Local Content Policies In Minerals-Exporting Countries: The Case of South Africa

Introduction

The mining industry has been a driving force of the South African economy for the last 150 years. Since the discovery of diamonds in 1867 and subsequently of gold, the mineral sector has contributed to make South Africa the most advanced economy in Africa. Today, despite growing economic challenges, South Africa is a well-established global player, both in the value of its mineral endowments, and in terms of industries and suppliers.

South Africa is the world's largest producer of platinum, vanadium, manganese, vermiculite and chrome and the second largest producer of ilmenite, palladium, zirconium and rutile. It is the third supplier of coal and a major producer of iron ore and gold (United States Geological Service, 2013).

General economic context

The South African economy has made tremendous strides in the two decades that followed the democratic transition. The country managed to peacefully embrace economic stability and to improve living conditions for its citizens. It has developed strong institutions and integrated successfully the global economy as a key African economic powerhouse. Between 1994 and 2012, growth rates averaged 3.8%, in real terms, which were significantly higher than the 1.4% registered between 1980 and 1993 (IDC, 2013).

The economic structure of South Africa has changed significantly. The economy is diversified, largely dominated by the tertiary sector which accounted for 69% of GDP in 2012 (IDC, 2013). The tertiary sector is largely driven by the financial sector, which accounted for 22% of total GDP in 2012. The secondary sector is the second pillar of the economy, despite a continued declined, from 27.7% in 1994 to 19% in 2012. The manufacturing sector dominated this pillar with a contribution of 12.4% to overall GDP in 2012 (IDC, 2013). The mining sector represented 9.3% of GDP, while agriculture contributed to 2.6% of GDP in 2012 (IDC, 2013).

Since the economic crisis of 2008, the economic situation has worsened, pointing to the pressing need to address numerous structural challenges. Real GDP growth rates slowed to 1.9% in 2013 and 1.3% in 2014 (IMF, 2014). Growth in 2015 is forecast at 2%, benefiting from the improved global economic situation, stronger demand from emerging partners and lower oil prices (AOE, 2015).

Despite freeing the population from apartheid, South Africa remains one of the most unequal societies, with significant disparities in labour income and wealth, although poverty levels have significantly decreased in the last 20 years. In 2014, unemployment was as high as 25% (49% among the youth population) and was highest among the black population, reflecting the educational, skills and spatial mismatches that are yet to be addressed to bring the transition to the next level of development (IMF, 2014; AOE, 2015). Other important bottlenecks that negatively impact growth include inadequate energy supply, insufficient transport networks, skills shortage and tense industrial relations reflected by persistent strikes and weak domestic demand (AOE, 2015).

The mining sector in South Africa

In 2013, the mining sector accounted for 9% of GDP, 12% of total investment, 30% of merchandise exports and 8% of total non-agricultural employment (South Africa Chamber of Mines, 2014).

The relative share of the mining sector has declined in the last 20 years for a number of reasons. First, the South African economy is a well-diversified economy and the growth of secondary and tertiary industries have, over time, dwarfed the contribution of the mining sector to the overall economy. But the decline, in particular in recent years, is also explained by a slump in commodity prices, some country-specific factors such as regulatory uncertainty, infrastructure constraints and other issues affecting investment by mining firms. Despite this, mineral resources remain a key sector of the South African economy, making a significant contribution to economic activity, job creation and foreign exchange earnings.

South Africa has a long experience in the mineral sector and has developed, over time, significant expertise in mining and mining related supply industries (upstream linkages). It counts today a number of globally competitive suppliers and has developed clusters of firms to provide world-class goods and services (Kaplan, 2011). It is estimated that 89% of spending by mining firms is local. Additionally, local content of exports of mining equipment is estimated at 90% as a result of South Africa's dense network of suppliers which are global leaders in a number of activities such as underground locomotives, mining fans or submersible pumps as well as a number of services such as geological services, shaft sinking and turnkey new mine design and operation services (UNECA, 2013).

