

ENCOURAGING ENTREPRENEURSHIP SUPPORTS HUMAN RIGHTS: AN EVALUATION OF ISSUES AND RESPONSES IN ZAMBIA

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ABSTRACT

Business and human rights are often thought to be in conflict. Under this premise, corporations are sometimes viewed as treating people as mere instruments of production, whereas human rights are seen as safeguards for individual freedom, autonomy, and self-actualization. This Note will argue that corporate activity and human rights can co-exist, and even reinforce one another, particularly in the field of entrepreneurship. Teaching and encouraging socially responsible entrepreneurship can lead individuals to promote their own personal autonomy, creativity, and tolerance for risk, which are underlying principles of many human rights. Thus, supporting entrepreneurship has the power to support the crucial freedoms that undergird human rights law. This Note will argue that entrepreneurship aligns with and encourages key freedoms found in the “International Bill of Human Rights.” Using Zambia as a case study, this Note will examine the various human rights issues facing Zambia and corresponding entrepreneurial programs in place. This Note will demonstrate how these programs support both entrepreneurship and human rights, as well as look to Zambia’s future prospects for continued peace, freedom, and economic growth.

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I. INTRODUCTION

Business and human rights are often thought to be in conflict.¹ Corporations are sometimes viewed as treating humans as mere instruments of production. On the other hand, human rights, which focuses on the individual, provides for freedom, autonomy, and self-actualization. This proposed dichotomy is often most striking when conversations turn to the economic development of low-income countries.²

However, the story does not end there. This Note will argue that corporate activity and human rights can co-exist, and even reinforce each other, especially in the field of entrepreneurship. Teaching and encouraging entrepreneurship leads individuals to promote their own personal autonomy, creativity, and tolerance for risk, all of which are underlying principles of many human rights.³ Thus, supporting entrepreneurship often may implicitly support the crucial freedoms that undergird human rights law, provided that corporate social responsibility is seen as a key facet of entrepreneurship.

1. See, e.g., H.D. Vinod, Professor of Economics, Fordham University, “Common Ground in Promotion of Entrepreneurship and Human Rights” at Fordham University School of Arts and Sciences, School of Law, and School of Business Conference on Entrepreneurship and Human Rights (Aug. 1, 2005) (“Human rights advocates are viewed as left wing bleeding hearts and entrepreneurship advocates are viewed as right wing laissez faire apologists for the wealthy and the powerful. In fact, these ideological characterizations are false and misleading.”).

2. See, e.g., JOHN RUGGIE, JUST BUSINESS: MULTINATIONAL CORPORATIONS AND HUMAN RIGHTS (2013); Surya Deva, *Human Rights Violations by Multinational Corporations and International Law: Where from Here?*, 19 Conn. J. Int’l L. 1 (2003); John Christopher Anderson, *Respecting Human Rights: Multinational Corporations Strike Out*, 2 U. Pa. J. Lab. & Emp. L. 463 (2000).

3. See *infra* Part III, particularly Part III.C.2.

Part II will begin with a paradigmatic example of the conflict between business and human rights, drawn from the author's field experience in Zambia. Part III will present research on the values of entrepreneurship and argue that entrepreneurship aligns with and encourages key freedoms found in the "International Bill of Human Rights." This Note will then use Zambia as a case study to illustrate the framework. First, a brief introduction to the country of Zambia and the various human rights issues it faces will be provided. For each issue, entrepreneurial programs currently in place are discussed. Part IV will demonstrate how these programs may support both entrepreneurship and human rights. Finally, Part V of this Note will look to Zambia's future prospects for continued peace, freedom, and economic growth, although acknowledging continued tension.

II. PROLOGUE: THE FUTURE OF CHICKANKATA⁴

Chickankata is a district in the Southern Province of Zambia, just a few hours' drive south of Lusaka, the capital. Its inhabitants are mostly subsistence farmers who grow maize,⁵ as well as a few other crops, including soy beans and ground nuts. They also raise cattle, goats, and chickens. Extended families live together in dried-mud buildings with thatched roofs. While all a part of the same community, these families may live sizeable distances from each other to provide room for personal farming plots and communal areas to graze animals.

Of late, crisis has gripped the community. It was not until the early 2000s that community members were granted title to the land on which they live.⁶ Even then, application was made in the name of the community.⁷ Individuals did not receive physical certificates of title.⁸ About four years ago, construction and development began on land

4. This section is based on the author's observations and interactions in Chickankata on Jan. 9, 2017, accompanied by Brigadier Siachitema, Lawyer, Women's Land and Property Rights Programme, Southern Africa Litigation Centre.

5. A small portion of crops grown are sold in order to purchase essentials that cannot be farmed, like clothing and soap. Subsistence farming was further described in an interview with Faith Adwoko Kalondawanga, Programme Manager, Social and Economic Development Programme, Jesuit Center for Theological Reflection.

6. *News Release: Zambia High Court Grants an Injunction In Favour of Displaced Community*, SOUTHERN AFRICA LITIGATION CENTER (Oct. 5, 2017), <https://southernafricalitigationcentre.org/2017/10/05/news-release-zambia-high-court-grants-and-injunction-in-favour-of-displaced-community/> [hereinafter *News Release*].

7. *Id.*

8. *Id.*

owned by the community and used for animals to graze.⁹ Speculation exists concerning whether the government is building a town for people to move into, which would ensure that the land they currently occupy is consolidated and sold to large-scale agribusinesses run by foreign investors.¹⁰ While this might provide employment for some members of the community, it will spell the end of animal grazing, farming, and other traditional ways of life practiced by Chickankata's inhabitants.¹¹

Zambia Land Alliance, a land rights non-profit, filed suit on behalf of the people of Chickankata seeking an injunction, which has recently been granted.¹² Construction has continued, and boundary markers have been placed throughout the community, including next to farming land and residences.¹³ Heavy machinery has been used to level land, presumably for a road. In this process of leveling the land, tractors plowed through and destroyed the graves of deceased members of the community. Understandably, locals seek to end this construction or be relocated and compensated for their losses.¹⁴

Underlying the locals' strong sentiments is a desire to maintain their way of life. Each year, the locals plant crops before the rainy season begins.¹⁵ After the rainy season is over, the harvest commences, and the crops are stored to be used gradually until the next harvest. The cycle continues, as it has for generations.

In the case of Chickankata, the stereotypical "business" and "human rights" camps would have vastly different ways of viewing the issues at hand. Those in favor of liberalization and unfettered free trade might support the foreign corporations in their efforts to acquire land at the expense of subsistence farmers. Proponents of this business-based

9. *Id.*

10. Interview with Brigadier Siachitema, Lawyer, Women's Land and Property Rights Programme, Southern Africa Litigation Centre, in Lusaka, Zambia (Jan. 6, 9, 2017) [hereinafter Siachitema Interview].

11. *Id.*

12. *News Release, supra* note 6.

13. These markers take the form of cylindrical cement pylons that have been placed in the ground, the tops of which are visible at surface level. The inhabitants of Chickankata refer to these "beacons."

14. According to its inhabitants, the land across the main road from Chickankata has been transformed into a nickel mine within the last ten or fifteen years. However, those who lived there were compensated for their loss by the nickel mining company and were able to relocate elsewhere.

15. The villagers note that climate change has had real effects on their lives: the rainy season has been getting much shorter and starting later. It used to begin in October, but now it does not start until December.

model of development might say that the farmers' way of life is ultimately doomed due to globalization and climate change. Although some of the farmers will be forced to leave rural areas and move to cities, large-scale agribusiness creates more efficient food production, which will be better for everyone in the long run. These agribusinesses will also create jobs for those who have been displaced and pay them regular wages, which creates a more stable livelihood than one based on bartering and the tyranny of inconsistent weather patterns. Ultimately, the free trade apologists say, the people of Chickankata will be better off, as they will attain a higher standard of living.

Alternatively, a caricatured view of human rights activists would see the farmers' way of life as a near-sacred expression of the human experience that should be preserved. Regardless of costs it might impose, protecting this way of life is of the utmost importance. Traditions should continue, and any sort of aid effort should go to improving farmers' livelihoods in ways that complement rather than uproot them. Businesses forcing change on others should be opposed and stopped.

As the above example regarding Chickankata attempts to illustrate, society's economic development is sometimes seen to conflict with a full pursuit of human rights.¹⁶ Law's role is to mediate between these opposing forces and to strike the proper balance between individual freedoms and a safe and thriving society.¹⁷ By assigning legal title to the land, the law creates privileges for those who own it. In general, human rights law focuses on the individual and what he or she is entitled to and protected against. However, individual autonomy must be limited in some cases for the greater good of society, and human rights law is cognizant of this tension—a tension that is at least to a degree present in Chickankata.¹⁸ But as the next Part will describe, business and human rights do not always conflict with each other. In fact, the principles that undergird human rights law are the same values that are supported by entrepreneurship, and thus—in some settings—corporate objectives can further the goals human rights law seeks to champion.

16. Andrew Phang, *Security of Contract and the Pursuit of Fairness*, 2000 JCL LEXIS 15, 34 (2000); see also *id.* at 35 (“[T]o the extent that it permits creativity and entrepreneurship, individual freedom is a necessary part of economic development.”).

17. See generally, e.g., HENRY M. HART, JR. & ALBERT M. SACKS, *THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATIONS OF LAW* 8 (1958) (“The group has something to say to the individual which bears on the decision he makes.”).

18. See *infra* Part II.C.3.b.

III. ENTREPRENEURSHIP'S ROLE IN SUPPORTING HUMAN RIGHTS

The following section will detail the value systems that undergird entrepreneurial thinking and human rights law, as well as demonstrate the considerable level of overlap. This encourages entrepreneurship—provided that corporate social responsibility is seen as an integral value—and should lead to a flourishing of human rights.

A. *Creation of an Entrepreneurship-Friendly Ecosystem*

Before describing the values that undergird both entrepreneurship and human rights law, it is important to understand what “encouraging entrepreneurship” means, especially if encouraging entrepreneurship ultimately supports human rights. Although there is no one process or method that produces entrepreneurs, “successful entrepreneurship development depends on sound business culture, education, skills and capital availability. . . .”¹⁹ In particular, “business incubators, venture capital funds, and business development support programs” are crucial to entrepreneurial development.²⁰

These programs, run by business incubators or entrepreneurship hubs, usually involve three main stages.²¹ In the “Ideas Stage,” individuals and small groups with business ideas (or current businesses that want to take on new projects) can participate in various training and educational programs that are designed to help these pre-entrepreneurs think critically about their business plans.²² Those that succeed in these programs can then apply for a selective program that provides more intensive support and mentoring—the “Breakthrough Stage.”²³ Finally, the very best businesses from the “Breakthrough Stage” receive complete business services, including legal, financial, and networking assistance for free for a set period, often in exchange for a portion of the company’s equity.²⁴ At this point, the “Growth Stage,” the incubator has empowered full-fledged entrepreneurs to run small but quickly-growing companies that are poised for success.²⁵

19. Winfred Agbeibor, Jr., *Pro-Poor Economic Growth: Role of Small and Medium Sized Enterprises*, 17 J. ASIAN ECON. 35, 38 (2006).

20. *Id.*

21. *Id.*

22. *Id.* at 39.

