, “Philippines ‘Extra Careful’ with China Loans – NEDA.”

<sup>57</sup> “Japan Has Better Rates for Loans, But PH Needs China, Too to Speed up Infra Projects: Pernia,” February 22, 2018, Interaksyon, <https://www.interaksyon.com/breaking-news/2018/02/22/120754/japan-has-better-rates-for-loans-but-ph-needs-china-too-to-speed-up-infra-projects-pernia/>

By comparing the rates and other terms of the loan agreements for ODA projects, it is self-evident that the Philippines did not exactly get the best deal, at least in terms of interest rates and other ostensible considerations. Pernia's statement on the need to secure loans from China as a matter of friendship indicates that the administration favored China. Dates showing discussions with China before the CRPIP could be approved may also support such an observation.

### **Waiver of Sovereign Immunity and Arbitration**

As a legal doctrine, the term "sovereign immunity" means that no one can sue the government without its consent. Like other states, the Philippines asserts this principle in Section 3, Article XVI of the 1987 Constitution, which provides that "the State may not be sued without its consent."

There is, however, a provision in the loan agreement expressly stating that the Philippines waives its sovereign immunity. This is perhaps the most controversial and inflammatory issue about the CRPIP given its patriotic appeal and in light of reports about the experiences of other countries with China regarding the waiver of sovereign immunity. Sri Lanka, Djibouti, Maldives, and other countries have reportedly had to give up strategic national assets as collateral for Chinese loans.

In particular, Article 8.1 of the loan agreement (2018) provides:

The Borrower hereby irrevocably waives any immunity on the grounds of sovereign or otherwise for itself or its property in connection with any arbitration proceeding pursuant to Article 8.5 hereof or with the enforcement of any arbitral award thereto. Notwithstanding the foregoing, the Borrower does not waive any immunity of its assets which are (i) used by a diplomatic or consular mission of the Republic of the Philippines, (ii) of a military character and under control of a military authority or defence agency of the Republic of the Philippines, or (iii) located in the Philippines and dedicated to a public or governmental use (as distinguished from patrimonial assets and assets dedicated to commercial use).

According to former Representative Neri Colmenares, one of the more vocal opponents of the loan agreement, the clause means that "in the event of a default or a dispute in the loan agreement that will be subject to an arbitration process, the patrimonial assets could be expended to satisfy the lender (China)."<sup>58</sup> Patrimonial assets are public properties that are not "intended for some public service or the development of the national wealth" as provided in Articles 420 and 421 of the Civil Code of the Philippines.

Of particular focus in this discussion of patrimonial assets is the gas-rich Reed Bank (Recto Bank), which, according to retired Supreme Court Senior Associate Justice Antonio Carpio, "could end up being the collateral."<sup>59</sup> The Reed Bank is controversial because—despite China's claim to it—the United Nations-backed Permanent Court of Arbitration in the Hague in the Netherlands ruled in July 2016 that the Philippines has sovereign rights. The government, responding to fears that China may take over Philippine possessions, dismissed the issue, with Justice Secretary Menardo Guevarra calling it "jumping the gun."<sup>60</sup>

<sup>58</sup> Louise Encabo, "Understanding the problematic Chico River Pump Irrigation Project," *The Defiant*, April 5, 2019 <https://thedefiant.net/understanding-the-problematic-chico-river-pump-irrigation-project/>

<sup>59</sup> Lian Buan, "Reed Bank Not Collateral to China Loan? Carpio Rebutts Duterte Gov't," *Rappler*, March 27, 2019 <https://www.rappler.com/nation/226733-carpio-rebutts-duterte-government-reed-bank-collateral-chico-river-loan>

<sup>60</sup> Buan, "Reed Bank Not Collateral to China Loan?"

DOF officials have asserted that the sovereign immunity clause in the Philippine-China loan agreement is, in fact, standard in all other contracts. Finance Undersecretary Bayani Agabin said that “these clauses are present not only in the loan agreements between the Philippines and China under the current government, but also in other loans accords entered into by previous administrations, with, among others, France, and China.”<sup>61</sup> According to Rivas, *Rappler* has “found out that indeed, waivers on sovereign immunity are standard in Chinese contracts,” and that they could be also be found – though only implicitly – in contracts with Japan and South Korea, the only other nations funding major Philippine infrastructure projects at the time.<sup>62</sup>

For his part, Panelo said that the waiver of immunity “is not a possibility because we will never renege” on the payments and that it is a “useless” provision.<sup>63</sup> He added that Colmenares “is just desperately seeking media mileage” in calling out the Duterte administration for its allegedly onerous \$62.09-million loan agreement with China.<sup>64</sup> DOF Assistant Secretary Lambino echoes the same confidence in the country’s capacity to pay.