South Africa has placed increasing focus on local content by laying out specific requirements for local procurement, employment, and firm ownership to historically disadvantaged individuals. Firms need to report performance on those requirements annually through a scorecard. A mature mining sector and rising unemployment were among the main factors driving policies towards finding new economic activities to reinvigorate the economy's growth. The legal framework is quite prescriptive and non-compliance may lead to license suspension or cancellation.

Recent years have seen a dual policy orientation, with measures to continue to support upstream supply chains while at the same time stimulating downstream beneficiation. Downstream beneficiation policies are featured in the broader industrial policy framework, with an identified five value chains.1 This requires other complementary efforts to address challenges such as infrastructure, high energy prices, skills shortages and declining research-industry linkages.

LCPs: Legal frameworks and practical applications

Despite the mining sector's significant contribution to employment, creating more sustainable economic linkages has become a priority as the country seeks to find a new economic model to address its weak economic performance and rising unemployment.

To redress the economic situation, South Africa has embarked on a new growth path2 in an attempt to transform and build an integrated economy, enhance growth, employment creation and equity.3 The role of the mining sector is particularly underscored, with particular emphasis on the minerals beneficiation strategy,4 approved in 2011,5 that lays the basis for economic linkages and diversification using mineral resources. This strategy is largely focused on downstream linkages.

Mining regulatory frameworks

The mining and minerals policy frameworks that regulate mineral exploration, mining, beneficiation and related downstream industries are based on the Constitution of South Africa. Relevant laws include the Mineral and Petroleum Resources Development Act, No. 28 of 2002 (MPRDA), Broad

[1] These are energy, iron and steel, pigment and titanium, autocatalytic converters and diesel particulate filters and jewellery fabrication.

[2] Six pillars of the new growth path are (i) significant *investment in infrastructure* in five key areas namely: energy, transport, communication, water and housing; (ii) support for *beneficiation in the mining sector* towards the final manufacture of consumer and capital goods; (iii) m*anufacturing and re-industrialisation* through innovation, skills development and reduced input costs in the economy; (iv) *green economy*, with emphasis on technologies for solar, wind and biofuels; (v) *agriculture*, to address high input costs and upscaling processing and export marketing; and (vi) support to *tourism and other high-level services*.

[3] Key policy instruments are the National Development Plan 2030 and the industrial Policy Action Plan (IPAP) 2013/14 – 2015/16, designed to prevent industrial decline and support the growth and diversification of the manufacturing sector.

[4] The White Paper on Minerals and Mining Policy for South Africa of October 1998, noted that the new policy would involve the promotion of secondary and tertiary mineral-based industries aimed at adding maximum value to raw materials. Section 26 of the Mineral and Petroleum Resources Development Act (MPRDA) noted that the Minister could initiate or prescribe levels of beneficiation of minerals in South Africa.

[5] Available on http://www.gov.za/documents/download.php?f=147564

Based Socio-Economic Empowerment Charter for the South African Mining Industry (the Mining Charter) and the Codes of Good Practice for the Minerals Industry (Mining Code).[6]

The Mineral and Petroleum Resources Development Act (MPRDA) of 2002 (Act 26 of 2002[7]) was enacted with the aim to conduct significant reforms in the mining industry of South Africa following the democratic transition. It came into effect in 2004 with the aim of establishing an enabling environment to foster the development of the mining industry and to transfer sovereignty to the State over all its mineral and petroleum resources. The main objectives of the act are:

- To facilitate equitable access to and develop mineral resources;
- To promote substantial and meaningful economic participation of historically disadvantaged population; and
- To ensure that holders of mining rights contribute to socio-economic development of areas in which they operate.

Socio-economic empowerment, as defined in the MPRDA is supported by the following laws:

- The Preferential Procurement Framework Act (No. 5 of 2000);
- The Employment Equity Act (No 55 of 1998);
- The Competition Act (No. 89 of 1998) including Amendment Act No. 35 of 1999 and subsequent amendments; and
- The Skills Development Act (No. 97 of 1998), Skills Development Levies Act of 1999 and the National Skills Development Strategy.

