

**Regulating Foreign Direct Investments in Resource-Dependent African
Countries: The case of Chinese Investments in Zambia's Copper
Mining Sector**

Beyongo Mukete Dynamic

A thesis submitted for the degree of Doctor of Philosophy of The Australian National
University.

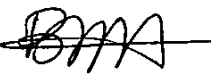
June 2018

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Declaration

This thesis is entirely my own work and has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the text.

Signature.....

Date.....*04 July 2018*

Beyongo Mukete Dynamic

Acknowledgement

I owe sincere gratitude to several people, without whom, I would never have completed this thesis. I would like to thank my supervisor, Associate Professor Jane Golley, for her time as well as the inspiration and motivation she gave me throughout this project. Jane always pushed me to do something better in the next version of my Chapters. She read all my draft Chapters thoroughly and made extensive comments. This has not only improved my research ability, but her comments have taught me to go more deeply into topics and focus on my written expression. She was immensely supportive and opened my eyes to countless essential details.

I also want to thank other members of my supervisory panel who read and commented on this work, most notably Margaret O'Callaghan, Dr Graeme Smith and

Dr Jolyon Ford. Margaret helped me to meet several people in Zambia, and these contacts made my fieldwork a success. She also commented extensively on my Chapters and helped me to know more about Zambia. I deeply appreciate Graeme's and Jolyon's feedback and support during the later stages of completing the thesis. I am grateful to the Australian Centre on China in the World for their support to the study. My appreciation goes to the professional and administrative staff at the Centre, especially to Jasmine Lin and Merrilyn Fitzpatrick. Caroline Stevenson helped read the thesis, provided suggestions and made extensive comments, which have helped to make the thesis more concise. I also benefited from the several discussions and seminars held at Centre. The study also benefitted from discussion and exchanges with other PhD students and scholars at the across the Australian National University.

My most beautiful experience as a PhD student came during my fieldwork in Zambia. Meeting and speaking with Zambians, combing through files at Mines Safety Department in Kitwe and ZCCM's Archive in Ndola, made me to develop deep love for Zambia, passion for my topic, and value of mining to most Zambians. I would like to thank Dr Besa Bunda and his colleagues at the University of Zambia for hosting me, helping me to access sources at the mines, and connecting me with important informants in public agencies. I am deeply indebted to many people in Lusaka, Kitwe, Ndola, Chambishi, Kalulushi who took their time to support this project. Special thanks to Marja Hinfelaar, Rodrick Chabala, and dozens of interviewees who created time in their busy schedules to share their diverse views and experiences in the mines with me.

I want to thank my close friends in Canberra, Princwill Mengot, Kpudzeka Maxime and Nyingmah Moses. Our weekend meetings helped me withstand the challenges of doing a PhD 15,000 kilometres from home. Most importantly, my deepest gratitude goes to my best friend and partner, Modeste Bongyi, who kept encouraging me in many ways and supported me throughout this project. During this time, Modeste

gave birth to our beautiful daughter, Berinyuy Beyongo. I also want to thank Mr Aunt, Martha Biongo for her tenderness and advice throughout the project. Special thanks to my wonderful mother, who inspired me to take this journey. She told me at an earlier age that I will make a good professor. I shared that dream, and years later took on this challenging and beautiful task.

Abstract

Several studies have examined the diverse social, economic and political impacts of Chinese investments on African countries. While some studies argue that Chinese investments has positively impacted on these countries, others claim that it has led to the weakening of local regulations and local industries. Throughout many aspects of this debate, scholars and commentators tend to consider African actors and agents as passive objects shaped by Chinese investments, often neglecting the subtle ways in which local actors and institutions interact with Chinese investments to both resist and shape various outcomes. This thesis addresses this oversight in the specific context of safety and environmental regulations of Chinese investments in Zambia's copper mining sector.

The thesis adopts a political economy approach, which contends that host country actors and institutions both resist and cooperate with foreign companies to shape investments practices. In particular, some local actors have responded to Foreign Direct investments (FDI) by re-vamping domestic institutions to counter more effectively the negative impact of FDI. I use this approach to examine how local actors have responded to events and practices involving two Chinese mining companies operating in Zambia. My analysis and findings draw on over six month's field work in Zambia during which time I conducted 69 interviews, and extensive desk-based research.

The thesis demonstrates that, at least partly due to pressure from local actors—unions, bureaucrats and elected government officials – both Chinese mining companies improved their regulatory standards: one being pressured to adopt substantial improvements in its safety regulations and practices, and the second compensating victims of pollution and installing emissions monitoring devices. In addition, the Zambian government increased funding to regulatory agencies and re-structured safety and environmental regulations in the mining sector. It also introduced new laws and measures that increased the power of mining regulatory officials and enabled local community members to take legal action against mining companies for compensation due to damages caused by the mines.

While most analyses of the impact of FDI on Zambia focuses on State-Business relations, I look beyond this dyadic relationship to argue that diverse actors and factors have shaped and influenced regulatory processes and outcomes in subtle ways. Any comprehensive analysis of the impact of Chinese FDI on Zambia needs to factor in the roles played by these diverse actors.

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Introduction

Throughout the 21st century, the rise of Chinese investments in Africa has generated contentious debate over its social, economic and political impacts on the region. There are two main schools of thoughts within this debate. On the one hand, there are scholars and public commentators who believe Chinese investments creates “tantalizing opportunities” for African countries (Tang & Yang, 2017; Lee, 2009; 2014; 2017; Brautigam, 2009; 2015; Sautman & Hairong, 2009; 2014; Alden & Alves, 2008); and on the other hand, there are those who are afraid that Chinese companies are re-introducing neo-colonial economic, diplomatic and cultural practices into these same countries (Shinn, 2016; Haglund, 2008; 2010; Collier, 2011; Taylor, 2006; 2009; Alden, 2005).

Chapter 1 begins by outlining these divergent viewpoints on the impact of Chinese investments in host African countries. I also analyse the impact of Chinese

investments on Zambia's copper mining sector, focusing on safety and environmental regulations in particular. I examine how Zambia's domestic actors have helped shape safety and environmental regulatory processes in the country's copper mining sector; how these various actors interact in different ways with Chinese companies; and the impact of these interactions on the behaviour of Chinese companies.

Against this backdrop, the thesis proposes to answer the following research questions. First, during the past two decades, how have events associated with Chinese mining companies shaped the monitoring and enforcement of regulations in Zambia's copper mining sector? Second, do host country (local) actors shape regulatory processes in Zambia, and if so, how? Third, have new regulatory processes (or institutional developments) affected the standards of Chinese mining companies in Zambia?

To answer these questions, I use a case study approach to analyse how bureaucracies, non-governmental organisations, unions and elected government officials responded to specific events that occurred in (or relating to) two Chinese state-owned enterprises (SOEs): Non-Ferrous China Africa (NFCA) and Chambishi Copper Smelter (CCS). I also examine how these responses affected Zambia's safety and environmental regulations. Furthermore, I analyse the roles played by bureaucrats and civil society organisations (unions and NGOs) in affecting the safety and environmental standards of these two Chinese companies operating in Zambia's copper mining sector. Finally, I attempt to evaluate changes in the safety and environmental standards of these two companies.

In Chapter 2, I review the current dominant conceptual and theoretical frameworks used in Sino-African and Sino-Zambian analyses of foreign investments. The review starts with a critique of the Economic Theory of Regulation (also known as the Capture theory), the "Race to the Bottom" hypothesis, and the

Neopatrimonial theory. In the specific context of Zambia, I argue that although the President has significant power over regulatory outcomes, power to influence environmental and safety regulatory processes is in practice decentred among different domestic groups. Here I point to the power held by bureaucrats, NGOs, unions and businesses. To address the implications of my decentred notion of power to our current understanding of regulatory processes in Zambia, I propose a political economy approach for understanding and explaining regulatory outcomes in Zambia's copper mining sector. By adopting this approach, I aim to move the debate beyond the simple neopatrimonial, "big-man dominated" argument to incorporate and critically examine the roles of bureaucrats, civil society organisations and unions in determining and shaping regulatory processes and outcomes. I also establish the importance of other domestic factors such as elections, decentralisation, and administrative processes.

The Chapter questions the perception that local actors are passive to foreign business actions, demonstrating instead that local actors use different strategies to resist, cooperate and shape the actions of foreign businesses. The Chapter argues that the roles of local actors in Zambia can best be understood within the political, historical and economic contexts in which these actors operate. In this context, I show that the influence of specific actors and factors vary over time, with the influence of any one actor varying from one domain (issue area) to another. I then introduce bureaucrats, NGOs, and unions as key stakeholders in safety and environmental regulatory processes in Zambia's copper mining sector. In Chapter 4 and 5, I will explain their influence (and the limitations of this influence) in regulatory processes, and how these actors have shaped the behaviour of Chinese companies operating in Zambia's copper mining sector.

I also discuss the roles of crises on regulatory processes and outcomes. I analyse the impact of crises on the regulatory environment, drawing on Gormley's distinction of regulation environment into salient and complex regulatory environments (Gormley, 1998). In the case of Zambia, crises turn complex regulatory environments into salient environments, which then draws public attention to limited funding, poor detection and deterrence mechanisms, and to the limited political commitment to safety and environmental regulations. Increase public attention in some cases leads to increased funding and political support, and sometimes to changes in formal regulatory texts.

In sum, Chapter 2 argues that although the president wields significant power in Zambia, power is to a significant extent decentred among several actors, albeit asymmetrically. And in this decentred political context, key actors such as bureaucrats, NGOs and unions (among others) influence business practices and the decisions of elected government officials. The Chapter concedes that there are significant economic, political, and social constraints on the extent to which local actors can influence foreign businesses—for example, limited funding and political interference. But it also demonstrates these constraints do not completely undermine the extent to which these actors can influence regulatory outcomes, and that mono-causal and “big-man” explanations of regulatory outcomes are at best misleading, and at worst completely wrong.

In Chapter 3 I describe my research method. First, the research is primarily qualitative, based on the gathering of primary information from informants who *observed or participated* in the events and regulatory processes explored in the thesis. The method also relies on small-N case studies. Second, I describe my key sources of information: interviews, documents, assembled data, and direct observation, along with an extensive academic literature; and I then discuss how I selected my informants and

research participants, and other sources of data. The data sources include 69 semi-structured interviews conducted over six-months of fieldwork in Zambia. The interview participants include central government officials, officials at Zambia's regulatory bodies, union presidents, union members, mineworkers, civil society officials, academics in Zambia, and local community members. Further, the thesis also draws from data gathered from documents accessed at the Zambia's Mines Safety Department (MSD), Zambia's Environmental Management Agency (ZEMA), Citizens for Better Environment (CBE), and Zambia's Ministry of Labour and Social Security; observation and participation in local Conferences such as the Alternative for Mining Indaba in Ndola, and visits to mining sites. The fourth section reports on the ethical issues of the research, and how I analyse the data and report my findings.

Notwithstanding the care taken to gather and analyse the data, and to report the findings in this study, the Chapter highlights some limitations regarding the validity and reliability of my data, and problems with causal claims. I also acknowledge some challenges with data analysis and subjective bias, and the limited scope of my conclusions. Meanwhile, to address some of these challenges, I use triangulation and journal keeping (to carefully report the research process), as well as recognising Opposing Theories.

Chapters 4 and 5 report the key empirical findings of the thesis. Chapter 4 describes the evolution of safety standards at Non-Ferrous China-Africa (NFCA)—a subsidiary of China Non-ferrous Metal Mining Company (CNMC). It describes NFCA in terms of its operations, goals, managerial structure, production capacity, and interaction with local actors. It narrates the evolution of safety standards at NFCA after two events, namely an explosion that killed 52 Zambian workers in April 2005, and a protest over wages and safety in June 2006, where six Zambians were shot and wounded. Returning to my argument regarding the role of crisis in driving regulatory

change, I argue that both incidences led to changes at the Mine Safety Department (MSD), and Ministry of Mines and Mineral Development (that is, in Zambia's broader regulatory framework) and within NFCA as well. I demonstrate significant increases in MSD personnel, inspections, and budgetary allocations for vehicles, monitoring technologies and new human resources. In addition, a number of people interviewed believed political commitment from elected government officials to regulatory agencies and enforcement of tougher regulations increased after both incidences.

The changes were not limited to Zambia's regulatory agencies. NFCA introduced substantive changes after these incidences. For example, based on interviews with miners, unions and regulatory officials, and reviews of the company's safety documents, I found that NFCA reformed its safety standards after 2006. First, it made managerial structural reforms by creating a new department in charge of safety and the environment, and it reformed its practices and ideas about safety—for example by introducing a Safety Day in July 2007. Nonetheless, the evidence also suggests that these reforms did not have a universal effect on the company's safety standards, because they failed to address safety problems at NFCA's subcontracting companies, which hires more than 65 percent of NFCA's labour force (Mineworkers Union of Zambia, 2015). By describing how the Zambian government and NFCA have responded to these two accidents in Chinese mines, the Chapter thus highlights the roles of local actors, crisis and domestic institutions in shaping regulatory processes and outcomes, and standards in Chinese mines.

Chapter 5 addresses another issue that has been pertinent in Sino-Zambian relations (or at least in Chinese investments in Zambia) - the environment. It starts with a broad consideration of the impact of mining on Zambia's environment and further describes the environmental standards of Chinese mines in Zambia's Copperbelt and local responses to Chinese environmental practices. The Chapter examines the case of

two Chinese mines, NFCA and Chambishi Copper Smelter (CCS). By examining ZEMA's interaction with NFCA and CCS, the Chapter contests the "race to the bottom" hypothesis and government passiveness to environmental breaches by Chinese companies. It describes the origins and responsibilities of ZEMA and the introduction of the Environmental Management Act in Zambia in 2011, and further narrates how ZEMA suspended activities at CCS and NFCA in line with local laws. While these responses by ZEMA can be seen as two limited cases, based on documents outlining routine inspections and site visits by ZEMA to these mines and data gathered through interviews, the Chapter supports the claim that ZEMA has played an important role in shaping the actions of these Chinese firms in Zambia. This is not to imply that local communities have been completely satisfied with ZEMA's actions – indeed, I argue that some community members believe that ZEMA has at times been too lenient on the mines. Nonetheless, information from interviewees supports my view that ZEMA has positively shaped the behaviour of Chinese companies through its routine inspections, and in taking punitive measures against non-compliance.

Chapter 5 also describes other local actors that influence government and business behaviour with regard to environmental regulations such as NGOs and community groups. Linking back to the idea of diverse actors in Zambia's regulatory processes, the Chapter tells the story of two non-governmental organisations and their efforts to influence mining companies to comply with local regulations and to hold them "accountable". I also use evidence from the field to suggest that NGOs have different relationships with government ranging from hostile to collaborative, as well as different relationships with businesses. Further, the Chapter examines changes in environmental behaviour in Chinese companies that have been incentivised by the actions of these NGOs. The evidence supports my challenge to the current view that NGOs in Zambia are weak and unable to influence policy and regulatory outcomes. Finally, it calls for a

more comprehensive understanding of regulatory process in Zambia that incorporates how government agencies and NGOs cope with limited resources in order to influence the behaviour of businesses.

In Chapter 6, I outline my key findings and contributions, limitations with the findings and areas for further research. One of the key findings in the thesis is that the Zambian side of the story in Sino-Zambian scholarship has been neglected, undervaluing the roles of Zambian actors and factors in determining the outcomes of Chinese (and indeed other foreign) investments. This is a common problem in current African political economy literature and International Political Economy studies, where domestic (especially African) institutions and groups are widely seen as objects defined by global forces, whether global capital, markets or politics, rather than domestic forces. I believe that my findings call for more systematic research in Sino-Zambian economic engagement, giving due credit to the role of domestic actors and factors, rather than simply accepting the Sino-centric focus of the some existing studies.

In addition, I argue that multiple actors have shaped Zambia's regulatory process and outcomes, interacting with each other in complex ways. For example, civil society organisations appeal to judicial institutions where they lobby, disseminate information, and protest to influence both public regulatory agencies and the management of Chinese mines. Bureaucracies use their position and knowledge of the Zambian government and operations at the mines to influence the formulation and implementation of regulation as well.

Further, my thesis demonstrates that it makes no sense to talk about Chinese investments in Zambia as being good or bad. The impacts of Chinese investments in Zambia are mixed; and the practices of Chinese companies evolve as do the regulations that shape those practices. Thus, while a particular company can have a negative impact

on the environment at one point in time, it is likely that due to local pressure or other factors not examined here, the same company (and others that follow it) will likely improve these practices on future occasions. Further, a company can have robust safety standards for full-time employees, and poor standards for casual employees. And companies can also digress from once positive (safety and environmentally friendly) standards to lax standards. Students of Sino-Zambian and Sino-African relations should incorporate the dynamic and evolving nature of Chinese company's standards in the host country.

Finally, I argue in the thesis that crises affect safety and environmental regulatory processes and outcomes in Zambia. Crises can affect the regulatory environment as shown in Chapter 4 and 5, by making the environment more salient. In making the environment salient, crises can draw public attention to regulatory processes and business standards and be a catalyst for change. In addition, crises can change the bargaining position of key stakeholders in regulatory processes, sometimes, leading to changes in the relative importance of the dominant groups. However, the impact of crises on regulatory processes will likely be shaped by several factors, including economic, political and cultural factors and actors. These findings reveal a more complex interaction between Chinese companies and Zambian actors and calls for more nuanced approaches to analysing Sino-Zambian and Sino-African relations.

In retrospect, the fundamental goal of this thesis has been to examine how local actors in Zambia constructively contest and shape the monitoring and enforcement of safety and environmental regulations in the country which in turn have an impact on the safety and environmental standards of Chinese companies operating in the country. Initially, I had an even grander plan to explore all of complex interactions between public and private sectors, as well as between local, national and international actors and factors, with a more comprehensive examination of the China-specific factors in

particular. However, a major difficulty I faced along the way was my inability to gain access to and cooperation from Chinese interviewees during my fieldwork in Zambia. Ultimately, the reluctance of relevant Chinese “actors” in the story to speak with me was more than compensated by the helpful assistance and cooperation I received from numerous relevant *Zambian* actors. It also resulted in a more concentrated focus on the *Zambian* side of the Sino-Zambian relationship, which I see as the most significant contribution of this thesis to the scholarly literature on this highly complex topic.

Chapter 1. Zambia and the rise of Chinese investments

I. Introduction

This Chapter discusses the rise of Chinese investments in Zambia’s copper mining sector, surrounding debates about the impact of these investments in Zambia and local response to the investments. After evaluating the strength and weaknesses of these debates, I introduce some key actors involved in Zambia’s regulatory processes overlooked or simplified by the current literature. The final section reports the conceptual and theoretical approach used in the thesis, as well as the method, findings and contribution the thesis makes to current Sino-Zambian and Sino-African studies.

II. The Rise of Chinese investments in Copper-rich Zambia

Zambia is a Southern African country rich in, and economically dependent on, copper.¹ In 2015, the international Copper Study Group (ICSG) ranked Zambia the second largest copper producer in Africa and the seventh in the world (International Copper Study Group, 2016). That same year, copper accounted for seventy-five percent of Zambia's export earnings, twenty-six percent of total government revenue, and ten percent of its GDP (Extractive Industry Transparency Initiative, EITI, 2016). The sector is the second largest formal labour employer in Zambia (behind the government) (Zambia's Central Statistics Office, 2016).

Notwithstanding these economic benefits, Ina Ruthenberg, a World Bank Country Manager for Zambia, notes that both international and domestic efforts 'to convert [Zambia's] wealth for the benefit of the [Zambian] people,' has failed (World Bank, 2016). In March 2015, the World Food Program (WFP, 2015) reported that 'over sixty percent [of Zambians] live below [the World's Bank's] poverty line and forty-two percent are considered to be extremely poor'. In this context of poverty amidst so much natural resource wealth, addressing the costs and benefits of mining to Zambia's economy, mineworkers, mining communities, and environment has preoccupied successive governments in the capital, Lusaka and scholars in Zambia and outside Zambia.

Controversies over the political, economy and social impact of foreign investments in Zambia's mining sector dates back to the 1930s when largescale copper mining began in the country (Sardinis, 2014; Lungu, 2014; Muchimba, 2008; Burawoy,

¹ The northern part of Zambia lies in what geologist refer to as the Central African Copper Copperbelt. A United States Geological Survey (USGS) study (2013) describes the region as "one of the most important copper-producing regions of the world". An International Study Group (2016) reports that the region accounts for over 70% of copper produced in Africa, in 2015; and 24% of global copper reserves, in the same year (ICSG, 2016).

1969). However, since the privatisation of the mines began in the 1990s, this debate has reached new heights, and also examining the effects of mining companies from China.

There has been growing debate over the social, economic and political costs and benefits of Chinese mining companies operating in Zambia, and the interaction between Chinese companies and government officials (Lee, 2009; 2014; 2017; Human Rights Watch, 2011; Baah and Jauch, 2009; Sautman & Hairong, 2009; 2014; Haglund, 2008; 2010; Fraser and Lungu, 2007). In 2006, former Zambian president Michael Sata built his presidential campaign on anti-foreign investments, directed mainly at China and India. During the campaign he accused Chinese companies of ‘of paying slave wages [to their employees], of flouting basic safety and environmental standards, and of corrupting African leaders across the continent with their multi-billion dollar “no-strings-attached” deals’ (*The Economist*, 1st October 2011).

China is currently Zambia’s top source of foreign direct investments (FDI) inflows. In 2016, the Chinese Ambassador to Zambia announced that the total stock of Chinese investments in Zambia had reached \$5.3 billion, up from \$300 million in 2003 (*Lusaka Times*, 6 June 2016). While recent evidence suggests Chinese investors are diversifying their investments in Zambia, like many other countries, these investments are concentrated in Zambia’s copper mining sector (Zambia Development Agency, 2015).

Chinese investments in Zambia’s copper mining sector is a relatively—relative to western investments—new phenomenon. The first major Chinese investment in Zambia’s copper mining sector was made in 1998, after the Zambian government initiated the process of privatising the state-owned Zambia Consolidated Copper Mines (ZCCM) (Muchimba, 2008). The UNIP (United National Independence Party) government had closed Chambishi mine in 1985, which left the economy of Chambishi

in a shattered state (Fraser & Lungu, 2007). China Non-Ferrous Metal Mining Company (CNMC) bought the Chambishi mine in Zambia's Copperbelt province for \$20 million in 1998 (Lee, 2014; 2017; Development Agreement, 2008; Fraser & Lungu, 2007).

CNMC's Chambishi mine is currently managed by a subsidiary of CNMC, Non-Ferrous China Africa (NFCA). After buying the mine, the Chinese company invested more than \$130 million in the abandoned mine and began operations in July 2003. NFCA claims it further invested over \$1.3 billion as of November 2017 in developing a new mine in Chambishi, known as the South-East Ore Body Mine (SEOB) (Lee, 2009; 2017). Wang Chunlai, the former chief Executive Officer of NFCA, believes 'The future of NFCA depends on the SEOB' (Zambia Mining Magazine, 27 February 2014). We revisit the SEOB in Chapter 5 to discuss the mixed effects of the SEOB mine on Chambishi. The mine created thousands of jobs, and increased copper production for Zambia. However, it also left some members of local communities in wretched conditions, when in 2013, the mine failed to provide compensation and relocation schemes to those displaced due to the construction of the mine.

Besides the Chambishi mine, CNMC also won the Chinese government's bid to develop China's first Special Economic Zone (SEZ) in Africa, known as the Zambia China Economic and Trade Cooperation Zone (ZCCZ) (Brautigam & Xiaoyang, 2011). The 11.58km zone is located within NFCA's 45-kilometre mining concession area in Chambishi. The zone hosts the Chambishi Copper Smelter (CSS), which processes copper from NFCA Chambishi and other mines in the area. The zone is managed by ZCCZ (Zambia China Cooperative Zone) Development Limited, a subsidiary of CNMC (Brautigam, 2009; Brautigam & Xiaoyang, 2011).

In Chapter 5, I will examine the relationship between local actors and the management of Chambishi Copper Smelter and its importance for Zambia. While

NFCA and CCS have evidently created thousands of jobs, built infrastructure, and paid taxes to the Zambian government, mineworkers, unions, NGOs, scholars, and local media have also accused them of poor safety and environmental practices. The mixed impact of NFCA and CCS investments in Zambia, among other Chinese companies, has led to debates over the Zambian government's ability to address local community concerns over risks associated with these investments, while still attracting more Chinese investments.

Debates over the impact of Chinese investments in Zambia reveal two broad groups of scholars and other commentators: optimists and pessimists. Sautman & Hairong (2009; 2012; 2014) and Ngheti (2005) argue that Chinese investments in Zambia's mines have created thousands of jobs, improved the welfare of some workers, and built health, education and other social infrastructure for miners and local communities. A quote by a top trade union official at the National Union of Allied and Mine Workers (NUMAW) supports this view²:

These [Chinese] mines *that you see*, the Chambishi mine, at one time they were closed, and closed by our Government...because they were not profitable. *People did not make noise* because they were deployed [to work in other mines]. So they did not lose their jobs. [But] Chambishi almost became a ghost town because mining activities were closed. Luanshya was sold to Benani Group of companies, and Benani failed to run Luanshya mines because they said the mine was unprofitable. The Chinese came on board and resuscitated these mines. I really want to thank the Chinese because *they have brought life* back to the Chambishi town as well as Luanshya mine (Interview with President of National and Allied Workers Union in Kitwe, 2nd October 2015, emphasis mine).

Viewing the positive impact of Chinese company as “visible” and “life transforming”, Lee (2014) demonstrates that these companies have created thousands of jobs and provided job security during periods of global uncertainty, such as the global financial crises of 2008-2009. Lee's claim is supported by data from the Zambian

² Interview with NUMAW President James Chansa in Kitwe 2nd November 2015.

Development Agency (2015), which shows that since 2003, these companies have created more than 10,000 direct jobs in Zambia's copper mining sector. An ILO study (2010) examining the impact of the 2008-2009 GFC on employment in Zambia's copper mining sector likewise shows that Chinese mines in Zambia retained their workers during the crises, while thousands of workers in other major western mines lost their jobs. Lee (2014; 2017) in the "Spectre of Global China" argues that Chinese mines guarantee job security for their workers, albeit with low wages. A study conducted by Bacht (2012) found that the majority of Zambians (over sixty percent) believed Chinese investments in Zambia had reduced unemployment in the country.

Chinese companies have also paid taxes and built vital public infrastructure in Zambia. These companies paid more than \$50 million in taxes to the Zambian government in 2013 (EITI, 2014). Further, a section of the Zambian public has praised the establishment of the Zambia China Economic and Trade Cooperation zone by CNMC as a significant step in building forward linkages within the Zambian copper mining sector, and also aiding the Zambian government's goal of diversifying the economy from its reliance on copper mining. In support of this view, speaking at the opening ceremony of the Zone, former Zambian Minister of Commerce, Trade & Industry, Emmanuel Chenda, said that:

I am proud to mention that the Chambishi MFEZ is the first zone being built in Africa under the framework of the forum for China-Africa cooperation (FOCAC). This project...will generate about 7,000 local employment opportunities and up to \$300 million US Dollars local procurement contracts...the MFEZ concept is designed to make Zambia a centre of excellence in economic development through increased activity in the trade and manufacturing sectors of the economy, which have numerous positive spill-over effects in other sectors and is in line with the diversification of the economy away from the traditional extractive sectors that are vulnerable to global dynamics.

In "The Dragon's Gift", Brautigam (2009) argues that CNMC's construction of the MFEZ appears to be 'Zambia's opportunity to finally add local value to the raw materials it had been exporting since British times'. She quotes a Chinese official who

describes Chinese investments in Zambia as a ‘shortcut to development...like borrowing a boat to go to the sea, instead of building it yourself’ (ibid, pp. 80-95). In sum, optimists about Sino-Zambian relations laud the opportunities created by Chinese investments, including adding value to copper and being a source of fiscal revenue, job creation, and vital capital. They believe Chinese companies are “builders” helping Zambia to become a centre of excellence or development “boats” in the country’s pursuit for economic growth and development.

Not everybody agrees, however. Brian (2012), Baah and Jauch (2009) and Haglund (2008; 2011) argue that Chinese companies are weakening the “effectiveness” of local institutions in Zambia and are undermining the welfare of certain groups, including unions and mineworkers. For instance, Brian (2012) and Haglund (2008; 2009) see Chinese investments in Zambia’s mines as exploitative and undermining local safety and environmental regulations in the country’s copper sector. These same scholars have accused Chinese companies of paying workers the lowest wages among foreign companies in the Copperbelt region, and of high levels of casualization and lax safety standards (Brian, 2012; Human Rights Watch, HRW, 2011; Haglund, 2008; 2009; 2010; Fraser and Lungu, 2007). Some scholars and reports have also accused Chinese companies of polluting the environment and denying workers in Chinese mines the right to join national unions (Office of Auditor General Report, 2015; Baah and Jauch, 2009; Simutnayi, 2009; Fraser & Lungu, 2007). Haglund (2008) goes even further in arguing that increased Chinese investments in Zambia has weakened the country’s regulations. He suggests that the urge to maximise profits drives Chinese companies to cut costs and by-pass local regulations. Tang and Sun (2017, pp. 80) contend that ‘some Chinese firms... [prefer] to pay a bribe to get through the approval process rather than allocate spending for real environmental assessment and protection’.

This pessimistic view of Chinese investments in Zambia suggests that growing foreign investments in the country, given Zambia's political context, will result in lax safety and environmental regulations. In some of these studies, blame falls not only on Chinese companies but also on Zambian leaders who are accused of being complicit in allowing Chinese companies operate with lax standards in their countries³. For example, Haglund (2008; 2009) characterises Zambia's regulations as being *determined* by a president with excessive power and by elected government officials who focus on short-term personal and electoral goals, rather than long-term goals that are in the public interest.⁴ He argues that political interference in regulatory processes is rampant in Zambia and also that regulatory agencies are underfunded and understaffed. He surmises that, in this political and regulatory context, certain corporate features of Chinese companies operating in Zambia will lead to weak regulatory monitoring and enforcement. While I agree with Haglund that there is evidence of political interference and limited funding at the Mines Safety Department, I will argue that these studies have overemphasized the importance of such interference to the agency's processes and outcomes. Further, limited funding and political interference do not sufficiently explain the empirical findings discussed in Chapter 4 and 5 in this thesis.