An issue was also raised regarding the arbitration of potential disputes. In their petition to the Supreme Court, those opposed to the loan agreement included the concern that the arbitrator would be a Chinese entity located in China, using their rules, the result of which would be final and binding.

Article 8.5 of the loan agreement states:

Any dispute arising out of or in connection with this Agreement shall be resolved through friendly consultation. If no settlement can be reached through such consultation, each party shall have the right to submit such dispute to the China International Economic Trade Arbitration Commission (CIETAC) for arbitration. The arbitration shall be conducted in accordance with CIETAC’s arbitration rules in effect at the time of applying for arbitration. The arbitral award shall be final and binding upon both Parties. The arbitration shall take place in Beijing.

The discussions on the issue of arbitration more or less follow the same lines of argument. Lambino again dismissed this issue, saying that the provision is standard and that it is “highly unlikely” that the two countries would reach that stage of arbitration, given that the Philippines is a “responsible borrower” and will not renege on its payments.<sup>65</sup>

Rivas noted that in contracts for projects funded by South Korea, there is “no mention at all of immunity on the basis of sovereignty or those pertaining to patrimonial assets” and that the venue for arbitration was not specified.<sup>66</sup> Moreover, contracts for projects funded by Japan specify that the umpire “will not be a person of the same nationality as either of the parties to arbitration.”<sup>67</sup>

<sup>61</sup> “Provisions in PHL-China loan accords standard in all other agreements,” Department of Finance, April 17, 2019

<https://www.dof.gov.ph/provisions-in-phl-china-loan-accords-standard-in-all-otheragreements/>

<sup>62</sup> Ralf Rivas, “Made in China: Loan Terms Shrouded In Secrecy”

<sup>63</sup> Corrales, “Palace: ‘Onerous Provision in Chico River Project Loan Just ‘Standard’”

<sup>64</sup> “Which Patrimonial Assets?” *Inquirer.Net*, March 6, 2019 <https://opinion.inquirer.net/119966/which-patrimonial-assets#ixzz6Opo5qDVE>

<sup>65</sup> Darryl John Esguerra, “DOF: PH, China highly unlikely to reach arbitration over Chico River project loan,” *Inquirer.Net*, March 7, 2019 <https://business.inquirer.net/267491/dof-ph-china-highly-unlikely-to-reach-arbitration-over-chico-river-project-loan>

<sup>66</sup> Ralf Rivas, “Duterte’s Golden Age of Infrastructure Will Have to Be Completed by Next President,” *Rappler*, November 13, 2019 <https://www.rappler.com/newsbreak/in-depth/244784-duterte-golden-age-infrastructure-projects-completed-next-president>

<sup>67</sup> *Ibid.*

### **Pre-selection of the Chinese Contractor**

One of the project issues is the choice of CAMCE as the project contractor. This was raised in the petition before the Supreme Court for a Temporary Restraining Order (TRO) on the loan agreement.<sup>68</sup> The contract between NIA and CAMCE for the CRPIP was signed on March 8, 2018.<sup>69</sup>

According to Colmenares, the pre-selection of CAMCE is a violation of the country's procurement laws and of the Constitution that mandates a preference for Filipino contractors and workers.

In the Preferential Buyer's Credit Loan Agreement on the Chico River Pump Irrigation Project (2018), one of the whereas provisions states:

Under the MOU and the abovementioned Note Verable and Clarificatory Procedures and Arrangements, China CAMC Engineering Co., Ltd. has been selected as the Contractor (hereinafter referred to as the "Chinese Contractor") for the Project following the Borrower's procurement laws, rules and regulations.