23. *Id.*

24. *Id.*

25. *Id.*

How does this support human rights? To start, many incubators encourage company founders to be social entrepreneurs. Social entrepreneurs are those who look for a “double bottom line”—both a financial return but also a return in terms of positive effects on the community.²⁶ These founder-CEOs “view[] business as an agent for social change”²⁷ by ensuring that their practices contribute to holistic, sustainable economic growth. In other words, they are willing to sacrifice a degree of profits to ensure that people (and the environment) are put first. So even for those individuals that only participate in business educational programs, the concepts that are central to entrepreneurial training support values that underlie key human rights.

Unfortunately, most developing countries do not have start-up incubators, venture capital funds, or training programs for entrepreneurs.²⁸ Without these facilities in place, entrepreneurial values—and, by extension, those connected to human rights—are not fostered to the extent that they could be were these facilities to exist. The following sections of this Note will elaborate on these values and their linkages to human rights.

B. *Entrepreneurship As Fuel for Personal Autonomy, Creativity and Innovation, Tolerance for Ambiguity and Risk*

Multiple studies document the values central to entrepreneurship, both in business and psychological literature.²⁹ A full review is unnecessary here, but even a somewhat perfunctory look will draw out multiple necessary ingredients in the entrepreneurial mindset. One important study which amalgamated the findings of several others describes fourteen key characteristics of successful entrepreneurs.³⁰ Another study

26. Social entrepreneurship involves a for-profit or non-profit organization that seeks to transform the living conditions of a disadvantaged societal group by developing for them a sustainable commercial enterprise; it is different from a normal business in that it has a social objective, but it is also not a charity in that it does not seek to better others through grants and donations. Barbara K. Bucholtz, *Doing Well by Doing Good and Vice Versa: Self-Sustaining NGO/Nonprofit Organizations* 17 J.L. & POL'Y 403, 439 (2009).

27. Vinod, *supra* note 1, at 2.

28. Agbeibor, *supra* note 19, at 38.

29. See generally studies cited Part III.B.

30. Jeffery A. Timmons, *Characteristics and Role Demands of Entrepreneurship*, 3 AM. J. SMALL BUS. 5, 7-11 (1978) (the characteristics were drive and energy, self-confidence, long term involvement, money as measure, persistent problem solving, goal setting, moderate risk taking, dealing with failure, use of feedback, taking initiative and seeking personal responsibility, use of resources, competing against self-imposed standards, internal locus of control, and tolerance for ambiguity and uncertainty).

lists eight attributes;³¹ and others list both fewer,³² as well as many more.³³ This Note will seek to synthesize the numerous descriptions in the literature to three key values shared by entrepreneurs: personal autonomy, creativity and innovation, and a tolerance for ambiguity and risk. In turn, this set of values underlies key human rights. Therefore, by encouraging entrepreneurship—and implicitly its underlying values—it is possible to foster human rights.

1. Personal Autonomy

Personal autonomy is a catch-all term this Note will employ to encompass the ideas of independence, self-empowerment, and confidence in the ability of one's actions to affect change in the world. Entrepreneurs "tend to believe strongly in themselves and their abilities to achieve the goals they set."³⁴ Furthermore, they feel the "necessity of having one's own independent space to make decisions and choices."³⁵ Though at the extreme this can tend towards a highly individualistic mindset,³⁶ an entrepreneur's belief that her own personal choices can lead to success is what enables her to take action and remain persistent in the face of adversity to achieve set goals.³⁷ Numerous studies cite personal autonomy or some variation of this trait as a central value of entrepreneurship.³⁸

31. Serena Cubico et al., *Describing the Entrepreneurial Profile: The Entrepreneurial Aptitude Test (TAI)*, 11 INT'L J. ENTREPRENEURSHIP & SMALL BUS. 424, 428 (2010).

32. Stephen L. Mueller & Anisya S. Thomas, *Culture and Entrepreneurial Potential: A Nine Country Study of Locus of Control and Innovativeness*, 16 J. BUS. VENTURING 51, 53 (2000) (two key characteristics).

33. James W. Carland et al., *Differentiating Entrepreneurs from Small Business Owners: A Conceptualization*, 9 ACAD. MGMT. REV. 354, 356 (1984) (surveying prior studies and finding over twenty descriptions).

34. Timmons, *supra* note 30, at 7.

35. Cubico et al., *supra* note 31, at 428.

36. Jay E. Janovics & Neil D. Christiansen, *Profiling New Business Development: Personality Correlates of Successful Ideation and Implementation*, 31 SOC. BEHAV. & PERSONALITY 71, 79 (2003); Rita Gunther McGrath et al., *Elitists, Risk-Takers, and Rugged Individualists? An Exploratory Analysis of Cultural Differences Between Entrepreneurs and Non-Entrepreneurs*, 7 J. BUS. VENTURING 115, 128-29 (1992); *see also id.* at 123 (describing a thirteen-nation study with over 3,000 responses).

37. Janovics & Christiansen, *supra* note 36, at 79; Peter B. Robinson et al., *An Attitude Approach to the Prediction of Entrepreneurship*, 15 ENTREPRENEURSHIP: THEORY & PRAC. 13, 23-24 (1991).

38. *See* David C. McClelland, *Characteristics of Successful Entrepreneurs*, 21 J. CREATIVE BEHAV. 219, 224 (1987); Mueller & Thomas, *supra* note 32, at 55-57; Cubico et al., *supra* note 31, at 428; Carland et al., *supra* note 33, at 356; Robinson et al., *supra* note 37, at 23-24.

2. Creativity and Innovation

The second tenet central to entrepreneurship, and arguably even more important than personal autonomy, is creativity and innovation. Entrepreneurs are curious and enjoy coming up with new ideas.³⁹ They incorporate feedback from others on their ideas to improve them,⁴⁰ and they think divergently—meaning that they can harmonize dissimilar concepts in an inventive manner.⁴¹ A preference for creativity and innovation is a core principle of entrepreneurial thinking, as many studies show.⁴²

3. Tolerance for Ambiguity and Risk

The word “entrepreneur” comes from a French verb which means, among other things, “to adventure.”⁴³ Entrepreneurs are adventurers and have a high tolerance for both risk and ambiguity. They are flexible and adaptable to whatever comes their way.⁴⁴ In pursuit of their long-term goals, entrepreneurs realize that calculated risks are essential to achieving success.⁴⁵ The literature fully supports this view that entrepreneurs have a high tolerance for ambiguity and risk.⁴⁶

4. Criticisms: Cross-Cultural Comparisons and Questions of Nature versus Nurture

At least two major criticisms may be lodged against this description of core entrepreneurial values. First, some may argue that entrepreneurship may vary across cultures, and because most studies have taken place in Western nations, these key tenets may only apply in that context. To this criticism, three of the studies cited above took place cross-culturally, and all found entrepreneurs’ values consistent with those surveyed in other research.⁴⁷ For instance, entrepreneurs

39. Cubico et al., *supra* note 31, at 428; Janovics & Christiansen, *supra* note 36, at 79.

40. Timmons, *supra* note 30, at 9.

41. Janovics & Christiansen, *supra* note 36, at 79.

42. See Carland et al., *supra* note 33, at 356-57; Mueller & Thomas, *supra* note 32, at 57-58; Robinson et al., *supra* note 37, at 23-24.

43. James W. Carland et al., “Who is an Entrepreneur?” is a Question Worth Asking, 12 AM. J. SMALL BUS. 33 (1988).

44. Cubico et al., *supra* note 31, at 428.

45. Timmons, *supra* note 30, at 9.

46. See McGrath et al., *supra* note 36, at 129-30; Carland et al., *supra* note 33, at 356; John A. Hornaday & John Aboud, *Characteristics of Successful Entrepreneurs*, 24 PERS. PSYCHOL. 141, 148 (1971).

47. Mueller & Thomas, *supra* note 32, at 55; see, e.g., McClelland, *supra* note 38; McGrath et al., *supra* note 36, at 128-29.

in India, Malawi, and Ecuador all displayed a preference for initiative and assertiveness—clear examples of personal autonomy referenced earlier.⁴⁸ Another study surveyed over 3,000 entrepreneurs in thirteen countries and found marked similarities.⁴⁹ While this research does not prove that these characteristics are always consistent across cultures, it does bolster the argument that there are some traits that are nearly ubiquitous.

A second criticism is perhaps more poignant. The debate centers on whether these values are inherent or if they can be taught and developed through participating in an entrepreneurial ecosystem.⁵⁰ At the risk of simplifying, this is a question of nature versus nurture. It is true that successful entrepreneurs display certain traits and that those looking to invest seek out business owners with these characteristics.⁵¹ But this does not exclude the possibility that these traits can also be learned in the right environment.⁵² As one commentator noted, “[s]ome entrepreneurial characteristics can be developed,” describing how those who successfully launch new ventures at a young age will build a set of skills as they continue innovating in future, more complex endeavors.⁵³

In short, evidence points to the fact that these “characteristics” *can* be learned, given the right environment. In that sense, they may not be true characteristics, but rather values that entrepreneurs aspire to. A start-up incubator or class for small businesses can impart the concepts of personal autonomy, creativity and innovation, and tolerance for risk and ambiguity to participants, who in turn, will recognize these values as beneficial to their entrepreneurial activity. Over time, these values will become central to who they are as entrepreneurs—but also, as people in society. As the next sections will show, these fundamental values of entrepreneurship support essential human rights.

48. McClelland, *supra* note 38, at 225.

49. McGrath et al., *supra* note 36, at 123.

50. *Id.* at 132. Some have questioned whether this dichotomy is even posing the right question. See Carland et al., *supra* note 43, at 35 (“Researchers who are caught up in a debate between ‘trait’ or ‘behavioral’ schools . . . have lost the directional thrust first provided by the concept of entrepreneurship. The definitional issue is simply an intermediary step in pursuing the question of ‘why.’”).

51. Timmons, *supra* note 30, at 6 (describing how venture capitalists look for entrepreneurial characteristics in the founders of companies in which they chose to invest).

52. Robinson et al., *supra* note 37, at 15.

53. Timmons, *supra* note 30, at 6.

C. *Personal Autonomy, Creativity and Innovation, and Tolerance for Ambiguity and Risk: Underpinnings of Human Rights*

Although Part II described the values associated with entrepreneurship, it has yet to be shown how these values are linked to supporting human rights. The following section will enumerate several crucial human rights found in international law and show how these rights are supported by the principles of entrepreneurship.

1. Fundamental Human Rights

There is no one list that contains an exhaustive description of all human rights, but three foundational documents are often considered to be the “International Bill of Human Rights.”⁵⁴ These documents are the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵⁵ The Universal Declaration of Human Rights was adopted in 1948 by the U.N. General Assembly; the two covenants followed about twenty years later.⁵⁶ Read together, they intend to promote a global vision of people’s inherent freedoms and to provide:

“a common standard . . . for all peoples and all nations, to the end that every individual and every organ of society . . . shall . . . promote respect for these rights and freedoms and . . . secure their universal and effective recognition and observance”⁵⁷

The rights enumerated in these documents overlap to some extent because the Universal Declaration of Human Rights is a non-binding “commitment,” whereas the covenants are binding on the states that ratified them.⁵⁸

54. *The Foundation of International Human Rights Law*, UNITED NATIONS, <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html> (last visited Jan. 21, 2018).

55. STEPHEN C. MCCAFFREY, *UNDERSTANDING INTERNATIONAL LAW* 251 (2d ed. 2015).

56. *Id.* at 251-56.

