Emory International Law Review

Volume 34 | Issue 2

2020

The Build Act: A Shift in U.S. Global Investment Strategy and Its Impact on Sub-Saharan Africa

Paige Parker

THE BUILD ACT: A SHIFT IN U.S. GLOBAL INVESTMENT STRATEGY AND ITS IMPACT ON SUB-SAHARAN AFRICA

INTRODUCTION

On October 5th, Donald Trump, the U.S. President, signed the Better Utilization of Investments Leading to Development Act of 2018—better known as the 2018 BUILD Act.[1] This important Act establishes the mechanism that will significantly alter how the United States invests globally by creating the International Development Finance Corporation (IDFC) while also replacing and consolidating the Overseas Private Investment Corporation (OPIC) and United States Agency of International Development (USAID) credit authority.[2] Despite its significance, the BUILD Act passed silently into law while lawmakers, commentators, and the American public focused on the controversial approval of Brett Kavanaugh's seat on the Supreme Court.[3] While it is unclear how much attention or recognition the policymakers, media, or American public would have given this Act, the timing of the BUILD Act, and the pre-occupation with the Supreme Court hearings, allowed this big change on the global investment landscape to go virtually unnoticed by the American public as perhaps distracted policymakers underestimated the potential costs of the Act in terms of lost leadership.[4]

The BUILD Act has been justified by its drafters as a way of countering China's dominating trade strategy in global economic development.[5] Though the United States currently remains Africa's number one aid donor, China leads in trade with Africa as far as volume of trade and capital investment flows.[6] With the passage of the BUILD Act, the United States is attempting to shift the focus of its support of global economic development from an aid-based to a trade-based mindset.[7] The BUILD Act established the IDFC in an effort to compete

---

[1] *MCC Applauds President Donald J. Trump for Signing BUILD Act into Law*, MILLENNIUM CHALLENGE CORP. (Oct. 5, 2018), https://www.mcc.gov/news-and-events/release/release-100518-build-act-signed-law.

[2] *Id.*

[3] *See* Sheryl Gay Stolberg, *Kavanaugh Is Sworn in After Close Confirmation Vote in Senate*, N.Y. TIMES (Oct. 6, 2018), https://www.nytimes.com/2018/10/06/us/politics/brett-kavanaugh-supreme-court.html.

[4] *See id*.

[5] Ted Yoho, *US Planning Development Finance Overhaul to Counter Growing Influence of China*, LEXISNEXIS (Apr. 13, 2018), https://advance.lexis.com/document?crid=fc928c87-6b56-4ef2-b998-1e63d00f8374&pddocfullpath=%2Fshared%2Fdocument%2Fnews%2Furn%3AcontentItem%3A5S3D-N901-DXN1-C424-00000-00&pdcontentcomponentid=405244&pdmfid=1000516&pdisurlapi=true.

[6] *Id*.

[7] *Id*.

with China's "state-led economic model" by giving the growing economies throughout the world, and specifically in the Sub-Saharan region of Africa, the choice to invest with the United States.[8]

The recent announcement that the head of the World Bank, Jim Yong Kim, would be resigning before the end of his term to take a position in the private sector adds to a climate of uncertainty about the future role of key international institutions, such as the World Bank, and feeds growing concerns about the future of the global economy in a growing leadership vacuum.[9] The global investment landscape is headed in a new direction as the United States changes investment strategy and pours $60 billion into the new IDFC in efforts to compete with its main competitor, China.[10] This $60 billion budget comes from a combination of new money and a shift from aid funds to investment funds.[11]

As the U.S. investment approach continues to shift farther from a primarily aid-based global investment strategy to favor a more mercantilist approach, the United States is in danger of losing its identity as a leader in the provision of foreign aid as the United States pours more money into investment.[12] At the same time that the United States loses its former leadership position in providing foreign aid, it is competing in a new mercantile race that it is unlikely to win. Although the $60 billion budget nearly doubles the budget for the prior U.S. agency dedicated to global investment, the new U.S. agency still cannot match China's Belt and Road Initiative (BRI), as the BRI budget is estimated to be at least one trillion dollars.[13] The competition with China is driving a U.S. change in approach, and this change is most apparent in how the U.S. invests in Sub-Saharan Africa. The impact of this change in the U.S. approach is of particular

---

[8] *Id.* The United Nations Development Program identifies forty-six countries that make up the Sub-Saharan region. They are as follows: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, DRC, Republic of Congo, Cote d'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nambibia, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, South Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, Zimbabwe. *About Sub-Saharan Africa*, UNPD AFRICA (2020), https://www.africa.undp.org/content/rba/en/home/regioninfo.html.

[9] Phillip Inman, *Jim Yong Kim Resigns as World Bank President*, THE GUARDIAN (Jan. 7, 2019), https://www.theguardian.com/business/2019/jan/07/jim-yong-kim-to-resign-as-president-of-the-world-bank.

[10] *See* JAMES ROBERTS & BRETT SCHAEFER, THE BUILD ACT'S PROPOSED U.S. DEVELOPMENT FINANCE CORPORATION WOULD SUPERSIZE OPIC, BUT NOT IMPROVE IT 1–3 (2018); Yoho, *supra* note 5.

[11] *See* Lawrence O. Gostin et al., *China's Grand Idea For the 21st Century: Will the New Silk Road Transform Global Health Assistance?*, HEALTH AFF. (Apr. 3, 2018), https://www.healthaffairs.org/do/10.1377/hblog20180327.739726/full/; Yoho, *supra* note 5.

[12] Gostin et al., *supra* note 11.

[13] *Id*.

concern to countries in this region because of their large dependence on U.S. aid.

China and the United States have competed over the past few decades for projects in lesser-developed countries in efforts to assert dominance in the global economy as well as benefit from national security and political perspectives. Competition for business-focused investments is intensifying in Sub-Saharan Africa as China continues to invest heavily in the region; this competition is distorting the traditional U.S. aid-focused approach in this region. Recently in 2018, the United States pledged to increase funding in Sub-Saharan Africa.[14] However, this pledge to Sub-Saharan Africa seems to clash with the new shift in U.S. global investment strategy as the new strategy lacks social development as a goal of the new government agency that was a key goal of its predecessor, OPIC.[15] The shift in U.S. approach is reflected in the important recent change in structure of the IDFC introduced by the BUILD Act. The IDFC effectively changes the way the United States can and most likely will invest in countries throughout the world, specifically in Sub-Saharan countries in Africa.

The BUILD Act is designed to compete with Chinese investments in less developed economies in ways that will ultimately negatively impact both the United States and the countries most depending on its aid. The Act threatens to radically change the global investment landscape and relates to U.S.–Sub-Saharan African relationships because of the heavy investment from both the United States and China in the Sub-Saharan region.[16] Safeguards must be built into this new U.S. development finance institution to protect those relationships.

This Comment consists of six parts. Part II discusses the demise of OPIC, and the traditional U.S. approach to global investment as a result of the BUILD Act. The discussion of OPIC explores OPIC's current involvement in Sub-Saharan Africa, explains the importance of regulation in global investment, and articulates issues with OPIC. Part II discusses the BUILD Act and the establishment of the IDFC. The IDFC essentially changes the way the United

---

[14] CONGRESSIONAL QUARTERLY'S HOUSE ACTION REPORTS, 115TH CONG., LEGISLATIVE WEEK: THIS WEEK ON THE HOUSE FLOOR 35–38 (2018).

[15] *See* 22 U.S.C. § 2151(a) (2010).

[16] *See* James Roberts & Brett Schaefer, The BUILD Act's Proposed U.S. Development Finance Corporation Would Supersize OPIC, But Not Improve It 1–3 (2018); *MCC Applauds President Donald J. Trump for Signing BUILD Act into Law*, MILLENNIUM CHALLENGE CORP. (Oct. 5, 2018), https://www.mcc.gov/news-and-events/release/release-100518-build-act-signed-law; Raj Bhala, *Trump's "Principled Realism" Versus China's Belt and Road Initiative*, BLOOMBERG QUINT (Oct. 6, 2018, 9:54 AM), https://www.bloombergquint.com/global-economics/trumps-principled-realism-versus-chinas-belt-and-road-initiative; Yoho, *supra* note 5.