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While the Government Procurement Reform Act (Republic Act No. 9184) dictates that competitive bidding is a basic government procurement principle and the 1987 Constitution provides that preference be given to qualified Filipinos, these regulations do not apply for the procurement of goods, infrastructure projects, or consulting services funded by foreign grants. According to the Government Procurement Policy Board (GPPB), an independent inter-agency body with responsibility to "formulate and amend public procurement policies, rules, and regulations,"<sup>71</sup> these activities are instead governed by Republic Act No. (RA) 8182, otherwise known as the Official Development Assistance Act of 1996, as amended by RA 8555, "unless the Government of the Philippines and the foreign grantor/foreign or international financing institution agree otherwise."<sup>72</sup>

Matoto, in his analysis, said that "all the ODA funders typically link their loans to the procurement of equipment and services from their respective countries," such as CEXIM loans using China equipment and contracted services.<sup>73</sup>

Nonetheless, the issue of the specific selection of CAMCE as project contractor was raised. Rocamora quoted DOF Assistant Secretary Lambino as saying that "on the procurement, China has provided a list of three contractors of good standing and the implementing agency was given the opportunity to vet and request a replacement, if needed."<sup>74</sup> Conspicuously missing are materials about the selection of CAMCE, despite the government outlining transparency as one of the basic principles of procurement.

On its website, CAMCE describes itself as an "incorporated company affiliated to China National Machinery Industry Corporation (SINOMACH)."<sup>75</sup> Established in 2001 and located in Beijing, it claims to have "rich experience in international project contracting." Dun & Bradstreet, a company that provides business

<sup>68</sup> Lian Buan, "SC Orders Gov't to Answer Petition vs P3.69-B China Loan Deal," *Rappler*, April 10, 2019

<https://www.rappler.com/nation/227827-supreme-court-orders-government-answer-petition-vs-chico-river-china-loan-agreement>

<sup>69</sup> National Economic Development Authority, "The NEDA Board Approved Projects (Duterte Administration)"

<sup>70</sup> "Preferential Buyer's Credit Loan Agreement," Department of Finance, April 10, 2018, paragraph F <https://www.dof.gov.ph/?wpdmdl=23113>

<sup>71</sup> Government Procurement Policy Board. "Applicability of RA 9184; Official Development Assistance (ODA)" October 7, 2015

[https://www.gppb.gov.ph/GPPBTSO\\_Non-Policy/1402](https://www.gppb.gov.ph/GPPBTSO_Non-Policy/1402)

<sup>72</sup> Official Development Assistance Act of 1996, as amended, Republic Act No. 8555, Official Gazette,

<https://www.officialgazette.gov.ph/1998/02/26/republic-act-no-8555/>

<sup>73</sup> Bing Matoto, "Chico River Loan – An Analysis," *Tribune.Net*, April 17, 2019 <https://tribune.net.ph/index.php/2019/04/17/chico-river-loan-analysis/>

<sup>74</sup> Joyce Rocamora, "\$62-M China-PH Irrigation Project Screened before Approval: DOF," *Philippine News Agency*, March 2, 2019,

<https://www.pna.gov.ph/articles/1063392>

decisioning data and analytics, lists CAMCE sales at USD \$1.54 billion, with about 615 companies and about 2,000 employees under it.<sup>76</sup>

However, CAMCE was associated with the North Rail project that was subsequently declared anomalous.<sup>77</sup> In the same article, Lozada quoted then Kabayan Party-list Representative Harry Roque, now returning Presidential Spokesman, as saying that he has “discomforts with the track record of some of these companies,” including CAMCE.

DOF Secretary Carlos Dominguez III was quoted as saying that “companies that have a bad reputation in the international community will not be able to bid for projects in the Philippines.”<sup>78</sup> However, Trade and Industry Secretary Ramon Lopez had defended deals with blacklisted Chinese firms, including CAMCE, contrary to the pronouncements of Roque and Dominguez.<sup>79</sup> It may be significant to note that these mentions of CAMCE occurred about 15 months before the signing of the project contract for CRPIP.

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<sup>75</sup> CAMCE, <http://www.camce.com.cn/en/>

<sup>76</sup> Dun & Bradstreet. (n.d.). Retrieved from [https://www.dnb.com/business-directory/company-profiles.china\\_camc\\_engineering\\_co\\_ltd.2c83103dc695ad7fc40918bdf455f372.html](https://www.dnb.com/business-directory/company-profiles.china_camc_engineering_co_ltd.2c83103dc695ad7fc40918bdf455f372.html)

<sup>77</sup> Aaron Lozada, “‘Tainted’ Chinese Firms Eye New Projects in the Philippines,” ABS-CBN News, October 26, 2016 <https://news.abs-cbn.com/news/10/25/16/tainted-chinese-firms-eye-new-projects-in-philippines>