57. Universal Declaration of Human Rights, G.A. Res. 217A (III), Preamble, U.N. Doc. A/810 at 71 (1948) [hereinafter UDHR] (even still, many countries see these documents—even the binding covenants—as merely aspirational).

58. UNITED NATIONS, *supra* note 54.

Although each right listed has multiple components, there are approximately seventy-five key rights addressed by these documents.⁵⁹ The right to freedom of movement; the right to property; the right to freedom of thought, opinion, and speech; the right to education; and the right to work are each found in at least one of the central documents. These rights are critical in a number of ways. Without them, a state will likely be repressive, autocratic, and destructive. A brief explanation of each of these rights is found below. The rights are divided into two categories: “first generation rights” are those that must exist for individuals in any society that wishes to call itself free and fair; “second generation rights,” on the other hand, are those that are more idealistic in kind, more difficult to achieve, and build off “first generation rights.”⁶⁰

a. *First Generation Rights*

Freedom of movement is described as the right “to liberty of movement and freedom to choose [one’s] residence” within one’s state.⁶¹ States that fail to respect this right may have limitations on where members of certain ethnic, racial, or religious minorities may go, often without paperwork or passes.⁶² Or worse, they may completely segregate these minorities from the rest of society, wholly limiting their freedom of movement.⁶³

Freedom of thought, opinion, and speech are closely interlinked rights. They include the “freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media,”⁶⁴ whether that be written, oral, or other types of artistic works.⁶⁵

59. This approximation comes from adding the number of articles that enumerate rights in each of the key documents (ICCPR: 27; ICESCR: 15; UDHR: 30). There is some overlap between the documents, and some of the rights are similar but specified differently. International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 [hereinafter ICESCR]; UDHR, *supra* note 57.

60. RHONA K.M. SMITH, TEXTBOOK ON INTERNATIONAL HUMAN RIGHTS 46 (2d ed. 2005).

61. UDHR, *supra* note 57, art. 13 (“Everyone has the right to freedom of movement and residence within the borders of each State.”); ICCPR, *supra* note 59, art. 12.

62. *See, e.g.*, Apartheid-era South African treatment of black South Africans; current Israeli policies towards Palestinians.

63. *See, e.g.*, Nazi Germany’s treatment of Jews during the Holocaust; U.S. internment camps for Japanese during World War II.

64. UDHR, *supra* note 57, art. 19.

65. ICCPR, *supra* note 59, art. 19; *id.* art. 13.

The right to property means that persons can own property, both on an individual and collective basis; furthermore no one can be “arbitrarily deprived” of his property.⁶⁶ Although it would seem that at least the first portion of this right is nearly universally followed, countries still exist in which there is no private ownership of some kinds of property. For example, all land in Eritrea must be owned by the state.⁶⁷ In fact, inclusion of the right to property in the Universal Declaration of Human Rights was controversial, as some of the drafters were socialists and worried about the right to property getting in the way of government control over private industry; subsequently, the right to property was not even included in the ICCPR nor the ICESCR.⁶⁸

b. *Second Generation Rights*

As previously mentioned, second generation rights flow from first generation rights. They require that first generation rights be in place so that there exists an adequate standard of living on which to build a thriving society.⁶⁹

While the rights to movement, property, thought, opinion, and speech are broadly accepted, the right to work—as with many economic rights—has found somewhat less acceptance.⁷⁰ Perhaps this is because many misconceptions exist about the right to work. First, the right to work does not encompass a “. . . guarantee of employment. Clearly, this would be unenforceable and could ultimately lead to situations which might infringe the provisions on compulsory labor.”⁷¹ Rather than a freedom from unemployment, the right to work focuses on protections in the workplace and others related to termination and dismissal.⁷² For example, the right to equal pay for equal work, safe and healthy working conditions, and a living wage are key elements of the right to work.⁷³ Also embedded in this right is the idea that states will create

66. UDHR, *supra* note 57, art. 17.

67. U.S. DEP’T OF STATE, BUREAU OF ECON. AND BUS. AFF., ERITREA INVESTMENT CLIMATE STATEMENT 9 (2015), <https://www.state.gov/documents/organization/241762.pdf>.

68. Jacob Mchangama, *The Right to Property in Global Human Rights Law*, 33 CATO POL’Y REP. 5, 5-6 (2011).

69. SMITH, *supra* note 60, at 305.

70. For example, the United States has never ratified ICESCR and its included provisions on the right to work. See United Nations, United Nations Treaty Collection, (Jan. 25, 2018), https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en.

71. SMITH, *supra* note 60, at 297.

72. *Id.* at 299.

73. UDHR, *supra* note 57, at art. 23; ICESCR, *supra* note 59, at art. 7.

programs and policies that promote full employment, as there is an inherent dignity in having a job and being able to provide for oneself.⁷⁴

Education is another fundamental freedom addressed by international human rights law. All individuals have the right to free education at primary stages, and should also have access to secondary education.⁷⁵ In addition, higher education should be made available to anyone who has the capacity to engage in it.⁷⁶ The right to education, like the right to work, is also often debated and questioned, as it straddles the line between a political right and an economic right, and debates also center on the extent to which education should be free or subsidized.⁷⁷

2. Entrepreneurship and Values Central to Human Rights Law

The fundamental rights previously outlined can be promoted through a variety of mechanisms, but one method that has received little attention is through supporting entrepreneurship. Because the values that are central to entrepreneurship undergird the rights previously mentioned, encouraging entrepreneurship will also promote individuals' recognition, assertion, and realization of these fundamental freedoms. The connections between specific entrepreneurial values and human rights are laid out below.

a. Nurturing Personal Autonomy: Freedom of Movement and Right to Property

Personal autonomy is at the root of both the freedom of movement and the right to property. Without a sense that a person is in control of his or her own destiny and can, to some extent, shape the future, there would be little to no reason to relocate in order to seek beneficial opportunities or try to better one's lot in life through ownership and improvement of property. Though at an extreme an individualistic mindset can be toxic, it can also lead people to assert their rights over things that rightfully belong to them and seek out the possibilities that exist further afield. By encouraging individuals to act with self-confidence and to be assertive, entrepreneurship can teach individuals to chase after their dreams. This might involve moving to a new city or purchasing the materials necessary to start a business. Thinking in individualistic terms may also cause entrepreneurs to question government

74. ICESCR, *supra* note 59, at art. 6.

75. UDHR, *supra* note 57, at art. 26.

76. ICESCR, *supra* note 59, at art. 13.

77. SMITH, *supra* note 60, at 311-15.

restrictions placed on personal liberties. In this way, rights flow from individuals to society at large—from the bottom up.

b. *Supporting Creativity and Innovation: Free Thinking and Self-Expression*

Creativity and innovation provide the kindling for the fire of self-expression. Whether it is expressing old ideas in new contexts or coming up with new material to challenge dominant narratives, repressive regimes fear creativity. Instead, these regimes strive for uniformity of thought and culture. While entrepreneurship programs support innovative thinking in business, they also broadly encourage problem-solving through discussion, because creativity builds off the feedback of others. This free-thinking undoubtedly spills over into areas outside the entrepreneur's professional life, bolstering the expressional freedoms and potentially leading the entrepreneur to challenge those regimes that limit these freedoms.

c. *Desire for Education*

Individuals that recognize their own ability to shape the world and who are encouraged to think creatively are likely to develop a thirst for knowledge. They will desire to know more in order to be able to create more. And to seek after knowledge, they will want an education. Entrepreneurs will constantly be on the lookout for new ideas and new ways to improve their businesses. To find this information, they will demand educational opportunities, both for themselves and for others. Thus, personal autonomy and creativity in an entrepreneurial setting may lead to improved access to education.

d. *Consequences of Entrepreneurship: Providing the Opportunity to Work*

By creating businesses, entrepreneurs can provide others with the opportunity to work, allowing them to experience the inherent dignity of supporting oneself through labor. Consequently, entrepreneurs' own tolerance for ambiguity and risk enables them to start businesses, which in turn provides for the fulfillment of the right to work. Indeed, according to research on innovation,⁷⁸ it is small and medium enterprises that

78. See generally Kimberly Zeuli & Kathleen O'Shea, *Small Business Growth*, 16 *Econ. Develop. J.* 15 (2017); Matthew Dobbs & R.T. Hamilton, *Small Business Growth: Recent Evidence and New Directions*, 13 *Int'l J. Entrepreneurial Behavior & Research* 296 (2007); Roy Thurik & Sander Wennekers, *Entrepreneurship, Small Business and Economic Growth*, 11 *J. Small Bus. & Enter. Dev.* 140 (2004).

actually power economic growth and, thus, job creation.⁷⁹ Entrepreneurs trained to be socially responsible will create businesses that impart these values and respect the more substantive aspects of the right to work, such as safe working conditions and a living wage.

3. An Environment That Respects Human Rights Drives Entrepreneurship

a. *The Virtuous Cycle*

As described previously, the values that underpin socially responsible entrepreneurship can support human rights. However, simultaneously, human rights are crucial to enabling an environment where entrepreneurship can take place. Thus, fostering an entrepreneurial ecosystem leads to increased human rights, which themselves support entrepreneurship, which further encourage human rights. The two can build on each other, creating a virtuous cycle. As one commentator put it:

In today's society, the successful creation of entrepreneurs is essential. Developing a cadre of new, creative, independent and fair business and civic professionals, as well as businesses, is one of the most important tools in raising the world's standard of living, as well as encouraging education and eradicating poverty. Self-esteem, mutual respect and improved basic human rights are all products of economic success, with each reinforcing the other characteristic.⁸⁰

More specifically, both human rights and entrepreneurship require a certain base level of physical and legal infrastructure. “[C]redit, security, due process, and public information are as essential to entrepreneurs as they are for human rights.”⁸¹ These primary considerations denote minimum levels of the rule of law. If these foundations are completely absent, entrepreneurship is more difficult. A thoroughly autocratic, despotic regime cannot truly support new ventures. Without a space for entrepreneurs, the virtuous cycle cannot begin, and “corruption, rent seeking, and other forms of opportunism will remain

79. Agbeibor, *supra* note 19, at 40 (stating how small businesses drive economic growth in developing countries).

80. John N. Tognino, Introductory Address at Fordham University School of Arts and Sciences, School of Law, and School of Business Conference on Entrepreneurship and Human Rights (Aug. 1, 2005).

81. Vinod, *supra* note 1.

pervasive . . . and entrepreneurs will find it extremely difficult to engage in those activities that create wealth.”⁸²

Another way that entrepreneurship supports human rights is by creating an alternative, internal center of power to check government over-reaching. Governments may be able to collude with a few powerful foreign investors to remain in control, but if an entrepreneurial culture is established within a country, multiple growing businesses will be able to exert counterbalancing pressures. If the founder-CEOs that run these businesses are schooled in social entrepreneurship, they will lobby to make sure that human rights are respected.⁸³ Some would even argue that it is impossible to “eliminate human rights violations without a local countervailing power. . . .”⁸⁴

b. *Conflicts and Proposed Solutions: The U.N. Global Compact and the “Ruggie Principles”*

Although this Note largely affirms the power of entrepreneurship to bolster human rights because of their similar underlying values, it would not be complete without a discussion of the ways that business and human rights can conflict. This can occur in two major ways. First, corporations with a sole profit-seeking motive may flagrantly disregard human rights in pursuit of only pecuniary gain. Second, a company providing a novel way of doing business or offering a new product may, through its “disruptive innovation,” imperil or cause harm to an older, more traditional way of doing things.