Other studies have contested the view that Chinese companies provide job security and safety to local Zambians. A report published by Human Rights Watch in 2011 found evidence that some Chinese managers in Zambia physically and psychologically abused local Zambian workers in Chinese mines. Moreover, contrary to

³ For example, after an incident at Collum Mine in Sinazongwe where two Zambians were shot by their Chinese manager, Sata told his supporters that 'We know we can't be protected by this government because it has been heavily corrupted by the Chinese for the 2011 elections' (Telegraph, 20 September 2011).

⁴ Haglund (2009; 2010) analysis supports Burawoy (1969) findings that first, after gaining independence young elected Zambian governments officials focused on consolidating power and enriching themselves at the expense of majority Zambians; and although the country gained political independence, its reliance on western technology, markets and managerial knowhow forced the new Zambian elected government officials to side with the interest of foreign capital over that of average Zambians.

Lee's (2014) claim above, Fraser and Lungu (2007) and Baah and Jauch (2009) have criticised Chinese mines for maintaining a precarious labour climate by retaining high levels of casual labour. During my interviews with Mineworkers Union of Zambia (MUZ) officials, a number of them criticised NFCA, for example, for using a significant proportion of casual workers compared to other foreign mines⁵ (Interview with MUZ officials in Kitwe, 03 October 2015). There is also evidence to suggest that some Chinese firms have tended to under-report workplace accidents as required by Zambian laws (Interview MUZ, 2015; HRW, 2011; ILO; 2010).

The behaviour of Chinese companies in Zambia drew domestic and international attention after a series of workplace accidents and protests in Chambishi in April 2005, where an explosion at a Chinese-run explosive factory killed 52 Zambians. In another incident in June 2006, six Zambians were shot during a protest at NCFCA mine in Chambishi (the government has yet to release the identity of the shooter to the public, although workers believe it was a Chinese manager). These incidences led to a flurry of domestic and global condemnation of Chinese investments practices in Zambia.

Domestic and international media reported both incidences as evidence of two crises: in safety standards in Chinese mines in Zambia and also their relationship with unions (*The New Yorker*, 29th October 2013; *New York Times*, 21st April 2005; *BBC* 21st April 2005). In a television interview in Lusaka, then American Secretary of State Hillary Clinton told the audience to be wary of 'China's rising influence on the continent, [because they] only deal with elites. We saw that during colonial times it is easy to come in, take out natural resources, pay off leaders and leave' (Reuters 11 June 2011).

⁵ However, the same officials admitted that the company has made efforts to provide more permanent positions to Zambian workers.

Government and non-governmental groups in Zambia have also pointed to the negative impact of Chinese investments on Zambia's environment. In 2015, Zambia's Auditor General Office published a damning report on the "Management of Environmental Degradation Caused by Mining Activities in Zambia."⁶ The report found that most foreign companies, both western and non-western, had neglected their responsibility to protect Zambia's environment and had failed to comply with local regulations. In the case of Chinese companies, the report pointed out that the Chambishi Copper Smelter (CCS) was emitting pollutants into local farms and streams; that the company had failed to submit its air and water emission records on time; and that it had also failed to install the recommended air and water emission monitoring devices. The report also found a lack of domestic capacity to regulate the behaviour of these companies.

This brief review of the impacts of Chinese investments in Zambia's copper mining sector reveals some limitations with both the optimistic and pessimistic views. First, the fundamental explanatory variable to both views is Chinese investments, and both sides tend to overlook, or underestimate, the capacity of domestic actors to resist and positively shape the standards in Chinese mines operating in Zambia. To be fair, some studies examine the roles of domestic actor and institutions, but argue that local institutions are not structured to "effectively regulate foreign companies": meaning local actors lack the incentives and capacity to guarantee the effective monitoring and enforcement of local regulations. The point is, on the one hand, that pessimists see Zambian actors and institutions as either passive or even facilitating the "exploitative" behaviour of Chinese companies in the country, and thus focus on features of Chinese

⁶ Office of the Auditor General's Report, "Management of Environmental Degradation Caused by Mining Activities in Zambia" submitted by Anna Chifungula (July 2014) online at: <http://www.ago.gov.zm/reports/Special/2014/OAG%20Management%20of%20Environmental%20Degradation.pdf>

companies that determine negative outcomes. Optimists, on the other hand, see the positive features of Chinese capital as delivered by China – reflected in such terms as “Spectre of Global China” and “the Dragon’s Gift” – ignoring the fact that domestic actors in Zambia have in fact shaped the outcomes of China’s economic engagement in positive ways. To both groups, the goals of Chinese companies, how these goals are formulated, and the strategies used to achieve them are the primary explanatory factors in understanding their economic activities in Zambia, and the impact of their actions on Zambian actors and institutions⁷ (exceptions are Kragelund, 2016 and Sautman & Hairong, 2009).

This focus on Chinese companies has resulted in a tendency to overlook and simplify a number of key Zambian actors. For example, the Zambian state is reduced to a “big-man” president and his cliques, while some studies dismiss civil society (including unions and NGOs) as weak and incapable of influencing both state and business policies (Polus, 2011; Haglund, 2008). Three reasons explain such perceptions. First, some studies adopt neopatrimonial approaches which focus on the key explanatory variables of corruption, “big-man”, underfunded government agencies, and neopatrimonial relations. These variables presuppose a staggering greed on the part of government officials and an official passivity to public complaints against businesses. In light of these presuppositions, evidence of government action is treated as marginal or insignificant. For example, Haglund (2008; 2011) dismisses government policies to increase funding to the Mines Safety Department as unlikely to boost the ability of the agency to “effectively” monitor and enforce local regulations.

⁷ Lee’s insightful works (2009; 2014; 2017) on Sino-Zambian relations touches on the impact of politics and society in Zambia on behaviour of Chinese companies operating in Zambia. However, her “accumulative capital” approach primarily looks at the distinctive feature of Chinese SOEs and how those features shape their labour hire, mine operations, and relations with government officials in Zambia.

Second, some of these studies adopt static approaches to conceptualisations of state, civil society and businesses. Static, and often homogenous, descriptions of these actors mean that some studies overlook the important roles of formal regulations, laws, and interactions among key stakeholders in shaping the actions of government officials and businesses, and they often overlook changes in the behaviour of these actors resulting from these formal laws and interactions with other actors.

Third, the asymmetrical nature of the Chinese and Zambian economies can lead scholars to suggest that Zambian leaders are passive to Chinese investments because they lack the resources to influence these companies, or are too dependent on Chinese investments to make any significant demands that may upset the Chinese and drive out these investments. For example, Zhang (2016) assumes that poverty in Zambia will weaken the ability of Zambian officials to bargain against Beijing with its significant economic resources. In essence, the view that the Zambian state is dominated by a corrupt “big-man” and that there has been no significant change in the country’s political system can support the misleading view that these corrupt officials are doing nothing to address the negative effects Chinese companies in the face of powerful and rich China.

A further criticism of some of these studies is that they adopt a form of economic reductionism—that only material factors matter. This implies that policies and regulations can be reduced to the interests of economic actors, mainly foreign businesses, or economic structures, such as modes of production, economic growth, job creation, commodity reliance, and profitability, irrespective of political, cultural and technological factors in the country. While these economic actors and factors are indeed important determinants of regulatory processes in Zambia (as elsewhere), a more nuanced understanding of the country’s regulatory processes needs to accommodate the roles of diverse non-economic actors and factors as well. It also needs to elucidate how

domestic political actors and civil society, as well as political, bureaucratic and social institutions shape regulatory process and outcomes. This is what this thesis sets out to achieve.

III. Introducing the diverse players involved in the monitoring and enforcement of Safety and Environmental Regulations in Zambia.

To illustrate the diverse set of local actors involved in the monitoring and enforcement of safety and environmental regulations in Zambia, this study will examine the roles of three groups: first, bureaucrats and two bureaucratic institutions (the Mines Safety Department and Zambia's Environmental Management Agency); second, two non-governmental organisations (Citizens for Better Environment and Zambia Institute for Environmental Management); and third, two unions (Mineworkers Union of Zambia and National Union of Miners and Allied Workers). I explain in Chapter 3 how and why I selected these groups. Here it suffices to describe some of their key features, (which Chapter 3 deals with more extensively).

One of the central arguments in this thesis is that multiple actors shape safety and environmental regulatory process and outcomes in Zambia. This argument contests the more widely-held view of policy and regulatory processes and outcomes in Africa (including Zambia), which emphasises that these outcomes are solely determined by a "big-man" usually, the president, or the corrupt interaction between the "big-man" and businesses.

Departing from the "big man" and state-business approach, I first of all add the roles of bureaucracy in regulatory processes in Zambia. Weber (1969) and Giddens (1986; 1994) argue that the drive to increase productivity and control over humans and nature in 18th century Europe led to the emergence of new forms of

authority and organisational relations. One kind of organisation and form of authority analysed by both authors is the modern bureaucracy, whose authority, they argue, is based on expert knowledge. According to Tordoff (1986), successive elected government officials in Zambia since its colonial days have relied on the country's bureaucracy for systematic policy advice and design, the coordination of economic and social policies, and the monitoring and enforcement of laws and regulations.

In Chapters 2, 4 and 5, I discuss the influence of the Mines Safety Department's (MSD), Zambia Environmental Management Agency's (ZEMA) and Ministry of Labour and Social Security's (MLSS) operations, routines, and strategies on safety and environmental regulations in Zambia's copper mines. Though I concede that many bureaucratic agencies in Zambia are underfunded and understaffed, I maintain that bureaucrats are key stakeholders in the safety and environment regulatory processes and outcomes in Zambia's copper mining sector. Zambia's bureaucracy faces challenges such as inadequate human and financial resources, interference by elected government officials and foreign institutions. This point notwithstanding, bureaucratic institutions such as MSD, ZEMA, and MLSS have affected regulatory processes in Zambia, and in positive ways. They influence regulatory processes and outcomes through their daily interaction with the public, businesses, and workers, their active participation in the generation and dissemination of data, reports and public statements, and bureaucratic routines (such as weekly and monthly inspection of business sites, among others).

In addition to bureaucrats, I also identify non-governmental organisations (NGOs) as important actors in the monitoring and enforcement of regulations in Zambia. While the term NGO is difficult to define, here I take on a broad interpretation of an NGO as an organisation that is not legally part of a public

agency, whose key officials are not appointed by the government; and whose main goal is to provide services for non-profit purposes.

NGOs have a long history in Zambia. According to the Zambian Ministry of Home Affairs, there were over 1400 NGOs registered in Zambia in 2014. These NGOs are mainly involved in advocacy, political work, empowerment of their members and local communities, and the provision of social services. NGOs in Zambia, as in many developing countries, face financial and capacity problems (Burnell, 2001). One of the arguments put forward in this thesis – that NGOs influence regulatory processes and outcomes in Zambia – challenges the view put forward by Polus (2011, pp.1-9) and others that the Zambian government distrusts and ignores NGOs in regulatory processes; and that NGOs’ contribution to the regulatory and other policy processes and outcomes is trifling – often amounting to little more than “naming and shaming”. I argue in Chapter 5 that NGOs use other strategies besides “naming and shaming” to influence government and business behaviours.

Another actor I examine in this thesis is the union. According to Hapaneen (2007), ‘unions focus on issues that primarily affect the wellbeing of their members, i.e. different occupation groups in the formal sector’, unlike some NGOs which provide services to the wider public. Larmer (2010) and Burnell (2001) have demonstrated that unions were a significant force behind the re-introduction of multi-party elections in Zambia in 1990, while Fraser and Lungu (2007) and Lee (2017) contend that the power of unions in Zambia’s political and economic system weakened after the privatisation of mines began in the 1990s. This marginalisation of unions, they claim, has weakened their ability to bargain for tougher safety regulations and the interests of their members more broadly. It is obvious that the rise of globalisation has likely given more power to capital (not just in Zambia) than

to unions. However, I argue that unions continue to exercise influence in regulatory processes in Zambia, and this influence varies over time and place.

In this Chapter, I have discussed the rise of Chinese investments in Zambia's, and critiqued academic and public debates about the impact of these investments in Zambia's copper mining sector. I also introduced some key stakeholders discussed in Chapters 2, 4 and 5 in the thesis, who are involved in the process of safety and environmental regulations in Zambia. In the next Chapter, I will outline the debate around foreign direct investments (FDI) in Africa and look in particular at the impact of Chinese direct investments in copper mining in Zambia on safety and environmental regulations. As well as reviewing scholarship to date on this topic, I will evaluate the various theories around regulatory outcomes in Africa.

Chapter 2. Debates on the Impact of Foreign Direct Investment on Regulatory Outcomes in Africa: The case of Chinese investments in Zambia

I. Introduction

For the past five decades, foreign direct investments (FDI) flows from developed to developing countries, and among developing countries, have increased at unprecedented rates (UNCTAD, 2015a; OECD, 2012; 2014; World Bank, 2016a). A broad set of views has emerged with the rise of FDI in developing countries. First, some scholars have emphasized foreign direct investors' control over domestic institutional processes and domestic actors. Second, others have pointed out the negative impact of FDI on labour, the environment, and overall on welfare due to what they describe as the excessive focus on profits maximisation by foreign investors at the detriment of the host country (Oatley, 2011; George, 2001; Husted, 1994). From this perspective, the increase in FDI has triggered a "race to the bottom" in terms of weak regulations, with foreign investors "capturing" host⁸ country governments via their excessive influence over domestic policies and regulations.

There are various problems with these views. An emerging body of literature, of which this thesis is part, contends that FDI has had a mixed impact on host countries, and in some cases this impact has been positive. FDI has provided capital to developing countries, which has created thousands of jobs, especially in Africa, help to build vital infrastructure and pay taxes to the host countries' governments (van der Lugt, 2016; Brautigam, 2009; 2013; Mudambi et al., 2013; Dasputa et al., 1997; Jaffe et al., 1995). In addition, both the "capture" theory (also known as the economic theory of regulation) and "the race-to-the-bottom" hypothesis provide an inaccurate and incomplete

⁸ In this thesis by *host country* I am referring to a country where a company that is based in another country has business activities. For example, Zambia is the host country of Chinese SOEs. On the other hand, by *home country* I am referring to the country where a company has its headquarters or the country of origin of the its majority shareholders. China is the home country of China Non-Ferrous Metal Mining company.

framework for understanding regulatory processes and outcomes in Africa. Both approaches focus excessively on economic factors and state-business relations as the sole determinants of regulatory outcomes, thereby ignoring a range of other actors, including bureaucrats and civil society organisations, which can positively shape the impacts of FDI in the destination country (Ensgstrom, 2007; Oslon, 1982). Finally, both views also fail to account for the effect of diverse factors on regulatory processes and outcomes, including the impact of elections, decentralisation of political power, accidents and crises. Taking these factors into account results not only in different theoretical predictions, but also different understandings of both regulatory processes and outcomes.

This thesis contributes to these debates by examining the impact of Chinese investments in Zambia, and the ways in which these have shaped regulatory processes in the resource-dependent African country. Over the last two decades, FDI outflows from China has grown rapidly, including into Sub-Saharan Africa (herein, Africa) (UNCTAD, 2015a, b; World Bank, 2015a; Taylor, 2009). The impact of these investments in Africa (both state-owned and private Chinese investments) and local responses to these investments has generated heated controversy (Shinn, 2016; Morris et al. 2012; Kaplinsky, 2008; and Morris, 2009; Bosshard, 2008, Haglund, 2008, pp.548; Taylor, 2006; 2007). Scholars and observers of Sino-African relations and Africa's political economy have hotly debated the social, economic and political impacts of these investments on the region. This debate has been dominated by pessimistic views consistent with "capture" theory and the "race to the bottom" hypothesis. In the words of one of the proponents of this view, "Chinese investors... [in] many African countries, risk undermining host country regulation and by extension sustainable development" (Haglund, 2008, pp.548).

These pessimistic views have been supported by findings from the neopatrimonial literature (Shinn, 2016; Bosshard, 2008; Haglund, 2008). Neopatrimonial theory is an elite “big-man”-centred theory that focuses on the president as the fundamental explanatory factor in political and regulatory outcomes in Africa (van de Walle & Bratton, 1994; Bates, 1986). Neopatrimonialists argue that presidents or “big-men” have overwhelming control over political processes and outcomes in Africa, and use these powers in their private interest, rather than public interest. Because of this preference for personal and corrupt self-enrichment, presidents in most African countries are seen as being passive to the plights of the electorate or citizens, often conniving with businesses against local communities or public interest. In this context, observers and commentators have critiqued the “elite” nature of China-Africa relations, claiming that Chinese companies and the government prefer to deal directly with African elites instead of the local population. This is disturbing because, they claim, African leaders prefer to collect bribes rather than ensure that businesses comply with local laws and they often govern for their personal interest rather than the national interest (Tang and Sun, 2016; and Mike and Morris, 2008; Bosshard, 2008; van de Walle & Bratton, 1994).

This Chapter revisits this debate with a focus on regulatory processes in Zambia, and safety and environmental regulations in particular. I examine who is involved in local regulatory processes, and how local actors actually respond to business practices in the region. After analysing the strengths and weaknesses of the capture and neopatrimonial approaches, I propose a political economy approach for understanding regulation. Central to this approach is that there are several other critical actors involved in regulatory process and outcomes – including bureaucrats and CSOs (mainly NGOs and Unions). These actors are important because they set standards for businesses, are

involved in information gathering about compliance with regulations, and help shape the behaviour of foreign businesses.

The rest of the Chapter is organised as follows. In the next section, I outline the difficulty in defining regulation and offer a working definition of the term. I evaluate the standard theories used in analyses of regulatory outcomes in Africa and highlight the problems with each of these. In section 3, I propose a more comprehensive political economy approach to regulations, which incorporates the roles of political and economic actors, regulatory agencies and CSOs in the regulatory process. In section 4, I suggest that regulation in Zambia is a dynamic process that is flexible and prone to change, driven by both endogenous as well as exogenous factors. Drawing on organisational theories, I suggest that one such factor is crisis. Section 5 concludes.

II. State-Business Relations and Regulatory Processes

a. Defining Regulation

There is no generally accepted definition of regulation. Black (2002, pp. 26) refers to regulation as ‘the sustained and focused attempt to alter the behaviour of others according to defined standards and purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard setting, information-gathering and behaviour modification.’ In a review of academic definitions of regulation, Selznick (1985, pp. 363) stresses the differences held by scholars over the meaning of regulation and suggests that the term refers to ‘sustained and focused control exercised by a public agency over activities that are valued by the community.’ Three decades after Selznick, Koop and Lodge (2015, pp.3) reviewed the use of the concept in the extant literature and found a consensus among scholars that regulations involves “purposeful intervention” and “control of behaviour.”

Following Mitnick (1980), in this thesis, I define regulation as the intentional and focused attempt of an actor to intervene and alter the activity of a business, in line with specific formal norms, with the goal of achieving a broader public goal. Some assumptions underlying my definition are: first, following recent academic research findings, state agencies are not the sole actor involved in the regulatory process; that is, states do not have monopoly of purposefully intervening and altering the behaviour of businesses (Gunningham, 2009; et. al., 2005; Braithwaite, 2007; 2009; Black, 2002). Second, although non-state actors purposefully intervene to shape business behaviour, the state is the primary medium through which the effects of other actors are channelled to businesses. And, my focus is on intervention to influence business compliance with formally enacted norms.

b. “The Capture” theory and the “Race to the Bottom” hypothesis

The focus on regulation among social scientists and the public has gained momentum over the past decades. One reason is due to the increasing costs that regulation imposes on businesses (Kitching, 2015; Haidar, 2012; Banks, 2003; Hahn, 1991). Further, in the face of growing transnational movements of capital, regulation is now a key mechanism for states to assert their sovereignty over businesses, especially considering the declining effectiveness of traditional control measures such as tariffs, taxes, and nationalisation, among others, over business (Stiglitz, 2002; 2010; Easterly, 2001; 2004; Strange, 1988; 1996). Besides, the redistributive effects of regulations in modern societies has often made regulations a controversial and political issue (Ostrom, 1999; Giddens, 1986, Lindblom, 1959; 1979; Stigler, 1971). Finally, there have been increasing calls from diverse sections of the public in recent years for politicians to liberate state institutions and processes from business control.

Fears of business control over state and government policies (including regulations) have existed for centuries. Marxists and Neo-Marxists contend that business control of finance, information, technology, and labour provides them with the necessary resources and capacity, vis-à-vis other groups, to control and define state policies—including regulations. In his critique of Hegel's *Philosophy of Right*, the young Marx (1843, pp. 170) noted that 'The relation of industry, of the world of wealth generally, to the political world is one of the major problems of modern times.' The point is, scholars (including those not often sympathetic to Marxist theories) have raised concerns over the propensity of specific groups to use the state⁹ to promote their specific interests (Laffont, 1991; Friedman & Friedman, 1980; Gramsci, 1971; Stigler, 1970).

This is particularly the case with the "capture" theory and "race-to-the-bottom" hypothesis of regulation. George Stigler (1971) first articulated the capture theory in his renowned article "The Theory of Economic Regulation". He (1971, p. 3) contends that regulation is essentially a form of intergroup competition for government favour as 'the problem of regulation is discovering when and why an industry (or other group of likeminded people) uses the state for its purposes or is singled out by the state to be used for alien purposes.' The theory claims that in this intergroup competition, businesses tend to be the best competitors as they are highly organized and possess more financial resources than other groups, such as consumers (Lessig, 2008; Odlyzko, 2003; Stigler, 1971; 1975). Businesses use these financial resources and information to

⁹ For example, Friedman and Friedman (1980, pp.193) observed that 'Every act of intervention establishes positions of power. How that power will be used and for what purposes depends far more on the people who are in the best position to get control of that power and what their purposes are than on the aims and objectives of the initial sponsors of the intervention.' Taking a narrower view, Coase (1959, pp. 37), argued that bureaucratic agencies are afraid that businesses use politicians to influence regulatory outcomes, and he suggested, 'When rights, worth millions of dollars, are awarded to one businessman and denied to others, it is no wonder if some applicants become overanxious and attempt to use whatever influence they have (political and otherwise), particularly as they can never be sure what pressure the other applicants may be exerting.'

capture and control elected government officials by giving them these material resources (votes and campaign funding) in exchange for regulations that promote or consolidate business interest against competing (or potential competing) groups. To support his argument, Stigler (1971) cites airmail subsidies, restrictions of the Civil Aeronautics Board (CAB), the Federal Deposit Insurance Corporation (FDIC) and government-supported price fixing of goods and services. The major implication of the economic theory of regulation is that the interest of business always prevails over that of the consumer; and, of particular relevance in this thesis, over the interest of the worker (Engstrom, 2013). For as Stigler (1971, pp. 33) concludes, ‘regulation is acquired by the industry and it is designed and operated primarily for its benefit’.

Some capture theorists have extended the insights from Stigler’s work to account for business influence over bureaucrats (Posner, 1982; 1974; Becker, 1982). According to these studies, businesses control all the information required by bureaucrats to monitor and determine incidences of noncompliance, and they manipulate this information so regulatory agencies will regulate in their favour. In addition, some claim that businesses control regulatory agencies through offering jobs and financial resources to these agencies in exchange for regulations that favour them (Posner, 1982; 1974; Weingast, 1981). In sum, capture theorists suggest that because business interests dominate the regulatory process, and businesses have high levels of influence over elected government officials and regulatory agencies, regulations always favour businesses¹⁰.

This line of argument has several consequences for regulatory processes and outcomes. First, based on the assumption that businesses are profit driven, they are

¹⁰ Thomas Frank (24 June 2009), commenting for the *Wall Street Journal* about regulations during the Obama administration, succinctly captures this view: “There are powerful institutions that don’t like being regulated. Regulation sometimes cuts into their profits and interferes with their business. So they have used the political process to sabotage, redirect, defund, undo or hijack the...state”.

expected to prefer policies that reduce costs of production, and since most regulations create extra costs for businesses, they prefer weaker regulations (Wu, 2010; Lessig, 2008). Thus capture theorists contend that the state weakens regulations to promote and consolidate business interests. Second, as Stigler explains, assuming that businesses are always more organized than other groups and therefore better able to control state officials, there is limited public (CSOs and other non-business groups) participation in the process, and also limited policy responsiveness to public opinion. In the face of criticisms and empirical evidence, some proponents of the capture theory have conceded the fact that businesses do not always demand weak regulations—even when strong ones negatively affect their profitability (Posner, 1982). This point notwithstanding, the key point is that businesses generally prefer weaker regulations, and governments weaken regulations in their interest.

Besides capture theory, some scholars have argued that developing countries (including most African countries) prioritise economic growth and job creation and their desire to attract investments drives them to weaken regulations (Payton and Woo, 2014; Haartstad, 2009; for a review of the literature see Robertson and Tietelbaum, 2015). This view has been coined as the “race to the bottom” of regulations or the weakening of regulatory standards (Lowe, 2016; Nicolas, 2004; Sanford, 2000; Cary, 1974). The metaphor of a “race to the bottom” emerged in the United States in a Supreme Court decision by Justice Louis Brandeis in the 1933 case *Ligget Co. v. Lee* (288 U.S. 517, 558–559). The concept refers to the ‘scenario of countries or regions competing against each other by offering investors ever greater tax breaks and ever weaker regulations’ (Sanford, 2000, pp. 91).

There are several further problems with both the capture theory and the “race to the bottom” hypothesis. First, they have both been criticised for their excessive focus on businesses and state-business relations (Engstrom, 2007; Wilson, 1989; Meier and

O'Toole, 2006; Waterman and Meier, 1998; Mitnick, 1980). For instance, recent research has suggested that political factors such as elections and bureaucratic factors – leadership, staffing and agency culture – affect regulatory outcomes in important ways that both theories tend to overlook, and that results in regulations that are contrary to business interest or demands (Bolton et al., 2015; Carpenter and Krause, 2014; Engstrom, 2007).

Besides, both theories neglect the roles of bureaucrats and CSOs in the regulatory process (Meier and O'Toole, 2007; Meier, 1988). One consequent of this neglect is an inaccurate or misleading top-down, centred and state-controlled view of power and regulatory processes. Further, both theories fail to explain the introduction of regulations that do not favour businesses or that are brought about due to the influence of CSOs (Wilson, 1989, Olson, 1982). Thus, as Olson (1982, pp. 110) suggests, capture theory correctly explains 'those cases where [business is more influential], but its victims are not, but [is] incorrect for cases where the opponents are as well organized.'

Not all studies have been dismissive of the role of CSO and bureaucrats. For example, Schoenbrod, (1993, pp. 13) commenting on the ability of powerful interest groups to influence regulatory outcomes, departs from businesses-domination view, and contends that:

Agency heads are usually not apolitical and, indeed, concentrated interests often prevail more easily in an agency than they can in Congress... Not only large corporations, but also labour unions, cause-based groups, and other cohesive minority interests sometimes can use delegation to triumph over the interests of the larger part of the general public, which lacks the organization, finances, and know-how to participate as effectively in the administrative process'.

I build upon this argument in in section III.

c. Chinese investors in “neopatrimonial states”: A boon to weak regulations?

By drawing, either explicitly or implicitly, on capture theory and the “race to the bottom” hypothesis, analyses of regulatory outcomes in Africa have largely been pessimistic. These pessimistic, state-business centred approaches are commonly used to explain the detrimental impact of Chinese investments in Africa (Shinn, 2016; Mike & Morris, 2012; 2008; Taylor, 2009; Bosshard, 2008). Some scholars have suggested that increased Chinese investments in Africa have led to the weakening of regulatory standards in the region. For instance, in his celebrated work on Sino-African relations, Alden (2005, pp. 29-59) argues that ‘China’s foreign policy foray in Africa has been primarily centred on capturing the elites and the resources under their control’, which may have led to corruption between Chinese businesses and African government officials. Burgis (2015, pp. 7) likewise argues that ‘what is happening in Africa is systematic looting, illegal, and informal exchange and distribution’ of the region’s natural resources between Chinese (and other foreign) companies and government officials. He further maintains that, in most cases, these exchanges have led to the weakening enforcement of local laws by respective African governments. The point is that some of these studies claim Chinese companies have indeed captured African government officials and are pushing these governments to ignore noncompliance with local regulations or weaken local regulations.

The belief that increased Chinese investments into Africa has weakened regulatory standards in the region is based on several assumptions about Africa’s politics and economy, that is, its political economy. For example, as discussed earlier, some studies contend that low economic growth rates, limited investment and the absence of capital has made African governments keen (and sometimes “desperate”) to attract FDI (Brian, 2012; Haglund, 2008; 2010; Kamwanga, 2009; Lungu & Fraser,

2007). This goal to attract FDI has influenced the host country governments to ignore instances of noncompliance with local laws by foreign companies and introduced laws that have had negative social costs on local communities. Some studies have argued that in some cases, government officials have excused instances of noncompliance by Chinese companies in terms of “cultural differences” which should be overlooked considering the economic benefits in these investments (Lungu and Fraser, 2007). Others have vigorously demonstrated that the goal by some African governments to transform African economies into “middle-income” economies has often led them to the prioritisation of business interest over domestic public interest (Shinn, 2016; Haglund, 2008; 2009; 2010; Bosshard, 2008)

Some of these studies have supplemented their analyses of state-capital relations in Africa, with a systematic interpretation of political regimes in Africa. Most commonly, scholars have argued that political regimes in most African countries are “neopatrimonial”. The term “neopatrimonial”, although tracing its roots to Weber, was first used by Shmuel Eisenstadt¹¹ (1973) in his book ‘Traditional Patrimonialism and Modern Neopatrimonialism’. According to Clapham (1985, pp. 49-51), neopatrimonialism is a ‘form of organisation in which relationships of a broadly patrimonial type pervade a political and administrative system which is formally constructed on [a] rational-legal line.’ He further adds that ‘It is a system in which an office of power is used for personal uses and gains, as opposed to a strict division of the private and public spheres.’ Other key features of these regimes include the domination of politics and other state processes by a “big-man” or president where the centralisation

¹¹ Scholarly opinion over the origin of neopatrimonialism in Africa differs. Jackson and Roseberg (1982) trace the dominate-authority of the president over national policies to authoritarian constitutions, statutes and degrees enacted by African states after independence in the 1950s and 60s and to the need to centralize power in ethnically divided and underdeveloped societies. Meanwhile, Chabal (1992, 2012) and (Bayart, 2006) believe that the existence of neopatrimonialism in Africa can be traced to an African culture where leadership is personalistic; authority is derived from tribal and other traditional values rather than formal norms; and personal interests and wealth are prioritised over “public interest”.

of power is in his hands in the absence of competitive elections or competitive party systems. Significantly, these regimes lack “effectively functioning” formal institutions such as bureaucratic agencies. In this world lacking “checks and balances” the ability of the host government to regulate FDI, including Chinese FDI is weak or absent (Solhjell, 2011; Bach, 2011; von Soest, 2007; Cromwell & Chintendza, 2005; Lindberg, 2003).

