

The Chinese Defilement Case: Racial Profiling in an African “Model of Democracy”

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Abstract

The unprecedented prosecution of four men in Zambia in 2011-2012 for defilement of teenage prostitutes became a *cause célèbre* there and abroad. That was because the four men were Chinese. After enduring months of harsh imprisonment, a trial marked by multiple perjuries, misidentifications, lack of corroborative evidence, and intervention by Zambia’s Foreign Minister, who assumed their guilt, defendants were acquitted. The Chinese Defilement Case has nevertheless become a prominent example of a politically driven anti-Chinese discrimination in Zambia that includes denials of equal protection. It is also now an exemplar of the negative narrative of China-in-Africa that U.S. and U.K. political leaders and media have propounded globally. Through an analysis of the Chinese Defilement Case’s development, its relation to other denials of equal protection, and its anti-Chinese political context and consequences, the matter has shown to have implications well beyond the dysfunctional legal system in which it emerged.

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I. Introduction

In an 1870 essay, Mark Twain, inventor of the American novel and acerbic critic of racism, related the true tale of a white, Sunday-schooled, San Francisco boy arrested for “stoning Chinamen.” Twain listed many ways in which Chinese immigrants to California were persecuted. For example, Chinese miners had to pay a mining tax, while white miners were exempt. In addition, when whites stole in a mining camp, they were made to leave, while Chinese were hanged, and “whenever any secret and mysterious crime is committed, [whites] . . . go straightaway and swing [hang] a Chinaman.” Twain, who as a local journalist covered the incident, noted the boy would have learned from politicians and media that

a Chinaman had no rights that any man was bound to respect; that he had no sorrows that any man was bound to pity; that neither his life nor his liberty was worth the purchase of a penny when a white man needed a scapegoat . . . And, therefore, what could have been more natural than for this sunny-hearted boy, tripping along to Sunday school . . . to say to himself: ‘Ah, there goes a Chinaman! God will not love me if I do not stone him.’¹

Twain commented, ironically, on the part elites played in naturalizing anti-Chinese racism in the United States, yet it has been far from the only country where that process has occurred, either

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¹Mark Twain, *Disgraceful Persecution of a Boy*, THE GALAXY MAGAZINE, May 1870, available at <http://etext.virginia.edu/railton/onstage/playscripts/galaxy01.html>.

then or more recently. In the Southern African country of Zambia, an electoral democracy whose leading industry, copper mining, is dominated by foreign-owned firms, something similar has been underway. Due to politically-inspired anti-Chinese agitation that began in the mid-2000s, the denial of equal protection of the laws to Chinese migrants by the Government of the Republic of Zambia (“GRZ”) and by part of its citizenry, has now become the norm, as seen in actions taken since Zambia’s Patriotic Front (“PF”) government took power in September, 2011.

Six months after the 2011 elections, the U.S. State Department’s third ranking official, Undersecretary for Political Affairs, Wendy Sherman, visited the country. She noted that the PF had peacefully displaced two decades of rule by the Movement for Multiparty Democracy (“MMD”) and commended Zambia as “a model of democracy.”² The U.S. government in effect equated democracy in Zambia with open elections. Yet, the election resulted in major policy continuity between the PF and the MMD,³ the latter being “an extreme capitalist party”⁴ that practices primary commodity dependent neo-liberalism.⁵ Michael Sata, PF leader and the new President, is moreover far from a committed democrat.⁶ His government attempted to de-register the MMD,⁷ and is said to buy off of journalists with official posts,⁸ and its police stopped a rally by the United Party for National Development (“UPND”) despite a court order proscribing such action.⁹ Asked about his reputation for authoritarianism, Sata replied, “to be a parent, you must be authoritarian. If the Zambians want to succeed they must learn to work hard and should not expect to be treated with kid gloves.”¹⁰

Unlike the circulation of mostly like-minded elites, as seen in Zambia, the concept of equal protection of the laws is at the core of democracy. It is doubtless familiar to Undersecretary Sherman: the U.S. Constitution’s 14th Amendment, Section One states “no state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” The amendment was enacted to mitigate discrimination against ex-slaves, but its language offers to protect citizens and aliens. International law¹¹ and Zambia’s Constitution of 1996 have similar provisions.¹²

² Press Release, Embassy of the United States, Lusaka, Zambia, Under Secretary of State for Political Affairs Sherman Engages with Zambia (Mar. 7, 2012) available at <http://zambia.usembassy.gov/pr03072012.html>.

³ See PF Government Following the Development Plans of the MMD government-Chikwanda, LUSAKA TIMES, Apr. 5, 2012, <http://www.lusakatimes.com/2012/04/05/pf-government-development-plans-mmd-governmentchikwanda/>; Gray Soko, What Is the Difference?, LUSAKA TIMES, Apr. 25, 2012, <http://www.lusakatimes.com/2012/04/25/difference-2/>.

⁴ Michael Chawe, Walking a Tightrope: Sata Struggles for Balance, AFRICA REVIEW, Mar. 13, 2012, www.africareview.com/Analysis/Sata+tough+balancing+act/-/979190/1365390/-/y5un2k/-/index.html.

⁵ See generally GARTH MYERS, DISPOSABLE CITIES: GARBAGE, GOVERNANCE AND SUSTAINABLE DEVELOPMENT IN URBAN AFRICA 105-127 (2005).

⁶ See Doug Bandow, “Democracy in under Challenge in Zambia,” Forbes, Feb. 11, 2013 forbes.com/sites/dougbandow/2013/02/11/; “Reversing Zambia’s Democratic Gains,” *Business Day* (South Africa), Feb. 22, 2013; Louise Redvers, “Zambia Cracks Down on Freedoms,” *Mail & Guardian*, Jan. 25, 2013; Freedom House, “Freedom House Concerned about Electoral Violence in Zambia,” Feb. 28, 2013, <http://www.freedomhouse.org/article/freedom-house-concerned-about-electoral-violence-zambia>.

⁷ Nic Cheeseman, *Democratic Backsliding in Zambia*, DEMOCRACY IN AFRICA, May 16, 2012, <http://democracyinafrica.org/democratic-backsliding-in-zambia/>; *Court Throws Out PF Bid to Deregister MMD*, ZAMBIAN WATCHDOG, June 26, 2012, <http://www.zambianwatchdog.com/2012/06/26/court-throws-out-pf-bid-to-deregister-mmd/>.

⁸ Nse Udoh, *Zambia’s “Ukwa” No Longer a Laughing Matter*, ZAMBIA REPORTS, Apr. 16, 2012, <http://zambiareports.com/2012/04/16/zambia-ukwa-no-laughing-matter/>.

⁹ See *UPND Rally Fails to Take off as Police Seal off Venue*, LUSAKA TIMES, Sep. 9, 2012, <http://www.lusakatimes.com/2012/09/09/upnd-rally-fails-police-seal-venue/>.

¹⁰ Aislinn Laing, “Humiliating” Work as Victoria Station Porter Helped Michael Sata to be President, THE TELEGRAPH, Jan. 22, 2012, available at <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/zambia/9030905/Humiliating-work-as-Victoria-station-porter-helped-Michael-Sata-become-Zambias-president.html>.

¹¹ International Covenant on Civil and Political Rights art. 26, *opened for signature* Dec. 16, 1966, 999 U.N.T.S 171 (entered into force Mar. 23, 1976) available at <http://www2.ohchr.org/english/law/ccpr.htm>; African Charter of Human and Peoples’ Rights art. 3, *adopted* June 27, 1981, 21 I.L.M. 58 (entered into force Oct. 21, 1986) available at <http://www1.umn.edu/humanrts/instrree/z1afchar.htm>.

¹² CONST. OF ZAMBIA 1996 (as amended by Act No. 18 of 1996), art. 11, 23, available at <http://aceproject.org/ero-en/regions/africa/ZM/Constitution%20of%20Zambia%201996.pdf>

As the Undersecretary was praising the country's electoral democracy, a well-publicized violation of equal protection in Zambia was coming to a head. In what became known as the "Chinese defilement case," four workers who labored in mine construction at Zambia's Chinese state-owned CNMC Luanshya Mine, were arrested on November 26, 2011.¹³ Carpenter Liu Hongping was charged with defiling 14 or 15 year-old, Constance Mwansa.¹⁴ Bricklayer Zhu Xianjin, bricklayer Zhang Daliu, and electrician Yang Gangqiang, were accused of indecent assault (fondling) of 12 or 13 year old, Maureen Mukabanda.¹⁵

The girls had solicited Chinese workers outside the Bwafwano Club in Roan Township, Luanshya, Copperbelt Province, as they had done on earlier occasions with other customers. Prostitution had become rife in Luanshya's mining townships during a "decade of ruin" in the 2000s. In that period of "total misery," Luanshya Mine had been privatized, mismanaged and then closed, first, by the Indian Binani firm and then by the Swiss company, Enya. Before the mine's sale to China Non-Ferrous Metals Mining Co. ("CNMC") in 2009,¹⁶ Roan township became "a haven for prostitutes, copper thieves and drunken layabouts."¹⁷ Even wives of the town's ex-miners protested that their impoverishment had forced them into prostitution.¹⁸

The charges against the Chinese workers were not, however, about payment for sex, which is legal in Zambia.¹⁹ Moreover, "Zambian law does not expressly prohibit child prostitution [and] there is no definition in the Zambian legislation for child prostitution,"²⁰ even though most Zambian prostitutes are aged between 14 and 18.²¹ Rather, one Chinese ended up being charged with defiling a girl under the age of consent (16 years), punishable by up to 25 years in prison.²² The three others were charged with indecent assault (fondling), punishable by up to 15 years.²³ If

¹³ See *Four Chinese Charged with Defilement*, TIMES OF ZAMBIA, Nov. 30, 2011, <http://allafrica.com/stories/201111300628.html>.

¹⁴ Zambian Penal Code (ZPC) Section 138(1), Ch. 87, as read with Act 2 of 2011. Defilement is equivalent to "statutory rape," i.e. non-forcible sex with a person under the age of consent.

¹⁵ ZPC Code Section 137(1), Ch. 87, as read with Act 15 of 2005. Defendants "Final Defense Submission," s.d. typescript in author's possession: 4 notes that Constance Mwansa, testified both that she was 14 years old and born on Dec. 30, 1996, which would have made her about one month short of her 16th birthday at the time of the charged offense. See also "4 Chinese Charged with Defilement," LT, Nov. 30, 2011 (accusers are 15 and 13 years old). Mwansa's guardian also testified that she was born on Dec. 30, 1996. Final Defense Submission: 28.

¹⁶ "Muliashi Mine Opening: Is this the Rebirth of Luanshya?" *Zambia Guardian Weekly*, Mar. 28, 2012. CNMC owns in Zambia the Non-Ferrous Co. Africa (NFCA, Chambishi Mine), CNMC Luanshya Mine (CLM), Chambishi Copper Smelter (CCS) and Sino Metals Leaching Zambia (SMLZ); By 2009, CNMC had invested \$1.7b in Zambia. "Mainland Miner to List Zambian Copper Assets," *South China Morning Post* (SCMP, Hong Kong), Apr. 18, 2012. By the end of 2013, its total Zambia investment will be \$2.5b. "Chinese Mining Firm to List its Copper Assets in Hong Kong," *The Post* (TP Zambia), Apr. 18, 2012. Two much larger firms, Swiss-based metals giant Glencore's Mopani Copper Mine and UK/Indian Vedanta's Konkola Copper Mine, had invested \$2b and \$2.5b respectively by 2012. "Glencore Investment in MCM Reaches \$2b," TP, Apr. 16, 2012; "Government to Help Konkola Copper Mines Tackle High Energy Bills," TOZ, Apr. 6, 2012. In 2011 however, 54% of Zambia's copper was produced by Canadian firms First Quantum Metal and Barrick Gold at Kansanshi and Lumwana mines. "Canadian Mining Firms Happy with Zambia's Copper Boom," DM, Sept. 21, 2012.

¹⁷ Lewis Mwanangombe, *Chinese Underage Sex Scandal Sparks Emotive Debate*, INTER PRESS SERVICE (Jan. 31, 2012), <http://www.ipsnews.net/2012/01/zambia-chinese-underage-sex-scandal-sparks-emotive-debate/>.

¹⁸ Neo-Simutanyi, "Copper Mining in Zambia: the Developmental Legacy of Privatization," Institute for Security Studies, Paper 165, July, 2008: 8, www.iss.co-za/uploads/PAPER165.PDF.

¹⁹ "The Legal Status of Prostitution by Country, ChartsBin.com, 2010, <http://chartsbin.com/view/snb>.

²⁰ "Law Reform in Zambia," Children in Need Network, s.d., 2010?, www.chin.org.zm/articles.php?newsid=9.

²¹ MAPODE. *Children and Young Women in Prostitution, Pornography and Trafficking for Commercial Sexual Exploitation, Labour and Crime in Zambia* (Lusaka: MAPODE, 2004). Many countries where prostitution per se is legal do ban child prostitution. See, e.g., "44 Men Accused of Sex with Underage Prostitute," SCMP, Apr. 18, 2012 (since 2008, sex with a prostitute under 18 years is punishable in Singapore by up to seven years).

²² "Marrying off Young Girls is a Tradition Here," UN Integrated Regional Information Networks (UN IRIN), Dec. 20, 2010. The statutory minimum is 15 years at hard labor. See "Cobbler Jailed 15 Years for Defilement," DM, Apr. 21, 2012. Long sentences are common. See, e.g. "Mumbwa Man Jailed 20 Years for Defilement," DM, Apr. 12, 2012; Delphine Zulu, "Will Sex with a Virgin Cure HIV/AIDS?" *The WIP*, July 6, 2007, www.thewip.net/contributors/2008/07/will_sex_with_a_virgin_cure_hi.html (30 and 35 year sentences).

²³ Cobus van Staden, "China's Zambian Sex Scandal," ChinaAfrica Project, Feb. 11, 2012, www.chinaafricaproject.com/2012/02/chinas-zambian-sex-scandal/.

they had in fact committed these crimes, the accused were victimizers, but because their right of equal protection came to be violated, they also became victims.

Some three months after their arrest, the four Chinese workers were acquitted by a magistrate. Her opinion dwelt on police and prosecutorial incompetence²⁴ and did not discuss ethnic or political factors; yet, among the many hundreds of media-reported defilement cases in Zambia each year, none appear to involve prostitution.²⁵ The defendants were, thus, likely prosecuted because they were Chinese. Public intervention in the case by then-Foreign Minister Chishimba Kambwili also supports this assertion.²⁶ As MP for Luanshya's Roan constituency, where CNMC Luanshya Mine is located, Kambwili has long singled out Chinese for attack. In addition, as a cabinet minister, he demanded that the number of Chinese coming to Zambia be reduced and that Zambians replace Chinese workers.²⁷ Despite the magistrate's thorough rejection of the case and a lack of errors of law on which to base an appeal, the prosecutor announced the state would appeal anyway.²⁸ The prosecutor's decision to appeal likely reflects a political motive based on the defendants' ethnicity, which, as we will see, is consistent with the PF's history of anti-Chinese incitement.

The Chinese defilement case is about a denial of equal protection based on ethnicity or nationality, but it is also about Zambia's troubled system of justice.²⁹ It occurred in the context of longstanding China-Zambia ties; the two countries' substantial trade and investment relationship,³⁰ the embedding in Zambia of opportunistic anti-Chinese political demagoguery beginning in the mid-2000s³¹ and claims of a malign Chinese presence in Africa and the world. These factors make Zambia a frontline state in a perceived strategic rivalry in and about Africa between the West -- mainly the U.S. and U.K. -- and China, evidenced by top Western leaders taking China to task for its activities in Africa. For example, U.S. Secretary of State, Hillary Clinton, visited Zambia in 2011, and warned Africans against Chinese "neo-colonialism."³² In 2012 in Senegal, she also launched a "veiled attack" on China, averring that "the US was committed to 'a model of sustainable partnership that adds value, rather than extracting it' from Africa. Unlike other countries, 'America will stand up for democracy and universal human rights even when it might be

²⁴ On inadequacies in Zambian police work in defilement cases, see *Former Cop Advises Thorough Probing of Defilement Cases*, TP, Mar. 23, 2012.

²⁵ A reading of five leading Zambian news sources (DM, LT, TOZ, TP, ZW) from 2008-2012 revealed about one report of a defilement arrest every second day. No reports, other than the Chinese defilement case, involved child prostitutes.

²⁶ See *Kambwili Warns Foreign Nationals as 4 Chinese Workers are Arrested for Indecent Assault*, LT, Nov. 26, 2011. Kambwili was Foreign Minister from September 30, 2011 to January 12, 2012, Labor Minister from January 12, 2012 to February 3, 2012, and thereafter Sport and Youth Minister.

²⁷ *Chinese Labor Force Coming into the Country should be Reduced: Kambwili*, LT, Jan. 25, 2012. Compare "Let's Reduce Expatriate Labor," DM, Jan. 19, 2012 (seeking reduced number of expatriates in mining, but without regard to nationality).

²⁸ *Chinese Men off the Hook in Defilement Case*, TOZ, Mar. 7, 2012; see also *The Director of Public Prosecutions is Untouchable: New LAZ President*, LT, June 4, 2011. According to Law Association of Zambia, "The DPP [Director of Public Prosecutions] . . . exercises discretion whether to appeal or not;" The 14-day period for appeal passed however without any filing by the DPP. Interview, Eric Silwamba, lead counsel for defendants, Lusaka, Aug. 18, 2012.

²⁹ AFRICAN HUMAN SOCIETY INITIATIVE, *THE CRIMINAL JUSTICE SYSTEM IN ZAMBIA: ENHANCING THE DELIVERY OF SECURITY IN AFRICA*, (2009), available at http://mercury.ethz.ch/serviceengine/Files/ISN/104312/ipublicationdocument_singledocument/1c12eebb-ea77-4a31-b9f1-709a1350e2dc/en/M159FULL.pdf.

³⁰ According to China's Ambassador to Zambia, in 2011 Chinese firms' stock of investment in Zambia was US \$3.4b and investment-plus-trade equaled \$5.5b. *China/Zambia Economic Relations with Zhou Yuxiao*, ABN DIGITAL, June 19, 2012, <http://www.abndigital.com/page/multimedia/video/beyond-markets/1229383-ChinaZambia-Economic-Relations-with-Zhou-YuXiao>.

³¹ See Joanne Wagner, "Going Out: Is China's Skillful Use of Soft Power in Sub-Saharan Africa a Threat to U.S. Interests?," JOINT FORCES Q. 64 (2012), available at <http://www.ndu.edu/press/chinas-use-of-soft-power.html>. ("China-bashing was a significant part of Sata's electoral platform and his rhetoric may well have been part of playing to the crowds.")

³² Matthew Lee, *Clinton Warns Africa of 'New Colonialism'*, HUFFINGTON POST, June 11, 2011, available at http://www.huffingtonpost.com/2011/06/11/hillary-clinton-africa-new-colonialism_n_875318.html. For a critique of claims of Chinese neo-colonialism in Africa, see generally Barry Sautman and Yan Hairong, *East Mountain Tiger, West Mountain Tiger: China, Africa, the West and Colonialism*, 186 MD SERIES IN CONTEMP. ASIAN STUD., no. 3 (2006), available at <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1185&context=mscas>.

easier to look the other way and keep the resources flowing.”³³ Similarly, in Nigeria, UK Prime Minister, David Cameron, argued that China’s authoritarian capitalism in effect subjugates Africans and negates Western aid and democracy promotion.³⁴

A Chinese analyst working for a German foundation has noted, “anything a Chinese firm does in Africa will be seen as representative of China as a whole. Anything a Chinese immigrant does in Africa will be seen as representative of all Chinese people.”³⁵ This is because politicians and the media disseminate invidious stereotypes about China and Chinese in Africa, especially in Zambia, because of the PF’s opportunism in local politics and the Western elite views of Zambia as a prime site of contention with China.³⁶

Moreover, while the PF, as ruling party, continues to deny Chinese equal protection, the MMD, in opposition, may also be taking up anti-Chinese cudgels, thus, duplicating the U.S.’s “long-standing trend in presidential elections for the candidate of the party in opposition to criticize the incumbent party for being ‘soft’ on China.”³⁷ Enoch Kavindele, Zambia’s Vice President from 2001-2003, and candidate for MMD president in 2012, claimed “the PF has allowed the Chinese too much freedom to bring in workers from China at the expense of Zambians.” He also stated that a “huge number” of Chinese accompany to Zambia each Chinese investment,” and that “the Chinese workers are taking up the jobs which young Zambians need and are in most cases very qualified to take up.” He further stated, “when Europeans or American investors move into Zambia, they bring about 10 workers from countries of origin, but that the Chinese bring 300 for any small investment.”³⁸

Typical of Zambian politicians’ pronouncements on “the Chinese,” these assertions are uniformly faulty. Chinese find it hard to get work permits. For example, a Chinese owner of a construction firm in Lusaka has observed that

in order to protect its own labor market, Zambia has some restriction on hiring foreigners. Immigration Department has large discretionary power over work permits. This means they can decide whether or not to issue the permit and the number being issued. Some

³³ David Smith, *Hilary Clinton Launches African Tour with Veiled Attack on China*, THE GUARDIAN (UK), Aug. 1, 2012, available at <http://www.guardian.co.uk/world/2012/aug/01/hillary-clinton-africa-china>.

³⁴ Jason Groves, *Cameron Warns Africans over the ‘Chinese Invasion’ as They Pour Billions into Continent*, DAILY MAIL (UK), July 19, 2011, available at <http://www.dailymail.co.uk/news/article-2016677/Cameron-warns-Africans-Chinese-invasion-pour-billions-continent.html>.

³⁵ Wang Xiaojuan, *Thorns in the African Dream (2)*, CHINADIALOGUE, Jan. 31, 2012, www.chinadialogue.net/article/show/single/en/4749. Another analyst has written of how in Zambia “the perception of a China Inc. has been shown to create a serious risk for Chinese strategic interests.” *Sata Wins, Changes for China*, CHINA AFRICA NEWS, Sept. 2011, www.chinaafricanews.com/index.cfm?fa=contentGeneric.Gvevbbbjwvhjauiw&pageId=4680992. Kambwili told managers at Chinese-owned CLM that “some people” conflate the activities of Chinese firms and if one has done something wrong “they will just think it is a Chinese company and that will paint a bad image about you.” *Luanshya Copper Mines has Produced Copper Valued at \$12m since Inception*, TP, Apr. 13, 2010. Foreign politicians who visit Zambia often fix on the Chinese presence. For example, in April, 2012, six German MPs who met with Foreign Minister Given Lubinda, “were particularly interested to know the relationship between Zambia and China . . .” *Lubinda Courts German Investors*, TOZ, Apr. 19, 2012.

³⁶ Zambian media have featured Western media negative characterizations of China and Chinese and, in some instances, make such representations even more negative. For example, in 2012, the popular Zambian news aggregator Tumfweko reproduced a CNN story about racism against Black people in China that showed its existence, but also showed that its manifestations were comparatively mild and may be ameliorating. It supplied its own headline however: *see CNN: Chinese Hate Black People*, July 24, 2012, available at <http://tumfweko.com/2012/07/24/cnn-chinese-hate-black-people/>.

³⁷ Christopher Freise, *The 2012 US Presidential Race: Impact on US Policy on China and Southeast Asia*, RSIS Commentary no. 118, July 9, 2012.

³⁸ *Kavindele Says Too Many Chinese are Taking Jobs Meant for Zambians*, ZW, June 4, 2012; *Kavindele Says Zambians Losing Jobs to Chinese Workers*, ZR, June 4, 2012. Kavindele, who some account to be Zambia’s third richest man, was in a dispute in 2011 with the Chinese state-owned copper mining company Non-Ferrous Company Africa (NFCA) over a demand he had made for US\$350m in compensation for supposed sub-surfaced rights he owned to 2,000 hectares of land that NFCA planned to mine. Daniel Kalomobo, “Who is Zambia’s Richest Man?” Answers, 2012, http://wiki.answers.com/Q/Who_is_Zambia's_richest_man; “Kavindele Seeks \$350m Compensation from NFC Africa,” TP, June 26, 2011.

positions, like accountant, secretary, administrator, are very difficult to get [a] work permit.³⁹

There are some 300 Chinese companies in Zambia, 80% of which are private and employ 25,000-30,000 Zambians.⁴⁰ The only Chinese companies with 300-plus Chinese at their operations are three of the four CNMC mining firms. As of Dec. 31, 2011, NFCA had 388 Chinese and 3,045 Zambians; CLM had 458 Chinese and 4,431 Zambians; CCS had 347 Chinese and 1,648 Zambians; and SMLZ had 47 Chinese and 352 Zambians. There were thus a total of 1,240 Chinese and 9,476 Zambians at the four CNMC firms. Chinese were 134.1% and Zambians 86.9% of the 10,716 total. Yet, among the just over 8,000 long-term (i.e. non-mine construction) CNMC employees, only about 500 (6.3%) are Chinese.⁴¹ If CNMC employees in Zambia *in strictu sensu* are considered, as of June 30, 2012, there were 6,194 employees, of whom 379 (6.1%) were Chinese and 5,815 were Zambians.⁴²

There are many more than ten non-Zambians at European-owned firms. For example, in 2012 at FQM's Kansanshi Mine, there were "around 3,000 employees, excluding contractors . . . and around 200 [were] expatriates."⁴³ It is also of interest that a 2008 survey of 30 Zambian managers/professionals at five (non-Chinese) foreign-owned copper mining firms found that all but one answered "no" to a question about whether expats employed at their firm were qualified to occupy their positions. All but one answered "yes" to a question asking whether there were indigenous Zambians capable of occupying these positions. All but one agreed that "the labor practices of the foreign companies are irregular in that there seems to be no careful scrutiny on award of job permits to foreigners."⁴⁴

Based on a plethora of empirical errors, misconceptions, and invidious stereotyping, in Zambia, the actions of Chinese firms and individuals receive heightened scrutiny and disparate treatment, and are often subject to equal protection violations - now exemplified by the Chinese defilement case. In what follows, we examine the PF's anti-Chinese incitement, as carried out by its President Michael Sata and Secretary General Guy Scott, who are now Zambia's President and Vice President, as well as by MP and cabinet minister Chisimba Kambwili. We then detail the Chinese defilement case and the reaction to it. Finally, we consider the case's implications for development of anti-China sentiment in the context of the larger, Western-promoted negative narrative of China-in-Africa. As the latest Zambia-based, globally-circulated, disparaging

³⁹ Jackson Zhang, *Mister Xin WANG, '03, CEO of Astor Investments Ltd. Talks about His Experience and Opportunities in Zambia*, RENSSLAER IN CHINA, Feb. 27, 2012, <http://gcbc.union.rpi.edu/stories/mr-xin-wang-ceo-of-astor-investments-limited-talks-about-his-experience-and-opportunities-for-chinese-companies-in-zambia/>.

⁴⁰ *Ibid*; see also *Not as Bad as They Say*, *ECONOMIST*, Oct. 1, 2011; see also *Zambia-China Ties Must Deepen*, *TOZ*, July 28, 2012.

⁴¹ *Web Proof Information Pack of China Nonferrous Mining Corp. Ltd.*, June 29, 2012: 185, III-148-150, iis.aastocks.com/20120629/001454807-0.PDF.

⁴² CHINA NONFERROUS MINING CORP. LTD, 2012 INTERIM REPORT 25 (2012), available at http://m.todayir.com/todayirattachment_hk/chinanonferrous/attachment/20120914170201001503963_en.pdf. See also "Luanshya Revival, Result of a Visionary Govt," *TOZ*, May 16, 2011 (CLM has 2,509 employees, of whom 42 are expats).

⁴³ "Working and Living on Kansanshi," First Quantum Minerals, 2012, www.first-quantum.com/Careers/our-locations/zambia/working-and-living-on-kansanshi/default.aspx. At Canadian-owned Lumwana mine, there were "more than 2,000 unionized employees" in 2012. "Barrick Gives Lumwana Workers 18% Increase," *Market Watch* (Wall Street Journal), <http://www.marketwatch.com/story/barrick-gives-lumwana-workers-18-pay-increase-2012-02-07>. While the number of expats was unclear, it was known that Lumwana was in the process of recruiting 250 expats. Rodl & Partner, "Sub-Saharan Projects Newsletter, Sept. 2012 :9, http://www.pd-promex.it/LinkClick.aspx?fileticket=qF8FsIq_fYA%3D&tabid=82&language=it-IT. A 5% or higher proportion of expatriates is not uncommon at foreign-owned enterprises in Zambia. See, e.g., *New 4 Star Hotel to be Built in Lumwana*, *TOZ*, Sept. 27, 2011 (5% of 438 employees at foreign-owned hotel are expatriates). The CEO of the Switzerland-based firm that formerly owned Luanshya mine also has commented about the mining industry that "There definitely is the inclination to employ expats where you actually have the skills in Zambia." JOHN LUNGU & ALASTAIR FRASER, *FOR WHOM THE WINDFALLS: WINNERS AND LOSERS IN THE PRIVATIZATION OF ZAMBIA'S COPPER MINES*, Civil Society Trade Network of Zambia, 2008: 57, available at <http://www.sarpn.org/documents/d0002403/index.php>.