States will invest globally and is likely to have a long-term impact on the global investment landscape.

In Part III, China's approach to global economic development is explored in a discussion of China's BRI initiative, the primary motivation for the U.S. change in global investment strategy. Part IV analyzes investments in health systems and the opportunity the United States has to invest in health system projects in Sub-Saharan Africa. This Section explores why investments in health systems in Sub-Saharan Africa are critical for the United States.

Part V proposes the implementation of guidelines and regulations on the IDFC during the transition period as the detailed plan of IDFC awaits approval from Congress. Increased oversight over the new institution will allow the United States to impose guidelines and regulations to ensure that under-developed countries—for example, in Sub-Saharan Africa—will remain the focus of U.S. global investment. The continued focus on supporting infrastructure development in less developed countries is important for these countries as they continue to develop more market efficient economies. This continued support of under-developed countries will result in these countries being less inclined to enter into asymmetrical, bilateral agreements with China that would likely destroy their current strides towards market efficient economies. Part V also calls for investment in infrastructure projects in health systems in Sub-Saharan Africa and the benefits of the advancement and promotion of global health.

Finally, Part VI then reaches the conclusion that the direction that the IDFC appears to be taking is detrimental for foreign relations with Sub-Saharan Africa as the United States shifts from an aid to trade-based approach. After all, the United States might be disinclined to trade with the least developed countries if the United States finds it would be more beneficial for the United States to trade with other, better off countries. However, the United States has an opportunity to benefit the global economy, itself, and Sub-Saharan countries by imposing congressional oversight and additional guidelines on the IDFC. In addition, the increased budget received by the IDFC should be used to invest in infrastructure projects in health systems in Sub-Saharan Africa.

I. U.S. FOREIGN INVESTMENT STRATEGIES: OLD VS. NEW

The BUILD Act of 2018 is a significant piece of legislation that impacts the government agency charged with overseeing and supporting private sector investment abroad, changing the government's role to focus more on supporting

U.S. business interests and less on providing aid and engaging in global health diplomacy. The 2018 BUILD Act legislation replaces one institution with another, and there are key differences that reflect the shift in objectives of U.S. foreign investment policy. This has implications both for the United States and for the countries most in need of U.S. aid.

A. OPIC: The Old Global Investment Institution

The OPIC is a U.S. government agency that helps American businesses invest in foreign states by providing financing, political risk insurance, and/or investment funds.[17] American businesses that obtain assistance from OPIC could not obtain financing otherwise because OPIC does not compete with traditional banks.[18] Therefore, OPIC's intention is never to compete with private sector investment.[19] American businesses that obtain investment assistance through OPIC would otherwise be unable to invest in emerging markets such as Sub-Saharan Africa.[20]

OPIC is a self-sustaining government agency that has no net costs for taxpayers.[21] Additionally, OPIC has contributed over $3.7 billion for federal deficit reduction.[22] The types of businesses that OPIC is authorized to support includes: (1) critical infrastructure; (2) financial services; (3) healthcare; and (4) technology.[23] To qualify for OPIC investment funding, the business must be owned by Americans or a business where U.S. citizens are strongly involved.[24] American businesses and/or Americans specifically benefit from the OPIC supported projects and that businesses that do not meet this U.S. ownership or substantial involvement qualification cannot reap the benefits of OPIC funding.[25]

Over the past several decades and since its founding, OPIC has been important to the United States because it supports American national security and foreign policy interests, supports American businesses, and supports the

---

17 *Who we are Frequently Asked Questions*, OPIC, https://www.opic.gov/who-we-are/faqs (last visited Oct. 28, 2019).

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

24 *Id.* (defining "strongly involved" generally as majority ownership or majority interests by U.S. citizens).

25 *See id.*

U.S. economy by providing a federal deficit reduction of over 3 billion.[26] OPIC has also been important to many other countries, including Sub-Saharan countries, as it has promoted economic and political stability in countries facing extreme poverty and conflict.[27] OPIC's investment and assistance in these fragile economies aided efforts in the economies of these countries to make a conscious shift from economies that were primarily dependent on foreign aid and investment towards a economies that are more independent and self-sufficient.[28] The shifts of historically dependent economies to more interdependent market economies benefits the global economy.[29]

OPIC 2018 Projects in Sub-Saharan Africa focus on agriculture, access to food supply, and investments that target the African consumer.[30] Notably, OPIC is not focusing on any health systems-related projects in the Sub-Saharan Africa for 2018.[31] The health systems industry could be crucial in getting under-developed countries to be better participators in the global economy. Since the history of its inception, OPIC has never demonstrated a focus on health systems in Sub-Saharan African countries.[32] However, the United States has consistently contributed foreign aid to Sub-Saharan Africa for health systems projects that do contribute towards global health.

1. *OPIC's Investment in Sub-Saharan Africa*

OPIC was investing heavily in Sub-Saharan Africa but this will likely change with the passage of the new legislation. Statistics show that more than 25% of OPIC activity is in Sub-Saharan Africa.[33] In other words, OPIC chose to allocate one fourth of its budget towards Sub-Saharan Africa when the funds could have been allocated to any other countries in the world that met its qualifications and showed dire need for assistance and opportunity.[34] Additionally, more than 33.33% of OPIC activity is in regions of conflict.[35] With the passage of the BUILD Act and the new establishment of the IDFC, there is no obligation that the IDFC increase the level of investment in Sub-Saharan Africa or even that it maintain that percentage of investment that OPIC currently

---

26 *Id.*
27 *Id.*
28 *See id.*
29 *See id.*
30 *Id.*
31 *Id.*
32 *See id.*
33 *Id.*
34 *Id.*
35 *Id.*

invests in Sub-Saharan Africa or in regions of conflict.[36] This is important to many BUILD Act supporters as they might have falsely equated the U.S. pledge of increased funding to Africa as being correlated to the IDFC's creation. BUILD Act supporters may have held a belief that the IDFC would be the mechanism that would provide increased funding to Sub-Saharan Africa, but unfortunately this is not explicitly supported in the BUILD Act.[37]

OPIC also makes efforts in Africa, though not particularly in the Sub-Saharan, to invest in the healthcare arena.[38] For example, in Kenya, OPIC supported a project that installed toilets to improve sanitation.[39] In Ghana, OPIC granted political risk insurance to support Belstar LLC in a project that introduced more advanced medical equipment.[40] The project included a supply of eighteen mobile health clinics.[41] Finally, OPIC provided the Magrapi ICO Cameroon Eye Institute a $2 million dollar loan to help the Cameroon Eye Hospital with startup costs.[42] The investment model used for this project is the "developmental impact model" where the lender receives an increased return as the hospital serves more patients.[43] This model helps businesses become self-sufficient and allows them to better participate in the global economy.[44] The model also protects the U.S. investor because more money is allotted to the project only if the project is successful.[45]

In 2018, OPIC released an initiative that specifically addressed women.[46] Gender inequality costs Sub-Saharan Africa $95 billion dollars a year.[47] Inequality results from little to no access to family planning and immunizations leading to earlier deaths of women and the inability to work.[48] The reduction of the female population's ability to work prevents females from participating in the economy at their full capacity.[49] OPIC invested $350 million in the Women's

---

36 *See* 164 CONG. REC. 6320, 6321 (2018).

37 *See* CONGRESSIONAL QUARTERLY'S HOUSE ACTION REPORTS, *supra* note 14.

38 OPIC, 2017 ANNUAL REPORT 30–31 (2017).

39 *Id.*

40 *Id.*

41 *Id.*

42 David Bohigian, *Washington: Cameroon Hospital Offers a Model for Africa-and the World-OPIC Featured in the Cameroon Post*, OPIC (Jan. 11, 2018), https://www.opic.gov/blog/opic-action/cameroon-hospital-offers-model-africa-and-world-opic-featured-cameroon-post.

43 *Id.*

44 *Id.*

45 *See id.*

46 *Improving Healthcare in Africa*, AFR. EXECUTIVE (Mar. 20, 2018), https://africanexecutive.com/article/read/9674.