To give effect to the legislation, section 100(2) (a) of the MPRDA has led to the development of the Broad-Based Socio-Economic Empowerment Charter for South African Mining and Minerals Industry. Adopted in 2004[8] and amended in 2010, its objective is to correct socio-economic imbalances created under the apartheid system, which prevented historically disadvantaged South Africans (HDSAs)[9] from benefiting from the means of production. A system of scorecard was put in place in 2004 to give effect to and monitor the provisions contained in the Mining Charter and was strengthened in 2010 to quantify the minimum thresholds and targets to be attained within a 5-year period for the following priorities.

In addition to the above, a Code of Good Practice for the South African Mineral Industry[10] were published in 2009 to set out administrative principles in order to facilitate the effective implementation of the minerals and mining legislation and enhance the implementation of the Broad-Based Socio-Economic Charter applicable to the mining industry. The Code provides an overview and confirmation of the existing mineral and mining policy in place. It also defines ethics of conduct to ensure the Mining Charter is implemented in good faith and to prevent abuses such as fronting practices and opportunistic behaviours that may divert the potential benefits from the targeted stakeholders.[11]

6 Other legal instruments relevant to the mining sector include the Precious Metals Act 2005 (Act No.37 of 2005); the Diamond Amendment Acts, 2005 (Act No. 29 of 2005 and Act No. 30 of 2005); the Mine Health and Safety Act and related regulations; the Geoscience Amendment Act Regulations; the Mineral Technology Act (Act No. 30 of 1989). These do not have specific requirements regarding local content.

7 Available at http://www.dmr.gov.za/publications/summary/109-mineral-and-petroleum-resources-development-act-2002/225-mineraland-petroleum-resources-development-actmprda.html

8 Available at http://www.dmr.gov.za/publications/summary/24-mining-charter/571-gg-26661-miningcharter-13-aug-2004.html

9 Historically Disadvantaged South Africans (HDSA) refers to any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) came into operation.

10 Available at http://www.saflii.org/za/legis/consol_reg/maprda28o2002rangnr446895.pdf

11 For example, the Code of Good Practice defines practices considered fraudulent. Such practices include situations where local stakeholders may be appointed to a position but discouraged or inhibited to participate in core activities; economic diversion, where economic benefits received do not flow back to the local stakeholder in the ratio specified in the legal document; and opportunities intermediaries which are enterprises that have concluded agreements with mining companies with a view to leverage the former's BBEE status.

Key local content requirements in the South African legal frameworks

South Africa's local content experience is unique given its history with apartheid. Following the democratic transition and in order to address the inequality created under the apartheid regime, South Africa established a programme to foster Black Economic Empowerment (BEE, and later Broad-based Black Economic Empowerment, BBEE), implemented through very specific measures and targeting all economic sectors.[12] According to the Mining Charter, "local" is understood as procurement within the South African national borders.

Measures include procurement preferences, employment preferences, and management and ownership. Table 1 summarises the key LCPs applicable to the mining sector. Most measures are subject to compulsory targets, on which firms have to report regularly.[13]