In the first case, governments can attempt to regulate the detrimental behavior, and some companies might choose to comply based on these incentives. But if regulations cannot reach some corporate actions (*i.e.*, those taking place in other countries), the sole remedy may be to encourage corporations to consider and act on factors besides the bottom line. To prevent human rights violations by businesses, the U.N. has created a voluntary initiative that companies can join to foster new norms. The United Nations Global Compact is a set

82. John Mukum Mbaku, *Providing a Foundation for Wealth Creation and Development in Africa: The Role of the Rule of Law*, 38 BROOKLYN J. INT’L L. 959, 1033-34 (2013).

83. For instance, the founders of various tech companies responded loudly to President Trump’s original travel ban blocking refugees and citizens from certain predominantly Muslim countries. David Streitfeld et al., *Silicon Valley’s Ambivalence Toward Trump Turns to Anger*, N.Y. TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/technology/silicon-valleys-ambivalence-toward-trump-turns-to-anger.html> (quoting the founders of AirBnb, Google, Facebook, and other tech companies denouncing President Trump’s travel ban as morally wrong).

84. Vinod, *supra* note 1.

of ten principles that businesses are asked to adhere to in order to align the objectives of the international community and the business world.⁸⁵ The first two principles address human rights, stating that “Businesses should support and respect the protection of internationally proclaimed human rights”⁸⁶ and that they should “make sure that they are not complicit in human rights abuses.”⁸⁷ The compact also requires businesses to abolish child labor, promote greater environmental responsibility, and combat corruption, among other values.⁸⁸ Within eight years of its inception, over 8,000 corporations in 140 countries had signed onto the initiative.⁸⁹

To provide “further conceptual and operational clarity” to the broad, brief principles, the U.N. engaged Harvard Professor John Ruggie as its Special Representative on Business and Human Rights.⁹⁰ Consulting with business, public sector, and civil society leaders, Ruggie drafted the U.N. Guiding Principles on Business and Human Rights, informally known as the “Ruggie Principles.”⁹¹ These principles are divided into three main pillars: the state’s duty to protect human rights, the corporate responsibility to protect human rights, and the ways that those harmed can access remedies.⁹² Intricate in detail and specificity, the principles make great strides to particularize the roles of corporations and governments in creating a better environment for human rights. However, there is still some dispute as to whether such voluntary corporate responsibility principles and codes actually limit corporate malfeasance, or if they are only adopted to boost reputation.⁹³ Rather than this “soft law” voluntary compact combined with guiding principles,⁹⁴

85. U.N. Global Compact, *Corporate Sustainability in the World Economy* (2008), https://www.unglobalcompact.org/docs/news_events/8.1/GC_brochure_FINAL.pdf.

86. *Id.* at principle 1.

87. *Id.* at principle 2.

88. *Id.* at principles 5, 8, and 10.

89. *Id.* at 1.

90. U.N. Office of the High Commissioner of Human Rights, *The UN Guiding Principles on Business and Human Rights: Relationship to UN Global Compact Commitments* (July 2014), https://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf.

91. *Id.*

92. UNITED NATIONS OFF. OF THE HIGH COMM’R FOR HUMAN RIGHTS, *GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS* (2011).

93. Julien Levis, *Adoption of Corporate Social Responsibility Codes by Multinational Companies*, 17 J. ASIAN ECON. 50 (2006).

94. *See, e.g.*, Alan Boyle, *Soft Law in International Law-Making*, in INTERNATIONAL LAW, 118, 118-21 (Malcom D. Evans ed., Oxford University Press, 4th ed. 2015) (explaining the differences between “hard law” and “soft law”).

what may be needed is a multilateral treaty, covenant, or convention that enshrines these principles and offers a mechanism of enforcement against bad actors.

Even if they are run responsibly, corporations can still impinge on human rights. Companies may grow to the point where they create societal shifts that alter the fabric of a nation. Often described as creative destruction, entrepreneurial businesses can generate new sectors of the economy that, as a by-product, eliminate or reduce opportunities in other sectors. These economic shifts can even cause some unique subcultures and ways of life to be threatened. For example, large-scale agribusiness may endanger the lifestyle practiced by subsistence farmers—even when the large company is following all relevant laws and seeking to act responsibly to its employees, customers, and the communities in which it is located.⁹⁵

The “International Bill of Human Rights” also protects cultural rights as human rights.⁹⁶ Cultural rights include the right of all peoples to determine and pursue a certain way of life through use of the resources available to them.⁹⁷ “In no case,” the International Covenant on Civil and Political Rights states, “may a people be deprived of its own means of subsistence.”⁹⁸ A successful business that results in other means of production becoming less viable—which, in turn, jeopardizes a way of life—would seem to violate these cultural rights.

The key human rights documents are cognizant of these tensions among individual rights, labor rights, and cultural rights that arise. Individuals have duties to the communities within which they are situated⁹⁹ and must limit their exercise of rights “for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”¹⁰⁰ Thus, entrepreneurs must try to strike this balance between the assertion of their own rights and the rights of those communities that they affect.

95. For example, the agricultural practice of planting only one crop—monoculture—may deplete minerals in the soil, harming the environment and preventing others from growing some crops. The situation in Chickankata appears to be entirely different, with whatever company(ies) involved seeming to be indifferent and irresponsible.

96. UDHR, *supra* note 57, at arts. 22, 27; ICESCR, *supra* note 59, at art. 15; ICCPR, *supra* note 59, at art. 27.

97. ICESCR, *supra* note 59, at art. 25; ICCPR, *supra* note 59, at art. 47.

98. ICCPR, *supra* note 59, at art. 1.

99. ICESCR, *supra* note 59, preamble; UDHR, *supra* note 57, at art. 29.

100. UDHR, *supra* note 57, at art. 29.

Here too, though, supporting entrepreneurship may be an answer. Local entrepreneurs can innovate in manners that enable a particular way of life to continue but alleviate some of the issues that are faced. For example, One Acre Fund is a socially-responsible enterprise whose clients are smallholder farmers in rural areas of Africa.¹⁰¹ By financing and distributing farming inputs like seed and fertilizer, training farmers on agricultural techniques, and facilitating markets to maximize farmer profits, One Acre Fund allows subsistence farmers to be more competitive and continue practicing their way of life.¹⁰²

In the fundamental human rights documents, the broad and open language of provisions seeking to balance individual and community rights leaves much room for interpretation and difference of opinion regarding which rights are the most important in a given setting. It is up to national laws to specifically spell out a particular hierarchy of rights, and court systems should be in place to determine outcomes in cases that are not clear cut.

Once again, we return to Chickankata, a prime example of the conflict that can exist between business and human rights. Fundamentally, it will be up to the courts of Zambia to decide ownership of the land, despite potentially unclear title.¹⁰³ As this Note continues in its analysis of issues faced in Zambia, the balancing of rights between communities and individuals on the one hand and corporations on the other will remain central.¹⁰⁴ Entrepreneurship simultaneously serves as an expression of individual autonomy, freedom, and self-expression—as well as the ability of businesses to allow others to actualize their rights by providing them with meaningful employment. It thus serves as a

101. *See Leadership*, ONE ACRE FUND, <https://www.oneacrefund.org/about-us/the-leadership> (last visited Mar. 15, 2018) Although the enterprise was not founded by African entrepreneurs, the vast majority of the staff, including those in leadership positions, are African.

102. *Our Model*, ONE ACRE FUND, <https://www.oneacrefund.org/our-approach/program-model> (last visited Mar. 15, 2018).

103. *News Release*, *supra* note 6. It seems as though farmers may have actual title, or, at the very least, should have rights to the land by virtue of their long-standing ties under customary law, according to Mr. Siachitema. Property that is communal in nature should be recognized as such, and the law should develop mechanisms that account for this sort of communally shared property. The community was recently vindicated when the High Court of Zambia granted an interim injunction to prevent further development until the case can be resolved.

104. Especially with regard to foreign corporations acting in developing countries, the International Convention on Economic, Social, and Cultural Rights seems to favor or at least allow the rights of locals to take preference over those of foreigners. *See ICESCR*, *supra* note 59, at art. 2 (“Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”).

helpful heuristic for finding middle ground and showing the importance of the rights of both individuals and businesses, which often seem to (and at times, do in fact) conflict.

IV. APPLICATION: ENTREPRENEURSHIP AND HUMAN RIGHTS ISSUES IN ZAMBIA

The following section applies the analytical framework from Part III to the Zambian context. After an initial section on research methods, this Part focuses on the past and present economic situation in Zambia to provide context for a discussion of BongoHive, a Lusaka-based start-up incubator that supports entrepreneurship. Next, human rights issues in Zambia are discussed. For each issue, participant views are provided, as well as current public sector and non-profit programs that address the issue. The human rights implicated by the issue are then analyzed, and the values underlying the rights are discussed. Finally, it is shown how BongoHive's efforts to encourage entrepreneurship support those values and thus support human rights.

A. *Research Methods*

This Note was researched through fieldwork that took place in Lusaka, Zambia from January 6, 2017 to January 20, 2017. To prepare, conversations were had with fellow researchers and sources were consulted to provide a general framework for understanding Zambia and the issues at hand. Extensive prior experience in Africa also served as a solid foundation for inquiry.

Initial information gathering took place, both prior to arrival in-country and once in Lusaka, by contacting Zambian individuals and organizations¹⁰⁵ regarding their willingness to participate in conversation. Interviews were then set up with consenting participants. In total, eleven participants were interviewed, all based on a set of broad questions which served as segues to open wider conversations.¹⁰⁶ These conversations are the primary basis for this Note's findings, and the information that participants provided shaped the issues discussed and responses described. The interviewees represent views from three major sectors of society: entrepreneurs, academics, and leaders of both

105. The author would especially like to thank the staff and leadership of BongoHive, Zambia's first technology and innovation hub, which connected the author with entrepreneurs and allowed full access to the classes and resources available for research purposes.

106. *See infra* note 222.

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religious and secular non-profits.¹⁰⁷ As each sector has its own set of strengths and weaknesses for implementing policy,¹⁰⁸ it was essential to be able to compare and contrast opinions from different sources. Generally speaking, participants from across sectors seemed to agree on which issues seemed most pressing. No quantitative claims are made based on the scant number of interviews conducted; rather, these conversations are best seen as a bellwether for current views on the issues presented among a broad spectrum of Zambian society.

In addition to these conversations, observations and interactions while traveling throughout the country supplement the interviews' fact-findings. Extensive notes were taken throughout this process. To supplement the fieldwork, further research was completed upon return from Zambia. Sources consulted include major news outlets; World Bank, IMF, and United Nations resources; and various legal databases.

