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Media Analysis of Conflict in Chinese-Zambian Engagement: From ZAFFICO to the COVID-19 Discrimination Controversy

Nicole Mazurova, Pokai Tsao, Taurence Chisholm Jr.

This paper examines the role media plays in polarising views and escalating tension. The cases studied reflect the competing perspectives on Chinese engagement in Zambia, from the courtship of Chinese investment to rising anti-Chinese sentiment. Based on a comparative media analysis of English and Mandarin news articles about the ZAFFICO and COVID-19 discrimination controversies, we argue that the multi-layered polarisation in Zambia's media landscape amplifies existing identity-conflicts. Framing—the tone, word choice, and selection of detail—in articles changes with the positionality of the media outlet and shapes the discourse around the cases. Sensationalisation, misinformation, and divergent frames contribute to conflict between different identity groups, which is capitalised on in a divisive political environment. The media facilitates blackboxing and us vs. them thinking which often precede conflict. The 'other' that appears in the Zambian media landscape includes 'China/the Chinese', 'the opposition', and 'the ruling Patriotic Front'.

Introduction

A globalised mass media is transforming communication, as well as its most intense form, conflict. Each conflict unfolding today has a media dimension because those directly involved, as well as outside audiences, form perspectives based on varied information that is more accessible and spreads quicker than ever before. New media further pluralises the media space and provides opportunities for audience engagement. While these developments have a democratising effect, the rise of voices competing for space has its disadvantages. There is mounting evidence that changes to how the public consumes and shares news intensify political attitudes and identities, which leads to more polarised societies (Cottle, 2006, p. 17). Self-interested actors are learning how to manipulate content and information flow which accelerates the process, and these actors include media conglomerates themselves (Orlowski, 2020). Sub-Saharan Africa is an interesting case study to analyse the relationship between media and conflict because of the dramatic changes to the continent's media landscape, as well as competition between international and local networks for a share in the information space. We selected a topic that is much-debated in academic and policy circles—the dilemma between the open reception of China's presence and vast investment, and rising anti-Chinese sentiment.

We specifically look at Zambian-Chinese engagement in the trading sector, as Zambia has a vibrant democracy and a relatively liberal media environment (CIVICUS, 2017). Zambia is also the main recipient of Chinese investment and home to a growing Chinese population.¹ There is a rich literature on Zambian-Chinese relations and increasing interest in how the media shapes perceptions, tensions, and conflict in the country (Jiang, Li et al., 2016; Li and Rønning, 2013; Li and Shi, 2019; Wasserman and Madrid-Morales, 2018). The following

questions guided our research: How do frame dynamics compare between Zambian and Chinese media sources? What are the consequences when frames clash? Are frame differences a mechanism of conflict? We seek to add to the literature by conducting a frame analysis of Zambian and Chinese media sources' coverage of two conflicts: 1) the ZAFFICO controversy; and 2) anti-Chinese sentiment in response to COVID-19, using media conflict paradigms and the spiral of escalation theory (Cottle, 2006; Hamelink, 2015).

Based on our research, we found that, first, the Zambian media landscape is highly polarised and provides the 'other' as an object of projection whereby fears, frustrations, and other negativity can be associated with any actions of the 'other' group. 'China/Chinese', 'the opposition', and 'ruling Patriotic Front' frequently appear as the 'other' in the media discourse, which abstracts the stakeholders involved. Second, polarisation amplifies and consolidates existing perceptions of the 'other', which facilitates identity-based conflicts. When othering leads to scapegoating, the root causes of grievances receive less coverage. Lastly, the Chinese media is less integrated into the Zambian media landscape than, for example, Western media, which leads to further perception gaps on China's influence in Zambia. In fact, the Chinese media often functions as its own landscape because sources are written in Mandarin and exclusively target Chinese audiences. While the media continues to intensify these gaps, the distrust of the Zambian government and its affiliation with China, as well as Chinese migrants' incentive to segregate themselves from local society for self-protection, may grow. As a result, a vicious circle is created, which facilitates the spiral of escalation.

2. Background

2.1 Media and Conflict

Conflict, its dangers, cleavages, and opportunities for resolution are ever changing. One dynamic that has become increasingly important is the relationship between conflict and the media. The media is an extremely fast-growing medium of communication that holds fact, fiction, innermost fears, and other projections on one device. To study this relationship between the media and conflict, it is important to analyse contexts where conflict exists and media plays a role in how information is shared.

Conflict resolution academics and practitioners have long debated the relationship between the media and conflict. In his book, *Mediatized Conflict*, Simon Cottle (2006) identifies three paradigms that could guide research on the media's divisive and unifying roles. The paradigms are dated and do not fully reflect social media advances, but they still offer a strong framework for media conflict analysis.

The first, the manufacturing consent theory, holds that the media mass produces culture in capitalist societies. The elite has the most control over the dissemination and production of

the media narrative. This normally manifests itself in how different groups or opinions are censored, uplifted, or even unintentionally left out, as well as how the victims and perpetrators are depicted.

The second, the media contest paradigm, is based on the idea of the media as a battleground. Different groups compete for media space across two dimensions, structural and cultural. Reports are shaped by the players' positionality, resources, as well as the relationship with the press. This, in one form, may be demonstrated in how certain identity groups compete for space on a certain media outlet. For example, viewership determines a lot of the content. As a result, the ideas shared in those videos, papers, journals, etc., will be the ones codified.

The third paradigm, the media culture paradigm, examines how media consumption shapes identity. The expressions of class, gender, race, sexuality, as well as moral attributions, are in part socialised through media consumption. Consumers are drawn to various corners of media (be it television, social media, etc.) **where they feel community**. This process facilitates 'us' versus 'them' world views, affecting how people position themselves to others. One way this can manifest is in the understanding of language that one group uses to define itself and its experiences versus the language another group uses to define the former group and that group's experiences. Differences in terminology can lead to constructive discourse or interactions shrouded in vilification.

Cottle's paradigms are most useful if put in dialogue with each other and other theories such as Cees Jan Hamelink's (2015) 'spiral of escalation.' In his book, *Media and Conflict: Escalating Evil*, Hamelink argues that the mass media triggers mechanisms in the 'spiral of escalation' by offering a daily discourse of social anxiety, elevating the rhetoric of provocative leaders, facilitating alienation by adopting divisive frames, and making possible the self-defense argument. The spiral works both ways, and thus media can both serve to resolve and amplify conflict. If the theory is applied to modern technological advancements, in which social media provides for a cheaper, faster, back-and-forth type of communication that has a global reach, it could be argued that the spiral takes on those qualities and is activated quicker and with greater intensity.

2.2 Zambia, China, and Media Relations

In Africa, perceptions towards China are complicated and heavily dependent on the proximity to the 'benefits' of individual engagement with Chinese state and non-state actors. In Zambia, the ruling party traditionally welcomed macro-level Chinese investment and the added value in multiple sectors (Matambo, 2019). However, local reports of unequal benefit sharing, corruption, and poor working conditions in Chinese organisations have led to tensions at the individual-organisational level. Frequent reference is made to the Chambishi Copper Mine (2008) and Collum Coal Mine riots (2010) which were a result of labour

disputes between Chinese management and Zambian miners. Western-led criticism of Chinese territorial ambitions and human rights abuses confirms biases, for example, the association between the Chinese and profit-driven pragmatism.

Zambia is one of the epicenters of sensationalised and ‘fake news’ about China, according to Eric Olander, co-founder of the China Africa Project. Misinformation is shared and forwarded through messaging platforms, and its content is frequently incendiary and xenophobic. One is only to look at the viral Facebook post picked up by a local tabloid that alleged China was selling canned human meat to Zambia (Olander, 2016). The story was declared a hoax after Zambian and Chinese leaders issued public statements to fact check the misinformation.

Zambian disinformation is closely intertwined with stories coming out of other countries. The knowledge, opinions, and conversations flowing through Anglophone countries—Nigeria, Kenya, South Africa—mix together and, along with the fake news from one country, feed into other countries (E. Olander, personal communication, October 14, 2020). Then, this news and the discourse with it get a second life on Facebook and Twitter. International media and expat media bring their own biases. Increasing the amount of sensationalised news, now termed ‘fake news’ by many (Mfula, personal communication, November 11, 2020). This demonstrates how pervasive, inconsistent coverage of issues and mis-contextualisation by the media coupled with the emotionally driven transport of social media can further exacerbate conflict, effectively losing the heart of where people’s frustrations come from in the leaguering outrage. The Chinese media is often intentionally slow to respond and prefers false allegations to dissipate on their own or for government authorities to act first.