Table 1. Summary of LCPs applicable in South Africa

Type of compulsory Requirements	Details of requirements	Applicability in South Africa	Relevant legal framework
Numerical requirements	Compulsory requirement to employ % of HDSA (Employment equity)	Diversification of the workplace to include HDSA by 2014 as follows: Top management (board): 40% Senior management: 40% Middle management: 40% Junior management: 40% Core skills: 40% Women in mining: 10%	Scorecard for BBSEE Charter for South African Mining[1]
	Procurement and enterprise development	Procurement spent on BEE entities by 2014: Capital goods: 40% Consumables: 50% Services: 70%	Scorecard for BBSEE Charter for South African Mining
	Ownership requirement: Minimum target for effective HDSA ownership	Compliance by 2014 Meaningful economic participation: 26% Full shareholder rights: 26%	Scorecard for BBSEE Charter for South African Mining
Monetary requirements	Enterprise development fund	Annual spend on procurement from multinational suppliers: 0.5% by 2014	Scorecard for BBSEE Charter for South African Mining
Capabilities and knowledge development	Requirement for local capacity development	Developing requisite skills, including support for South Africa based research and development initiatives intended to develop solutions in exploration, mining, processing, technology mining, beneficiation as well as environmental conservation HRD expenditure as percentage of total annual payroll (excluding mandatory skills development levy) by 2014: 5%	Scorecard for BBSEE Charter for South African Mining
Reporting and justification	Mining firms to report compliance with the charter for the calendar year	Documentary proof of receipt from the department to be submitted on an annual basis	Scorecard for BBSEE Charter for South African Mining
R&D: Use of local research facilities for sample analysis	Utilisation of South African research facilities for analysis of samples across the mining value chain	100% of samples analysed in South African facilities by 2014	Scorecard for BBSEE Charter for South African Mining

Note: 1. http://www.dmr.gov.za/publications/summary/108-minerals-act-charter-and-scorecard/130-scorecard-mining-charter.html

Source: Scorecard for the broad-based socio-economic empowerment charter for the South African Mining Industry (2014). Table adapted from Ramdoo (2015).

[12] The Government also passed Guidelines on how to calculate local content for public procurement using a specific mathematical equation. This followed from the Local Procurement Accord in 2011 that was a jointly created public and private commitment to improving local procurement in core sectors of the economy.

[13] Most of the targets refer to Historically Disadvantaged South Africans which comprises blacks, "coloureds", Indians and other Asians that have been in South Africa before 1994. The racial makeup of the working age population of South Africa in 2015 was: 78% black, 9% coloured, 9% white, 3% Indian or other Asian. Historically disadvantaged groups are generally defined therefore to consist of about 90% of the population of South Africa.

The scorecard explicitly refers to five criteria relevant for local content for the upstream part of the supply chain in order to improve the participation of local stakeholders, correct historical imbalances and improve living conditions of the local community.[14] These are:

1. *Ownership participation* by HDSA in existing or future mining, prospecting and exploration operations, measured as voting rights, economic interests and net value.[15] [16] HDSA ownership is defined as meaningful economic participation which has the following attributes:
   a) Ownership by HDSA is a minimum of 25% + 1 vote
   b) HDSA ownership comprised of BEE entrepreneur, Communities and Workers (including Employee Share Ownership Schemes)
   c) Barring any unfavourable market conditions, evidence of flow of dividends to HDSA shareholders.

Table 2. Ownership

Category	Mining Charter description	Target	Compliance by 2014
Ownership and Joint Ventures	Firm to achieve HDSA participation in terms of ownership for the equity or attributable units in production of 15% in HDSA hands within 5 years and 26% in 10 years	Voting Rights	26%
		Economic interests	26%
		Net value	26%
Management control	The importance of workplace diversity and equitable representation at all levels as a catalyst for social cohesion, transformation and competitiveness of the mining industry	Board participation	Demonstrable HDSA fiduciary participation
		Executive committee	40%

Source: Codes of Practice (2009).

2. *Employment equity requirements*: The Mining Charter emphasises "the importance of workplace diversity and equitable representation at all levels as a catalyst for social cohesion, transformation and competitiveness of the mining industry". Two conditions are required to achieve this objective:
   a) Management control, with an increasing participation at board level and in the executive committee
   b) Employment equity, at various levels occupational levels, must be defined. Firms must prepare a plan to meet the targets for a period of 5 years and must publish and report on an annual basis on progress made.

Table 3. Employment equity requirements

Category	Mining Charter description	Target	Compliance by 2014
Employment equity	Following threshold applies	Top management	40%
	Firm to publish its employment equity plan and report on its annual progress in meeting that plan	Senior management	40%
		Middle management	40%
		Junior management	40%

Source: Codes of Practice (2009).