<sup>78</sup> “PH to Screen Blacklisted Chinese Firms Bidding for Projects,” Portcalls.com, November 7, 2016 <https://www.portcalls.com/ph-screen-blacklisted-chinese-firms-bidding-projects/>

<sup>79</sup> “Trade Chief Defends Deals with Blacklisted Chinese Firms,” ABS-CBN News, November 2, 2016 <https://news.abs-cbn.com/business/11/02/16/trade-chief-defends-deals-with-blacklisted-chinese-firms>



## Conclusion

From the outset, the CRPIP has been beset with controversies. The tainted past of the frustrated Marcos-era Chico River Dam Project haunts this new project under President Duterte's "Build, Build, Build" program.

After the hype of ushering in the "golden age of infrastructure," the BBB program ran into difficulties delivering on its promises. The list of projects and funding sources had to be revamped when—as the government admitted—they realized that some were expensive and difficult to implement. Nonetheless, the CRPIP managed to stay on the list.

The social issues and governance issue on the consultation process are intertwined. They revolve around concerns raised by the affected indigenous peoples on the violations of the consultation process mandated by law. That construction was started ahead of the completion of the consultation process is uncontested, but other issues have yet to be discussed thoroughly. With construction proceeding, it may be challenging to correct the defects in the consultation process. These concerns may linger as socio-political unrest that can threaten the stability of the project long after it has been completed.

The government response to the concerns raised were either dismissive or evasive, summarized as follows:

- The loan agreement is above board.
- It has been vetted.
- The controversial provisions are standard for Chinese contracts.
- The Philippines is a responsible borrower and will not default on its payments.

Instead of responding to the issues point-by-point, the government's response has been to accuse critics of grandstanding for media mileage. Regardless of their motivation, the government should provide satisfactory explanations.

The government's pronouncements do not serve any valuable purpose, as they side-step the actual issues. Saying that the loan agreement in question is above board is tantamount to a mere denial of the issues being raised and, as such, is a feeble argument to defend the deal. Likewise, claiming that the contract has been vetted does not eliminate the prospects of wrongdoing, even with the presumption of regularity.

Moreover, even if the onerous provisions are standard in Chinese contracts, they remain undeniably onerous, and it remains unclear why the Philippine government decided to agree to these conditions. This is especially relevant given that there were other countries with standing offers of financing. The government's response only reinforces the underlying suspicion that the government heavily favored these agreements with China from the very start.

The government's argument that the arbitration provisions will not become relevant because the Philippines is a 'responsible borrower' is irrelevant. It does not deny the substance of the criticism and supports the conclusion that this is a sweetheart deal.

As to the other loan issues, the pre-selection of the Chinese contractor, and the financial terms in the agreement are all but irreversible at this point, short of rescinding the contract. Perhaps the nature and manner of the reply from the government are the closest to a validation of the points raised that

the Filipino people will receive, for now. To a considerable extent, the loan agreement is a *fait accompli*. But, even so, there is still a need to push the issues if only to prevent what appears to be a flawed contract from becoming a template for future loan agreements. For the remaining issues—the lack of transparency, the waiver of immunity and arbitration, and the environmental degradation—there may yet be some relief.

One side of the issue of transparency is the confidentiality clause in the loan agreement. Aside from the template reply that this is a standard provision in Chinese loan contracts, government officials claim to have negotiated a way out of it, culminating in the slow release to the public of a copy of the Preferential Buyer's Credit Loan Agreement.

The other side of the issue refers to the here and now. Despite the claim that China has released the Philippines from the confidentiality restrictions, the government has yet to be more transparent with the project. This behavior may actively support the suspicions of pre-meditated irregularities in the project, as discussed in the section on transparency. If the government is confident that the contract is above-board, then President Duterte should cause the release of the documents to the maximum extent allowed by law. Doing so will allay fears of collusion and corruption in the project negotiations. The administration's strategy seems to be to delay this from happening and just pay lip service to transparency.

The issues surrounding the waiver of immunity and arbitration are highly debatable. The government is arguing that the contested provisions do not give China any right to take over any assets that belong to the Philippines, even if the country defaults on the loan. Government officials are also arguing tangentially that those provisions are moot as the country will not default and, thus, no arbitration or takeover will ever occur. Both arguments, however, do not deny that such onerous provisions are included in the contract.