107. The following is a further depiction of the breakdown of participants by sector:

<u>Entrepreneurs</u>	<u>Academics</u>
BongoHive	University of Zambia
Modern Refinement, Ltd.	Evelyn Hone College of Applied Arts & Commerce
Musanga Logistics	
<u>Secular NGOs</u>	<u>Religious NGOs</u>
Transparency International Zambia	Caritas Zambia
Zambia Land Alliance	Jesuit Center for Theological Reflection

108. Cf. Barbara K. Bucholtz, *Doing Well by Doing Good and Vice Versa: Self-Sustaining NGO/Nonprofit Organizations*, 17 J.L. & POL'Y 403, 405-07 (2009) (describing society's three major sectors, each with its own merits and deficiencies). Bucholtz lists the three main sectors as the public, private, and non-profit: governments usually have legitimacy and power, but they are simultaneously less responsive and flexible to address problems; the private and non-profit sectors are less powerful and do not command support of the whole nation yet can react quickly and flexibly to societal problems. *Id.* Businesses and non-profits are distinguished (somewhat obviously) on the basis that businesses will not take on money-losing projects, leaving non-profits to conquer problems that the government rejects as unpopular (or is too slow to attack) and businesses see as unprofitable—it is the “sector of last resort.” *Id.*

B. *Entrepreneurship in Zambia: Economic Background*

To understand what encouraging entrepreneurship looks like in the Zambian context, it is first important to get a sense of Zambia's economic history and the current business climate. The next two sections will seek to flesh out these important background topics.¹⁰⁹

1. An (Exceedingly) Brief Economic History of Zambia

To understand Zambia's economic history, one must begin with its geography. Though landlocked, Zambia has abundant natural resources, including deposits of precious metals and minerals such as copper, cobalt, zinc, lead, coal, emeralds, silver, and gold.¹¹⁰ One might conclude that these resources would set the nation up for economic success, but Zambia's story has not yet been a full triumph.

Formerly a British colony known as Northern Rhodesia, Zambia became independent in 1964.¹¹¹ Attempting to follow in the communist footsteps of the Soviet Union, many industries were nationalized and the country became a single-party state.¹¹² This history connects to Zambia's current lack of entrepreneurship. As one commentator noted:

“[T]he inability . . . of entrepreneurs in . . . African countries to engage in wealth-creating activities can be linked to . . . weak institutions that were adopted at independence [These institutions] did not foster and promote entrepreneurial activities. . . . Additionally, they failed to adequately constrain civil servants and politicians, and as a result, these economies were pervaded by corruption, financial malfeasance, [and] rent seeking. . . .”¹¹³

Zambia continued to struggle economically during the 1980s and early 1990s due to depressed copper prices—its main export—as well as

109. The political, religious, and social factors that might affect entrepreneurship in Zambia are discussed in Part V, *infra*.

110. *Africa: Zambia, The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/za.html> (last visited Mar. 15, 2018) [hereinafter *World Factbook*].

111. *Id.*

112. *Zambia Profile – Timeline*, BBC NEWS (Apr. 28, 2016), <http://www.bbc.com/news/world-africa-14113084>.

113. Mbaku, *supra* note 82, at 1032 (internal quotation marks omitted).

a lengthy drought and financial mismanagement.¹¹⁴

After the fall of Soviet Union, Zambia moved away from communist ideologies, and a structural adjustment program was instituted by the IMF and the World Bank with the goal of liberalizing the economy and removing restrictions on trade.¹¹⁵ These reforms led to Zambia taking on of what can only be characterized as absurd amounts of debt to finance national budget deficits.¹¹⁶ The government then tried embarking on a program of austerity, which exacerbated widespread poverty as services were cut.¹¹⁷

In 2006, through a coordinated push by civil society that culminated in negotiations between the key ministers and intergovernmental organizations, the World Bank forgave \$3.8 billion dollars of Zambia's \$7.1 billion dollar debt.¹¹⁸ Although this stabilized the economic picture to a degree, Zambia recently reignited fears of over-indebtedness by issuing several sovereign bonds.¹¹⁹ It remains one of the poorest countries in the world, with a GDP per capita ranking 178th in the world, placing it ahead of some Sub-Saharan African countries, though still near the very bottom of the pyramid.¹²⁰

2. Current Economic Climate

Unfortunately, Zambia's current economic climate as described by interviewees does not differ significantly from its past. Substantial barriers exist in financing, skills development, and regulation. These barriers create a less-than ideal business climate, which in general hampers entrepreneurs from succeeding, although BongoHive hopes to break that cycle.

114. *World Factbook*, *supra* note 110.

115. Interview with Eugene Kabilika, Executive Director, Caritas Zambia, in Lusaka, Zambia (Jan. 17, 2017) [hereinafter Kabilika Interview]; International Monetary Fund, *Zambia: Enhanced Structural Adjustment Facility Policy Framework Paper, 1999-2001* (Mar. 10, 1999).

116. At the end of 1998, the net present value of debt was 510% of exports according to one estimate. *Id.*

117. Interview with Faith Adwoko Kalondawanga, Programme Manager, Social and Economic Development Programme, Jesuit Center for Theological Reflection, in Lusaka, Zambia (Jan. 19, 2017) [hereinafter Kalondawanga Interview].

118. *Id.*; BBC, *supra* note 112; MUSONDA KABINGA, JESUIT CENTRE FOR THEOLOGICAL REFLECTION POLICY BRIEF: ENHANCING TAX REVENUE COLLECTION IN ZAMBIA: PROMOTING SUSTAINABLE DEVELOPMENT AND ERADICATING POVERTY 10 (2015).

119. *World Factbook*, *supra* note 110.

120. *Country Comparison: GDP – Per Capita (PPP)*, in *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> (last visited Mar. 15, 2018).

From conversations with entrepreneurs and those in the small business community, financing appeared to be the number one concern. Foreigners invest heavily in agriculture, copper, and other mining sectors while displaying little interest in new ventures in other industries, sticking with the sectors that have been successful at least at times in the past.¹²¹ Well-off Zambians who could be potential investors are often unfamiliar with the workings of venture capital unless they have lived outside of the country, and even then, they are often secretive about their wealth to avoid being targeted by corrupt officials or ordinary criminals.¹²² And though there are some government programs designed to help small businesses, these often come with strict requirements; furthermore, several entrepreneurs were distrustful of government programs because they often seem only to support those with connections.¹²³ Borrowing money is another option. However, the economy is weak on a macro-level, which means that banks are hesitant to lend to enterprises that could be risky. As such, interest rates are extremely high: for small businesses, the rate most often quoted was 35%.¹²⁴ In the end, it is only “family, friends, and fools” who will invest, as one interviewee put it.¹²⁵

Part of this reluctance to invest is justified. Small businesses often lack sufficient collateral to secure loans and audited financial statements to show fiscal responsibility; without these safeguards, local, national, and international investors cannot perform the due diligence required to feel comfortable parting with their money.¹²⁶ One entrepreneur pointed her prior work experience in the industry as the sole reason that she was able to garner support.¹²⁷

The importance of prior expertise leads to a second issue: skills development is a crucial economic component that is largely missing in Zambia. There are limited opportunities to gain important management and entrepreneurial skills. Of these trainings and educational sessions, many are prohibitively expensive for those on the lower

121. Interview with Njavwa Mutambo, Founder and Chief Executive Officer, Musanga Logistics, in Lusaka, Zambia (Jan. 15, 2017) [hereinafter Mutambo Interview].

122. *Id.*; Interview with Lukonga Lindunda, Co-Founder & Executive Director, BongoHive, in Lusaka, Zambia (Jan. 11, 2017) [hereinafter Lindunda Interview].

123. Lindunda Interview, *supra* note 122; Mutambo Interview, *supra* note 121.

124. Interview with Rachel Njobvu, Founder & CEO, Modern Refinement, Ltd., in Lusaka, Zambia (Jan. 18, 2017) [hereinafter Njobvu Interview]; Mutambo Interview, *supra* note 121; Lindunda Interview, *supra* note 122.

125. *Id.*

126. Lindunda Interview, *supra* note 122.

127. Njobvu Interview, *supra* note 124.

economic rungs of society—especially for youth, who have the hardest time finding employment.¹²⁸ Due to the informal nature of the economy, people can easily begin selling goods or services, but they often have no idea how to run a business.¹²⁹

Although the government has not done much to improve human capital, many interviewees did believe that the government had taken some steps to make corporate regulations generally beneficial. Companies are easy to set up and can even be registered online;¹³⁰ the entire process can be completed within forty-eight hours, according to one participant.¹³¹ On the other hand, though, interviewees also perceived that the regulatory environment was preferential for foreign investors rather than domestic companies.¹³² This contrasts sharply with countries like Kenya, where the government’s active encouragement of entrepreneurs (and in particular technology entrepreneurs) has gained broad recognition.¹³³

Along these lines, participants pointed to another factor hampering entrepreneurship: a colonial mentality. Many of Zambia’s leaders, including the current president, were born when Zambia was still a British territory, and several interviewees thought that this created a sense of complacency and contributed to a hands-off, passive leadership style.¹³⁴ “If someone drives the agenda, things change,” one participant stated—but locals are not driving the agenda.¹³⁵ Instead, an

128. Interview with Kanenga Haggai, Lecturer, Department of Development Studies, School of Humanities and Social Sciences, University of Zambia, in Lusaka, Zambia (Jan. 16, 2017) [hereinafter Haggai Interview].

129. Njobvu Interview, *supra* note 124.

130. Mutambo Interview, *supra* note 121.

131. Interview with James Bwalya, Lecturer, Bus. Studies Dep’t, Evelyn Hone Coll. of Applied Arts & Commerce, in Lusaka, Zambia (Jan. 10, 2017) [hereinafter Bwalya Interview].

132. Mutambo Interview, *supra* note 121; Njobvu Interview, *supra* note 124; Haggai Interview, *supra* note 128.

133. Lindunda Interview, *supra* note 122. See also Map Design Unit of the World Bank, *Tech Hubs and Incubators in Africa*, International Bank for Reconstruction and Development #42460 (Aug. 2016) <http://pubdocs.worldbank.org/en/765531472059967675/AFC42460-081716.pdf> (noting numerous entrepreneurship hubs in Kenya); David Pilling, *Kenya’s Start to Roam Silicon Savannah*, FINANCIAL TIMES, Apr. 27, 2016, <https://www.ft.com/content/1cda231c-0bdb-11e6-9456-444ab5211a2f>; *Silicon Savannah: Kenya’s Billion-Dollar Tech Bet*, BLOOMBERG, Apr. 18, 2016, <https://www.bloomberg.com/api/embed/iframe?id=~nP8AsURSCSAbVZWrN~ufA>. The Zambian government does have an Economic Empowerment Commission that targets small enterprises in need of funding; founders that write a viable business plan can get access to small loans at favorable rates. Bwalya Interview, *supra* note 131. But the rate of those that fail to repay has been high, so the program may not be successful in the long run. *Id.*

134. Bwalya Interview, *supra* note 131; Lindunda Interview, *supra* note 122.

135. Lindunda Interview, *supra* note 122.

overdependence on outsiders prevails.¹³⁶ However, there is hope that the next generation of Zambians could turn things around once they come to power.¹³⁷

3. Human Rights Issues in Zambia: BongoHive

While the next generation may not have come to power politically, they are making strides to improve the current climate for entrepreneurs and small businesses. To this end, BongoHive, a start-up incubator based in Lusaka, was founded in 2011. In the words of one of its founders, BongoHive's goal is to create "productive chaos" by building a community of individuals who are interested in learning more about entrepreneurship and business skills.¹³⁸

To that end, BongoHive has created a multi-level start-up program. For those just looking to acquire specific skills, "Masterclasses" are offered on topics like financial statements, marketing, and effective communication.¹³⁹ These are offered on the weekends or at other times when small business owners can participate.¹⁴⁰ Entrepreneurs with a new business idea that they would like to get off the ground can participate in a three week intensive program called "Discover," in which participants test and refine their ideas by surveying potential customers and seeking feedback.¹⁴¹ Discover ends with a pitch day, and the companies with the best pitches are invited to participate in "Launch," a three-month program that provides extensive accounting, legal, and mentorship support.¹⁴² Once again, the program ends with a pitch day, and companies with top pitches are admitted to BongoHive's incubator, called "Thrive," in which they are given office space and connected to potential investors.¹⁴³ Start-ups can spend up to two years in Thrive,

136. Bwalya Interview, *supra* note 131.

137. *Id.*

138. *Id.* See also *About*, BONGOHIVE, <http://bongohive.co.zm/about/> (last visited Apr. 13, 2018).