⁴⁴ Chimanga Ngosa, thesis, *The Preference for Foreign Expertise by Foreign Direct Investors Vis-à-vis the Laws of Zambia: a Case Study of the Mining Industry*, 32 *COPPERBELT UNIVERSITY* 41, (2012).

discourse of China and Chinese in Africa,⁴⁵ the case is now part of the ideational structure of perceived strategic rivalry between the West and China in Africa.⁴⁶

II. Background to the Case: the PF in Opposition (2001-2011) and anti-Chinese Incitement

Despite, or perhaps because of, its half-dozen years of anti-China/anti-Chinese incitement, the U.S. and U.K. welcomed the PF's coming to power in 2011. That may seem odd because, before they turned to attacking "the Chinese," top PF leaders had endorsed several ideas and persons much disapproved of by the US and UK governments and Sata and Scott still have friendly relations with a U.S./U.K. bête noire, Zimbabwean strongman Robert Mugabe.⁴⁷

From 1991-2001, future PF head Michael Sata held several ministerial posts in the MMD government. In the last few of those years, he was at times critical of some U.S. policies. In 1999, Sata termed the U.S. "a monster that surrounds Cuba." Zambia's parastatals, including most mines, were then being sold off under orders of the International Monetary Fund ("IMF"), World Bank and other Club of Paris lenders. Sata said "Zambia's economy was in near-shambles because of the U.S. and its Western allies introducing new demands whenever there was slight progress on privatization and other economic benchmarks."⁴⁸ In 2001, after the IMF's representative in Zambia announced that the country would not receive one billion dollars in debt relief unless the Zambian National Commercial Bank was privatized, Sata stated that "Zambia cannot capitulate to the threats of the United States."⁴⁹ As MMD national organizing secretary, he also accused the U.S. and U.K. of financing the opposition.⁵⁰

In opposition, in 2003, Sata denounced the war in Iraq, as did Zambia's MMD government.⁵¹ In the early-to-mid 2000s, Sata praised Robert Mugabe for "taking back what belongs to Zimbabweans" (i.e. seizing land from white farmers).⁵² Sata said that despite U.S./U.K. claims about victimizations, "Mugabe is doing very well" and "[t]he struggle for Zimbabwe should be an example for every African country that wants to survive."⁵³ He described Mugabe's opponents in Zimbabwe's Movement for Democratic Change ("MDC") as a "harem of Western agents" and

⁴⁵ Other Zambia-based, negative Western discourses of "the Chinese" generalized to Africa are about an explosion at the Chinese-owned BGRIMM dynamite factory in 2005 that killed 46 Zambians and the 2010 wounding by shooting of 13 stone-throwing Zambian miners by Chinese supervisors at the privately-owned Collum Coal Mine (CCM). See, e.g., Howard French, *In Africa, an Election Reveals Skepticism of Chinese Involvement*, THE ATLANTIC, Sept. 29, 2011, www.theatlantic.com/international/archive/2011/09/in-africa-an-election-reveals-skepticism-of-chinese-involvement/245832/; see also Sonaskshi Madan, Neo-Colonialism: a New Spell of Colonialism in Africa," YOUTH KI AWAZ (India), July 29, 2012, <http://www.youthkiawaz.com/2012/07/neo-colonialism-a-new-spell-of-colonialism-in-african-nations/>. Barry Sautman and Yan Hairong analyze the BGRIMM explosion in a book manuscript in progress *Red Dragon, Red Metal: China in Zambia's Copper Industry* and the CCM shootings in "Bashing 'the Chinese': Contextualizing Zambia's Collum Coal Mine Shooting," article forthcoming in the *Journal of Contemporary China*, 2014.

⁴⁶ A US academic has said the US mainly competes with China through programs to influence young Africans' thinking: "At top diplomatic levels, the US worries about resource-hungry China's deep investments in Africa. The Chinese are building literal bridges, but the metaphorical bridges the US builds provide a critical counterbalance in the battle for the hearts and minds of millennial generations in Africa and elsewhere in the developing world." Thomas Schaller, *Seeking to Influence a Youthful World*, BALTIMORE SUN, June 27, 2012; see also *My Head Says China is Number One, My Heart Always Says America*, NBC NEWS, June 27, 2012, http://worldnews.msnbc.msn.com/_news/2012/06/27/12422593-my-head-says-that-china-is-number-one-my-heart-always-says-america?lite. There is also a military aspect. See Nick Turse, *Obama's Scramble for Africa*, HUFFINGTON POST, July 12, 2012, www.huffingtonpost.com/nick-turse/obamas-scramble-for-afric_b_1667926.html.

⁴⁷ *Sata Condemns Sanctions against Zimbabwe*, ZAMBIA REPORT, Apr. 27, 2012, <http://zambiareports.com/2012/04/27/sata-condemns-sanctions-against-zimbabwe/>; see also *Sata Right on Mugabe: Lubinda*, DM, June 6, 2012.

⁴⁸ *Sata Denounces US Blockade of Cuba*, TP, Oct. 6, 1999.

⁴⁹ *Privatization will be Over Zambians' Dead Bodies Warns Sata*, TP, Dec. 9, 2002.

⁵⁰ *UNIP Dismisses Sata's Outbursts over Donors*, TP, June 25, 2001.

⁵¹ *We Can't Fold Our Hands Over Iraq: Sata*, TP, Mar. 26, 2003; *War in Iraq is Evil, Charges Kavindele*, TP, Apr. 3, 2003.

⁵² *King Cobra' Praises Mugabe's Land Grab as Zambians Vote*, INDEPENDENT (UK), Sept. 29, 2006.

⁵³ *Sata Salutes Mugabe*, TP, Apr. 17, 2004.

"paid foot soldiers of the anti-Zimbabwe crusade" who "earn breadcrumbs by selling out on their birthright, against Zimbabwe's national interests . . . at the behest of their Western paymasters."⁵⁴ Sata urged Africans to "join hands and launch strong protests against attempts by the west to recolonize Zimbabwe."⁵⁵ He lauded Cuba for standing up to imperialists by defying the U.S.⁵⁶ and being "determined to ensure democracy for mankind"⁵⁷ and said, "[i]f Zambia has to develop we need to behave like Saddam Hussein, Fidel Castro, Muammar Gaddafi and Robert Mugabe."⁵⁸

From the mid-2000s, however, as he increasingly incited Zambians against "the Chinese," Sata strove to make himself acceptable to the U.S. and U.K., countries that the PF sees as an alternative to China and as major aid donors. The PF increasingly contrasted a benevolent West with a malign China. After a process extending over more than five years, PF Secretary General Wynter Kabimba could declare in 2012 that his government was now more closely aligned with the West than the preceding government had been and that "the PF had managed to win donor confidence which had waned under the MMD regime."⁵⁹ When former U.S. President George W. Bush visited Zambia that year, Sata praised him "for having cared for Africa during his tenure in office,"⁶⁰ despite the common and wide-ranging criticisms made of Bush's Africa policies during his administration.⁶¹

In the 2006 elections, Sata said that, in contrast to China, the European, U.S., Indian, and Japanese governments had done "tremendous work in Zambia."⁶² In 2007, he averred

[w]e want the Chinese to leave and the old colonial rulers to return . . . They exploited our natural resources too, but at least they took good care of us. They built schools, taught us their language and brought us the British civilisation. . . at least Western capitalism has a human face; the Chinese are only out to exploit us.⁶³

Just before the 2008 elections, Sata commended Britain for enhancing good governance in Zambia.⁶⁴ Sata was praised, in turn, by a prominent conservative U.K. journalist, who defended British colonialism and voiced approval of Sata's anti-Chinese campaign.⁶⁵ It was alleged in 2011 that Britain's Department for International Development ("DFID") indirectly assisted the PF, by funding forums of the Press Freedom Committee of The Post, an NGO that is open only to employees of the Zambian newspaper most tightly associated with the PF.⁶⁶

Soon after his 2011 electoral success, Sata stated his special appreciation for support received from Britain. He told a U.K. journalist that "Africa and Zambia in particular drifted away from the West for a long time and we have to reconcile." Sata added that "he is . . . keen to court British influence in Zambia as a counterbalance to the heavy Chinese presence."⁶⁷ Referring to two decades of MMD rule, he said that "most things had not gone right in the last 20 years as the

⁵⁴ *Zimbabwe Opposition Split on Mbeki*, NEWSZIMBABWE.COM, Aug. 16, 2007, www.newzimbabwe.com/pages/sadc16.16810.html.

⁵⁵ Chris McGreal, *South Africa Blames UK for Zimbabwe Crisis*, THE GUARDIAN (UK), Aug. 13, 2007, <http://www.guardian.co.uk/world/2007/aug/13/southafrica.zimbabwe>. Even after his election as President in 2011, Sata called MDC leader Morgan Tsvangarai a "Western stooge." Laing, *Humiliating Work*.

⁵⁶ *I'll Win if There's no Rigging, Says Sata*, TP, Sept. 28, 2006; *Chiluba is Still a Patient*, TP, July 8, 2006.

⁵⁷ *Mwanawasa Shouldn't Have Apologized to China: Sata*, TP, Sept. 4, 2006.

⁵⁸ *AAGM: EU has no Right to Demand SADC's Isolation of Zimbabwe, says Sata*, TP, Oct. 10, 2002.

⁵⁹ *It is the MMD and UPND that are in Opposition and not PF: Kabimba*, LT, Apr. 28, 2012.

⁶⁰ *President Sata Praises Former United States President George Bush*, LT, July 4, 2012.

⁶¹ See Raymond Copson, *The United States in Africa: Bush Policy and Beyond* (London: Zed Books, 2007).

⁶² *Zambia Doesn't Owe China Anything: Sata*, TP, Aug. 28, 2006.

⁶³ Andreas Lorenz and Thilo Thielke, *The Age of the Dragon: China's Conquest of Africa*, SPIEGEL, May 30, 2007, available at <http://www.spiegel.de/international/world/the-age-of-the-dragon-china-s-conquest-of-africa-a-484603.html>.

⁶⁴ *Sata Hails British Government*, DM, Aug. 1, 2008.

⁶⁵ Peter Hitchens, *In China 5000 People Die and There is Nothing; in Zambia 50 People Die and Everyone is Weeping*, SUNDAY MAIL (UK), Sept. 28, 2008. Himself a colonial-era policeman, Sata, in 2006 praised the colonial regime for looking after its police. *Chiluba Brought Rigging in MMD Says Sata*, TP, Mar. 20, 2006.

⁶⁶ *DFID Funding Sata Campaign*, TOZ, May 30, 2011.

⁶⁷ Laing, *'Humiliating Work'; see also Govt Salutes UK*, TOZ, Nov. 10, 2011.

country drifted away from the West to seek new friends” - a sarcastic reference to Chinese.⁶⁸ Guy Scott said that after the election, Zambians did not want to “remain static in ‘colonialism nonsense,’”⁶⁹ i.e. should not dwell on the lingering negative effects of British colonialism, while “the Chinese” “have a reputation for being somewhat . . . inhumane [and] are terrible managers.”⁷⁰ Sata’s courting of Western elites included an address in Geneva to an organization of Swiss investors in Africa in which he stated that “[we] cannot do without [Chinese] investment because they even invest in rural areas. But we also need your investment because you are endowed with good brains.”⁷¹

Sata commended former U.S. President George W. Bush when the latter visited Zambia in late 2011,⁷² while his uncle, Finance Minister Alexander Chikwanda, described the U.S. as “a reliable ally.”⁷³ The now-opposition MMD complained that Kambwili’s Ministry of Foreign Affairs was spending huge sums at its embassy in the U.S.⁷⁴ Sata’s appreciation for the U.S. was noted by an ex-Bush Administration official and *Washington Post* columnist:

President Sata ran and won on a platform opposed to outsized Chinese influence. Upon taking office, his first diplomatic meeting was with the Chinese ambassador - whom he publicly excoriated for bad Chinese labor practices. Sata’s first public reception honored the [U.S.] Peace Corps and USAID - America’s aid agency.⁷⁵

Creating amicable relations with the U.S. and U.K. was a by-product of PF leaders’ anti-Chinese demagoguery. From 2005-2011, when the PF was the main opposition party, it engaged in continuous anti-Chinese incitement, especially around the 2006, 2008, and 2011 presidential elections.⁷⁶ Sata’s history of anti-Chinese politics were preceded, however, by more general attacks on several of Zambia’s ethnic minorities.

In 2001, during Sata’s first run for president, only a few hundred Chinese lived in Zambia. There was, however, a longstanding commercially-influential South Asian community and other small minorities, such as Lebanese and Jews. As MMD government Minister without Portfolio, Sata led an effort to change the constitution to allow a third term in office for President Frederick Chiluba, a move opposed even by most of Sata’s fellow cabinet ministers.⁷⁷ Sata singled out for attack three opponents of his effort: (1) independent MP Dipak Patel and (2) Agriculture Minister Suresh Desai - both Zambians of Indian descent, and (3) Simon Zukas, a Jewish hero of Zambia’s independence struggle, former MMD cabinet minister, and head of a small opposition party. Sata directed comments at Patel and Zukas that invoked their ethnicity. He said that “Zambia was for indigenous Zambians and not for foreigners,” “urged Zambians not to accept to be ruled by white men like Zukas again, [because] Zambians had fought white people to get independence and it

⁶⁸ *We Need Religious Cleansing: Sata*, TP, Oct. 12, 2011.

⁶⁹ *Could this Guy Become Zambia’s Next President?* THE NATION (Kenya), Oct. 7, 2011; see also David Scott, *White Vice-President of Zambia Hails Country’s New ‘Cosmopolitan’ Era*, GUARDIAN (UK), Oct. 5, 2011, <http://www.guardian.co.uk/world/2011/oct/04/guy-scott-zambia-vice-president>.

⁷⁰ Lucy Bannerman, *Dr. Scott, I Presume*, THE SPECTATOR (UK), Mar. 10, 2012, available at <http://www.spectator.co.uk/features/7699583/dr-scott-i-presume/>.

⁷¹ *Zambia Needs a National Airline: President Sata*, LT, June 9, 2012.

⁷² *Red Carpet Reception for Bush Despite Arrest Call*, THE NATION (Kenya), Dec. 2, 2011.

⁷³ *IMF to Provide Checks and Balances*, TOZ, Oct. 8, 2011.

⁷⁴ *State to Overhaul Labor Laws*, TOZ, Dec. 8, 2011.

⁷⁵ Michael Gerson, *The Killing Fields of Childhood*, TOWNHALL, Apr. 5, 2012, <http://townhall.com/columnists/michaelgerson/2012/04/05/something/page/full/>; see also *Sata Hopeful of Peace Corps’ Efforts*, TOZ, Oct. 22, 2011.

⁷⁶ Rohit Negi, *Beyond the ‘Chinese Scramble’: the Political Economy of anti-Chinese Sentiment in Zambia*, 27 AFR. GEOGRAPHICAL. REV. 41, 63 (2008); Alastair Fraser and Miles Larmer, *Of Cabbages and King Cobra: Populist Politics and Zambia’s 2006 Election*, AFRICAN AFFAIRS 106: 425 (2007): 611-637; Jessica Belk, *China’s Role in the Zambian Presidential Election: Africa’s Friend or Foe*, CHINA ELECTIONS & GOVERNANCE, Oct 28, 2011, <http://chinaelectionsblog.net/?p=18228>.

⁷⁷ Tim Butcher, *Thugs Help President of Zambia Keep Power*, TELEGRAPH (UK), May 1, 2001, <http://www.telegraph.co.uk/news/worldnews/1328745/Thugs-help-president-of-Zambia-keep-power.html>.

would be a mistake to vote for the same people again.”⁷⁸ Sata “cautioned Zambians of Asian origin to cooperate if they wanted to continue living in the country or to enjoy their stay.”⁷⁹

A U.S. journalist observed, “Zambia was one of the first African countries where the role of China and of Chinese people in the country became an explicit and potent political issue.”⁸⁰ By 2004, Sata was already starting to mention “the Chinese,” particularly in cultivating a political base among Zambian market traders. He told them that, “The MMD government is removing you from the markets and bringing the Lebanese and Chinese because they think you are fools.”⁸¹ In the run-up to the 2006 elections, Sata was said to have told a rally in Lusaka that, “he would deport investors of Lebanese, Chinese and Indian origin after he assumes office.”⁸² There were, at that time, about 6,000 Chinese in Zambia, a country of over 12 million, and the Chinese government had no program to send migrants to Zambia.⁸³ Sata, however, stated that China had made

Zambia a dumping place for human beings and that Zambia has become a province – no, a district -- of China The Chinese are the most unpopular people in the country because no one trusts them. The Chinaman is coming just to invade and exploit Africa. We need investors not infesters.⁸⁴

Sata promised that, if elected, he would switch relations from the People’s Republic of China to Taiwan.⁸⁵ His critics called Sata another Hitler or Idi Amin, the dictator who expelled South Asians from Uganda in the 1970s,⁸⁶ but Sata compared himself to Jesus wielding a *sjambok* (southern African leather whip) in the temple.⁸⁷

After the 2006 elections, Sata said, “Chinese investors have employed 20,000 dehumanized Zambian workers.”⁸⁸ He charged that in building a 41 sq. km. Multi-Facilities Economic Zone (“MFEZ”) in Copperbelt Province, “[the Chinese] will have their state within a state, and will truly

⁷⁸ *Sata is in Trouble Says Zukas*, TP, May 31, 2001.

⁷⁹ *Sata’s Outbursts Beneath Zambia’s Spirit: Zukas*, TP, June 1, 2001; *Rebuke Sata, Nawakwi Challenges Chiluba*, TP, June 5, 2001; *Sata Speaks Out Against Zukas*, TP, May 30, 2001; *One Zambia for Some of Us*, THE POST (LUSAKA), Mar. 26, 2001, <http://allafrica.com/stories/200103260360.html>; Sata charged that Patel was an Indian citizen, which the Indian government denied. *Patel is Not Our Citizen Says Indian Govt Official*, TP, Aug. 22, 2001. In 2010, Sata said “Simon Zukas is a second-to-none friend of this country [who] has sacrificed everything . . . to defend the poor of this country.” He did so because of Zukas’ critical stance toward former Pres. Frederick Chiluba, who by then had become Sata’s enemy. *Zukas’ Sacrifice for Zambia is Immense*, TP, July 31, 2010; *Ex-Zambian President Didn’t Violate Constitution, Says Aide*, VOA, Jan. 28, 2010.

⁸⁰ French, In Africa.

⁸¹ *Sata Needs to be Tamed, Says Nalumango*, TP, Aug. 17, 2004.

⁸² *Electoral Commission Summons PF President over Remark*, TP, Aug. 17, 2006.

⁸³ Interviews with Chinese in Zambia in 2007-2008. In contrast, there are as many as 50,000 whites living in Zambia. Jeffrey Gettleman, *An Exceptional Change, and Via the Ballot Box Too*, N.Y. TIMES, Nov. 1, 2011, <http://travel.nytimes.com/2011/11/01/world/africa/zambia-peaceful-after-president-hands-over-power.html?pagewanted=all>.

⁸⁴ *Zambia is Shorthand for What Can Go Wrong*, IRISH TIMES, Aug. 25, 2008; *Sata’s ‘Infesters’ Remark Offmark*, TOZ, Aug. 10, 2006.

⁸⁵ Sata affirmed Taiwan a sovereign state entitled to recognition and is said to have signed a memorandum of understanding with Taiwan business people in Malawi, indicating that in exchange for campaign funds, Sata’s government would recognize Taiwan. *My Trip to Malawi was Fruitful: Sata*, TP, Aug. 31, 2006; see also DEBORAH BRAUTIGAM, THE DRAGON’S GIFT: THE REAL STORY OF CHINA AND AFRICA 151 (2009). During the MMD’s bid for power in 1991, it used funds from Taiwan, but “the Cabinet that was formed by Chiluba after these elections rejected and defeated his maneuvers to get the Zambian government on the side of Taiwan against the People’s Republic of China.” *Double Standards*, TP, Aug. 26, 2006.

⁸⁶ *Sata is not Presidential Material, Insists KK*, TOZ, Sept. 16, 2006; *Zambia Opposition Chief Files Complaint Over Amin Comparison*, AFP, Sept. 17, 2006; Michael Wines, *Strong Challenge to Zambia’s President*, N.Y. TIMES, Sept. 29, 2006, <http://www.nytimes.com/2006/09/29/world/africa/29zambia.html>; *How Mwanawasa ‘Stole’ the Election*, ZIMBABWEAN INDEPENDENT, Oct. 2006; *Northern Alliance*, TP, Mar. 13, 2006; Neo Simutanyi, *Why I Won’t Vote for Sata*, TP, Sept. 25, 2006; *Issue-based Campaigns*, TP, Aug. 22, 2006.

⁸⁷ *Chiluba Brought Rigging in MMD, Says Sata*, TP, Mar. 20, 2006.

⁸⁸ *Sata Explains Why He Stayed Away from SADC Summit*, TP, Aug. 20, 2007.

be able to do as they please.”⁸⁹ Sata also said: “Zambia has become a labor camp. Most of the Chinese are prisoners of conscience. I want any investment but not Chinese human beings. Why should China have a development zone in Zambia? Where is the American development zone? Where is the British development zone?”⁹⁰

Sata averred that “China is not investing, they are just invading Zambia. They want to take over Zambia the way the British colonialists did before independence”⁹¹ He also stated that China’s “interest is exploiting us, just like everyone who came before . . . [t]hey have simply come to take the place of the West as the new colonizer of Africa.”⁹² Sata judged that “Chinese investment had not benefited Zambians at all,” as “Chinese investors were just plundering everything in Zambia,” and “[f]or every dollar, the Chinese bring one China man.”⁹³ Discussing CNMC, a Chinese mining firm in Zambia, one study has noted that Sata “has on several occasions threatened to expel the company if he is elected president, calling most Chinese investors in Zambia exploiters who brought the country no benefit.”⁹⁴ In a 2007 speech at Harvard University, Sata, without citing evidence, made a series of charges against CNMC, “the Chinese,” and the MMD for supposedly protecting them. He approved of the then-ruling, pro-independence Taiwanese leaders.⁹⁵ Sata continued to voice support for Taiwan independence at least until 2010.⁹⁶

PF Secretary General Guy Scott said the Chinese are “not here to develop Zambia, they’re here to develop China.”⁹⁷ He also stated that the Chinese do not care about workers’ safety and rhetorically asked where the benefit was from Chinese mining investment.⁹⁸ Scott constructed a racial hierarchy of “foreigners” in Zambia that backhandedly complimented colonialism and ranked contemporary mining investors. In Zambia, a country where most of the main mines have been run by “white” firms (Canadian, Swiss, Australian and South African), but where there is also one “Indian” and one Chinese mining firm: “People are saying: ‘We’ve had bad people before. The whites were bad, the Indians were worse, but the Chinese are worst of all.’”⁹⁹

Scott pronounced: “The Chinese are no longer welcome. They are seen as cheats”¹⁰⁰ that Chinese turn African governments into “client factions” and “[t]hey are out to colonize Africa economically.”¹⁰¹ Claiming there were 80,000 Chinese in Zambia, he said that “[p]eople are very angry with China’s investment in Zambia: they are paid poor salaries, they work under risky conditions . . . and this is why no one seems to be supporting them.”¹⁰² Scott presided over

⁸⁹ Lorenz and Thielke, *The Age*.

⁹⁰ *I’m not Ashamed to Deal with Taiwan says Sata*, MARAVI, Nov. 1, 2007, <http://maravi.blogspot.com/2007/11/im-not-ashamed-to-deal-with-taiwan-says.html>. There is no MFEZ run by an American or British firm. There is the Lumwana MFEZ, run by Canadian mining giant Barrick Gold. *Lumwana MFEZ Gets Water, Energy Facilities*, TOZ, Aug. 19, 2012. The GRZ plans for 15 MFEZ’s to exist by the end of 2015 (there are now six). “A Peep into the Economic Strategic Plan, 2011-2015,” TOZ, Apr. 18, 2012. Of course, one or more of these may be run by a US or UK firm.

⁹¹ “Zambian Opposition Leader Decries ‘Chinese Invasion’” TP, Feb. 12, 2007.

⁹² Lydia Polgreen & Howard W. French, *China’s Trade in Africa Carries a Price Tag*, N.Y. TIMES, Aug. 21, 2007, <http://www.nytimes.com/2007/08/21/world/africa/21zambia.html>.

⁹³ *Sata Condemns Chinese Investments in Zambia*, TP, July 5, 2007.

⁹⁴ Brian Chama, Brief, *Economic Development at the Cost of Human Rights: China Non-Ferrous Metal Industry in Zambia*, HUMAN RIGHTS 17:2 (2010): 1-6 (4). *see also Sata Visits Taiwan*, TP, Feb. 6, 2007.

⁹⁵ Michael Chilufya Sata, *Chinese Investments in Africa and Implications for International Relations, Consolidation of Democracy and Respect for Human Rights*, HARVARD UNIV. COMMITTEE ON HUMAN RIGHTS STUD., Oct. 24, 2007, / www.scribd.com/Zambian-Economist/d/13050037-Chinese-Investment-in-Africa-and-Implications-for-International-Relations-Consolidation-of-Democracy-and-Respect-for-Human-Rights-The-Case-of-Zambia.

⁹⁶ Interview with King Cobra,” Istorai, Sept. 12, 2010, www.istoriai.info/2010/09/interview-with-king-cobra/.

⁹⁷ *Chinese President Takes His African Tour to Copper-Rich China*, AP, Feb. 4, 2007.

⁹⁸ *China’s Goldmine*, GUARDIAN, Mar. 28, 2006.

⁹⁹ Chris McGreal, *Chinese Influx Revives Colonial Fears*, GUARDIAN, Feb. 9, 2007,

<http://www.guardian.co.uk/guardianweekly/story/0,,2007803,00.html>.

¹⁰⁰ *African Protests Show China that Investment Comes with Heavy Price*, THE TIMES (UK), Feb. 3, 2007.

¹⁰¹ Colin Freeman, *Africa Discovers the Dark Side of its New Colonial Master*, TELEGRAPH, Feb. 4, 2007, <http://www.telegraph.co.uk/news/worldnews/1541566/Africa-discovers-dark-side-of-Chinese-master.html>.

¹⁰² *Cold Reception for China’s President*, UN IRIN, Feb. 5, 2007.

Lusaka's mayor's suspension from the PF because she attended a reception for visiting Chinese President Hu Jintao.¹⁰³ In 2009, he wrote about how China has a "shocking record" on human rights and overvalues its currency in order to unfairly promote exports and inhibit imports, key ideas about China that the U.S. government promotes.¹⁰⁴

In the 2008 election season, Sata opined that "the Chinese are not here as investors, they are here as invaders . . . it is not only Zambia, it's the whole Cape to Cairo where the Chinaman is."¹⁰⁵ After the election, Sata continued his anti-Chinese incitement. During the 2006 election, he had condemned Chinese for operating shops at Lusaka's Kamwala Market.¹⁰⁶ In 2010, Sata said of Lusaka's Luburma market, built and run by a Chinese firm with a lease from the GRZ, that

Zambians should be the first ones to benefit from what is in their country and not Chinese. I am against them abusing our people, and that abuse can be seen through them occupying all the stalls . . . How can they take over the whole market and start selling things that Zambians can also sell. This is unacceptable and it has to change.¹⁰⁷

As with almost everything Sata has said about "the Chinese," the claim was inaccurate: Chinese hardly occupied all the market's stalls, as the cited article itself indicates.¹⁰⁸ In any case, Zambia's retail sector, like all other sectors, is open to full foreign participation.¹⁰⁹

When the GRZ considered asking Chinese to return as investors in the Mulungushi Textile factory, built by China and co-partnered with Zambia in the late 1960s, but shuttered by 2008,¹¹⁰ Sata ruled out inviting "the Chinese" back and said he would seek other investors,¹¹¹ even though regional PF heads backed Chinese investment in the plant.¹¹² After the 2008 election, when asked about foreign investors to develop Luapula Province, Sata responded "[w]e don't need to run to China to come and develop our country."¹¹³ He also said that Chinese and Malaysians (many of whom are ethnic Chinese) practiced "slave labor" in Zambia,¹¹⁴ and that "the China man is the rider, the African is the horse. The Chinese are the ones enjoying all the comfort."¹¹⁵ Sata judged that Chinese SOEs are not engaged in investment, but merely in corruption.¹¹⁶ In 2009, he asserted that "if 100 Chinese come, 20 of them are skilled and the other 80 are unskilled prisoners."¹¹⁷ That claim was picked up by the U.S. State Department, which, in a 2010 report, asserted without evidence that

¹⁰³ *PF Suspends Lusaka Mayor*, TOZ, Feb. 28, 2007.

¹⁰⁴ Guy Scott, *Chinese Crackers*, TP, Dec. 31, 2009. On US Government claims that China overvalues its currency, see Imad Moosa, *The US-China Trade Dispute: Facts, Figures and Myths* (Cheltenham, UK: Edward Elgar, 2012): 188-191.

¹⁰⁵ Ofeibe Quist-Arcton, *Chinese Built Zambian Smelter Stirs Controversy*, National Public Radio (NPR, US), July 31, 2008, www.npr.org/templates/story/story.php?storyID=93081721.

¹⁰⁶ *Zambia Needs a New Order: Sata*, TP, Sept. 28, 2006.

¹⁰⁷ *Shooting Sharpens Tensions with Chinese in Zambia*, AGENCE FRANCE PRESSE, Oct. 25, 2010. As in other countries in the region, Zambia has many small traders from African and South Asian countries. Sata's attack on "the Chinese" as traders was thus not a general argument about reserving retailing for Zambians.

¹⁰⁸ Inaccuracies in Sata and Scott's pronouncements about "the Chinese" are dealt with in detail in our work in progress, Barry Sautman and Yan Hairong, *Red Dragon, Red Metal: China in Zambia's Copper Industry*.

¹⁰⁹ All 33 sectors of Zambia's economy studied by the Investment Climate Advisory Services, including retail, are fully open to foreign investment. "Investing Across Borders 2010" (Washington: World Bank, 2010): 19.

¹¹⁰ Andrew Brooks, *Spinning and Weaving Discontent: Labour Relations and the Production of Meaning at Zambia China Mulungushi Textiles*, 26 J. of SOUTHERN AFR. STUD. 1, 113-132, (2010).

¹¹¹ *There will be no Polls in 2011: Sata*, TOZ, Oct. 20, 2008.

¹¹² Interview with Robert Mwewa, PF Treasurer for Copperbelt Province, Ndola, July 15, 2008.

¹¹³ *PF Retains Kanchibiya*, DM, Oct. 16, 2008.

¹¹⁴ *Sata Accuses China and Malaysia Investors of Slavery*, LT, Jan. 21, 2010.