47 *Id.*

48 *Id.*

49 *See id.*

Initiative for projects that will increase financing available for women led businesses and access to water projects.[50] The goal of this project is bring an additional $1 billion from the private sector.[51] However, healthcare projects that support the health of women could also substantially increase the participation of women in Sub-Saharan African countries because women would be able to work for a longer duration and be able to work more effectively which would result in an increase in overall global economic development.[52]

Current and ongoing 2018–2019 OPIC projects target the agriculture industry and the African consumer.[53] "Connect Africa" is a new OPIC initiative that seeks to increase Africa's exports by focusing on transportation infrastructure, technology, and value chains.[54] For example, OPIC supported the Mall of Africa project under the "Connect Africa" initiative.[55] The business, Mall for Africa began by raising money from Helios Investment Partners and, in turn, Helios raised investment capital from OPIC.[56] The startup, Mall for Africa, allows Africans in many Sub-Saharan countries to order from major online retailers.[57] The startup solved the often problematic currency issue by letting the African consumers pay the company in the local currency of the country and then have the company make the purchases for the African consumer.[58] As the company grew, the big shipping orders have been able to reduce the costs to get the retail items to the Sub-Saharan countries, which has resulted in the creation of a successful business.[59] Mall for Africa is an example of how the United States can successfully invest in projects that allow Sub-Saharan Africans to better participate in the global economy.

E-commerce is a booming market for Sub-Saharan Africa that has been left largely untapped.[60] This is the result of a combination of two primary factors in Sub-Saharan Africa: (1) Africans are earning more disposable income, and; (2)

---

50 *Id.* at 4.

51 *Id.*

52 *Id.*

53 *Africa Has Key Role to Play in a Prosperous Global Future*, FIN. SERV. MONITOR WORLDWIDE (July 13, 2018), https://thehill.com/opinion/finance/396734-africa-has-key-role-in-a-prosperous-global-future.

54 *See id.*

55 *Washington: This OPIC Supported Startup is Connecting U.S. Retailers to Africa's Growing Middle class*, OPIC (Apr. 10, 2018), https://www.opic.gov/blog/opic-action/opic-supported-startup-connecting-us-retailers-africas-growing-middle-class.

56 *Id.*

57 *Id.*

58 *Id.*

59 *Id.*

60 *See id.*

the rapid growth of internet access.[61] The e-commerce market gives the United States and Sub-Saharan Africa a mutually beneficial opportunity to work together.[62] The United States has an economic interest in continuing to support e-commerce and infrastructure industry projects in Sub-Saharan countries because these projects enable their economies to expand along with the Sub-Saharan Africans increase in disposable income.[63] Although the aforementioned reasons for continued investment in Sub-Saharan Africa are primarily business and economic interests for the United States, these interests also further foreign policy and national security interests as these investments will promote the creation of market efficient economies in Sub-Saharan countries. If the Sub-Saharan countries can obtain more stable economies, the countries will be less vulnerable to China and India's offers of bilateral trade agreements.

2. *Explanation of OPIC's Heavily Regulation*

Generally, OPIC is subject to regulations for human rights, labor rights, and worker rights, as well as many other regulations.[64] In ensuring that OPIC abides by these regulations for projects in host countries, OPIC is facilitating benefits for all parties involved in the investments as well as positive foreign relations with the host countries.[65]

Under Section 239(i) of the Foreign Assistance Act, OPIC must take into account the conduct of its programs/projects in a host country.[66] OPIC must consult with the U.S. Department of State on all projects.[67] All available information regarding Human Rights, fundamental freedoms in the host country, and the effect the project will have on Human Rights and fundamental freedoms in such country must be obtained and discussed with the Department of State.[68]

As far as Labor Rights are concerned, OPIC must respect the rights of workers, which includes all Internationally Recognized Worker Rights.[69] These

---

61 *Id.*

62 *Id.*

63 *Id.*

64 *See Environmental and Social Policy Statement*, OVERSEA PRIV. INV. CORP. (Jan. 2017), https://www.opic.gov/sites/default/files/files/final%20revised%20ESPS%2001132017(1).pdf.

65 See *id.*

66 *Id.* at 9.

67 *Id.*

68 *Id.* OPIC defines "Human Rights" as, "Those rights expressed in the International Bill of Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work." *See id.* at 45.

69 *Id.* at 32. OPIC defines "Labor Rights" as, "Rights of **Workers**, which includes **Internationally Recognized Worker Rights**, and protection from discrimination with respect to employment and occupation

rights include the protection from employment discrimination such as discrimination on the basis of personal characteristics that are unrelated requirements inherent to the job.[70]

OPIC defines Internationally Recognized Worker Rights, following the definition specified in the Trade Act of 1974 (as amended) to include:

> (1) the right of association; (2) the right to organize and collective bargaining; (3) prohibition on forced labor and the worst forms of child labor; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety.[71]

OPIC also must follow the procedure of Meaningful Consultation with the U.S. Department of State.[72] Meaningful Consultation is a process that:

> (1) begins early in the project preparation stage and is carried out on an on-going basis throughout the project life cycle; (2) provides timely disclosure of relevant and adequate information that is understandable and readily accessible to Project Affected People; (3) is undertaken in an atmosphere free of intimidation or coercion; (4) is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (5) enables the incorporation of all relevant views of affected people and other Stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.[73]

Idealistically, this policy is intended to promote transparency to all parties involved in the project including the host country of the project, the American business shareholder/owner, the effected peoples of that host country, and to the American people generally.[74]

OPIC is also required to report to the Office of the U.S. Trade Representative (USTR) and follow the USTR's standards.[75] The USTR is "[a]n agency of the

---

on the basis of personal characteristics that are unrelated to inherent job requirements." *See id.* at 45. OPIC defines "Internationally Recognized Worker Rights" as, "The term, as specified in the Trade Act of 1974 (as amended), includes: (1) the right of association; (2) the right to organize and collective bargaining; (3) prohibition on forced labor and the worst forms of child labor; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety." *See id.*

70 *Id.* at 45.

71 *Id.* at 32, 45.

72 *Id.* at 4.

73 *Id.* at 46.

74 *Id.* at 19.

75 *Id.* at 32–33.

U.S. Government that is responsible for developing and coordinating U.S. international trade, commodity, direct investment policy, and overseeing negotiations with other countries."[76]

Additionally, OPIC has to comply with Performance Standards for 100% of its projects.[77] Performance Standards consists of "technical reference documents issued by the International Finance Corporation with environmental and social impact management performance criteria."[78] These requirements provide a system that serves as a check that projects are not detrimental to the host country and that the projects are not competing with American private sector businesses.[79]

OPIC is also regulated by the U.S. Department of Labor.[80] The U.S. Department of Labor is designed as "[a]n agency of the U.S. Government that is responsible for administering labor laws on working conditions, unemployment insurance benefits and re-employment services, and tracks national economic measurements."[81] The U.S. Department of Labor acts as an accountability mechanism for its project decisions.[82]

OPIC uses Special Consideration as a tool to help decide whether a project should be funded by OPIC.[83] Special Consideration is:

> [a] screening classification that is applied to a project when there are heightened social risks within a project. The decision to designate a project as Special Consideration will take into consideration the significance of the social risk, as determined by the scale and severity of the potential impacts and vulnerability of the affected people. The Special Consideration classification of a project indicates: (1) a project's heightened potential for Labor Rights or Human Rights risks or impacts; and (2) a higher risk to Workers or Project Affected People.[84]

OPIC also adheres to the Social Risk Due Diligence process.[85] The Social Risk Due Diligence process is a:

---

76 *Id.* at 46.
77 *Id.* at 17.
78 *Id.* at 46.
79 *See id.*
80 *Id.* at 33–34.
81 *Id.* at 48.
82 *Id.*
83 *Id.* at 5.
84 *Id.* at 47.
85 *Id.*