The reasons for these stories’ prevalence are complicated. They reflect grievances and fears of displacement but also seem to be exploited for political aims. First, Zambian politicians are using charged rhetoric against China, and as the 2021 Presidential election approaches, several seem ready to evoke Michael Sata’s campaign tactics before his win in 2011. A portion of the Zambian public associates China with the health and economic crisis triggered by COVID-19, which compounds the ongoing accusations levied against the current administration’s corruption and handling of Chinese debt. Second, as Zambians use Western platforms, they are privier to Western views than to Chinese views. Third, as internet penetration increases across Africa, these dynamics will be further tested as more people engage in creating and sharing news.²

The PRC government is aware that to control its image, it needs to increase its share in Africa’s information space. In a 2010 trip to Africa, Chinese journalists vocalised the need to balance Western coverage and present different narratives on Chinese engagement in Africa (Li and Ronning, 2013). In recent years, there has been an increase in English and French language Chinese-state owned multimedia broadcasting initiatives across Africa (Hollihan

and Zhang, 2016). At present, African audiences are less likely to rely on Chinese media than Western and indigenous media. Focus group data from Kenya and South Africa suggests that Africans do not actively engage with the Chinese media, including CCTV/CGTN and WeChat, and some are strongly biased against it and cited negative stereotypes of China as reasons to avoid these platforms. (Wasserman and Morales, 2018). These sentiments alone show how important audience perceptions are; if there is negative sentiment or no trust, then people will not engage enough with imported media platforms to shape or reshape local views.

To avoid the monolith trap, it is important to deconstruct 'China' and identify the many stakeholders involved on the continent. In a study of Chinese community associations in Zambia, the authors distinguished between state actors – “state-owned enterprises, diplomatic corps, and technical aid missions” and non-state actors – “long-term migrants, traveling business people, and students” (Li and Shi, 2019). Other scholars argue the Chinese in Africa are not a homogeneous group (Hodzi, 2019; Yan et al., 2019). While some Chinese migrants are reluctant or unable to interact with locals due to language barriers, others, especially highly-educated expatriates, have shown their proficiency in local languages and willingness to integrate into local communities. Based on a survey conducted by Yan et al. (2019, p. 53), the Chinese are the second most adaptive group, only after 'whites', among those represented in Zambia.

There is a growing awareness that misinformation and damaging narratives around Chinese engagement in Africa could be a result of prejudiced media coverage. Chinese communities in Africa have argued that negative press harms their interests and even jeopardises their safety. Countering misinformation on a case-by-case basis is an increasing priority for local associations. For example, Chinese embassy officials, association leaders, and journalists based in Zambia formed a WeChat group, 'Fighting Media Crisis', to exchange ideas on fighting negative press, as they recognised how negative press exacerbates tensions leading to the sensationalisation of events (Li and Shi, 2019, p. 162).

3. Methodology and Sources

3.1 Methodology

To study the relationship between 'media and conflict' with Chinese-Zambian engagement as a case study, we used qualitatively-driven mixed methods. We conducted a frame analysis of English and Mandarin news articles on two cases of conflict in Chinese-Zambian relations: the 2018 ZAFFICO Scandal and Riots and the 2020 Lusaka discrimination controversy. We selected articles from diverse Western, Zambian, and Chinese media outlets to compare their reporting on the cases. We supplemented the findings of the paper with key informant interviews using snowball sampling (Annex).

We found these cases frequently cited, both in interviews with informants and the recent literature. They feature diverse stakeholders and perspectives towards China, and they offer a departure from the 2005 BGRIMM and 2013 Collum Coal Mine incidents, which are the most widely studied examples of conflict in Chinese-Zambian engagement. As these cases are current, they also reflect the evolution in China's response to criticism and strategy – at the state, private and migrant worker level. There is a growing awareness that the media is an important space for interaction and reputation management and that 'anti-China' stories could incite real-life violence. We were also interested in analysing cases at the intersection of globalisation and identity politics, and these cases show frictions between different in and out-groups and how they form representations of 'the other.' To identify articles, we searched Google for key terms, including variations on China, Zambia, conflict, tension; terms related to the selected case studies; and the titles of major Chinese, Western and Zambian news outlets. We selected English and Mandarin articles that best complemented each other based on the context and timing of publication.

We analysed the framing, or "principles of selection, emphasis, and presentation" in each article (University of Vermont, 2009). We also looked for the master-narratives based on identity, which could lead to us versus them categorisation and polarisation. The three media and conflict paradigms discussed in the previous section (manufacturing consent, media contest, and media culture) were useful in identifying framing techniques and the positionality of the media outlets and readership.

3.2 Sources

3.2.1 Zambian Sources

Zambian access to the media is affected by many factors from poverty, illiteracy, and uneven electrification. However, those who have access to print and online media can choose from a variety of sources with diverse stances and focal points. Many are influenced by their ties, from state to external, for example, to the Zambian diaspora in the West, and almost all have explicit political affiliations. For instance, state-owned Zambia Daily Mail and Times of Zambia tend to bolster the position of the ruling party, the Patriotic Front. The Lusaka Times provides a more moderate perspective, but its content is sourced largely from government-owned news sources. Independent media that are based on online platforms, such as Zambian Watchdog and News Diggers, are considered to be more critical of President Edgar Lungu and in line with the opposition party, United Party for National Development (UPND) (Mfula, 2020).

3.2.2 Chinese Sources

Most Chinese nationals in Zambia prioritise online Chinese-language news and use a range of sources from official media to other independent platforms that cover African affairs.

Xinhua and Global Times (Huanqiu) are top state-owned international media outlets that report major events worldwide, but often without direct connection to what is happening on the ground. Their journalists extensively quote Chinese embassy announcements or Zambian media that is perceived as more objective, such as the Lusaka Times. Online platforms that are popular among the Chinese are the Guancha Syndicate (guancha.cn) and Toutiao (www.toutiao.com). There is only one Chinese-language newspaper published in Zambia: The Oriental Post (Feizhouhuaqiaozhoubao), which covers various countries in Southern Africa.³ This newspaper cooperates with the overseas version of People's Daily (Remin Ribao, a Chinese official newspaper) and largely reports on issues affecting business, such as Chinese investment, external relationships, and the latest Africa Policy.

4. Case Studies and Analysis

4.1 Case Studies

4.1.1 The ZAFFICO Controversy

On 5 November 2018, the alleged sale of the Zambia Forestry and Forest Industries Corporation (ZAFFICO) to Chinese investors triggered several riots in Kitwe and its neighbouring towns. It was reported that several Chinese shops were damaged and looted, and more than 100 protesters were arrested (Zambia: Over 100 Picked Up by Police in Anti-China Protests in Kitwe, 2018). The Lungu administration blamed UPND leader Hakainde Hichilema for inciting the riots, citing his interview with the Sun FM radio programme. Hichilema had accused the Zambian government of listing ZAFFICO on the stock market as part of a scheme to sell shares to the Chinese. The issue remains controversial to this date, with the media becoming a battlefield for competing narratives.

News outlets like Zambia Daily Mail and the Lusaka Times took a hard line against Hichilema's announcement and relied on Patriotic Front party officials' statements to challenge it (ZAFFICO Has Not Been Sold; It's Fake News Created by Overzealous Opposition-Dora Siliya, 2018; Musonda et al., 2018). Comments on a Zambia Report article accused Hichilema of spreading rumours and acting as an irresponsible politician (Phiri, 2018). At the end of November, the Lusaka Times published an article highlighting the Chinese Foreign Ministry's praise for President Edgar Lungu's handling of the "false China-related reports" (China Happy with President Lungu's Defense of Its Interests in Zambia, 2018).

Zambian Watchdog reported the story from a different angle, expressing support for Hichilema and questioning why the government would list a natural resource company - as it is not profitable and should not be privatised - on the stock market (Zambian Watchdog, 2018a, 2018b). Commenters on Zambian Watchdog's Facebook page showed their support for Hichilema and posted sarcastic comments about the PF government's tendency to blame everything on the opposition party. Hichilema defended himself on BBC Radio and offered a

timeline of government actions that shaped his thinking on the issue (VoiceUp News Zambia, 2018). After official government sources labelled the ZAFFICO sale as fake news, pro-opposition continued to question the legitimacy of the assertion (It's the Land Not Zaffico per se That Has Been Sold, 2018).

As for Chinese media outlets, the Oriental Post and Guancha Syndicate both accused Hichilema of causing the conflict. An Oriental Post headline even called Hichilema's denial of the accusation "pale and powerless" (Kitwe Riot Is Directed to Opposition Party's Incitation, HH's Denial Seems Pale and Powerless, 2018; Tang, 2018). Xinhua reported a small demonstration led by Zambian miners and businessmen one week after the riot. They denounced Hichilema's statement and accused him of breeding xenophobia. They feared Chinese investors would decide to leave Zambia (Mym, 2018). This event, however, did not attract as much attention as the earlier protests in Zambian media outlets.