¹¹⁵ *The China Man is the Rider, the African is the Horse: Sata*, TOZ, Dec. 18, 2009.

¹¹⁶ Howard French, *The Next Empire*, ATLANTIC, May, 2010, <http://www.theatlantic.com/magazine/archive/2010/05/the-next-empire/308018/>.

¹¹⁷ Quoted in Aaron Sikombe, *Should Trade between Africa and China be Regulated*, TUMFWEKO, Apr. 20, 2012, <http://tumfweko.com/2012/04/20/should-the-trade-between-africa-and-china-be-regulated/>.

[a]n increasing number of Chinese and Indian men recruited to work in Chinese or Indian-owned mines in Zambia's Copperbelt region are reportedly exploited by the mining companies in forced labor. After work hours, some Chinese miners are confined to guarded compounds surrounded by high concrete walls topped by electrified barbed wire.¹¹⁸

The PF opposed selling the shuttered Luanshya Mine to CNMC, although both major miners unions supported it.¹¹⁹ Kambwili noted that people in his Luanshya constituency “were being made paupers,” “can’t send their children to school,”¹²⁰ and “are now wallowing in abject poverty.”¹²¹ Yet, he was preoccupied with ensuring that Chinese did not run the mine. Kambwili “led a fierce opposition to the Chinese running the mine,”¹²² “appealed to government to source funds from the World Bank to run the mine,”¹²³ and “promised to look for an investor in the United Kingdom to take over Luanshya Mine.”¹²⁴ He stated that “the Chinese mine managers” are paying Zambians “slave wages,”¹²⁵ and “said the sale of the mine to [CNMC] would bring Luanshya to an end.”¹²⁶

After CNMC was tipped to buy the mine, but before it arrived there, Kambwili planned to organize a demonstration against the investors.¹²⁷ He stated that “[i]f the Mine [workers] Union of Zambia [were] going to support Chinese investors, [he was] not going to support them . . .” and vowed to continue speaking against Chinese running mines.¹²⁸

Once CNMC arrived in Luanshya, Kambwili complained about how “it was unfortunate that a picture had been painted that he was not for the idea of [CNMC] taking over the mines just because the company hailed from China.”¹²⁹ He continued, however, to attack “the Chinese,” (1) for failing to re-open the shuttered mine within a couple months of its purchase,¹³⁰ (2) about employment terms for CLM’s 1,700 re-hired and 600 newly-hired Zambian permanent and pensionable workers,¹³¹ and (3) for paying miners “peanuts,”¹³² including supposed salaries below Zambia’s minimum monthly wage of K419,000, or about \$100.¹³³ In early 2011, Kambwili attacked the government for “protecting and defending the Chinese” and said that he

¹¹⁸ *Compare Trafficking in Persons Report 2010: Country Narrative: Countries N through Z*, U.S. DEP’T. OF STATE, June 14, 2010, www.state.gov/g/tip/rls/tiprpt/2010/142761.htm with Yan Hairong and Barry Sautman, *Chasing Ghosts: Rumors and Representations of the Export of Chinese Convict Labor to Developing Countries*, 210 CHINA Q. 398-418(2012),

¹¹⁹ “Pastors Counsel Kambwili,” TOZ, Nov. 20, 2009.

¹²⁰ *Copper Loses its Shine and the Copperbelt its Jobs*, UN IRIN, Feb. 20, 2009.

¹²¹ Karin Bruilliard, *Global Woes Imperil African Nations’ Gains*, CHICAGO TRIBUNE, Mar. 29, 2009, http://articles.chicagotribune.com/2009-03-29/news/0903280375_1_global-crisis-african-nations-mine.

¹²² *Controversial Chinese Firm Given another Copper Mine*, INTER PRESS SERVICE, June 2, 2009.

¹²³ *Lumwana Intensifies Copper Production*, DM, Dec. 15, 2008.

¹²⁴ *Nesawu Counsels Kambwili*, TOZ, Apr. 15, 2009.

¹²⁵ *Punish Kambwili*, TOZ, May 7, 2009.

¹²⁶ *China’s NFCA will Take Over 85% Shareholding of LCM MARAVI*, May 9, 2009, <http://maravi.blogspot.com/2009/05/chinas-nfca-will-take-over-85.html>. In the end, many workers employed at the reopened Luanshya Mine and the nearby Mulyashi mine opened by CLM in 2012 were drawn from Kambwili’s Roan constituency. See “Mulyashi Mine Employs 1000 School-Leavers,” DM, Apr. 16, 2012.

¹²⁷ *MP up to No Good over LCM*, TOZ, Mar. 21, 2009.

¹²⁸ *Hands Off Mining, Mtayachalo Advised*, TOZ, Apr. 16, 2009.

¹²⁹ *Luanshya Police Warn Kambwili*, TOZ, May 12, 2009. An NGO, the National Initiative for Citizens Awareness (NICA) denounced Kambwili for opposing the sale of Luanshya Mine to a Chinese firm. *Tone Down Kambwili: Minister*, TOZ, May 14, 2009.

¹³⁰ *Kambwili Protest Calls Condemned*, TOZ, June 24, 2009. The MUZ criticized Kambwili’s call for a demonstration to demand the immediate re-opening of the mine, as mines that have been closed need substantial refurbishment to render them safe to work in. *Ibid.*

¹³¹ *Labor Laws Should be Revised*, TOZ, Jan. 8, 2010; *Luanshya Mine Refutes Kambwili Claims*, TOZ, Jan. 8, 2010; *Luanshya Copper Mines*.

¹³² *Kambwili’s Statements on Luanshya Mine Lack Merit*, TOZ, June 2, 2010.

¹³³ *LCM Dares Kambwili*, TOZ, Feb. 11, 2011. Kambwili presented no evidence of below-minimum wage salaries at CLM, a virtual impossibility given that the firm has a heavily unionized, permanent workforce.

had written to CLM managers to demand they increase workers' salaries by 100%.¹³⁴ He also criticized the government for awarding construction project tenders to Chinese firms.¹³⁵

In 2010, when China Development Bank ("CDB") provided a \$1B loan for Zambia's planned 600 MW Kafue Gorge Lower hydroelectric station, to be built by China's Sinohydro Corp., a firm then adding 360 MW to Kariba North Bank hydrostation,¹³⁶ Sata said the investment was "imaginary" and "[w]e have adequate facilities . . . [w]e don't need a new Chinese plant."¹³⁷ He also stated "he would send away Chinese workers from Zambia to leave room for Zambians to take up jobs, while shoddy investors would also be expelled."¹³⁸

Early in the 2011 election season, Sata told Danish journalists that "the Chinese bring excessive laborers, unskilled people, which is not the case with other Western investors," that non-Chinese mining firms "have invested a lot more than the Chinese," Zambia's buildings were all left by Westerners, while Chinese had not constructed a single building in Zambia, and that Chinese had come to Zambia "to seek refuge." Furthermore, Sata stated that Westerners developed everything in Copperbelt province, while "the Chinese have just come to sit in comfort. There isn't anything the Chinese have developed" and Chinese "export everything; what they leave is environmental deterioration." He added that, what Zambia earns from exports resulting from Chinese investment is paid out to Chinese, while with Westerners (presumably in the colonial era), "everything they sold came back to Zambia." Sata concluded, "the Chinese are very crafty," "extremely aggressive economically," live 60 to a room, and have "sprung out all over the world to protect their [economic] environment."¹³⁹ Close to the vote, he told an Al-Jazeera researcher, "the Chinese bring laborers to push wheelbarrows, which is wrong. They do not follow the minimum wage when they are paying their people. The Chinese have no conditions of service. They don't provide protective clothing. The list is endless."¹⁴⁰

The anti-Chinese agitation led by Sata and Scott has been consequential. The Chinese government complained that Western media exclusively cast the 2011 Zambia elections as a "referendum on China"¹⁴¹ and, indeed, anti-Chinese sentiment, as well as the MMD's failures, may have motivated many voters. A key result of anti-Chinese agitation was that Chinese in Zambia, from 2006-2011, were often kept on edge about whether they would be "chased" from the country¹⁴² and were subjected to continuous demonization, including by Western media.

¹³⁴ *Rupiah Banda Should Stop Protecting Chinese Nationals who Violate Zambian Laws*: MP, UKZambians, Jan. 20, 2012, www.ukzambians.co.uk/home/2011/01/20/rupiahs-banda-stop-protecting-chinese-nationals-violate-zambian-laws-mp/.

¹³⁵ *Government Defends Chinese Contractors*, TOZ, Oct. 1, 2009.

¹³⁶ *China Offers Zambia \$1 bn for Power Project*, LT, May 11, 2010. In return for the loan, the China-Africa Development Fund, controlled by CDB, will own shares in the hydrostation. "CDB Commits US\$1 bn to Development of KGL," TP, May 12, 2010. Some 2,000 workers will be employed in building it. "1bn Kafue Gorge Power Station Works to Begin Next Year," TOZ, Nov. 17, 2010. Power lines to rural Zambia are also being financed by the International Commercial Bank of China. "Zesco and ICB Sign Deal," LT, May 30, 2011.

¹³⁷ Peter Clotey, *Imaginary' Chinese Investment to Zambia Questioned*, VOICE OF AMERICA, May 11, 2010, www.voanews.com/english/news/africa/Imaginary-Chinese-Investment-to-Zambia-Questioned--93490454.html; see also *Zambia to Have another Power Plant Soon*, STEELGURU, Dec. 3, 2011, http://www.steelguru.com/metals_news/Zambia_to_have_another_power_plant_soon/239025.html (After Sata took power, his Energy Minister directed Sino Hydro, the firm doing the "unneeded" and "imaginary" power expansion to speed up its work.).

¹³⁸ *Sata's Ignorant: Liato*, TOZ, June 22, 2010.

¹³⁹ Transcript of Sata's Controversial Interview, LT, Mar. 22, 2011.

¹⁴⁰ King Cobra and the Dragon, ALJAZEERA, Jan. 5, 2012, www.aljazeera.com/programmes/peopleandpower/2012/01/20121484624797945.html.

¹⁴¹ Aislinn Laing, *Zambian Election a Referendum on China*, TELEGRAPH, Sept. 20, 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/zambia/8777317/Zambian-election-a-referendum-on-China.html>; see also Li Wentao, *West's Election Coverage Shows Anti-China Bias*, PEOPLE'S DAILY, Sept. 30, 2011, <http://english.peopledaily.com.cn/90780/7608939.html>.

¹⁴² See Terence McNamee et al., *Africa in their Words: A Study of Chinese Traders in South Africa, Lesotho, Botswana, Zambia and Angola*, BRENTHURST FOUNDATION, (2012), available at http://www.thebrenthurstfoundation.org/files/brenthurst_commissioned_reports/Brenthurst-paper-201203-Africa-in-their-

Sata's fulminations against "the Chinese" caused Hakainde Hichilema, leader of Zambia's third largest party, the UPND, to state that "attacks on Chinese nationals by a political party border on racial discrimination."¹⁴³ After his 2006 election defeat, Sata's followers sacked Lusaka and Copperbelt Chinese-owned shops,¹⁴⁴ with "numerous shops being vandalized and several Chinese traders being attacked."¹⁴⁵ In 2007, a high PF official said "the Chinese 'will not have it easy unless they change their ways' and warned that 'the people will rise.'"¹⁴⁶

Scott admitted in 2012, "anti-Chinese resentment among the unemployed and others in Zambia" includes "mild intimidation" and that due to "anti-orientalism," the Catholic Church "has had to send elsewhere priests from the Philippines who had been working in Zambia."¹⁴⁷ Soon thereafter, fifteen young men severely beat two Chinese on the streets of Luanshya, with the attack reportedly connected with resentment at Chinese being employed at CLM.¹⁴⁸ It was by no means the first attacks on Chinese in the Copperbelt. For example, in November 2009, Zambian miners striking at U.K./Indian-owned Konkola Copper Mine attacked Chinese construction workers, as well as the quarters of Indian managers and engineers.¹⁴⁹ In 2012, PF Secretary General Wynter Kabimba recognized that among "youth from Africa," there were "prejudices and stereotypes about China," but he ignored the PF's role in creating them.¹⁵⁰

The PF leaders' claims that Chinese firms bring over Chinese to perform work that Zambians could do -- claims without a reasonable basis, given the much higher costs of imported Chinese labor -- likely played a direct role in the defilement case. The accused were skilled Chinese craftsmen employed by 15MCC because it could not find Zambians with the skills and work pace required in mine construction. Chief defense counsel Eric Silwamba noted that

[i]n Luanshya, there was resentment at the Chinese over jobs. Some Luanshya people who wanted jobs at CLM had not gotten them The occupations of the defendants elicited hostility, as they were ordinary craft workers and some locals believed that Zambians could and should do their jobs. The situation was quite volatile [and] during the trial of defendants, life activities in Luanshya were at a standstill.

Defense counsel further opined that anti-Chinese sentiment in Luanshya influenced the police decision to carry out arrests of clients of prostitutes, unprecedented in Zambia, despite no reliable link between the arrestees and the crime. He averred that such sentiment underlay rulings by the magistrate: her denial of bail to defendants, ruling that they had a case to answer -- despite a poor police investigation, botched identification process, and the prosecution's failure to present corroborative witness testimony -- as well as her *sua sponte* decision to call additional witnesses after the accusers' self-discrediting in open court.¹⁵¹

Words-A-Study-of-Chinese-Traders.pdf. More than half of a sample of Chinese traders in Zambia surveyed in 2011 named "policy toward foreigners" as a major problem they had experienced there. *Ibid* at 37; Interview, Chinese Ambassador Zhou Yuxiao, Lusaka, Aug. 3, 2012.

¹⁴³ *Attacks on Chinese Border on Racial Discrimination*, TOZ, Nov. 1, 2007.

¹⁴⁴ Amos Malupeng & Brighton Phiri, *Sata Visits Taiwan*, TP, Feb. 6, 2007; see Negi, *supra* note 76, at 48; *Not all Charmed by China's Desperate Scramble for Africa*, SUNDAY TRIBUNE (S. Africa), Sept. 2, 2007.

¹⁴⁵ See McNamee, *supra* note 143, at 37.

¹⁴⁶ *China's Engagement of Africa: Preliminary Scoping of African Case Studies*, CENTER FOR CHINESE STUD. 159, (2007), available at www.ccs.org.za/downloads/RF_Paper_Final.pdf.

¹⁴⁷ Rowan Callick *Zambia's Test: to Bridge Gap with Chinese*, THE AUSTRALIAN, Mar. 31, 2012, <http://www.theaustralian.com.au/opinion/world-commentary/zambias-test-to-bridge-gap-with-chinese/story-e6frg6ux-1226314866613>. Scott assigned "anti-Orientalism" to the unemployed and claimed it is non-existent among top Zambian political elites, even though Sata, Scott and Kambwili have been its leading inciters.

¹⁴⁸ Zumani Katasefa, *Two Chinese Nationals Beaten by Unemployed Youths Languishing in the Streets*, UK ZAMBIANS, Apr. 12, 2012, www.ukzambians.co.uk/home/2011/04/12/zambia-chinese-nationals-beaten-unemployed-youths-languishing-streets/. Most posts to this article endorsed the attack.

¹⁴⁹ "Zambia KCM Launches Drive to Boost Skills of Local Miners," DOW JONES COMMODITY NEWS, Mar. 25, 2010, http://www.metal.com/newscontent/7633_zambia-kcm-launches-drive-to-boost-skills-of-local-miners.

¹⁵⁰ *China Vital for Africa's Development*, DM, June 19, 2012.

¹⁵¹ See Interview with Silwamba, *supra* note 27.

III. The PF in Power and Racial Profiling

After the PF attained power in September 2011, it displayed a desire to improve relations with China, as an important investment and trade partner.¹⁵² At a luncheon for Chinese investors in October 2011, Sata stated “when we were campaigning people were complaining about the Chinese and I promised that I will sort the Chinese out . . . [t]hey are also going to sort me out and so we are going to use them to develop.”¹⁵³ He joked, in February 2012 that, “[t]he Chinese of [former President and MMD head] Rupiah Banda are different to the Chinese of Michael Sata.”¹⁵⁴ Fackson Shamenda, then-Minister of Labor, Sport and Youth (now Minister of Information, Broadcasting and Labor) reportedly stated:

Chinese nationals living in Zambia should not be misled into believing that the government hates them and [does] not cherish their investment [and they] should not to [sic] listen to people peddling lies about the Government’s negative stance on Chinese investment in the country . . . Zambians loved the Chinese and that is why they often talked about them.¹⁵⁵

Even Kambwili, as Sport & Youth Minister, has had to allow a Chinese construction contractor to renovate Copperbelt Province’s Kitwe Playing Fields.¹⁵⁶

Yet, the PF in power continue to racially profile, with high officials singling out Chinese for condemnation, and then violating their right of equal protection. Guy Scott has continued to associate whites with being at the top of a racial hierarchy, and has stated that in Zambia, “[p]eople are nostalgic, not for exploitation and division, but for the standards of colonial times”¹⁵⁷

The main instance of racial profiling, however, has been the Chinese defilement case, in which then-Foreign Minister Kambwili intervened. Sata regards Kambwili as “one of his most trustworthy PF party stalwarts”¹⁵⁸ and also as one of its “radical people.”¹⁵⁹ Before he was made Foreign Minister, immediately after the PF came to power, Kambwili’s “foreign policy” experience was exclusively limited to his attacks on Chinese in Zambia.¹⁶⁰

¹⁵² See, e.g. *China Can’t Be Ignored: Mines Minister*, LT, Oct. 31, 2011; *Former President Kenneth Kaunda Arrives in Beijing*, TOZ, Nov 23, 2011.

¹⁵³ *Sata U-turns on China*, LT, Oct. 2011.

¹⁵⁴ *President Michael Sata Tries to Balance Investors Interests and his Populist Policies*, AFRICA-ASIA CONFIDENTIAL, Mar. 1, 2012.

¹⁵⁵ *Zambia Counsels Chinese Nationals over Misinformation*, IZAMBIA, Dec. 9, 2011, <http://www.izambia.co.zm/component/k2/item/10155-zambia-counsels-chinese-nationals-over-misinformation.html>.

¹⁵⁶ *Chinese Contractor Gets KPF Green Light*, TOZ, Mar. 9, 2012.

¹⁵⁷ See Smith, *supra* note 69.

¹⁵⁸ *Lusaka Welcomes Asia, Again*, AFRICA-ASIA CONFIDENTIAL, Feb. 29, 2012. Sata has valued Kambwili although the latter disobeyed him by participating in the PF-boycotted National Constitutional Conference. See *Roan MP Defies Party, Impresses MMD*, TOZ, Oct. 2, 2007. On Sata’s orders, the PF also reprimanded Kambwili for making tribalist comments in 2009. *PF Turns Heat on Kambwili*, TOZ, May 18, 2009. Kambwili was arrested and sentenced to 15 days imprisonment for provoking demonstrators who protested against these comments. *MP Arrested for Allegedly Disrupting Peace*, TOZ, May 27, 2009; *Caged Kambwili, Three Others Look to High Court*, TOZ, May 29, 2009; *Court Sets Kambwili Judgment Date*, TOZ, Feb. 19, 2010; *Court Jails Kambwili for Misconduct*, TP, Apr. 17, 2010.

¹⁵⁹ I’m not Ashamed. In 2009, Copperbelt PF MPs promoted the idea that PF youth regarded Kambwili as a possible replacement of Sata as PF head. *Copperbelt Cadres Want Conversion*, TOZ, May 2009.

¹⁶⁰ In the PF’s early years, Kambwili was in charge of labor and then mining. See *Suspended MMD Chairman has Joined PF*, TP, Apr. 6, 2003. He lived in the UK for a time. Sata told Kambwili to move back to Zambia after his election to parliament in 2006. *Sata Vows to Camp in Lupososhi with his MPs*, TP, Oct. 7, 2006. Kambwili was thereafter repeatedly called out by parliament’s Speaker for improprieties, such as interrupting debate and the annual Presidential address to parliament, almost coming to blows with another MP, lack of sobriety, and threatening and insulting other MPs. *MP Thrown out of Parley Session*, TOZ, Mar. 30, 2007; *Parliament to Probe Kambwili’s Conduct* Jan. 16, 2008; *PF MPs in Near Punch UP*, TOZ, Aug. 16, 2007; *Speaker Red Cards MP*, TOZ, Aug. 17, 2007; *Nalumongo Ejects Kambwili*, TOZ, Aug. 8, 2008; *Parliament Condemns Political Violence*, TOZ, Nov. 5, 2009; *Crude Language MPs Cautioned*, TOZ, Dec. 1, 2009; *PF MP Bashes his Party over Constitution*, TOZ, Oct. 2, 2010. In 2010, University of Zambia student leaders accused Kambwili of assaulting them at a TV studio where they were speaking on

In fall 2011 and winter 2011-2012, because of his actions against “the Chinese,” Kambwili enjoyed the support of leaders of the Mineworkers Union of Zambia (“MUZ”),¹⁶¹ the Federation of Free Trade Unions of Zambia (“FFTUZ”),¹⁶² and the Small-Scale Miners Association of Zambia (“SSMAZ”),¹⁶³ even though both major miners’ unions had clashed with Kambwili when the PF was in opposition.¹⁶⁴ That was likely because Kambwili could provide the MUZ with leverage in wage negotiations with CNMC mining firms¹⁶⁵ because, in 2010, Kambwili quarreled with the head of the FFTUZ’s rival, the Zambian Federation of Trade Unions (“ZFTU”),¹⁶⁶ and because the SSMAZ had sought, from CNMC and other mining firms, access for its members to mining concession areas and waste dumps.¹⁶⁷

Despite these endorsements, Kambwili has not been “pro-worker.” Over the objections of the National Energy Sector and Allied Workers Union (“NESAWU”), he proposed the national electricity company be split into small firms and sold to private investors.¹⁶⁸ Kambwili is also a businessman who owns eight firms. Some Kambwili’s firms supply goods and services to mines.¹⁶⁹ In 2009, Chinese-owned CLM awarded Kambwili’s firm, Roan Bread, a contract to supply “Maheu drink;” another Kambwili firm got a contract to install equipment. After Kambwili’s firms got contracts, and despite having earlier accused Chinese managers of paying “slave wages to miners,” Kambwili “said he was overwhelmed by the huge investment CLM had brought into Luanshya even before beginning production of copper” and “that apart from the huge investment, he was impressed with the salaries the miners were getting.”¹⁷⁰ In 2011, scores of workers from his Mwamona Engineering firm claimed Kambwili had reduced their salaries by 35%, and then dismissed them without paying legally-mandated termination benefits. Kambwili related that he had fired the workers for striking over the pay reduction and called them “thieves.” The fired workers’ spokesperson commented: “[w]e cannot believe that a man who strongly condemns Chinese investment in Zambia can treat us like this.”¹⁷¹

Since the PF took power in 2011, Chinese have been singled out for criticism in the defilement case, but also in other incidents detailed below: as Labor Minister, Kambwili threatened to deport a Chinese chief medical officer at a hospital for being “rude” to him. Two successive PF Ministers of Mines, Fackson Shamenda and Wylbur Simusa, singled out for condemnation Chinese mining firms’ labor practices. Deputy Minister of Labor Rayford Mbulu criticized CNMC’s Chambishi

a panel. “Kambwili, Others Storm *MUVI Studio, Threaten Violence*, TOZ, Jan. 21, 2010; *Lusaka Police Warn, Caution Kambwili*, TOZ, Jan. 26, 2010; *Kambwili Probe Handed over to DPP*, TOZ, Feb. 1, 2010.

¹⁶¹ *MUZ Backs Kambwili’s Stance on Investors*, TP, Feb. 5, 2012.

¹⁶² Lyson Mando, *Yes, Continue Speaking for Workers, Kambwili* ALLAFRICA, Feb. 4, 2012,

<http://allafrica.com/stories/201202060242.html>; *President Sata Moves Labour Portfolio to Ministry of Information and Broadcasting with Immediate Effect*, LT, Feb. 3, 2012.

¹⁶³ *Kambwili’s Stance on Chinese Investors is Timely, says Njovu*, TP, Feb. 2, 2012.

¹⁶⁴ *Kambwili Rantings Senseless: Miners Unions*, TOZ, Feb. 2, 2010. Kambwili had accused miners unions of supporting the MMD government. *Mwale Parries Kambwili’s Bribery Claims*, TOZ, Apr. 21, 2009.

¹⁶⁵ Pro-Sata, anti-Chinese ideology may play a role among union leaders as well. A union leader told the London-based analysts of *Africa-Asia Confidential* that “I do not regard the Chinese nationals as investors. What have they invested in so far? Shops in Kamwala, selling fake products and construction companies which send money they make back to China?” President Michael Sata Tries. Chinese copper mining firms however have invested more than \$2b of the \$5b in foreign direct investment in mining from 2000-2012, according to the Chamber of Mines of Zambia. *Extra Tax on Mines Unlikely*, SUNDAY TIMES, Apr. 1, 2012. Guy Scott has said that “about 10 percent of [foreign direct] investments [in Zambia] comes from China;” *China Key Economic Player*, DM, May 3, 2012; see also Judith Fessenhaie, *Development and Intensification of Industries Upstream of Zambia’s Copper Mining Industry*, MMCP (March, 2011) (China share of total FDI stock in Zambia in 2009 was 8%), www.cssr.uct.ac.za/sites/.../MMCP%20Paper%203.pdf.

¹⁶⁶ *Kambwili Riles Hikaumba*, TOZ, Feb. 9, 2010 (quarrel over 2010 wage increase for government workers).

¹⁶⁷ *The ‘Black Mountain,’ a Source of Livelihood for over 1,000 Men*, TP, Dec. 25, 2012.

¹⁶⁸ *Nesawu Rejects Zesco Unbundling Plans*, TOZ, Dec. 14, 2009.

¹⁶⁹ Kambwili’s companies include CK Technical Services, Mwamona Engineering and Technical Services, and Belle Isle UK Ltd. George Chomba, *Kambwili Overstretching his Governance*, DM, Feb. 1, 2012.

¹⁷⁰ *Kambwili U-turns on Chinese Investors*, LT, Nov. 19, 2009; see also *Kambwili Forced to Eat a Humble Pie*, TOZ, Nov. 19, 2009. Super Maheu is an energy drink produced by South African beer giant SAB Miller.

¹⁷¹ *Kambwili’s Firm Accused of Firing Workers after they Complain about 35% Salary Deduction*, LT, June 11, 2011; *Kambwili Insults his Ex-Workers*, TOZ, Aug. 17, 2011; *Former Kambwili’s Workers ask Government to Intervene over their Terminal Benefits*, LT, Sept. 6, 2011.

Copper Smelter (“CCS”) when a Zambian security guard shot a robber, even though security guards for other firms also use firearms against thieves. Commerce Minister Bob Sichinga, without evidence, accused the MMD of having had billions of Zambian kwacha printed in China, to be dispersed in the 2011 elections.

Such incidents demonstrate that the PF’s anti-Chinese campaign has continued now that it is a ruling party. The PF, thereby, reassures supporters that it will still “sort out the Chinese”¹⁷² and solidifies its connections with the U.S. and U.K. governments. China’s ambassador to Zambia stated, in response to the incident involving Kambwili and the Chinese doctor, “there is only one political party (PF) in Africa that makes China an issue.”¹⁷³ It is an issue the PF is reluctant to discard, as the Chinese defilement case illustrates.

IV. The Chinese Defilement Case in Context

A few days after the four Chinese workers’ arrest, State Prosecutor Ben Sichita argued against bail. He said defendants “were citizens of another country and might flee the country, and would also be likely to interfere with witnesses.” Defense counsel countered that “his clients were willing to abide by all the conditions which the court has put in place.”¹⁷⁴ Counsel also pointed out that both defilement and assault were ordinarily bailable offenses, that his clients had fixed abodes, and both the Zambians who stood as defendants’ sureties and the Chinese Embassy sought to see that defendants would attend court.¹⁷⁵ No evidence of intent to abscond, or even of such past conduct by other foreigners, was presented.

Luanshya Magistrate Chitundu Nanyangwe Kalungu denied bail and was quoted as stating:

[M]uch as the defense said the accused were willing to surrender their passports, different travel documents could be arranged for the accused by their embassy. If for instance different names are used to obtain travel documents, port of exit officers at Zambian ports would be none the wiser . . . [The Magistrate] added that while the accused were of fixed abode, it can be agreed that they were not ordinarily resident in Zambia [and] it was not known under which circumstances the accused persons were employed.¹⁷⁶

Denial of bail for the four Chinese workers in December 2011—and particularly the reasons given for its denial -- stood in marked contrast to grants of bail for European defendants in Zambia recently charged with graver crimes. In October 2011, three Czechs, a welder, a technician, and a carpenter, were charged with espionage, an offense carrying a sentence of up to 30 years, after they took photos and made sketches of Zambian military installations. A magistrate granted bail of K10m (\$2,000), but ordered defendants to surrender their passports, not leave Zambia, and report to police once a week. The Czech Foreign Minister tried to contact then-Foreign Minister Kambwili, who demurred, stating that the government does not interfere in judicial affairs. After the Czech Republic President intervened with Sata, bail conditions were relaxed and defendants returned home. Defendants failed to appear at trial in February 2012, and arrest warrants were

¹⁷² As President, Sata has had to publicly explain why he has not “chased the Chinese.” During his June, 2012 visit to the UK, he held a meeting with hundreds of diaspora Zambians, a couple of whom said Zambians need protection from “the Chinese,” who are taking the job of Zambians. Sata noted that Chinese in Zambia were hardworking and willing to labor under harsh conditions “in the bush.” “Dinner with his Excellency Michael Sata in London, 6/6/12,” YOUTUBE, www.youtube.com/watch?v=eg4QPg3DmGs&feature=relmfu.

¹⁷³ Kombe Chimpinde, et al., *Zhou Accuses Kambwili of Lies*, TP, Feb. 1, 2012.

¹⁷⁴ *Four Chinese Denied Bail*, TOZ, Dec. 2, 2012.