> [p]rocess through which the Applicant identifies and manages heightened social risks, including project-related Human Rights impacts. [This i]ncludes risk identification, consultation with Project Affected People and Workers, and resulting management and monitoring programs. [This p]rocess can be integrated into the Applicant's Environmental and Social Management System provided it identifies, manages, and communicates risks to Project Affected People and Workers.[86]

In regards to health and environmental regulations, OPIC follows the World Bank Group Environmental, Health, and Safety Guidelines.[87] The World Bank group follows the international standards for workers' rights, human rights, and the environment.[88] The World Bank Guidelines set uniform, good practice standards for countries that want to participate in investments benefiting both the host country of the project and the economy of the investing country.[89]

In efforts to ensure that projects supported by OPIC funding will have no negative impact on U.S. jobs or the U.S. economy, OPIC reviews all potential projects.[90] OPIC must ensure that a project will not have a negative impact by meeting the Performance Standard.[91] Reviewing potential projects is critical to ensure mutual benefit between the United States and the host country of the project.[92]

In addition to the previously mentioned regulations of OPIC, OPIC also has procedures that oversee the economic effect of their projects and ensure that additional laws and rules are complied with in the host country.[93] OPIC's Office of Investment Policy also evaluates the economic effect the project will have in the host country.[94] Additionally, OPIC ensures compliance with all congressionally mandated statutory and policy requirements for the U.S. economy and the host country.[95]

OPIC is a heavily regulated U.S. investment institution. By following these regulations, OPIC promotes healthy global investment where all parties can be

---

86 *Id*.

87 *Id* at 29.

88 *Id.*

89 *See Who we are Frequently Asked Questions*, *supra* note 17.

90 *Id.*

91 *See id.*

92 *Id.*

93 *Id.*

94 *Our Investment Policies Economic Analysis*, OPIC, https://www.opic.gov/who-we-are/OPIC-policies/economic-analysis (last visited Sept. 12, 2018).

95 *Id.*

beneficiaries of the completed projects. OPIC is used to bring people, countries, and governments together while contributing to the global economy.

3. Problems with OPIC

A primary concern with OPIC from a U.S. economic perspective is that it was not doing enough in comparison to its competitors, especially China, which invests on an exponentially larger scale.[96] Further, China's initiative known as the Belt and Road Initiative, invests solely with an eye towards profits as compared to OPIC which is limited in its investment opportunities given more non-economic requirements.[97] Additionally, India is another emerging player in the global investment landscape that has begun to seriously compete with the United States for global economic development, specifically in Africa.[98]

Another critical concern with OPIC is its lack of investments in projects in the health systems arena.[99] Although OPIC has backed projects that support businesses in the healthcare arena, health care systems have never been a primary focus of OPIC.[100] Another concern with OPIC is that it was outdated and is in need of modernization because it has not undergone any major reformations since its establishment in 1971.[101] Although the BUILD Act and the creation of the IDFC address some of the issues with OPIC by modernizing the institution, critical issues remain unaddressed while a plethora of new issues have arisen.

B. BUILD Act Legislation and the Creation of the IDFC

1. Legislative History of the BUILD Act

Members of Congress, Ted Yoho and Adam Smith, along with Senators Bob Corker and Chris Coons, introduced the bipartisan BUILD Act in February 2018.[102] The House of Representatives passed the BUILD Act in July 2018 by voice-vote.[103] Then, in September 2018, the House and Senate passed the

---

96 Gostin et al., *supra* note 11.

97 *Id.*

98 *See* Malancha Chakrabarty, *Indian Investments in Africa; Scale, Trends, and Policy Recommendations* 23–24 (Observer Res. Found., Occasional Paper No. 142, 2017).

99 *See* OVERSEAS PRIVATE INVESTMENT CORPORATION: 2017 ANNUAL REPORT.

100 *See id.*

101 Yoho, *supra* note 5.

102 *OPIC Issues Statement on President Trump Signing Better Utilization of Investments Legislation* (Oct. 5, 2018), https://advisornews.com/oarticle/opic-issues-statement-on-president-trump-signing-better-utilization-of-investments-legislation#.XhNu3y2ZNQN [hereinafter *OPIC Issues Statement*].

103 *Id.*

BUILD Act as incorporated by the FAA Reauthorization Act of 2018 with little opposition.[104] After President Trump signed the bill, the BUILD Act entered into a transition period in which OPIC continues to operate while the IDFC works on a plan to submit to Congress that will contain details in order to get the new institution up and running.[105]

2. *The IDFC*

The BUILD Act, in establishing the U.S. IDFC, changes the way the U.S. government, and its private sector partners, invest globally.[106] There are several important differences from OPIC: no explicit obligation for social development, a budget of $60 billion, the ability to invest in equity investment, the ability to invest in projects by state governments, automation of future growth, and a longer authorization.[107] These changes create concerns for accountability and transparency, as less congressional oversight is required for the new institution.[108]

The BUILD Act's IDFC, lacks an obligation to the social development of less developed countries in its stated purpose.[109] Social development was a key purpose of its predecessor, OPIC, making the IDFC fundamentally different and more similar to the investment strategy of China.[110]

The IDFC effectively changes the way the United States can and most likely will invest in countries throughout the world, specifically in Sub-Saharan Africa. Aside from the massive budget increase, the IDFC has been granted the authority to invest "U.S. tax payer dollars in equity investments in foreign countries."[111] Like OPIC, the IDFC seeks to further U.S. national security interests, support U.S. businesses, and support global economic growth in developing economies.[112]

---

104 *Id.*

105 *Id.*

106 Yoho, *supra* note 5. The IDFC is also referred to as the USIDFC or DFC. *Id.*

107 *See* CONGRESSIONAL QUARTERLY'S HOUSE ACTION REPORTS, *supra* note 14; *see also* James M. Roberts & Brett D. Schaefer, *The BUILD Act's Proposed U.S. Development Finance Corporation Would Supersize OPIC, But Not Improve It*, 2018 HERITAGE FOUND.: BACKGROUNDER 1–3; Yoho, *supra* note 5.

108 *Id.*

109 *See* Foreign Assistance Act of 1961, P.L. No. 87–195, § 231, at 122, 75 Stat. 424.

110 *See id.*

111 *See id.*

112 *See* ROBERTS & SCHAEFER, *supra* note 10, at 3.

The U.S. government has numerous concerns with the IDFC platform from both political and economic perspectives.[113] For example, the new IDFC requires less congressional oversight than what was required of OPIC, lowering the standard of accountability.[114] Less congressional oversight is particularly interesting because of the considerable increase in the budget of IDFC as compared to the former budget of OPIC.[115] Additionally, there is a provision within the IDFC that automates future growth.[116] The IDFC will increase its contingent liability every five years without congressional approval.[117] Consequently, if the IDFC does not do as well as hoped, there will still be an automatic increase in funds, which highlights the lack of congressional oversight.[118] However, if the IDFC does do well and is profitable, instead of paying funds to the U.S. Treasury like OPIC was required to do, the IDFC has the authority to retain "all funds, fees, revenues, and income transferred to or earned by the corporation, from whatever source derived" and use the money for the IDFC exclusively.[119] The IDFC will use its funds to further invest solely within IDFC, unlike OPIC which deposited its profits to the U.S. Treasury, thereby reducing the federal deficit.[120] This raises a transparency issue as the new IDFC will now have considerable discretion whereas OPIC previously had none.[121] Additionally, the IDFC is authorized for seven years whereas OPIC was only authorized on an annual basis.[122] Because the IDFC can retain its revenues without oversight on an annual basis and is established for a minimum of seven years before congressional review, it is of crucial concern to U.S. taxpayers that the IDFC is not subject to enough congressional oversight.[123]

3. *Regulation of the New IDFC and Its Potential Benefits*

The passage of the BUILD Act and establishment of the IDFC does address some previously unaddressed gaps in OPIC.[124] One of the undisputed benefits of the IDFC is the incorporation of an inspector general.[125] The addition of an