ZAFFICO made headlines again in 2019 after the Environmental Investigation Agency (EIA), an international NGO with headquarters in London and Washington DC, published a report about ZAFFICO's role in corrupt practices (Environmental Investigative Agency, 2019). According to the report, ZAFFICO was a cover for well-connected Zambian and Chinese business operators to illegally traffic an endangered species of rosewood. Yet again, oppositionist-linked and pro-government media interpreted the events from different angles (Diggers Editor, 2019; Mwamba, 2019a, 2019b; Ruwe, 2019). While Zambian News Diggers and Zambian Watchdog cited the report as proof of PF government corruption, sources such as Zambia Daily Mail denounced the report as propaganda and even hinted it was strategically released in advance of the 2021 elections to "sully, soil, and damage the local and international image of President Lungu" (Mwamba, 2019b). While Chinese outlets, such as the Guancha Syndicate, mostly quoted official Chinese embassy statements and refrained from taking sides, comments on the article revealed competing views. The comments with most likes blamed Western NGOs for escalating tensions and obstructing other countries' development. However, there were also comments positing that China's role in deforestation merited the negative backlash.

4.1.2. Anti-Chinese Sentiment in Response to COVID-19

Against the backdrop of the COVID-19 pandemic, several Chinese businesses in Lusaka were accused of displaying anti-Blackness, such as turning away Zambian customers and preventing workers from going home after work. Zambian Watchdog used loaded rhetoric while reporting the cases - "Zambians wake up! Your country is being taken away. The Chinese have regrouped and you are still sleeping" (Muchima, 2020). The Mayor of Lusaka, Miles Sampa, soon launched an investigation into the incident in May 2020 and shut down Chinese businesses that allegedly discriminated against Zambians (Sampa, 2020; Racist Chinese Barbershop Closed, 2020). Surprisingly, just one week later, Sampa apologised for

revoking trading licences and using discriminative language against the Chinese (Nkomesha, 2020). One day before his apology, Local Government Minister Charles Banda warned Sampa that unilaterally revoking trading licences is against standard procedure (Local Government Minister Opposes Lusaka Mayor for Closing Down Abusive Chinese-Owned Businesses, 2020). Segments of the public believed that the apology had been coerced. Lily Mutamz, a UK-based Zambian livestream commentator on YouTube, suggested the Mayor was pressured into apologising to delegitimise him. In the comments, many of her followers agreed with her and found it hypocritical that the Chinese did not have to apologise for mistreating Zambians (Lily Mutamz TV, 2020). An op-ed on Diggers News also argued that the government was allowing the Chinese to break laws freely (Sakala, 2020). Zambian Watchdog responded to Banda's statement by saying, "With this intervention, the Chinese are now free to discriminate [against] Black people in their businesses." This post attracted over two-thousand comments from those who supported Sampa's actions (Zambian Watchdog, 2020a).

Mayor Sampa's political affiliation should not be ignored—he is the nephew of former President Michael Sata. It is speculated that Sampa is copying his uncle's strategy—stirring up Sinophobia as part of a campaign strategy—and cultivating an image that would help him eventually run for President (Matambo, 2019; Marsh and Sinyangwe, 2020). Although the correlation is unclear, several criminal activities against Chinese nationals were reported after Sampa's charged rhetoric, which suggests an increase in Sinophobia. On May 24, 2020, three Chinese nationals were brutally murdered over a pay dispute at a warehouse in Makeni, a suburb of Lusaka (Three Chinese Murdered Over Pay Dispute, 2020). Crimes against the Chinese continued to happen. On September 16, 2020, armed thieves robbed a Chinese mining company's dormitory, in which three Chinese nationals and two Zambians were assaulted (Armed Thieves Rob Chinese Firm in Luano, 2020).

The Zambian media showed much more uniformity and discouraged sensational reports on these tragedies. Even Zambian Watchdog, which often takes an anti-Chinese stance, limited itself to an official Zambia Police statement; most comments under the post also condemned the attacks (Zambian Watchdog, 2020b). Some media outlets even expressed alarm over the potential racial motivation behind the murders and sent a clear message to readers, "You can't kill a Chinese national by taking advantage of the current anti-Chinese sentiment" (Mwewa Lane, 2020). Chinese media outlets argued that the perceived discrimination was a misunderstanding, but that social media and Mayor Sampa's 'radical' policies intensified the situation. For instance, a report on Caixin (a popular financial newspaper in China) clarified that the restaurant worker accused of racism was innocent and his actions misinterpreted. The restaurant's security camera showed that the dispute was over anti-epidemic measures, and no other Zambians in the restaurant were mistreated (Qing, 2020); the government's

investigation group supported these findings. Zambia Reports corroborated this point of view (Phiri, 2020).

Global Times reported that the increase in robberies and murder was due to the influence of anti-Chinese rhetoric used by local media and politicians. Those unfamiliar with the truth started to channel anti-Chinese sentiments (Zhao et al., 2020). According to a report on Toutiao (Look at The World, 2020), the misunderstanding stemmed from Chinese stores' implementation of strict anti-epidemic measures after cases of the virus were reported in Zambia in March 2020, including closed-off management and control of visitors, similar to precautions taken in China. These measures were seldom properly introduced by the Zambian media. An anonymous source in this report said the Chinese were worried about the rising anti-Chinese sentiment as robberies continued to happen after the murder. Some even hired guards or bought guns to defend themselves. "Many colleagues are being called 'virus' on the street," the source added. This report went viral on the internet and received more than five thousand comments. Chinese netizens flocked to the post to express their anger or question if the accusations of racism were exaggerated for political optics.⁴

4.2 Analysis

Based on a review of media sources from 2018 to 2020, we found significant differences in how Zambian and Chinese media outlets framed and reported events. Strong cleavages exist in the Zambian media environment, shaped by English and Mandarin language outlets' partisan affiliation. Zambia's state-owned media, Zambia Daily Mail and Times of Zambia tend to highlight the benefits and historical significance of Chinese-Zambian economic relations. As for independent media like Zambian Watchdog and News Diggers, they report more openly on acts of anti-Chinese prejudice. Such differences consolidate viewers' existing values or stereotypes, which also give politicians or activists the opportunity to mobilise anti-Chinese sentiment, disregarding what is true and what is not, to bolster their political platforms.

Chinese state-owned media, such as The Oriental Post and Xinhua, strive to report positive developments to boost China's image and quote extensively from governmental statements. However, they publish harsh criticism of anti-Chinese behaviour, mostly casting blame on Zambian opposition parties or politicians, when China's reputation or Zambia-China relations are attacked. Chinese online platforms, such as Guancha Syndicate and Toutiao, demonstrate similar patterns but publish more first-hand information and opinions and thus attract more critical or sensationalised comments from the readers.

It is important to note that loaded language was used across outlets, but different outlets flip-flopped villains and heroes based on their positionality. The tension is largely internal, with the PF government, on one side, and opposition parties (UPND, RRP, etc.) on the other, with

different stances reflecting different sides of the partisan divide. Chinese sources tend to support the PF government narrative because it strengthens China's positive image and maximises the stability of the relations between the two countries.

The polarised nature of the Zambian media landscape influences perspectives on Chinese activity in Zambia, reinforces in-group out-group identities, and distorts responses to information. In tense situations, variation in contextualising information leads to perceived clashes between group interests. Furthermore, a media environment in which false, incomplete, or inaccurate information is pervasive, attempts to discredit stories are interpreted as a devaluation of opposing perspectives, and there arises even more imperative to defend in-group interests.

Especially in the 2018 case, the 'media contest' paradigm described by Cottle best reflects competition in a polarised Zambian media environment. Their reporting on opposition leader Hichilema diverged. While one side blamed Hichilema for spreading rumours and inciting the riots, it focused less on people's distrust of the government and concerns about job loss. The other side represented Zambian people's grievances and questioned the government's affiliation with China, but provided little evidence to support its claims and relied on blackbox language. The competitive nature of the media only consolidates the Zambian people's existing stance for/against China. The EIA report in 2019 shows that, even though ZAFFICO was not sold to the Chinese, people's suspicions were likely rooted in a history of government corruption. Yet again, the media diverged on their views. The 'truth' remains unclear, but different media positionalities often only consolidate existing perceptions.

It is important to note that the target of mediated violence is frequently the Chinese migrant community in Zambia, unconnected to larger business dealings between the Zambian government and Chinese investors. This scapegoating could be a result of the media's creation and elevation of leaders' loaded rhetoric against a monolithic 'Chinese/China' threat which projects fears, frustrations, and other negativity onto anyone of visible Asian descent.

As for the year 2020, we found that the manufacturing consent theory and media culture paradigm are useful for analysing the case. As anti-Chinese sentiment was rising due to the spread of COVID-19, Sampa took advantage of the shift in public attitudes and 'manufactured' the image of a prejudiced Chinese migrant population. This image is possible because of the stereotypes about the Chinese formed over the years. Especially during a time of rampant misinformation about COVID-19's origins, the additional association between 'the Chinese' and the virus is easily exploited. However, as the events unfolded, it became clear that cultural differences, language barriers, and perceptions of the 'other' most likely contributed to misunderstanding.