Haglund (2008; 2009; 2010), for example, has systematically analysed the roles of economic, political and social factors on regulations in Zambia—drawing implicitly from the capture and neopatrimonial literatures¹². He (2008 pp.548) argues ‘that certain corporate governance features prevalent among Chinese investors, combined with the already weak regulatory frameworks of many African countries, risk undermining host country regulation and by extension sustainable development’. Haglund (2008, 2010) points to two sets of factors that interact to allow Chinese businesses to influence the Zambian government, and in turn to negatively affect the regulatory process. First, he refers to the existing political and economic factors in Zambia – especially the excessive power held by the president and his ability to intervene and influence regulatory outcomes, as well as cash-starved and dysfunctional public agencies. Further, Haglund argues that the prioritisation of FDI for diverse social, economic and political goals by the elected politicians drives elected government officials to ignore non-compliance with regulations. Finally, the tendency among elected government officials to pursue personal and short-term gains over public and long-term interests, means the absence of financial and human investments in regulatory institutions and a lack of a long-term political commitment to tougher regulations.

¹² Haglund argues that while the neopatrimonial literature fairly captures the centralised nature of power in the hands of the president in Zambia, other actors influence the processes. However, in most his works (2008, 2009, 2010), he overlooks this key point and primarily focuses on how the president dominates and intervenes in regulatory processes, and the negative impact of these intervention on the processes. Thus, to my understanding, he draws his findings from the neopatrimonial premise.

In another work, Haglund (2009) argues that a number of features common to Chinese companies ensures that their presence and interaction with government officials weakens local regulatory practice. These include an excessive focus on short-term profits; close relationships between Chinese companies, the Chinese government and Zambian government officials; and a tendency among Chinese companies to offer bribes to regulatory agencies rather than comply with local regulations. In addition, he notes that Chinese companies are inexperienced in complying with regulations when operating in foreign economies where the lack of home country institutional constraints encourages the company to devise strategies that ignore local regulations. My subsequent analysis will reveal that the Zambian government is not always indifferent to poor safety and environmental standards by Chinese companies, at least in the case of NFCA and CCS.

Notwithstanding the insights of Haglund and others (Shinn, 2016; Bosshard, 2008; Mike and Morris, 2008), these studies suffer from the same problems faced by those that rely on capture theory and the “race to the bottom” hypothesis. For instance, some of these studies focus excessively, and sometimes exclusively, on the interactions between the president and businesses. As Black (2002, pp.23) notes, in the case of capture theory, these approaches ‘to an extent, set up a straw man [elected politicians] which can easily be knocked down.’ When they move beyond the commands of elected politicians, Black (2002, pp. 3, in another context) contends that these approaches presuppose that state regulatory agencies are the only actors with ‘the capacity to command and control, to be the only commander and controller, and to be potentially effective in commanding and controlling [businesses].’ I agree with Black (2003) and Gunningham (2005; 2009) that elected government officials are not the only stakeholders in the regulatory processes, and that businesses or regulatory agencies do not have sole control over information.

Another problem, related to the first, is that most of the above analyses ignore the roles of CSOs and bureaucrats. Neopatrimonial theorists contend that African countries lack effective bureaucracies and CSOs for political, economic and cultural reasons. Some studies contend that even where CSOs and bureaucracies exist, they are corrupt, weak and too divided to influence the regulatory process (Polus, 2011; Haglund, 2008).

Mkandawire, (2015) and Bierschenk and Oliveir Sandan (2015) have critiqued neopatrimonial studies for their simplistic and deterministic view of policymaking and enforcement in Africa, and its weak explanatory power for explaining policies that seem contrary to their key top-down and “big-man” dominated assumptions. For instance, Pitcher et al, 2015, Mkandawire, 2015, Bratton, 2011; 2013, and Pitcher, 2012 have provided evidence which contest the view that African policymaking and regulatory processes are top down—that is, that the president takes the final (or initial) decision over most regulatory outcomes.

Besides, contrary to their claims, studies on the post-colonial state in Africa suggest that bureaucrats have historically been active players in the regulatory process (Tordoff, 1997). In the 1970s, Zolberg (1978, pp. 125) said ‘within a short time...it is likely that these [African] regimes will be composed of a senescent party and of a young vigorous governmental bureaucracy which will not hesitate to assert its place in the sun’. Tordoff (1997, pp. 8), commenting on governance in Zambia in the 1970s and 1980s, argued that ‘the bureaucracy rather than the ruling party increasingly spearheaded the development effort’¹³.

¹³ The United National Independence Party (UNIP) amended the country’s Administrative Act in 1987 primarily due to what some politicians referred to as the “excessive influence of the bureaucrats” over policy outcomes (ibid).

The point, as Bratton (2013; pp. 1-3) has demonstrated, is that scholars and commentators commonly view politics in Africa from a top-down perspective. According to Bratton, in analysing politics in Africa, ‘Journalists and social scientists alike tend to focus on the deeds—and [often] misdeeds—of African presidents and the coterie that surrounds them. Ordinary people ... are conventionally portrayed in the literature on African politics as mere bit players in supporting roles to centralized institutions or influential “big men”’. He concedes that political elites and central institutions like the presidency retain the upper hand in African politics, but affirms that “ordinary people are not powerless. Nor should their political attitudes and behaviour be overlooked. By voting in competitive elections, for example, they hold within their purview the power to bestow political legitimacy on—or withhold it from—leaders, institutions, and regimes’ (ibid, 2013, pp. 5).

To this we can add, in the case of Zambia, the central claim in the capture and neopatrimonial theories that a single set of actors (often businesses and “the big-man”) and factors (pursuit of material resources) determines regulatory outcomes is inaccurate and simplistic. In the next section, I will argue instead that multiple actors and factors—bureaucrats, CSOs, elections, material resources, and crisis—shape and define regulatory outcomes. Later in the thesis, I will demonstrate this to be evident in the case of safety and environmental regulations.

III. A Political Economy Approach to the study of Regulations

In this section, I propose a political economy approach to regulatory analyses, which incorporates the roles of bureaucrats, civil society organisations, politicians, businesses and formal institutions. I explain the roles of bureaucratic factors, democratic institutions, elections and decentralisation in the regulatory processes.

a) Bureaucrats and bureaucraies

Most social scientists have ignored the nature and roles of bureaucrats and bureaucracies in Africa, except in cases where they are analysed as being venal or powerless. In the developed world, however, the influence of bureaucrats on regulatory process has been extensively analysed (Putnam et al, 1974; Giddens, 1989, 2001; Weber, 1964). Several studies have demonstrated that bureaucrats are in fact the dominant players in policymaking (Lipsky, 2010; Meier, 2004; Pressman & Wildavsky, 1984; 1983; Aberbach, 1981; Niskanen, 1971).

Although definitions of the term “bureaucrat” differ among authors, I trace the term to its use by Max Weber (1964, pp. 800-1010). The Weberian analysis of bureaucracy emphasizes sources of authority, legitimacy and dependence in modern societies. Weber was one of the first thinkers to contend that the increased rationalisation of economic and political activities in the west had spurred a set of de-personalised organisations based primarily on rules. He argued that instead of relying on personal whims and patrimonial relations, decision-making in rule-based organisations is institutionalised in formal routines, executed by trained and paid personnel, and with a clear cut system of hierarchy. He insisted that politicians depend on these trained and objective personnel, namely bureaucrats, for the daily management of modern states, and that this dependence gives bureaucrats “over-towering” influence over politicians: ‘Generally speaking, the trained... official [is] more likely to get his way in the long run than his nominal superior, the Cabinet Minister... The absolute monarch, too, is powerless in face of the superior knowledge of the bureaucratic expert—in a certain sense more so than any other political head’ (ibid, 1964, pp. 800-1010).

Elected government officials reliance on bureacrats for political authority and legitimacy continues to give bureaucrats influence over elected politicians—albeit with

some limits (Wilson, 2003; Marsh, 2000). For instance, Carpenter and Krause (2015 pp. 7-8) argue that in the United States of America, politicians rely on bureaucratic expertise to legitimise their decisions to the public, and these reliance, as well as possession of technical knowledge legitimises the influence of bureaucrats over politicians. They contend that contrary to the view that politicians control bureaucrats, politicians' reliance on the expertise and specialized knowledge of bureaucrats enables bureaucrats to manoeuvre, contest and resist, and influence politicians and regulatory outcomes. In sum, due to their control of expert knowledge bureaucrats are not passive to political influence or completely controlled by politicians, but rather have leeway to influence politicians and regulatory outcomes based on their technical expertise (Carpenter and Krause, 2015, pp.9).

Besides technical knowledge, bureaucratic factors (such as the number of employees in an agency, standards of operations, practical and bureaucratic norms, operational routines, career patterns, and modes of appointment) affect regulatory processes and outcomes. For instance, Bolton, Potter and Thrower (2015) examine the determinants of decisions by the Office of Information and Regulatory Affairs (OIRA) in the United States of America, 'an agency often perceived to be the president's political instrument' (pp.243). The authors analysed over 22,000 regulations reviewed by OIRA and found that, while political factors such as presidential priorities, elections and, relations between regulations and the president's ideologies influence review lengths, organizational factors such as agency staffing resources, leadership and workload, 'also exhibit a significant role'.

Carpenter and Krause (2015) supports Wood's (1988) view that bureaucratic routines affect regulatory outcomes. Wood (1988, pp. 219-220) has demonstrated that bureaucratic routines such as inspection visits, record-keeping, writing and publication of reports, monitoring compliance tests, and routine surveillance influence and shape

business behaviour. While it is also clear that these factors can be determined to some extent by political support, agency funding, and the selection process of officials, Wood concludes that political interference only affects a modest number of regulatory outcomes, and regulatory agencies have wide discretion in the enforcement of regulations and in influencing business behaviours. In fact, Carpenter and Krause (2015, p.254)) argue that ‘Given independent bases of both legitimacy and power in regulation, public agencies can and do shape the very statutes that give them... sometimes by engaging in a form of lobbying of their own, at other times by engaging in the very drafting of such legislation’. I will argue in Chapter 4 that the Mines Safety Department in Zambia shapes the statutes that guide their relations with the mines, thus demonstrating a feature of bureaucratic influence in the regulatory process.

Notwithstanding the evidence provided by studies of bureaucratic influence on regulatory outcomes in developed countries, there has been limited attention paid to the roles of bureaucrats in policymaking and regulatory processes in Africa. As shown above, this is because of the presumption (by many) that in Africa the president controls all policymaking processes, leading to a focus on how African bureaucracies deviate from the Weberian ideal (see Mkandawire; 2015; Pitcher et al., 2015; see Bierschenk and Olivera de Sandan, 2013; 2014 for a review and critique of this view). While there is limited knowledge on bureaucracy in Africa, there is evidence that some countries have developed bureaucratic institutions that influence regulatory outcomes, although the extent of bureaucratic influence varies across countries.

Bierschenk and Olivier de Sandan (2014; 2013, pp. 10) examine ‘The “real” workings of states and public bureaucracies in [over 20] African countries’. They critique the negative image, held by some scholars and international media, of bureaucrats in Africa as “weak and dominated” by politicians. Drawing from observations of the daily life of bureaucrats in these countries, they find what Strava

(2016) describes as ‘a bureaucratic landscape, marked by complex arrangements and negotiations... [where] public servants balance informal arrangements with strict adherence to formal regulations, often in an attempt at achieving bureaucratic efficiency’.

In another work, Beirschenk and de Sandan (2013, pp. 37) show that in Africa ‘a formal organizational structure never completely limits actors who retain room for manoeuvre and strategic games in line with their own interests and situational definitions.’ They emphasize that bureaucrats with daily contacts with the local population (or what they refer to as “street-level bureaucrats”) have leeway to influence politicians and businesses, even in the face of resource and cultural constraints. Their findings are consistent with Mbaku (1991; 1996) and Kimenyi (1987), who argue that contrary to the picture of bureaucrats in Africa as passive instruments able to be manipulated by politicians, ‘bureaucrats are less constrained in their employment of public resources to lobby legislators and influence those individuals with direct responsibility for determining [national policies]. In fact, in some African countries, [bureaucrats] are the dominant group and have significant influence over the allocation of resources’ (Mbaku, 1996, pp. 110).

Obviously, there will be significant variations in the influence of bureaucrats in policymaking processes among countries and sectors. Court et al. (1999), in a survey of bureaucratic influence over policymaking processes and outcomes and performance in 32 African countries, found that in some countries bureaucrats have more influence than in other countries. They also report a declining role of bureaucrats and elected politicians in policymaking and outcomes due to the structural adjustment programs (SAP) introduced by the International Monetary Fund (IMF) and World Bank from the 1980s to 1990s.

In sum, the focus on elected politicians and their relations with businesses as determinants of regulatory outcomes gives an inaccurate picture of the roles of bureaucrats and other actors in policymaking (including regulatory processes) in Africa. Bureaucratic factors such as agency staff numbers, participation in the design of laws and statutes that govern their actions, visits to business sites, among others influence regulatory processes and outcomes.

b) Democratic reforms, elections and decentralisation

Bureaucrats are not the only missing element in current regulatory analysis in Africa. In 'Democracy's Third Wave' Samuel Huntington (1991) argues that the (re)introduction of democratic institutions, in the form of an expansion of political rights, civil and social rights, as well as the existence of a relatively inclusive and participatory systems of public policymaking, led to significant changes in the role of formal institutions in developing countries.

Fukuyama (2012) traces the origins of these reforms to individual and interest groups' demand for more political, economic and social rights, and especially local demands for more participation in public policymaking and enforcement. Focusing on Zambia, Burnell (2001) maintains that the introduction of political institutional reforms in the 1990s led various CSOs and other organisations to participate in domestic policymaking processes, and made formal institutions such as elections, law courts, among others, more important than in the past. Some political scientists and sociologists have shown that such increased participation across the sub-Saharan Africa and Latin America led to increased accountability, transparency and policy responsiveness to the demands of local communities (Faguet, 2014; Fraser and Larmer, 2007; Dubash and Morgan, 2012; Tordoff and Young, 1994).

Bratton (2013), commenting on the bottom-up nature of policymaking in Africa, suggests that local groups have used different mediums since the 1990s to influence top government officials. He argues that these groups use mechanisms such as social media debates, participation in elections, and occupying public offices at council levels—referred to as decentred authorities—and use the law courts as well as protests to demand for participation in policymaking, the enforcement of local laws and accountability.

The existence of these multiple sites of political and social influence has increased the ability of grassroots CSOs to influence government decisions by attempting or actually threatening to influence election outcomes (Bratton, 2013). As Huntington and Fukuyama (1996) have demonstrated, elections have become a central source of public legitimacy even for authoritarian regimes. Faguet and Sanchez (2008; Faguet, 2014) and Bardhan et al. (2014) have conducted an extensive review of the impact of decentralisation¹⁴ and elections on policy-making processes in more than 58 countries, including over 20 African countries. Faguet and Sanchez (2008) found that the emergence of competitive local elections and decentralisation reforms – including federalism and/or the devolution of power to government councils and other regional administrations – had brought about political competition among elected officials, promoted bottom-up participation in the policymaking process, produced greater accountability and encouraged policymakers to be more responsive to the needs of the citizenry. In sum, as Dubash (2012) maintains, elections and decentralisation have in some cases been accompanied by increased accountability and public participation by

¹⁴ Tordoff and Young (1994, pp. 287) define decentralisation as ‘the deconcentration of administrative authority, whereby the central government delegates power to its own field officers, and political devolution, an arrangement whereby certain powers are conferred on representative bodies at provincial and/or district level, each with its separate legal existence and its own budget, and with the authority to allocate resources and to carry out multiple function’.

local groups and individuals, and consequently increased the roles of both formal institutions and local groups in regulatory processes and outcomes.

Another important effect of decentralisation on policymaking, suggested by Faguet (2014), is that it re-focuses policy goals on important and pressing local issues. He argues (2014: pp.4) that ‘Political participation and competition re-centre (some) competitive political discourse on local—as opposed to national¹⁵—concerns or increase levels of political entrepreneurship or heterogeneity by lowering the costs of entry or provoke changes in the internal characteristics of political parties’. Such changes are likely to allow local groups, such as trade unions and NGOs, to pressure elected politicians for stronger regulations.

Tordoff and Young (1994) examine the impact of decentralisation on Zambia’s governance process. They found that decentralisation in the early 1990s, resulting from the implementation of the Local Government Act of 1991 and the Public Sector Reform Program in 1993, led to improved public participation by provincial, district, and council (district and municipal council) officials in the country’s policy-making process. The authors also contend that although reforms facilitated bottom-up participation in the country’s policymaking, decentralisation had not automatically translated into provincial autonomy over the central government, due to financial and human resource constraints.

Ted et al. (2016), in their examination of social actors’ contribution in the development of water resources in Zambia and Malawi, demonstrate that

¹⁵ Recent research in Africa and some developed countries have shown that elections and decentralization do not always lead to effective regulations. Trodman (2009; 2010) has demonstrated that, in some cases, the need to satisfy voters drives elected politicians to focus on material exchanges and job creation, even when it undermines regulatory standards. However, as shown above, due to elections and other multiple sites of communication made possible by reforms introduced in the 1990s, some groups now have the capacity to demand for tougher and more effective regulation. The important point is that elections have increased bottom-up participation in regulatory processes, even if such participation does not always translate to calls for tougher social regulations.

decentralisation has contributed to “self-help social actors” (such as NGOs, Donors and church groups) cooperating and participating in activities to provide drinking water to local communities. My take on these research findings is that policy making in Africa (including in Zambia) is more participatory and bottom up than some of the extant literature suggests.

In sum, over the past two decades, in some African countries (including Zambia) the host government has introduced reforms, due to external or internal pressure, to extend the political, economic, and social power of local groups (even if in some cases these rights have been reversed) over policy and regulatory process. As such, policymaking and enforcement has become a ‘site of contention, not only between competing actors and competing organizations, but also between competing normative ideas’ (Osha, 2014, pp.18-20).

c) CSOs: Partners in the monitoring and enforcement of regulation

The re-emergence of the idea of civil society in the 1970s and 1980s generated a large body of literature regarding its usefulness in policymaking processes, including regulation. As Ernst Gellner (1994, pp.1) remarks the idea of a civil society, once a forgotten concept, was suddenly ‘taken out and thoroughly dusted and has become a shining emblem’. Notwithstanding this growing attention to the concept, scholars disagree over its meaning, and as to which organisations constitute Civil Society Organisations (CSO) (Obadare, 2014; Kappler, 2010; Gellner, 1994, Comarrof & Comarrof, 1999).

Civil society, in the works of European Enlightenment scholars, referred to the sphere of human relations between the state and the family governed by civility and voluntarism, marked by the absence of coercion. For Kant, civil society referred to a

social space ordered by law and justice. For Lock, it was comprised of organizations founded on principles of equality, law and justice whose primary goal was to counterbalance the state. Hegel defined civil society as social organizations made-up of atomistic self-seeking individuals autonomous of the state and family (Hegel, 1988; Giddens, 1989). Schmitter (1993) identified three abstract features of CSOs that are widely accepted in the current literature: these are organizations that are autonomous from the state; that have the capacity to promote cooperation between groups and individuals; and ones that should be governed by principles of law and volunteerism—instead of by coercion and/or the ability to pay.

While the impact of CSOs on policymaking and enforcement has received wide attention in developed countries (Gellner, 1994; Habermas, 1985; Alexis de Tocqueville, 1835; Hegel, 1988), the literature on their role in regulatory outcomes is limited, emerging only during the past decade (Heijden, 2012; Braithwaite, 2006; Marjone, 1996; 2000; Black, 2003). In Africa, there is an even greater paucity of studies on the roles of CSOs in policymaking, including regulatory processes (with few exceptions – (Bratton, 1990; 1989; Comarrof & Comarrof, 1999) and particularly those concerned with shaping regulatory outcomes.

To some observers, the dominance of policy and regulatory processes by the “big man” has meant the absence of CSO organisations from policy and regulatory processes altogether (Chabal, 1999, 2012; Bayart, 2006). Chabal and Daloz (1999) contend that the existence of civil society in African societies is “unthinkable,” mainly because African social formations are limited to blood relations. Taking a different tack, Bayart (1996), in his analysis of civil society-state relations,¹⁶ suggests that

¹⁶ His arguments are not always logically coherent, however, His analysis of the state in Africa, for the case of Cameroon, suggests that the hegemonic state dominates all social spheres and leaves civil society organisations with little or no influence over government policies, yet he argues in a later part of the book that some social organisations challenge the state and direct national policies.

because politics in Africa is primarily geared towards the accumulation of wealth, CSOs as associations adversarial to the state do not exist. This is partly because state officials will find them a nuisance in their drive for wealth accumulation, and because civil society leaders are likely to succumb to neopatrimonial practices. Chabal (1999, pp. 30) surmises that ‘there is at yet no evidence of functionally operating civil society in Africa’.

Contrary to the notion that there are no effective CSOs in Africa, some studies have demonstrated that, although often weak, divided and coerced by the state, CSOs are active players in African policymaking (Berekeateb, 2009; Comaroff and Comaroff, 1999; Mandami, 1996). Mandami (1996) and Berekeateb (2009) have critiqued the conceptual frameworks used in most studies that claim there are no CSOs in Africa. To these authors, the meaning of the term in the literature on CSOs in developed countries as “hegemonic social institutions” governed by “principles of law and civility”, able to “counterbalance” the influence of the state and sharing limited contact with the state¹⁷ fails to capture the operations of CSOs in Africa, and in developed countries (Comaroff and Comaroff, 1999). Mamdani (1996) and Comaroff and Comaroff (1999) identify CSOs on the voluntary basis of their membership and their ability to promote or defend their members’ and/or the public interest. This is the sense in which I also refer to CSO in this thesis.

Focusing on the voluntary basis of membership as a defining feature of civil society, Bratton (1994) and Burnell (2001) support the view that CSOs are active players in policymaking processes in Africa. They trace the emergence of CSOs to five factors: (1) the inability of some Africa states to provide social services to local communities in the 1970s, 1980s and 1990s, (2) the expansion of civil and political

¹⁷ Comaroff and Comaroff (1999) provide a systematic critique of the notion that CSO organisations in the West have often been a counterbalance force independent of the state.

liberties in some Africa countries in the 1990s after the so-called ‘third wave of democracy’, (3) the end of the cold-war, the emergence of CSOs in western countries as promoters of democracy and human rights, and the ability of these western CSOs to establish relations with national CSOs in Africa, and (4) the support of foreign organisations such as the World Bank, United Nations and IMF for CSOs as partners in development. Finally (5) due to the ability of CSOs to mobilize and provide services to local communities that the state had failed to provide. In Chapter 5, I argue that in the case of Zambia¹⁸, the introduction of a new constitution in 1990, which expanded civil liberties in Zambia, including the right to form associations and participate in public policymaking, fostered a climate conducive for CSOs to become more active (Pitcher, 2012; Haapanen and Waller, 2007; Habasonda, 2002; Rakner, 2003; Burnell, 2001).

While the impact of CSOs on regulatory process differs due to political, economic and social factors, no comprehensive analysis of regulatory process in Africa can ignore their role (Banks et al., 2015; Hearn, 2007; Bratton, 1994). Osha (2014) maintains that the importance of structural reforms introduced in most African countries in the 1990s can be seen in the new opportunities they afforded to civil society organisations, community-based organisations and other local groups to contest and influence the policy process including regulations. According to this perspective, we can understand the regulatory process as a ‘site of struggle for an enfeebled civil society to articulate its counter-discourse against state-imposed processes,’ while still maintaining the presence and impact of centralised and powerful authority, in the hands of the president (Osha, 2014, pp.18).

In sum, with the emergence of CSOs and the introduction of political reforms, ‘no single actor has all the knowledge required to solve complex, diverse and dynamic problems, and no single actor has the overview necessary to employ all the instruments needed to make regulation effective’ (Black, 2002, pp.5). Beirschenk and de Sandan (2015, pp.19) also suggest that ‘the state is no longer the only carrier of effective government, and it is increasingly confronted with other actors, with which it is in overlapping and complex relations of conflict, negotiation, alliance, compromise and avoidance.’ These relations become more important during periods of crises.

d) Crises and Regulations: Do crises make any difference?

Debates over the impact of crises on regulations have gained momentum over the past three decades in developed economies (van Heijden, 2012; Thelen and Mahomy, 2010). Giddens (1984, pp. 61) refers to crisis as ‘circumstances of radical disjuncture of an unpredictable kind that affect substantial numbers of individuals, situations that threaten or destroy the certitudes of institutionalized routines.’ To organisational theorists, such as Fink et al. (1971), crises or circumstances believed to be crises includes the loss of capital, breakdown in production or operations, failure to achieve important goals, and the death of management or workers. They argue that crisis can affect organisational behaviour towards regulations, including compliance and demand for regulatory change. Besides, crisis can also affect who participates in the regulatory process.

Crises can also re-define the regulatory environment. William Gormley (1986) identified two key features of a regulatory environment—the salience and complexity of regulations. According to Gormley, salient regulatory environments are defined by intense conflict between actors and intense public concern about the regulations; while complex regulatory environments refer to regulations and regulatory processes with the

need for technical knowledge and special training to address factual questions. Meier (1998) examines the connection between the kind of regulatory environment (salient/complex) and who participates in the regulatory process, arguing that in complex environments bureaucrats are more likely to participate than politicians, while the latter and the public have more influence in salient environments. Liberthal (1995) argues that during a crisis the regulatory environment is more salient – due to increased public attention – which in turn leads to increased political support. He observes that crises increase political support, which in turn is often accompanied by increased resources and tougher regulations. However, he warns that such support can easily wane, as politicians turn their attention to other more salient issues, after the initial crisis that triggered the response.

Consistent with these analyses, research on developed economies shows that, in some cases, crises trigger positive regulatory changes—increased funding, increased political commitment, and introduction of stringent regulations, among others. For instance, Gunningham et al. (2005) analyse the impact of chemical disasters on regulatory processes in the US. They find that crises increase the salience of regulations, which brings about increases in political support for regulatory change. Marjone (2006) demonstrates that environmental disasters in Europe, including the Chernobyl Disaster in Ukraine, triggered the enactment of more stringent regulations in western European countries, especially over the use of nuclear energy. Van Heijden (2012) examines the impact of crisis in the Netherlands on housing regulations. He finds that while there were no structural changes in these regulations, a fire in a nightclub that led to the deaths and injury of dozens of citizens led to changes in Dutch housing regulations and political support for tougher regulations.

In Africa, incidences of pollution, industrial accidents and fatalities, displacement, protests, explosions and shootings of workers, relating to foreign

investors in Africa, have led to debates over local response to these incidents. For instance, in Zambia, as discussed in Chapter 1, an explosion at a Chinese plant in April 2005 killed 52 Zambians and resulted in the closure of this factory. In 2006, six Zambians were shot during protest at a Chinese mine in Chambishi, Zambia.

To my knowledge, there is no systematic study of the impact of crisis on regulations in Africa. However, a review of media reports and policy documents suggest political support for regulations tends to increase after crises. For example, in the case of Zambia, the crises mentioned above, affected the saliency of regulations and provided unions and NGOs opportunities to participate in regulatory processes. Second, crises have also triggered demands for a reinterpretation of the scope and stringency of regulation—what should regulations aim to prevent and what new standards and mechanisms will be appropriate to achieve stated goals. Third, crises affect business support for tougher regulations, as the affected businesses might accept tougher regulations to gain social licence to continue operations.

Some scholars have challenged the view that crises necessarily lead to policy or regulatory change (Steeck & Thelen, 2005). They contend that, even in the long term, crises do not always lead to abrupt structural changes in organisational practices, but to incremental changes, which is often a hybrid of old and new practices (Steinmo and Lewis, 2012; Thelen, 2009; Streeck & Thelen, 2005). However, van Heijden (2012) clarifies that the duration of the study can affect its conclusion on the relationship between crises and changes in regulations. His point is that crisis play an important role in determining the amendment, monitoring and enforcement of regulations, although such amendments are not always structural.

Further, as North (1991) observes, whether crises bring about the introduction of new regulations, the expansion of scope of existing regulations, or changes in the degree

of support for monitoring and enforcement depends on several other factors, including the presence of actors capable of utilizing a crisis to bring about change. Other scholars have demonstrated that the historical, social and economic context where the crises occur determines the possibility and extent of post-crisis changes (Acemoglu and Robinson, 2014, Kathleen and Steinmo, 2002).

In this section, I have argued that crises can shape regulatory processes, and hence outcomes. They create periods of uncertainty and breakdowns in the process. Some actors might draw from these incidents to promote their own interest or to bring about change, while other key stakeholders might resist change. However, the likely impact on the regulatory process is further dependent on several factors, among which are whether key stakeholders will benefit from the change or not and the ability of some groups to pressure others to change the status quo.

IV. Conclusion

Debates over the determinants of regulatory process have long been dominated by the pessimistic capture theory and “race to the bottom” hypothesis. This Chapter has critically examined these theories and highlighted their major shortcomings, including their simplistic state-business perspective and the fact that they under-analyse political factors and actors such as bureaucrats and CSOs, elections and decentralisation, to name a few. It also pointed to weaknesses in the neopatrimonial theory—particularly its top-down view of policymaking in Africa.

In this Chapter I have drawn from political science, sociology, economics and regulatory theories to offer a political economy approach to regulation. First, borrowing from Weber (1967), I argue that in most African states bureaucrats influence the behaviour of businesses and politicians, and I suggest this influence rests on their expertise, authority based in formal laws, and daily operations. While conceding that

material and other political factors limit their ability to “effectively enforce local regulations”, I argue that, in some cases, these constraints do not completely limit their ability to influence the regulatory process.

In addition, I emphasize that formal institutions, although often overlapping with informal institutions, shape the interest and actions of politicians, bureaucrats and businesses. Besides, the role of CSOs in regulatory outcomes cannot be under-emphasized. By incorporating the roles of bureaucrats, CSOs and formal institutions, I have attempted to provide a more comprehensive framework that will enable us to understand better the regulatory process in Africa – with Zambia as my case study – beyond the simplistic state-centred and deterministic view.