¹⁷⁵ Silwamba interview.

¹⁷⁶ *Court Denies Chinese Charged with Indecent Assault Bail*, TP, Dec. 2, 2012. The magistrate thus speculated that the Chinese Embassy might help defendants abscond, a speculation also made in the CCM shooting case. No support for such speculations exists; in fact, as argued below, the Chinese Embassy has not intervened when its citizens’ right of equal protection was traduced.

issued, but, in April, the state, without stating its reasons, entered a *nolle prosequi*. While not an acquittal, it indicated the case would not be pursued. A judge discontinued the matter.¹⁷⁷

In October 2011, a fifteen year-old Zambian girl accused Dutch citizen Evert Jan Wolf, an engineer living in Kalulushi, Copperbelt, of defilement by drugging her, forcing her to have sex with a dog, and paying off local police to threaten her. She also said he had indecently assaulted other girls. An angry crowd attempted to burn Wolf's home and fought running battles with police. Wolf fled to Lusaka and evaded police there for three months. Yet, when he was finally apprehended, a magistrate in Kitwe, Copperbelt granted bail. No trial was held. The next month, prosecutors, without stating their reasons, entered a *nolle prosequi*.¹⁷⁸

In contrast, the accused Chinese workers were imprisoned, pending trial, for more than three months in "a stinking and overcrowded Zambian jail where conditions [were] so terrible they lead to gastronomic disorders and skin diseases within days of confinement."¹⁷⁹ Indeed, defense counsel had to apply for medical bail and defendants were granted one week's treatment at the Sino-Zambian Friendship Hospital in Luanshya,¹⁸⁰ a self-financing private hospital in Kitwe with several Chinese and about forty Zambian doctors,¹⁸¹ where Kambwili's confrontation with the Chinese chief medical officer was to later take place.

As a GRZ newspaper noted, the Chinese defilement case saw "a lot of twists and turns."¹⁸² One twist was perjury by the accusers. The Chinese the accusers identified were initially charged with defilement.¹⁸³ Constance Mwansa testified in court in December that she met a Chinese man on November 25 who paid her K20,000 (U.S. \$4.00) for intercourse, but that he was not one of the defendants, and that later she met another Chinese, who paid K90,000 (\$18.00) to fondle her, but he too was not a defendant.¹⁸⁴ Mwansa added that everything occurred at night. She also testified, however, that in the first instance, the Chinese in question had intercourse with both her and her friend, Maureen Mukubanda, and, in the second instance, she had been fondled while Mukubanda waited for her. Mwansa did not report these encounters to anyone, but testified that her aunt subsequently encountered her in the street and alerted the Neighborhood Watch Association, which had her arrested by police. Mwansa was held in custody overnight and the next morning taken to 14 Shaft Hostels, where defendants and other Chinese employees of 15 Metallurgical Construction Co. ("15MCC") lived. Mwansa stated that she and other witnesses were "under extreme pressure and intimidation" from police to identify some Chinese. Scared, Mwansa randomly pointed at four Chinese, though none had had sex with her.¹⁸⁵

Mukubanda testified that she and Mwansa had gone to meet Chinese mine constructors coming out from 14 Shaft Hostels. She initially said one Chinese had intercourse with both her and Mwansa at a spot behind Bwafwano Hall, paying her K20,000 and Mwansa K30,000, but later

¹⁷⁷ *Zambia Court Lets Three Czechs off the Hook*, AFR. REV., Apr. 12, 2012, <http://www.africareview.com/News/Zambia-court-lets-Czechs-off-the-hook/-/979180/1385464/-/12x5744/-/index.html>; Julius Sakala, *Espionage-Charged Czech Nationals Temporarily Released*, The Analyst, Jan. 2, 2012 <http://julius-theanalyst.blogspot.com/2012/01/espionage-charged-czech-nationals.html>; *Czech MEP Satisfied with Zambia Reacting to his EU Appeal*, ZW, Nov. 24, 2011 (reproducing Czech News Agency report).

¹⁷⁸ *Kalulushi Dog Sex Man Arrested*, DM, Feb. 1, 2012; *Kalulushi Man Charged for Dog Sex*, DM, Feb. 2, 2012; *Dog Sex-Accused Appears in Court*, DM, Feb. 21, 2012; *Expatriate Off the Hook in Dog Sex Case*, TOZ, Mar. 20, 2012.

¹⁷⁹ See Mwanangombe, *supra* note 18, ; see also *Chongwe Calls on Government to Build Bigger, Modern Prisons*, TP Apr. 7, 2012; *Over 4,000 Inmates Infected with HIV*, DM, June 20, 2012 (a fourth of Zambia's 15,000 prisoners have HIV/AIDS; statistics showing prevalence of malaria, diarrhea, tuberculosis and STDs among inmates).

¹⁸⁰ *Court Calls for Other Witnesses in Chinese Defilement Case*, DM, Dec. 20, 2011; Silwamba interview.

¹⁸¹ Interview, Dr. Qin Xisheng, Chief Medical Officer, Sino-Zam Hospital, Kitwe, Aug. 15, 2012.

¹⁸² *Chinese Men Walk to Freedom*, DM, Mar. 7, 2012

¹⁸³ *Four Chinese Men Seized for Defiling Zambian Girls*, AFR. REV., Nov. 29, 2011, <http://www.africareview.com/News/Chinese-seized-for-defiling-Zambian-girls/-/979180/1281670/-/com5vz/-/index.html>; see 4 Chinese Charged, *supra* note 14.

¹⁸⁴ At the time of the arrests, the girls reportedly stated they were given K90,000 for intercourse and K30,000 for fondling. Kambwili Warns. They reversed the relationship between the sums and acts in their court testimony.

¹⁸⁵ *Remanded Chinese Identification Done Under Duress: Abused Minors*, TP, Dec. 14, 2012; *We were Paid Cash After Sex*, TOZ, Dec. 10, 2011; Final Submission: 4-6, 9, 50, 53.

said one Chinese had sex with her and another did so with Mwansa. Mukubanda also said she identified defendants under police duress and could not identify the man who had sex with her. The policemen who testified failed to correctly identify the defendants as associated with the charges laid against them. One policeman also stated that identifications of defendants were made at 14 Shaft Hostels early on the morning after the incident, but no identification parade was held. Another officer said the accused had denied all allegations. No other witnesses corroborated the alleged acts, and none testified that the accusers were in distress when encountered after the alleged acts. No medical evidence was submitted.¹⁸⁶

In January, the girls changed their stories, and stated in open court that they had lied, prompted by their adult neighbor Helen Kalunga, who had “asked them not to point at any accused persons.” The girls then claimed that they could, in fact, identify defendants as their victimizers, but when Mwansa attempted to do so, she identified defendant Yang as one of the two Chinese who had intercourse with her, when, in fact, he was charged only with having fondled Mukubanda.¹⁸⁷ Magistrate Daniel Musonda sentenced both girls to two months in jail; Kalunga was given six months. No motive for the subornation of perjury was adumbrated.¹⁸⁸

Besides the twist of perjury by the accused, there was another turn. Mukubanda had testified that she too had been defiled and not merely fondled. After having told the court that she had lied in her initial testimony, Mukubanda said she could identify defendant Zhu as her defiler, but the indictment alleged that Zhu had indecently assaulted Mwansa. A medical exam, conducted several weeks after the alleged incidents, moreover, determined that Mukubanda could not have been defiled because she was *virgo intacta*. Mukubanda then claimed that the physician’s report that she was a virgin was a lie. On February 2, a magistrate concluded that the accused had a case to answer. Defense lawyers Eric Silwamba and Chali Chitala told the court, on February 8, that their clients would remain silent and not call witnesses; not surprisingly, as the accusers’ contradictory and perjured testimony compromised the prosecution case. The State filed submissions on February 14, and defense lawyers filed a response the following day.¹⁸⁹

Magistrate Kalungu read out, on March 6, a sixty-four page decision that acquitted defendants.¹⁹⁰ The magistrate termed the case “frivolous,” and a “catalog of errors” by police that “was poorly investigated and prosecuted by the state.” Furthermore, the magistrate queried: “[w]hy were these particular Chinese nationals charged with these sexual crimes when both police drawing up the docket and public prosecutors studying the docket knew that the witnesses had identified the wrong men?” She found no consistency in the accusers’ testimony, no connecting evidence to prove the accused were at the crime scene, and no corroborative evidence. The magistrate determined that the accusers had lied, noting that the girls first told police they could positively identify the four Chinese, then testified in court that they had seen the Chinese only in the dark and that all Chinese look alike to them. Later, the girls again claimed they could positively identify defendants. The magistrate also said police were derelict in failing to call any independent persons to identify the accused. She noted that even the arresting policeman could not identify defendants in court, and that the complaint filed in the case itself failed to properly identify the accused.¹⁹¹

¹⁸⁶ Remanded Chinese; We were Paid; Final Submission: 10, 13-14, 16-17.

¹⁸⁷ *Two Luanshya Girls Identify Suspected Chinese Defilers*, TOZ, Jan. 17, 2012; Final Defense Submission: 29-30.

¹⁸⁸ *Luanshya Woman Jailed for Contempt*, DM, Feb. 4, 2012; *House Wife Jailed for Contempt in Chinese Defilement Case*, TOZ, Feb. 6, 2012.

¹⁸⁹ *Chinese Mute in Court*, TOZ, Feb. 9, 2012; Final Defense Submission: 29-31; Defendants’ “Submission of No Case to Answer,” s.d. typescript in author’s possession: 6.

¹⁹⁰ The opinion was never released, even to counsel; all information about it is known only from media reports.

¹⁹¹ *Chinese Men Walk to Freedom*, DM, Mar. 7, 2012; *Zambia Court Lets Chinese Rape Suspects off the Hook*, AFRI REV., Mar. 6, 2012; *4 Chinese ‘Defilers’ Acquitted*, KITWE TIMES, Mar. 7, 2012; *Clergyman Welcomes Acquittal of 4 Chinese Nationals Accused of Defiling Under-Age Zambian Girls*, FLAVAFM, Mar. 7, 2012, <http://flavafm.co.zm/2012/03/07/clergyman-welcomes-acquittal-of-4-chinese-nationals-accused-of-defiling-under-age-zambian-girls/>; *Chinese Nationals Accused of Defiling Under-Age Zambian Girls Acquitted, Police Officers Blamed*, LUSAKATIMES, Mar. 6, 2012, <http://www.lusakatimes.com/2012/03/06/chinese-nationals-accused-defiling-underage-zambian-girls->

A Western press agency noted that “[t]he men were arrested . . . amidst public and political outrage that could have placed the police under pressure to rush the case to court before full investigations were completed.”¹⁹² Apart from its investigative and prosecutorial malpractices, even if the accused had unequivocally been identified as victimizers, they had potential defenses or mitigating elements that many Zambians prosecuted for defilement do not have: denial of equal protection created by selective prosecution and top-level political intervention in the case.

One potential defense was that the workers had little way of knowing the girls were under the age of consent, because the age of consent is higher in Zambia than in China and because the Chinese workers were not appraised by their employer or by officials about what the Zambian age of consent. In China, the age of consent is fourteen, not sixteen, as in Zambia. One who has sex with a child under fourteen in China can be charged with child rape and face a penalty of ten years to death. The penalty for sex with an underage prostitute is said to be, variously, five years or more and a fine, or three to ten years. Thus, Chinese law does not penalize sex with underage prostitutes nearly as strongly as it does with other underage victims, though there are ongoing efforts to abolish the “underage prostitution” law in favor of one law on underage sex.¹⁹³

The accused workers were in Zambia for a short-term project. Personnel of CNMC first arrived at the Mulyashi mine construction site in August 2009, and presumably could have begun work any time thereafter.¹⁹⁴ When Chinese workers were brought in for construction projects, they had little contact with the local people.¹⁹⁵ One such Chinese worker in Zambia told a researcher he and the other Chinese workers “normally [] don’t go outside.”¹⁹⁶ This may be for “security reasons,” because “[t]here ha[d] been quite a lot of incidents directed against Chinese people.”¹⁹⁷ Because most firms demand their workers not have sexual contact with the locals, regardless of age, most firms in Africa do not inform Chinese workers about the local age of consent.¹⁹⁸ A journalist reporting on Chinese firms in Angola observed that “[i]f a worker becomes romantically or sexually involved with a local, he’s quickly hustled back to China.”¹⁹⁹

acquitted-police-officers-blamed/; *Luanshya Court Acquits Chinese of Defilement*, TP, Mar. 7, 2012; *Four Chinese Accused of Defilement Acquitted*, ZAMBIAN EYE, Mar. 6, 2012, <http://zambianeye.com/?p=2442>.

¹⁹² *Chinese Accused of Rape in Zambia Freed*, AGENCE DE PRESSE AFRICAINE, Mar. 6, 2012. In another case three months later, the Zambian police proved capable of detecting a wrongly-based accusation of defilement. See *Woman Nabbed for Staging Fake Defilement*, TOZ, June 20, 2012.

¹⁹³ *Abolish Law on Sex with Under-Age Prostitutes*, SCMP, Mar. 12, 2012; Oiwan Lam, *China: Outrage at ‘Underage Prostitution Law Protects Child Rapists’*, GLOBAL VOICES, Dec. 8, 2011, <http://globalvoicesonline.org/2011/12/08/china-outrage-as-underage-prostitution-law-protects-child-rapists/>. It has also been reported, however, that conviction of child rape carries a life sentence and that the death penalty may be imposed if the criminal knew the victim was younger than 14. See *Child Rape Trial Begins in China*, UPI.COM, Apr. 8, 2009, http://www.upi.com/Top_News/2009/04/08/Child-rape-trial-begins-in-China/UPI-51971239202724/.

¹⁹⁴ *Zambia: Luanhya Mine Casualization Ends*, TIMES OF ZAMBIA, Aug. 19, 2009, <http://allafrica.com/stories/200908190414.html>. Mulyashi was completed around March, 2012. Gethsemane Mwizabi, *Zambia: Muliashi Leading Luanshya to Lost Glory*, TIMES OF ZAMBIA, Apr. 5, 2012, <http://allafrica.com/stories/201204050901.html>.

¹⁹⁵ See generally Interview by Jean-Louis Gouraud with Lu Shaye, Director-General of the Department of African Affairs (Oct. 21, 2011), available at <http://www.fmprc.gov.cn/eng/wjb/zzjg/xos/gjlb/3291/3293/t870823.htm>.

¹⁹⁶ Gerard van Bracht, *A Survey of Zambian Views on Chinese People and their Involvement in Zambia*, AFRICAN-EAST ASIAN AFF., Aug. 2012, at 54, 83, available at http://www.ccs.org.za/wp-content/uploads/2012/08/AEAA_Issue_1_autumn_2012_web.pdf

¹⁹⁷ *Id.*

¹⁹⁸ See, e.g., *Zhongguo Chengbaoye Zai Feizhou Jixu Zhuanxing Baogong Chengyu Fazhan Pingjing* [Chinese Contracting Industry in Africa Urgently Needs to Transform to Include Projects to Meet Development Bottlenecks], FINANCE.HUANQIU.COM (May 7, 2011), <http://finance.huanqiu.com/roll/2011-05/1676614.html>. The anthropologist Yan Hairong has observed such a posting at living quarters of the Chinese mine construction firm Tongling in Chililabombwe, Zambia. Workers she interviewed in 2011, who had returned from Africa to Jiangsu province, China, told her of similar bans at companies that they worked for in Africa. Correspondence from Yan Hairong to author (Nov. 11, 2011)(on file with author).

¹⁹⁹ *China’s African Misadventures*, NEWSWEEK, Nov. 24, 2007, <http://www.thedailybeast.com/newsweek/2007/11/24/china-s-african-misadventures.html>. But see Hudson Mphande, *Malawi Blames Chinese on Increased Spread of HIV/AIDS*, NYASA TIMES (Malawi), Mar. 14, 2012,

It should also be noted that child prostitution is much rarer in China than in Zambia and thus Chinese patrons of prostitutes may be less attuned to the possibility that those they patronize may be underage. A study of twelve countries found that Zambia had the second highest proportion of child prostitutes among them, 580 per 100,000 population. While this was not much more than half the rate for the top-ranking country, Thailand (903 per 100,000), Zambia's proportion was much higher than those of all the other ten countries. The US, for example, had 96 per 100,000, while China had the lowest proportion of child prostitutes, at only 15 per 100,000.²⁰⁰

Such bans may however be compromised by prostitutes who seek out Chinese. The latter are regarded as having more money than locals and myths exist in Africa that "men from Asian countries do not have HIV/AIDS."²⁰¹ A newspaper stated in 2013 that according to a the district AIDS task force in Luapula Province, "Young girls in Kawambwa's Mushota area are reportedly chasing after Chinese men working on Kawambwa-Luwingu road to have a feel of 'Chinese sex,'" that "a number of girls interviewed said they wanted to experience unprotected sex with Chinese men," and that the prostitutes involved were 14 to 16 years old.²⁰² In any case, the ban on sexual contacts and a possible inclination by the complainants or others to gain financially, may have contributed to the defilement case in Luanshya. According to China's Ambassador to Zambia,

The actual situation was that women in that area were very angry that they lost business, because 15 MCC has a rule that its employees not to go to prostitutes. The company was strict about it. So the main problem was not defiling, but 'not defiling.' But then the case became political . . . 15 MCC was told that it could pay some money and then they would not press the case. But [that] could still be a setup, because if 15 MCC had paid, the process would have been videotaped as evidence for further blackmailing. And the process could repeat itself. So throughout the process, 15 MCC didn't pay anything and insisted on going through the legal proceedings.²⁰³

It was a setup and the girls had been organized to press the case. Ordinarily, parents would be the first to be concerned, but in this case, at the hearing, no parent showed up. The Chinese company also thought hard about it, because the demand that the company pay the girls, as if to cover up the case, is a serious matter. And the company . . . made a decision not to be involved. The company took no action whatsoever when the proceeding took place at the local level, because the whole thing at that level had been a setup.²⁰⁴

Chinese workers willing to violate a company ban on all sexual contact with local women might assume that the age of consent in Zambia is no higher than in China. Even if the workers knew the age of consent in Zambia, the parties would still be involved in prostitution. In Zambia, laws

<http://www.nyasatimes.com/malawi/2012/03/14/malawi-blames-chinese-on-increased-spread-of-hiv-aids/> (Chinese workers at Malawi construction site reportedly patronize local prostitutes).

²⁰⁰ Tuyen Huynh, "Child Prostitution in 12 Countries: an Exploratory Study of Predictors," Pennsylvania State University, s.d. 2010?, forms.gradsch.psu.edu/diversity/mcnair/.../Huyen.pdf.

²⁰¹ "Chinese Men Popular with Zimbabwean Women," [Izimbabwe.co.zw](http://www.izimbabwe.co.zw), Mar. 28, 2012, www.izimbabwe.co.zw/news/inews/item/14382-chinese-men-popular-with-zimbabwean-women.html. In some African countries, local men also patronize Chinese migrant prostitutes. See Basile Ndjio, "'Shanghai Beauties' and African Desires: Migration, Trade and Chinese Prostitution in Cameroon," *European Journal of Development Studies* 21 (2009): 606-621. In countries where opposition parties have politicized the Chinese presence, unsubstantiated claims have been made about Chinese prostitutes, e.g. that "In addition to making Africa a dumping ground for its cheap consumer commodities since the early 2000s, China has also been exporting its surplus domestic urban and rural sex workers . . . "Chinese Prostitution: the Dark Side of Globalization in Ghana." In fact, many Chinese prostitutes, in Ghana and elsewhere, are recruited under the guise of working as restaurant assistants. They are then confined and forced to provide sexual services." "Ghana's Opposition Look to Zambia for Election Tactics," *China Africa News*, Nov. 28, 2011, <http://chinaafricanews.com/ghanas-opposition-look-to-zambia-for-election-tactics/>.

²⁰² "Kawambwa Girls after Chinese Sex," TP, Sept. 26, 2013.

²⁰³ Interview with Zhou Yuxiao, China's Ambassador to Zambia, in Lusaka, Zambia (Aug. 3, 2012).

²⁰⁴ Interview with Zhou Yuxiao, China's Ambassador to Zambia, in Lusaka, Zambia (Aug. 4, 2012).

against prostitution *per se* and reports of prosecutions for the defilement of girls paid for sex are nonexistent.²⁰⁵ The workers may have believed that remunerated sex with underage girls is either not illegal in Zambia or is only notionally illegal.

Foreign Minister Kambwili intervened in the case from the outset,²⁰⁶ even though Zambian law regards public comment on a case *sub judice* as contempt of court.²⁰⁷ Kambwili said that the “[g]overnment has continued to receive reports on bad behavior of Chinese workers in Luanshya,” that “[g]overnment has received reports that some locals organize girls for the Chinese at a fee,” and that “[g]overnment will not entertain bad behavior from Chinese nationals working in the mines.” Kambwili stated that he would meet with 15MCC on the following Sunday “so that . . . [they could] educate them on the need for them to abide by the laws of the country.”²⁰⁸ While he might have sought to meet 15MCC workers in his capacity as the local MP, his statements mentioned “[g]overnment,” in which he was then a minister.

Kambwili’s pronouncements and the unprecedented GRZ effort to “educate” the 15MCC workers were seemingly formulated to promote the idea that Chinese workers were key abusers of underage girls involved in the local sex trade. That this idea is fanciful would have been obvious to Kambwili. The spread of prostitution in mining townships has been linked to the privatization of the mines.²⁰⁹ A 2009 report on Zambia’s mining communities, authored by the president of a miners’ union and the International Labor Organization’s representative in Lusaka, stated that “[p]rostitution, including that of very young girls, is very common, and clearly linked to the lack of alternative income earning possibilities, and to the high levels of substance use and abuse, and the ‘fast money’ culture. As a result, HIV exposure and infection levels are high.”²¹⁰ Of the general mine workforce, only a few hundred of the 55,000 miners are Chinese, and even fewer are involved in patronizing underage prostitutes.²¹¹ A South African political scientist and journalist whose specialties include the Chinese presence in Africa, has observed that:

Mining overwhelmingly takes place far away from urban centers. Mines overwhelmingly employ men. There isn’t a lot for these men to do during their free time, because the mine is so far away from the city. The local women don’t have many options, because extractive industries don’t tend to employ many unskilled women and they don’t add much to the local communities The

²⁰⁵ It is illegal to live on the proceeds of prostitution and a “nuisance” to solicit customers on the street. *See Lawyers Back Stella on Prostitutes*, ZAMBIA DAILY MAIL, Apr. 24, 2012, [http://wap.zamtelife.co.zm/news/wapview/id/NTU=\(citing Penal Code Act, Cap. 87, 7 LAWS OF REP. OF ZAMBIA \(1996\) § 146, available at <http://www.parliament.gov.zm/downloads/VOLUME%207.pdf>\); Lovely Kayombo, *Tasintha Condemns Directive to Arrest Sex Workers*, THE POST \(Zambia\), Apr. 18, 2012, \[http://www.postzambia.com/post-read_article.php?articleId=26957&highlight=Tasintha%20Condemns%20Directive%20to%20Arrest%20Sex%20Workers\]\(http://www.postzambia.com/post-read_article.php?articleId=26957&highlight=Tasintha%20Condemns%20Directive%20to%20Arrest%20Sex%20Workers\). For a review of illegalities associated with prostitution in Zambia, see Kenneth Mwenda, *To Legalize or not to Legalize the Profession of Prostitution*, ZAMBIA DAILY MAIL, July 11, 2012.](http://wap.zamtelife.co.zm/news/wapview/id/NTU=(citing%20Penal%20Code%20Act,%20Cap.%2087,%207%20LAWS%20OF%20REP.%20OF%20ZAMBIA%20(1996)%20%246,%20available%20at%20http://www.parliament.gov.zm/downloads/VOLUME%207.pdf);%20Lovely%20Kayombo,%20Tasintha%20Condemns%20Directive%20to%20Arrest%20Sex%20Workers,%20THE%20POST%20(Zambia),%20Apr.%2018,%202012,%20http://www.postzambia.com/post-read_article.php?articleId=26957&highlight=Tasintha%20Condemns%20Directive%20to%20Arrest%20Sex%20Workers)

²⁰⁶ “Kambwili Warns Foreign Nationals as 4 Chinese Workers are Arrested for Indecent Assault,” LT, Nov. 26, 2011, <http://www.lusakatimes.com/2011/11/26/kambwili-warns-foreign-nationals-4-chinese-workers-arrested-indecent-assault/> ..

²⁰⁷ Interview with Silwamba, *supra* note 27. Even the GRZ President and news media are disallowed comment on any *sub judice* case. *See* Amos Malupenga, *Zambia: Parts of the Constitution Can be Amended*, THE POST (Zambia), Oct. 11, 2004, <http://allafrica.com/stories/200410110804.html> (Pres. Levy Mwanawasa, for example, refused to comment on a case because it was *sub judice*); Editorial Staff, *Zambia: Money, Money, Money*, THE POST (Zambia), Aug. 7, 2006, <http://allafrica.com/stories/200608071493.html> (newspaper editorial notes that the editors would risk being held in contempt of court if they commented on a *sub judice* case).

²⁰⁸ *Chinese Workers Warned*, ZAMBIA DAILY MAIL, Dec. 3, 2011.

²⁰⁹ ALASTAIR FRASER & JOHN LUNGU, CIVIL SOC’Y TRADE NETWORK OF ZAMBIA, FOR WHOM THE WINDFALLS? WINNERS & LOSERS IN THE PRIVATISATION OF ZAMBIA’S COPPER MINES 50 (2008), available at http://www.banktrack.org/manage/ems_files/download/for_whom_the_windfalls_/report_for_whom_the_wind_falls.pdf.

²¹⁰ Sifuniso Nyumbu & Birgitte Poulsen, *The Global Crisis and Rising Child Labor in Zambia’s Mining Communities: Are We Facing a Downward Decent Work Spiral?*, ILO GLOBAL JOB CRISIS OBSERVATORY (Aug. 10 2009), <http://www.ilo.org/public/english/support/lib/financialcrisis/featurestories/story26.htm>.

²¹¹ Patricia Palale and Anwar Palat, “Resource Rich, but People Poor,” World Bank Zambia, .ppt presentation, Mar. 29-30, 2012, Lusaka, http://www.britishcouncil.org/resource_rich_but_people_poor.pdf (55,000 miners in Zambia).

miners are bored, the local women are poor . . . the math . . . is pretty simple in the African shantytowns surrounding big mines [T]his is far from the only case of underage prostitution in Zambia's Copperbelt region – in fact, the [Zambian media's] implication seems to be that it is not only routine, but routinely ignored – one aspect of the desperate times facing this Copperbelt town. Some of the community members interviewed made it clear that the only reason this particular case is getting this level of attention is because the defendants are Chinese.²¹²

Assuming the guilt of defendants while the trial was ongoing, and of the Chinese more broadly, Kambwili stated: “I will meet the Chinese and I will tell them how to behave like Zambians in Zambia. If incidents such as the one in Roan, where young girls were sexually abused occur again, we shall have no option but deport all the culprits because we shall not condone people molesting our young girls.”²¹³ On December 4, Kambwili was to address the assembled 15MCC workers. Reportedly, 270 of the 15MCC workers were Chinese.²¹⁴ However, as of December 31, 2011, 370 of the 1,320 workers were Chinese, and the other 950 were Zambians.²¹⁵ Kambwili was familiar with the company. In September 2011, he intervened when Zambian workers put down their tools as part of a strike aimed at “improv[ing] conditions of service” that began just after Sata's election. Kambwili met with management and addressed the strikers, who soon after returned to work.²¹⁶

While Kambwili expected that all 15MCC Chinese employees would attend the December 4th meeting, when he arrived with another Luanshya MP, Luanshya's mayor and the District Commissioner, he found only twenty Chinese workers in attendance.²¹⁷ 15MCC's General Manager had no explanation for why more workers had not attended.²¹⁸ Kambwili said: “this is a joke, which is not funny, and I will not take it lightly.”²¹⁹ He cancelled the meeting, ordered the General Manager to assemble all the Chinese workers the next day, and directed the District Commissioner and the Mayor to ensure that the order was carried out.²²⁰ Kambwili's orders to the officials are another indication that he was acting in his capacity as a cabinet minister and not as an MP.

Attendance on December 5th met Kambwili's expectations, as the whole 15MCC Chinese workforce was present. Kambwili accused the Chinese of beating and insulting Zambian workers, and said that rather than “have carnal knowledge of young girls,” they should feel free to marry Zambian women, a remark journalists regarded as a joke.²²¹ Videos of the meeting show Chinese workers in attendance smiling and vigorously applauding Kambwili's remarks, although, given that most workers understand little or no English, it is unclear whether their reaction to Kambwili's speech was “spontaneous.”²²² In any case, Kambwili's speech had a certain irony, as the accused were before a magistrate on that day to plead not guilty.²²³

²¹² Cobus van Staden, *China's Zambian Sex Scandal*, CHINAAFRICA PROJECT (Feb. 11, 2012), www.chinaafricaproject.com/2012/02/chinas-zambian-sex-scandal/.

²¹³ Elias Mbaio, *4 Chinese Deny Defilement Charge in Zambia*, AFRICA REVIEW (Dec. 6, 2011, 8:14 PM), <http://www.africareview.com/News/4+Chinese+deny+defilement+charge+in+Zambia/-/979180/1285318/-/t0qlguz/-/index.html>.

²¹⁴ *Kambwili Advise Chinese to Marry Zambian Women*, LUSAKA TIMES (Dec. 6, 2011), <http://www.lusakatimes.com/2011/12/06/kambwili-advise-chinese-marry-zambian-women/>.

²¹⁵ CHINA NONFERROUS MINING CORP. LTD., WEB PROOF INFORMATION PACK app. at III-149 (2012), available at <http://iis.aastocks.com/20120629/001454807-0.PDF>.

²¹⁶ *Kambwili Acts to End Strike*, ZAMBIAN NAT'L BROAD. CO. (Sept. 28, 2011), www.znbc.co.zm/media/news/viewsnes.cgi?category=14&id=1317222000.