139. Lindunda Interview, *supra* note 122. See also BONGOHIVE, *supra* note 138.

140. Lindunda Interview, *supra* note 122. See also *BongoHive Masterclasses: Price Change Notice*, BONGOHIVE, <https://bongohive.co.zm/bongohive-masterclasses-price-change-notice/> (Aug. 21, 2017) (detailing costs to take Masterclasses).

141. Interview with Emma Christie-Miller, Pre-Accelerator & Innovation Lead, BongoHive, in Lusaka, Zambia (Jan. 11, 2017) (speaking to a BongoHive "Discover" Session); Lindunda Interview, *supra* note 122.

142. Lindunda Interview, *supra* note 122.

143. Lindunda Interview, *supra* note 122.

honing their products and expanding in Zambia and throughout Africa.¹⁴⁴

BongoHive is also working to start a venture capital investment fund in order to pool money from various investors, because no such fund currently exists in Zambia.¹⁴⁵ First, though, it is crucial to have well-managed start-ups poised for growth for investors to fund, and in order to have new ventures that are ready to succeed, entrepreneurs need the skills and training that BongoHive teaches.¹⁴⁶

BongoHive provides a model of what encouraging entrepreneurship looks like in the Zambian context. Referring back to the framework laid out in Part III.A., the tiered programs BongoHive runs follow best practices in the start-up industry. In addition, BongoHive teaches a philosophy of social entrepreneurship, encouraging the founders it mentors to think beyond the bottom line. Because it is quite new, one cannot measure or state the degree to which these entrepreneurial programs have enriched the business climate in Zambia. But, as the next sections will show, the values underlying its entrepreneurial framework—personal autonomy, creativity and innovation, and tolerance for risk and uncertainty—are more than consistent with human rights. As explained previously, these values are the same as the fundamental principles on which human rights law is based. Thus, BongoHive's efforts, though focused on improving the business climate for small ventures, are also supporting human rights in Zambia.

C. *Human Rights Issues in Zambia and the Entrepreneurial Response*

This section of the Note will delve into specific human rights issues present in Zambia, as related by interviewees. For each issue, the nature of the problem will be described, along with any public sector or non-profit responses. Next, the specific human rights implicated will be discussed, as well as the value that underlies these rights. Finally, examples from BongoHive will show how its entrepreneurship activities reinforce that value and thus support human rights.

144. *Startup Programmes*, BONGO HIVE, <https://bongohive.co.zm/startup-programmes/> (last visited Apr. 13, 2018). *See also* Agbeibor, *supra* note 19, at 39 (note also how these stages mirror the framework described).

145. Lindunda Interview, *supra* note 122.

146. *Id.*

1. Corruption

a. *Issue*

Though corruption is often thought of as purely a human rights issue, it is also “a very serious obstacle to entrepreneurship. . . .”¹⁴⁷ It “alters economic incentives, such that talented individuals . . . tend to gravitate towards positions that allow for rent-seeking, rather than entrepreneurship.”¹⁴⁸ In Africa, state actors, like government officials and elected leaders, are to blame for a substantial share of the corruption that takes place.¹⁴⁹

Interviewees found these trends to be true in Zambia, though “nowhere is as bad as Nigeria,” according to one participant.¹⁵⁰ Discussions of corruption mostly took the form of stories: an entrepreneur unable to get a required license for six months because he refused to pay a bribe;¹⁵¹ constituents paid to vote;¹⁵² and perhaps most shockingly, a friend’s father with thousands of dollars in cash stashed in a bag in the trunk of his car, en route to buy off an official.¹⁵³

Due to corruption, government connections are necessary to be successful, and small businesses often lack the influence that foreign investors have—especially when foreign investors are willing to grease palms to get their projects approved.¹⁵⁴ Often, these projects procured by corruption harm local communities because the government has been paid to turn a blind eye. Even the inner workings of the government are corrupt: according to one interviewee familiar with the subject, the 2015 Zambian Auditor-General’s Report showed high levels of expenses marked “unvouched-for expenditures,” showing that many payments government agencies made were likely to have been fraudulent.¹⁵⁵ In all areas of life, corruption has become normal.¹⁵⁶ As one

147. Mbaku, *supra* note 82, at 994.

148. Cecily Rose, *The Limitations of a Human Rights Approach to Corruption*, 65 INT’L & COMP. L. Q. 405, 434-35 (2016).

149. Mbaku, *supra* note 82, at 1050.

150. Mutambo Interview, *supra* note 121.

151. *Id.*

152. Kabilika Interview, *supra* note 115.

153. Mutambo Interview, *supra* note 121.

154. Njobvu Interview, *supra* note 124; Haggai Interview, *supra* note 128.

155. Kalondawanga Interview, *supra* note 117.

156. *See, e.g.*, TRANSPARENCY INTERNATIONAL ZAMBIA & ANTI-CORRUPTION COMMISSION, 2014 ZAMBIA BRIBE PAYERS INDEX (2014). Out of a sample of nearly 2,000 respondents from across the nation, almost 60% had been asked to pay a bribe in the past year, and of those, nearly 65% admitted to paying the bribe, negotiating the bribe amount downwards and then paying, or paying the bribe in kind through bush meat, sexual favors, and/or agricultural products. *Id.* at 3,

participant noted, “[W]hen [an] honest person takes office, it is hard because [corruption] is part of the system.”¹⁵⁷

b. *Public Sector and Non-Profit Responses*

Several organizations have tailored programs that seek to combat corruption. First and foremost among them is Transparency International Zambia—the Zambian chapter of Transparency International, which is an international civil society movement “to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society.”¹⁵⁸ Transparency International Zambia runs the Advocacy and Legal Advice Center (ALAC), which offers a forum for ordinary citizens to report corruption and receive free legal advice.¹⁵⁹

In addition, Transparency International Zambia produces data-driven reports about corruption and then acts based on the findings of these reports. For example, in Transparency International Zambia’s most recent survey, participants reported that (out of twenty-two categories of public officials) traffic police most often demanded bribes.¹⁶⁰ To combat this, Transparency International Zambia put together an easy-to-read pamphlet that outlines basic traffic laws and the respective fines for breaking them.¹⁶¹ This way, Zambians could wield the power of information should they be confronted by a crooked officer trying to charge an exorbitant fine or foist a charge on them that does not exist.

Transparency International Zambia also works with Caritas, a Catholic social justice organization, to provide corruption sensitization

13. The survey also indicates that bribes are more often demanded in rural areas and that men and women tend to respond to requests for bribes in largely a similar fashion. *Id.* at 12, 14. In addition, most bribes paid (more than 75%) were less than the equivalent of \$10 (USD). *Id.* at 21.

157. Haggai Interview, *supra* note 128.

158. *Our Organization – Mission, Vision and Values*, TRANSPARENCY INTERNATIONAL (Oct. 16, 2011), https://www.transparency.org/whowere/organisation/mission_vision_and_values/0/.

159. Interview with Charles Emmanuel Chulu, Information and Communications Officer, Transparency International Zambia, in Lusaka, Zambia (Jan. 17, 2017) [hereinafter Chulu Interview]. Although there is a government-run Anti-Corruption Commission, whistleblowers are often afraid to go to it because they are reporting corruption taking place within the government, albeit in another department or ministry. *Id.*

160. *See, e.g.*, 2014 ZAMBIA BRIBE PAYERS INDEX, *supra* note 156, at 10-11 (stating that in both 2012 and 2014, Zambian police—and in particular traffic police—were most likely to demand a bribe). In addition, 50% of survey participants listed “avoiding delays” as the reason for paying the bribe, which corresponds well with the idea that traffic police might demand bribes, causing hold-up. *Id.* at 17.

161. TRANSPARENCY INTERNATIONAL ZAMBIA & ROAD TRANSIT AND SAFETY AUTHORITY, PROMOTING TRANSPARENCY IN THE ROAD TRANSIT AND SAFETY AGENCY OPERATIONS AND SERVICES (2014).

education.¹⁶² Because over 10% of survey respondents paid bribes because they thought it was a “normal trend,”¹⁶³ education is needed simply to inform Zambians about what corruption is and how it can be reduced.¹⁶⁴ In a slightly different approach, the Jesuit Center for Theological Reflection, a Catholic social justice organization, looks at the budget cycle and the auditor general’s report to scour for instances of mismanagement and partners with local communities to make sure that government funds are actually being used as they are claimed to be.¹⁶⁵

c. Human Rights Implicated and Their Foundational Value

Corruption implicates at least two human rights mentioned previously: the right to property and the right to freedom of movement. As seen in the previous examples, corruption involves officials or others in positions of power illegally taking property¹⁶⁶ that is rightfully owned by an individual, thus depriving that individual of a basic right. Often, the payments are demanded in response to individuals exercising their right to freedom of movement—especially because it is most often traffic police that demand bribes.¹⁶⁷

The foundational value that underlies both of these rights is personal autonomy. Individuals should be able to control those things that they possess and come and go as they might like, so long as they are respecting others and the law. The very fact that corruption is so widespread and prevalent shows that the value of personal autonomy is not respected to the degree that it should be.

d. How BongoHive Supports that Value

BongoHive’s entrepreneurship programs support the value of personal autonomy in several ways. First, the educational trainings place a strong focus on the individual. Participants are instructed to come up with their own business plans and are held accountable for taking the proper steps to implement those plans. In one session, entrepreneurs were directed to go out and interview people who they thought might be potential customers one-on-one. Furthermore, participants are taught to persevere under pressure and believe in their business plans.

162. Chulu Interview, *supra* note 159; Kabilika Interview, *supra* note 115.

163. 2014 ZAMBIA BRIBE PAYERS INDEX, *supra* note 156, at 17.

164. Kabilika Interview, *supra* note 115.

165. Kalondawanga Interview, *supra* note 117.

166. 2014 ZAMBIA BRIBE PAYERS INDEX, *supra* note 156, at 3.

167. *Id.*

When told “no” by one investor, entrepreneurs learn to continue asking and find others who might buy into their ideas.

By creating an environment that prizes personal autonomy in the above ways, BongoHive births entrepreneurs that are willing to go to great lengths to achieve their dreams, as well as a willingness to challenge and overcome obstacles in their paths. Because corruption is an obstacle faced by entrepreneurs, this emphasis on personal autonomy will make those schooled in entrepreneurship more willing to stand up to corruption when they see it and—perhaps more importantly—inspire others to do so as well. Instead of paying a bribe to get her business off the ground, an entrepreneur who understands a request for a bribe as an affront to her personal autonomy could feel more empowered to defy the corrupt official, because she knows the value of personal autonomy and, therefore, has greater motivation to resist its limitation. In this way, BongoHive’s entrepreneurial activities will support and encourage the development of the rights to property and freedom of movement in Zambia.