---

113 *Id.*
114 *Id* at 19.
115 *Id.*
116 *Id* at 29.
117 *Id* at 18.
118 *Id.*
119 *Id.*
120 *Id.*
121 *See id.*
122 *Id.*
123 *Id.*
124 *See id.*
125 *Id.*

inspector general is beneficial for several reasons: (1) inspector generals are mandated to report to Congress on a regular basis; (2) clear procedures must be followed; and (3) more transparent studies will be required.[126] For example, the studies must prove that the support offered by the IDFC would not be in competition with private sector support.[127]

In sum, the establishment of the IDFC does have several positive factors that address and fix issues found in OPIC.[128] One highlighted benefit of the IDFC is that it has more than twice the budget of OPIC, totaling $60 billion.[129] The requirement that the IDFC must have an inspector general is also a mechanism of accountability and monitoring that was absent in OPIC.[130] Another key improvement that was notably absent from OPIC is that annual reports to Congress are mandated by the BUILD Act, which is crucial for increasing transparency.[131]

4. *The Future of U.S. Investment in Sub-Saharan Africa Under the IDFC*

The BUILD Act fails to mention the word "Sub-Saharan" or even the entire continent of "Africa" at all.[132] Even though many supporters of the BUILD Act believe this is a huge step for the global development of Africa because of the recent pledge to increase funding in Africa, it is hard not to question the foundation of this support.[133] The BUILD Act offers no protection.[134] The Act is silent in regards to Africa and lacks any explicit or implicit obligation to the Sub-Saharan countries.[135] There is presently no policy specifically engineered toward the Sub-Saharan countries or even Africa more generally.[136] A lack of policy is problematic for two reasons. One, the BUILD Act was partially justified based on its impact on the economic development in Sub-Saharan Africa.[137] Additionally, a core reason the Act garnered so much support was because the passage of the Act happened soon after the U.S. pledge to increase funding.[138] Supporters who hoped that the Act would increase economic

---

126 *Id.*
127 *Id.*
128 *Id.*
129 *Id.*
130 *Id.*
131 *See id.*
132 CONGRESSIONAL QUARTERLY'S HOUSE ACTION REPORTS, *supra* note 14.
133 *See id.*
134 *See id.*
135 *See id.*
136 *See id.*
137 *See id.*
138 *See* Witney Schneidman, *Congress Takes the Lead on US-Africa Policy*, BROOKINGS: AFRICA IN FOCUS

development in Sub-Saharan Africa should be worried that this lack of policy does not seem to be anywhere on the IDFC's agenda.[139]

Additionally, Sub-Saharan Africa may not benefit from the IDFC like the supporters of the BUILD Act idealistically envisioned because the IDFC does not mandate that projects supported by the IDFC be in the "least developed countries" as defined by the World Bank.[140] Although, the BUILD Act focuses on U.S. business interests generally, U.S. and African policymakers expect Sub-Saharan Africa will benefit from the passage of this landmark legislation. However, the Act does explicitly say that "less developed countries"—meaning countries "with a low-income economy or a lower-middle-income economy"—should be given "preference."[141] However, the way that these "less developed" countries would be given preference was left unaddressed by the Act.

The BUILD Act includes a provision that the support for upper-middle-income countries is permissible as long as the U.S. president agrees that the support offered furthers a U.S. interest and the support given will "likely … be highly developmental."[142] The IDFC can essentially decide to support projects in any country, no matter what shape the country's economy is in, as long as the agency finds that the host country and the United States could mutually benefit from U.S. support.[143] The BUILD Act illustrates a gap in the IDFC's offered purpose if the institution can ultimately invest wherever it chooses as long as a U.S. "interest" is furthered.[144] African policymakers should be concerned that the Act will leave its least developed and less developed countries behind as those countries continue to struggle to become more economically market efficient because the United States has no obligation to invest in Sub-Saharan region specifically.[145]

As part of OPIC's stated purpose, the organization provides support for social as well as economic development.[146] However, with the new establishment of the IDFC, "social development" is lacking from the stated purpose of the IDFC in the BUILD Act.[147] It is unclear what "commitment" to

---

(Oct. 5, 2018), https://www.brookings.edu/blog/africa-in-focus/2018/10/05/congress-takes-the-lead-on-us-africa-policy/.

139 *See* CONGRESSIONAL QUARTERLY'S HOUSE ACTION REPORTS, *supra* note 14.

140 *See* 164 CONG. REC. 6320 (2018).

141 *Id.*

142 *Id.* at 6321.

143 *See id.*

144 *See id.*

145 *See id.*

146 Foreign Assistance Act of 1961, P.L. No. 87–195, § 231, at 122, 75 Stat. 424.

147 164 CONG. REC. 6320, 6321 (2018).

social development means for projects globally and specifically in Sub-Saharan countries, where a significant portion of the least developed and less developed countries are located.[148] These countries are in dire need of both social development along with economic development.

II. CHINA: THE MOTIVATION FOR U.S. CHANGE IN GLOBAL INVESTMENT STRATEGY

China's approach to global economic investment can be simply described as aggressive, debt-based, and unilaterally favorable.[149] China is pouring a lucrative amount of money into countries throughout the world by supporting vast infrastructure projects that allow China to have an extreme presence in these often less developed and least developed countries.[150] China's approach to investment is mercantilism: where the primary purpose of investment is commercial gain.[151] The promotion of the traditionally important values in U.S. foreign aid and global investment, such as human rights and freedom from authoritarian rule, is absent from the mercantile investment approach China uses.[152] China's current approach to trade is illustrated with its Belt and Road Initiative, known as the BRI. The BRI is essentially an enormous infrastructure project that will connect most of the world, exclusive of the United States.[153] The Chinese Communist Party introduced the BRI in 2013.[154]

A. Belt and Road Initiative

The idea of China's New Silk Road is the interconnection of Africa, Asia, and Europe through technological and infrastructural means.[155] The BRI project predicts that it will interconnect almost 65% of the global population, about 33% of the world's gross domestic product (GDP), and about 25% of the world's goods and services.[156] Infrastructure projects supported by the BRI initiative include airports, seaports, real estate, power plants, chemical plants, satellite

---

[148] *Id.*

[149] Bhala, *supra* note 16.

[150] Wilbur Ross & Chris Coons, *Wilbur Ross and Chris Coons: China is 'pouring money into Africa.' Here's How the US Can Level the Playing Field*, CNBC: POL. (Aug. 2, 2018, 1:28 PM), https://www.cnbc.com/2018/08/02/china-is-pouring-money-into-in-africa-heres-why-the-us-must-compete.html.

[151] *See* Gostin et al., *supra* note 11.

[152] *See id.*

[153] Ross & Coons, *supra* note 150.

[154] Bhala, *supra* note 16.

[155] Gostin et al., *supra* note 11.

[156] ROBERTS & SCHAEFER, *supra* note 10.

links, and more.[157] Of course, along with this investment comes the reality that the labor is almost exclusively Chinese and mostly only Chinese firms get the business from the BRI.[158]

The BRI will substantially increase China's power if China virtually controls the infrastructure and interconnection of almost 70% of the world's population.[159] As a result, the United States has a national security interest in monitoring China's activity with these asymmetrical bilateral agreements with less developed and least developed countries.[160] The United States also has a national security interest in competing with China for these infrastructure projects in Africa as the United States makes multilateral trade agreements that are subject to stricter regulations and fairer terms.

China's BRI is worth over $1 trillion—with some estimates even approaching $8 trillion—and includes over 2,000 deals in almost ninety countries.[161] Projects under the BRI tend to be focused in countries with unstable economies that are especially prone to corruption.[162] This focus differs significantly from U.S. government-funded global investment due to strict U.S. guidelines/regulations on investments made by OPIC, and now the IDFC.[163]

Given that many of the countries China seeks trade agreements with, for the advancement of the BRI, fall under a "less developed" or "least developed" category, it is unsurprising that these countries have very low credit scores.[164] Such low credit scores make it more difficult to borrow, thus putting these countries at high risk for default on Chinese-backed loans.[165] Because of the asymmetry in bilateral agreements between China and other countries, it looks as if China is expecting, if not hoping, for the other countries to default on the loan.[166]

---

157 Bhala, *supra* note 16.

158 ROBERTS & SCHAEFER, *supra* note 10.

159 *See id.*

160 *See id.*

161 Bhala, *supra* note 16; Jonathan Hillman, *How Big Is China's Belt and Road?*, CTR. FOR STRATEGIC & INT'L STUD. (April 3, 2018), https://www.csis.org/analysis/how-big-chinas-belt-and-road.