²¹⁷ *Chinese Nationals Shun Overzealous Chishimba Kambwili's Meeting*, ZAMBIAN WATCHDOG (Dec. 4, 2011), <http://www.zambianwatchdog.com/?p=27461>.

²¹⁸ *Id.*

²¹⁹ *Kambwili Loses it with Chinese Contractors*, ZAMBIA WEEKLY, Dec. 9, 2011, at 2.

²²⁰ *Chinese Shun Kambwili*, *supra* note 215.

²²¹ *Kambwili, Chinese Confer*, ZAMBIA DAILY MAIL, Dec. 6, 2011.

²²² MUVI TV, *Kambwili Meets Chinese*, YOUTUBE (Dec. 6, 2011), <http://www.youtube.com/watch?v=iPONDpdkV4s>.

²²³ Mboa, *supra* note 10.

Reportedly, “sexual offenses such as defilement top[] the list of convicted persons in Zambian prisons.”²²⁴ On Youth Day 2012, the major privately-owned PF-supporting newspaper, *The Post*, ran a long analysis by the leading NGO, the Jesuit Centre for Theological Research, on defilement and labeled it “a grave problem we need to face and attend to as a nation.”²²⁵ Lusaka’s University Teaching Hospital has noted, “the number of defilement cases being recorded has been on the increase and that now it’s an everyday situation, especially among girls between the ages of 12 and 14 years.”²²⁶ Zambia’s NGO Coordinating Council (“NGOCC”) has taken up defilement as one of its main issues,²²⁷ and has called for life in prison for defilers.²²⁸ The Zambia Association of Women Judges is reportedly “working on modalities to establish specialized fast-track courts to deal with defilement cases.”²²⁹

Besides poverty-driven prostitution, defilement is tied to Zambia having one of the world’s highest HIV/AIDS rates; some 14.3% of Zambia’s population aged 15-49 has the virus,²³⁰ and the proportion rises to 23% in Copperbelt’s capital, Kitwe.²³¹ In Zambia, it is widely believed that having sex with a virgin will cure the disease.²³² There are also “myths from traditional healers that having sex with a minor could bring one riches.”²³³

Zambia Police Victim Support Unit (“VSU”) statistics recorded 1,676 defilement cases in 2009. Prosecutions resulted in 277 convictions and 63 acquittals.²³⁴ The VSU recorded 2,028 defilement cases in 2010²³⁵ and 1,939 cases in 2011.²³⁶ Cases are concentrated in Lusaka, where 13.3% of Zambians live.²³⁷ Police records showed 1,089 defilement cases there in 2011, and 383 more in 2012’s first quarter.²³⁸ These statistics may represent a relatively high rate of defilement in Zambia compared to other developing countries. For example, Rwanda has approximately 11 million people, not much less than Zambia’s approximate 13.3 million, and reported only 255 defilement

²²⁴ *Zambian Women Want Defilers Caged for Life*, ENGLISH.NEWS.CN (Jan. 17, 2012, 9:05 PM), http://news.xinhuanet.com/english/world/2012-01/17/c_131365571.htm.

²²⁵ Jesuit Center for Theological Research, *Youth Day: Building Safe Environments for Children*, THE POST (Zambia), Mar. 18, 2011, http://www.postzambia.com/post-read_article.php?articleId=25792.

²²⁶ Martin Mulenga, *Why are child defilement cases in Zambia rising?*, LUSAKA TIMES (Mar. 5, 2012), <http://www.lusakatimes.com/2012/03/05/child-defilement-cases-zambia-rising/>.

²²⁷ *NGOCC to Hold Consultative Indaba on Defilement*, ZAMBIA DAILY MAIL, Dec. 28, 2011.

²²⁸ *Caged for Life*, *supra* note 226.

²²⁹ Mwape Mwenya, *Fast Track Defilement Court Coming*, ZAMBIA DAILY MAIL, Dec. 17, 2012, http://www.daily-mail.co.zm/sundaymail/index.php?option=com_k2&view=item&id=920:fast-track-defilement-court-coming&Itemid=192.

²³⁰ “HIV and AIDS,” UNICEF Zambia, s.d., http://www.unicef.org/zambia/5109_8459.html.

²³¹ See also *UNDP Sources Funds for Zambia’s HIV/AIDS Program*, ENGLISH.NEWS.CN (Aug. 24, 2011), http://news.xinhuanet.com/english2010/world/2011-08/25/c_131071820.htm; *Zambia: State Doubles Fight Against Aids*, TIMES OF ZAMBIA, Dec. 2, 2011, <http://allafrica.com/stories/201112020361.html>.

²³² *HIV and AIDS in Zambia*, AVERT (Nov. 17, 2012), <http://www.avert.org/aids-zambia.htm>.

²³³ *Caged for Life*, *supra* note 226.

²³⁴ *2010 Human Rights Report: Zambia*, U.S. DEP’T OF STATE (Apr. 8, 2011), <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154376.htm>.

²³⁵ Mwanangombe, *supra* note 16. Another source states that 2,419 defilement cases were reported to police in 2010, almost ten times the number of (adult) rapes reported (254). Law Association of Zambia, National Legal Aid Clinic for Women, “Strategic Plan, 2013-2017” s.d. 2013?: 13, <http://www.nlacw.org.zm/legal%20PDFs/NLACW%20Strategic%20Plan%202013-2017%20Final.pdf>

²³⁶ CORNELL LAW SCHOOL INT’L HUMAN RIGHTS CLINIC ET AL., “THEY ARE DESTROYING OUR FUTURES” SEXUAL VIOLENCE AGAINST GIRLS IN ZAMBIA’S SCHOOLS 7 (2012), *available at* <http://www.lawschool.cornell.edu/womenandjustice/Conferences-and-Events/upload/Sexual-Violence-Against-Girls-in-Zambia-s-Schools.pdf>. The VSU recorded 7,935 defilement cases in 2006-2011. “Projects,” UNFPA Zambia, Jan. 6, 2013, <http://countryoffice.unfpa.org/zambia/2013/01/06/6069/projects/>.

²³⁷ “Zambia,” City Population, 2010, <http://www.citypopulation.de/Zambia.html>.

²³⁸ “Zambia Records 1,089 Defilement and 75 Rape Cases in Lusaka [A]lone” *Chief Justice*, UKZAMBIANS (Jan. 10, 2012), <http://www.ukzambians.co.uk/home/2012/01/10/zambia-records-1089-defilement-and-75-rape-cases-in-lusaka-lone-chief-justice/>.

cases in 2011.²³⁹ Malaysia, with twice the population of Zambia, averaged less than 1,600 defilements per year from 2005-2010.²⁴⁰

In 2012, Minister of Home Affairs Kennedy Sakeni stated, “defilement cases are ever-increasing nearly every day due to lack of security and sensitization programs.”²⁴¹ Statistics on Zambian cases also likely represent an undercounting of instances of defilement. About sixty-five percent of Zambians live outside urban areas.²⁴² Underreporting of rural cases is probably rife: a Chief of the Tonga people in Choma, Southern Province, has said that over seventy percent of defilement cases in his chiefdom are not reported, due to stigma attached to victims.²⁴³

While it is unclear if Zambia actually has a much higher rate of defilement than most other countries, many Zambians see it as rising to crisis proportions.²⁴⁴ Luanshya, situs of the Chinese defilement case, has a dubious distinction in this regard. It has been a focus of not only the GRZ and media attention on defilement, but also uniquely of accusations made by Gender Deputy Minister Estelle Banda, who suggests that a “cartel” of local women are defiling young boys.²⁴⁵

V. Reactions to the Case

With the trial of the four defendants underway in January 2012,²⁴⁶ the world was to hear of the Chinese defilement case, mainly through Western-based sources, and most prominently through the U.S. Government’s broadcasting service, *Voice of America*. Its story on Vice President Guy Scott’s visit to China discussed the case and erroneously claimed that defendants were accused of “raping seven Zambian children.”²⁴⁷ It also neglected to mention that prostitution was involved.²⁴⁸ A few days later, Scott returned from his visit to China, while the defilement case was ongoing, and claimed that the PF was “treat[ing] Chinese investors just like South African, European, or American investors according to what was stipulated by the law.”²⁴⁹

However, to some Zambians, it was obvious that the defendants were prosecuted because they were Chinese. A miner in Roan Township, where the incident arose, said that “here most poverty-stricken young women and girls prostitute themselves to men who have money to spend, regardless of nationality . . . ‘the Chinese just happened to be men of a wrong nationality, that is all.’”²⁵⁰

In the blogosphere, Kambwili was lionized, mainly by North America and U.K.-based diasporic Zambians, as soon as he intervened in the Chinese defilement case. Many demanded that the then-

²³⁹ Fred Murenzi, *Man Arrested for Defilement*, THE NEW TIMES (Rwanda), Mar. 7, 2012, <http://www.newtimes.co.rw/news/index.php?i=14924&a=51039>; 2010 *Human Rights Report: Zambia*, *supra* note 235 (“Zambia is a republic of 13.3 million citizens governed by a president and a unicameral national assembly.”); 2010 *Human Rights Report: Rwanda*, U.S. DEP’T OF STATE (Apr. 8, 2011), <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154364.htm> (“Rwanda, with a population of 11 million, is a constitutional republic dominated by a strong presidency.”).

²⁴⁰ *Over 9,500 Statutory Rape Cases Reported Since 2005*, YAHOO! NEWS MALAYSIA (Mar. 14, 2011), <http://my.news.yahoo.com/over-9-500-statutory-rape-cases-reported-since-20110314-000055-579.html>; 2010 *Human Rights Report: Malaysia*, U.S. DEP’T OF STATE (Apr. 8, 2011), <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154391.htm>.

²⁴¹ *Defilement Cases in Luapula Worry State*, ZAMBIA DAILY MAIL, Apr. 29, 2012.

²⁴² “Zambia – Urban Population, Index Mundi, 2010, <http://www.indexmundi.com/facts/zambia/urban-population>.

²⁴³ *Over 70% Defilement Cases Unreported, Says Chief Mapanza*, ZAMBIA DAILY MAIL, Sept. 26, 2012.

²⁴⁴ See, e.g., K P Zulu, *The conspiracy of culture, traditional impurity and silence, a case of Zambia*. Oral Abstract session: The XV International AIDS Conference, Bangkok, Thailand, 2004, Abstract no. TuOrD1167.

²⁴⁵ *Luanshya Boys Fall Prey to Sugar Mummies*, MUVI TV (June 24, 2012), www.muvi.com/?p=1585.

²⁴⁶ See Mwanangombe, *supra* note 16.

²⁴⁷ Ivan Broadhead, *On Recent Beijing Visit, a Tall Order for Zambia VP*, VOICE OF AMERICA (Jan. 10, 2012), <http://www.voanews.com/content/in-recent-beijing-visit-a-tall-order-for-zambia-vp-136943513/159417.html>.

²⁴⁸ *Id.*

²⁴⁹ Stephen Kapambwe, *Zambia: Scott Answers Questions about PF at ‘Meet the Vice-President’ Event*, TIMES OF ZAMBIA, Jan. 20, 2012, <http://allafrica.com/stories/201201200974.html>.

²⁵⁰ Mwanangombe, *supra* note 16.

unindicted Chinese be imprisoned for life, castrated and deported, or executed.²⁵¹ However, a few bloggers protested that Kambwili had intervened in a judicial process and/or that his actions were discriminatory. One blogger pointed out that non-Chinese foreigners employed by mines in Zambia are also involved in sexual acts with underage girls. Referring to two major Canadian-owned mines in Zambia's Northwest Province, he stated:

I was in Solwezi last weekend. There, at the Floriana Inn, I saw expat workers from Kansanshi and Lumwana mines drinking, dancing and fondling young girls between the ages of 12 and probably 16 [T]hey were senior Australian, South African and British expats from those two mines. My insider informed me that they use their Zambian subordinates to round up these juvenile girls for them.²⁵²

Kambwili also received praise for his actions at 15 MCC from many bloggers, some of who identified themselves as PF supporters.²⁵³ However, there were criticisms from Zambians who branded Kambwili's intervention legally inappropriate, undiplomatic, or racist. On the Zambian Watchdog website, Katongo Nsambe wrote about Kambwili's visit to 15 MCC and said: "How would he feel if Zambians in China were paraded like that and lectured about their sex lives in front of TV cameras?"²⁵⁴ One "Lyelela" posted:

Surely it is racist to tar all Chinese working [i]n Luanshya with the same brush as those alleged to have defiled children and have yet to be found guilty in a court of law[.] Those who may have sexually abused children did so not because they were Chinese but because they are perverted. Defiling children happens all over the world so why should every Chinese living in Luanshya be summoned to be shouted at by Kambwili? I remember two years ago here in the UK, a Zambian by the name of Kenyanta Mulenga was convicted of murder[.] [D]oes that mean every Zambian or Bemba resident in the UK is equally guilty as the murderer Kenyanta Mulenga? Would it have been acceptable at the time for the UK foreign secretary to summon all Zambian[] resident[s] in the UK to for him 'to have a word with them'? We cannot allow our govt[.] to behave in a manner that can be construed to be xenophobic and racist.²⁵⁵

A post written by "Dirazo," referring to incidents in which Michael Sata had been accused of breaches of the law in South Africa in 2005 and in the U.K. in 2007, stated:

Kambwili should be consistent with [the] civilized way with dealing [with] matters of [a] criminal nature. When Michael Sata had his US\$27,000 confiscated from him by the South African authorities, did they later summon all Zambians in [Johannesburg] to be addressed by [South Africa's then-African National Congress Youth leader Julius] Malema? [O]r when the same Sata lied in London that a Chinese national had stolen his passport, was every Zambian

²⁵¹ See, e.g., posts by "Chacu" and Kekeke "No Nonsense," TUMFWEKO, Dec. 12, 2011, <http://tumfweko.com/2011/12/12/no-nonsense-china-executes-south-african-woman-monday-1212-morning-despite-sa-government-intervention/>.

²⁵² Mike Kafwimbi, Comment to *Kambwili warns foreign nationals as 4 Chinese workers are arrested for indecent assault*, LUSAKA TIMES (Nov. 26, 2011), <http://www.lusakatimes.com/2011/11/26/kambwili-warns-foreign-nationals-4-chinese-workers-arrested-indecent-assault>. See also Linah Benyawa, *Belgian Arrested over Defilement*, STANDARD DIGITAL (July 18, 2012), <http://www.standardmedia.co.ke/index.php/business/videos/mag/mag/radio-maisha/?articleID=2000062178>; *Accused Dutch Paedophile Accuses Accusers*, MODERN GHANA (July 22, 2012), <http://www.modernghana.com/news/407428/1/accused-dutch-paedophile-accuse-accusers.html>.

²⁵³ See, e.g., posts by "Hopeless," "Genuine Patriot," "Believer," to "Chinese Nationals Shun Overzealous Chashimba Kambwili's Meeting," Zambian Watchdog, Dec. 4, 2011, <http://www.zambianwatchdog.com/?p=27461&cpage=1#comments>.

²⁵⁴ Katongo Nsambe, Comment to *President Sata Reshuffles Ministers*, ZAMBIAN WATCHDOG (Jan. 12, 2012), <http://www.zambianwatchdog.com/?p=29257>.

²⁵⁵ Lyelela, Comment to *Chinese Shun Kambwili*, *supra* note 217.

residing in London called to a meeting to be addressed on the issue of lying about stolen passports[?] Where then does Kambwili get his authority of summoning innocent residents of his constituency?²⁵⁶

A post by “The Real Muntu” wrote that fellow Zambians should look to the moral education of their children. Assuming the guilt of the Chinese defendants, he added:

It is not only the Chinese defiling these kids. Zambians and blacks for that matter are actively engaged in the immoral acts with [c]hildren. I think Xenophobia or is it Sinophobia is at work here. Zambians are being racist big time. This time the victims are [C]hinese. Four [C]hinese defile girls and every Chinese should be addressed? Shame Bwana Minister. Please let us use the [j]udiciary to solve such issues. That[‘]s what China does to our [d]rug [d]ealers in their [c]ountry.²⁵⁷

The GRZ did not express disapproval of Kambwili’s actions related to the Chinese defilement case. When he was made Minister of Labor on January 13, 2012, the GRZ voiced an appreciation of what he had done as Foreign Minister. A Government spokesperson said “the decision to move Mr. Kambwili is based on the fact that he performed exceptionally well”²⁵⁸ Because Kambwili had done little as Foreign Minister, it may well have been his act vis-a-vis “the Chinese” that led PF leaders to believe he performed well. In fact, even the PF-supporting newspaper *The Post* accepted that he had committed many diplomatic faux pas.²⁵⁹

There was a mixed reaction to the acquittal. PF-supporting bloggers, as well as some with no indicated party affiliation, voiced outrage that “the Chinese” were not found guilty. They disagreed that a lack of evidence against the accused should determine the outcome of the case. Despite the magistrate’s detailed legal analysis, some bloggers speculated that she had been bribed.²⁶⁰ Some news sources could not let go of the idea that those acquitted must be guilty, with one headlining an article about the acquittal “Chinese Defilers Freed.”²⁶¹ Another bannered that “Chinese [D]efile[r]s [W]alk to [F]reedom, [C]ommunity [S]hocked,”²⁶² even though nothing in the article indicated anyone’s shock. A few bloggers, however, argued against an assumption of guilt based on nationality. One blogger said on a Kitwe newspaper website:

In Law and Practice, whether an accused person must be convicted or acquitted is a matter of clear evidence. Any competent court of law will acquit any accused person where it is found that there is no evidence to suggest that the complainant was defiled. It doesn’t matter whether the accused is Zambian, British or Chinese, as the Law must treat everyone equally. There’s no evidence and you want them sent to prison simply because they are Chinese? Come on people, let’s be fair.²⁶³

²⁵⁶ Dirazo, Comment to *Chinese Shun Kambwili*, *supra* note 217.

²⁵⁷ The Real Muntu, Comment to *Chinese Shun Kambwili*, *supra* note 217.

²⁵⁸ Editor, “*Diplomats Never Complained about Kambwili*,” TUMFWEKO (Jan. 13, 2012), <http://tumfweko.com/2012/01/13/diplomats-never-complained-about-kambwili/>.

²⁵⁹ Chiwoyu Sinyangwe, *Wild Utterances Hurt Government*, THE POST (Zambia), Mar. 4, 2012, http://www.postzambia.com/post-read_article.php?articleId=25507.

²⁶⁰ See Comments to 4 *Chinese ‘Defilers,’ supra* note 190. In contrast, defense counsel opined that the Magistrate had gone out of her way to attempt to resuscitate the prosecution case by sua sponte calling more witnesses after the fiasco of the accusers’ testimony. See interview with Silwamba, *supra* note 27.

²⁶¹ *Chinese Defilers Freed*, ZAMBIA WEEKLY, Mar. 23, 2012, at 5, available at <http://zambia-weekly.kabilibranding.com/archive/Zambia%20Weekly%202012%20-%20week%2012.pdf>.

²⁶² *Chinese Defile[r]s Walk to Freedom, Community Shocked*, UKZAMBIANS (Mar. 7, 2012), www.ukzambians.co.uk/home/2012/03/07/chinese-defiles-walk-to-freedom-community-shocked/.

²⁶³ Terry P. Kalunga, Comment to *Chinese Defiles [sic] Walk*, *supra* note 260.

Other bloggers at the same website pointed out that some Zambian girls had two identification cards with different ages. They argued that the police never had evidence that would warrant a prosecution, but went forward with one in order to please Kambwili.²⁶⁴

Defense counsel told his clients that in light of the acquittal, they could bring a civil suit for malicious prosecution based on racial discrimination. The Chinese embassy also considered making a demarche to the GRZ based on perceived racial discrimination. The defendants themselves indicated their own feelings of having been very unfairly treated, but, nevertheless, decided to return to China immediately.²⁶⁵

Despite the acquittal, the Chinese defilement case has contributed to a negative image of Chinese in Zambia and beyond. A survey of 155 Zambians, conducted while the case was in progress, recorded sixty-nine negative statements about the social behavior of Chinese in Zambia that pertained to sexually-related amorality: for example, “encouraging prostitution, raping Zambian girls in Luanshya, impregnating and abandoning Zambian girls.”²⁶⁶ The survey’s author observed that “the alleged abuse of Zambian girls in Luanshya by four Chinese men in 2011 led to fierce reactions [on] the part of the Zambian interviewees.”²⁶⁷ Apart from the treatment of Zambian workers by Chinese-owned companies, one of “the most pressing issues for the Zambian respondents” was “the moral behavior of Chinese people, especially the defilement case in Luanshya.”²⁶⁸

The survey’s finding of intensely negative Zambian attitudes toward Chinese, focusing on defilement, was wholly caused by the then-ongoing case, but such attitudes came to exist despite an absence of evidence that the Chinese in Zambia encourage prostitution. Moreover, though a few cases, from elsewhere in Africa, have been reported in which Chinese allegedly impregnated local women apparently none of these instances involved Zambians. The impression that Chinese had impregnated Zambians may have derived from one Zimbabwean and one Kenyan story that appeared in Zambian media at the time of the survey.²⁶⁹ In any case, inaccuracies have a long afterlife: studies show that due to the common process of “biased assimilation,” even discrediting information is usually dismissed by those whose initial belief the information might undermine.²⁷⁰ The mere existence of the Chinese defilement case, despite the acquittal, thus may cause the Chinese to be long imagined as defilers.²⁷¹ That may be the one possible non-political explanation for a statement by Zambia’s Minister of Labour and Social Security More than two years after the Chinese defilement case, he discussed the heavy work schedules of Chinese doing construction projects in Zambia. Seemingly oblivious to the fact that the defendants in the Chinese defilement case had been acquitted, Minister Fackson Shamenda observed that “lack of time for Chinese

²⁶⁴ See Chucuchucu, Comment to *Chinese Defile [sic] Walk*, *supra* note 260; Mule, Comment to *Chinese Defiles [sic] Walk*, *supra* note 260.

²⁶⁵ Interview with Silwamba, *supra* note 27.

²⁶⁶ Van Bracht, *supra* note 197, at 62.

²⁶⁷ *Id.* at 64.

²⁶⁸ *Id.* at 74.

²⁶⁹ See *Busted! Cheating Black Woman Gives Birth to Chinese Baby*, TUMFWEKO (Feb. 2, 2012), <http://tumfweko.com/2012/02/02/busted-cheating-black-woman-gives-birth-to-chinese-baby/> (“A cheating married black woman in Damafalls, Ruwa, Zimbabwe remains the talk of the neighbourhood after she gave birth to an Asian baby.”). *School Girl Who Gave Birth to Chinese Baby Fails to Identify the Father, Says They All Look Alike*, TUMFWEKO (Apr. 27, 2012), <http://tumfweko.com/2012/04/27/school-girl-who-gave-birth-to-chinese-baby-fails-to-identify-the-father-says-they-all-look-alikevideo/> (citing Kenyacitizenstv, *20yr Old Girl Looking for Her Chinese Baby Daddy*, YOUTUBE (Mar. 5, 2011), <http://www.youtube.com/watch?v=bztNoEypJG0#!>).

²⁷⁰ Cass R. Sunstein, *Breaking up the Echo*, N.Y. TIMES, Sept. 18, 2012,

<http://www.nytimes.com/2012/09/18/opinion/balanced-news-reports-may-only-inflate.html>.

²⁷¹ Despite the acquittal, Zambian bloggers continued to refer to the Chinese defilement case as establishing Chinese sexual criminality. See, e.g., Munyale, post to “Minimum Wage: Mine Workers Kill Chinese Manager, Injures 2 Others In Sinazongwe,” Tumfweko, Aug. 6, 2012, <http://tumfweko.com/2012/08/06/minimum-wage-mine-workers-kill-chinese-manager-injures-2-others-in-sinazongwe/>.

workers to socialize could lead to bad episodes such as the one in the Copperbelt where some Chinese workers defiled young girls.”²⁷²

VI. Other Post-Election Denials of Equal Protection Involving Chinese

Kambwili was removed as Foreign Minister on January 12, 2012 and made Labor Minister, allegedly because “diplomats complained that Kambwili lacked diplomatic etiquette . . . [and his] language was vulgar.”²⁷³ For example, a conservative U.S. journal recounted, with approval, that when Amnesty International requested that the GRZ arrest a visiting George W. Bush as a war criminal, “Kambwili had a tart response. ‘On what basis does Amnesty International want us to arrest Mr. Bush? Tell them to hang, and also please ask them to create their own country and wait for Mr. Bush to visit their country so that they can arrest him to suit their wish and not here in Zambia.’”²⁷⁴ However, Kambwili indicated that Sudan’s President Omar al-Bashir, denounced by the U.S. and under an International Criminal Court indictment opposed by the African Union, would “regret the day he was born,” and would be arrested if he set foot in Zambia.²⁷⁵

In his last press conference as Foreign Minister, Kambwili stated “I’m going to [L]abour to sort out the issue at [L]abour . . . I’ve never used any vulgar language . . . I think I’ve scored a lot of success everywhere I’ve gone.”²⁷⁶ He added that “Government would not hesitate to take punitive action against investors who continued to verbally abuse Zambian workers . . . [as] it was against the Zambian tradition for people to use abusive language.”²⁷⁷ About two weeks later, Kambwili was to excoriate to his face and order the deportation of a senior Chinese surgeon who had worked in Zambia for years at the CNMC-built Sino-Zam Hospital.²⁷⁸

Soon after becoming Labor Minister, Kambwili began surprise visits to industrial firms, focusing on those owned by Chinese and ethnic Indians.²⁷⁹ An analyst said, “Kambwili went on a rampage aimed primarily at Chinese interests.”²⁸⁰ Another reported that Kambwili “ordered inspections of factories on the Copperbelt, paying special attention to Chinese-owned operations,” and claimed “to have reports of Zambian laborers ‘being treated worse than animals in their own country by Chinese.’”²⁸¹ Still, another analyst said Kambwili “lambasted Chinese and Indian economic interests.”²⁸² For example, on January 24th, he visited Gourock Ltd. Co., an Indian-owned cooking oil and soap factory. He instructed its manager to:

Tell your people to stop insulting the Zambians because they will be forced to leave this country if they continue with this kind of behaviour . . . You should also stop bringing a lot of Indians to come and work because our own people have the capacity to do so. We allow you to invest because we want to create employment for our people.²⁸³

²⁷² “Shamenda Advises the Chinese to Treat Local Labour Force with Humane (sic),” LUSAKA TIMES, May 10, 2013.

²⁷³ Edwin Mbulo & Enerst Chanda, *Diplomats Complained about Kambwili*, THE POST (Zambia), Jan. 14, 2012, www.postzambia.com/post-read_article.php?articleId=24704.

²⁷⁴ *The Week*, NATIONAL REVIEW, Dec. 31, 2012, <https://www.nationalreview.com/nrd/articles/293975/week>.

²⁷⁵ *Zambia Ready to Arrest Al Bashir*, DAILY TIMES (Malawi), May 20, 2012, <http://www.bnltimes.com/index.php/sunday-times/headlines/national/6528-zambia-ready-to-arrest-al-bashir>.

²⁷⁶ Mbulo & Chanda, *supra* note 269.

²⁷⁷ *Genuine Investors Won’t Lose Confidence in Zambia-Kambwili*, LUSAKA TIMES, (Jan. 13, 2012), <http://www.lusakatimes.com/2012/01/13/genuine-investors-wont-lose-confidence-zambiakambwili/>.

²⁷⁸ *Zambia: Kambwili Orders the Revocation of the Work Permit of a Chinese Medical Officer for Being Rude*, LUSAKA TIMES (Jan. 28, 2012), <http://www.lusakatimes.com/2012/01/28/kambwili-orders-revocation-work-permit-chinese-medical-officer-rude/>.

²⁷⁹ See Fridah Nkonde, *Kambwili Rebukes Gourock Manager*, THE POST (Zambia), Jan. 25, 2012, http://postzambia.com/post-read_article.php?articleId=24809.

²⁸⁰ Arthur Simuchoba, *Sata Under Fire Over “Realignment,”* TIMES (South Africa), Mar. 18, 2012, www.timeslive.co.za/africa/2012/03/18/sata-under-fire-over-realignment.

²⁸¹ *Zambia: Sata Moves to Placate Asian Investors*, GHANA NATION (Feb. 29, 2012), <http://news1.ghananation.com/africa/237661-zambia-sata-moves-to-placate-asian-investors.html>.

²⁸² Chola Mukanga, *The Peasant Girl with a Rich Lover*, 4th Edition, ZAMBIAN ECONOMIST (Mar. 2, 2012), <http://www.zambian-economist.com/2012/03/peasant-girl-with-rich-lover-4th.html> (internal citation omitted).

²⁸³ Nkonde, *supra* note 275.