This approach concedes to the capture theory and “race to the bottom” hypothesis that economic factors and actors matter; and that elected government officials opting for foreign capital to satisfy the electorates can give businesses power over other groups and drive politicians to design and enforce regulations in their business interests. However, the key point is that economic factors (profit motives, cost of operations, shareholders influence, among others) are not the only determinants of regulatory processes and outcomes. The interaction between economic, political and social factors and actors do not only shape the behaviour of elected politicians, but also affect business behaviour and the relationship between businesses and elected politicians. This suggests that actual regulatory outcomes are more complex and vary over time and context in ways that cannot be determined in abstract by business interest alone.

The contribution of this Chapter to the existing body of literature is three-fold. First, it provides a link between regulatory studies in developed and developing countries. For instance, students of regulatory studies in Africa can draw from the

western literature to examine the roles of CSOs and bureaucrats, in regulatory contexts that are highly political and economic-growth oriented, while taking account of conceptual differences. Second, our understanding of regulations in developed countries can be improved by incorporating how agencies facing resource constraints manage to enforce laws, and how crises can affect regulatory change.

Third, the key argument in this Chapter supports recent demands for a rethinking of the top-down and “big man”-centred approach commonly used in political-economy studies on Africa. While not dismissing the key roles of centralised institutions and the president on political, economic and social outcomes, researchers should develop analytical tools that capture the complexity of different actors and factors involved in policy-making processes, and how they interact to shape regulatory outcomes. For example, the use of salient and complex regulatory (and other policymaking) environment. Further, our understanding of politics in Africa can move beyond the “African world view”, to examine how the political economy of African states and their relationship with the external world affects the decisions and actions of top and bottom government and civil society officials.

Finally, the Chapter also adds to the current debate in emphasising the role of Africans and “African agency” in the relationship between African actors and foreign capital. Most debates of African agency have paid little or no attention to the structural constraints faced by African actors, or conversely, have overemphasized such constraints, in their interaction with foreign governments and capital. However, the political economy approach proposed in this Chapter remedies these shortcomings by identifying the material and institutional constraints faced by actors such as bureaucrats, CSOs, and politicians, on the one hand, and by examining how these actors navigate and operate within these contexts to promote and achieve their goals. On the other hand, such an approach will move the current Sino-African debate beyond the dichotomy of

deterministic versus free-acting agents, towards a more balanced approach of “agency” amidst constraints.

In the Chapters that follow, I examine the roles of bureaucrats and CSOs in the case of Zambia. In Chapter 4, focus falls on the case of safety regulations. I argue that bureaucrats are able to shape political commitment and the behaviour of businesses through information gathering, participatory decision-making, and visits to business sites. I also demonstrate that crises affect regulatory processes. In this case while the regulatory processes became salient after an accident that killed 52 Zambians, complex issues like investigating the root cause of the accident was left to bureaucrats, who used their position in the investigation to boost the resources of regulatory agencies and also demand tougher laws. These findings are accompanied by similar findings in Chapter 5, which critically examines the evolution of Zambia’s environmental regulations, the roles of environmental CSOs and bureaucrats, and how formal institutions shape the behaviour of elected politicians. I argue that although Zambia’s statutory regulatory agency, ZEMA, is underfunded, the agency has been able to suspend activities in Chinese mines and push for changes to their environmental standards. Where ZEMA has failed to meet public expectations, civil society organisations have organised sustained campaigns involving public shaming, suing Chinese mines, and contesting government decisions. Together these campaigns led to changes in the environmental standards of two Chinese companies.

Chapter 3: Research Methods and Sources - the Zambian Experience

I. Introduction

The fundamental goal of this thesis is to examine how local actors in Zambia constructively contest and shape the monitoring and enforcement of safety and environmental regulations in the country, which in turn impact on the safety and environmental standards within Chinese (and other) companies operating in the country. To achieve this goal, the study explores ‘the multiple interplays between public and private sector forces... [impacting on] policy and practice’ (Tang & Sun, 2016, pp.72).

This Chapter outlines my research method. According to Yin (1993), all academic research has an implicit or explicit research design. Maxwell (2013, pp.26) argues that ‘because a design always exists, it is important to make it explicit, to get it out in the open, where its strengths, limitations and consequences can be clearly understood.’ In the face of limited data, challenges with validity of data and representativeness of samples, Maxwell (2013) and Keohane et al. (1994) encourage social scientists to explicitly state their research methodology and collection methods so that the scholarly community can access the reliability and validity of the study¹⁹.

This study is primarily based on qualitative research. I use a case study approach to gather data to better understand the object (the monitoring and enforcement of safety regulations in Zambia and safety and environmental standards in Chinese mines) and the subject of the study – the role played by local Zambian actors and their impact on

¹⁹ Keohane and Colleagues (1994, pp.10-22) argue that ‘If the method and logic of a researcher’s observations and inferences are left implicit, the scholarly community has no way of judging the validity of what was done. [They] cannot evaluate the principles of selection that were used to record observations, the ways in which observations were processed, and the logic by which conclusions were drawn’. They further encourage social science students to explicitly state their methods and methodology “when data are limited, observation tools are flawed, measurements are unclear, and relationships are uncertain”.

the operations of two Chinese mines. In what follows I define the case study method and describe the cases I selected. Zambia is my primary case while environmental and OHS regulations in Zambia's Copperbelt and environmental and safety standards in three Chinese SOEs are secondary cases (or cases within cases). To gather data for these cases, I selected specific groups for closer examination—Unions and Mine Workers, NGOs, Bureaucrats and local Community groups and the two Chinese mining companies. The study employs three primary data collection techniques—intensive semi-structured and non-structured interviews, document analysis and observations. I also relied on ready-made statistics from public departments and other organizations.

I started by breaking my data processing and measurement process into four phases. The first phase was the thematic development phase, where I created four themes and divided the data into these themes; this was followed by the transcribing and coding phase, where I transcribed the data and created codes. In the third phase or semi-theoretical phase, I searched for patterns, differences and similarities in the data and used the data to test the validity of existing theories; the fourth phase was the reporting stage, wherein I organized the data and extracted my findings from it. I should note that these phases were not as clear cut as I have stated them here; rather there was a lot of backward and forward movement between the various phases.

In section 4, I outline some challenges faced by the research, and how I attempted to address the challenges of issues such as validity, reliability and ethics. I used three main techniques to boost the reliability and validity of my research claims—namely triangulation, respondent validity and my consideration of alternative hypotheses. In section 5, I report other challenges with the study, for example, measurement errors, uncertain causal claims, data and researcher's bias, as well as the challenge of validating my findings as representative in the face of rapid changes in social and political events in Zambia and China and Sino-Zambian relations.

II. **Qualitative Case Study Method**

Maxwell (2013) defines qualitative research as ‘research that is intended to help you better understand (1) the meanings and perspectives of the people you study— seeing the world from their point of view, rather than simply from your own; (2) how these perspectives are shaped by their physical, social, and cultural contexts; and (3) the specific processes that are involved in maintaining or altering these phenomena and relationships.’ Goertz and Mahoney (2012), diverging from this interpretivist’s view, argue that qualitative research has two defining features. First, that qualitative studies use within-case analysis, which ‘requires broad knowledge of specific cases... and the use of specific pieces of data or information to make inferences about individual cases’; second, that at the core of most qualitative studies are ‘ideas concerning necessary conditions and sufficient conditions’ for making inferences (pp.10-11).

This study is qualitative research. I focus on participant perspectives of specific events, policies, relationships and actions; and how these interactions and actions are shaped and influenced by the political, economic, and social contexts in which these actors operate. To capture these perspectives, the study uses semi-structured and unstructured interviews, document analysis and observations of artefacts, photos, and films as the primary sources of data. In addition, the study uses within-case analysis, as described by Goertz and Mahoney, as a key feature of qualitative study.

a. The Case Study Method

Creswell (2003, pp. 17) defines the case study method as a qualitative research method ‘in which the researcher explores in depth a program, an event, an activity, a process or one or more individuals. [And] the case (s) are bounded by time and activity and the researcher collects detailed information using a variety of data collection procedures over a sustained period of time.’ As part of the case study approach, some

scholars have outlined the first steps researchers take in understanding their project. They start by selecting the case and selecting units within the case for study, followed by selecting sources of data (Sharan & Tisdell, 2016; Maxwell, 2013; Klotz, 2008).

In this study, my primary case is Zambia. Why Zambia? I focus on post-1990 Zambia, after the UNIP introduced multiparty elections and agreed to some neo-liberal reforms. I selected Zambia for four primary reasons. First, I wanted to analyse the relationship between political and economic systems (in countries where power is asymmetrically decentred) and regulatory outcomes. Zambia introduced multiparty and competitive electoral reforms in 1991 (and by 2016 had organized 8 presidential elections). Scholars have argued widely that these (and subsequent) reforms decentred power from the hands of the executive (Pitcher, 2012; Fraser & Larmer, 2007; Rakner, 2003; Burnell, 2001). Thus Zambia provides a good context to examine the relationship between political systems in resource dependent developing countries and regulatory outcomes. Second, mining is an important activity in Zambia. Simutanyi (2009) and Fraser and Lungu (2007) argue that there is a positive correlation between tougher regulations and economic and social community benefits from mining. Third, Zambia is among the top African recipients of Chinese investments flows in the SSA region being ranked at number four in 2015, according to the United Nations Commission for Trade and Development, 2016. Although scholars have conducted extensive research on Sino-Zambian relations, the roles of *Zambians in these relationships* have largely been ignored. Finally, I selected Zambia because, as Chris Alden describes it, Zambia has been China's "perfect storm in Africa." This is relevant in two senses. First, an in-depth description of the case of Zambia will provide the base for examining the view that Zambians are passive to Chinese investments in their country; second, it may also help us to better understand the idiosyncrasies of the Zambia-China relationship and China's relationship with other African countries.

To understand the interaction between Zambian actors and Chinese businesses, I focus on the monitoring and enforcement of Occupational Health and Safety (hereafter referred to as “safety”) and environmental regulations in Zambia on the one hand, and, safety and environmental standards within Chinese mining companies on the other hand. And why Chinese companies? I choose to focus on Chinese companies for several reasons. First, Chinese investments in Zambia has significantly increased over the past two decades, and in 2016 Chinese companies were the largest investors in Zambia, in terms of annual investments flows. Such an increase in Chinese investments has generated fears of exploitation and capture and control of Zambian elites by Chinese companies, and with that fears of deteriorating of safety and environmental regulations in Zambia.

Further, by selecting Chinese investments I aim to test the hypothesis that Chinese investment in Zambia is likely to weaken regulatory standards in the country. This is important because current research on African political economy sees FDI as the primary mode of interaction between African economies and economies in other regions. Given that China is currently the largest foreign investor in the region (but not the largest stockholder overall), understanding Chinese investments in Africa presents an opportunity for researchers to examine how African countries (including Zambia) interact with foreign capital. Third, I selected Chinese companies in order to enhance our understanding of the behaviour of foreign investors from emerging countries into Africa as their economies become among the top sources of FDI across the globe.

In addition to selecting Chinese investments, I selected safety and environmental regulations in Zambia’s copper mining sector for two primary reasons. Copper mining is Zambia’s largest export earning sector and the biggest employer of formal labour in Zambia next to the government. In addition, copper mining has had a significant negative impact on Zambia’s environment. Besides, Joy (2004) has

demonstrated that poor safety standards in a company can reduce a worker's living standards by over twenty percent. He argues that poor safety standards can lead to accidents, injuries, and even fatalities which are likely to undermine a workers' productivity and revenue. Thus an understanding of the impact of FDI on the host country through its impact on safety and the environment may help us better understand the overall impact of FDI on the host country.

b. Sample Selection

A sample is defined as the selection of persons, settings, events, and documents to generate information relevant to the research questions and methods. The issue of sampling in qualitative research is particularly important because, as Miles and Huberman (1984) note, '... one cannot study everyone everywhere doing everything, even within a single case...' (p. 36). According to Sharan and Tisdell, (2016, pp.41), the process of sampling is difficult because qualitative researchers 'are not only sampling people, but also settings, events, and processes.'

In this study, the primary method of sampling is purposeful sampling. Sharan and Tisdell (2016, pp. 46) define this strategy as a process by which 'particular settings, persons, or activities are selected deliberately to provide information that is particularly relevant to your questions and goals and that can't be gotten as well from other choices.' I purposefully selected the samples of people, documents, settings and events based on five criteria. First, representativeness—that the data gathered from the source should represent the social reality the research describes; second, heterogeneity—that the sample would constitute diverse sources and participants; third, that the sample would be critical for testing particular theories; fourth, that I would have access to the sample, and that it would generate rich and in-depth data; and finally, that it was ethically justified to use the data. I also considered Lincoln and Guba's (1985, pp. 201-

201) point that: ‘In purposeful sampling the size of the sample is determined by informational considerations. If the purpose is to maximize information, the sampling is terminated when no new information is forthcoming from new sampled units; thus, redundancy is the primary criterion’. Besides purposeful sampling, in some instances, I also used the snowballing sampling method – that is, where a participant or document leads a researcher to other participants for interviews in the study or to other documents.

I contacted people in several organisations for interviews and requested the relevant documents. I picked top officials, branch representatives and stewards at the Mineworkers Union of Zambia (MUZ) and the National Union of Allied Workers (NUMAW). In addition to these officials, I contacted and interviewed mineworkers, some of whom belonged to unions and others who did not. Second, I also contacted four environmental NGOs, and five NGOs focused on safety and the social and economic welfare of mine workers. To understand the influence of bureaucrats in the regulatory process, I contacted and interviewed officials at Zambian Environmental Management Agency (ZEMA) in Lusaka and Ndola, at the Mines Safety Department (MSD) in Kitwe and officials at the Department of Labour Safety and Security in Kitwe.

The Chinese embassy did not response to my request to interview officials at the the Embassy of the Peoples Republic of China (PRC) in Lusaka. My request to speak with Chinese officials at NFCA and CCS was declined. In my pre-field work proposal, I declared that I intended to interview Chinese managers and top Zambian managers at NFCA, CCS and CNMC Luanshya. I did manage to speak with some safety managers (all of whom were Zambians) in the mines.

Further, I selected participants working at Zambia’s Ministry of Labour and Social Security in Lusaka, the Ministry of Mines and Mineral Development, the Ministry of Land, Natural Resources and Environmental Protection, the Ministry of

Finance, and at the Zambia Development Agency, all located in Lusaka. Finally, I selected scholars at the University of Zambia and Copperbelt University residing in Zambia with an expertise in mining. After selecting these sources, the next task was to actually collect the data.

III. Data Collection

The primary sources of data for this study consist of interviews, observations of pictures and signposts in mining sites, and reviews and analysis of excerpts and passages from documents. The study also uses data from databases, such as the database. These consist of data of Chinese FDI in Zambia held by the Zambian Development Agency; the Mines Safety Department's Fatalities and Injuries Database, the United Nations Commission for Trade and Development's Foreign Direct Investments Data, among others. Thus my study relies on interviews, documents, observation and statistics.

a. Interviews

Sharan and Tisdell (2016) define interviews as structured and purposeful conversation between a researcher and a participant, with the goal of gaining data for a study. Interviews are the primary sources of data for this study. I conducted over 69 interviews in Zambia between June and November 2015.

Before travelling to Zambia, I designed interview guides consisting of a list of questions I used in order to solicit information from participants. The interview guides contained over 30 questions and I estimated the average duration of an interview session lasting from 1 to 2 hours. The interview guides contained broad questions I designed to pose to all participants with specific questions for members of specific organisations. Questions were designed to encourage mutual comprehension between participants and

myself. I also ensured that I removed double barreled questions, defined as a question that touches upon more than one issue yet allows only for one answer.

While in Zambia I contacted the relevant authorities and persons for authorisation to conduct the interviews and access the documents. After gaining the relevant authorisation, I contacted the participant to fix a venue, date and time for the interview. In most cases, the interviews were conducted within the organisation where the participants worked. Before starting the interview, I requested the participant's permission to record the interview. After three interviews, I realised some participants were not comfortable being recorded. In subsequent interviews, I tried to create a rapport with participants before deciding whether to ask to record or resort to note taking.

In some cases, I met with the participants after working hours for further discussion. I used audio-tape recordings and note taking to record the interviews. I also endeavoured to ensure good quality recordings by keeping the device close enough to the interviewee and having a backup recorder. During the interview, I led the process by asking questions to the participant in exchange for information. Appendix 1 lists the participants interviewed for this study. I failed to interview a single Chinese mine manager, embassy official, public or private Chinese individual. This was despite having sent a formal request to the PRC Embassy in Lusaka for an interview, similarly with the mining companies and other intellectuals (officials and scholars) in Beijing. My requests were either declined or I did not receive a reply.

The interviews and the questions were both structured and semi-structured. I started the interviews with structured questions to gain the participants' cooperation

after which I posed some open-ended questions²⁰. After the first two interviews, some questions were re-worded to ensure that participants understood their meaning and in a language that was familiar to the participants. For example, during my first interview, I realised the respondent referred to Occupational Health and Safety Standards rather than Workplace Health and Safety Standards. Noting the dissimilarity helped me to rephrase some of the questions and wordings to facilitate mutual comprehension between participants and myself. Further, during interviews, I used questions or comments to follow up on what participants had previously reported.

b. Documents

Sharan and Tisdell (2016, pp.62) refer to documents as a canopy term for the ‘wide range of written, visual, digital, and physical material relevant to the study.’ This study also relied on documents gathered during my fieldwork. For example, I used official records about FDI, workers fatalities, injuries, reports of noncompliance, among others. Other documents included, court transcripts, agency records, police records, government memos and internal agency exchanges, minutes of organisational meetings, parliamentary proceedings, interchanges between government officials, interchanges between agencies; as well as civil society documents, recordings and websites.

After collecting the documents, I created cover sheets for each document with notes, stating the author(s) of the document, when and where it was written, the intended audience and theme, the purpose for which it was written and where it was stored or published. Most of the documents were obtained by a formal request to the relevant organisation. In some cases, documents were handed to me without the

²⁰ The benefit of both approaches is that structured interviews ‘can help ensure the comparability of data across individuals, times, settings, and researchers and are particularly useful in answering questions that deal with differences between people or settings’ [While] less structured approaches, in contrast, allow you to focus on the particular phenomena being studied, which may differ between individuals or settings and require individually tailored methods (Sharan & Tisdell, 2016, pp. 54).

knowledge of the relevant superior. After doing careful research on some of these documents, I used those that were already in the public domain while for those that were not, I requested further permission from the relevant authority to consult them. I selected the documents based on purposeful sampling, for example, by requesting specific data, documents or access to specific files and through recommendation by a participant that I should access a document (i.e., snowballing). Data from these documents and interviews were supplemented by statistics from the UNCTAD, AfroBarometer Surveys, statistics from the Zambia Development Agency, Mines Safety Department, ZEMA and Mineworkers Union of Zambia.

IV. Data analysis

Sharan and Tisdell (2016, pp. 201) refer to data analysis as ‘a complex procedure that involves moving back and forth between concrete bits of data and abstract concepts, between inductive and deductive reasoning, between description and interpretation.’ Goertz and Mahoney (2012) and Creswell (2003; 2013) have demonstrated that the researcher’s tools for data analysis needs to be relevant for its research questions, data collection and goals.

I commenced analysing my data from the first interview. This analysis consisted of a series of specific steps. First, transcribing, developing themes and codes; next searching for patterns and relationship between the codes and finally, I used the narrative historical method to tell the stories of how specific events had evolved.

a. From Transcribing to Coding

After my first interview, I transcribed the audio records and my notes. I transcribed all the recorded interviews, without the assistance of computer software

and/or a professional transcriber. Some interviews were fully transcribed, while in others I listened to the record and selected the important sections to transcribe. After transcribing the interviews, I coded the data. According to Sharan and Tisdell (2016, pp. 202) ‘Coding is nothing more than assigning some sort of shorthand designation to various aspects of your data so that you can easily retrieve specific pieces of the data. The designations can be single words, letters, numbers, phrases, colours, or combinations of these.’

To code my data, I started by dividing the data into four themes: Bureaucrats and Regulations; NGOs and Regulations; Unions and Regulations; Elected Government officials and Regulations. These codes helped me explore how the key stakeholders (those I could access) influenced the regulation process. For each theme, I developed five codes. Because of limited data from elected government officials, I have not systematically examined their roles in the regulatory process in this thesis.

b. Measuring the Influence of Bureaucrats

In order to examine the influence of bureaucrats on safety and environmental regulations, I focused on the relationship between the number of visits by regulatory agency officials to business premises and the degree of compliance by the companies. To measure the number of visits (code 1) by bureaucratic actors to business premises, I relied on statistics provided by MSD, ZEMA and MUZ. I expected to see an increase in the number of visits during the period covered by this study, especially after the 2005 accident, for reasons outlined in Chapters 2 and 4. I also expected that an increase in the number of visits would be correlated with a fall in noncompliance (code 2)—as reported in noncompliance reports, measured through injuries, fatalities and inspection reports. Gunningham et al. (2005) argue that more agency visits to business premises increase communication and dialogue (code 3) between agency and businesses, between

regulatory agencies and businesses and also increases the legitimacy of regulations and increases the possibility of regulatory staff detecting incidences of noncompliance.

Further, I examined the relationship between agency personnel (mainly staff numbers) and noncompliance. I suggested in Chapter 2 that an increase in regulatory staff (code 4) should also correlate with a fall in the noncompliance rate. As stated above, an increase in regulatory staff is likely to lead to an increase in visits to the mines and is expected to lead to an increased capacity in the agency, especially when an increase in staff is based on the need to recruit more trained or experienced staff (as was the case with MSD after the 2005 accident). I expected that this increase in staff capacity would have led to better monitoring and enforcement standards.

In addition, I also examined the relationship between changes in the severity of fines and the capacity of the regulatory agencies to impose such fines and noncompliance by businesses. The reason is that businesses will comply when they believe failure will incur financial or other legal penalties and create conflict with these agencies (Braithwaite, 2007).

In Chapter 4, I find evidence to suggest that an increase in the number of visits by Zambia's Mine Safety Department (MSD) is associated with a fall in accident rates in the mining sector. One criticism of this relationship, which I am claiming to be causal, is that the fall in accident rates in the mines may be due to under-reporting of accidents, to changes in technology or to internal management changes within the mines rather than due to the actions of regulatory inspectors or regulatory agencies. However, I used the information gathered through semi-structured, open question interviews, to examine the influence of MSD inspectors on business behaviours, which supports the view that MSD inspectors contributed to the fall in accident rates in Chinese mines (see Chapter 5).

c. NGOs and Unions

To measure the influence of NGOs and Unions, I hypothesized that protests (code 5) whether as law suits, protests in popular media by NGOs or strikes by unions against a business practice will lead to communication and dialogue (code 7) between the key stakeholders. I also argued that the severity of the protests, whether it was a crisis or not (code 8) will affect whether the firm, government and unions and/or NGOs engage in dialogue.

In addition, I examined whether activities that are part of the NGOs and unions routines affect the firms' behaviour. For example, I examined how labour contract negotiations and wage bargaining (code 9) by unions affect the firm's behaviour. I also examined the relationship between reports conducted and published by NGOs and changes in government practices on the one hand, and also how these studies affect business practices, on the other hand.

Finally, I examined whether the number of staff within an NGO or? Union (code 10) and its location (distance?) to the mine (code 11) affected its daily routines and its impact on firm's activities.

d. Reporting findings

After transcribing the data and analysing the patterns within the codes I created three additional codes: conflict, consensus and collaboration, to search for broader patterns across the data and units. I found two patterns. First, that Chinese companies and local actors engage in conflicts (intense disagreement over compliance with regulations) and this leads to consensus (agreement over the importance of compliance with regulations) and finally collaboration (working together to achieve public regulatory standards). However, I also found a second pattern where companies agreed to alter certain practices but reneged on these promises.

In the face of the second pattern, I explain my findings in the following way. First, using the case study approach, I identify a specific phenomenon, discuss the political, economic and social context in which the phenomena occurred, and the reasons for the different interpretations of the phenomena. Finally, I discuss how local actors responded to these phenomenon - the context of their responses, the differences in these responses, explanations of these differences, and the effect of their responses on regulatory processes and outcomes and the behaviour of Chinese companies.

V. Research limitations and addressing these challenges.

This research, in common with other social science research, faced challenges of data collection, reliability and representativeness, problems with causal analysis and researcher bias. In this section I outline these challenges and explain how I attempted to address them.

a. Challenges with research method

1. Problems with data and measurement errors

The first limit facing my research is one of data challenges. One significant challenge with conducting research on Zambia (in common with most developing countries) is the scarcity of data and the unreliability of data where it exist. Researchers have found that some government agencies over- or under-report the value of what they measure. For example, Haglund (2010) has shown that statistics on fatalities and injuries reported by the Mines Safety Department might underestimate the actual number of accidents because the MSD relies on companies to report such incidents or the data may be changed to achieve political goals.

Another problem with data in Zambia is inconsistency in measurement and definitions. For example, similar indicators may represent different values or objects because of differences in terminology or organisational culture. A good example is how

changes in terminology can affect values of what counts as injury, fines or suspension. While this problem is not limited to developing countries, it poses a significant problem for researchers of developing countries. I carefully examined terminology and indicators used by different databases, considered the likelihood of over-reporting or under-reporting, and used interviews to supplement data from these databases.

Second, the research also faced issues with selection bias and measurement errors, which are two challenges commonly faced by researchers, whether their goal is to describe a specific case or make causal inference (King et al, 1994). Selection bias can occur during the case selection as well as during sampling and during data collection. Selection bias occurs when the researcher purposefully selects a case, sample or method of data collection that is likely to confirm a hypothesis. I have described in the case study and sample selection how I handled this problem in this study. Measurement error occurs when a study gives a false representation of reality due to incorrect measurement of some variables. King et al. (1994) listed two fundamental types of measurement errors, namely, systematic and random measurement errors. Systematic errors occur in cases where the study consistently overestimates the amount, frequency or value of a variable. They argue that these can occur due to bias and unreliable statistics, as a result of a researcher's subjective preference to inflate some data to confirm the study's propositions, or to poor reporting from participants.

For example, because this study uses data provided by MSD and ZEMA, such as the number of visits by agency inspectors to mining sites, the suspension of operations and the imposition of fines, and the number of fatalities and injuries as indicators of safety trends in Chinese companies, limitations with such data and measurement errors are likely to affect the validity of my findings. To resolve some of these problems, as I will explain below, I used triangulation and other validity techniques. Due to the gravity

of these challenges and my inability to fully address all the problems, the claims made in this study need to be treated with caution.

2. Causal claims: Omitted variables and endogeneity

Another conspicuous problem with studies that assert causal relationships, implicitly or explicitly, is the precision of causal relationship claims. Studies that attempt to establish causal relationships face two main challenges. First, when the study asserts a causal relationship between two variables, in some cases, there may be an omitted variable that affects the dependent variable. For example, arguing that a crisis in a Chinese SOE led to changes in human and physical resources in Zambia's regulatory agencies and within the Chinese SOE, overlooks other plausible explanations, such as the opening of new mines in other provinces (for example, in the Northwestern province after 2008) or other home country factors. Second, studies that make causal claims can suffer from endogeneity problems, where 'the values our explanatory variables take on are sometimes a consequence, rather than a cause, of our dependent variable' (King et al., 1994; pp.185). I took three steps to address these causality problems. First, I asked participants questions to examine the causal relationship. Because I expected that participants and locals would have in-depth knowledge of possible causes of change within their organisations (see validity and reliability below). Next, I carried out a careful and extensive review of the literature and explored other likely factors that may have affected the dependent variable, based on current knowledge in the field. Finally, I used triangulation to ensure that causal relationships posited by one source was supported by evidence from another source. Because both procedures are unlikely to eliminate the causal relationship problem, I have avoided mono-causal claims and have been careful with the scope of my findings.

b. Addressing research method problems

1. Triangulation

Triangulation is defined as the use of more than three sources to ensure that the researcher's categories and/or representation of reality reflect the social or real world. I conducted three kinds of triangulation. First, inter-group triangulation, by which representations of reality, data and numeric information from one group was compared to the data given by another group. For example, I compared the number of fatalities registered by MSD with those registered by the Labour Department and Unions. In addition, I compared workers representation of safety standards in the mines with those given by unions and companies (these agencies have different sources and methods of data collection). Second, I used cross-instrument triangulation—comparing data from different instruments: interviews, documents and observations—to further check the validity of different claims. Finally, I performed intra-group triangulation—comparing accounts given by members in same groups—to check whether specific claims reflect the views of other members in the group.

2. Respondent validity and peer review

To further ensure that the findings in this research are consistent with the accounts given by the participants or at least consistent with the state of the world believed by those who experienced these events, after transcribing the interviews, I sent ten transcripts to the participants to verify if the records in the transcripts matched what I had been told, and what changes they may suggest. I received feedback from six of the interviewees. Three of the responses came with additional information, while one of the interviewees thought the setting of the interview influenced her to make some claims that were inconsistent with her experience of the events. This participant provided me with a two A4-long script with a different account. Finally, I sent the two empirical

Chapters to these six participants. I received feedback from two of these participants, and I made some changes in line with their comments. Most of these changes had to do with my representation of the organisational structure of the agency and firms where they worked.

Further, from the thesis proposal stage, I have shared my theoretical frameworks and empirical findings for peer review. I shared and discussed this research with my principal supervisor, other members of my supervisory committee, and friends and colleagues working on related topics. Although some of these people were not familiar with the empirical setting of the research, Zambia, they were able to scrutinize and make comments about the logical coherence and structure of the theoretical and conceptual framework.

3. Ethical Clearance

Over the past fifty years, pressure on social science research to meet specific ethical standards has surged due to the negative impact that such research is likely to have on its participants. This research confronted two ethical issues: first, protecting the participants and second, keeping a detailed and accurate record of the research process. As part of the Australian National University's Internal Humanities protocol, I submitted a formal request to undertake this study. As part of the process, I developed measures to mitigate and address any negative impact the study was likely to have on participants. For instance, protecting the identity of the participants by using pseudonyms or general descriptions (e.g. union official; mineworker, official at MSD) when using data provided by the participant; and keeping data such as recordings, interview transcripts and documents in a safe and protected environment.