162 *Id.*

163 *Id.*; *see also Environmental and Social Policy Statement*, *supra* note 64 at 4, 6, 16, 37–38 (noting countries have to meet certain standards to be able to host projects); ROBERTS & SCHAEFER, *supra* note 10.

164 Bhala, *supra* note 16.

165 *Id.*

166 *See id.*

For over a decade, China has been financing infrastructure projects across Africa via high-interest commercial loan agreements.[167] China has been making these loans directly to governments as well as state-owned entities.[168] OPIC has never had the authority to support state-owned entities in this manner.[169] However, IDFC does have the authority to support state-owned entities.[170] If the United States can offer a multilateral agreement with fairer terms to state-owned entities of less developed countries, Sub-Saharan countries will be less likely to enter into loans with China that will likely result in a default on the loan.[171]

Another interesting aspect of China's deals under the BRI is that China ends up owning the assets it finances in the countries that China is completing the project in when the host country defaults on the loan.[172] China achieves this by securing the rights to the infrastructure project as collateral for the loans.[173] When a host country fails to make a payment on time, China takes over the operation of the project.[174] However, typically even when a country makes payments to China on schedule, China still supplies Chinese labor for the projects instead of employing the citizens of the host country.[175]

China is able to coax financially desperate countries into bilateral agreements because such less developed countries are willing to enter into *any* agreement with the potential to boost their, often fragile, economies.[176] Instead of benefitting these host countries, such bilateral agreements actually make the less developed countries worse off, either by greater indebtedness or loss of control over the project, when they are unable to pay back the high-interest rate loans.[177]

B. China's Approach to Official Development Assistance

Over the past few decades, China has increased its official development assistance (ODA).[178] Although in dollars China appears to be contributing as much as "high-income" countries in percent gross national income (GNI),

---

167 Ross & Coons, *supra* note 150.
168 *Id.*
169 ROBERTS & SCHAEFER, *supra* note 10.
170 *Id.*
171 *See id.*
172 Bhala, *supra* note 16.
173 *Id.*
174 *Id.*
175 *Id.*
176 *See id.*
177 *See id.*
178 Gostin et al., *supra* note 11.

China's ODA is significantly less than high-income countries.[179] For example, the United States, a high-income country and current leader in ODA, contributed almost $34 billion, which accounted for approximately 0.2% GNI.[180] In contrast, China's GNI is 0.05%.[181]

China's ODA is often criticized for following neither the World Health Organization (WHO) standards nor the U.N. Children's Fund (UNICEF) standards.[182] China gave roughly 2% of its ODA to multilateral organizations, with the remainder allocated directly to foreign governments via bilateral trade agreements.[183] Instead of the approach followed by most high-income countries that provide ODA to multilateral organizations, China provides ODA directly to foreign governments with substantially less developed economies.[184]

C. *China in Sub-Saharan Africa*

China's approach to global economic investment in Sub-Saharan African countries and throughout the world is subject to substantially fewer regulations than other significant contributors.[185] Because the agreements are bilateral, countries that enter into these agreements with China are not afforded the protections provided by a multilateral governmental agency such as the World Bank.[186] Few, if any, bilateral investment treaties between China and Africa contain any language regarding environmental standards, labor rights, or human rights.[187] Additionally, the investor and/or host state of the investor has no responsibility.[188] The bilateral investment treaties also fail to mention the phrases "sustainable development," "environmental protection," "labor rights," or "human rights" anywhere.[189] None of the treaties even list development as an objective.[190]

---

179 *Id.*
180 *Id.*
181 *Id.*
182 *Id.*
183 *See id.*
184 *Id.*
185 Uche Ewelukwa Ofodile, *Africa-China Bilateral Investment Treaties: A Critique*, 35 MICH. J. INT'L L. 131, 179–80, 190–93 (2013).
186 Bhala, *supra* note 16.
187 Ofodile, *supra* note 185, at 179–80, 190–94.
188 *Id.* at 180.
189 *Id.* at 180, 190.
190 *Id.* at 192.

Although Chinese projects generally create more jobs, China pays less for such labor.[191] It is also unclear how many jobs China creates for citizens of the host country. China fulfills jobs created by BRI projects with Chinese citizens, even for the jobs created in the host country.[192] China sends its own citizens to fulfill the job positions on these projects instead of using the citizens of the host country, leaving the host country no better off than before the project.[193]

China's global economic investment approach are numerous and of significant concern for the U.S. from an economic, political, and national security perspective.[194] These concerns are caused by China's unfair agreements and lack of transparency with their Belt and Road Initiative, the model of China's global investment strategy.[195] As a result of China's incorporation of unfair terms in their negotiation agreements with other countries, particularly those of lesser income, such countries have been unable to make the principal and steep interest payments.[196] Because of these defaults, several countries including Djibouti, Mongolia, Montenegro, and Sri Lanka are in unsustainable state indebtedness to China.[197] These countries are highly debt-distressed as a direct result of China's BRI initiative.[198] China's negative impact is important because it illustrates a pattern where China's bilateral agreements often leave countries less economically independent, while affording China more power on the global landscape in economic, political, and military spheres.[199]

III. OPPORTUNITY FOR INVESTMENT IN HEALTH SYSTEMS IN SUB-SAHARAN AFRICA

A. *Generally: The Importance of Investing in the Health Systems Industry*

Investment in global health systems is imperative within the landscape of global investment.[200] Benefits of adequate health systems include "economic growth and tax revenue."[201] These benefits result in the increase of disposable

---

191 Nicola D. Coniglio et al., *Foreign Direct Investment, Employment and Wages in Sub-Saharan Africa* 22 (U.N. Indus. Dev. Org., Working Paper No. 05/2014, May 2014).

192 Bhala, *supra* note 16.

193 *Id.*

194 *See id.*

195 *Id.*

196 *Id.*

197 *Id.*

198 *Id.*

199 *See id.*

200 *See* Gostin et al., *supra* note 11.

201 *Id.*

income and the ability for more health systems projects.[202] If the United States invests in health systems projects in Sub-Saharan African countries, such countries will be discouraged from entering into bilateral trade agreements with China that have high default risks.[203] A default on the loans would harm the health of the host country because the default would result in decreased funding devoted to health care budgets.[204] If the United States does not step in and invest in health systems projects, China's BRI has a great potential to harm host countries and global health generally. [205]

B. China and Investments in Health Systems

China has been contributing to global health since the 1960's when Chinese doctors trained doctors in less developed countries.[206] In 2014, when there was an Ebola epidemic in West Africa, China promised to step up and financially support healthcare projects for children and mothers.[207] This is significant because China is giving global health assistance a more prominent position on its agenda than ever before.[208]

With the BRI, China has the opportunity to more easily invest in global healthcare.[209] Although China's projects do not qualify as development assistance, projects focused on health systems would create healthier nations in Sub-Saharan Africa, which in turn would make the nations more active economically.[210] This would ultimately increase the potential for the host countries to meet their loan payments.[211] However, because China usually uses the labor of its own citizens, a host country will not experience the project's full benefits because jobs are not being created for the host countries' citizens.[212] Because of the terms of these bilateral agreements with less developed countries, many critics of the BRI view the BRI as a modern form of colonialism.[213]

There is concern from both global health and environmental perspectives that China will use the BRI as a means to expand its tobacco industry, which

---

202 *Id.*
203 *See id.*
204 *See id.*
205 *See id.*
206 *Id.*
207 *Id.*
208 *See id.*
209 *Id.*
210 *Id.*
211 *See id.*
212 *See id.*
213 *See, e.g.*, *id.*

would violate the WHO policy that aims to control tobacco accessibility.[214] However, China's BRI "promises to transform international development assistance for health."[215] To focus on health, China should export pharmaceuticals at lower rates through the infrastructure created by the BRI, enabling more people access to important drugs.[216]

China's global investment strategy highlights why the United States should make efforts to fund health systems projects in Sub-Saharan Africa. The benefits of these projects would have long term effects on these countries. Because the United States funds projects in which the host countries' citizens get the majority of the jobs, the host countries' population will be able to actually reap the benefits of the project. This also demonstrates that although the United States is adopting a strategy of investment more similar to China's global investment strategy, the United States cannot lose its identity as a leading aid provider in Africa, especially the Sub-Saharan region. The United States has the opportunity to benefit economically and politically by investing in health systems projects in Sub-Saharan Africa.