In case of default, becoming entangled in a legal battle with China is not a good prospect for the Philippines. As in the case of the enforcement of the Hague ruling, China can resort to a heavy-handed approach. Therefore, between the two arguments of the government, the best insurance against unfavorable outcomes for the Philippines seems to be not to default on its payments. However, by accepting this, the Philippines would have allowed the onerous provisions to stay in this specific agreement but also to become a template for future loan agreements. Another option, of course, is the cancellation of the existing contract.

Unless there have been irreversible actions already, the environmental degradation that is feared to happen need not take place if transparency and vigilance accompany decision-making. However, if the CRPIP is so fundamentally flawed as to make environmental degradation a certainty, the only recourse is the cancellation of the project.

There is also the issue of accountability. Good governance dictates that allegations of improprieties be probed. After all, this is not a simple case of missing page numbers in a document where you can just remind the clerk to be more careful next time. The offenses involve running roughshod over regulatory processes and requirements with impunity. It is bothersome because the concerned officials behave as if each one of them holds a get-out-of-jail-free card, since they were merely following an executive decision. If the arguments are pushed further, this could also mean that the required approvals were purely ministerial and for the record.

If, and only if, that executive decision is traced to President Duterte, he is wont to claim responsibility for everything and absolve everybody else. Given his remaining years as president with immunity from suit, his advanced age, and health condition, it does not look likely that he will be held responsible for any legal issues with the project, especially since the judicial system can do its part to prolong the proceedings.

There is no doubt that the Philippines needed significant resources to play catch-up on its infrastructure as it tried to sustain its stellar pre-pandemic economic growth streak. The credit ratings of the Philippines were all improving with a generally positive outlook. This meant that the Philippines was in excellent economic and financial shape and creditor countries were available to provide ODA.

Against this backdrop, the Philippines decided to borrow from China to fund the controversial CRPIP under a less-favorable interest rate compared to other ODA projects with other countries, with controversial contract provisions that could mean parting with patrimonial assets, while disregarding its regulatory processes and requirements, and all under a cloak of secrecy. This decision defies all logic.

Given the circumstances behind the project and the loan, it is not unreasonable to get the impression that certain things are awry. When challenged about this, the government has made only token responses, seemingly content at the thought that this too shall pass. It is interesting to note that these issues are not present in ODA agreements with Japan, South Korea, and other countries.

The severe lack of transparency from the very beginning, and the ongoing lack of accountability, are made possible by a poor governance structure with a leader who, buoyed by high popularity ratings fueled by his populist stance, behaves as if he has monarchic powers to make unilateral decisions. This, in turn, is complemented by weak institutions headed by bureaucrats who owe allegiance to the president or by politicians eager to support a popular leader in exchange for patronage.

China was able to leverage its special friendship with the Duterte administration to further its national interest. The Philippines, however, came out with the raw end of the deal. The loan agreement entered into with China has done more harm than good for the Philippines. Aside from the obvious financial costs, it has also compromised the integrity and professionalism of individuals, institutions, and processes.

In the end, the Philippines would have been better off without this loan from China.





### **What is BRI Monitor?**

BRI Monitor is a collaborative effort by five civil society organizations in Southeast Asia and the Pacific: the Institute for Democracy and Economic Affairs (IDEAS) of Malaysia, Stratbase Albert Del Rosario Institute (ADRI) of the Philippines, Sandhi Governance Institute (SGI) of Myanmar, the Institute of National Affairs (INA) of Papua New Guinea and the Future Forum of Cambodia to promote transparency and accountability in major infrastructure projects funded through the Belt and Road Initiative (BRI) in the region.

These organizations have studied the regulatory environments governing these large infrastructure projects in respective countries, including public procurement, official development assistance, public private partnership (PPP), and more, to identify regulatory gaps. They have each researched a set of case studies to identify implementation gaps and governance gaps. Each case study assesses the level of transparency based on almost 40 data points, from basic project information to the tendering process to project completion. Last but not least, each organization maps out the structure of the projects in question in order to understand the degree of public financial exposure resulting from each project. (please check our research methodology here).

This website is intended to be a platform for the publication of our research outputs and as a knowledge repository. We also hope that the website can be used as a platform for knowledge sharing and a tool to advocate better governance of major infrastructure projects in the region.

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