Generally, no gifts or other goods and services were provided to the participants in this study in exchange for their participation or in exchange for specific documents.

However, in one case, I provided a participant, who later accompanied me to visit some mines, Kwacha 400. The participant did not request this money, but after several meetings, I learned the participant was having difficulties with rents payments and felt I could be of help. The organisation in which this participant worked is not one of the cases this research has looked at and no data gathered from this participant formed any part of my research findings.

4. Conclusion

In this Chapter I have described my research method as primarily qualitative research, which gathered primary information from informants who *observed* or *participated* in the events and regulatory processes explored in the thesis. The method also relies on a small-N case study—with the primary case being Zambia, and within cases being two Chinese SOEs and safety and environmental regulatory processes. Second, I described my key sources of information, interviews, documents, assembled data, and direct observation and how I selected my informants and research participants, and other sources of data. The Chapter also discussed the ethical issues of the research, and how I analysed the data and reported my findings. I mentioned that I used the narrative approach.

Notwithstanding the care taken to gather and analyse the data, and to report the findings, the Chapter highlights some limits with the validity and reliability of my data, and problems with causal claims. For example, I pointed out the limited nature of data in Zambia, and the manipulation of data for political ends. I also pointed out some challenges with my analysis of the data and subjective bias, and the limited scope of my conclusions. For example, the study does not include information from Chinese managers, and relies only on key Zambian informants. Meanwhile, to address some of these challenges, I use triangulation and journal keeping to carefully record and report the research process, as well as taking into account opposing theories.

Chapter 4. Workplace safety standards in Chinese mines and Zambia's safety regulatory process: Bureaucrats, Unions, Accidents Crises and Change

I. Introduction

Copper and coal mining in Zambia, as in many other countries, is inherently dangerous to the health of mineworkers and the surrounding mining communities.²¹ According to official statistics from the Mines Safety Department (MSD) (2012), Zambia's statutory body entrusted to monitor and enforce local safety regulations in mines operating in Zambia, between 1956 and 1971, 962 Zambians were killed while working in mines in the country. In the worst accident, 89 workers died in a mudslide accident at the Mufulira mine in September 1970 (Vutukuri and Singh, 1995). Statistics from MSD shows that the number of recorded fatalities in mines in Zambia fell from 17 in 2006 to 13 in 2014; while the number of reported accidents fell from 328 in 2003 to 123 in 2014 (MSD, 2014). Nonetheless, a former director at MSD, now head of the Mines and Mineral Development Department at Ministry of Mines and Mineral Development, Mooya Lumbamba, believes that the number 'is too high in this modern age when you can operate entire plant from control room using computer and you can blast all the charges underground from the surface by merely touching a button,' (*Xinhua*, 21 March 2012).

Accidents and fatalities resulting from mining and the socio-economic impact of injuries and fatalities to workers and mining communities has made safety regulations a

²¹ On average more than 12000 people die each year from mining accidents (International Federation of Miners Unions, 2008). The International Labour Organisation (ILO, 2009) suggests that although the sector employs only one percent of global workforce, it generates more than 8% of fatal accidents globally.

central part of debates on Chinese mining in Zambia (Human Rights Watch, 2011; Haglund, 2008; Muchimba, 2008; Lungu and Fraser, 2006). As part of these debates, scholars and sections of the Zambian public have observed that Chinese companies operate within unsafe environments for mineworkers. As noted in Chapters 1 and 2, Brian (2012) and Haglund (2011) believe the government has failed to enforce the country's safety regulations. Instead it has prioritised business interest over workers interest. They have pointed to weaknesses in public regulatory agencies such as the Mines Safety Department in charge of monitoring and enforcing local safety regulations across mines in Zambia. Besides the government and regulatory agencies, some critics have accused mining companies for putting profits and shareholders interest ahead of the interest of miners and local communities (Brian, 2012; Baah and Jauch, 2009; Haglund, 2008).

While most studies have accused foreign companies in Zambia of putting profits and shareholders' interests ahead of workers' safety and rights, a Human Rights Watch report (2011) and Fraser and Lungu (2007) claimed that Chinese companies in Zambia seem to have the "worst" safety standards. Whether or not this is the case is beyond the scope of this study. The point is that poor safety standards in Chinese companies are likely to have significant effect on workers and local communities. Haglund (2008) makes the point that poor safety standards in Chinese mines are likely to exert more pressure on MSD's scarce resources as the agency works to address these safety challenges. Further, lax safety standards are likely to lead to political and industrial unrest in the region. For example, the Human Rights Watch report (2011) noted that the prevalence of lax safety standards, workers dissatisfaction with working conditions, perceived low wage rates, and physical abuse at NFCA and the Luanshya mine has generated a spirit of resentment towards the Chinese. And in 2006, 2008, and 2011

workers dissatisfaction with NFCA safety standards spurred industrial unrest targeting a number of Chinese mining companies operating in Zambia.

Besides these studies, other events in Chinese companies have supported the view that these companies fail to pay attention to the safety of their workers and the dire consequence of neglecting local safety laws. In April 2005, an explosion at BGRIMM, a Chinese-run explosive manufacturing factory, killed 52 Zambians in Chambishi. In June 2006, workers at NFCA went on strike in protest against NFCA's refusal to increase the wages of local workers and to implement safety policies agreed with miners' unions. During the protest, five Zambians were shot and injured by their Chinese manager and another miner was shot and injured by Zambian police on the mine's premises. In August 2008, more than 500 Zambian workers attacked the newly built Chinese-owned Chambishi Copper Smelter (CCS) and burnt down a Chinese-resident kitchen. One Chinese and three Zambians working in the kitchen were seriously injured by the protesters (*The New Yorker*, 23 March 2013). The protesters claimed they had been told that the management was going on vacation and abandoning collective negotiations in which they demanded changes in safety standards, especially reduction in workhours.

In 2010, a Chinese supervisor at the Collum Coal mine in Southern Province shot thirteen Zambians (Sautman and Hairong, 2014). The workers at the mine were complaining about its safety standards and low wages. In short, these accidents and protest have led to serious debates about safety standards at NFCA, CNCM Luanshya, Chambishi Copper Smelter, and Collum Coal Mine, as well as the Zambian government's ability to enforce local safety standards in these mines.

This Chapter re-examines the evolution of safety standards in Chinese mines, by examining the roles of unions, bureaucrats and NGOs in the regulatory processes, and the relationship between the government and Chinese mines. The Chapter starts by

closely examining the key actors involved in safety regulatory processes in Zambia, focusing on the roles of bureaucrats and bureaucratic factors, unions, and elected government officials. The Chapter also examines how factors such as elections and crises have affected safety regulations in Zambia and safety standards²² in Chinese mines.

Drawing from empirical evidences gathered during my fieldwork in Zambia, I explain changes in the enforcement capacity at MSD following an accident at the Beijing Research Institute of Mining and Metallurgy (BGRIMM) in 2005 in Chambishi Zambia. This analysis contests the view that elected government officials have failed to listen to public complaints regarding events in Chinese mines in Zambia. In section 5, I analyse changes in safety standards at NFCA following the 2006 protest in which six Zambians were shot and injured. The Chapter concludes that the 2005 BGRIMM accident and the 2006 protest at NFCA led to positive improvements in MSD monitoring and enforcement capacity, inciting the Zambian government to increase funding to MSD and other departments; and the 2006 protest drove NFCA to adopt new safety policies.

II. Bureaucrats, Unions and Safety Regulations in Zambia

Zambia has comprehensive regulations protecting workers safety, even if these regulations are not always properly enforced. The British South African Company and

²² I define safety standards as formal rules, compliance procedures and standard operating practices within a company that structure the relationship between employees and employers to ensure the safety and health of employees within a workplace. According to this definition safety standards will include hazard identification and control according to government standards, and ongoing safety training and education for employees, provision of safety equipment, management commitment to safety standards (Guide to the Mining Regulations, 95 of 1973).

Roan Selection Trust introduced the first mine safety regulations in 1931²³. The laws were amended after the country gained independence in 1964. The Mining Regulation of 1973 (herein the Mining Regulation) still serves as a guide to safety standards among businesses and other stakeholders in the sector. Mining operations in Zambia are principally regulated by the Mines and Mineral Development Act 2015 (herein the Mining Act). The Mining Act regulates the ‘exploration for mining and processing of minerals; provide for safety, health and environmental protection in mining operations; and provides for the establishment of the Mining Appeals Tribunal’.

The Mines Safety Department (MSD) is the main statutory body entrusted with enforcing safety standards and regulating mining operations in Zambia. Between the early 1930s and late 1960s, it was based in Ndola and later transferred to Kitwe²⁴, its current headquarters. Figure 2 shows the administrative structure at the Mines Safety Department in 2008.

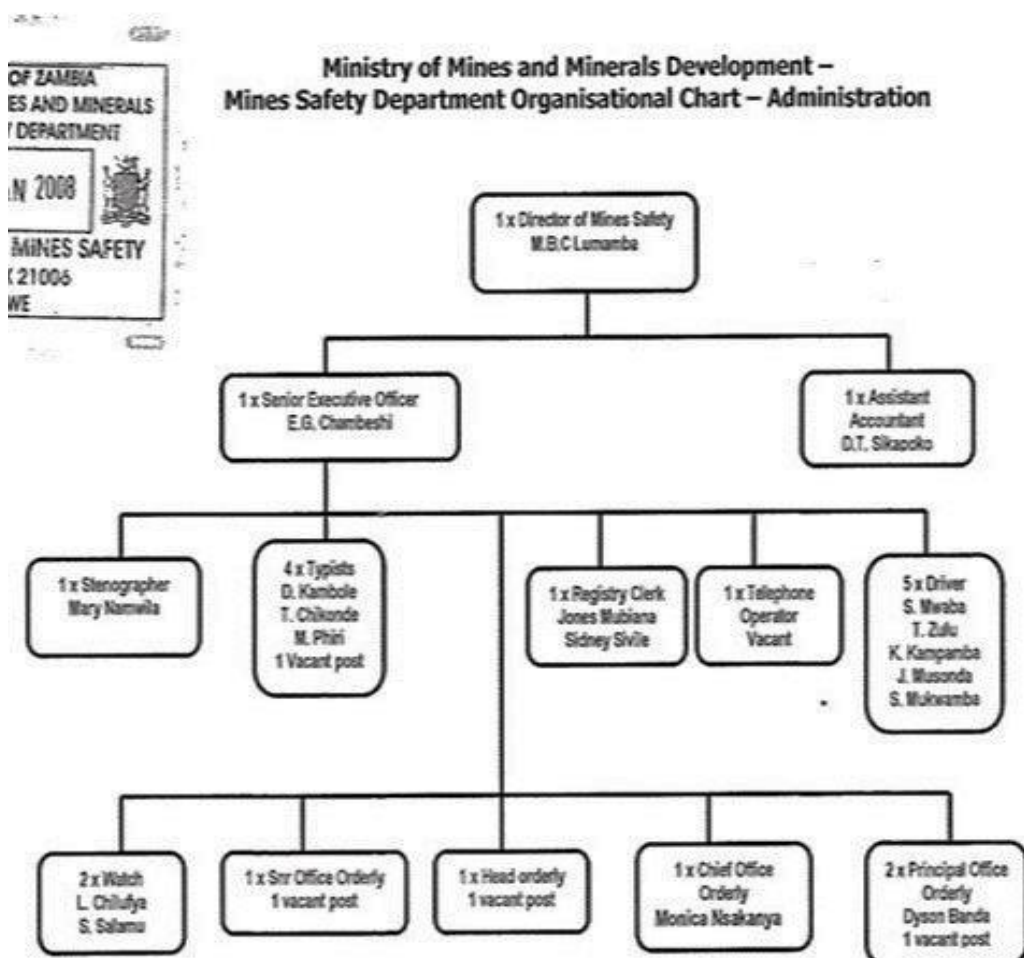
However, the top government department in charge of handling mining operations in Zambia is the Ministry of Mines and Mineral Development. MSD is one of the four departments managing specific areas under the Ministry of Mines and Mineral Development. The other departments include the Department of Mines and Mineral Development (headed by the Director of Mines), Geological Survey Department (managed by Director of Geological Survey) and Department of Mining Cadastre (headed by Director of Mining Cadastre). Section 5 paragraph 4 of the Mining Act states that ‘the director of MSD shall have responsibility for matters concerning

²³ The Law was enacted to guarantee the safety of white African and white British workers. However, subsequent pressure from black Zambian unions from 1940s forced the mining company to extend the scope of the agency to also ensure the safety of African workers.

²⁴ Kitwe is located in the Copperbelt Province. About 357 kilometres from Lusaka, Zambia’s Capital. It is informally referred to as the Mining Capital of Zambia.

environment, public health, and safety in exploration, mineral process and mining operations’.

Figure 2: Administrative Structure of the Mines Safety Department in 2008



Source: Ministry of Mines and Mineral Development 2008

Bureaucratic influence in regulatory processes and outcomes in Zambia's copper mining sector is partly based on the authority given to officials at MSD and other regulatory agencies by local laws and regulations. The Mining Act and the Mining Regulation accords the responsibility of maintaining a *healthy* safety climate on those working in the mines in Zambia to MSD. Specific safety responsibilities are entrusted with the managers of mining companies, assistant managers of mines, mine captains, shift bosses (persons managing a given group of mineworkers over a specified period of time) in the mine. The mine manager has the responsibility to appoint persons to manage daily mining operations, to provide resources to ensure that workplaces are safe before mining operations can start, and to report accidents and fatalities to the MSD (Regulations, section 206, 207, 208). Shift bosses and mine captains are mandated to inspect their workplace before work begins each day and report dangerous safety environments to their superiors. It is also the responsibility of the shift bosses and mine captains to ensure that workers comply with the Regulations. Furthermore, the Mining Act provides MSD inspectors with the power to ensure that all mines operating in Zambia comply with the country's safety laws. In theory, the inspectors are empowered to undertake regular and spontaneous visits to the mines to monitor safety conditions. Both the Act and Regulation maintain that it is an offence to obstruct an inspector from discharging his duties, and/or for failing to report accidents and 'endangering safety and health of persons employed in mine'.²⁵ This demonstrates that several stakeholders are involved in the ensuring workers safety in the mines.

²⁵ Section 104 of the Mining Act states that '104. (1) A person employed in a mine or mineral processing plant shall not— (a) wilfully interfere with or misuse an appliance, convenience or other thing provided in a mine for the purposes of securing the health, safety or welfare of employees; (b) wilfully and without reasonable cause do anything likely to endanger the life of a person in the mine; or (c) wilfully neglect to make use of any appliance or other thing provided in the mine for the purpose of securing the health or safety of the persons employed in the mine. (2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

While monitoring safety standards and enforcing safety regulations is entrusted to several other actors, MSD holds the day-to-day responsibility to ensure that the Regulation and other laws are fully enforced. Section 302 of the Regulation states that ‘if an inspector finds that anything or practice connected with mining or the absence of anything or practice, is dangerous or defective so as to threaten the safety or health of any person, or to cause damage to any property...may order work to be suspended until the danger or defect is remedied to his/her satisfaction’. According to paragraph 3 of the same section, the manager of the mine shall suspend work in the area until a decision is made by a chief inspector. These laws also provide inspectors in MSD with the power to suspend operations in mining sites. For example, MSD inspectors suspended mining operations at NFCA in 2006 and 2013 in accordance with section 302 of the Mining Act.

Besides the coercive power to suspend operations, local laws and regulations are also used to promote communication between regulatory agencies and the mines. The Mines and Mineral Development Act calls on inspectors to visit mining sites at least five times every year for regular inspection. Inspectors are also required to visit mining sites to investigate reports of workplace accidents. After these visits, inspectors issue a visit report requesting the mining company to address safety problems or suspend operations. MSD uses visit reports to communicate with Chinese companies to improve their standards. For example, an inspection report MSD/101/2/53 of 29th March 2012, of a backshift inspection of NFCA Chambishi mine conducted by MSD inspector notes: “I conducted a backshift inspection at your mine from 19th-28th March 2012. During my inspection, the following ventilation and environmental anomalies came to my attention: it was observed that during development, work place areas are poorly ventilated...at 440ml 4 mining drive, there was poor support and loose hangings to the roof...”.

A report by Mining for Developing Countries (IM4DC) on operations of the Mines Safety Department in 2013 found that the local laws promote communication and consultation within MSD, MSD and other government agencies, mining companies (including Chinese companies), miners and their representatives (IM4DC, 2013, p12). Gunningham and Thorton (2005) have shown that increased communication through site visits between businesses and inspectors from regulatory agencies increase businesses' and workers' awareness of regulation, the likelihood of detecting incidences of non-compliance, as well as the legitimacy of regulations, which in turn increase compliance and improve workplace safety.

While most studies acknowledge the salient role of MSD in safety regulations in Zambia, they argue that, in reality, the agency is underfunded and the interest of politicians overshadows the agency's institutions. As such, the agency fails to enforce local laws and regulations over mining companies (Haglund; 2008; 2010; Ranker 2013). Funding challenges remain a key problem to MSD. During interviews with inspectors in at the department, one inspector said the agency lacks resources to design and sustain a vigorous oversight of the mines. He also noted that sometimes MSD inspectors rely on the mines to supply the agency with transport means to visit the mines²⁶. Another inspector said poor career prospects, primarily promotion, is weakening his motivation towards work²⁷. These interviews confirmed Haglund's (2008; 2010) finding that poor career prospect, limited resources, and corruption at MSD weakens the agency efforts to enforce local safety regulations and strengthen safety standards in the mines.

However, they do not mean that MSD is not monitoring and enforcing local regulations. For instance, both inspectors cited above disagree that their reliance on the mines for transportation weakens their ability to monitor the. One inspector related to

²⁶ Interview with MSD1 in Kitwe 15 October 2015 at Mines Safety Department

²⁷ Interview with MSD2 in Kitwe 16 October 2015

me that their relationship with the mine is like that of father and son, with the agency being the father and the mine being the son. He added, ‘A good father will correct the son, even if the son gives him money for transportation’.²⁸ He laughed, after saying so.

Besides these organisational challenges at MSD, Haglund (2008) has argued that the presidential system in Zambia embodies a top-down hierarchical decision-making system that makes Zambia’s regulatory agencies vulnerable to the influence of top government officials. He argues that political interference is a common phenomenon in MSD, as agency officials appointed by the President and Ministers overrule regulatory standards for political goals. And, since politicians are more focused on generating short-term profits and have the power to interfere with the running of MSD, they use this power to undermine the enforcement of regulatory outcomes by making the process uncertain, overturning decisions to benefit businesses, and limiting regulatory constraints where businesses demand lax safety standards. Fraser and Lungu (2007) have cited cases of top hierarchy interference in MSD processes. The authors (2007, pp. 51) note the case of a ‘staff at Mines Safety Department [who] revealed that early in the life of the mine [NFCA] they proposed to suspend operations at the mine on safety grounds. [the] informant reported that his boss replied, “Don’t. I will fire you. What you should do is work with these people. They have got a different culture.”’

While political interference seems a significant explanatory variable of the interaction between mines and MSD, and for regulatory analyses in Zambia, its significance may have been over overstated. As noted above inspectors at MSD are entrusted by the Regulations and Mining Act for the day-to-day monitoring and enforcement of safety regulations. This day-to-day interaction gives them extensive experience, expertise and also authority over safety matters in the mines.

²⁸ Interview with MSD2 in Kitwe 16 October 2015

Furthermore, the command and control argument, that politicians command and control bureaucrats at MSD, as at most government agencies in Zambia, seem to be simplistic and misleading. As Meier and O'Toole (2006) and Dan Wood (1988) show in another context, top elected officials in most countries, exercise strong influence over regulatory agencies through appointments, budgets, reorganisation of the agencies, oversight, and legislation. This is the case with Zambia. However, the impact of such influence on regulatory outcomes is modest (see Meier & O'Toole 2006, p.179).

In the case of Zambia, although top government officials may influence decisions at local regulatory agencies, bottom level officials remain key stakeholders over the monitoring and enforcement of safety regulations in Zambia. Junior inspectors at the mine write reports required for mines and provide technical advice to top government officials and the director at MSD (IM4DC, 2013). They interview victims of accidents in the mines and eye witnesses and collect evidence for court proceedings and other legal documents (ibid). They have first-hand information about operations and safety standards in the mines, from personal experience. These inspectors have special training and technical knowledge about safety at MSD. Also, the Director of MSD takes decisions on specific cases based on recommendations from these inspectors. Although, junior inspectors maybe obliged to comply with decisions made by politicians, they still wield significant influence over regulatory outcomes (Interview with MSD1, 15 October 2015). This is in line with Weber's (1967) view that the positional and technical advantages of expert bureaucrats with respect to elected and other senior government officials provide them with influence over regulatory outcomes. The point is the top-down "big-man" view of decision making at MSD fails to reveal the bottom-up nature of operations at the agency. The MSD tends to rely on the input of inspectors in most decisions regarding safety in the mines (Interview in Kitwe, 15 October 2015).

I am not arguing that politicians do not interfere with decision-making processes at MSD, in fact, I believe they do (see Haglund, 2010 for evidence of interference in two cases). My suggestion is that the current body of literature has exaggerated the level and significance of political interference on MSD's capacity to enforce local safety standards. A former chief inspector at MSD supports the view that the impact of senior government officials over regulatory decisions at MSD might be lower than it is currently perceived in the literature (Interview at with official Ministry of Mines and Mineral Development official (MMMD1) in Lusaka, 20 June 2015). One reason is that, while the Mining Act provides top executives at MSD with the power to overrule the decision of junior inspectors or overrule a fine imposed by a junior inspector, such powers are contingent on the administrative procedural standards in Zambia—implying top executive officers, at least in theory, are allowed to use these powers only in accordance with the law. Discussions with a former chief inspector at MSD and a current inspector at the body reveal that political interference is not a significant determinant of the agency's decisions (Interview at with MSDs in Kitwe, 15 October 2015; Interview with MMMD1, 20 June 2015).

Besides interviews, information from the MSD also highlights that decision making there is both bottom up and top down. For example, in 2014 a subordinate inspector ruled that blasting activities in a large mining company [name withheld] from a western country had cracked houses in a neighbouring village close to the mine. Managers at the mine wrote to the Minister of Mines to overrule the findings by MSD. The Minister wrote back to the Director of MSD to enquire about the case. In reply the Director noted that:

The Inspector was in charge of the investigations and his supervisor was merely to provide logistics and look at his findings for administrative purposes in conjunction with me as the Director of Mines Safety Department. The Inspector of Mines...communicated to the Mine Manager/Holder of (name of the company omitted) about his investigations and his findings and instructions concerning...house cracking status complaints against [the

company] which they received by 17th January 2014 from the... village representatives. The Mine Manager appealed against the Inspector's instructions to me, as the Director of Mines Safety Department. I upheld the inspector's directives, but management was still unsatisfied with my position on the matter and now they have moved the appealed to you [the Minister] as the final authority.

Besides, an inspector at MSD told me that some politicians are cautious of intervening in the operations of MSD for fear of losing electoral support. Given the competitive electoral political system in Zambia, politicians also desire to satisfy their electorate in order to be elected or re-elected into office (Burnell, 2001). Safety standards in the mines is often a contentious issue, and bureaucratic policies are often sources of legitimacy, or loss of electoral support, for elected government officials. As an inspector at MSD told me, most often politicians express concerns to MSD officials about the effect of fatalities in the mines on electoral outcomes and image of the government to the Zambian electorate . A top government official made a similar observation about his government's position on poor practices by mining companies to Fraser and Lungu (2007). The official noted:

There are one or two [mining companies] who tend to step outside the normal and we notice that we call them and talk to them. I won't mention this one particular company. The Head of State has called them and talked to them. And we believe that a new Chapter has been created - the problems that people were seeing will be a thing of the past. But if they deliberately continue to put the Government in ridicule, then they will be sorry for themselves. They won't say that we didn't talk to them. No Government on earth would wish to have such a situation where it is put into ridicule by the behaviour of one particular company (ibid, 2007, pp 53).

The broader point of this discussion is that safety enforcement in Zambia's mine is more procedural, admits different interests and is more transparent than the current literature admits. Miners, unions, MSD and the mining companies are active actors in the process of regulation. These actors participate in the processes, shape, resist, and negotiate regulations in line with their interests, admittedly, with varying levels of success. Furthermore, it appears that political interference is not a key factor in determining MSD regulatory capacity.

In sum, I have tried to argue that intergroup analyses (politicians dominating bureaucrats) and the pessimistic organisational analyses, which fundamentally looks at the weakness for MSD, fails to account for empirical evidence of procedures within MSD that suggest that MSD officials “follow the rules” that ordain its existence and operations. I also contest the view that businesses or politicians control the agency’s staff and processes.

III. The BGRIMM Accident in 2005: Impact on MSD regulatory capacity

In 1998, NFCA bought the Chambishi copper mine, 30 kilometres from Kitwe, for just \$20 million. In 2001, it entered into a joint venture with Beijing General Research Institute of Mining and Metallurgy (BGRIMM) to construct an explosive manufacturing plant at NFCA Chambishi mine worth \$7 million. Both parties agreed to create another company, BGRIMM Explosives Zambia Limited (BEZL), which was to manage the explosive plant. By October 2003, the factory had begun operating, with a production capacity of 6,000 tons of explosive a year (*Xinhua*, 21 April 2005).

On 20th April 2005, the BGRIMM explosive plant was razed down in an explosion that killed 52 Zambians. All the workers who died in the accidents were casual employees, some as young as 20 (Lee, 2015). Relatives of employees who died in the accident believed that it occurred due to poor safety standards at the factory. One of the workers who died at the factory, Mumba, had intended to become a pastor. A devoted Christian and choirmaster, he had complained to his mother, Justina Mulumba, of the poor safety standards at the factory and feared that he might not return back from work one day. Iris Chibuye, one of the devastated mothers whose 24-year-old son Sledge and 27-year-old daughter educated in Britain died in the accident believed ‘The Chinese didn’t care about our children –they just sacrificed them’ (*Wall Street Journal*,

2nd February 2007). BGRIMM Explosives Zambia Limited compensated the victims' relatives with \$10,000 each (ibid).

The BGRIMM incident caused widespread anger against the Chinese because most Zambians believed BGRIMM had breached Zambia's safety regulations in pursuit of profit at the plant. Local and international media blamed the Zambian government for not enforcing local safety measures in Chinese mines. After the accident, a minister within the then government, Felix Mutati, agreed that such accidents 'might have arisen because [Zambia's] inspection regime is not as effective as it should be' (Wall Street Journal, 2nd February 2007).

I am drawing on the BGRIMM accident because the Zambian government response to the April 20th accident supports my claim that crises turn complex regulatory environments into salient environments, and political commitments to tougher regulations is likely to grow in salient regulatory environments. My analysis also aims to make the point that regulatory process in Zambia is dynamic, it changes over time.

In response to the BGRIMM accident, the MMD government ordered a joint taskforce to investigate the cause of the incident. The taskforce was composed of officials from the Mines Safety Department, the Ministry of Labour and Social Security, the Zambian Police Force, and other experts on explosives manufacturing and transportation (MSD/103/39/219). According to the taskforce report (MSD/103/39/219), which has never been released to the public, the accident was likely caused by 'a metal object or detonator in the emulsion mixing tank [which] could have ignited the explosion; or a chemical contamination of the emulsion matrix could have ignited the explosion'. The makeup of the task force supports the view, in Chapter 2, that bureaucrats are more likely to dominate in complex regulatory processes such as

investigations that entail expertise. In this case, the taskforce was composed mainly of bureaucrats.

The taskforce found that MSD and the Labour Commission in Kitwe were underfunded before the accident. For instance, the report claimed that the 'Mines Safety Department has become ineffective due to poor funding and conditions of service, which have resulted in high staff turnover; and that MSD lacks appropriate equipment and transport for it to operate effectively' (MSD/103/39/219). With regards to the Labour Commission in Kitwe, the report stated that 'the office was facing fundamental challenges similar to MSD such as poor conditions of service, low staff retention rate and limited numbers of inspectors which undermine its ability to enforce labour laws'. The report also found that BEZL did not have a rescue team and there was no firefighting equipment at the Chirundu site, and the company was involved in illegal storage, transportation and sale of explosives.

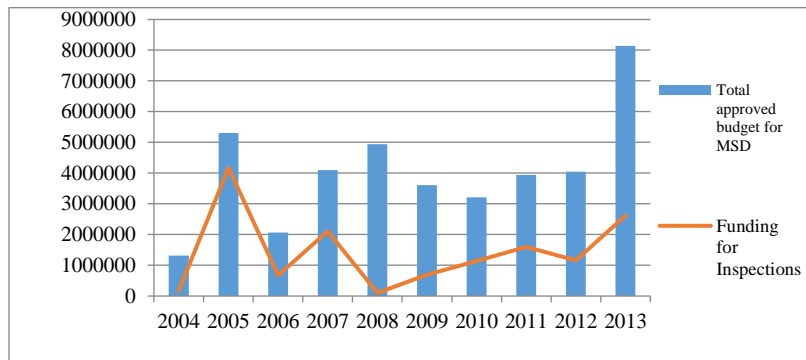
A former official, who was a member of the taskforce, told me that MSD and the Ministry of Labour saw the accident and their participation in the taskforce as a legitimate opportunity to inform the Central Government in Lusaka, of some fundamental challenges that MSD and the Labour Commission office in Kitwe faced at the time and to boost their demand for more resources (Interview with MMMD1 in Lusaka, 20th June 2015). His claim is substantiated partly by the fact that the report indicates that the whole accident was caused by the negligence of BEZL, and that had MSD, the Ministry of Labour and the Zambian police had the necessary material and human resources the accident might have been averted, because they would have been able to monitor and enforce better safety standards. In addition, the report called on Lusaka to provide more staff, financial resources and administrative autonomy to MSD.

In light of these recommendations and public outcry, the Mwanawasa government committed to strengthening the country's mine safety standards. The government increased funding to MSD. During a parliamentary debate (11 July 2007) Zambia's Deputy Minister of Mines and Minerals Development, Maxwell Mwale, told the Zambian parliament:

The ministry is looking into the recommendations [made by the task force] and some of them have been implemented. These are: Strengthening the Mines Safety Department: (i) the Government has increased the fleet of inspection vehicles in the department from one in 2005 by procuring three new field vehicles in 2006; and (ii) the Government recruited fourteen new inspectors in 2005 which increased the number of inspectors to twenty in 2006.