Once mainstream views take shape, it is difficult to change the narrative. For example, *Zambian Report* unpacked the discriminative restaurant incident, but commenters did not believe the report though clear evidence was provided (Phiri, 2020). As for the media culture paradigm, when some *Zambian* media outlets showed support for Sampa's actions, the view of 'us' (*Zambian*) versus 'them' (*Chinese*) became more pronounced. Such a view gained support rapidly because the *Chinese* were not just accused of racism, but also of their intention to exclude local people or 'segregate' themselves from local communities. Thus, according to some, the *Chinese* were not just discriminating against *Zambians* but also taking away job opportunities and monopolising the benefits of economic development.

Disregarding if the *Chinese* intend to segregate or not, if anti-*Chinese* sentiment and crimes against *Chinese* people continue to grow, this might force the *Chinese* to further segregate themselves from locals. As Yan et al. (2019) argued, the main causes of *Chinese* self-segregation are due to structural factors, including anti-*Chinese* discrimination, as opposed to 'subjective consciousness.' In fact, most *Chinese* migrants are willing to embrace and adapt to the host society. However, when the media creates an environment of 'us' versus 'them', the *Chinese* will have to protect themselves by adopting segregation from the locals, but that will only increase anti-*Chinese* sentiment. A spiral of escalation is, therefore, created.

There is a second layer to the mechanism. The *Chinese* media mostly engages *Chinese* audiences. Segments of the media are delivering the message that *Zambians* mistreat *Chinese* migrants and that opposition political leaders are purposely and untruthfully demonising the *Chinese*. Thus, all critiques and attacks against the *Chinese* government or *Chinese* people could be perceived as political manipulation while structural factors that make the *Chinese* presence unwelcome are neglected. Such a point of view may discourage *Chinese* immigrants from integrating with the local society or embracing the opinions of the opposition. In short, the different style and focus of *Chinese* media may also worsen the image of 'us' versus 'them.' As a result, *Chinese* engagement with *Zambians* would only decline, as well as the chance for *Zambian* people to get to know the *Chinese*. Moreover, as both the *Zambian* and *Chinese* media continue to polarise views, the lack of engagement and the problem of asymmetric information between *Zambians* and the *Chinese* will deteriorate as well.

5. Conclusion

The media plays a role in polarising views and amplifying societal tensions around *Chinese-Zambian* engagement. We found visible differences in tone, word choice, and selection of detail between articles depending on the positionality of the outlet and its readership. These differences in frames could be a contributing factor to polarisation and conflict escalation in inter-group conflict. The majority of *Chinese* stakeholders are not malign actors, as some media sources suggest, but differences between them and the *Zambian* people are

capitalised on in a divisive political environment. The media certainly reflects real grievances, but also sensationalises and exaggerates information for political ends.

Analysing the media presents an interesting but also daunting task as there are so many points of distortion. People are inundated with information, and it is difficult to discover the root of the problem and not get emotionally invested in the discourse taking place. Similarly, for researchers, it is difficult to limit where, when, and what to assess in the media. From this, the question of positionality arises as how someone adds to the conversation is affected by the identity they hold in relation to the identity of the group, society, or country being researched. The other difficulty with media analysis is reflecting intersectionality in the analysis. There are socioeconomic differences that affect who can participate in the media discourse and whose identities are validated. All of these ideas feed into information reliability, and there is no guarantee that the media is an accurate reflection of what is happening in society.

Without effective spaces for addressing legitimate grievances and mediating between different views, the media will continue to escalate tensions and be used as a tool to incite violence. Those who study the media in any context should acknowledge positionality and intersectionality, and those working with activists, journalists, or stakeholders could create workshops and facilitate discussion on navigating media in different contexts.

¹ Governmental ties between China and Zambia date back to the 1960s when China committed itself to the TAZARA railway project in 1967. The railroad has been an important symbol of Chinese-Zambian friendship to this day. However, it is not the only reason to keep their relationship. By 2015, China became the largest investor in Zambia, with 9% of China's total FDI going to the country (UNCTAD, 2019). China now accounts for around 80% of infrastructure in Zambia. The number of Chinese nationals residing in Zambia is reportedly growing rapidly as well, which was around 20 thousand in 2014 and reached 30 thousand in 2020, and the Chinese are even referred to as the '74th nation of Zambia' by the Zambian government (Che, 2020; Postel, 2017).

² As of 2020, the number of Internet users increased to 4.45 million (+16%), while 16 million people gained mobile connection (+5.6%) in Zambia, and as a result, social media users increased to 2.3 million (+19%). To put these numbers in perspective, Zambia's population is 18.12 million and, it is important to note that the median age is 17.6. While community radio continues to serve as the greatest source of information across many rural areas of Sub-Saharan Africa and internet penetration is low, there is already indication of how the continent will transform. The youth bulge and continued digitisation will likely lead to growth in citizen journalism and political organisation around collective identity and shared goals inspired by outside influences. However, state pushback and use of these tools by malign actors will check their activity.

³ The Oriental Post also has other online versions, such as Qiaowang (<http://www.qiaowang.org/>) and WeChat public account (huaqiaozhoubao).

⁴ There were many angry comments in the post, such as "do not trust Africans" or the "Chinese must retaliate," while some argued that Zambians just envy the rich Chinese and that there are always risks to doing business in Africa. Also, one of the comments clarified that "I know the restaurant (Lan Tian), it is famous in the local, and many of its chefs and clerks are black people. How can this restaurant be discriminative?"

References

English Reference

Armed Thieves Rob Chinese Firm in Luano. (2020, September 20). *Lusakatimes.com*. <https://www.lusakatimes.com/2020/09/20/armed-thieves-rob-chinese-firm-in-luano/>

China Happy with President Lungu's Defense of Its Interests in Zambia. (2018, November 24). *Lusakatimes.com*. <https://www.lusakatimes.com/2018/11/24/china-happy-with-president-lungu-defence-of-its-interests-in-zambia/>

CIVICUS. (2017, January 1). Zambia – Overview. <https://monitor.civicus.org/updates/2017/01/01/zambia-overview/>

Cotterill, J. (2020, September 22). Zambia Headed for Africa's First Covid-Related Debt Default. *Financial Times*. www.ft.com/content/0b744d46-46b1-48c3-81cd-be0d78d99262

Cottle, S. (2006). *Mediatized Conflict: Developments in Media and Conflict Studies*. Open University Press.

Diggers Editor. (2019). How Did 95% of Mukula Reach China Undetected by Zambian Authorities? *Diggers News*. <https://diggers.news/opinion/2019/12/15/how-did-95-of-mukula-reach-china-undetected-by-zambian-authorities/>

Environmental Investigation Agency. (2019). *Mukula Cartels: How Timber Trafficking Networks Plunder Zambian Forests*. EIA. https://content.eia-global.org/posts/documents/000/000/987/original/Mukula_Cartel-HighRes.pdf?1575566086

Hamelink, C. J. (2015). *Media and Conflict: Escalating Evil* (digital ed.). Taylor and Francis.

Hodzi, O. (2019). Chinese in Africa: 'Chineseness' and the Complexities of Identities. *Asian Ethnicity*, (20)1, 1-7.

Hollihan, T. A., and Zhang, Z. (2016). Media Narratives of China's Future. *Global Media and China*, 1(1-2), 7-11.

It's the Land Not Zaffico per se That Has Been Sold. (2018, November 24). *Zambian Watchdog*. <https://www.zambianwatchdog.com/its-the-land-not-zaffico-per-se-that-has-been-sold/>

Li, H. and Shi, X. (2019). Home Away From Home: The Social and Political Roles of Contemporary Chinese Associations in Zambia. *Journal of Current Chinese Affairs*, 48(2), 148-170.

Li, S. and Rønning, H. (2013). Half-Orchestrated, Half Freestyle: Soft Power and Reporting Africa in China, *Ecquid Novi: African Journalism Studies*, (34)3, 102-124.

Lily Mutamz TV. (2020, May 27). *Lusaka Mayor Miles Sampa Does the Unthinkable Apology to the Chinese in Zambia* [Video]. YouTube. <https://www.youtube.com/watch?v=LKmfKsKmOOY>

Local Government Minister Opposes Lusaka Mayor for Closing Down Abusive Chinese Owned Businesses. (2020, May 27). *Lusakatimes.com*. <https://www.lusakatimes.com/2020/05/27/283923/>

Marsh, J. and Sinyangwe, C. (2020, June 5). Three Chinese Nationals Were Murdered and Burned in Zambia, in a Week When Racial Tensions Were Running High. *CNN*. <https://www.cnn.com/2020/06/05/china/china-zambia-murder-intl-hnk/index.html/>

Matambo, E. (2019). Constructing China's Identity in Zambian Politics: A Tale of Expediency and Resignation. *Journal of African Foreign Affairs*, (6)3, 43–64.