Reportedly, the manager responded weakly by saying that he had been in Zambia for three years, and wanted to stay.²⁸⁴ That day, Kambwili also visited Scaw Ltd., an ethnic Indian-owned metal molding company, where he “castigated some Zambian workers and there [sic] supervisors for defending the company’s flaws.”²⁸⁵ He then went to CNMC-owned Chambishi Copper Smelter, where he told management to reduce the number of Chinese workers.²⁸⁶

The day of the Sino-Zam incident, January 27th, Kambwili had already visited Israeli-owned emerald producer Kagem Mine and the “white-owned” Alfred Knight engineering firm.²⁸⁷ Pronouncing that “Zambia is for Zambians,” he ordered these firms to reduce the number of foreigners they employ, and to pay Zambian managers and professionals the same as expatriates.²⁸⁸ He arrived at Sino-Zam unannounced, claiming to “verify alleged reports of poor conditions of service”²⁸⁹ Kambwili was met by Chief Medical Officer Qin Xisheng.²⁹⁰ Pointing his finger at Qin, Kambwili said he had been told that nurses at Sino-Zam receive K700,000 as basic pay and that the PF, unlike the MMD, would not accept poor salaries being paid.²⁹¹ Kambwili also erroneously claimed that the GRZ had set a precedent by doubling the salaries of publicly-employed health workers and said that he “expected the private companies to follow suit.”²⁹²

Dr. Qin recalled that a friend who worked for Zambia’s President had told him earlier to expect a visit by the Minister of Health. Instead, Kambwili and a group of journalists had come. Qin saw Kambwili, but did not know who he was. Kambwili told Qin who he was, and said he was there to deal with the issue of low wages. When Kambwili stated that he had heard that nurses there were paid K700,000 a month, Dr. Qin replied that they earn K2m.²⁹³ Pointing his finger at Qin, Kambwili said “you Chinese come to our country to exploit our people and just make money,” and added something about China that Qin considered disparaging. Qin refuted this, and claimed the nurses were not being mistreated.²⁹⁴ At the time, Qin thought to himself, “if I did something wrong, you can criticize me. If you want to criticize Chinese in Zambia, that’s OK too, because not all Chinese here are good. But if you want [to] criticize my country, that’s another matter.” He then told Kambwili, “[y]ou are a very rough person. I cannot imagine how someone like you can be a minister . . . why do you keep pointing your finger at me? You’re very rough.”²⁹⁵

²⁸⁴ *Id.*

²⁸⁵ *Kambwili Orders Workers not to Return to Work Until They are Provided Safety Gear*, LUSAKA TIMES (Jan. 25, 2012), <http://www.lusakatimes.com/2012/01/25/kambwili-orders-workers-return-work-safety-gear/>.

²⁸⁶ *Id.*

²⁸⁷ *Kambwili Orders Revocation of Medical Officer*, *supra* note 274. See also *Zhou Accuses Kambwili of Lies*, THE POST (Zambia), Feb. 1, 2012, http://www.postzambia.com/post-read_article.php?articleId=24889.

²⁸⁸ *Kambwili Orders Revocation of Medical Officer*, *supra* note 274.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.* Kambwili’s solicitude for nurses was at odds with statements he made in 2007, upholding the beating of nurses by patients. See Sandra Lombe et al., *Nurses’ beatings are justified – Kambwili*, MARAVI (Sept. 15, 2007), <http://maravi.blogspot.com/2007/09/nurses-beatings-are-justified-kambwili.html>.

²⁹² *Kambwili Orders Revocation*, *supra* note 274.

²⁹³ It is unlikely that a non-government nurse would earn only K700,000, as there is an acute nurses shortage in Zambia. See Meluse Kapatamoyo, “Bad Pay for Good Work in Zambia,” MYWAGE.ORG (Feb. 24, 2011), www.mywage.org/zambia/main/women-and-work/bad-pay-for-good-work (“According to the latest Economic Report, there are currently 9,563 nurses in Zambia against the recommended 22,332.”). In 2005, nurses in Zambia averaged \$345 (K1.6m) a month. CHRISTOPHER LANE ET AL., WORLD HEALTH ORG., THE NURSING COMMUNITY, MACROECONOMIC AND PUBLIC FINANCE POLICIES: TOWARD A BETTER UNDERSTANDING 37 (2009), available at http://www.who.int/health_financing/documents/dp_e_09_02-nursing_macroconomics.pdf. By 2011, they received about K2m. Louise Redvers, *Zambian Elections: Poverty, Prosperity and Potholes*, MAIL & GUARDIAN (South Africa), Aug. 26, 2011, <http://mg.co.za/article/2011-08-26-zambian-elections-poverty-prosperity-and-potholes>.

²⁹⁴ *Overzealous Kambwili Gives Chinese Doctor 7 Days To Leave Zambia*, ZAMBIAN WATCHDOG (Jan. 27, 2012), <http://www.zambianwatchdog.com/?p=29938>.

²⁹⁵ Interview with Xisheng Qin, Chief Medical Officer, Sino-Zam Hospital (date unknown). Pointing a finger at someone is considered rude in both Chinese and African cultures. See Mark Wiens, *17 African Cultural Values (To Know Before you Travel to Africa)*, MIGRATIONOLOGY, (Mar. 28, 2011), <http://migrationology.com/2011/03/african-cultural-values-travel-africa-17/>; *Top Ten Things to Know About Chinese Communications and Culture*, USCHINA

Qin also reportedly asked Kambwili “to use diplomacy when talking to him.”²⁹⁶ Kambwili retorted that Qin “was equally being rude for answering and defending himself even when he was in the wrong.”²⁹⁷ Officials in Kambwili’s entourage also rebuked the doctor.²⁹⁸ Kambwili, “as a warning to other foreign investors,” stated, “I am giving you seven days in which to vacate the office. I have revoked your work permit with immediate effect.” He directed the acting Labor Commissioner to immediately contact the Ministry of Home Affairs to cancel the permit and ensure Qin left Zambia within seven days. Qin retorted by querying “Can I leave tomorrow?” and added, “despite being a foreigner he deserved some respect from Mr. Kambwili when discussing labor matters.” He further stated, “I may be Chinese, but I have worked here for so many years, saving the lives of many Zambians. I have been dedicated to doing my work and I have only been home for 90 days to see my family.”²⁹⁹

In an interview, Qin later related that he had occasionally thought of leaving for Canada or Australia, where a friend had guaranteed him a job, and where he could make US\$20,000-\$30,000 a month. Alternatively, if he set up a private practice in Zambia, Qin could earn \$50,000 a month, or more, by sacrificing efficiency and halving staff at Sino-Zam. Yet, Qin did not open a private practice in Zambia because he “wants to accommodate as much employment as possible.”³⁰⁰

While Qin made a moral plea, he also had a potential legal defense: the Zambia Supreme Court decision, *Attorney General v. Clarke*.³⁰¹ In *Clarke*, the Attorney General appealed against a High Court decision nullifying an order to deport British national and long-term Zambia resident Roy Clarke, a columnist for *The Post* newspaper.³⁰² In 2004, Clarke contributed a satirical article with crude descriptions of the physical features of government officials, comparing them to various animals.³⁰³ He also alleged that the President and some ministers had rigged the 2001 elections.³⁰⁴ The Minister of Home Affairs ordered Clarke’s deportation, erroneously claiming he was doing no more than what had been done to a Zambian High Commissioner in the U.K. who was deported after calling that country a “toothless bulldog.”³⁰⁵ The Minister also argued that Clarke’s insults were so grave that they could lead to violence. Clarke responded that his article was satire protected by freedom of expression and freedom of the press and not intended to inspire violence.³⁰⁶ The deportation order, he contended, “was explicitly taken on grounds of his origin, nationality and race.”³⁰⁷ The Supreme Court reasoned that no discrimination was involved because only a foreigner can be deported from Zambia. It nevertheless ruled in Clarke’s favor, because deportation was “disproportionate” and “too extreme.”³⁰⁸ The *Clarke* decision might have served

BUSINESS SOLUTIONS, <http://www.uschinabiz.com/TopTens/ChinaBusinessCommunication.aspx> (last visited Feb. 16, 2013).

²⁹⁶ Interview with Qin, *supra* note 292.

²⁹⁷ Kambwili is noted for obstreperous debating. *See, e.g., Debates – Tuesday, 17th November, 2009*, ZAMBIAN PARLIAMENT (Nov. 17, 2009),

http://www.parliament.gov.zm/index.php?option=com_content&task=view&id=1079&Itemid=86&limit=1&limitstart=5.

²⁹⁸ *Zambia: Kambwili Orders Revocation of Sinozam Chief’s Work Permit*, TIMES OF ZAMBIA, Jan. 28, 2012,

<http://allafrica.com/stories/201201300202.html>

²⁹⁹ Interview with Qin, *supra* note 292. *See also Chinese Doc Work Permit Revoke*, DAILY MAIL OF ZAMBIA, Jan. 28, 2012; *Sinozam Chief Medical Officer Faces Deportation*, ZAMBIA NEWS INFORMATION SERVICE, Jan. 27, 2012.

³⁰⁰ Interview with Qin, *supra* note 292.

³⁰¹ *See generally* Att’y Gen. v. Clarke, (2008) ZLR [SC] (Zam.), *available at*

<http://www.saflii.org/zm/cases/ZMSC/2008/4.html>.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.* *See also* LOMA LLOYD, DIPLOMACY WITH A DIFFERENCE: THE COMMONWEALTH OFFICE OF HIGH COMMISSIONER, 1880-2006 236-37 (2007) (In 1967, Ali Simule, Zambian High Commissioner in Britain, referred to the UK as a “toothless bulldog,” due to its perceived insufficient actions against the unilateral declaration of independence by the racist government of Rhodesia. He was neither deported nor declared persona non grata. Rather, the GRZ temporarily seconded him to the United Nations. He was treated with diplomatic courtesies by Britain – including an audience with the Queen – on his next visit there).

³⁰⁶ Att’y Gen. v. Clarke, (2008) ZLR [SC] (Zam.).

³⁰⁷ *Id.*

³⁰⁸ *Id.*

as controlling precedent had Qin adjudicated the deportation order that Kambwili demanded against him.

Most bloggers on the *Lusaka Times* (“LT”) website, many of whom live in North America or the U.K., applauded Kambwili’s actions, and some proposed that Kambwili become Sata’s successor as top PF leader.³⁰⁹ Other bloggers, however, objected that Kambwili’s finger pointing was rude, or asserted that he was acting *ultra vires* by attempting to instruct another ministry to cancel a legally-held work permit in retaliation for its holder, calling him rude. One blogger termed Kambwili a racist and asked why he had singled out Chinese, another blogger ventured to say that some workers in Kambwili’s Ministry of Labor are paid less than Dr. Qin’s nurses.³¹⁰ Both supporters and detractors among the LT bloggers were sufficiently impressed with the over-the-top nature of Kambwili’s actions, and they dubbed him “The Monster of Labor.”³¹¹

Kambwili appeared on a radio program on January 29th and said that “he was shocked by the treatment he got at one company run by a Chinese investor . . . [as] one of the investors . . . had the courage to call him ‘rude.’”³¹² He said that Dr. Qin complained to China’s Ambassador Zhou Yuxiao, who then phoned Finance Minister Alexander Chikwanda, who was Acting President while Sata was abroad, “to complain that he (Kambwili) was intimidating Chinese investors.”³¹³ Kambwili added, “I will not be intimidated by the Chinese Ambassador.”³¹⁴ Zhou gave an interview the next day. He complained that Kambwili “was making groundless accusations against him,” “asked the government to clear up the matter,” said he had not called the Finance Minister, but had tried, unsuccessfully, to contact Kambwili.³¹⁵ Stating that Chinese investors were still being portrayed in a bad light in Zambia, Zhou added:

I do not know why this is so, because Chinese input in [Zambia] is the largest among all African countries, but the approval rate of China by Zambia is the lowest among all African countries. That doesn’t mean China is doing the worst in Zambia. There is only one political party (PF) in Africa that makes China an issue.³¹⁶

The ambassador also argued that Chinese companies were no worse than Zambian firms in terms of wages or other conditions of labor.³¹⁷

A couple days later, Kambwili was annoyed, again, with a Chinese man who he regarded as insufficiently responsive when he made an impromptu visit to CLM’s Mulyashi Open Pit Mine. Gao Jing, the Projects Manager, sent an interpreter to inform Kambwili that he had not expected his visit, was busy, and could not meet with him. Kambwili insisted on being seen, and Gao Jing

³⁰⁹ See generally Comments to *Kambwili Orders Revocation of Medical Officer*, *supra* note 274.

³¹⁰ See Mwisu, Comment 48 to *Kambwili Orders Revocation of Medical Officer*, *supra* note 274; Kamwendo, Comment 78 to *Kambwili Orders Revocation of Medical Officer*, *supra* note 274; Rude Monk, Comment 19 to *Kambwili Orders Revocation of Medical Officer*, *supra* note 274.

³¹¹ See Chin Tom Fwa, Comment to *Kambwili Orders Revocation of Medical Officer*, *supra* note 274; Rude Monk, Comment to *Kambwili Orders Revocation of Medical Officer*, *supra* note 274; Starved man, Comment to *Kambwili Orders Revocation of Medical Officer*, *supra* note 274.

³¹² Staff Reporters, *Ambassador Zhou Can’t Intimidate Me, says Kambwili*, THE POST (Zambia), Jan. 30, 2012, http://postzambia.com/post-read_article.php?articleId=24863.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ Kombe Chimpinde et al., *Zhou Accuses Kambwili of Lies*, THE POST (Zambia), Feb. 1, 2012, http://www.postzambia.com/post-read_article.php?articleId=24889.

³¹⁶ *Id.*

³¹⁷ *Id.* See also *Improve Workers Conditions, Hybrid Poultry Urged*, ZAMBIA DAILY MAIL, July 4, 2012 (Wages at most Zambian firms are much lower than at foreign-owned mining firms, including CNMC firms. For example, at Hybrid Poultry, a white Zambian-owned firm with 930 employees, workers in early 2012 allegedly earned K420,000 a month, the then minimum wage.); *Hybrid Poultry Gets Ultimatum*, TIMES OF ZAMBIA, Apr. 21, 2012, <http://allafrica.com/stories/201204230209.html>; *Cargill Workers Down Tools over Minimum Wage*, ZAMBIA DAILY MAIL, Sept. 4, 2012 (Many foreign non-mining firms also pay very low wages. At a cotton firm owned by US agribusiness giant Cargill, 700 workers, who also earned K420,000, went on strike in 2012).

appeared after about 30 minutes. Kambwili told Gao to “ensure transparency is exercised especially when employing workers. . . . [and] urged the Chinese to advertise all the jobs they will be offering when employing workers.”³¹⁸

The next day, Kambwili “vowed to continue his highly publicized controversial tours,” and stated that he had met on February 1st with Ambassador Zhou, who invited him to an acrobatics performance the next day, and agreed with him about the mistakes that had been made.³¹⁹ He claimed moreover to have “made up with” Dr. Qin, but also asserted that as a minister he could revoke anyone’s work permit and “no-one can stop him, including the President.”³²⁰

What got Kambwili ousted as Labor Minister was not mainly his attacks on “the Chinese,” but the statement in which he “boast[ed] about his ability to act without President Sata’s say-so”³²¹ and his January 25th announcement that the GRZ had to double all public health employees’ pay.³²² The GRZ had in fact fixed on a much lower figure: it ended up giving a four percent increase.³²³ Sata was not pleased with Kambwili’s exercise of autonomy.³²⁴ He said on January 30th that “Ministers and government officers should not resort to arbitrary positions [S]ome of the approaches pursued by individuals in government are adrift with established procedure” and “salary adjustments [should] stay as close to inflation [six to seven percent in 2011] as possible. . . . to avoid triggering inflationary spirals.”³²⁵

The Zambia Federation of Employers and ZCTU indicated Kambwili had gone too far.³²⁶ Kambwili responded that “ZFE and ZCTU were an embarrassment not only to their members but also to the country” and “call[ed] for [ZFE President Alfred] Masupa’s and ZCTU president Leonard Hikaumba’s resignations . . . on moral grounds.”³²⁷ The GRZ-owned *Daily Mail* noted that Kambwili ordered Dr. Qin’s deportation, “even though it [wa]s not clear whether he has such powers.”³²⁸ In a popular political online message board, Kambwili was criticized for being one-sided and lacking a calm demeanor.³²⁹ For his part, Kambwili said he would continue to be emotional and people should not expect him to be calm, as three quarters of foreign-owned firms he visited in the Copperbelt were not complying with labor laws.³³⁰

On February 3rd, Sata “realigned” ministries so that Kambwili lost Labor and became Minister of Sports and Youth. In his January 30, 2012 statement, Sata recalled that he:

[E]njoined and cautioned ministers not to make statements that did not reflect government policy or which had not been referred to and cleared by Cabinet. Statements on the economy made by ministers that are not the competent channels for the issues they raise are damaging to our credibility as a country. Policy

³¹⁸ Brian Matambo, *Labour Minister Demands for Transparency When Hiring*, IZAMBIA.CO.ZM (Feb. 1, 2012), <http://www.izambia.co.zm/news/local/item/12032-labour-minister-demands-for-transperency-when-hiring.html>.

³¹⁹ *Kambwili Ready to Die for Zambian Workers, Reconciles with the “Rude” Chinese Doctor*, LUSAKA TIMES (Feb. 3, 2012), <http://www.lusakatimes.com/2012/02/03/kambwili-ready-die-zambian-workers-reconciles-rude-chinese-doctor/>.

³²⁰ *Id.*

³²¹ *Sata Moves to Placate*, *supra* note 277.

³²² *Health Workers Get 100% Salary Hike*, LUSAKA TIMES, (Jan. 26, 2012), <http://www.lusakatimes.com/2012/01/26/health-workers-100-salary-hike/>.

³²³ *Tension Rises over Salaries*, (NEWSPAPER), Mar. 18, 2012, (Article URL).

³²⁴ *See* Sinyangwe, *supra* note 254.

³²⁵ Joan Chirwa-Ngoma, *Sata Tells Ministers to Stick to Procedure*, THE POST (Zambia), Jan. 31, 2012, http://www.postzambia.com/post-read_article.php?articleId=24883.

³²⁶ *Kambwili Gets Rude with Employers*, ZAMBIA WEEKLY, Feb. 3, 2012, at 3, available at <http://zambia-weekly.kabilibranding.com/archive/Zambia%20Weekly%202012%20-%20week%205.pdf>.

³²⁷ *Kambwili Reacts Explosively to Advice on Relations with Investors*, THE INDEPENDENT POST (Zambia), Jan. 19, 2012.

³²⁸ *Don’t Antagonise Investors, Sata Caution[s] Ministers*, UKZAMBIANS (Jan. 31, 2012), <http://www.ukzambians.co.uk/home/2012/01/31/dont-antagonise-investors-sata-caution-ministers/>.

³²⁹ *Kambwili*, DEAR ZAMBIA (Jan. 30, 2012, 2:52 PM), www.zambia.co.zm/dearzambia/viewtopic.php?f=7&t=4989.

³³⁰ Kombe Chimpinde, *Kambwili Justifies Stance on Investors*, THE POST (Zambia), Feb. 3, 2012, http://www.postzambia.com/Joomla/post-read_article.php?articleId=24932.

consistency is a compelling need for all governments all over the world. As my very final warning, I ask all the ministers not to lead me into temptation.³³¹

In response, Kambwili, like Sata before him, compared himself to Jesus, who “was crucified for doing the right thing . . . [i]f I have to die to give Zambians a decent wage, respect and a better life, so be it.”³³² Kambwili did not die, but was only transferred.³³³ He was dispatched to represent Sata at football’s Africa Cup of Nations in Gabon.³³⁴ Yet even there, he could not escape his nemesis. Chinese firms in Zambia had chartered an aircraft to fly Zambia team supporters to Gabon, where it won the Cup.³³⁵ Not long after, Kambwili had to appear at a ceremony where Ambassador Zhou turned over equipment donated by China’s General Administration of Sport to Zambia’s Olympic Youth Development Center.³³⁶

Reasons for why Sata moved Kambwili to another ministry, rather than ousting him from the cabinet, are many. Some think it was because he feared Kambwili might become a “rebel backbencher” who would undermine him.³³⁷ Others believe it was because other ministers were no more competent and obedient to Sata than Kambwili.³³⁸ The problem may have mainly been that Kambwili’s statements and style had unnerved investors.³³⁹ In any case, Kambwili remains popular among those with anti-Chinese leanings and the PF has sought to assure its supporters that Kambwili’s transfer did not mean it was going soft on “the Chinese.”³⁴⁰ PF Secretary General Wynter Kabimba said that PF “has not changed its tough stance on exploitative Chinese investors.”³⁴¹

Apart from the threat to deport Dr. Qin, Chinese were also singled out for disapprobation when a government official sought to uniquely and literally deny a Chinese firm protection afforded other firms.³⁴² In December 2011, Zambian security guard Nicholas Liswaniso, who worked for the Zambian firm Henry Gomes Security on the premises of Chinese-owned 15 MCC within Chambishi Copper Smelter (“CCS”), shot and killed suspected copper thief Bill Mwape, a carpenter at 15 MCC.³⁴³ Liswaniso was charged with murder, as he used excessive force.³⁴⁴ Deputy Minister of Labor Rayford Mbulu then visited CCS to investigate the shooting, which he termed regrettable. Mbulu urged CCS to ensure that guards at its premises “do not use live

³³¹ Bright Mukwasa, *Sata Realigns 3 Ministries, Detaches Labour From Sport*, THE POST (Zambia), Feb. 4, 2012, http://www.postzambia.com/post-read_article.php?articleId=24934.

³³² Arthur Simuchoba, *Sata Puts His Foot Down*, TIMES LIVE, Feb. 4, 2012, available at <http://www.timeslive.co.za/africa/2012/02/12/sata-puts-his-foot-down>.

³³³ See generally *Street Vending Needs to be Controlled-Kambwili*, LUSAKA TIMES (Mar. 11, 2012), <http://www.lusakatimes.com/2012/03/11/street-vending-controlledkambwili/> (Just as Kambwili, acting as Foreign Minister, intervened in the Chinese defilement case, even though it was a matter for other ministries, Minister of Sport Kambwili continues to intervene in matters outside his ministry’s purview, such as aiding the large South African supermarket chain Shoprite in its problems with street vendors selling near its outlets).

³³⁴ *Sata Delegates Kambwili to Represent Him at AFCON, Promises to Facilitate Fans Trip if Zambia Reaches the Final*, LUSAKA TIMES (Feb. 4, 2012), <http://www.lusakatimes.com/2012/02/04/sata-delegates-kambwili-represent-afcon-promises-facilitate-fans-trip-zambia-reaches-final/>.

³³⁵ *Lusaka Welcomes Asia, Again*, supra note 159.

³³⁶ *Chinese Ambassador Donates Sports Wears to Hon. Kambwili*, EMBASSY OF THE PEOPLE’S REPUBLIC OF CHINA IN THE REPUBLIC OF ZAMBIA (Mar. 13, 2012), <http://zm.chineseembassy.org/eng/sgzxdthxx/t913497.htm>.

³³⁷ Jay Jay, Comment to *Sata Delegates Kambwili*, supra note 332.

³³⁸ *Why is Sata Afraid of Sacking Chishimba Kambwili*, INDEPENDENT POST, Feb. 5, 2012.

³³⁹ Dean Mwaanga, *Sata Acts on Chishimba Kambwili*, ZAMBIA ONLINE (Feb. 4, 2012), <http://zambia.co.zm/news/headlines/2012/02/04/sata-acts-on-chishimba-kambwili/>; *Ministry Changes Draw Mixed Reactions*, ZAMBIA DAILY MAIL, Feb. 4, 2012.

³⁴⁰ Ernest Chanda, *PF Stance on Exploitative Chinese Hasn’t Changed, Says Kabimba*, THE POST (Zambia), Mar. 1, 2012, http://www.postzambia.com/Joomla/post-read_article.php?articleId=25410.

³⁴¹ *Id.*

³⁴² Needs source (may come from the daily mail article below in FN 342). This statement does not need a source. It merely introduces the topic to be discussed.

³⁴³ Needs source (may come from the daily mail article below in FN 342).

³⁴⁴ *Kalulushi Guard Shoots Carpenter Dead*, ZAMBIA DAILY MAIL, Dec. 12, 2011.

ammunition on innocent citizens.”³⁴⁵ CCS Deputy CEO Yu Zhongqin responded by stating that thieves often came at night to steal copper, and that some had beaten security guards.³⁴⁶

The Deputy Minister’s statement was problematic in more than one way. It implied that Mwape was an “innocent citizen,” even though a police investigation was ongoing and security guards had been attacked in previous copper theft attempts at CCS.³⁴⁷ Indeed, in 2009, two thieves brutally murdered two security guards at CCS’s sister firm Sino Metals, and were subsequently sentenced to death.³⁴⁸ Mbulu had singled out the Chinese firm for criticism even though a Zambian, who was employed by a Zambian security firm, did the shooting, and shootings of thieves at non-Chinese firms had not been subject to intervention by high-level officials. A Zambian-Canadian observed in a blog on security in Lusaka, “a cousin of mine works as a supervisor for a security firm in the capital. His men carry pistols and shotguns and are trained to shoot to kill. The police some years ago took a similar stand, shooting first and asking [questions] later.”³⁴⁹ The point is not to uphold the shooting of thieves by immunizing security guards or their employers,³⁵⁰ but to demonstrate the apparent disparate treatment of Chinese and non-Chinese firms in the use of armed force against thieves.

In January 2012, CCS’s Yu Zhongqin returned to the issue of the GRZ’s implied singling out of Chinese firms for the use of potentially deadly force in protecting against thieves. He stated that “some CCS workers connived with suspected thieves to steal copper from the smelter,” that copper thieves had “threatened CCS security with catapults, guns and machetes each time they were confronted,” and that though the security firm was licensed to use fire arms, it was no longer free to do so because of publicity surrounding Mwape’s killing.³⁵¹ Alluding to Mbulu’s intervention, Yu added:

CCS was not comfortable with the publicity that came out after the shooting of the suspected thief, who did not stop when warning shots were fired in the air. . . . ‘People said a lot of things about the Chinese. The security company is Zambian. It is for this reason that we ask Government to intervene.’³⁵²

Another instance of a top Zambian official engaging in racial profiling of Chinese occurred in late 2011/early 2012. In November 2011, Minister of Labor Fackson Shamenda joined the wholly Western-financed NGO Human Rights Watch (“HRW”)³⁵³ in singling out Chinese mining firms in Zambia by “demanding a stop to the abuse of Zambians working [for] Chinese investors.”³⁵⁴ HRW had just issued a flawed report on CNMC firm “labor abuses.”³⁵⁵ Shamenda endorsed it

³⁴⁵ Nkombo Kachemba, *Stop Using Guns, Mbulu Tells Chinese Investors*, ZAMBIA DAILY MAIL, Dec. 14, 2011, available at <http://www.accessmylibrary.com/article-1G1-274945137/chinese-investment-zambia-helps.html>.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Bandits Kill Two Sino Metals Guards*, TIMES OF ZAMBIA, May 7, 2009, <http://allafrica.com/stories/200905070231.html>; *Two to Hang, Killer Fisherman in 100 Years*, ZAMBIA DAILY MAIL, Jan. 31, 2012.

³⁴⁹ Darkstar, *Mean Streets*, ODYSSEY. VOYAGE. TREK. PILGRIMAGE. WHATEVER THE TERM, IT’S SEVEN MONTHS IN SOUTHERN AFRICA, (Nov. 10, 2012, 10:15 PM), http://blog.travelpod.com/travel-blog-entries/darkstar/africa_05/1122899340/tpod.html.

³⁵⁰ See Mwala Kalaluka, *Cops Nab Kaoma Guard, 82 for Killing Suspected Thief*, THE POST (Zambia), Mar. 15, 2012, http://www.postzambia.com/post-read_article.php?articleId=25863.

³⁵¹ *Zambia: Mining Company Bemoans Copper Theft*, TIMES OF ZAMBIA, Jan. 7, 2012, <http://allafrica.com/stories/201201090341.html>.

³⁵² *Id.*

³⁵³ Of donations to HRW, “almost 75 percent comes from North America and about 25 percent from Western Europe, with less than 1 percent from all other regions of the world combined.” See *Human Rights Watch Visit to Saudi Arabia*, HUMAN RIGHTS WATCH (Jul. 17, 2009), www.hrw.org/en/node/84512.

³⁵⁴ Kanyanta Katongo, *Work Within the Law, Chinese Told*, ZAMBIA DAILY MAIL, Nov. 9, 2011, available at <http://www.accessmylibrary.com/article-1G1-272159016/zambian-government-urges-chinese.html>.

³⁵⁵ See generally MATT WELLS, HUMAN RIGHTS WATCH, YOU’LL BE FIRED IF YOU REFUSE: LABOR ABUSES IN ZAMBIA’S CHINESE STATE-OWNED COPPER MINES, (2011),

without any investigation by his own ministry, stating that “the Chinese . . . should stop flouting labor laws and ensure that all workers are properly looked after . . . [and] protect the interest of workers in Zambia because the safety and health of employees cannot be compromised at the expense of wealth creation.”³⁵⁶ He made no specific criticisms on compliance with labor laws by firms of other nationalities, although other foreign- and locally-owned firms flaunt the law.³⁵⁷ In February 2012, Minister of Mines and Mineral Development Wilbur Simusa, likely based on the same HRW study, reportedly “said he would request mine safety is improved when he meets Chinese mine managers operating in Zambia and the ambassador next week. . . . ‘Some methods aren’t up to accepted practices. If they do not improve we may be forced to take their (the miners’) licenses.’”³⁵⁸

The Chinese defilement case involved ethnic-based selective prosecution; a 2012 case may have involved ethnic-based selective sentencing. Chen Shaoming, a driver, and Guo Wei, an engineer, worked building an ultra-modern stadium in Lusaka. In June 2012, on their way back to China, they were arrested at Lusaka’s airport for possessing ivory trophies without a certificate from the Zambian Wildlife Authority (“ZAWA”). Chen had four “bungles” (possibly bugles-beads), one hanko (seal) and a several dozen loose beads. Guo had a single hanko. The ivory, in total, weighed about a half-kilogram. Chen stated that “he did not know it was an offense to possess such items and that it was his first time to work in Africa, Zambia in particular.” Guo said “he did not understand the Zambian laws,” and “had bought the hanko as a gift for his friend in China and it was not meant for sale.”³⁵⁹

Defendants pleaded guilty, but their lawyers, Isaiah Ng’onga and M. Munansangu, soon argued that the plea they had taken from defendants was equivocal because “their clients did not understand the language used when they pleaded guilty to the offence.”³⁶⁰ Counsel applied to the magistrate to change the pleas to not guilty and grant bail. Magistrate Wilifred Muma rejected both applications.³⁶¹ He sentenced Chen, who had been returning to China on crutches after being injured on the job, to seven years at hard labor. Guo got five years at hard labor.³⁶² Magistrate Muma asserted that “he paid particular attention to the fact that they were first offenders who

<http://www.hrw.org/sites/default/files/reports/zambia1111ForWebUpload.pdf>. For critiques of the report, see Barry Sautman & Yan Hairong, *The Chinese are the Worst?: Human Rights and Labor Practices in Zambian Mining*, University of Maryland School of Law, Maryland Series in Contemporary Asian Studies, 2013; Yan Hairong & Barry Sautman, “*The Beginnings of a World Empire*”?: Contesting the Discourse of Chinese Copper Mining in Zambia, 39 MOD. CHINA 131 (2013). For shorter critiques, see Barry Sautman & Yan Hairong, *Simply the Worst? Findings from Human Rights Watch about Labour Practices in Chinese-owned Copper Mines are Flawed*, ZAMBIA ANALYSIS, Dec. 2011-Jan. 2012, at 25-27, available at <http://www.scribd.com/doc/76252063/Zambia-Analysis-2011-12-Dec-Jan-Web>; Barry Sautman & Yan Hairong, *Barking up the Wrong Tree: Human Rights Watch and Chinese Copper Mining in Zambia*, PAMBAZUKA NEWS, Dec. 14, 2011, www.pambazuka.org/en/category/features/78660; Barry Sautman & Yan Hairong, *Gilded Outside, Shoddy Within: the Human Rights Watch Report on Chinese Copper Mining in Zambia*, ASIA-PACIFIC JOURNAL: JAPAN FOCUS, Dec. 26, 2011, <http://www.japanfocus.org/-Yan-Hairong/3668>; Barry Sautman & Yan Hairong, *Wrong Answers to the Wrong Question: Response to HRW*, PAMBAZUKA NEWS, Feb. 2, 2012, www.pambazuka.org/en/category/features/79602; Yan Hairong & Barry Sautman, *One Dog Barking Sets the Whole Street A-barking*, CHINA IN AFRICA: THE REAL STORY (Feb. 7, 2012, 11:49 PM), www.chinaafricarealstory.com/2012/02/hrw-meets-critics-report-on-chinas.html.