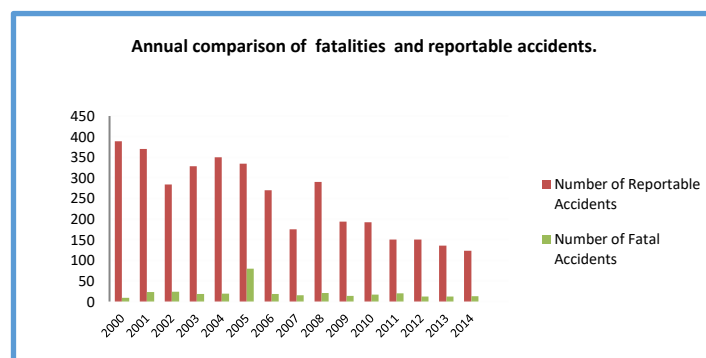
Since these changes were made, the MSD has recorded a fall in the rate of accidents rates in mines in Zambia as shown in figure 2. Figure 3 shows changes in the government budget to the MSD between 2004 and 2015. Almost a decade later, IM4DC (2013) found that the majority of the trained inspectors at MSD in 2013 were employed by the agency after the 2005 BGRIMM accident (pp.9).

Figure 3: Approved budget to the MSD from 2004 to 2015* (figures in ZMW)



Source: Ministry of Finance, Yellow Papers. *the spike in the total approved budget in 2014 is a result of ZMW 12 million spent under the modernisation of Mines Safety Department program.

Figure 4. Reportable accidents and fatalities in Zambia between 2000 and 2014



Source: MSD, 2015

In addition, the Zambian government provided MSD with more autonomy within the Ministry of Mines and Mineral Development when the Mines and Mineral Development Act was amended in 2008 and 2015. Some of these changes (providing more autonomy to MSD and increasing MSD powers to sanction mining companies) were suggested in the report on BGRIMM accident. For instance, the supervision and enforcement of health and environmental protective measures by the mine on local communities, which was surprisingly under the jurisdiction of the Director of Geological Survey (see Article 115 Act 2008), was transferred to MSD in 2015 (environmental issues in the mines are managed by MSD in liaison with ZEMA)²⁹. The amount of autonomy provided to MSD contest the “big-man” view, as inspectors and directors at MSD make important decisions that affect’s mining companies.

Further, power to suspend operations over the mines was transferred from the Ministry of Mines and Mineral Development to MSD. In the 2008 Mining Act, only the Cabinet Minister could order a mine to close or stop production; however, article 36 paragraph (1) of the 2015 Act, stipulates that ‘the Director of Mines Safety or Director of Mines may direct a holder of a mining right or mineral processing license to suspend or curtail production or close the mine or a section of the mine’. The 2015 Mining Act empowers the Director of MSD to ensure that all mining companies have insurance protecting workers and local communities in and around plants—this was formerly the responsibility of the Minister. Besides these changes affecting MSD, unlike the Mines and Mineral Development Act of 1995, the 2008 (amended in 2015) Mines and Mineral

²⁹ See more on ZEMA in Chapter 5.

Development Act emphasized safety and health in the mines. While we cannot conclude that the BGRIMM accident alone instigated the Zambian government to ratify these changes, most of them were recommended by the Joint task force commissioned to investigate the BGRIMM accident, so it can be argued that the accident played an important role in bringing about these regulatory changes.

Mr Lumamba, former head of MSD agreed that before the 2005 BGRIMM accident, MSD suffered from financial and capacity constraints however, the government increase funding and number of inspectors at MSD after the accident. In his words:

There were several capacity challenges within [MSD before 2005]. At one time we had very few Inspectors of Mines and I think going back in 2005 there was some large disasters, the BGRIMM disaster where we lost 46 people.... I think [the government] wakeup and they try to empower [MSD] immensely by employing a lot of new Inspectors and giving them some vehicles and increasing their budgets for inspections. So, from 2005 the accident statistics started going down actually. [With these changes] things have improved. This year [2015] we decided to add the number of inspectors, I think last year there were three vehicles and we are trying to buy another one. I think things have improved.

Mr Lumamba also believes safety standards in Chinese companies such as NFCA and Chambishi Copper Mine have improved and ‘maybe they are even better than the other miners. I think they are ok now. It is just the small [Chinese mines] run by individuals that gives us problems’.

IV. The Chambishi Incident in 2006 and Changes at NFCA

Chambishi mine is one of Zambia’s oldest copper mines. After decades of operation, in 1987, the Zambian government decided to put the mine on care and maintenance, because of low copper prices, leaving just 100 workers behind to water the mine and prevent some critical machines from falling into disrepair (Lungu and Fraser, 2006). In 1998, China-Non-Ferrous Metal Mining Company (CNMC) bought

the mine for \$20 million, through a subsidiary Non-Ferrous China Africa (NFCA), and further invested more than \$132 million into the mine.

The Chinese government founded CNMC in 1983. CNMC engages in the exploration and development of copper, zinc, lead-antimony alloy, sulfuric acid, nickel, bauxite, and other nonferrous metals in China, Europe and parts of Africa. Like many other Chinese SOEs, CNMC is under the supervision of the State-owned Assets Supervision and Administration Commission (SASAC) of the State Council and possesses two listed companies in China, Non-Ferrous China (NFC) and Ningxia Orient Tantalum Industry Co. Ltd (OTIC). CNMC benefited from China's 'Going out policy' in the early 2000s, in which Chinese SOEs were supported by their government to create externally driven economic growth and acquire new raw material supplies and increase their competitiveness globally.

CNMC's president, Zhang Keli, sees a close linkage between the company's policies and China's domestic and foreign policies. For instance, the president argues that 'as China is carrying out more profound reforms, starting a serial of opening up strategies including "One belt, One road Initiative", and advancing the "Made in China 2025" concept, it will provide room for CNMC to adapt to the "new normal" of China's economy to realize an upswing against the negative economic environment³⁰. In the future, 'with the support and kind care of Chinese government and industrial association' CNMC will acquire more assets and raise its profitability (ibid). CNMC entered the fortune 500 Global Companies list in 2013 (ibid).

Besides this goal of being Beijing's forerunner in non-ferrous metal mining abroad, the company also operates to make profits (Lee, 2009; 2014). Some studies have looked at this dual responsibility by CNMC subsidiaries in Zambia: working in

³⁰ (CNMC http://www.cnmc.com.cn/outlineen.jsp?column_no=12, 2015).

line with China's diplomatic interest in Zambia and making profit. They suggest that profit maximisation is the most important determinant of the company's corporate strategy and relations with regulatory agencies (Haglund, 2008; Kaplinsky and Morris, 2008; Taylor, 2006). Lee (2014) believes that Chinese companies prioritise the use value of commodities "to Beijing" (that is align their operations with Beijing's resource security strategy in Africa) over the "exchange value" of making maximum profits, especially where profits motives might affect China's bilateral relations with Zambia. McNally (2012) suggest that most managers in Chinese SOEs treat both goals with equal weight. I believe in understanding the relationship between the Chinese businesses and regulatory agencies, and their compliance with local regulations, the political economy of the host country will likely be the chief explanatory factor, and the goals of the company will be secondary. And understanding the interaction of host country actors and these businesses is very important for any compressive understanding of regulatory standards in these businesses.

From when it began operation in July 2003, workers at NFCA complained about poor safety standards in the mines and low wages (in this section, I focus on safety standards rather than wages). Workers accused the company of failing to provide workers with personal protective equipment (PPE) as recommended by local laws. They also said managers were physically abusing workers, and that local workers were forced to work in hazardous conditions without PPE, and that the mine management forced workers to work overtime causing fatigue and stress among the workers (Fraser and Lungu, 2007). Besides, the company did not provide its workers with housing, medical and transport allowance as required by law (Lee, 2008; Fraser and Lungu, 2006).

In addition to lax safety standards, NFCA also had a hostile attitude towards unions in Zambia (Baan and Jauch, 2009; Muchimba, 2008). The company had refused its workers from joining any unions and barred all unions activities in the mines until

2005. In November 2005, NFCA signed a collective agreement with National Mine Workers Union of Zambia, following the BGRIMM accident. Although the BGRIMM factory was operated at NFCA Chambishi site, as shown above, BGRIMM was managed by BELZ, a different company from NFCA. Nevertheless, safety standards at NFCA as at most Chinese-run mines operating in Zambia came under public scrutiny following the BGRIMM accident. In response to the public outcry against BGRIMM accident, NFCA agreed to improve its safety standards in a collective agreement signed in November 2005, which was to be implemented in July 2006. However, in July 2006, the company refused to implement the changes it had agreed in the November 2005 collective agreement. For instance, workers were told the company would not be providing them with two PPEs per year as local laws require, and the 2005 collective agreement promised safety improvements and wage increases could not be realised because the company was making losses.

A day after the company told the workers it was renegeing on the terms of the November collective agreement—on 25 July 2006, workers who had prepared to start work refused to work, went and blocked the Chambishi highway leading to Chingola. The irate workers then marched to the company’s administrative building where they met the police who had been called by NFCA management to protect the mine’s equipment from the workers. In a scuffle with these police officers at the mines administrative building, one miner was shot by the police. The information got to Chambishi, and NFCAs workers in Chambishi and mining town residents marched to the Chinese management residential quarters in Chambishi. The group attacked the compound, and Chinese managers who were at the premises including one Chinese manager who to date is only known as Qi, shot five workers. A day after the shooting, the union agreed to end the strike, after the management agreed to implement the terms of the November 2005 Collective agreement (Lee, 2014; 2017).

The six workers who were shot were taken to the SinoZham Hospital—a Chinese-run hospital in Chambishi, for medical attention. The shooting of six workers during the protest engendered widespread public discontent against Chinese mines in Zambia (Interview with NUMAW branch secretary at NFCA Chambishi, 3rd October 2015). Zambian workers at the mine thought that Chinese managers did not care about Zambian lives. Albert Mwanamo, one of the protesters who was shot in the incident claimed ‘The Chinese, they don’t even consider us to be human beings, they think they have the right to rule us’ (Wall Street Journal 2nd February 2007).

The strike at NFCA occurred three months before the 2006 general presidential election in Zambia. Labour relations in Chinese mines and Chinese investments in Zambia took the centre stage during the 2006 presidential elections. Zambia’s former president Michael Sata, while in opposition, used the incident to legitimise his argument that Chinese companies were in Zambia to exploit Zambian workers and critique government inaction on the abuse of workers in Chinese mines. Sata promised that if he was to be elected as president, he will send Chinese mining companies out of Zambia and cut diplomatic ties with Beijing and recognise Taiwan. And the Chinese ambassador proclaimed, in flagrant breach to China’s principle of non-intervention, that China might have to cut ties with Zambia if Sata was elected president of Zambia. The incident also led to troubled diplomatic relationship between Lusaka and Beijing. The Zambian government order all flights from Lusaka to Beijing to be cancelled, and Chinese president Hu Jintao visited Zambia in 2007 without visiting the Copperbelt province where most Chinese companies are based, out of fear that families of the victims of the BGRIMM accident and workers at NFCA and other Chinese mines in Zambia would protest (Wall Street Journal, 2nd February 2007). The MMD government accused PF and other political parties of instigating the 2006 strike for their political ends.

Although the incident received much public attention, the Zambian government saw the protest as a political action rather than legitimate worker dissatisfaction with safety standards. This supports the view that the manner in which political elites act in salient issues also depends on individual leaders and what they consider legitimate or illegitimate. Former Zambian deputy minister for Home Affairs, David Phiri (19th November 2009) said in a parliamentary debate that: ‘we should not allow the workers to be politically motivated like in this particular case [Chambishi incident] where workers were politically motivated. One Opposition Leader is on record as having declared that he had incited that incident to happen. Doing that causes danger to the lives and property of the investors’.

My review of MMD government reactions shows that while the government may seem to have been passive to Chinese companies, covertly, the MMD government significantly engaged these companies to improve their practices. The government ordered an investigation into the shooting incident, although nobody was persecuted because the Director of Public Prosecution (DPP) believed the Chinese manager who shot the workers acted in self-defence. For example, in reply to a Human Rights Watch Report (2011) CNMC top management in Beijing said that the company been under pressure from the Mines Safety Department in Zambia and other Zambian government agencies to improve its safety standards and register its subsidiaries operating in Zambia under local laws.

Further, the incident led to improvements in safety standards at NFCA. Three policy changes were adopted by NFCA to improve its safety standards. NFCA launched the ‘Safe Production Management System’ in which Safety and Environmental Protection were restructured into a separate department. According to the program a new department was created to focus on safety and environmental issues and it had the responsibility to provide workers with personal protective equipment twice a year, or in

accordance with local laws. In addition, in 2007 NFCA launched a corporate social responsibility program. Through the program, the company agreed to meet union's demand of repairing roads leading to the mine, and building bus shelters, participating in HIV/AIDS awareness programs and providing stationary to local schools (Discussion at the Kalulushi Council, 2013; Lee, 2009).

Furthermore, NFCA introduced a Company 'Safety Month', commemorated every June since 2007. The first safety month was celebrated in June 2007. Seven years later, in the 'Safety Message'—the company's memo to all workers at the start of Safety Month – it suggested that commemorating June every year as a safety month demonstrates the management's commitment to ensuring that its operations are conducted in safe and risk-free environment. Also, the company has used the month to promote safety awareness among its workers and the importance of safety in mines. For instance, in the June 2011 "Safety Message" the company states that 'we put the spotlight on promoting a positive safety culture of enhanced safety skills execution and improved safety awareness training, in all-out effort to reduce workplace injuries and in all our workplaces'. Commemorating the Safety Month in June 2015, NFCA CEO Wang Chunlai claimed that the 'management recognizes that our company's most valuable resource is our personnel and nothing has greater importance than their health and safety based on the fact that they are all entitled to come for work and return home again every day without being harmed by their daily work activities' (NFCA Safety Month Message, 2015). In 2011, following the safety bonus practice in other mines like Mopani, NFCA management summarized the June 2011 'Safety Message' in that 'it should be worth noting that should a situation arise that the company achieves a Month-Long Zero MSD Reportable injury performance during the Safety Month, Management has committed itself to ensure that the entire workforce at the mine is rewarded in the form of a Safety bonus.' (NFCA Safety Month Message, 2011).

This section has argued that the 2006 strike at NFCA stirred NFCA's management to improve safety standards at its Chambishi mine. It demonstrates three key changes, the creation of the Safety and Environmental Protection Department, the establishment of a Corporate Social Responsibility Program, and the launching of a "Safety Month" celebrated in June each year. Three reasons account for these changes, first, although the Zambian government did not take any legal action against NFCA for shooting local workers, information from the mine shows that the government put pressure on the mines to improve its safety standards. Further, NFCA management argues in the same HRW Report that it had to end the labour conflicts in the mines for smooth operations of the mine, which depended on having a regular labour force. It notes that 'NFCA believes that as the main ore body is the Chambishi copper mine which has a daily discharge of nearly 50,000 cubic meters of water and a large volume of groundwater...the mine's lifeline depends on the effective functioning of all underground water drainage systems, power supply systems, hoisting system...which [in turn] depends on workers operating the systems 24 hours a day to maintain continuous operations of these systems' (cited in Human Rights Watch, 2011, pp.108). Finally, China's Ministry of Foreign Affairs notes that it had instructed all its companies in Zambia to comply with local standards in the interest of China's economic and diplomatic cooperation with Zambia (*Xinhua*, 21 October 2010). These findings illustrate the roles of MSD, unions, crises and elected government officials in altering the behaviour of Chinese companies in Zambia. It also suggests that the host country's government has a role in shaping business behaviour, in this case at least.

V. Conclusion

This Chapter has examined the impact of the BGRIMM accident and the 2006 shooting of six Zambians on safety standards in Chinese mines and the enforcement capacity of MSD. I argued that the BGRIMM accident contributed to changes in the

enforcement capacity of MSD, and that the 2006 strike led to positive changes in safety standards at NFCA. Partly due to the impact (or crisis) of the BGRIMM accident, the Zambian government was forced to increase the number of inspectors at MSD after the BGRIMM incidence and the government has maintained that it has been in continuous dialogue with Chinese mines to improve their safety standards. Also because of the diplomatic implications of Chinese companies failing to comply with local laws, and in order to protect its image in Africa, the Chinese government has urged Chinese mines in Zambia to adhere to local safety standards. Meanwhile, the economic cost of protest on the mines cannot be ignored. The mines need a stable labour force to maintain continuous operations of the mines, and that implies reducing the possibility of strikes and meeting workers' demands.

The Chapter also suggested that some of the changes made after the accidents have been consolidated for more than a decade. For instance, Safety Month is still commemorated by NFCA and the Safety and Environmental Protection Department still controls safety and environmental protection at NFCA. At MSD, the Department's power at the Ministry of Mines and Mineral Development has increased over the past decade, and in real terms its budget remains far above what it was in 2005 before the BGRIMM accident. The number of inspections to mines by its inspectors has continuously increased over the past years, and the Department has acquired more vehicles over the past decade. What this suggests is that protest and accidents provide local actors with opportunities to improve on safety enforcement in Zambia, and the changes made after these accidents have not been marginal.

Chapter 5. China's footprint on Zambia's Environment: A race to the bottom?

I. Introduction

Zambia's century of large-scale copper mining has created a legacy of negative environmental, social and economic outcomes in the country (Lungu, 2014; Matilda, 2014; Haglund, 2008; 2010; Simutanyi, 2008; Fraser and Lungu, 2006). In 2013, Kabwe, the capital of Central Province, was ranked as the tenth most polluted city in the world (Blacksmith Institute and Green Cross, 2013). In the Copperbelt province, formerly the largest copper-producing province in Zambia, land, soil, water and air pollution resulting from mining and mineral processing waste have caused significant damage to humans, animals, crops, and the province's ecology (World Bank, 2014, Lindahl, 2014). According to the Environmental Council of Zambia (2008, now ZEMA) and Lindahl (2014), in 2008, mining waste covered more than 10,000 hectares of land in the Copperbelt, making the affected areas unsuitable for agriculture (SGAB et al. 2005). The Kafue River, Zambia's most used source of water is the most polluted waterway in the country, mainly due to the disposal of mining waste (Lindahl, 2014).

This legacy of environmental degradation and lax environmental regulation has engendered concerns over the current state of Zambia's environmental policy (Simutanyi, 2008). Some observers have argued that the Zambian government and local councils prioritise mining, foreign investments, and job creation over environmental protection (Shinn, 2016; Simutanyi, 2008; Haglund, 2008, 2009, 2010; Lungu and Fraser, 2006; Osei-Hwedie, 1996). Others argue that limited funding, and weak monitoring and enforcement of local regulations is evidence of the government's lack of commitment to environmental protection (Haglund, 2008, Lungu and Fraser, 2006). Some also contend that local laws do not allow communities affected by mining operations to take legal action against mining companies for damages (Simutanyi, 2008). Furthermore, critics have expressed concerns over the extent to which the

government allows businesses to control or ‘capture’ environmental regulatory institutions with some businesses preferring to pay bribes rather than comply with local regulations. Critics believe the policy in the long term will result in a race to the bottom of lax environmental standards (Haglund, 2008; Bosshard, 2008).

As argued in Chapter 1, Chinese investments flows in Zambia rose from a mere \$6 million in 2003 to over \$292 million in 2012. And the UNCTAD (2017) ranked China as Zambia’s top source of FDI flows. These investments have contributed to the creation of jobs and economic growth and have boosted the country’s fight against unemployment and poverty (Sautman and Hairong, 2014; 2009; Brautigam, 2009). However, researchers and observers believe that the increase in Chinese investments has destroyed Zambia’s environment (Shinn, 2016; Haglund, 2008). According to some of these studies, the urge to make huge profits drive Chinese companies to use poor technologies and ignore local environmental regulations (Kaplinsky and Morris, 2008; Haglund, 2008). Some studies have also shown that Chinese managers focus on making short-term profits and increasing production because of the short term of their tenure in these companies, and pressure from the Chinese government for their companies to become financially independent. As such, most Chinese companies operating in Zambia are forced to cut costs and limit compliance with any local regulatory standards that increase costs (Shinn, 2016; Haglund, 2008, 2010; Morris and Kaplinsky, 2001; 2008; Edwards and Jenkins, 2006). In this light, scholars have expressed concerns that Chinese companies in Zambia risk further weakening Zambia’s already weak environmental standards (Auditor General’s Report, 2014; Haglund, 2008).

While there are grounds for the view that Chinese investments risks have undermined Zambia’s environmental regulations and polluted the country’s environment, these analyses are inadequate for understanding current environmental regulatory processes in Zambia. First, some studies are limited to the interaction

between the Zambian state and Chinese businesses (Shinn, 2016; Haglund, 2008). Others ignore recent laws and policies introduced by the Zambian government to strengthen the country's environmental regulatory standards. Furthermore, the role that NGOs have in determining environmental regulatory outcomes in Zambia is either ignored or conceptualised as marginal. To some of these analysts, NGOs are unimportant in the regulatory process because of the adversarial nature of State-NGO relations in Zambia, characterised by 'mutual distrust, and mutual accusation' (Andrzej, 2012; Haglund, 2008). I argued in Chapter 2 that this view of state-NGO relations as being impotent and distrustful is rooted in the neopatrimonial frameworks used by some of these studies.

In this Chapter, I discuss the key stakeholders and institutions involved in environmental regulatory processes in Zambia's copper mining sector and the interaction between these key stakeholders and two Chinese companies. The Chapter builds on evidence gathered during my fieldwork in Zambia. I use information collected from 69 semi-structured interviews. I focus on two Chinese state-owned enterprises: China Non Ferrous Africa (NFCA) and Chambishi Copper Smelter (CCS). I selected these companies because other studies have examined them, so to my understanding they were a good starting point for re-examining China-Zambia relations (Hairong and Sautman, 2009, 2014; Human Rights Watch, 2011; Haglund, 2008; 2009; Simutanyi, 2008, Lungu and Fraser, 2006). In addition, the NFCA and CCS parent company, China Non-Ferrous Metal Mining Company (CNMC) is known as 'a pioneer among Chinese enterprises to implement the "going abroad" strategy and to carry out international investments and cooperation in nonferrous metal mineral resources field' (CNMC http://www.cnmc.com.cn/outlineen.jsp?column_no=1202.) Thus the cases can provide a base for understanding the forerunners of Chinese SOEs in Zambia (and Africa).

As I argued in Chapter 2, my analysis moves beyond the state-business centred approach. I fail to find sufficient evidence that Chinese investments in Zambia is weakening the country's regulation or forcing the country to race to the bottom of lax environmental standards. Instead, the government has introduced regulations such as the Environmental Management Act passed in 2011 to replace the Environmental Protection and Pollution Control Act of 1990 and created institutions such as Zambia Environmental Management Agency (ZEMA) to strengthen the country's environmental regulatory processes. More recently, in 2015, it passed the Mines and Mineral Development Act with strong provisions against mining companies that pollute the environment. Funding to the Department of Natural Resource and Environmental Protection has more than doubled from \$2 million in 2013 to \$4.8 million in 2014, and \$6.2 million in 2015 (Zambia Budget, 2013, 2014, 2015, 2016). These measures, although still inadequate, contest the view of government passiveness to environmental protection and the view that Chinese companies are leading the country to weaken its regulations.

In addition, the Chapter reveals that the participation of non-governmental organisations (NGOs) in environmental regulatory processes in Zambia is important in understanding the country's environmental regulatory outcomes. Major economic and political reforms introduced in Zambia since the 1990s have allowed NGOs to participate in the country's decision-making process (Matilda, 2014; Bratton, 1994). In addition, multilateral agencies such as the World Bank, USAID, and other foreign donors have provided material and technical assistance to NGOs operating in Zambia, which has enhanced their ability to participate in environmental regulations and other policy decisions.

This Chapter discusses the relationship between NGOs and government agencies, on the one hand, and between NGOs and businesses on the other hand, in the

context of environmental regulations in Zambia's copper mining sector. It suggests that there are different forms of NGO-Business and NGO-Government relations. Some of these relations, as Bratton (1994) has argued, are cooperative. In cooperative relationships, the government and NGO share information and collaborate to further public interest. It is fair to think that these relationships are not free of conflict, however, such conflicts do not always undermine cooperation. Regarding NGOs relations with businesses, the Chapter suggest that NGOs influence the environmental standards of Chinese companies in Zambia's copper mining sector.

In this Chapter, I define environmental regulation following Lemos and Agrawal (2006, pp. 298) as 'a set of processes, mechanisms, and organizations through which political actors influence environmental actions and outcomes' of businesses. I focus on the actions of representatives of four groups: Nongovernmental organizations, state regulatory agencies, Central Government ministries, and community-based organizations.

The rest of the Chapter is organized as follows. In the next section I describe the evolution of Zambia's environmental regulatory standards since 1990. I evaluate the main institutional and structural changes, mainly the introduction of a national environmental policy in 1990, the Zambian government changed in 2011 and the establishment of ZEMA in 2011. In section 3, I examine two cases of government responses to incidences of pollution by NFCA and CCS. Section 4 and 5 look at how NGOs participated in monitoring compliance at NFCA and CCS in campaigning for financial reparations to communities affected by mining operations. Section 6 concludes by summing up the discussion and highlighting the implications of the findings in this Chapter for the study of Sino-African relations and environmental policy in Zambia.

II. Environmental Regulations in Zambia: ZEMA and the Mines Act

Until the late 20th century, formal environmental regulations were marginal in Zambia (OECD, 2002; Osei-Hwedie, 1999). The main environmental regulation was the Action for Smoke Damage Act 1952 (herein after the Smoke Damage Act). This Act protected mining companies from damages caused to local environment and human lives because of the actions of these companies. In addition, mining companies were not legally required to mitigate air, water, or land pollution. Although the law was introduced during the colonial period, the UNIP government did not abolish the law, in fact, and an OECD (2002, pp.10) report revealed that ‘the [UNIP] government assured [mining companies] that they would not be charged for remediation of any damage caused’ to the environment or human lives.

Osei-Hwedie (1999) has demonstrated that Zambia did not have any formal policy to protect the environment until 1985. Discussions of environmental protection only became part of the UNIP government’s official policy in the late 1980s. Chapman and Walmsley (2003) have examined the evolution of the Zambia’s environmental regulation in the late 20th century. The authors argue that the first formal measure taken by the Zambian government to improve the country’s environmental governance was the National Conservation Strategy introduced by the UNIP government in 1987. Osei-Hwedie (1999) observes that the 1987 Conservation Strategy resulted from efforts by the government to identify environmental problems in Zambia and strives to develop measures to address the intractable environmental problems in the Central Province and

Copperbelt. The strategy established the basis for the enactment of environmental policies in the 1990s³¹.

Mining and mineral processing in Zambia are regulated by several laws of which the most important are the Environmental Management Act of 2011, the Environmental Impact Assessment Law of 1997, and the Mines and Mineral Development Act of 2008 (revised in 2015). According to the Environmental Management Act ‘... every person living in Zambia has the right to a clean, safe and healthy environment’ ... and these rights include ‘the right of access to the various elements of the environment for recreational, education, health, spiritual, cultural and economic purposes’. The section also argues that ‘ A person may, [whose right as mentioned above] is threatened or is likely to be threatened as a result of an act or omission of any other person, bring an action against the person whose act or omission is likely to cause harm to human health or the environment’.

Before the introduction of the Mines and Mineral Development Act of 2008, Development Agreements (DA) signed at privatisation between foreign mining companies and the Zambian government guided mining and mineral processing operations (Fraser and Lungu, 2007). These agreements, like the colonial Smoke Damage Act, did not legally permit local regulatory agencies or communities to take any legal action within Zambia against mining companies for damages caused to the environment or socio-economic activities by mining companies.

However, the Mines and Mineral Development Act (herein after the Mining Act) enabled local Zambians to sue mining companies for reparations due to damages

³¹ Three years later (1990) the Zambian government introduced the country’s first national law, the Environmental Protection and Pollution Control (EPPC) Act to mitigate pollution and ‘protect the environment’. The law also allowed the creation of supporting institutions such as the Environmental Council of Zambia (ECZ) in 1992. The council had the mandate ‘to do all such things as are necessary to protect the environment and control pollution, so as to provide for the health and welfare of persons, animals, plants and the environment’ (EPPC, 1990, section 2 paragraph 6).

caused by mining companies. According to Section 87 paragraph one of the Mines and Mineral Development Act of 2008 (revised 2015):

A holder shall be strictly liable for any harm or damage caused by mining operations or mineral processing operations and shall compensate any person to whom the harm or damage is caused. Liability shall extend to any harm or damage caused directly or indirectly by the mining or mineral processing operations to the economy or social cultural conditions; any negative impact on the livelihood or indigenous knowledge systems or technologies of any community; any disruption or damage to any production or agricultural system; any reduction in yields of the local community; any air, water or soil contamination or damage to biological diversity; any damage to the economy of an area or community; or any other consequential disorder.

In addition to these laws, after more than a decade of negotiation, a new Zambian constitution was enacted by an act of parliament No. 2 of 2016 on the 5th of January 2016. The new Zambian Constitution enshrines the right to a clean, healthy and safe environment and to the protection of the environment for the benefit of present and future generations (Constitution of Zambia (Amendment), 2016).

The administration of environmental issues in Zambia broadly falls under the Ministry of Lands, Natural Resources, Environment Protection (MLNRES) and the Ministry of Mines and Mineral Development. The MLNRES is organized into five departments: The Natural Resource and Environment, Forestry, Planning, Survey and Lands and Deeds Departments. The Natural Resource and Environment Department (NRE) is headed by a Director with four main functions namely; natural resource conservation and management, environmental protection, policy design and review, and providing support to international and domestic environmental agencies. Approved Government funding to the NRE increased from \$2 million in 2013 to \$4.8 million in 2014, and \$6.2 million in 2015 (Budget Yellow Book of Zambia, 2013, 2014, 2015, 2016).

The administration of the Environmental Management Act falls to the Zambia Environmental Monitoring Agency (ZEMA). The agency is in charge of day-to-day monitoring and enforcement of local environmental regulations countrywide. Its head

office is in Lusaka, with one regional office in Ndola. The Mines Safety Department under the Ministry of Mines and Mineral Development works with ZEMA to monitor and enforce local environmental regulations on the mines. The Environmental Management Act 2011 (2015) and Mines and Mineral Development Act 2008 (2015) provide ZEMA and MSD officials with the power to suspend operations when mining companies fail to comply with local environmental standards.