14 Seven criteria are explicitly defined but two fall outside the scope of this study. These are (i) ownership participation; (ii) employment equity (iii) human resource development; (iv) preferential procurement; (v) local community development; (vi) beneficiation; and (vi) housing and living condition standards. Beneficiation and housing and living conditions standards fall outside the scope of this study.

15 Voting rights and economic interest are expressed as a percentage held by HDSA in relation to the total within that measured entity.

16 Net value means the value of the Equity Instruments held by HDSA's determined on the date of measurement less the carrying value of any acquisition debts of the relevant HDSA Participants on the date of measurement expressed as a percentage of the value of the Measured Entity on the date of measurement.

3. *Human resource development and capacity building requirements:* In South Africa, the mining industry is required to conduct regular skills gap assessments and development to ensure that there is enough supply of requisite skills at various levels of competencies. To this end, the HRD element was introduced as a compulsory requirement to strengthen workforce capabilities to place the country on a more competitive trajectory.

Table 4. HRD requirements

Category	Mining Charter description	Target	Compliance by 2010
Human Resource Development	Firm to offer every employee the opportunity to be functionally literate and numerate by the year 2010;	HRD expenditure as a percentage of annual payroll spend	5%
	Employees offered training opportunities		

Source: Codes of Practice (2009).

4. *Preferential procurement and enterprise development*: Mining right holders are encouraged by the Mining Charter to procure a percentage of their capital goods, consumables and services from compliant BEE suppliers.

Targets for preferential procurement were set over ten years, with specific targets set for the first five years (starting in 2004, when the Mining Charter was implemented) and increasing targets for the next five years.

Table 5. Preferential procurement requirements

Category	Mining Charter description	Target for BEE procurement spend from local suppliers	Compliance target years 0 - 5	Compliance target years 6 - 10
Preferential procurement	Mining firms to give HDSA's preferred supplier status	Spend on *capital goods*	20%	40%
		Spend on *services*	50%	70%
		Spend on *consumables*	10%	50%
		Spend from any of the following suppliers as a percentage of Total measured Procurement spent: (a) suppliers that are more than 50% black owned, (b) suppliers that are more than 30% black woman owned	15%	20%

Source: Codes of Practice, 2009

Suppliers development: strategic partnerships and private sector initiatives

South Africa has a developed suppliers' network in goods and services. This has been supported by mining firms leading initiatives such as suppliers development programmes to help local SMEs develop their prospects to be able to secure tender opportunities and hence help them to compete with larger vendors.

Examples of private initiatives to support suppliers' development

Anglo American launched a Small Business Initiative, Zimele, in 1989 to provide business opportunities to create commercially viable and sustainable SMEs in particular for historically disadvantaged groups and hence contribute to the sustainable development of mining communities.[17] The programme supports SMEs by providing finance, skills transfer and technical assistance. Regarding local content, Anglo's needs are identified and tenders are given to SMEs accompanied by training and rapid payments. It is reported that between 2008 and 2014, Zimele has concluded 2 358 transactions to support 1 619 firms and has provided ZAR 921 million in funding for businesses that employed 30 092 people.[182]

There are different ways in which the Zimele programme supports small businesses. Zimele offers financial assistance in the form of loans. In some cases, equity is purchased in some SMEs with an aim of selling it back to its entrepreneurs at market value within three years. Zimele has achieved a repayment rate of between 85-93% over its history. Capital and any profits realized from its loans and investments are then re-invested into the fund with a view to re-investing in other businesses.

In July 2007, **Lonmin**, a platinum mining firm, created a local supplier development programme, in collaboration with the International Finance Corporation, with a view to bring economic development to the community, situated within a 15 km radius of its Marikana mines.[19] The programme sought to develop locally owned supply firms that would be awarded contracts to supply the mining sector. Within the first 3 years, the firm is reported to have awarded 215 contracts to 34 local suppliers, to the value of USD 31.5 million in the fields of construction, ore transport, training and catering.