³⁵⁶ *China Urges Zambian Government to Jail its Nationals Flouting Labor Laws*, STEEL GURU (Nov. 11, 2011), http://www.steelguru.com/metals_news/China_urges_Zambian_government_to_jail_its_nationals_flouting_labor_laws/235141.html.

³⁵⁷ “Accept Gov’t Successes; ZCTU,” TOZ, Sept. 18, 2012 (President of Zambian Congress of Trade Unions states that “several investors both local and foreign were still abusing employees and violating labour laws”). See also “Labour Nuisance Continues as lumwana Workers Complain of Unlawful Number of Working Hours and Violation of Human Rights,” Tumfweko, Mar. 1, 2013, <http://tumfweko.com/2012/02/29/labour-nuisance-continues-as-lumwana-workers-complain-of-unlawful-number-of-working-hours-and-violation-of-human-rights/>.

³⁵⁸ *Safety Under Spotlight at Mining Indaba*, BUSINESS LIVE (South Africa), Feb. 12, 2012.

³⁵⁹ *2 Chinese Face 5-Year Custodial Jail Term*, ZAMBIA DAILY MAIL, June 14, 2012.

³⁶⁰ *2 Jailed Over Illegal Ivory*, TIMES OF ZAMBIA, June 20, 2012, <http://www.times.co.zm/sunday/?p=1926>.

³⁶¹ *Id.*

³⁶² Agness Changala, *Magistrate Convicts Two Chinese for Unlawful Possession of Government Trophy*, THE POST (Zambia), June 14, 2012, http://www.postzambia.com/post-read_article.php?articleId=27917.

deserved leniency.”³⁶³ Defense counsel indicated that the defendants would appeal to the High Court and, ten days after their sentencing, defendants’ appeals counsel Clavel Sianondo secured a grant of K60m bail, conditioned on finding two GRZ or quasi-government employees to act as sureties.³⁶⁴

The fact that the sentences were, under the circumstances, far from lenient, indicates that defendants’ ethnicity may have been a factor. There have been several publicized cases of arrests for illegal possession of ivory in Zambia; some cases involved Chinese with small quantities of carved pieces, such as chop sticks and bracelets,³⁶⁵ but there are almost no reports of the sentences handed down. In 2003, a Zambian who admitted to shooting fifty-eight elephants was given five years, but released in 2004.³⁶⁶ A Zambian was given five years in 2009 for illegally possessing 36 kg of mostly raw ivory, indicating intent to sell, in contrast to Chen and Guo’s half-kilo of trinkets, which indicated personal possessions or intended gifts.³⁶⁷

There are also a few reported sentences from other African countries. For example, in 2003, a Malawian trafficker was sentenced by her country’s High Court to one year of hard labor for unlawful possession of 127 kg of ivory.³⁶⁸ In Botswana, in 2006, a sentence of twenty-four months, with ten months suspended, was given for possession of elephant tusks without a certificate.³⁶⁹ A Chinese citizen caught with “[ten] pairs of ivory chopsticks and ivory bracelets” was sentenced in 2010 to eighteen months in Kenya.³⁷⁰ The Kenyan Wildlife Service, which, like ZAWA, prosecutes illegal ivory possession cases, stated that the finished products were for personal use, not trafficking.³⁷¹ It added, however, that “China is leading the way” among “Asian countries [with] an insatiable appetite for ivory and rhino horns,” implying that defendant’s nationality may have played a role in his sentencing.³⁷² In 2011, a Zambian arrested in Ethiopia with ivory bracelets was fined US\$600.³⁷³ In 2012, a South African magistrate sentenced a shop manager to five years for possessing for sale a ton of ivory products without documentation.³⁷⁴ A group of ivory traffickers in Cameroon were sentenced to one year in prison for possessing forty-four tusks.³⁷⁵ In the above-mentioned cases, short sentences or fines were generally imposed where the kind and amount of ivory indicated that the illegal possession of ivory was not for commercial

³⁶³ Agness Changala, *Court Jails 2 Chinese Over Ivory Possession*, THE POST (Zambia), June 12, 2012, http://www.postzambia.com/post-read_article.php?articleId=28076.

³⁶⁴ *Id.*; *Convicted Chinese Given K60m Cash Bail*, ZAMBIA DAILY MAIL, June 30, 2012.

³⁶⁵ Mutuna Chanda, *Three Chinese Nationals Found with Ivory, Arrested*, MARAVI (Mar. 26, 2009, 6:11 PM), <http://maravi.blogspot.com/2009/03/three-chinese-nationals-found-with.html>; *Arrested in Zambia over Illegal Ivory Possession*, TRAFFIC (Mar. 31, 2008, 1:14 PM), <http://www.traffic.org/seizures-journal-legacy/2008/3/31/9-arrested-in-zambia-over-illegal-ivory-possession.html>.

³⁶⁶ JULIAN NEWMAN ET AL., ENVTL. INVESTIGATION AGENCY, THE ENFORCEMENT IMPERATIVE: COMBATING THE ILLEGAL TRADE IN IVORY 3 (2004), available at <http://www.eia-international.org/wp-content/uploads/The-Enforcement-Imperative-Low-Res1.pdf>.

³⁶⁷ *Man Gets 5 Years for Illegal Possession of Ivory*, LUSAKA TIMES (Nov. 15, 2009), <http://www.lusakatimes.com/2009/11/15/man-gets-5-years-for-illegal-possession-of-ivory/>.

³⁶⁸ Republic v. Akimu, [2003] M.W.H.C. 96 (Malawi), available at www.malawilii.org/mw/judgment/high-court-general-division/2003/96.

³⁶⁹ *Police Arrest Trophy Dealers*, DAILY NEWS (Botswana), Mar. 24, 2006, <http://www.olddailynews.gov.bw/cgi-bin/news.cgi?d=20060324>.

³⁷⁰ *Chinese Citizens Risk Imprisonment for Ivory Smuggling*, TRAFFIC NEWS (Sept. 23, 2010, 10:56 AM), <http://www.traffic.org/home/2010/9/13/chinese-citizens-risk-imprisonment-for-ivory-smuggling.html>.

³⁷¹ David McKenzie, *Kenya Jails Chinese National for Ivory Possession*, CNN, Aug. 26, 2010, http://articles.cnn.com/2010-08-26/world/kenya.ivory.smuggling_1_illegal-ivory-ivory-ban-rhino-horns?_s=PM:WORLD.

³⁷² *Id.*

³⁷³ *Zambian Woman Arrested in Ethiopia for Wearing Ivory Bracelets*, ZAMBIAN WATCHDOG (July 26, 2011), <http://www.zambianwatchdog.com/?p=20362>.

³⁷⁴ *Ton of Ivory Shop Manager Jailed*, GHANA MMA (Apr. 24, 2012, 9:53 PM), <http://www.ghanamma.com/2012/04/ton-of-ivory-shop-manager-jailed/>.

³⁷⁵ “Weak Ivory Trafficking Penalty Stengthened on Appeal,” Scoop, Apr. 19, 2012, <http://www.scoop.it/t/animal-poaching-who-does-it-who-allows-it/p/1624732105/weak-ivory-trafficking-penalty-strengthened-on-appeal>.

purposes, but even in cases involving large quantities and obvious commercial purposes, the sentences were equal to or shorter than those given to Chen and Guo in Zambia.³⁷⁶

In mid-2012, Kambwili also returned to bait “the Chinese.” Since he had been moved to the Ministry of Sport, Kambwili had not had much opportunity to do so. That changed in relation to action he took in his own constituency. Kambwili ordered CNMC Luanshya Mine to immediately re-open a clubhouse at the Roan Antelope Rugby Club.³⁷⁷ The clubhouse is within the Luanshya Sports Complex, owned by CLM. It seems that CLM does not subsidize rugby in Luanshya; indeed, few of CLM’s Chinese managers are expected to know much about this British-derived sport.³⁷⁸ Kambwili said that because of the lack of CLM subsidies, the Rugby Club decided to raise money by sub-letting the clubhouse, which is owned by CLM and had been rented to the Rugby Club. The latter sub-let the clubhouse to a casino operator.³⁷⁹ When CLM found out about the sub-let, which was undertaken without CLM’s permission, CLM decided to close the clubhouse on the ground that a casino “was not in the original concept of the club.”³⁸⁰ By the same token, CLM also objected to the Roan Squash Club opening a nightclub in the Luanshya Sports Club.³⁸¹

Kambwili ordered CLM to reopen the clubhouse by the time he visited Luanshya, the next day. He also charged that “the local Luanshya community was being barred from patronizing the Roan Badminton Club by “the Chinese” who rehabilitated it.”³⁸² Kambwili claimed that the Chinese’s actions amounted to segregation. He also demanded that “the Chinese” report to him about whether they were fulfilling their promise to build a gymnasium.³⁸³

It is not clear what legal basis, if any, there is for Kambwili’s issuing of “orders” in what would ordinarily be a landlord/tenant dispute over whether particular kinds of sub-letting were allowed. Whether CLM or the Chinese Embassy has contested the orders and intervened remains unknown. It is clear, however, that Kambwili, despite his ministerial downward mobility, will continue to play the role vis-a-vis “the Chinese” bequeathed to him by Sata.³⁸⁴

Besides top GRZ leaders’ post-election actions aimed at “the Chinese,” there was also an action aimed at “China.” Commerce Minister Bob Sichinga, addressing a February 3, 2012 meeting of business people in Kitwe, asserted that the MMD government had, in 2011, ordered more than three trillion in kwacha notes printed in China to distribute in rural areas during the election.³⁸⁵

³⁷⁶ Just as the two Chinese were sentenced, the largest case of illegal ivory possession in Zambian history broke. Some three tons of ivory, out of the total 30 tons possessed by the GRZ, was stolen from the ZAWA’s storeroom. Two ZAWA policemen were arrested. See *Police Condemned for Detaining Journalists Covering Zambia’s Biggest Ivory Theft Story*, LUSAKA TIMES (Jun. 22, 2012), <http://www.lusakatimes.com/2012/06/22/police-condemned-detaining-journalists-covering-zambias-biggest-ivory-theft-story/>; *Police Detain Journalists, Torture Suspects in Ivory Stolen by PF Bosses*, ZAMBIAN WATCHDOG (June 22, 2012), <http://www.zambianwatchdog.com/?p=37571> (“Since the announcement of the ivory theft – the largest in recent history – police have since apprehended two game scouts in connection with the alleged crime.”). See also *Zambia Considers Sale of Ivory Stockpile*, TIMES OF ZAMBIA, July 6, 2012, <http://www.times.co.zm/sunday/?p=3649> (any sentences handed down on illegal possession charges will be of interest to the Chinese ivory possession case).

³⁷⁷ *Kambwili Wants Club House Reopened*, TIMES OF ZAMBIA, July 4, 2012, <http://allafrica.com/stories/201207040555.html>.

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ At the same time, however, Kambwili continues to be “a businessman with the Chinese,” namely CLM, having reportedly been “awarded a hefty contract of K1 billion [about US\$200,000] to dismantle an old smelter where the Chinese want to build a modern smelter.” Zambia Reports, May 6, 2013.

³⁸⁵ See generally *MMD printed K3 Trillion BOGUS Notes[.] “The Bogus Money was Printed in CHINA,” TUMFWEKO* (Feb. 2, 2012), <http://tumfweko.com/2012/02/02/mmd-printed-k3-trillion-bogus-notes-the-bogus-money-was-printed-in-china/>.

Former MMD government officials denied it and sued Sichinga for defamation.³⁸⁶ Although he did not specifically mention the Chinese government, the latter denied it – presumably because the movement of such a huge sum from China to Zambia would require official Chinese connivance – and it demanded that Sichinga produce evidence.³⁸⁷ Sichinga said the government was already in the process of withdrawing the “fake currency,” but Finance Minister Alexander Chikwanda stated that he was not aware of any fakes.³⁸⁸ The Bank of Zamiba averred that all bank notes in circulation were legal tender and challenged Sichinga to produce evidence of fake money.³⁸⁹

UPND head Hakainde Hichilema issued a statement on the contretemps over the supposed “fake money.” He asserted that Sichinga’s claim was “a diplomatic blunder against the Chinese government that has already received so much negative publicity from the PF during campaigns. This shows that nothing has changed about the PF’s anti-Chinese rhetoric.”³⁹⁰ The same could be said about the Chinese defilement case, the threat to deport Dr. Qin, and the unique criticism of CCS for having security guards bearing firearms, all instances that appear to be denials of equal protection, grounded in politically-motivated racial incitement.

VII. Defilement, Racism and the Strategic Rivalry in Africa

Claims of defilement by a deprecated group are often integral to racial incitement, despite no evidence that the group engages in such activity. The Nazis, in the midst of the Holocaust, put the 68-year old head of the Nuremberg Jewish community, Leo Katzenberger, on trial for “racial defilement” (*rassenschande*), though they could have sent him to a conquered territory to be killed for no reason other than being Jewish, and though they presented no evidence he had sex with his non-Jewish woman friend.³⁹¹ The trial was merely to provide a supposed example for their assertion that Jewish men are defilers of non-Jewish women and children, a claim they always linked with other ones about Jews being cruel exploiters.³⁹²

Racial stereotyping often includes claims of defilement of local women by foreign immigrants,³⁹³ a notion intensively promoted from the late-19th to mid-20th centuries in Western countries with Chinese migrants. Hollywood films up through the 1930s portrayed “yellow peril fantasies of Asian rapists” in the US and wider world.³⁹⁴ For example, in 1932, “The Mask of

³⁸⁶ Maluba Jere et al., *MMD Sues Sichinga Over “Fake Money”*, THE POST (Zambia), Feb. 8, 2012, http://www.postzambia.com/post-read_article.php?articleId=25022.

³⁸⁷ *China Said to be Demanding Evidence on Fake Money it Printed for Zambia*, ZAMBIAN WATCHDOG (Feb. 8, 2012), <http://www.zambianwatchdog.com/?p=30349>.

³⁸⁸ Jere, *supra* note 383.

³⁸⁹ *Bank of Zambia Refutes Media Report of Existence [sic] of “Fake” K3.1 Trillion*, LUSAKA TIMES (Feb. 8, 2012), <http://www.lusakatimes.com/2012/02/07/bank-zambia-refutes-media-report-existence-fake-31-trillion/>.

³⁹⁰ *HH Says “PF Government is DISORGANISED; There [sic] Lies are an Embarrassment to the Country,”* TUMFWEKO (Feb. 9, 2012), <http://tumfweko.com/2012/02/09/hh-says-pf-government-is-disorganised-there-lies-are-an-embarrassment-to-the-country/>.

³⁹¹ This case was extensively discussed in the decision in one of the Nuremberg Trials, popularly known as “The Justice Case.” See generally *United States v. Alstotter*, 3 T.W.C. 1 (1948), available at http://www.loc.gov/frd/Military_Law/pdf/NT_war-criminals_Vol-III.pdf.

³⁹² See ERNST HIEMER, *DER GIFPILZ [THE POISON MUSHROOM]* (Der Stürmer 1938), available at <http://www.historiography-project.org/books/giftpilz/index.html>. It has been observed that “the Nazis’ anti-semitic propaganda always showed Jewish men, not women. Their idea of a threat to the purity of German womanhood was seen as even more dangerous for the health of the nation than that of an Aryan associating with a Jewish woman.” Antony Beevor, “The Spin Cycle,” *Sunday Times* (UK), May 12, 2013.

³⁹³ See ROBERT GELLATELY, *BACKING HITLER: CONSENT AND COERCION IN NAZI GERMANY 151-82* (2001) (discussing how the Gestapo concentrated on stopping foreign workers, particularly Polish workers, from “defiling” German women). See also Yasmin Alibhai-Brown, *Asian Men, White Men, White Women and a Taboo that Must be Broken*, THE INDEPENDENT (Nov. 29, 2010), <http://www.independent.co.uk/voices/commentators/yasmin-alibhai-brown/yasmin-alibhaibrown-asian-men-white-women-and-a-taboo-that-must-be-broken-2146251.html> (discussing discourse of the threat to white women in UK from South Asian men).

³⁹⁴ GINA MARCHETTI, *ROMANCE AND THE “YELLOW PERIL”: RACE, SEX, AND DISCURSIVE STRATEGIES IN HOLLYWOOD FICTION 4* (1993). See generally Wendy Marie Thompson, *Black Chinese: History, Hybridity, and Home*, CHINESE AMERICA: HISTORY & PERSPECTIVES, 2007, at 25-31 (In the US, the fear of defilement attached only to white women. It did not concern the substantial sexual contact between Chinese and black women and girls).

Fu Manchu,” British pulp novelist Sax Rohmer’s fictional Chinese villain “rallies his [non-white] forces by telling them of all the white women they will defile.”³⁹⁵

In the late 19th and early 20th centuries, “[t]he Chinese were widely vilified by racist White Australians.”³⁹⁶ Chinese men were accused of “gross ‘immorality’ . . . and a large number of violations of business and work practices,” then equated with defilement.³⁹⁷ For example, in 1892, white women seeking to set up a laundry wanted government protection from Chinese competitors.³⁹⁸ In their appeal to the Melbourne Trades Hall Council, one of the women noted that her fourteen-year-old daughter had considered responding to an ad by a Chinese household seeking a nursemaid. A report of the incident opined that “surely the police can . . . prevent the defilement of the young girls of our community by the almond-eyed procurer or his leprous associates.”³⁹⁹

Canada’s Saskatchewan province, at the behest of business owners and trade unionists seeking to curb Chinese competition, passed the 1912 “Female Labor Law,” which remained on the books until 1969.⁴⁰⁰ The Female Labor Law barred Chinese men, such as restaurateurs and British subjects Quong Wing and Quong Sing, from hiring white women, leaving only much higher-paid white men as potential replacements.⁴⁰¹ Four other provinces soon followed suit.⁴⁰² Social reformers, including church leaders and feminists, claimed white women would be defiled if they worked for Chinese and that “only girls of the lowest type” would do so.⁴⁰³ They called for punishment “every time anything occurs”⁴⁰⁴ between white women and Chinese, to avert a threat to “Anglo-Saxon supremacy.”⁴⁰⁵ The National Council of Women of Canada favored the law, even though its own investigation found “‘no evidence of girls receiving harmful treatment’ at the hands of Chinese employers.”⁴⁰⁶ A leading female judge countered, however, that while women should be protected from harassment in the workplace, “[w]hen feminists directed their attack solely at employers of one race . . . their racial motivation usurped any claim they may have had to protecting women” and said: “What is needed is protection against [sexual harassment], not restriction directed against a race.”⁴⁰⁷ The Quongs were prosecuted for employing three white women, who testified that the Quongs were good employers.⁴⁰⁸ Defendants were, however, convicted and fined.⁴⁰⁹ The Supreme Court upheld the convictions, even though it recognized that the law was racially discriminatory.⁴¹⁰

³⁹⁵ Professormortis, *The Mask of Fu Manchu (1932)*, LEAGUE OF DEAD FILMS (Oct. 24, 2012), <http://leagueofdeadfilms.com/2010/10/24/the-mask-of-fu-manchu/comment-page-1/>. Fu Manchu has by no means faded from Western memories. See John Farrell, “The Enduring Appeal of Sax Rohmer and Fu Manchu,” *Forbes*, Jan. 18, 2013; Ian Young, “The Racist Curse of Fu Manchu Back in Spotlight after Chevrolet Ad,” *South China Morning Post*, May 3, 2013. An analogous present-day equivalent in Europe is the Israeli film “Christmas in Eurabia,” which fixes on the supposed high incidence of rape of European women by Muslim immigrants. See *Muslims Ban Christmas and Rape White Women in Latest Latma Satires*, ISLAMOPHOBIA TODAY (Jan 6, 2012), www.islamophobiatoday.com/2012/01/06/muslims-ban-christmas-and-rape-white-women-in-latest-latma-satire/.

³⁹⁶ Kate Bagnall, *Across the Threshold: White Women and Chinese Hawkers in the White Colonial Imaginary*, 28 *HECATE*, no. 2, 2002 at 11, 11.

³⁹⁷ *Id.*

³⁹⁸ HUMPHREY MCQUEEN, *A NEW BRITANNIA* 36 (Univ. of Queensland Press, 4th ed. 2004) (1970).

³⁹⁹ *Id.* at 36-37.

⁴⁰⁰ Constance Backhouse, *The White Women’s Labor Laws: Anti-Chinese Racism in Early Twentieth Century Canada*, 14 *LAW & HIST. REV.* 315, 315 (1996).

⁴⁰¹ *Id.* at 330.

⁴⁰² *Id.* at 346.

⁴⁰³ *Id.* at 339.

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.* at 340.

⁴⁰⁶ *Id.* at 341.

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.* at 361-62.

⁴⁰⁹ *Id.* at 364. See also JAMES W. ST. G. WALKER, “RACE,” RIGHTS AND THE LAW IN THE SUPREME COURT OF CANADA: HISTORICAL CASE STUDIES 90-121 (1997); W. PETER WARD, *WHITE CANADA FOREVER: POPULAR ATTITUDES AND PUBLIC POLICIES TOWARD ORIENTALS IN BRITISH COLUMBIA* 9 (3rd ed. 2002) (Discussing the popular conception among Canadian

In early 20th century South Africa, it was thought likely that, in the absence of women among them, imported Chinese mine workers would rape African or white women. The Transvaal Chamber of Mines investigated and found no evidence that this had taken place.⁴¹¹

The view that Chinese migrants threaten defilement has faded in the West, but still may have purchase in Africa, where stereotyped conceptions of foreigners often date back to the colonial era, and where negative portrayals of Chinese behavior are pervasive, in part due to media reliance on Western sources of news and analysis. Though almost all reports of defilements in Zambia involve Zambians, the involvement of Chinese in paid sex with underage Zambian girls has presented an opportunity for PF officials to “sort out the Chinese.” PF officials can assert that there is a threat of “Chinese defilement” that is correlated with the Western and PF notion of a “Chinese invasion” of Africa - the term also used by David Cameron in 2011.⁴¹² Anti-Chinese U.K. sources oddly claim that so many Chinese are “flooding” into Africa that, “within a mere decade, more Chinese have come to live in Africa than there are Europeans on the continent, even after many centuries of European colonial and neocolonial rule.”⁴¹³ Sata has spoken many times of a “Chinese invasion,” and has said that the Chinese are “too numerous” to be sustained by China’s resources. Thus, they are being “dumped” in Zambia.⁴¹⁴ An implicit theme in Western and PF negative appraisals of Chinese migration is the likelihood of Chinese male illicit sexual contact with Zambian women. This occurs because most Chinese migrants to Zambia are males. Claims of both economic and of literal rape often pair in deprecations of foreign migrants. In Canada, for example, during the Canadian labor movement from 1872-1934, attacks on Chinese migrants by anti-Chinese Canadians were common. These anti-Chinese Canadians viewed Chinese migrants as economic competitors. They rhetorically depicted Chinese as morally and physically infecting young white girls,⁴¹⁵ and “framed the whole issue of the Chinese presence in the Pacific West using the imagery of violated female innocence.”⁴¹⁶ A British Columbia newspaper questioned “how the grand virgin province of our Confederation . . . [could] be so tamely given up to Chinese slave labor and Chinese lust and leprosy?”⁴¹⁷ Shifting back to Africa, Sata has similarly stated that Chinese are “engaged in modern slavery” and “out to rape Africa of its resources.”⁴¹⁸ Since women and children are considered part of Africa’s valued resources, Kambwili’s intervention in the Chinese defilement case reflected the supposed need for disparate treatment of the Chinese to protect Zambians from predation.

whites that “the Chinese opium peddler especially wished to enslave a white woman with the poppy and then defile her with his own embraces or prostitute her to his countrymen.”)

⁴¹⁰ See Quong Wing v. R. (1914), 49 S.C.R. 440, 444 (Can.) (“This legislation may affect the civil rights of Chinamen, but it is primarily directed to the protection of children and girls.”)

⁴¹¹ KEVIN GRANT, A CIVILISED SAVAGERY: BRITAIN AND THE NEW SLAVERIES IN AFRICA, 1884-1926 97 (2005).

⁴¹² Groves, *supra* note 33.

⁴¹³ Sanou Mbaye, *Africa Will Not Put Up With Colonialist China*, GUARDIAN (UK), Feb. 7, 2011,

<http://www.guardian.co.uk/commentisfree/2011/feb/07/china-exploitation-africa-industry>. See also Andrew Malone,

How China’s Taking Over Africa and Why the West Should be VERY Worried, DAILY MAIL (UK), July 18, 2008,

<http://www.dailymail.co.uk/news/article-1036105/How-Chinas-taking-Africa-West-VERY-worried.html>; *The Chinese*

in Africa: Trying to Pull Together, THE ECONOMIST (UK), Apr. 20, 2011, <http://www.economist.com/node/18586448>.

South Africa’s white population was 4.5m in 2011, alone exceeding the Chinese population in Africa of about 1m by several times. STATISTICS S. AFRICA, MID-YEAR POPULATION ESTIMATES 2011 3 (2010), available at

www.statssa.gov.za/publications/P0302/P03022011.pdf. Far from being flooded by Chinese, Africa is the continent with

the least settlement by Chinese. See Giles Mohan & May Tan-Mullins, *Chinese Migrants in Africa as New Agents of*

Development? An Analytical Framework 21 EUR. J. OF DEV. RES., 588, 589 (2009). For a more in-depth discussion of the

topic, see generally Meine Pieter van Dijk, *Introduction: Objectives and Instruments for China’s New Presence in Africa*,

in THE NEW PRESENCE OF CHINA IN AFRICA 9, 9-30 (Meine Pieter van Dijk ed., 2009).

⁴¹⁴ Eric Olander, *China in Africa: Who is Michael Sata?*, CHINA TALKING POINTS (July 23, 2012),

<http://www.chinatalkingpoints.com/audio-china-in-africa-podcast-who-is-michael-sata> (citing Howard French, *The Next*

Empire, THE ATLANTIC, May 2010, <http://www.theatlantic.com/magazine/archive/2010/05/the-next-empire/308018>).

⁴¹⁵ DAVID GOUTOR, GUARDING THE GATES: THE CANADIAN LABOUR MOVEMENT AND IMMIGRATION, 1872-1934 41 (2007).

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Zambia: Sata Condemns Chinese Investment*, TIMES OF ZAMBIA, Dec. 18, 2009,

<http://allafrica.com/stories/200912180426.html>.

Zambia is appraised in terms of its abundant minerals and its strategic position in southern Africa, where it borders on eight countries. Out of proportion to its small population, Western entities began to pay great attention to Zambia as soon as the PF's anti-Chinese agitation started in the mid-2000s. In part, that has been because Western politicians, media, and analysts have increasingly focused on a putative strategic contest with China, including in Africa.⁴¹⁹ The contest is not, yet, fought over specific material interests; rather, it is a "discursive phenomenon of Western criticism with regards to China's role in Africa, and other criticism regarding a 'scramble' in Sino-Western relations."⁴²⁰

The perceived rivalry is, for the most part, unilaterally generated. It is based on Western charges about "China-in-Africa" and the potential for Chinese influence exceeding that of the West. Secretary Clinton has said that "the United States is in a competition for influence with China," around the world,⁴²¹ while Michael Battle, U.S. Ambassador to the African Union, has warned that "[i]f we don't invest on the African continent now, we will find China and India have absorbed its resources without us, and we will wake up and wonder what happened to our golden opportunity of investment."⁴²² A U.K. journalist has noted "the anxiety manifest and unsubstantiated claims made" in U.S. diplomatic cables, leaked through Wikileaks, on the China-Africa situation show that "[i]n a number of African countries the sense of rivalry is unambiguous."⁴²³ Indeed, Johnnie Carson, the top U.S. African affairs official, addressed Western oil executives in 2010 and called China "a very aggressive and pernicious economic competitor with no morals."⁴²⁴ Carson added, in 2011, that China is taking work away from Africans and failing to comply with local labor laws or "pay decent wages, train staff, and share technology."⁴²⁵ However, a leading scholar of the Africa/China link has shown these claims to largely have no basis.⁴²⁶

There is a debate about the reality of a West versus China contest.⁴²⁷ Or, at least U.S. policymakers are inclined to think in these terms. Princeton Lyman, a veteran U.S. diplomat stationed in Africa, who is now the U.S. Special Envoy for Sudan, has written that "it is wise[r] to look upon China as a formidable competitor for both political and economic influence in Africa than as only a benign participant."⁴²⁸ Think tank analysts also naturalize the strategic rivalry.⁴²⁹

⁴¹⁹ See generally RUSSELL ONG, CHINA'S STRATEGIC COMPETITION WITH THE UNITED STATES, (2012). See also J. Stapleton Roy, *Strategic Challenges for US-China Relations*, CHINA-US FOCUS (Apr. 10, 2012), <http://www.chinausfocus.com/slider/strategic-challenges-for-us-china-relations/>; Emma Mawdsley, *Fu Manchu Versus Dr. Livingstone in the Dark Continent? Representing China, Africa and the West in British Broadsheet Newspapers*, 27 POL. GEOGRAPHY 509 (2008).