Furthermore, under the Environmental Act and Mines and Mineral Development Act, all large-scale mining companies are required to have an Environmental Management Plan (EMP), which consists of either a project brief at the start of the project or (and in most cases of large-scale mining) a project brief and environmental impact assessment (EIA). Through the EIA the mine consults with the public, and provides the government with adequate information and strategies that will be put in place to protect the environment and attend to social conflicts or negative impacts on the communities.

Shinn (2016) and Haglund (2008; 2010) contend that while these regulations look good on paper, they are not “effectively” monitored and enforced by the relevant organisations. Shinn (2016) points to problems of coordination among different agencies and the scattered nature of the laws, while Haglund (2008) believes the regulations are not effectively enforced by the regulatory agencies because of limited resources and political interference. These debates have been primarily focused on the institutional structure of the political system and its inability to provide incentives for environmental protection (Simutanyi, 2008; Haglund, 2008; 2010). Some observers claim that in Zambia ‘the presidency emerges as the dominant arena for decision-making, to the point that regular ministerial structures are relegated to an executant rule’ (van da Walle, 2003: 310). Concomitantly, lower-level officials (e.g. heads of regulatory agencies) are also ‘executant’ of ministerial orders. As such, regulations are

imposed in line with the personal will and desires of top government officials. These prevent regulatory officials from monitoring compliance by mining companies and holding companies accountable.

Others argue that the structure of political incentives in Zambia encourage political elites to weaken regulatory enforcement in order to promote economic growth, job creation, and mining. For example, Fraser and Larmer (2007) demonstrate that the top goal among the political elites in Zambia is to stay in office. As a result, these officials have to provide economic opportunities and benefits to their electorates and patronage network in the form of jobs, tax reduction and sometimes power over local regulatory agencies (Ranker, 2013, Haglund, 2008). It is conventionally believed that top government officials tend to prioritise job creation, industrialisation and mining over environmental regulation (Fraser and Lungu, 2007; Osei-Hwedie, 1999). Another argument is that because elected officials are not guaranteed to stay in office for ‘long term’, political elites are led to focus on short term gains, at the expense of environmental protection (See Haglund, 2008; 2010; Fraser and Larmer, 2007). Van da Wall and Michael Bratton (1991; van da Walle, 2001) refers to the political system as a ‘winner-takes-all’.

In addition, some analysts have observed that salaries in regulatory agencies are low, which has made retention within these agencies difficult as regulatory staff prefer to work in mining companies with higher salaries and better conditions, leaving these agencies without trained and experienced personnel. Low remuneration also encourages staff at regulatory agencies to engage in rent-seeking behaviour. Haglund (2008, p554) contends that the likelihood of rent-seeking behaviour is of great concern at environmental agencies in Zambia in the face of increased Chinese investments into the country because ‘Chinese companies were ranked as the most corrupt of thirty nationalities of firms’ by Transparency International in 2006.

There are some significant challenges with these arguments. First, while the constitution and other laws in Zambia provides the president and ministers with power over regulatory agencies, the scope and reach of this power is constrained by administrative, legal and political factors. For instance, Section 115 paragraph 2 of the Environmental Management Act allows the Minister to review and overrule a decision made by ZEMA, but the law also states that ‘In determining a review application, the Minister—shall have regard to the purpose of this Act and the principles set out in section six; shall have regard to relevant environment policies, guidelines and standards published by the Agency; shall have regard to... the findings and recommendations of the person conducting the inquiry’. Furthermore, according to a top official at the Ministry of Mines most top government officials avoid intervening in the decision-making process of public regulatory agencies because of the negative media and parliamentary attention that may result from such interventions (Interview at MMMD in Lusaka, 20 July 2015). Another official at ZEMA agreed that political intervention posed a challenge for inspectors at the agency. However, the official believes that debates about political interference should take into account the context, time and scope of the regulatory decision (interview at ZEMA in Lusaka, 11 June 2015). According to the inspector, majority of ZEMAs decisions are ‘low-level’ decisions that are unlikely to attract the attention of the relevant minister but will likely affect the practices of the mining company, and there are ‘high-level’ decisions that are made in which the minister avoids intervention because of the timing and public outcry if they do intervene (ibid).

Besides, the High Court of Zambia has the final say on the environmental regulatory decisions in Zambia, not the Minister of Lands, Natural Resource and Environment. Section 115 of the Environmental Management Act states that, ‘a person aggrieved with the decision of the Minister may appeal to the High Court within thirty

days of the decision'. For example, in 2014, the High Court in Lusaka suspended mining operations by Zambezi Minerals, an Australian mining company, on environmental conservation grounds. The case was taken to court by more than one hundred NGOs after the Minister overruled ZEMAs decision that denied Zambezi Resources the rights to mine in the lower Zambezi area.

In addition, the structure of political institutions in Zambia implies the government has the dual goal of promoting economic growth and protecting the country's environment. Political and other local actors often frame incidences of pollution in Zambia as proof that the government prioritises mining companies' interest over the Zambian public's interest (Simutanyi, 2008). Therefore, pollution incidences by mining companies are likely to undermine local support for an elected official. This was evident in 2006 when Michael Sata anchored his campaign around the Copperbelt on the claim that the incumbent president, Rupiah Banda's policies benefitted foreigners to the detriment of local Zambians (Fraser and Larmer, 2007). In addition, opposition groups cite incidences of environmental pollution as symptoms of a corrupt, weak and inefficient regime (ibid, 2007). In sum, in Zambia, prioritising economic growth does not always entail weakening environmental regulatory standards.

Furthermore, although salaries in regulatory agencies are relatively low, there are other factors that affect staff motivation to work in an organisation. Within regulatory agencies factors such as job security, satisfaction and other social benefits, may incentivise workers to stay at ZEMA and other regulatory agencies on low salaries than migrate to mining companies with higher salaries. A chief inspector at MSD told me that most people prefer to move from the mines to join the government because of social prestige and job security (Interview at MSD, 23 October 2015).

In addition, the literature ignores the important roles of NGOs in shaping Zambia's environmental regulations. Haglund (2008, pp.564) argues that 'the potential of civil society to independently engage with and support monitoring activities may be limited' partly based on the fact that 'government agencies may not be able or willing to share monitoring information with non-state actors'. Andrzej (2013, pp.2) confirms that state-NGO relations in Zambia are 'characterized by mutual distrust and mutual accusation of a lack of transparency and legitimacy'. In addition, according to Haglund (2008, pp.564) 'local NGOs tend to see themselves as advocates or activists rather than monitoring agents...'

Even if these claims were valid in the past, they should now be taken with a grain of salt. According to Professor Lungu of the Copperbelt University in Zambia, 'Chinese mining companies in Zambia started off badly but they soon discovered that gone are the days when MSD and ZEMA concluded the deals [of environmental regulatory outcomes]. There are NGOs playing an important role in the implementation of local regulations' (Interview at Copperbelt University, 27 October 2015).

Gemmill and Bamidele-Izu (2002) suggest five roles that NGOs can play in environmental governance. First, NGOs can collect, analyse and disseminate information with the public and/or with the public about the state of the environment or environmental practices of a particular company. Second, NGOs can contribute to the formulation of environmental regulations. Third, NGOs can operate organisations that provide technical services such as consultation to their members or the public. Fourth, they can monitor whether or not companies are complying with environmental standards or agreements. Lastly, they can advocate for the rights of local communities to a clean, safe and healthy environment. In section 4 and 5, I attempt to show how two NGOs in Zambia have provided, in different ways, some of the services suggested by

Gemmill and Bamidele-Izu in response to incidences of pollution by Chinese companies.

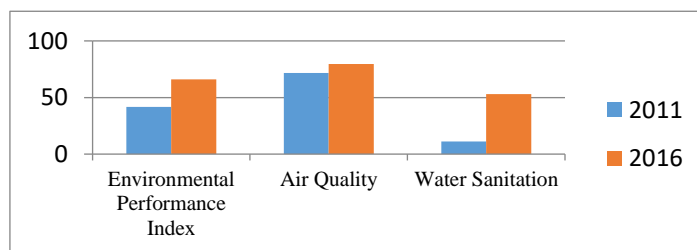
Notwithstanding the roles of these NGOs and government regulatory agencies, there are still some challenges faced by public environmental regulatory institutions in Zambia. An Auditor General Report (2014) released in 2014 looked at environmental standards in fifteen large mines in Zambia between 2009 and 2011 (including NFCA and Chambishi Copper Smelter). According to the report during the period covered by the audit, most of the large-scale copper mining companies operating in Zambia did not show any strong commitment to environmental protection. These companies failed to comply with local environmental standards, failed to provide emission reports to ZEMA and released waste above the government recommended levels. The report found that Chinese and western companies were all lacking in developing adequate measures to protect the environment. The report also argued that measures taken by the Zambian Government as of 2011 were inadequate for ensuring that mining companies complied with local environmental standards.

According to the Auditor General's report, the main challenges faced by ZEMA and MSD were financial ones. ZEMA lacked the relevant equipment to monitor the environment, and the agency was overly reliant on mining companies to report their emission levels. The findings of the report were confirmed to me by an inspector from ZEMA. According to the inspector, some Chinese mining companies (small-scale mines, not covered in this Chapter) establish mining operations before ZEMA's approval, and the company could not investigate all these cases because of limited staff. ZEMA was short of staff, and there were not adequate follow-ups with the implementation of the Environmental Impact Assessment (EIA) by the companies because of limited resources on the part of ZEMA. Further, ZEMA had only one set of

air and water monitoring equipment and just four offices spread around the country (Interview at ZEMA in Lusaka, 11 June 2015).

However, most of the findings made in this report occurred before the enactment of the Environmental Management Act and the creation of ZEMA, that is under the Environmental Protection and Pollution Control Act (EPPC) of 1990 and Environmental Council of Zambia. The fines for noncompliance with EMA increased from \$15 under the EPPC to more than \$300 in the current EMA. In addition, the new EMA 2011 and the Mines and Mineral Development Act of 2015 provide environmental inspectors with more powers than the EPPC and the Mines and Mineral Development Act of 2008. Besides, both the Minister of the Minister of Mines and Mineral Development told the Zambian parliament that the government has increased funding to the MSD environmental division to strengthen their regulatory capacity. In recent years, ZEMA and MSD have increased the number of visits to Chinese mining companies (and non-Chinese companies). ZEMA has developed a program ‘where compliance is verified at least once every year’ and the number of staff in the agency has increased (Interview at ZEMA in Lusaka, 11 June 2015). Partly due to this reform, an inspector at ZEMA stated that the level of compliance by Chinese and other foreign companies has improved (ibid). Figure 1 shows the increases in Zambia’s environmental performance index between 2011 when the EMA was introduced and 2016.

Figure 1: Zambia’s Environmental Performance Index



Source: Yale University Environmental Performance Index, 2016

In this section, I have argued that the Zambian government has introduced formal regulations, established regulatory structures and develop a national policy for environmental protection which demonstrates its commitment for environmental protection, and a careful examination of these measures indicate that Zambia's environmental regulatory system is not racing to the bottom, notwithstanding limitations in these measures or the system. I have also suggested that, although the current literature ignores the roles of NGOs in monitoring compliance, NGOs are important actors in environmental regulations in Zambia. Their actions in some cases supplement actions taken by government regulatory agencies. In the next section, I discuss two cases where ZEMA has taken actions in line with local regulations on Chinese NFCA and CCS.

III. The tale of Zambia Environmental Management Agency and two Chinese Mines

Non-Ferrous China Africa (NFCA) is a subsidiary of China Nonferrous Metal Mining Company (CNMC), a Chinese state-owned enterprise operating in Zambia. In December 2010, NFCA announced an expansion plan to increase its copper production in Zambia from 80,000 metric tons a year to more than 150,000 tons (Wall Street Journal, 23 January 2014). A key part of this plan was to develop the Southeast Ore Body mine (SEOB) (Zambia Consolidated Copper Mining investments Holdings, 2016). The SEOB is less than 10 kilometres from NFCA's Chambishi Copper Mine, along the Kitwe-Chingola road. In December 2013, the company's Executive Director, Wang Chunlai said that NFCA had invested \$832 million in developing the mine, and its investments in the mine was expected to increase in the long run. That same year,

the project directly employed 500 Zambians. The project currently employs more than 1,000 Zambians.

Construction of the SEOB began in 2012 after ZEMA approved NFCA's EIA and later on, its management plans. In September 2012, ZEMA sent a 'Decision Letter' to NFCA instructing the Chinese mine to create a Resettlement Action Plan (RAP) to resettle and compensate local Zambians displaced by the SEOB construction. This is in line with Zambia's Mining Act and its Environmental Management Act. According to both laws, mining companies must develop a relocation and resettlement plan where their actions are likely to lead to the dislocation of local communities. In line with these laws, ZEMA instructed NFCA to provide those displaced by the SEOB with accommodation, agricultural land and utensils, and compensate them for any financial loss (ZEMA, 4 December 2013). The letter also requested NFCA to develop a 'dialogue and conflict resolution system with the affected people' (ibid, 2013).

In November 2013, ZEMA conducted an Environmental Audit to assess whether NFCA was complying with the conditions of the Decision Letter issued in September 2012. The agency found that NFCA had not developed an RAP as the letter recommended³². On 4 December 2013, Irene Lungu Chipili, ZEMA's spokesperson, told local media that ZEMA had suspended construction activities at NFCA SEOB because NFCA had failed to comply with its EIA and Decision Letter issued to the mine in September 2012 (*Lusaka Times*, 4 December 2013; ZEMA Statement Suspending mining at NFCA, 2013). The suspension of NFCA SEOB seems to question the view that because of the friendly relationship between the Zambian government and Chinese firms, the government has failed to enforce local environmental regulatory standards on

³² Simutanyi (2008) and Lungu and Fraser (2006) have shown that after the privatisation of mining companies in Zambia, most foreign mining companies failed to develop policies to mitigate pollution and resettle affected communities, leaving most of them landless and homeless. The negative impact of soil, land, air and water pollution from mining companies on the agriculture and livestock of local communities exacerbate the problem (Lindahl 2014).

these companies. NFCA director, Wang Chunlai described ZEMA's action as 'shocking and rather draconian' (*The Post*, 5 March 2013).

Osei-Hwedie (1996, pp. 57) and Haglund (2008, 2009) demonstrate that some sections of the Zambian government and some Zambians tend to emphasize economic growth and related job creation over environmental protection, which poses a significant challenge to the environmental regulatory agency. This appears to be the case when we examine the response of some government officials, union members and officials within NFCA. For instance, after the suspension of the SEOB, workers from the National Union of Mine Workers (NUMAW) organised a protest in Chambishi calling on ZEMA to lift the suspension, which they claimed was a threat to their jobs and livelihood. NUMAW president, James Chansa, told the Post that 'mining is the mainstay of Zambia's economy...As it is now, the laid off miners [500] including their families have been left in suspense over what the future holds for them and this is why there is need for ZEMA and NFCA to quickly address the problem that caused suspension of the project' (*The Post*, 26th December 2013). A statement from an NFCA Zambian spokesperson best captures the perceived interrelationship between enforcement of environmental standards and job creation: 'As NFCA, we were taking the SEOB project and the employees as one. We cannot make any development without the employees and it's not our intentions to send them home, it is ZEMA's decision ... it's not only these 500 miners, there are about 5,000 prospective employees whom we envisage to employ at the completion of this project and they have also been seriously affected' (*The Post*, 26th December 2013).

However, these claims do not reflect the view of other political actors in Zambia, both within the government and among NGOs. Ten months before the NFCA SEOB events, former Zambian Deputy Minister of Labour Rayford Mbulu, in a speech concerning another environmental dispute involving the Chinese Chambishi Copper

Smelter (discussed below), told community leaders in Kalulushi Council that the Zambian government takes environmental protection and resettlement plans seriously. He accused ZEMA of being reactive rather than proactive in combating environmental protection. He noted that ZEMA reactive approach was undermining environmental protection in Zambia (Sunday Mail, 24th February 2014). In 2012, former Zambian interim president, Dr Guy Scott, then vice president, told NFCA deputy executive director Zhou Liang that the Zambian government would not force ZEMA to facilitate NFCA's environmental impact assessment approval for environmental protection reasons. He warned that ZEMA must ensure that the Chinese mine has sufficient measures to protect Zambia's environment and compensate the displaced communities. Dr Scott's warning came after Zhou Liang told the Zambian media that ZEMA was delaying approval of its EIA for the SEOB (ZIEM, 2013).

Zambia's civil society also defended the government's request that NFCA complies with local laws. Edward Lange, from Southern African Resource Watch (SARW) in Zambia, argued that NFCA need to develop a RAP for the affected communities and develop measures that will prevent pollution on surrounding farms. Regarding noncompliance with local regulatory standards, he argued: 'If investors are going to be taking Zambia like an animal farm where they can do anything that they want without observing the laws of the land, then we are not going anywhere. ZEMA must be allowed to execute its mandates diligently and professionally without any interference' (The Post, 4th December 2013).

Another aspect of the event worth looking at is the perceived agency of local businesses vis-à-vis the Chinese mine. The event appears to support Brautigam's (2009; 2015) and Corkin's (2008; 2014) claims that local businesses still negotiate and protect their relationships with public institutions even in the face of powerful Chinese SOEs. After the suspension, NFCA and some media agencies argued that ZEMA's decision

was influenced by owners of Hybrid Poultry Farm. Hybrid Poultry Farm is the largest supplier of poultry product in Zambia and purportedly owned by a former Zambian politician. In an implicit hint of the farmer's influence on ZEMA's decision, NFCA spokesperson argued that: 'In the absence of the audit report, which to us is the basis of this decision by ZEMA, one would be left with no option but to speculate that it could be the misunderstandings that have been there between us from NFCA and Hybrid Poultry Farm that has contested this project'. On 23rd February 2014, NFCA sued Hybrid Poultry for 'allegedly making false representations that it was affected by the mining company's on-going construction of the South East Ore Body (SEOB) project' (Zambia Mining Magazine, 25 February 2014). In the suit, NFCA argued that Hybrid Poultry had influenced ZEMA to suspend the SEOB project even though the Chinese company had complied with ZEMA's Decision Letter, and organised several meetings with local communities including with owners of Hybrid Poultry to reach compensation and a settlement agreement.

After negotiation and dialogue between ZEMA, the Zambian Ministry of Labour and Social Security, Ministry of Land, Natural Resources and Water Development, community leaders and unions, ZEMA lifted the suspension on NFCA SEOB activities, the project was completed in early 2016, and mining activities are currently operational. Wang Chunlai, the company's chief director argued that NFCA lost \$10 million because of the fourteen-day suspension (Zambian Weekly, 24 January 2014). Although ZEMA claims to have resolved the impasse between NFCA and local communities, local community leaders and affected families expressed dissatisfaction with ZEMA's decision to lift the ban on claims that NFCA still did not sufficiently compensate them. They also argue that although NFCA helped to relocate some farmers, but it has failed to relocate those without land titles. Some farmers are still in court seeking compensation from damages done by the construction of the SEOB.

In another case, members of the Luela community in Kalulushi Council accused a Chinese smelter, Chambishi Copper Smelter of land and air pollution. Chambishi Copper Smelter (CCS) is a joint venture between China Non-Ferrous Metal Mining Company (CNMC) and Yunnan Copper Industry (Reuters, 23 October 2009). In November 2006, CNMC and the Zambian Government, in the presence of officials from China's Ministry of Foreign Affairs, signed a memorandum of understanding (MoU) paving the way for the construction of a copper smelting facility in Chambishi-Zambia, 35km northwest of Kitwe. ISAMELT, a subsidiary of Glencore Technology, began constructing the "state of art" Chambishi Copper Smelter with ISA technology from Australia in 2006 and finished the construction in 2008. The smelter originally had a production capacity of 150,000 tons of copper blister. In April 2012, Xing Rong, CCS deputy director, told Richard Musuka, former deputy minister at Zambia's then Ministry of Mines, that CCS would expand the smelter's production capacity to twice the original capacity. The proposed expansion program aimed to increase the smelter's production capacity for blisters of copper to 300,000 tons per year and add production of sulphuric acid to 340,000tons per year. In Zambia, Kanshishi Mine, Lumwana Copper Mine, Luanshya (CNMC), NFCA, and Chibuluma mine use CCS to refine part or whole (as is the case of NFCA and Luanshya mine) of their copper concentrates (Reuters, 23 October 2009).

Zambia's President Edgar Lungu has expressed support for CCS activities on the basis that it has helped to create more than 600 direct jobs in the Chambishi area. In April 2012, Richard Musukwa told CNMC officials that the Patriotic Front government 'hold this investment in very high esteem ... [And] we will support this investment because we want it to add value to our economy and create more jobs' (*Lusaka Times*, 23 April 2012). In October 2009, former Zambian president Rupiah Banda expressed gratitude to the company for creating 'thousands of new jobs in Chambishi' (Reuters,

23 October 2009). This political gratitude for the smelter's contribution to Zambia's fight against unemployment did not stop ZEMA from suspending operations at the smelter in 2013. Nor has it stopped NGOs from taking actions against the mine (discussed further below).

In September 2006 CCS held a meeting in Mango place, Luela Community, Kalulushi District with members of the community, the majority of whom are farmers. Those at the meeting included officials from CCS, Kalulushi District office, and leaders and members of the Luela community (Minutes of the Meeting held at Mango Place Luela Community Area, 11th September 2006). CCS used the meeting to discuss the impact of the proposed copper smelter on agriculture, livestock and health with the community. During the meeting a member of the Luela Community, Mr Gabriel Simfukwe, expressed concerns to the head of CCS delegation, Mr Young, that sulphur dioxide (SO₂) emitted from the smelter plant would damage the farmers' crops and affect their health. Mr Young told the community members that ninety-five percent of SO₂ released by the smelter will be processed into sulphuric acid, and the leftover (five percent) will be discharged in high altitudes, so that it will not affect their crops (Minutes of the Meeting held at Mango Place Luela Community Area 11th September 2006). In short, the CSS delegation assured the community that the smelter would not affect their crops, livestock, and health. They also told community members that CCS was more than a kilometre away from the farming communities, and members of the community would not be asked to leave their land that is relocate to other areas (ibid, 2006).

Less than two years after the meeting between CCS and Luela Community members, the former deputy director of Zambia Economic Cooperative and Trade Zone (ZCCZ), Zan Baosen, issued a public order requesting that local community members be evicted from the land around CCS and the land demarcated for ZCCZ. The order

instructed the farmers to stop cultivation and relocate to another area. This seems to be in contradiction with previous promises by CCS management that it would not stop local farmers from farming nor instruct them to relocate. For instance, the letter states that ‘all persons carrying on any cultivation and/or living in the [area surrounding Chambishi Copper Smelter and ZCCZ] are strongly urged to discontinue any cultivation and vacate the area with immediate effect’ (ZCCZ Notice to all persons living and/or carrying on any cultivation activities in the area earmarked for the Economic Zone, 15 September 2008).

In January 2013, members of the Luela Community invited officials from Zambia’s Ministry of Agriculture and Livestock (MAL) to investigate the impact of SO₂ from CCS on local farms and rivers. Obby Banda, a senior agriculture Officer at MAL, led the investigation between 8th and 9th January 2013. On 10th January 2013, MAL released its findings showing that SO₂ from CSS prevented crops, such as maize, groundnuts, beans, okra, sugarcane, among others from growing properly due to lack of photosynthesis. Some plants had also died due to excessive loss of leaves. Acid rain caused by the smelter also contributed to poor crop productivity. The study also found that SO₂ emissions from the smelter made streams unfit for drinking and led to death of some small livestock. The report estimated the loss to the Luela community farmers at KR 48,705 (Ministry of Agriculture and Livestock, 2013).

After the complaints from the farmers and the findings from MAL, ZEMA conducted another investigation to assess whether CCS was complying with local regulatory standards and polluting the farming area. The investigation revealed that CSS had failed to comply with the local law on the threshold for SO₂ emissions and discharge of industrial waste into the environment. Following ZEMA’s investigation, on 13 February 2013, Patson Phiri, an official from ZEMA told reporters in Zambia that ‘we have since taken action; we have issued Chambishi Copper Smelter with an

environmental restoration order' and order CSS to comply with local laws. CSS complied with the order, shut down operations, and installed a monitoring system.

According to the Wall Street Journal (23 January 2014), other companies in Zambia that relied on the smelter, such as NFCA, First Quantum Minerals Ltd.'s Kansanshi copper mines and Barrick Gold's Lumwana copper, could not process their copper concentrates because of the suspension. However, these significant costs to mining companies for shutting down CCS did not discourage ZEMA from enforcing local regulations. ZEMA's actions thus contest the view that Chinese companies have captured local elites and institutions and that these institutions and actors are passive to behaviour of Chinese companies.

Two days after ZEMA suspended operations at CCS, a spokesperson for the regulatory agency, Irene Lungu-Chipili, said that ZEMA had lifted its suspension on CCS. According to official, 'ZEMA's inspections had revealed that CCS had put in place adequate rehabilitation and operational measures to reduce sulphur dioxide emissions to the satisfaction of the agency' and 'the agency would continue to monitor CCS to ensure compliance of the Environmental Management Act (ZEMA) and other relevant legislation and ZEMA would remain committed to preventing and controlling pollution in order to safeguard human health and the environment' (*Lusaka Times* 15 February 2013). This decision by ZEMA raised concerns among some NGOs. For example, the Director of Citizens for Better Environment (CBE) Peter Sinkamba queried CCS's capacity to install and address its SO₂ emissions within two days (*Zambia Daily* 19 February 2013). In an editorial review in *Zambia Daily*, one commentator argued, 'How possible is it that CCS could have addressed the pollution which affected over 1,000 farmers within one day?' (ibid). Based on interview with officials at ZEMA, the agency lifted its ban on CCS because the Chinese mine had agreed to develop an 'environmental restoration order...pursuant to Section 105 of

EMA No. 12 of 2011', which included recording its emission levels, acquiring the relevant technology, and providing monthly information to ZEMA of its emissions (Interview at ZEMA, 15 July 2015). As will be seen below, CCS developed an environmental restoration order and hired a local NGO Citizens for Better Environment to monitor the smelter's emission levels (interview with Peter Sinkamba in Kitwe, 2015).

Although the Chinese company agreed to adequately compensate all the people whose fields were affected by the emission of SO₂' most farmers were not satisfied with resettlement and compensation plan (Bloomberg, 14 February 2013). After ZEMA suspended operations at CCS, Howard Simpemba, Mayor of Kalulushi District, told the affected farmers that the CCS in liaison with the Zambian government had agreed to compensate 90 of the 200 affected farmers. Some dissatisfied farmers contacted a local NGO Citizens for Better Environment to demand for better compensation from the Chinese company on their behalf.

IV. NGOs and Environmental Governance in Zambia: The case of Citizens for Better Environment and Chambishi Copper Smelter

Citizens for Better Environment (CBE) is an NGO registered with Zambia's Registrar of Societies, based in Kitwe in the Copperbelt Province. According to its founder and Chief executive Director, Peter Sinkamba, the organisation is 'dedicated to achieving environmental and socio-economic justice through community education and mobilisation, litigation, policy, law review, advocacy as well as corporate accountability' (Daily Mail, 5th February 2015). Sinkamba was a maize exporter before becoming an environmental activist. He obtained a Master of Philosophy Degree in Sustainable Development, Planning and Management at the University of Stellenbosch,

South Africa, in 2007. His dissertation was titled ‘Technical and financial proposal for sustainability of the Copperbelt Environment Project in Zambia’ (Sinkamba, 2007).

With his academic background in environmental management, Sinkamba participated in the \$44 million Zambia Copperbelt Environmental Project (CEP). The project, funded by the World Bank, was meant to ‘address environmental liabilities associated with the mining sector, following the privatization of the mining assets, and, [to] improve future compliance of the mining sector with environmental and social regulations in Zambia’ (World Bank, 2014). He was also a member of the committee that created the famous Environmental Protection Fund (EPF) at the Ministry of Mines in Zambia, and was one of the board members of the Fund (Interview with Sinkamba, 15 October 2015).

Sinkamba’s educational, political and financial background has helped him to establish relations with international organisations such as the World Bank, the United Nations and the Department of Trade and Industry in the United Kingdom (Interview with Sinkamba, 15th October 2015). He claims that he has used his relationship with these multilateral bodies to advocate for the rights of local farmers and participate in policy and law reviews and projects aiming to rehabilitate and protect the environment in Zambia. He has also participated in court cases to advocate for the rights of local communities vis-à-vis multinational companies such as Anglo-America, Glencore, and First Quantum. Sinkamba says that he is not against mining companies operating in Zambia. He wants them to respect environmental standards, take measures to protect the environment and contribute to the rehabilitation of affected communities. As such he has collaborated with mining companies such as Konkola Copper Mines, Non-Ferrous China Africa, and Mopani Copper Mines among other giant mining companies in Zambia to develop environmental management plans and resettlement plans when consulted (Interview in Kitwe, 15th October 2015).

CBE also monitors how mining companies are complying with environmental standards and protecting the environment. In the previous section I discussed how ZEMA handled the conflict between CCS and farmers in the Luella Community and I suggested that some members of the community were not satisfied with the compensation they got from CCS through the government. While the negotiations between CCS and the community were still taking place, three farmers from the affected community, Judith Nkamba who had lost crops estimated to worth K8,190, Julius Tanganyika (K14,771 in crop losses) and Benson Chinyama (K24,544 in crop losses), contacted CCS to demand compensation for NFCA on their behalf (MAL, 2013; Interview with Sinkamba in Kitwe, 15th October 2015).

Zambian laws allows NGOs and private citizens to sue mining companies for damages to private or community property resulting from mining operations. According to Section 123 of the Mines and Mineral Development Act 2008:

A person, group of persons or a private or State organisation may bring a claim and seek redress in respect of the breach or threatened breach of any provision relating to damage to the environment, biological diversity, human and animal health or to socio-economic conditions— in that person's or group of persons' interest; in the interest of or on behalf of, a person who is, for practical reasons, unable to institute such proceedings; in the interest of, or on behalf of, a group or class of persons whose interests are affected; in the public interest; and in the interest of protecting the environment or biological diversity.