In 2003, Gold Fields Limited adopted a Black Economic Empowerment Procurement Policy to increase the participation of HDSA. To facilitate this, the firm has identified needs and barriers to entry for its local suppliers, and accordingly has developed the Thusanang Entrepreneurial Support Centre to help empower small, medium and micro enterprises. The Centre provides training in particular in business skills to increase HDSA groups' participation in the market and to enable them to supply required services. The firm regularly organizes alignment meetings between potential HDSA service providers and its traditional vendors to form partnerships or joint ventures. To facilitate and stabilise cash flow for its HDSA vendors, Gold Fields indicates that it adheres to a seven-day payment schedule.[20]

In view of implementing the BEEE initiative, Anglo Gold Ashanti has designed a comprehensive preferential procurement programme to promote local procurement from qualifying BEE entities, as part of its normal procurement activities across all AngloGold Ashanti mining operations in South Africa. A number of mechanisms were put in place to meet the objective of the policy. First, the firm encourages existing suppliers to form partnerships with Black Owned and Black Women Owned firms. This is expected to give the latter access to the latest skills and technologies. Secondly, contracts were sub-divided to maximize local participation. Third, in some cases, it would even set tenders aside for the exclusive participation of BEE Entities. Fourth, the firm committed to support skills transfer and training to help local firms in completing tenders, meeting technical and compliance requirements and managing their businesses. The firm is in the process of setting up enterprise development centres in various areas in which it operates, which are expected to support and act as incubators for SMEs. By 2014, the firm reported that it had exceeded employment targets set in the Mining Charter for all categories defined in the Charter[21].[5] It had exceeded the targets for procurement spending on BEE firms for all categories identified. Finally, in order to alleviate cash flow pressures, Anglo Gold Ashanti committed to pay suppliers within 15 working days of submission of statements.

17 The word "zimele" is derived from the Nguni language group term for "being independent" or "standing on one's own feet".

18 Source: http://southafrica.angloamerican.com/our-difference/zimele-enterprise-development.aspx

19 This area is comprised of approximately 250,000 people and is characterised by a 60-65% unemployment rate, with 50% of the population living in informal settlements and shacks.

20 See https://www.goldfields.com/reports/annual_report_2008/sus_chain_management.php.

21 See http://www.anglogoldashanti.com/en/sustainability/miningcharter/social%20and%20labour%20plans/2015-2019-slp%20vr%20-%20awaiting%20ministerial%20approval%20from%20the%20department%20of%20mineral%20resources.pdf.

5. *Integrated socio-economic development for host communities* through a financial contribution to support initiatives in public programmes meant to facilitate further mine community and rural development.

Table 6. Community development requirements

Category	Mining Charter description	Target	Compliance
Community development	Mining firms to cooperate with government in the formulation and implementation of integrated development plans for the communities where mining takes place and for major labour sending areas Firms to engage/consult the local mine community and major labour sending area communities Firms are be required to provide a pattern of consultation, indicate money expenditure and show a plan	Annual value of all qualifying contributions made by the measured entity from the commencement of this statement	1% of after tax net profit

Source: Codes of Practice (2009).

6. *Non-compliance*: Non-compliance with the Mining Charter and the Code of Good Practice renders firms to be in breach of Section 47 of MPRDA, which can lead to the cancellation or suspension of permit.

Assessing local content requirements

An assessment of the Mining Charter released by the Department of Mineral Resources (DMR) in May 2015 revealed that on average, mining firms have made good progress in achieving targets set by the scoreboard. In total, 962 right holders were expected to submit data for the assessment. However, only 46% of the eligible mining rights holders submitted data, but which nevertheless accounted for 95% of total employment in the sector, giving a fair representation of the South African mining industry. The majority of mining right holders that did not submitted their data were small and medium sized firms.