2. A Copper-Dependent Economy

a. *Issue*

Another issue that multiple interviewees considered was Zambia’s dependency on copper. Several participants noted that 60% of Zambia’s GDP comes from the copper industry.¹⁶⁸ Although having an abundance of natural resources can be beneficial for a country, it also has negative effects. When copper prices decrease sharply, the country’s currency loses demand, so its value collapses, making imports extremely expensive; because Zambia produces little other than copper and maize, many necessities must be imported.¹⁶⁹ This happened in the 1970s and again in the past decade.¹⁷⁰

From shortly after independence onwards, the government attempted to diversify the economy away from copper; instead, it tried to support agriculture and tourism.¹⁷¹ Both of these sectors are crucial to the economy: agriculture, because it helps to ensure food stability, and tourism,

168. Bwalya Interview, *supra* note 131; Mutambo Interview, *supra* note 121 (one participant claimed that copper made up 95% of exports, although according to the Observatory of Economic Complexity, this number is actually just shy of 80%); *Zambia, THE ECONOMIC COMPLEXITY OBSERVATORY: AN ANALYTICAL TOOL FOR UNDERSTANDING THE DYNAMICS OF ECONOMIC DEVELOPMENT* (2016).

169. Haggai Interview, *supra* note 128.

170. *Id.*; Mutambo Interview, *supra* note 121.

171. Mutambo Interview, *supra* note 121; Bwalya Interview, *supra* note 131.

because it brings in foreign currency which can then be used for other purposes.¹⁷² Although there is a fair amount of agriculture already in Zambia, much of it is subsistence farming.¹⁷³ This leaves little product for export or creating secondary goods, many of which still must be imported—as one interviewee put it, “It’s crazy that we create so much maize yet import cornflakes.”¹⁷⁴

With these pushes for alternative economic centers unsuccessful, copper and other extractive industries continue to grow and expand, and related problems persist. One participant mentioned Solwezi, once a rural, backwater town in the North-Western Province. Now a mining center, expatriates have moved in, and local people are being displaced, despite the fact that the government promised hundreds of jobs for locals.¹⁷⁵ Tying back to the previous section on corruption, the Zambian government has cut all sorts of sweetheart deals—both on the books and off the books¹⁷⁶—with mining companies from other countries like Switzerland and the United States; these deals allow corporations to pay little to no tax.¹⁷⁷ Losing this tax revenue is disastrous for the Zambian people because it means less support for programs designed to alleviate poverty, improve healthcare, and encourage education. In turn, Zambia continues to borrow money to fund these programs, increasing the national debt and macroeconomic instability.

b. *Public Sector and Non-Profit Responses*

The response to this issue has not been as strong as the coalitions formed against corruption, in part because many of the dealings in extractive industries happen behind closed doors. The first step, then, is to increase transparency. To accomplish this goal, several civil society organizations have joined together to create a Zambian chapter of the Publish What You Pay network.¹⁷⁸ This group advocates for both mining companies and the government to increase disclosure and to be more explicit about the resources they receive; in addition, group

172. Haggai Interview, *supra* note 128.

173. Kalondawanga Interview, *supra* note 117.

174. Mutambo Interview, *supra* note 121.

175. Kalondawanga Interview, *supra* note 117.

176. As one interviewee stated, “It’s always interesting when you see copper prices go up because the government has new cars.” Mutambo Interview, *supra* note 121.

177. Kabilika Interview, *supra* note 115; Lindunda Interview, *supra* note 122; *see also* Christoffer Guldbrandsen, *Stealing Africa – Why Poverty?*, THE WHY (Jan. 5, 2013), <https://www.youtube.com/watch?v=WNYemuiAOFU> (documentary on sweetheart deals).

178. *Zambia*, PUBLISH WHAT YOU PAY (2009), <http://www.publishwhatyoupay.org/members/zambia/>.

members lobby the government to require foreign corporations pay their fair share of taxes.¹⁷⁹ However, as one interviewee put it, the problem of an overdependence on copper calls for a “both/and” solution: the sector needs to become both more accountable *and* less important overall.¹⁸⁰ And, as the next sub-sections will describe, one way that the copper sector can become less significant overall is through entrepreneurs starting businesses in other industries.

c. Human Rights Implicated and Their Foundational Value

Although freedom of opinion and expression may not be limited in the way that they are in other countries, it is clear that outside-the-box thinking is needed. Encouraging freedom of thought is crucial to spur innovation in sectors outside of the copper industry. In addition, the right to education is implicated, because Zambians must be taught skills that are transferrable to other fields of employment.

Creativity is a fundamental value that underlies both the right to education and the rights to freedom of speech and expression. As described previously, freedom of speech embeds the idea of something new to say, or, at the very least, enables others to innovate based on one’s ideas. Higher education, too, is centered on the concept of learning through dialogue and giving students the freedom to craft fresh answers to old questions. As such, both freedom of expression and the right to education require creativity and innovation to be present. This creativity can lead entrepreneurs to explore new sectors for business activities, rather than repeatedly looking to copper.

d. How BongoHive Supports that Value

At BongoHive, no idea is a bad idea—just one that might need some tweaking. Frequent brainstorming sessions and collaboration are prized, and entrepreneurs are encouraged to come up with new business ideas that do not fit the mold. Rather than imitating others, creative concepts for ventures are prized, because these are the ones that will succeed. In addition to promoting creativity, BongoHive’s educational programs enable small business owners to learn about ways to expand their businesses and reach new customers, as well as develop skills that will be valuable in multiple industries. With a better educated workforce that is keen to develop creative new businesses

179. Haggai Interview, *supra* note 128.

180. *Id.*

opportunities, Zambia can move away from copper dependency and become a well-diversified and more stable economy.

For example, two start-ups currently in the incubator focus on logistics and real estate,¹⁸¹ respectively. Both have pan-African aspirations, and to achieve this vision, these enterprises will need to hire many more workers. As both companies are based in Zambia, they could potentially provide employment to hundreds of Zambians in their quest to grow into sizable companies. These jobs would be in the real estate and logistics sectors—two industries completely unrelated to copper extraction.

3. Chinese and Other Foreign Investments

a. Issue

A third issue that has had negative repercussions for the development of human rights in Zambia is the prevalence of foreign investment. In particular, Chinese companies have established a strong presence in Zambia.¹⁸² Survey participants had mixed views on the topic. On the one hand, the Chinese provide competition to Zambian businesses, at least in theory raising the standard of quality that both must provide.¹⁸³ The influx of capital is also positive in that there is more money moving around in Zambia and thus a larger “pie” in which Zambians can hopefully share.¹⁸⁴ In addition, one participant thought that Chinese businessmen were more open to training Zambians than those from Europe and America.¹⁸⁵

Most other participants had strongly opposing views, indicating that Chinese investment was different than that from other countries and was more detrimental. According to these interviewees, the Chinese set up their own separate mini-economies within Zambia: they start and exclusively patronize Chinese-owned restaurants, banks, and retail stores and bring in and hire Chinese laborers to do nearly all tasks,

181. MUSANGA, <https://web.archive.org/web/20170607125335/https://musangalogistics.com/>; MODERN REFINEMENT, <http://modernrefinement.co.zm/> (last visited Mar. 15, 2018).

182. Haggai Interview, *supra* note 128. Most interviewees believed China to be the most dominant foreign investor. *Id.* Professor Haggai disputed this, saying that Chinese investment in Zambia compared to other countries can still be said to be minimal; although, because it is rapidly increasing, it has become and will be even more significant in coming decades. *Id.* See also Kanenga Haggai, *Understanding Sino-Zambia Trade Relations: Trends, Determinants and Policy Implications*, 2 WORLD J. SOC. SCI. & HUMAN. 52 (2016); CHILUFYA CHILESHE, CHINESE DEBT, AID AND TRADE: OPPORTUNITY OR THREAT FOR ZAMBIA? (2010).

183. Njobvu Interview, *supra* note 124.

184. Haggai Interview, *supra* note 128.

185. Bwalya Interview, *supra* note 131.

from the most menial jobs to management-level positions.¹⁸⁶ This approach to investment blocks Zambians from what could be prime opportunities. As one interviewee put it, “They’re eating us for breakfast.”¹⁸⁷

At the same time, these participants did not seem to harbor much animus against the Chinese as a people, but instead pointed to government action—and inaction—as the root of the problem.¹⁸⁸ Unlike the United States, U.K., and other Western countries, China does not impose policy requirements and other such “hoops” for African countries to jump through before supporting investment; in this way, China offers an alternative: they are just in the business of making money, not supporting political or social change.¹⁸⁹ The Zambian and Chinese governments have also had a long history of close cooperation. After its independence, Zambia was the first country in Africa to create formal ties with China; China, in turn, has promoted Zambia among its citizens as a safe country in which to invest.¹⁹⁰ Such cooperation between China and Zambia has led to Chinese companies receiving preferential treatment, especially for government contracts for infrastructure development.¹⁹¹ So, as one interviewee put it, “[i]f the government is taking a cut and doesn’t want to spend for a quality product, we can’t blame the Chinese for not providing quality.”¹⁹²

China is not the only foreign nation to seek opportunities in Zambia. European and U.S. companies also engage in a fair amount of investment, as do South African firms, whose presence has especially been felt in the retail and consumer goods sectors.¹⁹³ Ultimately, as one participant pointed out, the regulatory environment of the host country—in this case, Zambia—is crucial to preventing foreign investors from

186. Mutambo Interview, *supra* note 121; Njobvu Interview, *supra* note 124; Lindunda Interview, *supra* note 122; Kalondawanga Interview, *supra* note 117. However, as one interviewee pointed out, Zambians may lack the skills and abilities to fully participate in these ventures and take advantage of the opportunities that are available. Bwalya Interview, *supra* note 131.

187. Mutambo Interview, *supra* note 121.

188. Njobvu Interview, *supra* note 124 (“Of all the investors, [the Chinese] are most greedy But you can’t blame them because the government should make sure that doesn’t happen.”).

189. Mutambo Interview, *supra* note 121; Lindunda Interview, *supra* note 122. See generally, e.g., Howard W. French, *China in Africa: All Trade, With No Political Baggage*, N.Y. TIMES (Aug. 8, 2004), <http://www.nytimes.com/2004/08/08/world/china-in-africa-all-trade-with-no-political-baggage.html>.