In line with this Act, on 29 January 2013, Peter Sinkamba sent a letter to CSS requesting compensation for the affected farmers. In the letter, Sinkamba based his request for compensation and ability to represent the communities on local laws. He argued that Sections 123 (1 and 5) gives CBE the legal right to defend the affected communities. He notes that investigation carried out by the Ministry of Agriculture and Livestock proved that the crops of the affected farmers had actually been damaged by SO₂ from CCS (CBE, Demand Letter for Liability Arising from Damage of Crops for

Luela Farming Community, 19th January 2013). In the letter, he invited CCS to compensate the affected farmers K48,705 for the damages stated in the MAL report and K45,225 for legal expenses and other damages. CCS did not reply to the letter sent by CBE (interview, 15th October 2015).

Sinkamba had noted in the letter to CSS that if the Chinese mine failed to reply to its letter, the NGO would take legal actions against CCS (ibid). On the 13th February 2013, Freddie and Company, a legal practitioner who represented CBE and the affected Luela Community Member, sued CCS in the High Court in Kitwe. CBE stated that as an NGO on behalf of the affected communities, it was requesting CCS to compensate the affected farmers for damages caused to their crops and for failing to comply with section 123 of the Mines Act of 2008. CBE argues that its ‘objective and mandate [is] to utilize research, public education, community organisation, legislation and litigation to protect the environment and communities against any harm or damage from acts of pollution’, and as such it had the legal legitimacy to take CSS to courts on behalf of the affected farmers.

The manner in which CBE structured its argument for the farmers supports Gemmill and Bamidele-Izu’s (2002) and Bratton’s (1994) claims that besides advocating for the rights of local communities, through litigations NGOs may influence mining companies to comply with local environmental regulations. In the lawsuit, CBE argued that ‘the farmers of Luela Farming Community have a right to a safe and healthy environment’ (file 2013/HK/55). It requested compensation for the farmers and ordered CCS to rehabilitate, clean-up and neutralize any damaged caused to the environment according to the Mines and Mineral Development Act (ibid, 2013). CSS agreed to compensate the affected farmers out of court. On 18th of April 2013, the legal firm Freddie and Company issued a statement that CCS had paid the sum of ZMW 60,000 as ‘full and final settlement to the affected farmers’. The settlement was reached on the

basis that the farmers will relocate to new farms provided by Kalulushi Council as agreed with the Zambian government. After the settlement CCS hired CBE to monitor is SO₂ emission levels (Interview with Sinkamba, 15th October 2015).

V. Zambia Institute of Environmental Management and the NFCA—the Musakashi River Catchment Dispute

Zambia Institute of Environmental Management (ZIAM) is an NGO operating in Zambia. ZIAM was formally established with the Registrar for Societies in 2007. Morgan Katati is the current Director and Secretary General of the organisation. The organisation states that its mission is to promote ‘sustainable environmental governance’ by engaging with the government and wider public, advocating for community environmental rights, training local communities to monitor compliance with environmental regulations, achieving ‘fair justice’ for damages, and participating in the formulation of environmental legislation (ZIAM website, 2015). ZIAM has conducted projects on indoor Air Pollution Monitoring and Modelling in Zambia with Partnership for Clean Indoor Air (PCIA) and Solid Waste Management Disposal (ibid).

ZIAMs mainly drives its funding from local and external donors, from paid research on environmental studies, and through registration by its members. Funding is a fundamental challenge to the activities of the NGO. Its head office is in Lusaka. I visited their office on the second floor, in a two-storey townhouse during my fieldwork in Zambia. I was an hour early for the interview because I was not sure of the location. When I got to the quiet and small building, I followed the organisation’s directions—an arrow on the wall—to the second floor into a tiny room, cramped with three staff. The organisation has three permanent staff and other external members who are invited to work when there is a project. From the furniture, teacups, and the size of the room, I

inferred a huge difference in resources between the local ZIEM and international organisations such as the International Labour Organisation (ILO) and the World Bank—whose Zambian offices I had also visited while in Zambia.

Notwithstanding the human and financial resources challenges faced by ZIEM, during our discussion, Morgan Katiti was passionate about protecting the environment and determined to do all that was legally possible to ensure that mining and other companies operating in Zambia protect the environment. With such determination, ZIEM has had an impact on the enforcement of environmental standards on Chinese mining giant NFCA in the Copperbelt province of Zambia, even with its limited resources.

In 2011, Non-Ferrous China Africa (NFCA) discharged wastewater into the Musakashi River catchment (MRC) without prior notice to the residents as required by the Zambian Environmental Management Act. The emissions led to massive pollution of the MRC area, caused limited access to clean water, damage to houses, infrastructure, crops and livestock. The catchment is located 35km northwest of Kitwe. It separates three major mining towns in Zambia: Kitwe, Kalulushi and Chingola. The catchment area consists of Kamatete, Namumba, and Lukoshi streams that flow into the Musakashi River.

The area falls within region four of Zambia's Ministry of Agriculture and Livestock's four-region agro-ecological zones. Because of its location, the area sometimes records 1000mms of rainfall during the rainy season and has three seasons within a year. Its high levels of rainfall and fertile soil type make it suitable for agriculture. Foreign companies such as NFCA also undertake mining in the area, while Zambians primarily occupy engage in agriculture. The area consists of 4000 hectares (ha) of farmland, and farmers there grow maize, groundnuts, sugarcane, sweet potatoes,

and cassava (ZIEM, 2013). They also raise cattle, pigs, goats, and chickens for commercial and subsistence purposes. Some of these farmers (25%) cultivate eight or more hectares of land and produce 120 or more bags of maize a year. The first group of farmers, who mainly consist of educated graduates from the Zambia College of Agriculture in Monze and Mpika, employ at least five permanent workers and other casual employees. The largest group (50%) is made up of farmers whose land titles were yet to be issued as of 2013 (ZIEM, 2013). They cultivated three to five hectares of land, hired one to four permanent workers, and sold 70-100 bags of maize a year. The other group consist mainly of poor farmers referred to as 'squatters'.

After the NFCA released the pollutants into the Musakashi River without notice to the farmers, local farmers affected by the waste discharge protested to the Zambian government (ZIEM, 2013). They claimed that the waste discharge had led to loss of crops, livestock, and for some, their houses. According to ZIEM (2013), after the residents complained to the Zambian government, the government instructed them to leave the area and relocate to another area because NFCA had secured mining rights on the lands on which they were farming and they were not legally allowed to live and farm in the area. Simutanyi (2008) has shown that disputes over land ownership between local communities and foreign mining companies have intensified in Zambia since the privatisation of mines began in the late 1990s. Actually, these disputes not only affect local farmers' ability to invest and plan in the farms, but also their ability to seek reparations from mining companies for damages caused by these mines.

The Zambian government was firm on its position that local farmers should relocate from the affected areas. The government claimed that the area was not suitable for livelihood, even though it had established the area as resettlement zone in 1980s (ZIEM, 2013). Due to the government's reluctance to investigate the alleged pollution, in October 2011, ZIEM, with consultation and support of the affected community

members, launched an Environmental and Social Impact Assessment (ESIA) of mining on the farmers in the MRC, especially NFCA actions.

When ZIEM started the Environmental Social Impact Assessment (ESIA) it requested information from ZEMA and NFCA pertaining to waste discharges by NFCA and other data about the Chinese mine (Interview, 20th July 2015). ZEMA provided some information to the organisation, which they used to initiate the investigation, before funding an independent assessment. NFCA denied the NGO access to any relevant information at the start of the study; however, after the ZIEM team provided NFCA with its preliminary findings, NFCA agreed to hold talks with the NGO over resolving the environmental problems.

At the end of the assessment, ZIEM officials found that although NFCA had the capability to protect the environment, the Chinese mining company was not properly protecting the environment, as it was not properly managing its waste. The capacity of the mine's dam was 5.7 million litres, 43 percent below the amount of tailings produced by the mine. As a result, slags and acid from the mine spilled into the environment affecting over 330 households (ZIEM, 2015). The waste from the mine had caused severe damage to local streams and crops.

Further, the NGO found that the organisational structure at NFCA prevented the officer in charge of environmental issues from performing their duty. The environmental unit was under the production department and the head of the unit reported to the production manager. As such there was likelihood of prioritising production over the environment (Interview with Katati in Lusaka, 20th July 2015). In a meeting between officials from NFCA, ZIEM and the Zambia government, ZIEM requested the CEO of NFCA to address the coordination problem. Katati stated that 'The environmental manager wanted to maximise environmental protection, and the

production manager wanted to increase production, but the production manager had an upper hand because the environmental officer was under his command, and production is a priority in the mine'. During the interview, Katati, who has maintained contact with NFCA ever since the publication of the investigation, told me that the environmental manager currently reports to the deputy CEO. He believes ZIEM's 'research was eye opening to the mine. Because it seems they altered their system. But it still remains to be known how independent the environmental officer is and what administrative capacity it has to enforce its mandate' (ibid).

In addition, based on the findings of the investigation, NFCA approved compensation for the affected farmers who held land titles. Those who were not compensated used the information gathered by ZIEM to sue NFCA in court for damages caused by NFCA's actions. I could not confirm the outcomes of these court cases because the issue was still in court; however, this incident can help us to understand the evolution of NFCA relations with some local NGOs in Zambia, and it problematizes the claim that the nature of state-NGO relations in Zambia is simply founded on 'mutual distrust, and mutual accusation'.

Concerning NFCA relations with the mine, this incident also questions the belligerent view held by some scholars, about NGOs' relations with Chinese mines in Zambia. After the preliminary findings, NFCA agreed to establish friendly relations with ZIEM through which the Chinese mine agreed to allow ZIEM access to some information about the mine. The mining company also contracted ZIEM to conduct further studies about the impact of its activities, including those of its subsidiaries, on the environment. Both organisations continue to exchange information. According to Katati, as of 2015, 'whenever we ask for [some] information from the mine, they do not hesitate to provide the information to us'. Further he told me that 'When we were

launching the report we invited ... the Chinese ambassador; he did not make it but sent a senior official from the embassy’.

About ZIEM’s relationship with the government, Katati said the project benefited from the government’s support. ZEMA allowed officials from ZIEM to access information on NFCA within the agency. The Ministry of Natural Resources and Environmental Protection sponsored the ceremony in which ZIEM launched the final report. Besides the Minister of Environmental Protection, the District Commissioner (DC) for Kalulushi and ZEMA’s Director were present in the ceremony. This supports Matilda’s (2014) and Bratton’s (2014) claims that some NGOs enjoy a friendly relationship with the government, while others do not. It further disputes the claim that NGOs in Zambia do not work with the government because of mutual distrust.

Further, the exit strategy developed by ZIEM after the project supports the claim that NGOs can train local communities on how to advocate for their legal rights (Gemmill and Bamidele-Izu, 2002). According to Katati, officials from ZIEM trained members in the local community ‘on some basic negotiation skills and how to negotiate with the mines to defend their interest’. He added that ‘We created local negotiation teams in the communities, and we took the names of the members of the negotiation teams to District Commissioner to ensure that the committee members are recognised by the government, and ensure that they are represented in the councils’ (Interview with Katati in Lusaka, 20th July 2015). Some members of the community later used information gathered by ZIEM and the training provided by the NGO to the local communities to sue NFCA for environmental damages. The mining company had failed to compensate them because they did not have land titles to claim ownership over the land the farmers were operating in.

6. Conclusion

Copper mining and mineral processing generates significant amounts of waste—overburden rocks, wastewater and dangerous chemicals. If not properly managed, these can have harmful effects on the environment and human lives, which last for generations. Proper management of the impact of mining activities in Zambia, as in many other countries, depends on the existence of formal public regulations, political support for environmental protection, the capacity of relevant institutions to monitor and enforce these regulations, businesses practices, and the ability of non-state actors to influence compliance with these regulations.

The rise of Chinese investments into Zambia's copper mining sector has raised concerns over the environmental and social impact of their actions. Evidence of the negative environmental legacy of mining in Zambia including land degradation, air and water pollution, and loss of economic opportunities among some affected communities, has compounded these public concerns. In addition, there are concerns that the government prioritises economic growth and mining over environmental protection, and fails to adequately fund environmental regulatory agencies, monitor compliance with local regulations and penalise companies for noncompliance. Some critics have argued that the rise of Chinese investments into Zambia's mining sector has exacerbated weaknesses in the country's environmental regulatory system because Chinese companies fail to comply with local regulations and bribe local officials responsible for enforcing those regulations. As a result, it has been claimed that more Chinese investments into Zambia will likely lead to a race to the bottom of lax environmental standards in Zambia.

Most of these studies, however, examine Zambia's environmental regulatory process using a narrow framework that limits the relevant actors to the top government officials, state-sponsored regulatory agencies and Chinese businesses, while local NGOs

and community members are ignored. In the case of Zambia, an examination beyond the state-business framework reveals that local NGOs help to monitor the activities of Chinese mining companies; educate local community members about their rights to a safe, healthy and clean environment and provide advice on how to access the judicial system to defend their communities against the violations of their rights by mining companies. In addition, some studies portray a homogenous portrait of local perceptions about environmental protection in which the Zambian government and most citizens focus on economic growth to the detriment of environmental protection. However, the reality on the ground shows that while the Zambian government prioritises economic growth, it has also introduced measures to strengthen its environmental regulatory framework by enacting comprehensive formal environmental regulations, increasing funding (although still limited) to the relevant environmental agencies, and articulating political support for environmental protection.

In sum, this Chapter has argued that the Zambian government as well as local community members affected by Chinese mining companies have not been passive to the actions of these companies when they affect the environment. The government has taken steps to ensure that Chinese companies comply with local regulations and when government actions have been inadequate, NGOs have increased the pressure on Chinese companies to comply with local environmental standards.

Therefore, the evidence discussed in this Chapter does not support the view that Zambia's environmental regulatory standards is racing to the bottom of weak regulatory agencies and a lack of environmental regulations. However, it confirms the conventional view that there are some challenges with environmental regulations in Zambia, including excessive dependence on donor funding, inadequate funding of relevant regulatory agencies, lack of coordination among the relevant state agencies, and fragmented regulations. Notwithstanding, this critical analysis of Zambia's

achievement in the environmental sector over the past two decades indicates that Zambia's environmental standards, though relatively weak compared to some advanced western countries, are improving.

Chapter 6: Conclusions

Restatement of Research Objective

A large body of literature has examined foreign direct investments (FDI) in Zambia and its social, economic and political impacts on the country, often focusing on the negative ones and on the passive reception of the Zambian state to these investments. This is particularly the case with Chinese investments in Zambia. The aim of this thesis was to re-examine the interaction of Chinese investments and local actors in Zambia's copper mining sector. I designed the study to assess the impact of Chinese investments practices on Zambia's regulatory processes, and more specifically, on occupational health and safety and environmental regulations in Zambia's copper mining sector. The study critically examined how domestic actors interact, resist, and shape Chinese investments in Zambia, and vice versa. This analysis debunks the view that local actors are passive to Chinese investments practices in the country and contributes to a deeper understanding of the varying impacts of Chinese FDI in Zambia, and of Chinese investments in Africa more broadly.

To conclude this thesis, I outline the main findings of the study, including the mixed impact of Chinese investments on safety and environmental regulations in Zambia, and the different roles of domestic actors in safety and environmental processes and outcomes. I also examine the limitations of my approach—that I neglected the specific roles of some domestic factors, as well as global political and economic factors such as world market prices of copper, the influence of multinational companies over national states, and the Chinese side of the story – in this case, factors emanating from China itself. Further, I discuss the significance of my study to the literature on Chinese investments in Africa, and the interaction between African states and foreign direct

investments, broadly. This Chapter concludes with recommendations for new ways of examining Sino-Zambian and Sino-African relations.

Research findings and contribution

In Chapters 1 and 2 I examined the neopatrimonial and capture theory used in current studies of Chinese investments in Zambia (and more broadly in Africa). I also discussed the analytical and explanatory power of these theories with regards to Chinese investments in Zambia. One of the themes to emerge from my analysis was that both theories, and the studies that use them, have significant shortcomings. For example, they excessively focus on the asymmetrical economic power that China has over Zambia. This drives them to see Zambian actors as passive to Chinese investors' behaviour. Further, some of these studies assume that the 'China factor' (i.e., Chinese investments) is the primary determinant of Chinese investor practices in Zambia, including their safety and environmental practices. This approach overlooks the roles of local political, economic and social factors and actors in shaping such practices.

This problem is not limited to pessimistic analysis of Sino-Zambian relations, but is also common among optimists who see China as a benevolent investor in Zambia, transforming the country's economy with its investments in areas such as infrastructure, health, education and mining, with little or no significant contribution from the Zambian side.

Further, these approaches often reduce African (including Zambia's) political systems to being determined by one man (rarely, if ever, a woman). In the case of Zambia, they focus on the president and argue that regulations are primarily determined according to his corrupt self-enrichment goals. They claim Zambian presidents are primarily driven by short-term material economic or political interests and, as such, blindly submit to the interest of Chinese investments. These big man-centred

approaches ignore the roles of diverse actors in regulatory processes (and other political-economic) outcomes in Zambia (and other African countries).

What I found was that, while the Zambian president has (as designed by the constitution and other informal norms) considerable influence over Zambia's policy and regulatory outcomes, the president is just one of the key stakeholders who shape and determine regulatory processes and outcomes. There are several other actors. In Chapters 2 through 5 I argued that bureaucrats, NGOs, and unions are among the several groups that influence regulatory outcomes. For example, in Chapter 5 I argued that when NFCA failed to comply with local environmental regulations at its South East Ore Body, bureaucrats at Zambia Environmental Management Agency (ZEMA) suspended operations at the mines based on authority enshrined in the Mining Acts and Mining Regulations. Further, in the same Chapter, I argued that besides bureaucrats, NGOs conducted research, collaborated with local communities, organised environmental protection awareness programs, and used litigations to encourage Chinese companies to comply with local regulations. And these activities shaped the environmental standards of CCS and NFCA.

Other studies conducted in developed countries support my findings in the case of Zambia, that even where elected politicians enjoy considerable influence compared to bureaucrats, bureaucrats are still able to influence regulatory processes and outcomes; and that besides bureaucrats, other non-governmental organisations, community members, and other actors influence regulatory processes and business standards (Braithwaite, 2007, Black, 2003). The point is that in the case of Zambia, as in many other countries, regulatory processes and outcomes are determined by the interactions of several actors and factors, besides the state and businesses.

My examination of the diverse actors in regulatory processes in Zambia's copper mining sector also contests the view that Zambian actors are passive to Chinese behaviour in Zambia. The cases analysed in Chapter 4 and 5 showed how the Zambian government restructured the Ministry of Mines and Mineral Development, created the Zambian Environmental Management Agency, and amended and enacted the Environmental Management Act 2011 and the Mines and Mineral Development Act 2008, 2015 to strengthen the country's environmental and safety regulations. This sometimes occurred after accidents, protests and pollution in Chinese mines, and sometimes due to domestic political pressure.

Meanwhile, this study revealed the differing capacities of domestic actors to shape the behaviour of Chinese (and presumably other foreign) companies. Data gathered from interviews and analysis of many other materials showed that responses to the behaviour of Chinese businesses vary according to the core interests of respective local actors. In the cases presented, some groups were able to modify the behaviour of these investors, in line with the interest of their members or group interest, better than other groups. This capacity to pressure for change was dependant on several factors, including the level of impact on each actor's core interest, his or her position in Zambia's political economy, as well as historical, economic, political and cultural factors. For example, while unionized and permanent employees at NFCA have successfully pushed for stronger and better safety standards, casual workers at Chinese labour hire companies still work under harsh and unsafe conditions.

Another contribution this research makes to understanding regulatory processes and their impact on Chinese (and other foreign) investments in Zambia is to stress the significant roles played by formal institutions, such as law courts, elections, bureaucratic norms and domestic laws. I found that formal institutions affect the way local actors interacted with Chinese investors in Zambia's copper mining sector in three

ways. First and second, they constrain and define the legitimacy of specific regulations. This is primarily by changing the costs of specific actions in light of a set of laws and institutions. For example, the Mining Act of 2008 (amended in 2015) and the Environmental Management Act of 2011 (amended in 2015) increased the financial cost of pollution on mines, and gave local communities the power to take legal actions against the mines for damages resulting from mining activities. The law also provided MSD and ZEMA inspectors with more power over the mines and right to impose severe penalties for noncompliance. Both laws override the lax environmental and safety regulations agreed between the Zambian government and foreign businesses in the Development Agreements. Third, formal institutions define the day-to-day interaction between Chinese mining companies and local actors. This is not to challenge the roles of informal institutions and belief systems in understanding how Chinese mining companies interact with local Zambians, but to suggest that both formal and informal rules are likely to be significant determinants of the practices of Chinese mining companies in Zambia's Copperbelt.

Alves' (2009, 2011) examination of the Angolan elite relationship with Chinese capital in Angola and Odoom (2016) examination of the Ghanaian government's response to Chinese mines in Ghana's mining sector support my findings that host country (African) actors have shaped and contested their practices of Chinese capital in some host countries; and in the case of Ghana that civil society affects the behaviour of Chinese companies and government response to these companies.

Limitations with findings and with the approach

In my analysis, I focused on how domestic actors affect safety and environmental regulatory processes in Zambia's copper mining sector and the behaviour of Chinese investments in Zambia. For manageability, I narrowed my focus to the roles

of Zambian politics, bureaucracy, civil society and unions. One problem is that I have neglected a range of more specific domestic and global economic factors such as global changes in copper prices and their impact on the profitability of Zambian mines, which may have significantly influenced the behaviour of Chinese companies and the Zambian government's commitment to stronger and more expensive regulations.

For example, the study does not examine how global prices of copper are likely to affect the bargaining power of unions' vis-à-vis Chinese businesses, and how changes in their bargaining power could affect their ability to demand for expensive safety measures or environmental mitigation programs. Besides, I have neglected how these price fluctuations could impact on internal organisational strategies, i.e., within Chinese companies, for example, to adopt better (and presumably therefore more expensive) safety and environmental standards.

In addition, changes in the behaviour of Chinese mining companies may have also been driven by regulatory changes in China, demands by state-owned banks in China, or Beijing's broader foreign policy in Zambia (and Africa). For example, Lee (2014; 2017) has shown how Beijing's resource policy shapes the behaviour of Chinese SOEs in Zambia. She finds that Beijing's goal to acquire and secure vital natural resources bodies like copper means Chinese companies sometimes overlook policies that might increase their profit, in preference for policies that are appealing to the Zambian government and population—such as job security and employment creation. Brautigam (2009; 2015) and many other works provide extensive details of policy and regulatory reforms in China, and how these reforms have shaped the rise of Chinese in African countries like Zambia. For instance, Brautigam (2009) showed how the Chinese state provided funding to companies like NFCA and others to invest in Zambia, and also how the government introduced guidelines that companies aiming to benefit from state capital must follow. Examples of such guidelines include “Guidelines for

Environmental Protection in Foreign investments and Cooperation” issued by China’s Ministry of Commerce (MOFCOM) and Ministry of Environment (MEP)³³. While this research would have benefitted from examining the influence of source country factors such as these, I partly left out the source country (here China) because I was not granted access to interview the people who would have provided me with this information. And my study complements those studies that examine the source country, by debunking the view that Chinese mining companies are driving Zambia’s regulations to a race to the bottom of weak regulations.

While I concede that systematic research into the roles of source country factors is likely to enhance our understanding of Chinese investments behaviour in Zambia, my own view is that domestic factors and actors will continue to play an important role – and one that has been neglected in the past. This is for two reasons. First, studies that have so far examined the roles of source country factors suggest that some of the changes introduced by Beijing has come in light of criticism of the behaviour of Chinese companies in foreign economies. And this is not limited to China: the United States and Great Britain, among other states, have introduced regulations to control the behaviour of their companies in response to foreign criticism of the behaviour of these companies. The point is that to an extent regulatory reforms introduced by China (source country) would reflect and incorporate host country responses to the practices of these investors. This is an area that deserves further research. Second, safety and environmental regulations are likely to continue to be dynamic processes determined by the interaction between several factors and actors, beyond the source country. Chinese management’s expectation of safety and environmental standards will continue to be

³³ Ministry of Commerce of People’s Republic of China (2013) “Notification of the Ministry of Commerce and the Ministry of Environmental Protection on Issuing the Guidelines for Environmental Protection in Foreign investments and Cooperation” online at <http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml>

shaped by expectations and reactions of unions, bureaucrats, civil society and even the state in Zambia, economic and political factors in Zambia, among several other domestic factors not explored here, like changes in copper prices, technological development, capital and profitability of the mines.

Some may argue that the rise of “globalisation” weakens the roles of domestic institutions and actors in policy and regulatory outcomes. There is no denying that the actions of public agencies, including the monitoring and enforcement of regulatory agencies in Zambia (as elsewhere in the world) are significantly shaped by global capital and market expectations, and also by the dictates of international institutions such as the World Bank and the IMF. While this may have weakened the importance of domestic factors on some cases, this view is not without its problems. While going beyond the scope of this study, I maintain that economic and political nationalism has accompanied the rise of transnational capital, trade and labour in many countries across the globe, and Zambia is one of them. These nationalistic sentiments have incentivised elected government officials, civil society, and bureaucrats to respond and attempt to shape foreign investments practices and, as such, the Zambian state, bureaucrats and civil society have not simply been passive recipients of foreign investors practices (Lee, 2014; 2017; Sautman and Hairong, 2009; 2014; Fraser & Lungu, 2007; Fraser and Larmer, 2007).

Further, while globalisation has increased the power of capital over labour, in some states like Zambia, it has also provided domestic actors – including unions and members of civil society – with resources (networking, funding, easy access to information, etc.) to contribute or participate in the formulation, monitoring and enforcement of local regulations by states and businesses.

Further, some students of Zambian politics now question the view that the Zambian state is withering away to foreign capital (Lee, 2014; 2017; Mkandawire, 2006; 2015; Pitcher, 2012; et al., 2015). Lungu (2014) has shown that foreign capital has relied on state structures and processes in most cases to achieve workplace stability and increased productivity. This reliance continues to give some state institutions power over capital. This does not imply that the Zambian state can always get what it wants from foreign capital. The key point is that even with the rise of globalisation, which has evidently granted capital more power over policy and regulatory outcomes, domestic actors such as the Zambian state, NGOs and unions are able to significantly influence regulatory processes and the behaviour of foreign companies.

Further research

One avenue for further study would be to research the specific ways in which bureaucratic agencies influence elected government officials in Zambia and how they influence Chinese businesses, with a focus on three key areas. First would be an examination of interagency coordination, its scope and limits, and how such coordination may affect the capacity of Zambian bureaucracies to shape the behaviour of Chinese (and other foreign) companies. For example, are there forms of interagency coordination between the Ministry of Labour and Social Security and Ministry of Mines and Mineral Development to monitor and enforce work safety and security, wages, and management-employee relations? Or is there interagency coordination to promote FDI compliance with the Employment Relations Act, Mines and Mineral Development Act, and other local laws? Second would be to look more closely at interagency learning, for example, how new agencies like the ZEMA may be learning from their older counterparts like MSD to better interact with foreign companies. Further research could

investigate how agencies learn from each other about data generation, analysis and utilisation, business-agency communication, and the technologies and cultures of agencies that have succeeded in influencing outcomes within their own remits.

Furthermore, without further research into how Chinese companies are affected by their home countries institutions, and how managers connect these home country demands with demands made by political and economic actors and institutions in Zambia, our understanding of Chinese business behaviour will be one sided. Ongoing investigations into whether and how the changes made by the companies discussed in this thesis have been consolidated over the years will add further strength to the arguments presented here (unless they instead prove me wrong!).

Finally, the thesis opens up the way for new research into Zambian politics, to examine how groups such as NGOs, unions, and bureaucrats learn from their experience with Chinese companies, and whether these groups use these lessons in their interaction with other companies. Such studies may explore the scope and challenges of transferring knowledge gained from interaction with companies in one sector to those in another sector, or companies from one country to companies from other countries.

There is also ample scope for application of the approach developed in this thesis to understanding the impact of Chinese investments on other countries in Africa (and beyond). For example, my evidence of government responses to Chinese investment practices in Zambia's copper mining sector raises the question of whether similar conditions exist in other African countries for regulatory reforms in light of crises or protest against practices of FDI. In addition, the roles of NGOs and unions suggest that in countries where states are suffering from limited resources and where there is active civil society, the incorporation of civil society in the regulatory processes can bring in more expertise, resources and stakeholders, which may in turn strengthen

the monitoring and enforcement of regulations. Given the difference of political systems and state-society-business relations across Africa, we must be careful with making hasty generalisations, but should instead rely on more systematic empirical cross-sector and cross-country studies in the future.

Appendix 1. Interviews

Alfonso, (pseudonym), interview by Mukete Beyongo. 2015. NFCA OHS Manager (October 10).

Amos, interview by Mukete Beyongo. 2015. Mine Engineer (November 2).

Botirob, (pseudonym), interview by Mukete Beyongo. 2015. Safety Official at Chambishi Copper Smelter (October 25).

Chadukwa, Choolwe, interview by Mukete Beyongo. 2015. Mine Engineer MAMD (June 06).

Chansa, James, interview by Mukete Beyongo. 2015. NUMAW President (10 15).

Chewe, Billy, interview by Mukete Beyongo. 2015. Chief Mining Engineer (June 3).

DeSafe, (pseudonym), interview by Mukete Beyongo. 2015. Safety Official NFCA (October 6).

Farmer 1, (pseudonym), interview by Mukete Beyongo. 2015. Poultry Farmer Chambishi (October 3).

Farmer 2, (pseudonym), interview by Mukete Beyongo. 2015. Sugar cane Farmer Chambishi (October 5).

Farmer 3, (pseudonym), interview by Mukete Beyongo. 2015. Poultry Farmer Chambishi (October 6).

Farmer 4, (pseudonym), interview by Mukete Beyongo. 2015. Maize grower Kalulushi (October 8).

James, (pseudonym), interview by Mukete Beyongo. 2015. Chief Inspector MSD (October 25).

JCNX Workers, Meeting, interview by Mukete Beyongo. 2015. 6 causal workers (September 3).

Jonas, interview by Mukete Beyongo. 2015. Green Initiative Zambia (11 11).

Kabani, Dr, interview by Mukete Beyongo. 2015. Lecturer at University of Zambia (07 15).

Kabaso, Davies, interview by Mukete Beyongo. 2015. Manager Chibuluma Mine (September 6).

Kabinga, Musonda, interview by Mukete Beyongo. 2015. Programme Officer JCTR (May 18).

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