⁴²⁰ Péter Marton & Tamás Matura, *The "Voracious Dragon," the "Scramble" and the "Honey Pot": Conceptions of Conflict Over Africa's Natural Resources*, 29 J. CONTEMP. AFR. STUD. 155, 160 (2011).

⁴²¹ Matthew Pennington, *Clinton Says US in Direct Competition With China*, WASH. POST, Mar. 2, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/03/02/AR2011030202888.html>.

⁴²² Jason Hickel, *The US, the AU and the New Scramble for Africa*, PAMBAZUKA NEWS, Oct. 23, 2012, <http://pambazuka.org/en/category/features/68088>.

⁴²³ James Kynge et al., *The China Syndrome*, FINANCIAL TIMES (UK), March 3, 2011, www.ft.com/cms/s/0/2ab8c5a8-45e1-11e0-acd8-00144feab49a.html.

⁴²⁴ *US Embassy Cables: US Monitors China and its Expanding Role in Africa*, THE GUARDIAN (Dec. 8, 2010, 4:30 PM), <http://www.guardian.co.uk/world/us-embassy-cables-documents/250144>.

⁴²⁵ Staff, *Johnnie Carson Accuses Chinese of Taking Work of Africans*, AFRICAN DIPLOMACY (Nov. 22, 2011, 9:10 PM), http://www.africandiplomacy.com/index.php?option=com_content&view=article&id=767.

⁴²⁶ See DEBORAH BRAUTIGAM, THE DRAGON'S GIFT: THE REAL STORY OF CHINA IN AFRICA 273-306 (2009) (discussing and dispelling common myths about China's investment in Africa).

⁴²⁷ See Bates Gill et al., *China-Africa Relations: an Early, Uncertain Debate in the United States*, in CHINA RETURNS TO AFRICA 167-180 (Chris Alden et al. eds., 2008).

⁴²⁸ Princeton Lyman, *China and the US in Africa: A Strategic Competition or an Opportunity for Cooperation*, COUNCIL ON FOREIGN RELATIONS, www.cfr.org/content/thinktank/ChinaandUS_Africa.pdf (last visited Feb. 19, 2013).

⁴²⁹ See, e.g., Carmel Davis, *Africom's Relationship to Oil*, 53 ORBIS 122 (2009); ROBERT L. HUTCHINGS & BART M.J. SZEWCZYK, THE ATLANTIC COUNCIL OF THE U.S., THE GLOBAL FUTURE AND ITS POLICY IMPLICATIONS: VIEWS FROM JOHANNESBURG, LOGOS, AND CAIRO 7-12 (2007) available at <http://ssrn.com/abstract=1881955>; Peter Pham, *China's American Strategy and its Implications for US Interests*, 28 AM. FOREIGN POL'Y INTS. 239, 239-53 (2006).

This occurs even more so with the U.S. Congress⁴³⁰ and analysts connected to the U.S. military.⁴³¹ Above all, “[Western] media commentators have been assiduous in depicting” an “ongoing Sino-Western conflict over access to Africa’s natural resources.”⁴³² Some analysts point out that because much of what the U.S. and China do in Africa does not overlap, or because China accommodates most U.S. interests in Africa, such as the oil industry, there is no objective reason for rivalry. However, these analysts tend not to be political or media elites from the U.S. or U.K.⁴³³

Western states have criticized Zambia for being “close” to China and rewarded it when it appeared to be more distant. In Africa, during the Cold War, “the United States tended to back the white minority regimes/interests, in stark contrast to the Zambian position of support for independence and majority rule.”⁴³⁴ In the 1960s, western states turned down Zambia’s request to build a railway to bypass apartheid-era South Africa in moving copper to market.⁴³⁵ The U.S. then warned Zambian President Kenneth Kaunda “against dealing with the Chinese,” and opposed a joint effort with China to build the railway in the 1970s.⁴³⁶

More recently, a view has emerged in Zambia that U.S. support for the PF government – despite the latter’s continued friendship with Mugabe’s ZANU-PF party⁴³⁷ – is linked to the PF’s history of antagonizing “the Chinese.”⁴³⁸ In any case, the U.S. Embassy in Zambia has closely monitored the development of “China’s engagement with Zambia” and local criticisms of “the Chinese.”⁴³⁹ After the PF came to power, Western and other donor states have substantially increased their assistance to highly aid dependent Zambia.⁴⁴⁰ The U.S., Zambia’s largest aid donor,

⁴³⁰ See generally *China in Africa: Hearing Before the Subcomm. on African Affairs of the S. Comm. on Foreign Relations*, 110th Cong. 1-46 (2008), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg45811/pdf/CHRG-110shrg45811.pdf>.

⁴³¹ See, e.g., Philippe D. Rogers, *Dragon with a Heart of Darkness*, JOINT FORCE Q., Oct. 2007, at 22, available at <http://www.ndu.edu/press/lib/pdf/jfq-47/JFQ-47.pdf>; Gordon Magenheimer, *Chinese Influence on U.S. Operational Access to African Ports*, JOINT FORCE Q., Apr. 2007, at 22, available at <http://www.ndu.edu/press/lib/pdf/jfq-45/JFQ-45.pdf>; DAVID BROWN, U.S. ARMY WAR COLLEGE, HIDDEN DRAGON, CROUCHING LION: HOW CHINA’S ADVANCE IN AFRICA IS UNDERESTIMATED AND AFRICA’S POTENTIAL UNDERAPPRECIATED (2012), available at <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1120>; JOSEPH F. BIRCHMEIER, U.S. ARMY WAR COLLEGE, CHINA IN AFRICA: IMPLICATIONS FOR THE UNITED STATES (2010), available at <http://www.dtic.mil/dtic/tr/fulltext/u2/a521360.pdf>; PAULETTE FREESE, U.S. ARMY WAR COLLEGE, CHINA – THE RISING DRAGON: HOW SHOULD THE U.S. RESPOND? (2009), available at <http://www.dtic.mil/dtic/tr/fulltext/u2/a500530.pdf>; Jennifer Parenti, *China-Africa Relations in the 21st Century: How USAFRICOM Should Respond to China’s Growing Presence in Africa*, JOINT FORCE Q., Jan. 2009, at 118, available at <http://www.ndu.edu/press/lib/pdf/jfq-52/JFQ-52.pdf>.

⁴³² Marton & Matura, *supra* note 418, at 156.

⁴³³ See Xu Yi-chong, *China and the United States in Africa: Coming Conflict or Commercial Coexistence?*, 62 AUSTRALIAN J. OF INT’L AFF. 16 (2008); Zhao Hong, *China’s Oil Venture in Africa*, 24 EAST ASIA: AN INT’L Q. 399 (2007); COUNCIL OF FOREIGN RELATIONS ET AL., AFRICA-CHINA-U.S. TRILATERAL DIALOGUE: SUMMARY REPORT 18-19 (2007), available at <http://www.cfr.org/china/africa-china-us-trilateral-dialogue/p14998>.

⁴³⁴ Jim Meriwether, Article Review, H-DIPLO ARTICLE REVIEWS (Sept. 8, 2009)(reviewing Andy DeRoche, DREAMS AND DISAPPOINTMENTS: KENNETH KAUNDA AND THE UNITED STATES, 1960-64 (2008) and NON-ALIGNMENT ON THE RACIAL FRONTIER: ZAMBIA AND THE USA, 1964-68 (2007)), available at www.h-net.org/~diplo/reviews/PDF/AR239.pdf.

⁴³⁵ Andy DeRoche, *Non-alignment on the Racial Frontier: Zambia and the USA, 1964-68*, 7 COLD WAR HISTORY 227, 231-39 (2007).

⁴³⁶ *Id.* at 231, 238-39. Kaunda told the US Ambassador of his unease about “the Chinese,” *id.* at 239, but he later concluded that “only the PRC had consistently protected Zambia from its hostile neighbors,” *id.* at 241.

⁴³⁷ See Kasuba Malenga, *Zambia-Zimbabwe Ties: We are Like Siamese Twins – President Sata*, ZAMBIA DAILY MAIL, Apr. 27, 2012, available at <http://www.ukzambians.co.uk/home/2012/04/27/zambia-zimbabwe-ties-we-are-like-siamese-twins-president-sata/>.

⁴³⁸ See Nse Udoh, *Zambia Aims to Boost Chinese Investment*, ZAMBIA REPORTS (Jun. 04, 2012), <http://zambiareports.com/2012/06/04/zambia-aims-to-boost-chinese-investment/>.

⁴³⁹ See *Chinese Engagement in Zambia is Strong Despite Itself*, WIKILEAKS (Feb. 17, 2010), available at <http://www.cablegatesearch.net/cable.php?id=10LUSAKA103>.

⁴⁴⁰ ZANIS, *Economic Support From International Community Overwhelming – Chikwanda*, LUSAKA TIMES (Apr. 28, 2012), <http://www.lusakatimes.com/2012/04/28/economic-support-international-community-overwhelming-chikwanda/> (“Finance and National Planning Minister Alexander Chikwanda says Zambia has received massive economic support from the international community since the ascendance to power of the Patriotic Front Government.”).

increased aid from \$400 million (for HIV/AIDS and malaria) in 2012⁴⁴¹ to \$500 million for 2013,⁴⁴² including a \$355 million account⁴⁴³ with the U.S. government's Millennium Challenge Corp. ("MCC"), an agency that reinforces neo-liberalism by requiring recipient governments to "guarantee economic freedom."⁴⁴⁴ Some Zambians, however, are critical of the kind of aid given by the U.S. In 2012, reacting to a U.S. pledge of \$12 million for an agricultural institute in Zambia, one blogger commented that:

[T]he Americans . . . are only funding soft projects – research, ARVs [anti-retroviral drugs], NGOs etc. Most of this money ends up with American experts who do the actual work, and not Zambians. They don't fund infrastructure that Zambia sorely needs. It is only the Chinese who are funding infrastructure projects (two stadia, Kafue Lower Gorge Station, Kariba North Bank upgrade, Mongu-Kalabo road etc). Unfortunately the PF govt is so obnoxious against China, that funding could dry up soon.⁴⁴⁵

To counter such views, the U.S. continues to deprecate China's role in Zambia. While "only a few U.S. corporations have a significant presence in Zambia,"⁴⁴⁶ and China's stock of investments in Zambia is many times larger than that of the U.S.,⁴⁴⁷ Al Jazeera network related that in late 2011, the U.S. Ambassador to Zambia told its researcher that

the Chinese should follow the US lead and "make a contribution." He reiterated the words spoken by Hillary Clinton, the US secretary of state, during her visit in Zambia in June 2011:

⁴⁴¹ *China in Africa: Hearing Before the Subcomm. on African Affairs of the S. Comm. on Foreign Relations*, 110th Cong. 41 (2008) (statement of Sen. Richard J. Durbin, Member, Sen. Comm. on Foreign Relations), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg45811/pdf/CHRG-110shrg45811.pdf>

⁴⁴² *U.S. Aid to Zambia Rises to \$500M*, TIMES OF ZAMBIA, Apr. 26, 2012, available at <http://zambiareports.com/2012/04/26/usa-pledges-500-million-in-aid-to-zambia/>.

⁴⁴³ Ben Kangwa, *U.S. \$355m Million MCC Compact to Improve Water, Sanitation and Drainage in Lusaka*, THE GLOBE NEWSPAPER, Apr. 30, 2012, <http://theglobenewspaper.blogspot.com/2012/04/us-355-million-mcc-compact-to-improve.html>.

⁴⁴⁴ About MCC, MILLENNIUM CHALLENGE CORP., <http://www.mcc.gov/pages/about> (last visited Feb. 20, 2013). The U.S. government definition of "economic freedom" seemingly precludes any state ownership: a U.S. Department of Commerce sub-agency has stated that in Zambia "the continued government ownership of key public utilities . . . tarnish in practice Zambia's liberal investment environment." U.S. DEP'T OF STATE ET AL., DOING BUSINESS IN ZAMBIA: 2011 COUNTRY COMMERCIAL GUIDE FOR U.S. COMPANIES (2011), <http://photos.state.gov/libraries/zambia/231771/PDFs/2011countrycommercialguidezambia.pdf>.

⁴⁴⁵ *U.S. to Contribute Over US\$12 Million to Agriculture Policy Research in Zambia*, LUSAKA TIMES, Feb. 10, 2012, <http://www.lusakatimes.com/2012/02/10/contribute-us12-million-agriculture-policy-research-zambia/>. Western media imply that Chinese only build infrastructure in Africa tied to their extraction of natural resources – an aspect of claimed "neo-colonialism." A study has found, however, that "official finance for infrastructure needed to facilitate development and export . . . [accounts for] less than 7 percent of total Chinese infrastructure finance reported in this study." VIVIEN FOSTER ET AL., THE WORLD BANK, BUILDING BRIDGES: CHINA'S GROWING ROLE AS INFRASTRUCTURE FINANCIER FOR SUB-SAHARAN AFRICA 37 (2008), available at http://siteresources.worldbank.org/INTAFRICA/Resources/Building_Bridges_Master_Version_wo-Embg_with_cover.pdf.

⁴⁴⁶ See U.S. DEP'T OF STATE ET AL., *supra* note 442.

⁴⁴⁷ See H.E. Chinese Ambassador Zhou Yuxiao Lecture[s] for Zambian University Students, EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN THE REPUBLIC OF ZAMBIA (Apr. 5, 2012), <http://zm.chineseembassy.org/eng/sbgx/wh/t920669.htm> ("Chinese total investment in Zambia has reached 2.1 billion US dollars and created more than 50,000 job opportunities."). The stock of "major" US investments in Zambia as of 2010 was about \$65m. *2010 Investment Climate Statement – Zambia*, U.S. DEP'T OF STATE, <http://www.state.gov/e/eb/rls/othr/ics/2010/138170.htm> (last visited Feb. 20, 2013). U.S. investment in Zambia totaled \$538m from 2000 through 2009. Sanne VAN DER LUGT ET AL., CENTRE FOR CHINESE STUDIES, ASSESSING CHINA'S ROLE IN FOREIGN DIRECT INVESTMENT IN SOUTHERN AFRICA 68 (2011), <http://www.ccs.org.za/wp-content/uploads/2011/03/Final-report-CCS-March-2011-CCS.pdf>. U.S. companies' investment pledges in Zambia from January through November of 2010 were a bit over \$30m; Chinese firms pledged roughly \$1.13b. See *2011 Investment Climate Statement – Zambia*, U.S. DEP'T OF STATE, <http://www.state.gov/e/eb/rls/othr/ics/2011/157387.htm>.

"While you're doing well, you should also do good." Some Zambians told us they found the policy patronizing.⁴⁴⁸

Clinton contrasted U.S. activities in Zambia with those of China by claiming that "The United States is investing in the people of Zambia, not just the elites, and we are investing for the long run."⁴⁴⁹ Yet, the 300 Chinese firms in Zambia employ several tens of thousands of local people⁴⁵⁰ while those employed by the few U.S. firms in the country are inevitably much less.

The Chinese defilement case, thus, has operated at two levels; first as a violation of equal protection connected to the PF anti-Chinese campaign. If foreigners of another nationality were accused of nefarious sexual activity, their case probably would have been seen as exotic, but would not likely have involved racially disparate treatment. Thus, the "dog sex case" mentioned above was not a "Dutch defilement case." The accused was not jailed pending trial or prosecuted, unlike the four Chinese defendants.

The Chinese defilement case also operates at a second level. PF anti-Chinese incitement has politicized everything about being Chinese in Zambia, with a wide range of accusations about behavior that now includes defilement. The charges were made because they served the PF well in mobilizing while in opposition. With the party in power, China bashing/Chinese baiting continues to serve the PF: it reassures the party's base that Sata and Co. are pursuing a "populist" path,⁴⁵¹ even while not many changes, in terms of living conditions, are made. It also puts the government on the side of "the West" in the supposed rivalry with China, thus, making "the donors" more favorably disposed to the PF regime.

VIII. Conclusion: the Chinese Defilement Case and anti-Chinese Incitement in Africa

Defilement is the latest purported Chinese oppression of Zambians to be discursively constructed in Zambia and beyond. Chinese are uniquely depicted as having blown up, shot, endangered, and raped Zambians, even though in the country's mines and mining townships over the years, people of many origins, including Zambians, have been involved in activities at least as harmful as those attributed to "the Chinese."⁴⁵² De-contextualized retellings of tales of supposed Chinese wrongdoing are repeatedly featured in Western media and extrapolated to all Africa in order to demonize Chinese more generally.⁴⁵³ Inapt moralizing on "China-in-Africa" by liberalist Western politicians, media, and NGOs constructs a one-sided discourse of strategic rivalry that allows Westerners to see themselves and be seen by others as behaving well in Africa compared to "the Chinese." That, in turn, allows Western governments to elicit African support in the putative West-versus-China contest.

⁴⁴⁸ *King Cobra and the Dragon*, AL JAZEERA (Jan. 5, 2012),

<http://www.aljazeera.com/programmes/peopleandpower/2012/01/20121484624797945.html>.

⁴⁴⁹ Andrew Quinn, *Clinton Warns Against "New Colonialism" in Africa*, Reuters, Jun. 11, 2011, available at

<http://www.reuters.com/article/2011/06/11/us-clinton-africa-idUSTRE75A0RI20110611>.

⁴⁵⁰ See Zhou Yuxiao *Lecture[s]*, *supra* note 445.

⁴⁵¹ "Populism" and ethnic disparagement often go hand-in-hand. The career of Vienna's famed late-19th/early 20th Century mayor Karl Lueger, who combined populist appeals and anti-Jewish agitation, is a classic example. 2 WORLD FASCISM: A HISTORICAL ENCYCLOPEDIA 394 (Cyprian Blamires ed., 2006). PF populism, however, has been fleeting and unimplemented. See Sautman & Yan, *Red Dragon, Red Metal* (unpublished manuscript)(on file with author), *supra* note 45. It has been observed that "[S]ome [Zambians] view Sata . . . less as an authentic man of the people, and more as a manipulative schemer who has stayed close to power his entire adult life." Andrew Bowman, *Zambia vs China?*, NEW INTERNATIONALIST, Dec. 2011, at 11.

⁴⁵² See, e.g., Kabanda Chulu, *JVC Site Manager Beats Worker*, THE POST (Zambia), Jul. 19, 2011, http://www.postzambia.com/post-read_article.php?articleId=22055 (discussing a supervisor for contracting company at Mopani Copper Mine – likely a white South African -- who beat a Zambian worker); *Zambia: Lunashya Looted*, THE POST (Zambia), Nov. 4, 1998, <http://allafrica.com/stories/199811040022.html> (discussing two people shot dead by Zambian police during a miners' strike); Reuben Phiri, *Zambia: UNIP Urges Government to Bail out RAMCOZ*, THE POST – ZAMBIA, Apr. 28, 1999, <http://allafrica.com/stories/199904280049.html> (discussing another incident in which a striking miner was shot by Zambian police).

⁴⁵³ See, e.g., WELLS, *supra* note 354..

The discursive strategic rivalry is one-sided because “the Chinese” do not act in concert in Africa, even though a “wrongly assumed unitary-actor or monolithic character of ‘the Chinese’” in Africa prevails in Western and much of African thought.⁴⁵⁴ In fact, even a cohesive “China” hardly exists on the continent, as uncoordinated Chinese government ministries make their own Africa-related policies,⁴⁵⁵ and Chinese firms compete against each other in African markets.⁴⁵⁶

The defilement case exemplifies the non-cohesiveness of the Chinese presence. China’s embassy in Lusaka said nothing publicly about it, and played a minimal role.⁴⁵⁷ That might have been expected if the accused had been Chinese small traders. A report of a 2011 survey of Chinese traders in six African countries, including Zambia, recounted that the respondents:

reserved their harshest comments for their putative guardians in African countries – Chinese diplomatic and consular officials. Ninety-five per cent of our survey claimed that they had never received assistance of any kind from their respective Chinese embassies. . . . The embassy’s response to [those] who complained of ill-treatment or unlawful arrest was that “we cannot intervene in the internal affairs of another country.”⁴⁵⁸

This hands-off approach was evident in 2012, when Zambian merchants in Katete Village, Eastern Province, tried to destroy a Chinese shop. The merchants demanded that Zhang Bing stop trading because Zambian customers had flocked to his shop, where clothes and footwear could be had for about half the prices at Zambian-owned shops.⁴⁵⁹ Local police protected the shop, but there is no indication that the Chinese embassy intervened, even though the case involved an attempt to drive out a Chinese shop that was apparently engaged in lawful business.⁴⁶⁰

The defilement case arrestees were not traders, but SOE employees. Yet, public diplomatic protection was not apparent, despite state responsibility to protect citizens abroad from discrimination being a central tenet of international law.⁴⁶¹ Moreover, although China’s own criminal justice system undervalues equal protection, it does uphold it for ethnic groups: indeed, most minority people in China have been entitled to more lenient treatment than the Han majority as to arrest, conviction, and sentencing.⁴⁶² That the Chinese Embassy did not act on the denial of

⁴⁵⁴ Marton & Matura, *supra* note 418, at 159.

⁴⁵⁵ Bates Gill & James Reilly, *The Tenuous Hold of China Inc. in Africa*, WASH. Q., Summer 2007, at 37, 41-48.

⁴⁵⁶ See, e.g., Paul Garvey, *Busting the Myth about China’s State-owned Companies*, THE AUSTRALIAN, Apr. 30, 2012, <http://www.theaustralian.com.au/business/opinion/busting-the-myth-about-chinas-state-owned-companies/story-e6frg9if-1226342071604>; *China’s Telecoms and Wireless Drums for Africa*, CAIXIN, Feb. 22, 2012, <http://english.caixin.com/2012-02-22/100359637.html>.

⁴⁵⁷ Instead, the Chinese embassy “educates Chinese companies to use Chinese laborers in a reasonable manner, pay workers reasonably and refrain from corruption.” “China/Zambia Economic Relations with Zhou Yuxiao,” Apr. 11, 2012, ABNDigital, <http://www.abndigital.com/page/multimedia/video/beyond-markets/1229383-ChinaZambia-Economic-Relations-with-Zhou-YuXiao>. With regard to Chinese firms that compete with African firms for government tenders, China’s top African affairs diplomat has said that “[w]e request the Chinese companies not to be obsessed with economic returns only and ignore the relationship with local people.” Interview by Jean-Louis Gouraud with Lu Shaye, Director-General, Dep’t of African Affairs, Ministry of Foreign Affairs, People’s Republic of China (Oct. 21, 2012), available at <http://www.fmprc.gov.cn/eng/zxxx/t870823.htm>.

⁴⁵⁸ McNamee, *supra* note 143, at 26-27.

⁴⁵⁹ *Katete Residents Break Chinese Shop*, LUSAKA TIMES (June 21, 2012), <http://www.lusakatimes.com/2012/06/21/katete-residents-break-chinese-shop/>.

⁴⁶⁰ *Id.* (District Commissioner Col. Peter Kaisa noted that Zhang had a business license and Humphrey Botha, a local pastor, said that people in the district were happy with the new Chinese-owned shop because it sold affordable goods).

⁴⁶¹ See U.N. Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation XXX on Discrimination Against Non Citizens*, UNHCR (Oct. 1 2002), www.unhcr.org/refworld/docid/45139e084.html.

⁴⁶² The policy of *liang shao, yi kuan* (literally “two less, one loose”) has resulted in less arrests, less prosecutions and leniency in sentencing for key minorities. *Dui Shaoshu Minzu Zhong de Fanzui Fenzi Bixu Shixing “Liang Shao yi Kuan” Zhengce [The Policy of Two Restraints and One Leniency Must be Practiced Among Ethnic Minority Criminal Elements]*, BBS.M4.CN (July 22, 2009), <http://bbs.m4.cn/thread-183351-1-1.html>; *Liang shao yi kuan shi zenme hui shi? [How did two restraints and one leniency come to be?]* (June 30, 2009), <http://hi.baidu.com/daidangwei/blog/item/dc2295d7445.cb02607088bb3.html>.

equal protection in the defilement case shows how non-cohesive “the Chinese” are in Zambia, how unshielded Chinese can expect to be when future breaches of equal protection rights occur, and the scope for the continuing use of the defilement case to deprecate them.

That the four Chinese workers were acquitted by no means precludes continued use of the defilement case as an example of supposed Chinese inequity in Zambia and Africa generally. The 2010 Collum Coal Mine (“CCM”) shooting, when two supervisors wounded thirteen protesting Zambian miners, is often cited as exemplifying Chinese cruelty, even though the supervisors were besieged and being stoned at the time they used their shotguns, the charges against them were set aside, and the mine’s main owner was an Australian citizen.⁴⁶³

The same holds true for Zambia’s 2005 BGRIMM disaster. The Chinese firms that owned the plant whose explosion killed at least forty-six workers bore legal responsibility under the doctrine of strict liability, which applies to injuries arising from ultra-hazardous activity like dynamite-making.⁴⁶⁴ Although no evidence of actual negligence was adduced, the incident is nonetheless portrayed in Zambian and international media as an example of callous disregard for human life by “the Chinese.” Explosions at other firms in Zambia, for example the late 2011 blast that extensively damaged the Kafue steel plant of Universal Mining Steel and seriously injured ten workers, are not portrayed as reflecting a disregard for human life.⁴⁶⁵

A 2012 poll showed that fifty percent of U.S. policymakers regard “East Asia/China” as the region of greatest strategic importance to the U.S. and that eighty-five percent believe East Asia/China will be so twenty years hence.⁴⁶⁶ The sense of Western rivalry with China, in Africa, will likely increase then, if only as a correlate of concern about China’s wider influence. Whether or not the U.S. “pivot to Asia,” announced in 2011, is extended,⁴⁶⁷ the U.S. will increase its discursive challenges of Chinese activities around the globe. African elites aligned with the West will also try to marginalize the Chinese presence in order to damage political opponents friendly to China, ensure that Western patronage flows, and vindicate the neo-liberalist ideology shared by much of the elite. More politicized incidents like the defilement case, in which Chinese in Africa are singled out for disparate treatment, can, thus, be expected. These events will affect those directly targeted, but also the viability of the Chinese presence in Africa. Such violations of equal protection may, however, be challenged, as Chinese abroad come to demand that their government defend their rights⁴⁶⁸ and as scholars and others analyze the objectives and means of anti-Chinese racial profiling in “models of democracy” like Zambia.

⁴⁶³ Barry Sautman and Yan Hairong, “Bashing ‘the Chinese’: Contextualizing Zambia’s Collum Coal Mine Shooting,” article forthcoming in the *Journal of Contemporary China*, 2014.

⁴⁶⁴ The strict liability principle exists in Zambian law. See *Zaza v. Zambia Electricity Supply Corp. Ltd.*, (2001) ZLR [SC] (Zam.), available at <http://www.saflii.org/zm/cases/ZMSC/2001/40.html>.

⁴⁶⁵ See *Explosion Extensively Damages Kafue Steel Plant*, FLAVAFM (Dec. 31, 2011), <http://flavafm.co.zm/2011/12/31/explosion-extensively-damages-kafue-steel-plant/>.

⁴⁶⁶ Paul Avey et al., *Fading Camel, Rising Dragon?*, FOREIGN POLICY, Jan.-Feb. 2012, www.foreignpolicy.com/articles/2012/01/03/the_ivory_tower.

⁴⁶⁷ For an argument that a pivot is unlikely, see Robert Kelly, *The United States Will Not Pivot Much to Asia (1): We Really Don’t Want to*, ASIA SECURITY BLOG (Mar. 9, 2012), <http://asiansecurityblog.wordpress.com/2012/03/09/the-us-will-not-pivot-much-to-asia-1-we-dont-really-want-to/?preview=true>.

⁴⁶⁸ See Andrew Erikson & Gabe Collins, *China’s New Challenge: Protecting its Citizens Abroad*, CHINA REAL TIME REPORT (Feb. 10, 2012 3:56 PM), <http://blogs.wsj.com/chinarealtime/2012/02/10/chinas-new-challenge-protecting-its-citizens-abroad/>; Terence McNamee, *The Real Frontline of the Chinese in Africa*, FINANCIAL TIMES (UK), May 8, 2012, <http://www.ft.com/intl/cms/s/0/10c9bf14-960b-11e1-9d9d-00144feab49a.html#axzz2LUbPiU9i>. China’s Constitution states that “The People’s Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad” XIANFA art. 50 (2004)(China), available at http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm. As early as 2007, there were 675,000 Chinese workers overseas and more than 30,000 cases annually of Chinese citizens “who get in trouble abroad.” *Chinese Abroad to be Better Protected*, EMBASSY OF THE PEOPLE’S REPUBLIC OF CHINA IN THE U.S. (Aug. 22, 2007), <http://www.china-embassy.org/eng/qwqz/t354686.htm>. Some Chinese in Zambia proposed organizing a demonstration after the killing of a Chinese engineer at Collum Coal Mine in 2012, but the Chinese Embassy discouraged that proposal. Interview with Pan Wenxiu, Head, Chinese Chamber of Commerce, in Lusaka, Zambia (Aug. 11, 2012) (on file with author).