Mfula, C. (2020). Re-enacting Zambia's Democracy through the Practice of Journalism on Facebook. In Banda T. et al. (Eds.), *Democracy and Electoral Politics in Zambia* (pp. 242-282). Koninklijke Brill NV.

Muchima, K. (2020, May 18). *Zambian Turned Away At Chinese Restaurant*. *Zambian Watchdog*. <https://www.zambianwatchdog.com/zambian-turned-away-at-chinese-restaurant/>

Musonda, C., Ndola, and Ntambi, M. (2018). ZAFFICO Will Forever Be for Zambians. *Zambia Daily Mail*. <http://www.daily-mail.co.zm/zaffico-will-forever-be-for-zambians/>

Mwamba, E. (2019a, December 14). What Would \$193 Million Worth of Mukula Timber Look Like?- Let's Expose the Heightened Propaganda from EIA. *Lusakatimes.com*. <https://www.lusakatimes.com/2019/12/14/what-would-193million-worth-of-mukula-timber-look-like-lets-expose-the-heightened-propaganda-from-eia/>

Mwamba, E. (2019b, December 12). Peddling in Mukula Trade or Defamation – The EIA Report. *Zambia Daily Mail*. <http://www.daily-mail.co.zm/peddling-in-mukula-trade-or-defamation-the-eia-report/>

Mwewa Lane, S. (2020, May 25). 3 Chinese Nationals Tied-up, Murdered and Their Bodies Burnt. *Zambian Observer*. <https://www.zambianobserver.com/3-chinese-nationals-tied-up-murdered-and-their-bodies-burnt/>

Mym. (2018, November 15). *Zambian Miners Stage Protest against Inciteful Opposition Politicians.* *Xinhua.* http://www.xinhuanet.com/english/africa/2018-11/15/c_137607705.htm

Nkomesha, U. (2020, May 28). *Sampa Apologises to Chinese Community.* *Diggers News.* <https://diggers.news/local/2020/05/28/sampa-apologises-to-chinese-community/>

Okeowo, A. (2013). *China, Zambia, and a Clash in a Coal Mine.* *The New Yorker.* <https://www.newyorker.com/business/currency/china-zambia-and-a-clash-in-a-coal-mine>

Olander, Eric. (2016, September 17). *So What Do Zambians REALLY Think of Chinese Immigrants?* *The China Africa Project.* <https://chinaafricaproject.com/podcasts/podcast-zambia-africa-chinese-china-migrants-lu-yao/>

Orlowski, J. (Director). (2020). *Social Dilemma* [Film]. Netflix.

Over 100 Picked Up by Police in Anti-China Protests in Kitwe. *Lusakatimes.com.* (2018, November 5). <https://www.lusakatimes.com/2018/11/05/over-100-picked-up-by-police-in-anti-china-protests-in-kitwe/>

Phiri, C. (2018, November 7). *Hichilema Roasted Hot FM ZAFFICO Spark.* *Zambia Reports.* <https://zambiareports.com/2018/11/07/hichilema-roasted-hot-fm-zaffco-spark/>

Phiri, C. (2020, June 5). *Reflection: With Regards to the Lan Tian Incident.* *Zambia Reports.* <https://zambiareports.com/2020/06/05/reflection-regards-lan-tian-incident/>

Postel, H. (2017). *Moving Beyond “China in Africa”: Insights from Zambian Immigration Data,* *Journal of Current Chinese Affairs,* 46(2), 155-174.

Racist Chinese Barbershop Closed. (2020, May 21). *Zambian Watchdog.* <https://www.zambiawatchdog.com/racist-chinese-barbershop-closed/>

Ruwe, F. (2019, December 18). *Lungu Urged to Come Clean on Mukula Cartel.* *Zambian Watchdog.* <https://www.zambiawatchdog.com/lungu-urged-to-come-clean-on-mukula-cartel/>

Sakala, N. (2020). *Chinese Will now Freely Break Laws after how Banda Rebuked Sampa, Laments Machungwa.* *Diggers News.* <https://diggers.news/local/2020/06/02/chinese-will-now-freely-break-laws-after-how-banda-rebuked-sampa-laments-machungwa/>

Sampa, M. (2020, May 24). Miles Sampa Confronts Another Chinese Operation Locking Locals on Fear of COVID-19 Transmission. *Lusakatimes.com.*

<https://www.lusakatimes.com/2020/05/24/miles-sampa-bursts-another-chinese-operation/>

UNCTAD. (2019). World Investment Report 2019. United Nations. <https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=2460>

University of Vermont. (2009, Spring). Frame Analysis. http://www.uvm.edu/~tstreete/Courses/sociology_of_news/page25/page25.html

VoiceUp News Zambia. (2018, November 11). *UPND Leader Hakainde Hichilema on BBC Radio Talks Sake of ZAFFICO*. Facebook. <https://www.facebook.com/VoiceUpNews/videos/576037092818354/>

Wasserman, H., and Madrid-Morales, D. (2018). How Influential Are Chinese Media in Africa? An Audience Analysis in Kenya and South Africa. *International Journal of Communication*, 12, 2212-2231.

Yan, H., Barry, S. and Lu, Y. (2019). Chinese and 'Self-Segregation' in Africa. *Asian Ethnicity*, (20)1, 40-66.

ZAFFICO Has Not Been Sold; It's Fake News Created by Overzealous Opposition-Dora Siliya. (2018, November 6). *Lusakatimes.com*. <http://www.lusakatimes.com/2018/11/06/zaffico-has-not-been-sold-its-fake-news-created-by-overzealous-opposition-dora-siliya/>

Zambian Watchdog. (2018a, November 7). *Zaffico Should Remain as Zaffico, I Smell a Rat*. Facebook. <https://www.facebook.com/Zambianprotector/posts/2156868227697249>

Zambian Watchdog. (2018b, November 8). *HH Says It's the Chinese who Will Buy Zaffico Shares, Say PF Is Blaming Him even for the Current Heat*. Facebook. <https://www.facebook.com/Zambianprotector/posts/2158042407579831>

Zambian Watchdog. (2020a, May 26). *Money Talks: Minster Stops Sampa from Revoking Licenses of Racist Chinese*. Facebook. <https://www.facebook.com/Zambianprotector/posts/3266614246722636>

Zambian Watchdog. (2020b, May 24). *Three Chinese Murdered, Warehouse Burnt Over Pay Dispute*. Facebook. <https://www.facebook.com/Zambianprotector/posts/3260463607337700>

Chinese Reference

Che, J. J. (2020, September 4). 2020 Zambia Chinese Society Screening [2020 赞比亚华人社会扫描]. *Qiaowang*. <http://www.qiaowang.org/m/view.php?aid=13693>

Kitwe Riot Is Directed to Opposition Party's Incitation, HH's Denial Seems Pale and Powerless [基特韦骚乱矛头直指反对党煽风点火HH竭力否认却似乎苍白无力]. (2018, November 16). *The Oriental Post*, Z3.

Look At The World. (2020, May 27). After Three Chinese Nationals Were Killed in Zambia, More Robberies against Chinese Happens; Anti-Chinese Sentiment Rises Significantly, Chinese Are Afraid of Going Out, and They Hire Armed Guards and Build Electricity Fence [3 中国人在赞比亚遇害后, 又有华人被抢; 当地歧视华人情绪明显, 华人不敢出门, 雇佣持枪保安、拉电网]. *Toutiao.com*. <https://www.toutiao.com/a6831483900334703117/>

Qing, Y. (2020, May, 27). Three Chinese Nationals Murdered in a Zambian Warehouse, Two Suspects Were Arrested, Chinese Embassy Demanded Punishment [.

Tang, Y. F. (2018, November 7). Riots Against Chinese Happened in Zambia: 三名中国人在赞比亚仓库遇害 两嫌已被捕使馆要求严惩]. *Caixin*. <https://international.caixin.com/2020-05-27/101559790.html>

Multiple Shops Were Looted, Embassy Announced Safety Alerts [赞比亚发生针对华人骚乱: 数家商店遭打劫, 使馆发布安全提醒]. *Guancha Syndicate*. https://www.guancha.cn/internation/2018_11_07_478597.shtml

Zhao, J. C., Li, Q., Liu, C. Y. (2020, May 25). Chinese Embassy Condemns the Murder of Three Chinese Nationals in Zambia, Malicious Attacks against Chinese Occur in Consecutive years [我大使馆强烈谴责3名中国公民赞比亚遇害案件 赞已连年发生针对华人恶性事件]. *Huanqiu.com*. <https://3w.huanqiu.com/a/5e93e2/3yNkCacZT1I?agt=11>

Annex: List of Experts Interviewed

Chanda Mfula, PhD Candidate in Media Studies, Journalism and Democracy at the University of Sussex.

Charles Mulila, Director of Development Education Community Project in Zambia (DeCoP).

Eric Olander, Managing Editor of The China Africa Project.

Kibrom Teweldebirhan, LLM from Harvard Law School Candidate.