190. Haggai Interview, *supra* note 128.

191. Kalondawanga Interview, *supra* note 117.

192. *Id.*

193. Haggai Interview, *supra* note 128; Kalondawanga Interview, *supra* note 117.

overrunning a nation, and, as often happens in the process, abusing human rights.¹⁹⁴

In particular, foreign investment that is not properly monitored can squeeze out small players. With many outsiders focusing on agribusiness in Zambia, subsistence farmers are pushed out.¹⁹⁵ According to some participants, the government says it is supporting small farmers, but it is actually facilitating large-scale farming.¹⁹⁶ In trying to increase the food supply, the government has been selling supposedly unoccupied land to foreign agribusinesses; however, this land is actually owned by subsistence farmers and is only lying fallow at the time.¹⁹⁷ This, of course, spells doom for the small farmers, because it leads to over-grazing and over-cultivation of the small area of land that they have left.¹⁹⁸

Taking land from those who grow food on it to survive is unlikely to achieve the goal of food security. Furthermore, small farmers' livelihoods are pressed by climate change and other natural disasters. For example, the government has encouraged a policy of monoculture, with maize as the most commonly planted crop,¹⁹⁹ but both drought and an army worm infestation have shown this strategy susceptible to disruption.²⁰⁰

194. Haggai Interview, *supra* note 128.

195. See Chickankata discussion *supra* Part II.

196. Kabilika Interview, *supra* note 115; Siachitema Interview, *supra* note 10; see also Claire Provost et al., *G8 New Alliance Condemned as New Wave of Colonialism in Africa*, THE GUARDIAN, Feb. 18, 2014, <https://www.theguardian.com/global-development/2014/feb/18/g8-new-alliance-condemned-new-colonialism>.

197. Siachitema Interview, *supra* note 10. According to Brigadier Siachitema, small farmers use land in three ways: residential land (for houses and living spaces), farming land, and grazing land. Both farming land and grazing land need periods of non-use to allow the soil to regain nutrients and for grass to regrow. In these situations, it will appear that farmers are only using a small portion of the land, when in fact they need much more acreage than their house, fields, and animals visibly occupy.

198. Wealth is not stored in money for small subsistence farmers but in animals, especially cattle. Cattle are sold when large expenses must be paid. Thus, taking away grazing land, which eventually leads to weak or sick cattle and even cattle death, fundamentally degrades key assets for subsistence farmers. In addition, taking land also disrupts the social structures of these communities, as some unused land is part of inheritances. Often, a father will give a son a plot of currently unoccupied land for his own farm and home when he gets married. *Id.*

199. Kalondawanga Interview, *supra* note 117.

200. *Id.*

b. *Public Sector and Non-Profit Responses*

Several programs have been put in place to address some of the negative effects of foreign investment, and in particular, foreign agribusiness cutting into the means of support for small-scale farmers. Zambia Land Alliance was founded in 1997 to address the land rights issues discussed above, and Caritas, a Catholic social justice organization, has a livelihood and climate change program that educates and promotes sustainable agricultural techniques in order for subsistence farmers to make their land more productive and to prepare for natural disasters of all kinds.²⁰¹ The Jesuit Center for Theological Reflection, a Catholic social justice organization, created a Basic Needs Basket, which measures essential goods and supplies that farmers need to survive, thus providing an important informational benchmark.²⁰²

The government also has several programs in place, including a farmer input support program that subsidizes the cost of maize seed and fertilizer, as well as a maize buying program for small farmers in which the government agrees to purchase some of their maize.²⁰³ This maize is then sold to nearby countries like Congo, Malawi, and Zimbabwe or kept as a strategic reserve in case of drought.²⁰⁴ However, because the Zambian government has long-term contracts with these countries that require Zambia to supply set amounts of maize, the government sometimes forces small farmers to sell all of their crop to the government, leaving them little to live on.²⁰⁵ While these programs seem to be doing some good,²⁰⁶ there is still much room for improvement—and further entrepreneurial thinking could be the answer. On the whole, though, the government’s focus on large-scale agribusiness and promoting foreign investment ultimately may be hampering development in Zambia.²⁰⁷

201. Kabilika Interview, *supra* note 115.

202. Kalondawanga Interview, *supra* note 117.

203. *Id.*

204. *Id.*

205. *Id.*

206. Nicole M. Mason et al., *A Review of Zambia’s Agricultural Input Subsidy Programs: Targeting, Impacts, and the Way Forward* 23 (Indaba Agricultural Policy Research Institute (IAPRI) Working Paper No. 77, 2013), <https://ageconsearch.umn.edu/bitstream/162438/2/wp77.pdf> (noting that the benefits of the program have been outweighed by the costs).

207. *See, e.g.*, Jan Schupbach, *Foreign Direct Investment in Agriculture: the Impact of Outgrower Schemes and Large-Scale Farm Employment on Economic Well-Being in Zambia* (2014) (unpublished Ph.D. dissertation, ETH Zurich) (on file with the ETH Zurich Research Collection) (asserting that small-scale farmers in Zambia that were connected to markets for sale of goods became better off than those who were employees on large-scale estates).

c. Human Rights Implicated and Their Foundational Value

Zambians' right to work is threatened by the overpowering wave of foreign investment. Not only are people unable to provide for themselves, but those who can get jobs are faced with unsafe working conditions, because the Zambian government has allowed Chinese firms to operate with minimal regulation. In addition, the cultural rights of Zambian small-scale farmers are at stake. As the example of Chickankata illustrated, it is clear that in some places, foreign investment is impinging upon a way of life and the cultural values associated with it.

As mentioned previously, the right to work is—in some sense—based on individuals willing to take risks to start businesses, because once these enterprises grow and develop, they can hire others as employees. Thus, tolerance for risk and ambiguity is a critical value that supports the right to work. Furthermore, if this tolerance for risk and ambiguity is fostered among those in a specific cultural context, they can create businesses that are sensitive to and compatible with the culture in which they are developed.

d. How BongoHive Supports that Value

BongoHive develops small business owners' appetites for calculated risk in several ways. First, it creates a positive environment full of a community of people who are supportive. With everyone looking out for each other, the hope is that entrepreneurs feel comfortable to pursue their business ideas. Second, surrounding oneself with other risk-takers normalizes behavior that might otherwise be questioned by those who prefer greater levels of stability. Finally, BongoHive provides opportunities for individuals to practice risk-taking by enabling them to experience and navigate unfamiliar situations. One entrepreneur had the opportunity to fly internationally for the first time to pitch his business at a start-up conference in Helsinki, Finland.²⁰⁸ Though nervous about the travel, the presentation led to investors from the U.K. funding his company—the perfect example of a calculated risk paying off. This has enabled him to hire more drivers and expand his logistics company.²⁰⁹

Moreover, many of the entrepreneurs at BongoHive originally come from agricultural communities far from Lusaka. These founders are inherently in tune with the wants, needs, and desires of those in the

208. See *Musanga at Slush 2016* ;, MUSANGA LOGISTICS (Nov. 27, 2016), <https://www.youtube.com/watch?v=5F74wxPXd3E> (a video of the pitch).

209. See *About*, MUSANGA, <https://web.archive.org/web/20170607125335/https://musangalogistics.com> (last visited Mar. 15, 2018).

villages they come from, especially because many still have family in these locations. Entrepreneurs' sensitivity to the way of life practiced in rural areas enables them to innovate in ways that take into account the cultures and values of the places from which they come. Thus, BongoHive's activities to promote calculated risk-taking among entrepreneurs not only facilitate the fulfillment of the right to work, but also promote development that respects cultural rights.

V. FUTURE PROSPECTS FOR ZAMBIA, ENTREPRENEURSHIP, AND HUMAN RIGHTS

Predicting the future is not an easy task. It would be easy to say that Zambia's problems will continue to persist, much as they have for decades now. This Note does not share that view. Several commentators point to pivotal changes that African countries must make in order to confront their laundry list of pressing challenges.²¹⁰ Although Zambia has much ground to cover, it is well on its way when compared to many other African countries.

For one thing, ethnic and religious strife is virtually non-existent in Zambia, which is a sharp difference from other nations.²¹¹ Despite the fact that there are seventy-two unique tribes, Zambia's national slogan is "One Zambia, One Nation."²¹² Interviewees connected the longstanding peacefulness of Zambia to its founding period: the first president, Kenneth Kaunda, appointed members of various tribes to his cabinet—not just people from his own tribe.²¹³ He also had government officials who were originally from one region of the country move to other regions to promote integration, and he encouraged intermarriage between the tribes.²¹⁴ These initiatives were successful, and all participants stressed how united Zambia is as a country. In addition, some

210. See, e.g., Mbaku, *supra* note 82, at 979 (stating that African countries face a "plethora of problems," including ethnic and religious strife, poverty, poor living standards, weak economic growth, corruption, political opportunism, lack of human rights protections, and minimal participation in global affairs, and offering solutions).

211. See, e.g., Rwanda, South Sudan, South Africa (countries with intense inter-ethnic strife within the last three decades.)

212. Kalondawanga Interview, *supra* note 117; Haggai Interview, *supra* note 128; Bwalya Interview, *supra* note 131. One interviewee noted how perhaps having many tribes was preferable to two strong ethnic, religious, or racial groups that would naturally fight for power, similar to what took place in Rwanda, Sudan and South Sudan, and South Africa.

213. Kabilika Interview, *supra* note 115; Haggai Interview, *supra* note 128.

214. Bwalya Interview, *supra* note 131; Kalondawanga Interview, *supra* note 117; Kabilika Interview, *supra* note 115.

participants attributed Zambia's harmoniousness to the fact that over 90% of the country is Christian, which teaches that people should live in peace.²¹⁵

Ethnic and religious conflict has been cited by scholars as a serious impediment to entrepreneurship.²¹⁶ Because Zambia is free from this obstacle, it is better positioned than many African countries to promote entrepreneurial activity. Indeed, building a peaceful society may be one of the most important first steps towards creating an environment that is friendly to new ventures.²¹⁷ Provided that Zambia can make progress to overcome corruption, copper dependency, and detrimental foreign investment, entrepreneurship has a strong potential to take off—especially with organizations like BongoHive leading the way. And if the logic of this Note holds true, encouraging entrepreneurship in Zambia will lead to a greater flourishing of human rights, creating a virtuous cycle.

The presumption of peacefulness in Zambia was challenged slightly in the most recent elections.²¹⁸ A few participants noted that there was some politically-based violence, and the provinces seemed to be voting based on tribal lines.²¹⁹ But at least one interviewee believed that these latest political issues were just a means for the government to divert attention from the fact that the country is struggling economically.²²⁰ This will only be changed by unleashing the power of entrepreneurship. As one commentator put it:

To migrate from natural wealth to purchasing power, one needs a conversion mechanism that revolves around people and their ability to harness national resources innovatively to satisfy wants. This mechanism is entrepreneurship People

215. Kalondawanga Interview, *supra* note 117; Haggai Interview, *supra* note 128. *See, e.g.*, Romans 12:8 (“If it is possible, as far as it depends on you, live at peace with everyone.”). Several interviewees also asserted that it was just not in a Zambian's nature to be violent. Njobvu Interview, *supra* note 124; Mutambo Interview, *supra* note 121; Kabilika Interview, *supra* note 115.

216. Mbaku, *supra* note 82, at 1050 (“[T]he failure of African governments to manage ethnic and religious diversity has often resulted in . . . significantly high levels of political instability, which have created economic environments that are not suitable for, or conducive to, investment and/or engagement by entrepreneurs in productive activities.”).

217. Agbeibor, *supra* note 19, at 40.

218. Norimitsu Onishi, *Zambia Votes Amid Economic Slowdown and Political Violence*, N.Y. TIMES, at A3 (Aug. 12, 2016).

219. Njobvu Interview, *supra* note 124; Kalondawanga Interview, *supra* note 117.

220. *Id.*

in developing countries demonstrate a passion for entrepreneurship; these creative energies must be tapped.²²¹

If Zambia continues to foster these energies and protect the rights they reinforce, it will be well on its way.²²²

221. Agbeibor, *supra* note 19, at 37, 40.

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