C. India: Another Major Investor in Sub-Saharan Africa

India is currently investing in Sub-Saharan Africa with a general approach that parallels China's, but on a much smaller scale.[217] India, like China, has minimal regulating guidelines for investment.[218] Asymmetry in trade is also evidenced by the trade agreements entered in between India and Sub-Saharan African countries.[219] India currently has no institutional vehicle for regulation which results in a lack of transparency like China.[220]

Recently, India has been substantially investing in the health systems arena in Sub-Saharan Africa through the pharmaceutical market.[221] Interestingly enough, although India follows a method of global investment in Africa paralleling China's, India has declined to enter in bilateral BRI agreements with China itself to do similar infrastructure projects in areas of India that need

---

214 *Id*.

215 *Id*.

216 *Id*.

217 *See generally* Uche Eweluka, *South-South Trade and Investment: The Good, The Bad and The Ugly–African Perspectives*, 20 MINN. J. INT'L L. 513 (2011) (discussing investment in Africa by India and China).

218 *Id.*

219 *Id.*

220 *See* Chakrabarty, *supra* note 98, 23–24.

221 *Id.*

development.[222] In other words, India appears to shy away from entering into a deal with China itself although the deal would be nearly identical to the deals India enters with other countries.[223] Although it does not appear that India is a major threat or competitor with the United States, the United States should remain aware of India and its investment projects and policies throughout the world, especially in Sub-Saharan Africa.[224]

D. Opportunity for United States to Invest in Health System Industry in Sub-Saharan Africa

1. Investment in Sub-Saharan Africa Generally

Unfortunately, the African Growth and Opportunity Act (AGOA), an act created by the United States and Africa in 2000 to facilitate economic growth in Africa, has not been as effective as intended.[225] The United States needs to make more of an effort to address supply-side constraints that limit advancements in Sub-Saharan Africa.[226] The purpose of the AGOA is for the United States and Sub-Saharan Africa to mutually benefit by strengthening trade with and investment in Sub-Saharan Africa along with improved relations.[227] Another primary purpose of the AGOA is to make Sub-Saharan countries more economically self-sufficient so that these countries can more fully participate in the global economy.[228] The IDFC, formerly OPIC, needs to invest in more infrastructure projects, because these projects can enable better access to health.[229] Examples include building hospitals or clinics, building roads that allow people access to get to hospitals and clinics, and technology development that would allow e-health.[230] Additionally, the IDFC should work to educate more investors about how Sub-Saharan African countries are worth the investment.[231]

---

222 *See* Bhala, *supra* note 16.

223 *See id.*

224 *Id.*

225 Okezie Chukwumerije, *Strengthening U.S. Trade Relations with Sub-Saharan Africa*, 20 UCLA J. INT'L L. & FOR. AFF. 317, 318–19 (2016).

226 *Id.*

227 *Id.* at 328–29.

228 *Id.*

229 *See* Gostin, *supra* note 11.

230 *Id*. E-health is "health services and information delivered or enhanced through the Internet." G. Eysenbach, *What is E-Health?*, 3 J. MED. INTERNET RES. 1 (2001).

231 *Id.*

2. *Benefits of Investing in the Health Systems Industry in Sub-Saharan Africa*

Benefits of investing in health systems projects in the Sub-Saharan region are numerous for the Sub-Saharan, the United States, and for the rest of the world from both economic and global health diplomacy perspectives. If the United States invests more in health systems as a means to increase trade in Sub-Saharan Africa, the United States will benefit economically long term.[232] If Africans in the Sub-Saharan have better access to health generally and receive better healthcare they will be more likely to live longer.[233] Consequently, Sub-Saharan Africans will be able to work longer and better participate in the economy if better primary health is afforded in the Sub-Saharan region.[234]

The United States could help contribute to a lower mortality rate as well as increase participation in the Sub-Saharan economy and the global economy overall.[235] To lower the mortality rate, the United States should support projects that focus on prenatal and antenatal healthcare for women.[236] U.S.-supported health systems projects that focus on decreasing noncommunicable diseases will also benefit the global economy in the long run.[237]

IV. PROPOSAL

The United States should impose regulations on the IDFC requiring that a certain percentage of IDFC investment projects occur in the less developed economies of Sub-Saharan Africa to avoid harming U.S. economic and foreign relations interests as well as the economic interests of the less developed economies of the Sub-Saharan. Additionally, Congress should mandate that a percentage of IDFC's investment funds be allocated to infrastructure projects in the health systems industry. Benefits in the health systems industry will be substantial for economic and foreign relations interests for both the United States and Sub-Saharan Africa. If U.S. interests are going to primarily focus on trade instead of aid in order to emulate a strategy similar to China's profit-driven approach, then the United States should, at the least, attempt to support projects

---

[232] *Id.*

[233] Toyin Ojora Saraki, *Keynote Address at 5th Annual Commonwealth Africa Summit*, WOMEN IN L. & DEV. (Mar. 14, 2018), https://wildaf-ao.org/index.php/en/woman-news/news/651-keynote-address-at-5th-annual-commonwealth-africa-summit.

[234] *Id.*

[235] *Id.*

[236] *Id.*

[237] *Id.*

that strive for social development. Basically, to compete with China, the United States needs to propose better offers to Sub-Saharan countries than China.[238]

A. Additional Oversight Regulations Should Be Placed on the IDFC

Though the BUILD Act was passed, OPIC is still operating until the final plan is submitted and approved by Congress.[239] The final plan, which will specify the details of how the IDFC will operate, should implement more Congressional oversight. New regulations should also explicitly require that a certain percentile preference of projects should be given to the less developed countries. This preference should also be given to less developed and the least developed countries in Africa, most notably in the Sub-Saharan region.

There is no mention of "social development" as a stated purpose of the IDFC for projects in any country, including less developed countries and the least developed countries.[240] Social development should be added as a purpose of the IDFC, especially in regards to projects in the less and least developed countries. It is also important that the phrase "social development" be included in the purpose of the IDFC because the stated purpose of the current legislation is only economic, which drastically shifts from one of the core focuses of AGOA and OPIC.[241] It is imperative for the U.S.-Sub-Saharan relationship that the United States continue to invest in projects that will result in the social development of less developed economies. A historical goal of U.S. foreign investment has been to create more stable, market-efficient economies. These regulations are important to the United States from an economic, national security, and foreign policy perspective as the United States does not want to abandon its favorable foreign relations with Sub-Saharan Africa in order to compete with China's lucrative bilateral investment strategy.[242] In the long term, U.S. investment that requires social development as a criterion for the project would benefit the United States and curtail China's power with the BRI.

If the IDFC includes in the details of the plan that the United States will continue to give aid to the least developed countries. The United States would benefit from a national security perspective by gaining trust and having political influence which can be very instrumental in helping a country's economy

---

[238] Daniel F. Runde & Romina Bandura, *The BUILD Act Has Passed: What's Next?*, CTR. STRATEGIC & INT'L STUD. (Oct. 12, 2018), https://www.csis.org/analysis/build-act-has-passed-whats-next.

[239] *OPIC Issues Statement, supra* note 102.

[240] *See* 164 CONG. REC. 6320, 6321 (2018).

[241] *See* Chukwumerije, *supra* note 225.

[242] *See id.*

become more self-reliant. Also, if the United States were to continue to focus on providing aid to countries that are making efforts to become more market efficient, the United States would discourage those countries with the less developed economies from entering into bilateral trade agreements with China that are actually harmful to the host country and the global economy generally. This prevents China from strengthening its political, military, and foreign interests in the most vulnerable countries.