Marriot Nyangu, Executive Director of The Policy & Governance Center.

Nsama Musonda Kearns, Executive Director of Care for Nature Zambia.

Solange Chaterlard, Journalist and Researcher.

Tamika Halwiindi, Accountable Mining Project Officer at Transparency International Zambia.

Trevor Simumba, Senior Partner and Director of Sub-Saharan Consulting Group.

Wang Xin, Vice President of Zambia Chinese Association.

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Law, Lawyers and Sustainable Development: Reflections of a Fellow Traveler

Muna Ndulo

(William Nelson Cromwell Professor of International and Comparative Law, Cornell Law School)

At the national level, the rule of law is necessary to create an environment for providing sustainable livelihoods and eradicating poverty. Poverty often stems from disempowerment, exclusion and discrimination. The rule of law fosters development through strengthening the voices of individuals and communities, by providing access to justice, ensuring due process and establishing remedies for the violation of rights. Security of livelihoods, shelter, tenure and contracts can enable and empower the poor to defend themselves against violations of their rights. Legal empowerment goes beyond the provision of legal remedies and supports better economic opportunities. In order for the rule of law to further sustainable development outcomes, it must ensure protection for all human rights, including, economic, social and cultural rights and the right to development. The role of law and lawyers in Africa is seen here as to help the development process by understanding the social and economic matrix in which legal norms are essentially a super structure, and making the lawyers expert knowledge to bear on this process in order to make the norms more functional to the development process.

1. Introduction

Since I joined academia several decades ago, I have had great interest in how we can use law to advance the living conditions of all people. This took me to study law and development under the late Professor Seidman at the University of Wisconsin in the USA. I have been struck by the enormous challenges that face developing countries and in particular African countries in the area of development. As a lawyer, I have always looked for ways in which as a profession we can contribute and respond to the enormous challenges of sustainable development. There is widespread support for the view that law has an important role to play in promoting development (Seidman 1984; Ocran 1984) . The critical limitations of globalization and increasing inequality, despite human advancement in science, technology, and culture has further drawn attention to the role of law in sustainable development.

United Nations member states have emphasized the important role of law in development. In the Declaration of the High Level Meeting of the Rule of Law, member states noted that and I quote: *“the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustainable and inclusive economic growth, sustainable development, the*

eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law.” (UN, 2012) They therefore called for consideration of that interrelationship in the post-2015 international development agenda. At the international level, the body of international instruments, including those concerning international trade and finance, climate change and protection of the environment and the right to development, establishes internationally agreed upon standards, which support sustainable development (UN 2018).

At the national level, the rule of law is necessary to create an environment for providing sustainable livelihoods and eradicating poverty. Poverty often stems from disempowerment, exclusion and discrimination. The rule of law fosters development through strengthening the voices of individuals and communities, by providing access to justice, ensuring due process and establishing remedies for the violation of rights. Security of livelihoods, shelter, tenure and contracts can enable and empower the poor to defend themselves against violations of their rights. Legal empowerment goes beyond the provision of legal remedies and supports better economic opportunities. In order for the rule of law to further sustainable development outcomes, it must ensure protection for all human rights, including, economic, social and cultural rights and the right to development. While the “rule by law” may provide a legal framework, contractual certainty and dispute resolution mechanisms that support economic growth and development, it is only the rule of law, consistent with international human rights, which can provide for development that is also inclusive and sustainable.

As highlighted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of no-recurrence, “recent experience demonstrates that narrow development efforts that exclude justice and rights considerations fail to achieve sustainable human development” (UNHR, 2013) (/A/68/345 para.64). The United Nations General Assembly has highlighted, inter alia, the importance of access to justice for all, and in this regard encouraged the strengthening and improvement of the administration of justice, and emphasized that respect for the rule of law, property rights, and the pursuit of appropriate policy and regulatory frameworks encourage business formation, including entrepreneurship, and contribute to poverty eradication.

There also exists a strong relationship between the law, land tenure and the effective management of other natural resources such as land. For instance, improved security of tenure for land and property can make a critical contribution to ensuring social and economic progress in rural and urban settings, supporting poverty reduction and furthering gender equality and peace and security (Freudenberger & Miller 2010). Land tenure, including a range of tenure appropriate to local conditions and needs, such as community property rights and the protection of resource commons, creates certainty about what can be done with land or property and its use can increase economic opportunities and benefits

through investment, improving health, financial stability and personal safety. More broadly, ensuring the rule of law in the exploitation of natural resources is essential to ensuring inclusive and sustainable economic growth and development, and in respecting, protecting and fulfilling the human rights of persons. Sustainably and transparently managed natural resources can be the engine for economic well-being and a basis for stable and peaceful societies. Resources such as transboundary water resources require a high degree of cooperation among sharing countries and appropriate legal frameworks to support sustainable management. Proper management of natural resources, in accordance with the rule of law is also a key factor in peace and security, highlighting the interconnectedness of the three pillars of the United Nation system: peace, security and development (OHCHR 2018). The risk of violent conflict is elevated when the exploitation of natural resources causes environmental damage and loss of livelihoods, or when benefits are unequally distributed.

2. Historical Background

As Yong –Shik Lee points out in his article entitled ‘General Theory of Law and Development’, the idea that law is relevant to economic development and social progress is not new (Lee 2017). Adam Smith stated in his Lectures on Jurisprudence that “the imperfection of the law and the uncertainty in its application” was a factor that retarded commerce (Meek; Raphael & Stein 1978). Max Weber, a lauded sociologist and philosopher of the late nineteenth and the early twentieth century, explained the importance of rational law in the economy and society (Trubek 1972). Friedrich Hayek, another prominent philosopher and economist, of the twentieth century, also discussed relevant legal concepts to support liberty as the cornerstone of wealth and growth (Caldwell 2003). The term “law and Development” emerged and gained significance after the Second World War when a group of western scholars, private foundations, and aid agencies in developed countries made efforts to adopt laws and legal practices from developed countries particularly the United States, in order to assist in the economic and social progress of developing countries. These efforts were influenced by the modernization theory advanced in the 1950s and the 1960s by scholars such as Walt Rostow who argued that the modernization of the third world would be accomplished by the diffusion of capital, institutions, and values from the developed world (Jacobs 2015). The modernization approach has had its implications in sometimes disparate ways for the wellbeing and livelihood of the developing world.

Notably, the first Law and Development efforts were not successful due to difficulty in implementing laws and legal practices, including reform of legal education, in developing countries where key socioeconomic conditions, which were essential to their successful implementation, did not exist and their absence had been overlooked or ignored. In many ways the failure of the law and development movement in the 1970s was a lesson in the futility of engaging in legal transplants that are not context driven and which are based on

the supposed inherent superiority of Western culture and institutions (Trubek 2016; Burg 1977).

Law and development was resuscitated in the 1980s and the 1990s after the fall of the Soviet bloc, with the proliferation of neoliberal law reform projects that sought to reduce state intervention in the economy by promoting the privatization and deregulation of the economy (Lee 2017). The market was portrayed as the answer to the ills of society. The outcome of the second law and development movement was mixed at best, failing to result in successful development for most of the developing world. Moreover, some of these reforms caused serious economic difficulties for large populations, as demonstrated by the devastating economic outcome in many developing countries especially in Africa. Many of the 1980s law and development projects again failed because they repeated the mistakes of the first wave of law development projects. They continued to be ideological and to be premised on the superiority of the western system of governance and economic ideology reinforced by the collapse of the Soviet Union. They were not holistic in their approach. They were not based on sustainable and inclusive development. Issues of human rights, peace and security, and equitable distribution of resources were ignored. They excluded justice and rights. One remarkable thing about the literature of the above periods is that it was exclusively written by western scholars, except for one or two Africans notably Tawia Ocran (Ocran 1984). It was western scholars prescribing what should be happening in Africa. No surprise that it engaged in transplants devoid of context. This decontextualization of legal and structural systems is also seen in policy implementation and incentives for the participation of states in the global economy as regulated by the IMF and World Bank.

The current approach to law and development includes values of rights, justice, inclusiveness, human dignity and environmental justice. For example, the United Nations initiated global efforts to eradicate poverty in this period, such as the Millennium Development Goals, and the Sustainable Development Goals include the rule of law among its targets (UN 2015). The rule of law has thus become a development objective and not just a means to achieve development—contrary to its earlier perception.

3. Why Law is an Instrument for Change

Why do we argue that law is an instrument of change? It is necessary to discuss why law and development. The reason is that Law has unique characteristics which can be used as an instrument of change (Seidman 1984). Law may provide orderly change. The promulgation of law is a deliberate process which enables the pros and cons of a policy and the methods for its implementation to be considered and debated. . Paul Freund in a 1953 lecture at Washington University argued that the most important legal method is that of translating into institutions the ideals and purposes of a society (Schroeder 2009). Yash Ghai in his article, 'The Role of Law in the Transition of Societies', has argued that the publication of the

law is an effective way to communicate the government's policy (Ghai 1991). And the relative precision of the language makes clear the ambit of the policy, thus providing a tolerable degree of clarity and certainty.