The results summarised below take into account the size of the mine as it is believed that this measure captures better the impact of the mining sector. 22 Key conclusions of the Assessment, summarised in Table 7, are:

1. Ownership requirements: 90% of submissions have reportedly met and exceeded the target of 26% HDSA shareholding with total industry simple average HDSA ownership of 32.5%. However, there was a significant difference of opinion between the Government and the mining industries and the matter has been referred to the High Court for interpretation;[23]
2. Labour requirements: The analysis reported that the mining industry exceeded the 40% target in the different functional categories, with HDSA the highest representation in the core skills category at 75.2%, followed by junior management at 62.8%. The target for women in mining was also met.
3. The Assessment indicated that targets regarding HRD were largely unmet in terms of functional literacy, career path and mentoring of empowerment groups. The Mining Charter required mining firms to spend 5% of total payroll (excluding skills development levies) by 2014 on HRD but only 56.8% of firms (weighted) reached the target.

[22] Due to the huge variation in size and significance of mining right holders, a **weighting methodology** based on employment for each mining right holding was applied in assessing the data. Accordingly, the aggregate industry results are presented on the following basis: (i) ***not-weighted***: this approach aggregates the industry on a basis that mines of different sizes have equal significance in the output. (ii) ***Weighted by Size of Mine (using employment)***: Employment figures have been used as a measure of the size of a mining right. This measure was selected as it is viewed to better capture the social impacts of mining operations. Weighting the output by size provides a measure of significance of the results to industry performance as a whole.

[23] The Department of Mineral Resources and the mining industry disagree on the interpretation of the essence of the Mining Charter, which demands 26% black ownership of companies. It is expected to bring the matter to the High Court to resolve the impasse. The disagreement centres on whether past deals count towards the 26% when the transactions have fallen away.

4. Regarding preferential procurement, significant progress has been made and the report showed that the percentage of firms meeting the 40% target of total expenditure on *capital goods* sourced from BEE entities was 81.6% (when data was weighted). With respect to procurement of *services* from BEE entities, 64.8% of firms in the weighted dataset met the target of 70% whereas for the *procurement of consumables* from BEE entities, 82.7% of firms in the weighted data met the 50% target.

Table 7. Assessment results (comparing selected targets)

Element (Scorecard weighting)	Description	Target	DMR Assessment *(i) Comparison to target* *(ii) % of submissions that has met target* — Unweighted	DMR Assessment — Weighted	Informal Chamber of Mines assessment *(i) Comparison to target* *(ii) % of submissions that has met target* — Weighted
Ownership	Min HDSA ownership %	26%	(i) 30.6%	(i) 32.5%	(i) 38%
	% of firms achieving 26%	100%	(ii) 79%	(ii) 90%	(ii) 100%
	Percentage of firms with BEE, community & ESOP	Not agreed	(iii) 6.3%	(iii) 20%	(iii) 41%
Procurement & enterprise development	Capital goods	40%	(i) -----	(i) -----	(i) 72%
	% of firms meeting target		(ii) 39.1%	(ii) 81.6%	(ii) ----
	Services	70%	(i) -----	(i) -----	(i) 63%
	% of firms meeting target		(ii) 32%	(ii) 64.8%	(ii) ----
	Consumable goods	50%	(i) -----	(i) -----	(i) 72%
	% of firms meeting target		(ii) 57.8%	(ii) 82.7%	(ii) ----
	Annual spend on procurement from MNCs	0.5% of procurement	(i) -----	(i) -----	(i) ----
	% of firms meeting target		(ii) 3.3%	(ii) 14.9%	(ii) 20%
Employment equity	Top Management (Board)	40%	(i) 54.1%		(i) 50,4%
	Senior Management	40%	(i) 50.7%		(i) 41,9%
	Middle Management	40%	(i) 52.7%		(i) 50,9%
	Junior Management	40%	(i) 62.8%		(i) 54%
	Core skills	40%	(i) 75.2%		(i) 75,5%
Human resource development	HRD expenditure as % of total annual payroll	5%	(i) -----	(i) -----	(i) 5.5%
	% of firms achieving target		(ii) 35.3%	(ii) 56.8%	(ii) 100%
Mine community development	Implement approved community projects	Up to date implementation	(i) -----	(i) -----	(i) 70,6%
	% of firms meeting target		(ii) 36%	(ii) ----	(ii) ----

Source: DMR (2015); South Africa Chamber of Mines (2015).