B. Alternative Options

If the IDFC will not give preference to the Sub-Saharan African countries, a new bill could be introduced to the House that specifically addresses the need for investments in Sub-Saharan countries. This bill should be introduced because Sub-Saharan countries have so much potential to be great contributors to the global economy. This can be demonstrated by the untapped resources in the region and because of the tremendous growth of disposable income due to the expansion of the Sub-Saharan middle class.[243] However, a new bill may not be a viable alternative because the establishment of the IDFC already more than doubles the budget of OPIC.[244] If a new mechanism was created, the purpose of the IDFC would also be undermined. The better option would be the imposition of detailed regulations on the IDFC instead of creating a new mechanism to ensure that adequate attention is given to the Sub-Saharan region.

C. The United States Should Invest in Health Systems Projects in Sub-Saharan Africa

More projects in the health systems industry need to have U.S. support and funding.[245] There is a call for the United States to focus more on health systems as a means to increase Sub-Saharan African trade, because Africans in the Sub-Saharan region will be more likely to live longer if they receive better healthcare.[246] Consequently, Sub-Saharan Africans will be able to work longer and better participate in the economy if better access to health care is afforded to the people in the Sub-Saharan region.[247]

[243] *See* Chris Folayan, *Chris Folayan: How I Built an Online Platform to Help Retailers Reach Africa's* Consumers (Apr. 16, 2018), https://www.howwemadeitinafrica.com/chris-folayan-how-i-built-an-online-platform-to-help-retailers-reach-africas-consumers/61208/.

[244] *See* ROBERTS & SCHAEFER, *supra* note 10.

[245] Chukwumerije, *supra* note 225.

[246] *Id;* Saraki, *supra* note 233.

[247] *Id.*

Additionally, if the mortality rate is lowered in Sub-Saharan Africa, a greater number of persons will be able to participate in the economy.[248] To lower the mortality rate, the United States should support projects that focus on prenatal and antenatal healthcare for women.[249] The mortality rate could also be lowered while simultaneously increasing the number of persons participating, as well as the quality of participation, in the economy if the U.S.-supported health systems projects focused on decreasing noncommunicable diseases.[250]

D. Promotion of Global Health Through Infrastructure

As Lawrence Gostin, chair of global health law at Georgetown University Law Center stated, "socioeconomic status is integrally connected to good health, so investment in employment, education, and transport could be transformational."[251] China has the opportunity to improve global health through its massive BRI infrastructure project. However, because China's investment strategy historically has been bilateral, Sub-Saharan Africa and advocates for global health should be skeptical of receiving any benefits in the health systems industry from China's BRI.[252]

The United States provides a resolution where China's bilateral agreements fall short in terms of benefits for Sub-Saharan African countries. The United States has the opportunity to invest in infrastructure projects that promote global health with its $30 billion budget increase. The United States should invest in building hospitals, clinics, and roads that allow more Sub-Saharan people access to healthcare. The United States should also invest in information technology projects that allow Sub-Saharans easier access to health information. Agreements between the United States and Sub-Saharan African countries would be better agreements for Sub-Saharan Africa than bilateral agreements with China because they are multilateral through organizations like WHO.[253] Even though the new IDFC institution has elected to keep societal development out of its purpose, the IDFC can still choose projects that promote social development and achieve economic gain. While the United States is trying to focus more of its foreign assistance on commerce rather than aid, the United States can maintain its promotion of global health by deciding to invest in infrastructure projects that improve access to healthcare in Sub-Saharan Africa.

---

[248] *Id.*
[249] *Id.*
[250] *Id.*
[251] Gostin, *supra* note 11.
[252] *Id*.
[253] *Id.*

CONCLUSION

The IDFC is likely to have a greater impact on the global investment landscape than OPIC had in the past.[254] However, this prediction is solely based on the fact that the IDFC has a $60 billion dollar budget—a budget that doubles the budget of OPIC.[255] Supporters of the bill that are primarily interested on its impact in Africa should be wary as the IDFC has no current obligation to increase investment in Sub-Saharan countries, or even the continent of Africa generally. With the provision in the act that allows the United States to use IDFC funds to support upper-middle-income countries, there is no guarantee that support funds will be used to support projects in the less developed countries or more importantly, the least developed countries.[256] Instead, the IDFC states only that there should be a "preference" given to less developed countries.[257] Sub-Saharan countries and Africa generally hold the disproportionate majority of the least developed countries as compared to the rest of the world.[258]

Because the Sub-Saharan countries make up the bulk of the less developed and least developed countries, these countries are the most vulnerable to China's agreements. The ability of Sub-Saharan African countries to obtain foreign aid from the United States remains crucial so that these less-developed countries will not feel pressured to enter into asymmetrical trade agreements with China. The option for Sub-Saharan African countries to enter into a multilateral agreement with the United States will prevent China from gaining a concerning increase in control of the global economy and lessen the threat of neocolonialism in the Sub-Saharan region. Alternatively, if Sub-Saharan African countries do enter into unfair trade agreements with China that result in defaults for the less developed country, a national security concern is created for the United States as well as the host state. Additionally, these defaults negatively affect the global economy.

As the United States concedes to being unable and unwilling to match China's budget in regards to global economic development, the United States could be losing a key tie to Africa that it has always possessed, as the United States will cease to be the leading aid donor.[259] Without U.S. aid to Africa, where the United States currently leads and fosters benefits for foreign relations, the

---

254 *See* ROBERTS & SCHAEFER, *supra* note 10.

255 *Id.*

256 *See* 164 CONG. REC. 6320, 6321 (2018).

257 *Id.*

258 U.N. Conference on Trade and Development, *The Least Developed Countries Report 2017*, v, UNCTAD/LDC/2017 (2017).

259 *See* Yoho, *supra* note 5.

United States is harming its foreign relations with Africa in attempts to increase trade with the knowledge that the United States cannot surpass the trade volume or capital flows between Africa and China. It is unclear what the U.S. attempts to achieve by giving up what it does best: providing an economic and social developmental impact through foreign direct assistance in less developed and the least developed countries. The way to win a competition with China might be the very idea that the United States is turning away from: social development through aid and investment.

The direction that the United States is headed in their shift from the combination of aid and trade to only trade with the enactment of the BUILD Act is problematic because it reflects a policy shift that involves less concern for the social development impact of economic investment opportunities throughout the world. A proposal to mitigate this concern is to impose more oversight over the IDFC.[260] More oversight could ensure that the United States is closely following the U.N. development goals, depending on who is responsible for the oversight, and if concrete goals can be identified. For example, projects under the IDFC should have a social development goal despite its absence in the act. Regulations on the IDFC should be imposed that require a social development goal to be identified in order for a project to be chosen for IDFC investment.

Scaling back the autonomy of the IDFC and building in some objectives that have been raised in this comment through the implementation of regulations could ensure that less developed countries including low-income-economy countries and lower-middle-income-economy countries, specifically Sub-Saharan African countries, get adequate attention and support from investment projects. With the new IDFC budget that doubling the previous budget of OPIC at $60 billion dollars, the United States should invest in infrastructure projects that focus on the health systems industry in Sub-Saharan Africa. Focusing on health systems will promote global health and benefit the global economy, as well as U.S. economic, political, and national security interests, while also helping the Sub-Saharan region's economic and health interests. These changes

[260] *See id.* (noting that the passage of the BUILD Act enacted the establishment of the International Development Finance Corporation).

will also ultimately curtail China's hegemony with the BRI, the primary motivation of the BUILD Act.

PAIGE PARKER*

* Has a B.S. in Psychology and B.A. in Sociology, from Louisiana State University, Summa Cum Laude, and is a 2020 J.D. Candidate at Emory University School of Law. *Emory International Law Review*, Symposium Editor. The author would like to thank her parents, Pat and Tammy Parker for your endless love, generosity, and support. The author would also like to thank her brothers Patrick, Daniel, and Drew for tolerating me. Last but not least, a special thank you to Professor Liza Vertinsky, your diligence and authenticity is inspiring.