These virtues are particularly important when the market is expected to be an important instrument of development. They promote transparency and accountability. The rules for interpreting the law enables a policy to be applied uniformly across the country and facilitate a wide delegation of authority, thereby making it particularly appropriate for public bureaucracies. Even in non-democratic regimes, laws command a measure of popular allegiance. It legitimizes public policy and highlights its obligatoriness or otherwise. This obligatoriness can be seen in tax policies, capital flows, tariffs and other market measures that may enhance the wellbeing of citizens.

Moreover, the support of the international community and agencies (important for most developing countries) is easier to secure if the government's actions can be shown to be based on lawful principles and authority. In multi-ethnic or multi-religious states, law may be the only instrument to develop the country, consolidate national values, coordinate different groups, and integrate the economy. So, governments view law as an instrument of governance. At the same time, the general principles of law for the exercise of public power as well as the independence of judiciary restrict the abuse of power and secure protections for citizens. The emphasis on law tends to engender habits of the lawful exercise of power and the consciousness of rights and enhanced prospects of fair administration.

4. The Challenges for African Lawyers

In some respects, the challenges that confront African lawyers and scholars in the law and development discourse are common to both developed and developing societies: in the western world, communities have either mobilized themselves to commence or accelerate their development or, in a situation of social erosion, to marshal resources to protect and conserve values already accumulated. The promise of this mobilization is improvement of the people's lives. In other respects, the challenges are different.

In most African countries, there is a big gap between the country's economic and social conditions and the minimum aspirations, values, and objectives of the people (Gower 1967). In traditional society the economies were basically peasant, and political organizations tended to be simple and small. Colonial rule attempted to permanently subordinate the African population to a distant exploiting power. This led to a disintegration of local forms of government and local law. It also led to urbanization, a recognized modernizing factor. There were great movements of people back and forth between the rural areas and the cities, and one of the consequences of this is the retrojection of values of the urban experience into the rural areas. It is inevitable that conflict should arise due to the constant interaction

between people subject to different laws. What has emerged is some kind of different understanding and approaches to grappling with modernity.

Colonialism and Apartheid left a legacy of deep economic and social problems in Africa. An indicator of Africa's plight is that its participation in world trade remains insignificant (Ndulo 2008). In comparison to other regions of the world, Africa's participation in world trade leaves much to be desired. Over the past three decades, Africa's meager portion of world trade fluctuated. Whereas in 1980 Africa's trade represented about 6% of world trade, it declined in the late 1990s and fell to 2% in 1998. Recently, this trade has been reversing as Africa's GDP growth averaged between 5% and 6% from 2002 to 2008 and foreign direct investment grew from \$9 billion to \$40 billion in 2011 (Ndulo 2008). Although progress has been made and Africa's participation in world trade is increasing, its share remains the smallest of any region in the world. Similarly, foreign direct investment remains a small fraction of global FDI flows. While the structure of most developing countries' exports has shifted to manufacturing (about 70%), in the case of Africa, that figure is closer to 30%, a mere 10% increase over the two decades from 1980 to 2000 (Ndulo 2008). Farming dominates the economies of African states with the balance going to extractive industries. Of course, there are differences between countries in terms of challenges and levels of development.

Against this background, what then should be the role of the lawyers in Africa? I believe that the lawyers in Africa have two major challenges. These are the reform and modernization of the law, and the use of law to aid the development process. The present state of the law itself creates a need for imaginative lawyers. The legal system, as currently structured, was developed to serve communities divided on ethnic and racial grounds (Purdy 1984). The African lawyer must not only be competent to administer and operate the law as it now is, but must be equipped and willing to reform it. There is need to adapt the law to meet present day needs and to unify its substantive provisions and its machinery to ensure that it serves the interests of all the people. There is further need to develop legal, administrative and political institutions to serve all the people. There is need to simplify systems of land law and its administration to ensure equitable access to land by all groups in society and provide security of tenure.

The second responsibility of a lawyer in Africa is, in my view, to help and participate in the development effort. To do this effectively he or she must understand the relationship between law, development and society. He or she should have a view on the strategy for economic development and not regard himself or herself as a mere trespasser in other peoples' domains. Issues of development are not only the domain of the politicians, economists, public administration experts, industrialists, agriculturalists, but are fields in which African lawyers must work.

No major social change can occur in a society where there is no parallel change of some kind in its laws. As the late Professor Lon Fuller observed, "lawyers have a central role to play in the ordering of society (Summers 1984)." The kinds of laws that are written will to some degree or another determine the sorts of social change that will take place. Law is the instrument through which goals are adopted, implemented and reviewed. It is lawyers who must plan and draft the complex institutional arrangements required of the welfare state and the regulatory state and developmental state. Of equal, if not greater importance, lawyers in private practice are the architects of countless sophisticated and highly varied arrangements that facilitate private ordering. What sort of rules are most likely to facilitate rapid development? What sort of law enforcing agencies are required to guarantee security without which development cannot take place? And what kind of sanctions will best serve the process? (Ocran 1984) All these are questions African lawyers must live with and attempt to resolve. It is the policymaker's job to determine policies, but it is a lawyer's responsibility to help the policymakers determine whether the rules adopted will bring the latter's objective to fruition. With this in mind, the lawyer must actively encourage regulations that will enhance social and economic development and actively participate in development plans.

The role of lawyers has not always been appreciated. In history, the laity, it seems, has always appreciated the need for clergy, doctors, engineers and many other professions but not for lawyers. In fact, extreme measures against lawyers and the legal profession have sometimes been taken. For example, the legal profession was abolished after both the French and the Russian revolutions. Historically, in England a lawyer developed a skill to sell (Brooks 1998). He or she was a great convenience to the wealthy landlords who were constantly involved in litigation and found it troublesome to appear in person. He or she was also used by other moneyed bodies. His or her orientation was therefore favourable to the wealthy class hence attracting the marxist criticism of law as an instrument of the ruling classes and the condemnation of lawyers as simply mercenaries of the propertied classes.

Of course, this is far from the truth. Even in the England of those times, a lawyer was concerned with the individual needs of the community. Over the years, lawyers have served their communities well. They have given practical advice, often to individual clients, with few resources to pursue their legal claims. They have traditionally "nursed clients" and their families through a myriad of problems and concerns, which were not always of a legal nature. They have foregone untold amounts of money in "legal aid." Often, they were not thanked for their services, yet continued to make a major contribution to the profession despite this.

But in the context of the challenges facing Africa, involvement in litigation alone is no longer sufficient. The principle of legality needs to be extended to the discharge of services and the regulation of economic processes in the context of a developing country. A lawyer must actively participate in shaping plans of economic development. A lawyer's participation may

avoid the unwarranted overriding of private interests by the politician. The lawyer brings reason to bear in the creation of rules, process, and institutions; in determining the proper applicability of rules; in facilitating the sound functioning processes and the healthy maintenance of institutions, and in various activities of legal reform. The lawyer will help in determining beforehand the course of future developments and calculating their probable effects and future risks. As long ago as 1962, a Congress of Jurists held in Brazil observed that:

In a changing and inter-dependent world, lawyers should give guidance in the creation of new legal concepts, institutions and techniques to enable man to meet the challenge and the dangers of the times and to realise the aspirations of all people. The lawyer should not content himself with the conduct of his practice and the administration of justice. He cannot remain a stranger to important developments in economic and social affairs if he is to fulfil his vocation as a lawyer. He should take an active part in the process of change. He will do this by inspiring and promoting economic development and social justice. The skill and knowledge of lawyers are not to be employed solely for the benefits of clients, but should be regarded as held in trust for society (ICJ 1962).

The acquisition of insights into the development process will be the beginning and not the end of a lawyer's task in Africa. Ultimately, the lawyer must concern himself or herself with the translation of government policy into a legal framework, and to contribute as far as he or she can to its successful implementation. This is a concern which goes beyond mechanical legal drafting and into institution building. This in turn requires an awareness of the perimeters or limitations of law as a technique of social control and a study of the kinds of considerations that will augment the efficacy of laws.

This poses a great challenge to the average lawyer anywhere in the world. The main concern of the practicing lawyer, engaged in litigation, is to predict the result of litigation, whereas the task of the lawyer concerned with institution building is to predict whether a specific piece of legislation will attain its intended objectives. A lawyer concerned with institution building will want to see the law providing the moral and legal basis of development. This it does in part merely by being or becoming a formal system. Such a system provides and assumes a way of looking at society as a whole. Social relations come to be seen as amenable to control, and the entire civil order is ultimately viewed as a creature of law and artifact of human desire. The growth of a formal legal system, therefore, is inextricably associated with the rationalization of man's understanding of society that is at the core of development. It is essential to development that African legal systems furnish general organizational constructs which make efficient public or private entrepreneurial activity possible.