The Department of Mineral Resources is solely in charge of determining compliance with local content requirements. However, the South African Chamber of Mines made its own informal assessment. Its results are presented for comparison purposes in Table 7.

The assessments highlight a number of challenges both firms and the government faced in increasing the participation of local stakeholders in the mining industry. For instance, the attainment of broad-based economic empowerment of HDSAs was constrained access to funding, limited capacity to clearly identify beneficiaries (BEE entrepreneurs) as well as financially cumbersome structures of BEE deals. More importantly, the reported level of BEE ownership was established to have been concentrated in a handful of Black beneficiaries, contrary to the spirit and aspirations of both the Freedom Charter and Mining Charter (DMR, 2015).

Main properties

South Africa has one of the most detailed and complex local content legislations and frameworks. The local content requirements include employment quotas at key levels of the firm, procurement targets, ownership requirements, mandatory expenditure on training and suppliers development, and community development programmes, all implemented with the stated intention to normalise the skewed demographics in the industry that were the result of apartheid.

Local content provisions represent an attempt to increase the participation of local actors in the mining industry, correcting at the same time historical imbalances. The targeted populations are the Historically Disadvantaged South Africans (HDSA) who make up about 90% of the population. It is estimated that 89% of spending by mining firms is local. Additionally, the local content of exports of mining equipment is estimated at 90% as a result of South Africa's dense network of suppliers which are global leaders in a number of activities. The intent of the legislation was to drive local manufacturing of goods and services that supply the mining sector, however it has been noted that in some cases domestic production has been replaced by imports by BEE compliant firms.

A large proportion of South Africans are employed in and around the mining sector. The mining sector accounts for 8% of direct, non-agricultural employment. This is large compared to many minerals rich countries where mining typically employs less than three percent of the labour force. Part of this may be due to the more labour-intensive nature of platinum mining. It may also however point to a shift to more capital intensity that will come in future in order to ensure that South African mining remains competitive.

On the positive side, the assessment of procurement and enterprise development targets show that large firms made significant efforts to source from local suppliers. Similarly, employment equity targets were largely met, although further increases in local employment at senior and middle management levels will surely be possible only through scaling up of skills in order for potential employees to meet the competency requirements.

However, a recent assessment revealed a number of challenges. First, these targets are highly complex, complicated and difficult to understand for mining firms as well as for the beneficiary target groups. Complex legislation means that even basic monitoring and reporting become costly.

Secondly, there is some evidence of unintended effects of the policies in place. In particular, there is some evidence that locally produced inputs into the mining sector have actually been displaced by imports by BEE-compliant firms. In this case, the local content requirement actually had the opposite of the intended effect. The South African government is reviewing the legislation that is thought to have caused this situation.

Third, despite meeting the procurement and enterprise development targets overall, sustainable private sector development and enterprise growth have not necessarily resulted. The extensive local content requirements have raised the cost of doing business in South Africa and, in some cases, even caused business to shy away from investing further according to one source (USAID/SPEED, 2013). While firms have strict obligations to meet these targets, they often face a lack of capability to deliver on the part of suppliers, or of requisite skills on the part of employees. Perhaps the most important criticism to the South African model is that the approach was focused on mandating firm purchasing and employment behaviour rather than improving the business enabling environment and providing incentives to catalyse local procurement without sacrificing quality and cost.

As in many other mature mining countries, firms in South Africa have engaged in quite extensive suppliers' development programmes. Some of these programmes are vast: Zimele, a suppliers' development programme undertaken by Anglo American, has engaged with firms that employ 30 000.

More Information

Korinek, J. and I. Ramdoo (2017), "Local content policies in mineral-exporting countries", *OECD Trade Policy Papers*, No. 209, OECD Publishing, Paris. http://dx.doi.org/10.1787/4b9b2617-en

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