The law can further contribute by conferring impersonality, legitimacy and to some extent, stability on the political structure of the nation state. This strengthening of the state is an important indirect contribution of the legal order to the development process because the

state provides at once; (a) a national market; (b) a centralized source of general decision making and long-range planning; and (c) a more impersonal and less restrictive centre of social gravity than the primary group.

A formal system is indispensable to the growth and workings of an industrial economy not only as a source of tools for reaching certain economic objectives but as a framework for economic life. Industrial economies call for (a) the availability of formal arrangements, whether private (e.g. contractual) or public (e.g. regulatory) which permit the ordering of economic regulations; and (b) predictability of the enforcement of such arrangements and of the interpretations which will be given to them, or, at least of the factors which will enter into that interpretation.

The impersonal process of the legal systems can accommodate the enactment of substantive policy measures that are instruments in furthering development. Thus, through specific substantive provisions, the legal order may seek to encourage capital formation, spur productivity, induce rational decision-making and facilitate the conformance of private resource allocation to publicly planned objectives. These substantive policies embedded in the law will vary according to the nature of the particular socio-economic situation confronted by the legal decision-makers and their objectives and interests. The essential point, however, is the establishment of a process of framing, interpreting and changing law that will be able to serve development needs.

5. Legal Education

In order for the legal profession to be responsive to the needs of development, legal education must be responsive to those needs and equip the lawyer with the necessary skills to enable him or her to play his or her role in the development process (Ndulo 2002) . Lawyers must be trained in such a way that they are able to appreciate the importance of community goals and how to clarify them. They should be able to relate the legal institutions, as well as social and political institutions, to the general and specific premises of development and reconstruction.

To be able to do this, a lawyer requires a sufficiently general and broad-based education to enable him or her to adapt successfully to new and different situations as his or her career develops and he or she gains adequate knowledge of the more important branches of the law and its principles, the ability to handle facts, both analytically and synthetically, and to apply the law to situations of fact. He or she needs the capacity to work, not only with clients, but with experts in different disciplines(Twining 2001; Twining 1966; Kent R. 1999). He or she must also have the professional skills and techniques which are essential to practice, a grasp of the ethics of the profession, a critical approach to existing law, an appreciation of its social

consequences, and an interest in, and positive attitude toward, appropriate development and change.

Traditional legal education does not usually impart all the skills necessary to discharge the legal function I have described as necessary to meet the challenges of development (Dayal 184). It remains largely oriented towards producing legal technicians rather than legal craftsmen. It does not train students to appreciate the importance of community goals and how to clarify them. There is need, however, to make legal education more broadly based. Every effort should be made to ensure that lawyers have some degree of sophistication in non-legal disciplines such as economics and other social sciences.

When addressing one's mind to the question of legal education one is faced with the problem of method and scope. On the one hand, there is urgency felt to provide training in the technique of the law and on the other, there is the question of degree to which attention should be given to the purposes of the law by way of training in social sciences. Law, being involved in every social relation, is in some sense an element of every social science, just as every social science is in some sense an element of law. It is wrong for the law teacher or student not to take a broad interest in the social issues. Good law is that which goes to the root of the matter. Lawmakers must understand the nature of the society for which the law is being made.

This is really a call for the lawyers in Africa to be more than legal mechanics, and understand the society in which they work and in which they can help to remold.

Changes to legal education to respond to the needs of the practicing profession and society are not new in history. Courses like administrative law were developed in the in the 1940s to provide students with an understanding of the role of administrative agencies as governmental activity grew and became central in many kinds of practice. Many law schools, beginning in the 1970s, introduced environmental law as a subject warranting separate treatment. The study of international commercial arbitration, international investment law, financial markets, technology and the law, human rights and many other subjects responded to the needs of the time. What has changed is the rapid pace at which the changes driven by technological advances and globalization of the world economy are happening.

There is also a need to promote systematic legal research in the many legal problems already mentioned and not least among which should be added the establishment of viable institutions to resolve the various political and social conflicts that pervade parts of Africa. Africa is in need of highly trained, broad minded and courageous lawyers to cope with the many challenges that confront it. Its township and squatter residents are impatient for improvement in their material well-being. Development anywhere in the world is, in a broad sense, a revolutionary process implying fundamental changes in society. *But, however,*

revolutionary the process of development may be, it is nonetheless a process that is intimately related to the legal structure of society. Institutions which are central to the wellbeing of people, freedom of the mind, ownership, trade, human rights and dignity are all dependent on a structure of law.

Conclusion

In conclusion, I would like to emphasize that the role of law and lawyers in Africa is seen here as to help the development process by understanding the social and economic matrix in which legal norms are essentially a super structure, and making the lawyers expert knowledge to bear on this process in order to make the norms more functional to the development process. It is also a necessary component of good governance. Governments are organized around institutions that are engaged in the delivery of goods and services and ensuring government accountability. Without effective and responsive institutions that are undergirded by sustained legal structures and behavioral norms that guide the actions of decision- makers governance and all its attributes will not be sustainable.

References

1. Burg Elliot, 1977. Law and Development: A Review of the Literature & a Critique of “Scholars in Self-Estrangement “ American Journal of Comparative Law, Vol. 25, No.3, 492-530
2. Brooks, C. 1998. Litigation and Society in England, 1200-996, in Brooks , Hambledon Press, 94-95
3. Caldwell, B. F. 2003. A Hayek, The Road to Seldom, Hayek paper back
4. Jacobs, J. 2015. International Development Patterns, Strategies, Theories & Explanations Modernization theory in Rostow’s Five Stages of Economic Development Widely Criticised (<http://www.e-education.psu.edu//128/node79>)
5. Freudenberer M & Miller D. 2010. Tenure, Governance, and National Resource Management ([https://and-links.org/issue-brief/teure-governance-and-natural Resource Management](https://and-links.org/issue-brief/teure-governance-and-natural-Resource-Management))
6. Ghai, Y. 1991. The Role of Law in the Transition of Societies: The African Experience, Journal of African Law, Vol. 35, 8-20
7. Gower L.C.B. 1967. Independent Africa: The Challenge to the Legal Profession, 102
8. ICJ. International Commission of Jurists, 1962 (<https://www.icj.org/about/congress>)
9. Kent R. 1999. One Zambia, One Nation: A Reprise, 8 Cornell Law Forum . 98

10. Lee Y.S. 2017. General Theory of Law and development, Cornell International Law Journal, Vol. 50: No.3, 415-472
11. Meek R.L, Raphael D.D. & Stein N.G. 1978. Lectures on Jurisprudence-Adam Smith, Oxford: Clarendon Press
12. Ndulo M, 2008. Trade, Law, and Economic Development, in Ndulo M & Kayizzi-Mugerwa (ed.) Cambridge Scholars publishing,
13. Ndulo, M, 2002. Legal Education in the Era of Globalization and Structural Adjustment, 20 Penn St. Int'l L Rev 487
14. Ocran T, 1984. The Rule of Law as the Quest for Legitimacy, in Ndulo M (ed.), 1984 Law in Zambia, 297-308
15. OHCHR 208, Remarks by the President of the Human Rights Council, 13 July, 2018 (<https://www.ohchr.org>)
16. Seidman, R. 1984. Law and Stagnation, in Ndulo M, (ed.)1984 Law in Zambia, 271-279
17. Schroeder, Jean 2009. Totem, Taboo and the Concept of Law: Myth in Hart and Freud, Washington University Jurisprudence Review, Vol. , issue
18. Summers 1984. Fuller on Legal Education, 34 Journal of Legal Education, 8
19. Trubek, D.M. 1972. Max Weber on Law and the Rise of Capitalism, Wis. L. Rev. 720
20. Trubek, D.M. 2016. Law and Development: Forty Years After “Scholars in Self-Estrangement, University of Toronto Law Journal, Vol.66 No. 3, 30-329
21. Wining W. 2001. A Cosmopolitan Discipline? Some Implications of Globalization for Legal education, Journal of Commonwealth Law and Legal Education, Vol... No. 1 December 2001, 9
22. Twining W. 1966. Legal Education in East Africa, British Institute Int'l & Comp. L. 5
23. Purdy R. 1984. The Zambian Judicial System, in Ndulo M 1984 Law in Zambia, East Africa Publishing House, Nairobi, 67-90
24. United Nations, Declaration of the High- Level Meeting of the 67th Session of the General Assembly on the Rule of Law at the National and International levels, 24 September 2012. Resolution A/RES/66/102
25. United Nations 2018. Economic Commission for Europe, Standards for Sustainable Development Goals, Geneva,
26. United Nations, 2015. Sustainable Development Goals, New York
27. UNHR, Annual Thematic Reports of the Special Rapporteur on the Promotion of Truth ,Justice, Reparations and Guarantees of non-Recurrence, (GA/68/23/08/2013 (A/68/345)

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